

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Applications of Tribune Media Company and)	MB Docket No. 17-179
Sinclair Broadcast Group)	
For Consent to Transfer Control of Licenses)	BALCDT - 20180427ABM
and Authorizations)	BALCDT - 20180427ABL and
)	BALCDT - 20180227ABD
)	

NEWSMAX MEDIA, INC.'S PETITION TO DENY

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Newsmax Media, Inc. (“Newsmax”) petitions the Federal Communications Commission (the “Commission” or the “FCC”) to deny the applications filed by Sinclair Broadcast Group, Inc. (“Sinclair”) and Tribune Media Company (“Tribune”) seeking consent from the Commission to the transfer of control of subsidiaries of Tribune holding the licenses of full-power broadcast television stations, low-power television stations, and TV translator stations to Sinclair, and consent to combine two top-four rated stations.¹ This petition is based on the insufficiency of the purported third-party divestitures that Sinclair asserts will allow it to comply with Commission rules. As explained below, Sinclair’s proffered divestiture plan renders this transaction antithetical to the public interest.

I. Introduction

Sinclair Broadcasting Group, Inc. has agreed to acquire Tribune Media Company (collectively, “Applicants”). Sinclair is a television broadcasting company that has a broadcast distribution platform consisting of 191 stations in 89 markets, which Sinclair either owns outright, provides programming and operating services pursuant to agreements commonly referred to as local marketing agreements (“LMAs”), or provides sales services and other non-programming operating services pursuant to other outsourcing agreements (such as joint sales agreements (“JSAs”) and shared services agreements (“SSAs”)).² Tribune is a broadcast company that owns 42 television stations in 33 markets, cable network WGN America, digital

¹ Newsmax is a party in interest who will suffer concrete, particularized harms as a direct result of the merger of Sinclair and Tribune. As has been well established on the record, Newsmax, like other independent programmers, will be injured by Sinclair’s immediate, increased leverage to demand higher license fees and demand carriage of Sinclair’s wholly-owned cable channels, further reducing the limited channel capacity now available to independent cable networks. *See, e.g.* Petition to Dismiss or Deny of Newsmax Media, MB Docket No. 17-179, at 3 (Aug. 7, 2017) (“August 2017 Newsmax Petition to Dismiss or Deny”).

² Sinclair Broadcasting Group, Inc., 10-Q, March 31, 2018, at 10.

multicast network Antenna TV, minority stakes in the TV Food Network, ThisTV, CareerBuilder, and a variety of real estate assets.³

The size and breadth of these companies has resulted in substantial overlap between them and the combined ability to broadcast to many more people in the United States than permitted under existing Commission rules and regulations. The Applicants have filed successive installments of divestiture amendments in an attempt to bring this transaction into technical compliance with the recently relaxed national cap and duopoly restrictions, the latest of which is the subject of this public comment cycle. Even then, in its application for consent to the transfer of Tribune's 33 license subsidiaries to Sinclair, Sinclair and Tribune note that without divestiture, the combined company would have an audience reach approximately 6.5 percent in excess of the 39 percent cap imposed by the Commission's national television ownership rule. And this calculation is conservative, given that it is based on application of the UHF discount that is currently the subject of an appeal in the D.C. Circuit.⁴ Without this discount, the combined company would almost 60 percent of the national audience, well in excess of the 39 percent level imposed by the FCC's own rules.⁵ Given the D.C. Circuit's a high degree of skepticism towards the propriety of the discount, the Commission should hold this proceeding in abeyance until the Court rules in that proceeding. Otherwise, if the Court reverses or remands the Commission's action after the transaction has been approved and consummated, the Applicants would have to unscramble it or find stations covering another 20 percent of the

³ *Id.* at 16

⁴ Sinclair Broadcasting Group, Inc., 10-Q, March 31, 2018, at 20.

⁵ Sinclair Response to FCC Request for Information, Ex. 1 and 2, filed October 5, 2017; see 47 C.F.R. § 73.3555(e)(1)(prohibiting the transfer of a license for a commercial television broadcast station if the transfer will result in the transferee having an attributable interest in television stations that reach greater than 39 percent of the national audience.).

nation's television households and seek authority to divest those stations, too, on top of the ones whose divestiture is being proposed here.

