BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

PETITION TO DENY

DISH Network L.L.C. ("DISH")[1] respectfully petitions the Commission to deny the amended applications of Sinclair Broadcast Group, Inc. ("Sinclair") to acquire Tribune Media Company ("Tribune") (collectively, the "Applicants") and their related divestiture requests (collectively, the "Applications").[2]

[1] DISH is a multichannel video programming distributor ("MVPD") that retransmits local broadcast stations in every one of the 210 designated market areas in the United States. DISH today has retransmission consent agreements with both Applicants, allowing it to retransmit certain local broadcast stations owned by the Applicants. DISH expects to negotiate with both Applicants in the future for continued retransmission of their stations. In addition, DISH's Sling TV, an Online Video Distributor ("OVD"), has started offering local stations in a number of markets, and intends to expand this offering if it can achieve reasonable terms from broadcast groups such as Sinclair and Tribune. For these and other reasons described herein, DISH is a party in interest under Section 309(d)(1) of the Communications Act. *See* 47 U.S.C. § 309(d)(l).

[2] *See* Public Notice, MB Docket No. 17-179, Media Bureau Establishes Consolidated Pleading Cycle for Amendments to the June 26, 2017, Applications to Transfer Control of Tribune Media Company, to Sinclair Broadcast Group, Inc., Related New Divestiture Applications, and Top-Showings in Two Markets, DA 18-530 (May 21, 2018). DISH filed a Petition to Dismiss or Deny the initial application. Petition to Dismiss or Deny of DISH Network L.L.C., MB Docket No., 17-179 (Aug. 7, 2017) ("Petition"). DISH also filed a reply to the Applicants' Opposition. *See* Reply of DISH Network L.L.C., MB Docket No. 17-179 (Aug. 7, 2017) ("Reply"). Because the facts and arguments presented in those pleadings apply to the amended applications as well as the new applications, DISH incorporates both by reference.

I. INTRODUCTION AND SUMMARY

Through this proposed transaction, Sinclair seeks permission to become the largest broadcaster in the country. As DISH and numerous other diverse parties have explained previously, this transaction will lead to higher prices, more station blackouts, less choice, and less local news for millions of consumers.[3] The Applicants have not addressed these harms, and have not provided evidence that this transaction will lead to verifiable benefits. During the initial pleading cycle, DISH, among other things, submitted economic evidence that has essentially gone unrebutted by the Applicants. The Applicants submitted an economic report that was not fully responsive to DISH's showings, and DISH responded with a new study that the Applicants have yet to address.

The Applicants now propose new divestitures that were not in their initial filing. Among other things, the Applicants attempt to 1) address the overlaps between their respective stations through arrangements that merit closer scrutiny; and 2) bring the reach of the transaction within an ownership cap that depends on the survival of the recently reinstated UHF discount, a rule

[3] Petition to Deny of the American Cable Association, MB Docket No. 17-179 (Aug. 7, 2017); Petition to Deny of NTCA – The Rural Broadband Association, MB Docket No. 17-179 (Aug. 7, 2017) ("NTCA Petition"); Petition to Deny of the Competitive Carriers Association, MB Docket No. 17-179 (Aug. 7, 2017); Comments of T-Mobile USA, Inc., MB Docket No. 17-179 (Aug. 7, 2017); Comments of the American Television Alliance, MB Docket No. 17-179 (Aug. 7, 2017); Petition to Deny of Free Press, MB Docket No. 17-179 (Aug. 7, 2017); Petition to Deny of Public Knowledge, Common Cause, and the United Church of Christ, OC Inc., MB Docket No. 17-179 (Aug. 7, 2017); Comments of Cinémoi, RIDE Television Network, Awe – A Wealth Of Entertainment, MAVTV Motor Sports Network, One America News Network, TheBlaze and Eleven Sports Network, MB Docket No. 17-179 (Aug. 7, 2017); Petition to Dismiss or Deny of Newsmax Media, Inc., MB Docket No. 17-179 (Aug. 7, 2017); Petition to Deny of Steinman Communications, Inc., MB Docket No. 17-179 (Aug. 7, 2017); Letter from Karl Frisch, Executive Director, Allied Progress to Ajit Pai, Chairman, FCC, MB Docket No. 17-179 (Aug. 7, 2017); Letter from Lonnie R. Stephenson, International President, International Brotherhood of Electrical Workers to Michelle M. Carey, Media Bureau Chief, FCC, MB Docket No. 17-179 (Aug. 7, 2017).

that is currently under review by the D.C. Circuit. It is therefore premature to move forward with the Applications until the Court settles the status of the UHF discount.

II. THE RECORD DOES NOT DEMONSTRATE THAT THE MERGER IS IN THE PUBLIC INTEREST

Benefits. The Applicants' initial public interest showing was two-and-a-half pages of assertions, with no supporting evidence.[4] In their Opposition, the Applicants tried re-framing their initial assertions to rely on size and scale as a public interest rationale, suggesting that the combined company would be able "to invest in local news and sports (among other programming) and to advance and leverage their technological innovation,"[5] and "negotiate for compensation from MVPDs that more closely reflects the fair value of broadcast programming."[6] But, these arguments were not backed by adequate evidence.

