Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY OF NATIONAL HISPANIC MEDIA COALITION, COMMON CAUSE, AND UNITED CHURCH OF CHRIST, OC INC.

The National Hispanic Media Coalition, Common Cause, and United Church of Christ, OC Inc., (together "Petitioners") file this Reply in the above-referenced proceeding in response to Sinclair Broadcast Group, Inc. ("Sinclair") and Tribune Media Company's ("Tribune") (together, "Applicants") Second Consolidated Opposition To Petitions to Deny ("Applicants' Second Opposition").[1] In Applicants' Second Opposition to the consumer groups, independent programmers, competitive broadband carriers, and cable and satellite operators who petitioned the Federal Communications Commission ("FCC" or "the Commission") to deny this transaction, the Applicants largely repeat their arguments made in their divestiture plan while failing to address any of the legitimate public interest harms raised by Petitioners.

[1] *See* Applicants' Second Consolidated Opposition to Petitions to Deny, MB Docket No. 17-179 (July 5, 2018) (Applicants' Second Opposition). The Applicants filed an amended divestiture plan filed on April 24, 2018. *See* Tribune Media Company and Sinclair Broadcast Group, Inc., Consolidated Applications for Consent to Transfer Control of Licenses and Authorizations, Amendment to June Comprehensive Exhibit, MB Docket 17-179 (April 24, 2018). Applicants also filed a response to request for more information from the FCC on May 14, 2018. *See* Tribune Media Company and Sinclair Broadcast Group, Inc., Response to FCC Information Request, MB Docket 17-179 (May 29, 2018). Petitioners then filed a Petition to Deny on June 20, 2018. *See* Petition to Deny of National Hispanic Media Coalition, Common Cause, and United Church of Christ, OC Inc., MB Docket No. 17-179 (June 20, 2018) (NHMC et. al Petition).

I. THE RECORD DEMONSTRATES THE APPLICANTS' DIVESTITURE PLAN IS A SHAM AND IS NOT IN THE PUBLIC INTEREST

A. The Applicants' Divestiture Plan is a Sham

As multiple Petitioners[2] in this proceeding have noted, the Applicants' divestiture plan is a sham. The pageantry does not disguise the Applicants' intent to retain control of divested stations and skirt the media ownership rules. The Applicants' divestiture plan is not in the public interest given (a) the discrepancies in asset valuations and (b) the Applicants' *de facto* control of divested assets.

The discrepancies in asset valuation emphasize that divestitures are in fact sweetheart deals. As Cinemoi et al. states in its Petition to Deny, Sinclair is underselling stations: the "Cunningham purchase price is curiously low for two stations located in top-10 DMAs."[3] Cinemoi goes on to explain that "analysts have said HSH bought the stations at discounts of anywhere from $10 million to $55 million and that the WGN-TV price tag was 'very low.'"[4] Free Press shares the same concern that stations "are being nominally sold to sidecars at well below-market price – as little as one-tenth the fair market price."[5] Additionally, "Sinclair would also assume $2.7 billion more in debt pre-divestiture if this transaction were approved, resulting in a 69 percent increase in the company's debt burden. Lowballing its own assets in this manner can only be understood once one remembers that Sinclair earns massive revenues from these sidecar stations, which qualify as variable interest entities for which Sinclair is considered a 'primary beneficiary.'"[6] These facts underscore arguments raised by Petitioners that these divestitures are straw man deals crafted so

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[2] *See* Petition to Deny of Cinemoi et al., MB Docket No. 17-179 at 6 (June 20, 2018) (Cinemoi Petition). *See also* Petition to Deny of Newsmax Media Inc, MB Docket No. 17-179 at 14 (June 20, 2018) (Newsmax Petition); Petition to Deny of Free Press, MB Docket No. 17-179 at 9 (June 20, 2018) (Free Press Petition).
[3] *See* Cinemoi Petition at 6.
[4] *See id*.
[5] *See* Free Press Petition at 10.
[6] *See id.* at 10-11 (internal citations omitted).

Sinclair can retain control of the divested stations. Of course, there is no risk for selling stations below market value when Sinclair plans to maintain ownership rights and exercise buyback options.

