

**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)	
)	

REPLY OF DISH NETWORK L.L.C.

DISH Network L.L.C. (“DISH”) respectfully replies to the Second Consolidated Opposition to Petitions to Deny (“Opposition”)¹ submitted by Sinclair Broadcast Group, Inc. (“Sinclair”) and Tribune Media Company (“Tribune”) (collectively, the “Applicants”) in the above-referenced proceeding.²

I. INTRODUCTION AND SUMMARY

Even with the additional opportunity provided by the current comment period, the Applicants have not provided sufficient evidence that this transaction will lead to verifiable benefits for the public. And, the Applicants continue to ignore the harms this transaction will cause, including higher prices and more station blackouts. The Applicants have thus failed to show the transaction is in the public interest and the Commission should deny it.

¹ Tribune Media Company and Sinclair Broadcast Group, Inc., Applicants’ Second Consolidated Opposition to Petitions to Deny, MB Docket No. 17-179 (July 5, 2018) (“Opposition”).

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).

II. THE RECORD STILL 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.³ Likewise, their latest Opposition merely repeats the initial assertions with a three-page summary of their initial filing.⁴ And both their initial and latest arguments lack adequate evidence to meet the Commission's standard of verifiability for the claimed benefits.

Harms. As DISH showed through two separate econometric analyses, the merger will lead to higher prices in the form of increased retransmission consent fees. In response, the Applicants argue that higher retransmission consent prices benefit the public.⁵ Consumers, who will have to bear the brunt of these price increases, may not agree. And, antitrust law holds that when a merger gives the combined company the ability to increase prices, it is an adverse competitive effect of a merger, not a beneficial one.⁶

The Applicants also did not refute DISH's initial economic analysis that the transaction would lead to higher retransmission consent prices.⁷ Nor did they respond to DISH's second econometric analysis provided in the initial reply period by Professor Janusz Ordovery, William Zarakas, and Dr. Jeremy Verlinda. Among other things, DISH's experts provided additional

³ Application of Tribune Media Company and Sinclair Broadcast Group, Inc., MB Docket No. 17-179, at 2-4 (June 28, 2017).

⁴ Opposition at 3-6.

⁵ *Id.* at 17.

⁶ See Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines (2010) ("The unifying theme of these Guidelines is that mergers should not be permitted to create, enhance, or entrench market power or to facilitate its exercise. For simplicity of exposition, these Guidelines generally refer to all of these effects as enhancing market power. A merger enhances market power if it is likely to encourage one or more firms to raise price, reduce output, diminish innovation, or otherwise harm customers as a result of diminished competitive constraints or incentives.").

⁷ See Reply of DISH Network L.L.C., MB Docket No. 17-179, at 23-24 (Aug. 29, 2017).

empirical evidence proving that the transaction will lead to higher retransmission consent fees.⁸

This evidence has gone un rebutted.

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

Because post-divestiture, the proposed 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.⁹ But, as even the Applicants admit, the discount may be eliminated in a pending case before the D.C. Circuit.¹⁰ The Applicants are taking aim at a straw man when they say: "Courts have declined to enforce repealed rules that are the subject of judicial review."¹¹ Neither DISH nor any other party has claimed that the Commission must reinstate a repealed policy before the Court mandates such a reinstatement. But when the repeal of the policy is likely to be remanded, as is the case where all three judges have expressed doubts about the repeal's wisdom, it is imprudent to allow a major merger whose legality depends on the repeal.

IV. CONCLUSION

There is nothing in the record that allows the Commission to conclude that the transaction is in the public interest.¹² Therefore, the Commission should deny the Applications as amended.

⁸ *Id.* at 5-6, 19-26; *Id.* at Exhibit C ¶¶ 8-31 (providing empirical analysis demonstrating the positive relationship between size and retransmission consent fees); *Id.* at Exhibit D ¶¶ 41-44.

⁹ See May Amendment at Exhibit J; Opposition at 19-20.

¹⁰ *Free Press, et al. v. FCC*, Case No. 17-1129 (D.C. Cir. 2017); Opposition at 20.

¹¹ Opposition at 21.

¹² See Applications of Level 3 Communications, Inc. and CenturyLink, Inc. For Consent to Transfer Control of Licenses and Authorizations, *Memorandum Opinion and Order*, 32 FCC Rcd. 9581, 9586 ¶ 11 (2017).

Respectfully Submitted,

/s/

Pantelis Michalopoulos
Stephanie A. Roy
Christopher Bjornson
Steptoe & Johnson LLP
1330 Connecticut Ave, N.W.
Washington, D.C. 20036
(202) 429-3000

Counsel for DISH Network L.L.C.

Jeffrey H. Blum, Senior Vice President
& Deputy General Counsel
Alison Minea, Director and Senior Counsel,
Regulatory Affairs
Hadass Kogan, Corporate Counsel
DISH Network L.L.C.
1110 Vermont Avenue, N.W., Suite 750
Washington, D.C. 20005
(202) 293-0981

July 12, 2018

CERTIFICATE OF SERVICE

I hereby certify that, on this 12th day of July 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.

Mace J. Rosenstein
Covington & Burling LLP
One City Center
850 Tenth Street, NW
Washington, D.C. 20001
mrosenstein@cov.com

Miles S. Mason
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street, NW
Washington, DC 20036
miles.mason@pillsburylaw.com

David Roberts
Federal Communications Commission
Video Division, Media Bureau
445 12th Street, SW
Washington, D.C. 20554
David.Roberts@fcc.gov

David Brown
Federal Communications Commission
Video Division, Media Bureau
445 12th Street, SW
Washington, D.C. 20554
David.Brown@fcc.gov

/s/ Christopher Bjornson
Steptoe & Johnson, LLP