But even if the UHF discount were to be sustained, the divestitures would not be enough to bring the transaction below the 39 percent cap. This is because many of the proposed divestitures do not appear to be at arm's length, if they are genuine transfers at all. Sinclair's relationship with some of the proposed divestees, along with its history of using side car agreements, suggests that the divestitures are a smokescreen. Indeed, the divestitures appear intended to enable Sinclair to pretend to divest these stations while retaining control over them through agreements, and continuing to extract revenue from the stations, in circumvention and contravention of the FCC's rules.

First, Sinclair's proposed sale of two stations to Cunningham Broadcast Corporation is a divestiture designed to circumvent the national ownership rules. It would provide Sinclair with a seller over which Sinclair can exert control and for which ownership may in fact be attributable to Sinclair. The Commission has already found that Sinclair has the ability to exercise control over Cunningham.⁶ An evidentiary hearing is expected to show that Sinclair continues to hold control of Cunningham in violation with the FCC rules. Accordingly, the Form 314 Applications submitted by the Applicants do not represent legitimate divestitures sufficient to comply with 47 CFR 73.3555(e).

Second, Sinclair's divestiture of WGN-TV to WGN-TV LLC, a company formed only recently that is controlled by a business associate of one of the directors and controlling shareholders of Sinclair, represents another divestiture in name only and will again enable the

⁶ See *In the Matter of Edwin L. Edwards Sr. (Transferor) and Carolyn C. Smith (Transferee) for Consent to the Transfer of Control of Glencairn, Ltd., parent entity of Baltimore (WNUV-TV) Licensee, Inc. Licensee of Television Station WNUV-TV*, Baltimore, Md., et al., file No. BTCCT-19991116BEC, Memorandum Opinion and Order and Notice of Apparent Liability, 16 FCC Red 22236 (2001) ("*In the Matter of Edwards*").

controlling shareholders of Sinclair to exert control and obtain financial benefits from stations they are claiming to divest.

Third, while the balance of the proposed divestitures does not immediately indicate an attempt by Sinclair to circumvent the FCC's rules, given Sinclair's history of utilizing side car agreements to control and obtain revenue from stations and that the terms of these divestitures seem to be quite favorable to the purchasers, a hearing is necessary to examine these transactions. By one count, the Applicants have withheld 274 separate agreements, schedules, exhibits, and related documents from their 21 divestiture agreements.⁷ These documents include disclosure schedules to the asset purchase agreements, disclosure schedules on an option agreement with Fox, a news share agreement, and a shared programming license agreement.⁸ The Amendments and divestiture applications tell us little about the new station owners, including who will manage the companies taking over the divested stations and whether those persons have any experience in running a broadcast station. The Commission should verify that there are no hidden or transitory arrangements that will be unraveled after a few years such that Sinclair essentially will continue to derive economic and operational benefits from these stations.

II. Legal Standard

Sections 214(a) and 310(d) of the Communications Act require the Commission to determine whether “the Applicants have demonstrated that the public interest would be served by the proposed acquisition.”⁹ The Commission's analysis “encompasses an examination of [the

⁷ Letter from Ross Lieberman, American Cable Association, to Marlene Dortch, FCC, MB Docket No. 17-179, at 3 n.7 (May 24, 2018).

⁸ *Id.* at 3.

⁹ *In the Matter of Applications for Consent to the Transfer of Control of Licenses & Section 214 Authorizations by Time Warner Inc. & America Online, Inc., Transferors, to AOL Time Warner Inc.*, Transferee, CS Docket No. 00-30, Mem. Op. & Order, 16 FCC Rcd 6547, 6554 ¶ 19 (2001) (“AOL/Time Warner Order”).

potential] anticompetitive effects [of the merger]”¹⁰ as well as evaluation of “the potential impact of the proposed transaction on the rules, policies, and objectives of the Communication Act.”¹¹