The sales price and terms of Sinclair's complex divestiture plan indicate "that the 'sale' of these stations is only temporary—to last only until Sinclair is no longer prohibited by the Commission's ownership rules from owning them again outright."[7] As NTCA states in its Petition to Deny, "the reportedly below-market prices being paid by Howard Stirk Holdings and Cunningham Broadcasting for the stations they are acquiring raise yet more questions about whether these are bona fide sales.[8]" Given the buyers of the Applicants' divested stations close ties to Sinclair management and the questionable asset valuations, Sinclair's divestiture plan is an attempt to circumvent the Commission's media ownership regulation. In essence, "Sinclair is proposing to transfer the relevant stations from its metaphorical right hand to its left hand, and calling this farce diverse ownership."[9]

B. The Applicants Revised Divestiture Plan Continues to Fail the Public Interest Standard

The record overwhelmingly illustrates that the Applicants have failed to show that its proposal serves the public interest. To the contrary, the merger will cause irrefutable harm.[10] Simply claiming that the divestiture plan is "legal" does not satisfy the public interest standard.[11]

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[7] *See* Petition to Deny of NTCA, MB Docket No. 17-179 at 16 (June 20, 2018) (NTCA Petition).
[8] *See* Free Press Petition at 10.
[9] *See id* at 11. *See also* Petition to Deny of Herndon Reston Indivisible, MB Docket No. 17-179 at 7 (June 20, 2018) (characterizes the Applicants' sham divestiture plan as being "inconsistent with business practice, common sense, human nature and law).
[10] *See infra* Section IV.
[11] *See* 47 U.S.C. § 310(d) (The public interest standard states that the FCC shall only transfer broadcast licenses "upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.").

The Applicants are required to show that the transaction has a specific public benefit.[12] Instead, the Applicants use twisted logic and avoid the reality of media ownership regulations in flux[13] to claim that their divestitures comply within *current*[14] ownership rules and therefore must be in the public interest. As Free Press accurately states, the divestiture plan "violate[s] the spirit and the letter of the Commission's rules by making abundant use of obsolete regulatory loopholes and deceptive shell games."[15]

Notably, the divestiture plan will also assist another broadcaster in expanding its audience reach above the national cap. The American Cable Association and Free Press bring to light that without factoring in the technically obsolete UHF discount, the Applicants divestiture to Fox Broadcasting Company will place it above the national audience reach cap.[16] Nonetheless, Fox's response uses the same manipulative accounting and argues that the current rules would not push it over the national ownership cap.[17]

II. THE APPLICANTS DISTORT THE VIDEO MARKETPLACE AND THE ROLE OF BROADCASTERS

The Applicants continue to contend that they face growing competitive pressures from online streaming services, and that the only way to compete with them is through consolidation.[18]

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[12] *See id*.
[13] *See infra* Section III.
[14] *See Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, Notice of Proposed Rulemaking, 32 FCC Rcd 10785 (12). *See also* Applicants' Second Opposition at 6.
[15] *See* Free Press Petition at 6.
[16] *See* Petition to Deny of American Cable Association, MB Docket No. 17-179 at 5 (June 20, 2018); Free Press Petition at 11-12.
[17] *See* Response of 21st Century Fox, Inc. and Fox Television Stations, LLC To Petitions To Deny, MB Docket No. 17-179 (July 5, 2018). Fox's Response dismisses the concerns of the American Cable Association and Free Press regarding the National Audience Cap and fails to address the impacts of pending litigation on the proposed divestiture.
[18] *See* Applicants' Second Opposition at 4.

But the Applicants are merely distorting the video marketplace to create a false equivalency between broadcasters and other types of video providers.

Broadcasters are inherently different from online streaming services. First, broadcasters and online streaming services operate in entirely different sectors and serve different communities. When the FCC awards licenses to broadcasters to provide service, it does so using local licenses relating "to the principal community or other political subdivision which it primarily serves."[19] Further, the Commission has long-established that broadcasters must serve the needs and interests of the communities to which they are licensed.[20] Indeed, the FCC's broadcast licensing system is designed to ensure that broadcasters serve local communities. Online streaming services on the other hand do not need a license to operate and have no requirement to serve local communities. Therefore, the Commission must evaluate the merits of this transaction by examining the competitive impact to the local broadcast marketplace. If the Applicants want to compete with online video distributors they can launch their own streaming services,[21] but cannot distort the facts to fit their false narrative that broadcasters compete directly with online video distributors.

Broadcasters are also subject to public interest requirements that do not apply to other video providers. Over the years, the Commission has adopted rules specifically designed to give local broadcasters more control over their programming to ensure they meet local community needs. For example, the FCC's network affiliate rules protect local broadcast stations against interference from national and regional networks. Those rules include prohibiting network

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[19] 47 C.F.R. § 73.1120.
[20] *See* Broadcasting and Localism: FCC Consumer Facts, https://transition.fcc.gov/localism/Localism_Fact_Sheet.pdf.
[21] *See* Brett Samuels, "Sinclair Broadcasting plans to launch streaming service: report," The Hill (July 11, 2018), http://thehill.com/homenews/media/396458-sinclair-broadcasting-plans-to-launch-streaming-service-report.

exclusivity agreements and granting local stations the ability to preempt network programming for content of "greater local or national importance."[22]

The Commission also promulgated network-affiliate[23] and chain broadcasting rules[24] to give local broadcasters more control over programming. They ensure that communities have access to a critical source of local news and information. These public interest requirements reaffirm that broadcasters are public trustees required to serve the needs of their local communities. The Applicants ignore the fact that these public interest responsibilities apply specifically to broadcasters and not to other types of video providers.