Harms. As many stakeholders have noted, the merger will lead to higher prices in the form of increased retransmission consent fees. This view is supported by the econometric analysis prepared by DISH's experts, Professor Janusz Ordover, William Zarakas, and Dr. Jeremy Verlinda, who explained that the transaction will lead to higher retransmission consent fees and higher prices for consumers.[7] The Applicants responded with a paper from Professor Gowrisankaran that was limited to questioning the assumptions and context under which DISH's

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[4] Application of Tribune Media Company and Sinclair Broadcast Group, Inc., MB Docket No. 17-179, at 2-4 (June 28, 2017).

[5] Tribune Media Company and Sinclair Broadcast Group, Inc., Consolidated Opposition to Petitions to Deny, MB Docket No. 17-179, at 6 (Aug. 22, 2017) ("Opposition").

[6] *Id.* at 29. The ability to "negotiate for compensation from MVPDs that more closely reflects the fair value of broadcast programming," *id.* at 42-44, turns the public interest analysis on its head, as it would result in higher prices for MVPDs, higher prices for OVDs, and ultimately higher prices for consumers.

[7] Petition at 14-43 and Exhibits D and E.

analyses were undertaken, while not reaching any conclusions.[8] The Applicants did not model or estimate the economic effects of the merger. On reply, Professor Ordover, Mr. Zarakas, and Dr. Verlinda showed that Professor Gowrisankaran's objections were not supported by academic literature.[9]

Localism. Finally, while the Applicants claim localism as a benefit to the transaction, the record has demonstrated the opposite. DISH's Petition to Deny detailed Sinclair's practice of acquiring local broadcast stations and shedding local talent and news operations. The Applicants admitted that Sinclair reduced news staff at many of the stations Sinclair acquired from Fisher and Allbritton.[10] The Applicants also admitted that Sinclair moves news operations out of a local market,[11] having supposedly "local" broadcasters providing local news from another community altogether.

III. IT IS PREMATURE FOR THE COMMISSION TO MOVE FORWARD WITH THE AMENDED APPLICATIONS

The latest amendments and divestiture applications attempt to remedy same-market station overlaps and bring Sinclair into compliance with the statutory 39 percent national ownership cap.[12] Because the post-divestiture transaction will still give Sinclair a national audience reach of 65.9 million television households (58.77% of the nation's total), its compliance with the 39% national ownership cap also assumes application of the UHF discount.[13] But the discount may be eliminated in a pending case before the D.C. Circuit.[14]

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[8] *Id.*

[9] Reply at 27-36.

[10] Opposition at 9 ("[W]hile anchors may have been replaced or staffing may have been reduced at some stations. . . ."); *id.* at 20 ("While there have been staffing reductions over the years. . . ."); *id.* at Exhibit H ¶ 6 ("While Sinclair has had some staff reductions at many of the stations it acquired. . . .").

[11] *Id.* at 19.

During oral argument in that case, one of the three judges foreshadowed the rule's uncertain fate by noting: "[i]t doesn't seem that there's any option for keeping [the discount] in its current form that seems at least plausible at this stage . . . I don't understand the point of keeping this thing alive when everyone has said it's obsolete, it's harmful, there's no point to it, it's way outdated, it needs to be gone."[15]

If the UHF discount were to be eliminated after the transaction is approved and consummated, then Sinclair would be out of compliance with the cap for about 20% of the nation's households. It would therefore need to propose new divestitures that would have to be greater than what it has proposed to date. As a result, it is premature to move forward with the merger applications until the Court settles the status of the UHF discount. To the extent the Commission chooses to revise the national ownership cap, the appropriate place to do so is in the separate proceeding that is currently open for public input.[16]

IV. CONCLUSION

The Applicants have not provided the Commission with the means to find that the transaction is in the public interest.[17] Therefore, the Commission should deny the Applications as amended.

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[12] *See* Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004); *see also* 47 C.F.R. § 73.3555(e).

[13] *See* May Amendment at Exhibit J.

[14] *Free Press, et al. v. FCC*, Case No. 17-1129 (D.C. Cir. 2017).

[15] Oral Argument Transcript, *Free Press, et al. v. FCC*, Case No. 17-1129 (D.C. Cir. 2017), at 32, 1:10.

[16] Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, *Notice of Proposed Rulemaking*, MB Docket No. 17-318 (Dec. 18, 2017).

[17] Applications of Level 3 Communications, Inc. and CenturyLink, Inc. For Consent to Transfer Control of Licenses and Authorizations, 32 FCC Rcd. 9581, 9586 ¶ 11 (2017).

Respectfully Submitted,

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June 20, 2018

CERTIFICATE OF SERVICE

I hereby certify that, on this 20th day of June 2018, I caused a copy of the foregoing Petition to Deny of DISH Network L.L.C. to be filed electronically with the Commission using the ECFS system and caused a copy of the foregoing to be served upon the following individuals by electronic mail.

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