In evaluating transfer applications, the Commission employs “a balancing test weighing any potential public interest harms of the proposed transaction against the potential public interest benefits. The applicants bear the burden of proving by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.”¹² If the Commission is “unable to find that the proposed transaction serves the public interest, or if the record presents a substantial or material question of fact, section 309(e) of the Act requires that [the Commission] designate the application for hearing.”¹³ Indeed, if a party challenging an application to transfer control through a petition to deny provides “specific allegations of fact sufficient to show that . . . a grant of the application would be prima facie inconsistent with [the public interest],”¹⁴ which the Commission finds to present “substantial and material question of fact” concerning whether the grant of the application would serve the public interest “the Commission must formally designate the application for a hearing”¹⁵

Here, a hearing is necessary to resolve whether the proposed transaction conforms with the Commission’s rules regarding ownership of more than one station in a DMA. Under the

¹⁰ *Id.* at 6550 at ¶ 4.

¹¹ *In the Matter of Applications of Comcast Corp., Gen. Elec. Co. & NBC Universal, Inc.*, MB Docket No. 10-56, Mem. Op. & Order, 26 FCC Rcd 4238, 4248 ¶ 19 (2011) (“*Comcast/NBC Universal Order*”); *see also AOL/Time Warner Order* at 6550 at ¶ 4. *See also In the Matter of Applications of Level 3 Communications, Inc. and CenturyLink, Inc. For Consent to Transfer Control of Licenses and Authorizations*, WC Docket No. 16-403, Mem. Op. & Order, 32 FCC Rcd 9581 ¶¶ 8-9 (2017).

¹² *In the Matter of SBC Commc’ns Inc. & AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Mem. Op. & Order, 20 FCC Rcd 18290, 18300 ¶ 16 (2005) (“*SBC/AT&T Order*”); *see also Comcast/NBC Universal Order* at 4247 ¶ 22; *In the Matter of Applications filed by Global Crossing Ltd. And Level 3 Commc’ns, Inc. for Consent to Transfer Control*, IB Docket No. 11-78, Mem. Op. & Order & Declaratory Ruling, 26 FCC Rcd 14056, 14061 ¶ 10 (2011) (“*Global Crossing/Level 3 Order*”).

¹³ *SBC/AT&T Order* at 18301 ¶ 16 n. 63.

¹⁴ 47 U.S.C. § 309(d)(1).

¹⁵ 47 U.S.C. § 309(e).

Duopoly Rule any “entity may directly or indirectly own, operate, or control two television stations licensed in the same DMA [only] if : (a) the “digital noise limited service contours of the stations [] do not overlap;” or (b) at the time the application to acquire or construct the station(s) is filed, at least one of the stations is not ranked among the top four stations in the DMA based on Nielsen ratings (“Top-Four Prohibition”).¹⁶ The Top-Four Prohibition does not apply where, at the request of an applicant, the Commission concludes “that permitting an entity to directly or indirectly own, operate, or control two television stations licensed in the same DMA would serve the public interest, convenience, and necessity.”¹⁷

In addition to this market-specific rule, the Commission also limits ownership on a national level (“National Television Multiple Ownership Rule”). The FCC’s national television ownership rule states that “[n]o license for a commercial television broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors having a cognizable interest in television stations which have an aggregate national audience reach exceeding thirty-nine (39) percent.”¹⁸ Any person exceeding the thirty-nine percent limitation must make divestitures sufficient to come into compliance.¹⁹

III. Sinclair’s Divestitures Are Insufficient To Remedy The Proposed Transaction’s Violation Of The FCC’s Ownership Rules.

Sinclair recognizes that the proposed transaction places the company in violation of the Duopoly Rule and the National Television Multiple Ownership Rule. Indeed, if the transaction

¹⁶ 47 C.F.R. § 73.3555(b).

¹⁷ 47 C.F.R. § 73.3555(b)(2).

¹⁸ 47 C.F.R. § 73.3555(e).

¹⁹ 47 C.F.R. § 73.3555(e).

were to go forward without any divestitures, it would result in a company that would reach almost 60 percent of the national audience—nearly 20 percentage points above the 39 percent limit. Sinclair manages to reduce this to 6.5 percent above the 39 percent limit only by relying on the Commission’s Reconsideration Order that allows Sinclair to apply the UHF discount,²⁰ an order that remains under review by the D.C. Circuit.²¹ Uncertainty over whether the D.C. Circuit will affirm the Commission’s Order is alone sufficient to justify delaying consideration of the proposed transaction. However, even if the Commission is inclined to move forward in the face of this judicial uncertainty, the public interest demands that it not simply approve a divestiture plan that raises a multitude of questions.

