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March 12, 2018

**BY ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
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:

I write on behalf of the American Cable Association to express our concern with Sinclair Broadcast Group's continued unwillingness to present sufficient information for the public to review its proposed merger with Tribune Media Co. Indeed, Sinclair's latest submission raises *new* issues related to retransmission consent pricing—issues that highlight why it is so important for Sinclair to be more forthcoming than it has been to date. The Commission cannot fully evaluate this proposed transaction until Sinclair provides additional information.

Last month, Sinclair filed an amendment to its application to purchase television stations from Tribune.<sup>1</sup> Numerous parties filed objections to this February Amendment, arguing that Sinclair had failed to provide the “full and complete record” necessary for the public and the

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<sup>1</sup> See Applications of Tribune Media Co. and Sinclair Broadcasting Group, Inc. for Consent to Transfer Control of Licenses and Authorizations, MB Docket No. 17-179, Amendment to June Comprehensive Exhibit (filed Feb. 20, 2018) (“February Amendment”); Applications of Tribune Media Co. and Sinclair Broadcasting Group, Inc. for Consent to Transfer Control of Licenses and Authorizations, MB Docket No. 17-179, Amendment to June Comprehensive Exhibit (filed March 7, 2018) (“March Amendment”).

Commission to evaluate the transaction.<sup>2</sup> After meeting with media Bureau Staff,<sup>3</sup> Sinclair filed a new, revised amendment days later.

In many of the markets where Sinclair proposes to divest stations, the new amendment makes no material changes.<sup>4</sup> In two other markets, however, Sinclair now proposes to address duopoly-rule issues *not* through a divestiture trust, but instead through a waiver. That is, if the Commission determines that Sinclair may not own two top-four stations in Greensboro and Indianapolis, Sinclair seeks a waiver of the duopoly rule permitting it to own both “temporarily” until it can decide which station to divest and do so “in an orderly manner.”<sup>5</sup>

Replacing divestiture trusts with temporary waivers, however, raises a host of *new* issues related to retransmission consent. Indeed, the “temporary” waiver process could result in automatic and, in some cases, *permanent* price increases. Here’s how such “laundering” would work:

- Suppose that SmallTown Cable Company carries Tribune Station A for \$1.00 per month. Suppose further that SmallTown Cable also carries a Sinclair Station B for \$2.00 per month.

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<sup>2</sup> See Letter from Rick Chessen to Marlene Dortch, MB Docket No. 17-179 (filed Feb. 27, 2018) (“NCTA Letter”); Letter from John Simpson to Marlene Dortch, MB Docket No. 17-179 (filed Feb. 27, 2018) (setting forth objections of Newsmax Media, Inc.); Letter from Charles Herring *et al.* to Marlene Dortch, MB Docket No. 17-179 (filed Feb. 28, 2018) (setting forth objections of members of the Coalition to Save Local Media); *see also* Letter from Michelle M. Carey to Miles S. Mason, MB Docket No. 17-179 (rel. Jan. 11, 2018) (directing Applicants to provide a “full and complete record”).

<sup>3</sup> Sinclair’s and Tribune’s lawyers met with Media Bureau staff to “discuss[] FCC policies and procedures applicable to applications filed in connection with the proceeding.” Letter from Miles Mason to Marlene Dortch, MB Docket No. 17-179 (filed Mar. 5, 2018). We have no idea what “policies and procedures” were discussed. As such, Applicants have likely violated the Commission’s *ex parte* rules, which require much more fulsome disclosure. 47 C.F.R. § 1.1206(b)(1) (“Oral presentations. A person who makes an oral *ex parte* presentation subject to this section shall submit to the Commission’s Secretary a memorandum that lists all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and summarizes all data presented and arguments made during the oral *ex parte* presentation. *Memoranda must contain a summary of the substance of the ex parte presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.*”) (emphasis added).

<sup>4</sup> That is, in Oklahoma, Grand Rapids, Richmond, and Des Moines, Sinclair still will not disclose which station it proposes to divest. It instead continues to propose using divestiture trusts, which it promises “will be amended prior to grant to specify which station ultimately will be assigned to the trust.” March Amendment at 8.

<sup>5</sup> *Id.* at 2. In Greensboro, Sinclair would own three stations—two top-four stations and one non-top-four station. It thus seeks a temporary waiver of the duopoly rule to own all three stations, because it says it will not know which station it needs to divest.

- Now suppose that SmallTown Cable’s agreement with Sinclair contains an “after-acquired station” clause so that it applies to any station Sinclair purchases.
- Under Sinclair’s new formulation, Tribune Station A would go *through Sinclair* before eventually being sold to Mystery Buyer. Because Sinclair would own Tribune Station A during the interim period, the after-acquired station clauses would apply—meaning that the station’s rate would increase from \$1.00 to \$2.00. This would not happen if Tribune Station A were placed in a divestiture trust, the entire point of which is that Sinclair never owns the station.<sup>6</sup>
- What happens when Sinclair eventually sells Tribune Station A to Mystery Buyer? If Sinclair assigns Tribune Station A’s contracts to Mystery Buyer (as most such agreements do) and no other contract between SmallTown Cable and Mystery Buyer governs, then SmallTown Cable would pay \$2.00 going forward, instead of the \$1.00 it would have paid had Mystery Buyer obtained the station from the divestiture trust.

To be clear, our concern here is not solely with Sinclair’s or any other broadcaster’s use of after-acquired station clauses, although we have expressed concerns with such clauses in the past.<sup>7</sup> The new issue here is that, by *combining* after-acquired station clauses with temporary ownership waivers, Sinclair could—intentionally or otherwise—automatically increase retransmission consent prices for stations that Sinclair cannot lawfully own.

We will object at the proper time to the substance of Sinclair’s proposed “temporary” waivers, both for the reasons described above and for others. At the moment, however, our objection is procedural: *We cannot evaluate the potential harm the “laundering” described above will cause unless we at least know (1) which stations Sinclair proposes to divest; (2) the parties to whom it proposes to divest; and (3) the terms under which it proposes to divest.* Yet this is precisely the information that Sinclair refuses to provide to the Commission.

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<sup>6</sup> See March Amendment at 4. (“As set forth in Section III below, consistent with Commission precedent and in order to facilitate orderly divestitures in accordance with the Commission’s rules, the Applicants are also simultaneously filing applications (the ‘Divestiture Trust Applications’) seeking Commission consent to assign or transfer control of the licenses of certain television stations to a divestiture trustee, who will be charged with promptly selling the stations to third parties to the extent such stations have not been divested prior to the closing of the Transaction. The Divestiture Trust Applications include the Sinclair and Tribune stations listed on Appendix I hereto.”); *see also id.* Appendix 1 (listing Tribune stations to be divested).

<sup>7</sup> See Petition to Deny of the American Cable Association at 13, MB Docket No. 17-179 (filed Aug. 7, 2017) (discussing the use of such clauses).

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Until Sinclair discloses information regarding the stations it proposes to divest, it has not provided the “full and complete record” necessary to evaluate the proposed transaction. Without such information, the Commission cannot proceed with its review.

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In accordance with the Commission’s rules, I will file a copy of this letter electronically in the docket listed above.

Sincerely,

A handwritten signature in black ink, appearing to read "Ross J. Lieberman". The signature is fluid and cursive, with a large initial "R" and "L".

Ross J. Lieberman