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VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Applications of Tribune Media Company and Sinclair Broadcasting Group, Inc. for Consent to Transfer Control of Licenses and Authorizations, MB Docket No. 17-179*

Dear Ms. Dortch:

NCTA – The Internet & Television Association (“NCTA”) submits this letter in response to Sinclair Broadcast Group, Inc.’s (“Sinclair’s”) recently filed amendment to its June Comprehensive Exhibit in the above-captioned proceeding.¹ Despite the length of Sinclair’s filing, Sinclair fails to provide the “full and complete record” necessary for the public and the Commission to evaluate whether the proposed transaction complies with the Commission’s media ownership rules and otherwise meets the statutory public interest test.² The Commission should not restart the shot clock until Sinclair provides all of the necessary information, and interested parties have had an adequate opportunity to review and comment on it.

For instance, in four of the eight identified “Overlap Markets,” Sinclair does not disclose which stations it proposes to divest in order to comply with the Commission’s Duopoly Rule.³ Rather, for each of these markets, Sinclair states only that it “intends” to divest “one of [several overlap] stations” to a third party.⁴ In the meantime, it has filed Divestiture Trust Applications

¹ See Applications of Tribune Media Co. and Sinclair Broadcast Group for Consent to Transfer Control of Licenses and Authorizations, MB Docket No. 17-179, Amendment to June Comprehensive Exhibit (filed Feb. 20, 2018) (“Amendment”).

² See Letter from Michelle M. Carey, Chief, Media Bureau, to Miles S. Mason, Counsel to Sinclair and Mace J. Rosenstein, Counsel to Tribune Media Co., MB Docket No. 17-179, at 1 (rel. Jan. 11, 2018).

³ See 47 C.F.R. § 73.3555(b)(1)(ii) (restricting an entity’s ownership of two television stations licensed in the same Designated Market Area (“DMA”) if, *inter alia*, both stations are ranked among the Top Four stations).

⁴ See Amendment at 5 (Oklahoma City), 6-7 (Grand Rapids-Kalamazoo-Battle Creek, Michigan; Richmond-Petersburg, Virginia; Des Moines-Ames, Iowa).

for all of the stations that might be divested, promising only to identify the stations that will actually be placed in the Divestiture Trust “[b]y the time the parties are ready to close the Transaction.”⁵ This approach is patently inadequate. Neither the public nor the Commission can evaluate this transaction without knowing which stations Sinclair intends to retain and which it is going to sell to come into compliance with the Duopoly Rule. Sinclair has persistently refused to provide this information, beginning with its initial application through its response to the Media Bureau’s information request and now this Amendment. These specifics are essential to understanding the competitive impact of the transaction, including the impact on future retransmission consent negotiations with Sinclair in these markets.⁶ Sinclair should not now be permitted to go forward on the basis of a vague “bigger than a breadbox” promise to comply with the Duopoly Rule by placing in the Divestiture Trust “no fewer than the stations as necessary for the Transaction to comply with the Commission’s rules (unless any such required divestiture has taken place at or prior to closing) and no more stations than are allowable under the Commission’s television multiple ownership rules.”⁷ The review of this transaction raises serious issues for consumers and competition that cannot be satisfied by a guessing game.

Sinclair must also be required to disclose the “option and services agreement(s)” that it “intends” to enter into with the buyers of many of the stations it plans to divest, including the buyers of two of the three stations Sinclair is divesting to comply with the national ownership cap.⁸ Sinclair currently plans to reveal the details of these agreements only when it files the assignment applications for these stations,⁹ but the public and the Commission must be able to scrutinize these agreements now in order to determine their impact on the transaction. Sinclair’s demonstrated willingness to use sidecar agreements to unlawfully engage in joint retransmission consent negotiations¹⁰ warrants a careful review of the proposed services agreements to ensure that they contain safeguards sufficient to prevent the recurrence of this unlawful conduct. The duties of the Divestiture Trustee under these agreements also raises questions about the independence of the Trustee.¹¹

⁵ See *id.* at 32-33.

⁶ In the three markets where Sinclair acknowledges that it seeks to retain ownership of two Top 4 stations, it notably ignores the impact of the proposed combination on retransmission consent fees going forward. At least in those markets, the identity of the stations to be retained is known and the competitive impact of the combinations can be evaluated.

⁷ See *Amendment* at 32-33.

⁸ See *id.* at nn.9, 15, 17, 86 & 87.

⁹ See *id.*

¹⁰ See *In re Sinclair Broadcast Group, Inc.*, Order, 31 FCC Rcd 8576 (MB 2016). The need for such a review is therefore not obviated by the Commission’s recent decision that Joint Sales Agreements are not attributable under its media ownership rules. *In re 2014 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802, 9853 ¶ 110 (2017).

¹¹ See Trust Agreement, § 4(f) (“The Trustee acknowledges that it may be requested by Sinclair to assume or enter into a local marketing, joint sales, shared services or similar agreement under an Existing Sale Contract (or to assume such an existing agreement), and agrees to assume, enter into and perform its obligations under such agreement, provided that such agreement is in form and substance reasonably satisfactory to the Trustee.”) (attached as Exh. A. to Engagement and Assignment Agreement between Sinclair and RAFAMEDIA, LLC,

Likewise, the Commission and the public need to better understand the nature of the “options” that Sinclair will obtain under these agreements. These options could compromise the divestitures that Sinclair puts forward in the Amendment to ostensibly satisfy the Commission’s media ownership rules¹² by allowing Sinclair to reacquire the divested stations.

The Commission should not reward Sinclair’s continuing refusal to provide all of the details of its proposals for bringing the transaction into compliance with the Commission’s media ownership rules. Rather, the Commission should decline to restart the shot clock until Sinclair identifies the specific stations that it plans on divesting and provides the option and services agreements it will enter into with the buyers of these stations, and interested parties have had an adequate opportunity to review and comment on this information.¹³ Only with this information will the public and the Commission have the “full and complete record” necessary to evaluate the transaction.

Respectfully submitted,

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Feb. 16, 2018). While Sinclair states that the Trustee will have complete control over the divested stations and will “operate them as separate, independent and active competitors to Sinclair,” it also indicates that its trust arrangement “conforms to the Commission’s attribution insulation standards”—which would not preclude Sinclair from entering into a JSA with the Trustee for the divested stations prior to closing. *See* Amendment at 33-34.

¹² *See* Amendment at 3 (“Overlap Markets where Sinclair is divesting stations *to comply with* the Duopoly Rule”), *id.* at 31 (“Markets where Sinclair is divesting stations *to comply with* the National Cap Rule”) (emphasis added).

¹³ The Amendment raises issues of first impression under the recently-revised Duopoly Rule, and review of the Amendment will require significant economic analysis. The Commission should therefore provide interested parties with more than 30 days to comment on the Amendment after Sinclair provides the additional information described above.