Sinclair proposes several divestitures to bring itself into compliance with the Commission’s ownership rules.²² Specifically, it has proposed the following transactions:

- Cunningham Broadcast Corporation will purchase KDAF-TV, Dallas, TX and KIAH-TV, Houston, TX for \$60 million;²³
- WGN-TV LLC will purchase WGN-TV, Chicago, IL for \$60 million;²⁴
- Howard Stirk Holdings (“HSH”) will purchase KUNS-TV, Seattle, WA, KAUT-TV, Oklahoma City, OK, and KMYU-TV, St. George, UT for \$4.95 million;²⁵
- Place KNDL-TV and KPLR-TV in St. Louis, MO into the Sinclair Divestiture Trust pending Department of Justice, Antitrust Division approval of the divestiture of one of these stations;²⁶

²⁰ Sinclair Broadcasting Group, Inc., 10-Q, March 31, 2018, at 20.

²¹ *Free Press, et. al v. F.C.C., et. al*, DC Circuit Court of Appeals Case number 17-1129.

²² Amendment to Comprehensive Exhibit, *In the Matter of Applications of Tribune Media Company and Sinclair Broadcast Group for Consent to Transfer Control of License and Authorizations*, MB Docket 17-719.

²³ Jason Schwartz, *Armstrong Williams got ‘sweetheart’ deal from Sinclair*, Politico (June 13, 2018), available at <https://www.politico.com/story/2018/06/13/sinclair-broadcasting-armstrong-williams-642997> (“Schwartz, *Williams Got Sweetheart Deal*”); Sinclair Amendment to Comprehensive Exhibit, April 24, 2018, at 22-23.

²⁴ Schwartz, *Williams Got Sweetheart Deal*.

²⁵ Amendment to Comprehensive Exhibit, *In the Matter of Applications of Tribune Media Company and Sinclair Broadcast Group for Consent to Transfer Control of License and Authorizations*, MB Docket 17-719, April 24, 2018; Schwartz, *Williams Got Sweetheart Deal*.

- Fox Broadcasting Company will purchase KCPQ (TV), Seattle, WA, WSFL-TV, Miami, FL, KDVR, Denver, CO, WJW (TV), Cleveland, OH, KTXL(TV), Sacramento, CA, KSWB-TV, San Diego, CA, and KSTU, Salt Lake City, UT for a total of \$0.9 billion;²⁷ and
- Standard Media Group will purchase KOKH-TV, Oklahoma City, OK; WXLV-TV, Greensboro, NC; WXMI(TV), Grand Rapids, MI; WRLH-TV, Richmond, VA; KDSM-TV, Des Moines, IA; WPMT(TV), York, PA; WOLF, Wilkes Barre, PA; WQMY, Wilkes Barre, PA; and WSWB, Wilkes Barre, PA for \$441.7 million.²⁸

The Commission should reject, or at least conduct full hearings, on this divestiture plan because two of these transactions—the divestitures to Cunningham Broadcast Corporation and to WGN-TV LLC—present substantial questions regarding whether Sinclair will actually surrender control of the divested asset and represent “sidecar” divestitures undertaken solely to circumvent the national ownership cap for which there is no public interest precedent.

A. The Commission Has Already Held That Sinclair Controls Cunningham, Which The Companies’ Relationship Confirms

Part of Sinclair’s divestiture plan is to sell KDAF-TV, Dallas, TX and KIAH-TV, Houston, TX to Cunningham.²⁹ These transactions will not result in a change of control of these assets. The Commission has already found that Sinclair has the ability to exercise de facto control over Cunningham.³⁰ *In the Matter of Edwin L. Edwards and Carolyn Smith et. al*, the FCC ruled that Sinclair and Cunningham Broadcasting, then known as Glencairn, entered into transactions that were not executed at arms-length, allowing Sinclair to exercise de facto control over Cunningham. Specifically, the Commission reached this conclusion on several bases,

²⁶ See Comprehensive Exhibit FCC Form 315 BTCCDT-20180514ABV.

²⁷ Sinclair Amendment to Comprehensive Exhibit, April 24, 2018, at 22-23; *Sinclair Enters Into Agreements to Sell TV Stations Related to Closing Tribune Media Acquisition*, PRNewswire, available at <https://www.prnewswire.com/news-releases/sinclair-enters-into-agreements-to-sell-tv-stations-related-to-closing-tribune-media-acquisition-300635743.html> (“PRNewswire, *Sinclair Agrees To Sales*”).

²⁸ Sinclair Amendment to Comprehensive Exhibit, April 24, 2018, at 22-23; PRNewswire, *Sinclair Agrees To Sales*.

²⁹ Sinclair Amendment to Comprehensive Exhibit, April 24, 2018, at 2.

³⁰ *In the Matter of Edwards* at ¶ 23.

including the fact that Glencairn would obtain its stations at a small fraction of their value, which the Commission found indicated “that it was Sinclair, and not Edwards, that made the decision as to what stations Glencairn should acquire and at what price.”³¹ The FCC chose not to enforce stringent penalties against Sinclair and Glencairn only because it believed that it was not “likely that such violations may continue in the future, particularly in light of Edwards’ departure and the assumption of control of Glencairn by Carolyn Smith.”³²

The transaction now before the Commission shows that its hope was misguided. Although Cunningham has changed its name from Glencairn, and the form of its ownership, Sinclair still retains control over Cunningham. Cunningham used to be held by the estate of Sinclair’s owners’ mother: “Up until January 2018, when [the stock was] purchased by an unrelated party after receiving FCC approval, the voting stock of the Cunningham Stations was owned by the estate of Carolyn C. Smith, the mother of [the] controlling shareholders” of Sinclair.³³ This has made the ownership more complex but Cunningham is only superficially not under Sinclair’s control.³⁴ Sinclair’s owners, or trusts in their children’s names, own all of the non-voting shares in Cunningham.³⁵ The voting shares are ostensibly owned by Michael Anderson, who joined Cunningham as the President and CEO in 2009 and purchased the voting stock from Cunningham for a little over \$400,000 in January 2018.³⁶ Sinclair’s controlling

³¹ *Id.* at ¶ 24.

³² *Id.* at ¶ 31.

³³ Sinclair Broadcast Group, Inc., 10-Q, March 31, 2018, at 22.

³⁴ See S. Derek Turner, *Cease to Resist: How the FCC’s Failure to Enforce Its Rules Created a New Wave of Media Consolidation*, Free Press (Oct. 2013) at 4-5, 26-28, available at <https://ecfsapi.fcc.gov/file/7520960125.pdf> (“Turner, *Cease to Resist*”).

³⁵ The Smith family directly owns 4 percent of the non-voting stock while trusts in the name of Smith family’s brothers hold the remaining 96 percent.

³⁶ Sinclair 10-K, March 1, 2018, at F-39; See Turner, *Cease to Resist* at 27; Cunningham Broadcasting website, ‘About Us’ available at <http://cunninghambroadcasting.com/team-member/michael-anderson-2/>; see also Keach

shareholders—Carolyn Smith’s sons, David Smith, Frederick Smith, J. Duncan Smith, and Robert Smith—each hold options to acquire Mr. Anderson’s voting shares such that they can regain control of the company. These options are in addition to the ownership of all of Cunningham’s non-voting shares.³⁷ Cunningham’s ownership structure is thus still tightly connected to Sinclair’s ownership.

For this reason, it is no surprise that the divestiture agreement does not reflect market prices for the assets. Cunningham is purchasing KDAF (Dallas) and KIAH (Houston) for substantially below what they are worth, even taking into account Sinclair’s position of needing to divest the assets. Cunningham is purchasing these assets for a combined price of \$60 million. By contrast, in Sinclair’s divestiture with Meredith Corporation—an entity without any apparent ties to Sinclair—Sinclair proposed to sell KPLR-TV in St. Louis to Meredith Corporation for \$65 million. KDAF and KIAH are similar to KPLR in terms of affiliation agreements and UHF spectrum location.³⁸ Yet, with respect to the size of market, KDAF is in the 5th largest DMA and KIAH is in the 7th largest DMA, while KPLR is in the 21st largest DMA.³⁹ Nevertheless, despite the apparent greater value of the stations, Cunningham is paying for them as if they are worth less than half of KPLR.

In addition to Sinclair’s continued de facto control over Cunningham, Sinclair’s control of Cunningham is also reflected in the commercial relations between them in apparent violation of the Commission’s Equity Plus Debt Standard. Sinclair has “jointly and severally,

Hagey, *Sinclair Draws Scrutiny Over Growth Tactics*, Wall Street Journal (Oct. 20, 2013), available at <https://www.wsj.com/articles/sinclair-draws-scrutiny-over-growth-tactic-1382321755?ns=prod/accounts-wsj>

³⁷ Sinclair 10-K, March 1, 2018, at F-39 to F-40; see Turner, *Cease to Resist*.

³⁸ Sinclair Response to FCC Request For Information, Ex. 2, Response to Request 1; Sinclair Amendment to Comprehensive Exhibit, filed April 24, 2018, at 12-13, Ex. F-2, Ex. J.

³⁹ *Id.*

unconditionally and irrevocably guaranteed” \$53.6 million of Cunningham debt.⁴⁰ This figure appears to be before any possible financing arrangements Sinclair has further guaranteed as a result of the Cunningham acquisitions in Houston and Dallas.

Under the attribution rules, the Commission will find a nonvoting interest in a license holder attributable if the interest passes a two part test, known as the Equity Plus Debt Standard:

- The equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value, defined as the aggregate of all equity plus all debt, of that media outlet; and
- The interest holder also either (a) holds an interest in a broadcast licensee, cable television system, newspaper, or other media outlet operating in the same market that is subject to the broadcast multiple ownership or cross-ownership rules or (b) supplies over fifteen percent of the total weekly broadcast programming hours of the station in which the interest is held.

Since Sinclair has not revealed the financial position of Cunningham Broadcasting and the specifics of Sinclair’s debt guarantees, it is impossible to know if Cunningham meets the first prong of this test. Given the size of this guarantee, and the size of Cunningham, it is possible that Sinclair controls more than 33 percent of Cunningham’s assets under the debt plus equity standard, which would mean Sinclair has an attributable interest in the stations owned by Sinclair.⁴¹ The true nature of the financial positions of both companies is something that is only likely to be revealed in an evidentiary hearing.

Moreover, Sinclair has a history of providing programming in excess of 15 hours per month to stations owned by Cunningham Broadcasting.⁴² Sinclair also provides services to

⁴⁰ Sinclair Broadcast Group, Inc., 10-Q, March 31, 2018, at 22.

⁴¹ *Cumulus Licensing LLC C/O Lewis J. Paper, Esq. Andrew S. Kersting, et. al*, 21 FCC Rcd. 2998, 3000 (March 23, 2006)

⁴² Written Testimony of Matthew F. Wood, Policy Director, Free Press and the Free Press Action Fund, before the Congress of the United States House of Representatives, Committee on Energy and Commerce, Subcommittee on Communications and Technology regarding “*Reauthorization of the Satellite Television Extension and Localism Act*,” on March 12, 2014, at 13, 14 n. 21, 17-18 available at

Cunningham-owned WNUV-TV, WMYA-TV, WTTE-TV, WRGT-TV and WVAH-TV governed by a master agreement that expires on July 1, 2023 at the earliest, but provides for extensions to July 1, 2033.⁴³ Additionally, Sinclair executed purchase agreements that give it the right to acquire, and give Cunningham the right to force Sinclair to acquire, the license-related assets of these stations from Cunningham, including 100 percent of the capital stock or the assets of these individual subsidiaries of Cunningham.⁴⁴ This all goes to show that Sinclair is retaining control of Cunningham even after the purported divestiture.

B. The Nature Of The Divestiture To WGN-TV LLC Suggests That Sinclair Intends To Continue To Operate, Assert Control And Potentially Extract Revenue From WGN-TV

WGN-TV, LLC, is a newly formed company headed by Steven Fader, the CEO of Atlantic Automotive Corp (“Atlantic”), a holding company for MileOne Autogroup.⁴⁵ MileOne Autogroup is a network of 40 auto dealerships in Maryland, Pennsylvania, Virginia and North Carolina.⁴⁶ Steven Fader and David Smith, a director and controlling shareholder of Sinclair, are business partners.⁴⁷ David Smith has a controlling interest in Atlantic Automotive and serves as a member of its board.⁴⁸ Atlantic Automotive is also a Sinclair advertiser and tenant.⁴⁹

<https://docs.house.gov/meetings/IF/IF16/20140312/101835/HHRG-113-IF16-Wstate-WoodM-20140312.pdf>; S. Derek Turner, Cease to Resist: How the FCC’s Failure to Enforce Its Rules Created a New Wave of Media Consolidation, *Free Press*, October, 2013, at 4, 39 n. 85, available at <https://ecfsapi.fcc.gov/file/7520960125.pdf>

⁴³ Sinclair Broadcast Group, Inc., 10-K, March 1, 2018.

⁴⁴ *Id.*

⁴⁵ Christopher Dinsmore et. al, *Sinclair Broadcast, Tribune Media Announce Plans To Sell TV Stations To Move Merger Forward*, *The Baltimore Sun* (June 8, 2018), available at <http://www.baltimoresun.com/business/bs-bz-sinclair-tribune-sales-20180424-story.html> (“Dinsmore, *Moving Merger Plans Forward*”).

⁴⁶ *Id.*; Ben Munson, *Sinclair Plans \$60M Sale Of WGN-TV To Chairman’s Business Partner*, *FierceCable* (Mar. 2, 2018), available at <https://www.fiercecable.com/video/sinclair-plans-60m-sale-wgn-tv-to-chairman-s-business-partner> (“Munson, *Sinclair \$60M Sale Of WGN-TV*”).

⁴⁷ Munson, *Sinclair \$60M Sale Of WGN-TV*.

⁴⁸ Sinclair Broadcast Group, Inc., April 26, 2018, Proxy Statement.

⁴⁹ 10-K, March 1, 2018.

WGN-TV, LLC is purchasing WGN-TV from Sinclair for \$60 million with an option for Sinclair to buy it back after eight years.⁵⁰ Moreover, at closing, Sinclair will enter into a JSA, SSA, and Option with respect to station WGN-TV.⁵¹ With a “brand like WGN in the nation’s third-biggest media market,” WGN-TV LLC should have paid a minimum of \$100 million or \$150 million.⁵² Even the terms of the sidecar arrangements are financially favorable to Sinclair.⁵³ Moreover, outside experts agree that the sidecar agreements give Sinclair leverage in negotiating fees that cable companies pay to carry their stations, as well as fees Sinclair pays networks for their affiliations.⁵⁴

Sinclair’s proposed transaction with WGN-TV LLC will thus provide Sinclair continued control over WGN-TV and allow it to retain many of the financial benefits of owning and operating the station. And again, without detailed information about the financial position of WGN-TV LLC and any debt guarantees made by Sinclair, it is impossible to determine if this divestiture is permitted under the Equity Plus Debt rule.

C. Option Agreements Further Confirm Sinclair's De Facto Control Over Cunningham Broadcasting and WGN TV LLC

As referenced earlier, all of divestitures to Sinclair-affiliated companies include option purchase agreements that provide Sinclair the right to reacquire the divested assets. While not illegal per se, the terms of the agreement illustrate the influence Sinclair exercises with Cunningham Broadcasting and WGN TV LLC.

⁵⁰ Schwartz, *Williams Got Sweetheart Deal*.

⁵¹ Sinclair Amendment to Comprehensive Exhibit, at 20 n. 72, April 24, 2018; Dinsmore, *Moving Merger Plans Forward*; see also Schwartz, *Williams Got Sweetheart Deal*.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

The option agreements undermine any claim, as has been made, that the fire sale prices at which Sinclair is selling the divested assets is the result of “good negotiating.”⁵⁵ Each divestiture includes a provision allowing Sinclair to reacquire the stations at a substantially similar price for a period of up to **48 years**.⁵⁶ And while Sinclair can freely assign its option rights, the grantors (Cunningham and WGN TV LLC) need Sinclair’s consent to assign their option rights.⁵⁷ Moreover, Sinclair’s option survives assignment of the assets or a merger or consolidation of the grantees.⁵⁸

No arms-length transaction would provide the seller an option to buy back the sold assets, at a substantially similar price, for nearly **half a century**. This illustrates that the divestitures are sham transactions in which Cunningham and WGN TV LLC are merely warehouses for licenses Sinclair is not legally able to own. It is clear that Sinclair made the decisions as to what stations these firms would buy, the terms on which they would buy them, and at what price. This is a clear violation of the Commission’s decision in *Edwards* and as a result, the stations should be attributable under 47 CFR 73.3555(e).

IV. Conclusion

The foregoing demonstrates that there are, at minimum, serious questions about whether the proposed divestitures are truly arms-length transactions that will divest Sinclair of the assets at issue. Moreover, given Sinclair’s history of utilizing side car agreements to control and obtain revenue from stations and the favorable terms purchasers are receiving for the divestitures, the

⁵⁵ Schwartz, *Williams Got Sweetheart Deal* (reporting the owner of one entity Sinclair is being divested to, Mr. Williams of Howard Stirk Holdings, stating “I know I got a good deal...I’m a tremendous negotiator. I’m like Donald Trump; I know how to negotiate.”).

⁵⁶ Option Agreement, between Sinclair and WGN TV, LLC, at ¶ 2 (providing for an initial eight year term that can be renewed, at Sinclair’s option, five times), *available at* https://licensing.fcc.gov/cdbs/CDBS_Attachment/getattachment.jsp?appn=101783802&qnum=5040©num=1&exhcnun=5.

⁵⁷ *Id.* at ¶ 9.

⁵⁸ *Id.* at ¶ 10.

Commission should closely review the terms of those agreements to guarantee that they are not designed solely to circumvent the Commission's rules. This is particularly true given Sinclair's decision to withhold a great amount of information about the divestitures. It has not identified which of the stations it will place in trust.⁵⁹ Moreover, by one count, the Sinclair has withheld 274 separate agreements, schedules, exhibits, and related documents from their 21 divestiture agreements.⁶⁰ Consequently, there remain substantial questions to be resolved before the Commission can make a public interest determination.

For these reasons, Newsmax respectfully urges the Commission to deny the petition to transfer licenses or, at minimum, to designate the above-referenced applications for divestiture by Sinclair for an evidentiary hearing and, upon any finding inconsistent with 47 CFR 73.3555, deny the application for consent to transfer control of licenses and authorizations in the above captioned proceeding between Sinclair Broadcast Group and Tribune Media Company.

Respectfully submitted,

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⁵⁹ Sinclair Broadcast Group, Inc. and Tribune Media Company, February 2018 Amendment to June Comprehensive Exhibit at 32 (Feb. 20, 2018) ("By the time the parties are ready to close the Transaction, they will have decided which Stations to place in the Trust."). Sinclair Broadcast Group, Inc. and Tribune Media Company, May 2018 Amendment to June Comprehensive Exhibit (May 14, 2018). The Applicants have filed applications to send KDNL and KPLR to the Sinclair Divestiture Trust. Sinclair intends to only divest one of the two stations but has not specified which one it will keep. The station Sinclair keeps will form a Top-4 duopoly along with KTVI. *Id.* at 2.

⁶⁰ Letter from Ross Lieberman, American Cable Association, to Marlene Dortch, FCC, MB Docket No. 17-179, at 3 n.7 (May 24, 2018).

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DECLARATION

The foregoing Petition to Deny has been prepared using facts of which I have personal knowledge or upon information that has been provided to me. I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

Executed June 20, 2018

/s/ Jonathan Schiller

Jonathan Schiller

Counsel to Newsmax Media Inc.

CERTIFICATE OF SERVICE

I, Jonathan Schiller, hereby certify that on June 20, 2018, a true and correct copy of the foregoing Petition to Deny was filed with the Federal Communications Commission and copies were served by e-mail upon the following:

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June 20, 2018