III. THE APPLICANTS' TRANSACTION IS INHERENTLY TIED TO THE UHF DISCOUNT AND NATIONAL OWNERSHIP CAP

The proposed merger hinges on the Applicants' ability to leverage the outmoded UHF discount, which is currently under review in the D.C. Circuit Court of Appeals,[25] to artificially lower its reach to comply with the national ownership cap.[26] Multiple Petitioners in this proceeding[27] – as well as the Commission itself[28] – have raised issue with the UHF discount, noting that it has no modern technological justification and now functions only to distort a broadcast company's true national reach. The present transaction is perhaps the clearest case study

[22] *See, e.g.*, 47 C.F.R.§ 73.658(a), (d)-(e).
[23] *See*, e.g., 47 C.F.R.§ 73.1125(a)(1), (e).
[24] *See* 47 U.S.C. § 303(i); *see also* 47 U.S.C. § 153(10).
[25] *See* Free Press, et al., v. FCC, Opening Brief for Petitioners, On Petition for Review of an Order of the Federal Communications Commission, No. 17-1129 (D.C. Cir. 2017).
[26] The Commission is currently reviewing whether to lift the national ownership cap. Multiple Petitioners have noted the national ownership cap proceeding is tied to the Applicants' transaction and have urged the Commission not to grandfather pending transactions to the extent the cap is lifted. *See* Cinemoi Petition at 3.
[27] *See* Petition to Deny of NHMC et al; Free Press Petition at 15; Newsmax Petition at 7; DISH Petition at 5; Petition to Deny of Communications Workers of America, National Association of Broadcast Employees and Technicians, and The NewsGuild, MB Docket No. 17-179 at 12 (June 20, 2018); Petition to Deny of Attorneys General of the States of Illinois, Iowa, and Rhode Island, MB Docket No. 17-179 at 6 (June 20, 2018).
[28] *See* Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, Report and Order, 31 FCC Rcd 10213, paras 2 and 28 (2016).

of its pernicious misuse: Sinclair's actual reach of 58.77 percent with its proposed divestitures, is grossly in excess of the Congressionally set limit of 39 percent. However, Sinclair's reach drops to the superficially acceptable level of 37.39 percent once the UHF discount is applied.[29] Allowing Sinclair to understate its coverage by over 20 percent using this technically-obsolete measure currently under review all but invites a long, cumbersome divestiture process should the UHF discount be vacated.

Given the potential for this disastrous fallout, Public Knowledge and Common Cause filed a separate motion with the FCC to hold the merger proceeding in abeyance pending the D.C. Circuit's review of the UHF discount,[30] which was supported by United Church of Christ, OC Inc. and NHMC.[31] The motion argues, that the consequences of approving the proposed merger, which could soon after be deemed unlawful, are too significant and irreparable to allow the proceeding to continue unabated while the fate of the UHF discount remains uncertain.[32] The Applicants' Second Opposition suggests there is "no legal support or precedent" for such an argument.[33] This assertion is as disingenuous and self-interested as it is plainly false. Both the Supreme Court and the Commission have a demonstrable preference of delaying proceedings, particularly in the case of proposed mergers, when the potential ramifications are contingent on an unresolved legal issue.

Contrary to what the Applicants suggest, Courts have been straightforward in cautioning against the difficult process of disassembling two companies post-consummation, instead opting to enjoin merger proceedings pending judicial review of a related issue. As the Supreme Court found,

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[29] *See* Sinclair Broadcast Group, Amendment to FCC form 315, Amendment to Comprehensive Exhibit, Exhibit J (April 24, 2018).
[30] *See* Motion Requesting to Hold the Proceeding in Abeyance, MB Docket No. 17-179 (June 29, 2018).
[31] Letter from Daphna Edwards Zinn, Cinemoi et al to Marlene Dortch, FCC, MB Docket 17-179 (filed July 9, 2018).
[32] *See id*.
[33] Applicants' Second Opposition at 20.

"administrative experience shows that the Commission's inability to unscramble merged assets frequently prevents entry of an effective order of divestiture"[34] and that "where businesses have been merged or purchased and closed out it is commonly impossible to turn back the clock."[35] Furthermore, once a merger is approved, the previously separate companies can undertake actions which "preclude effective relief… if divestiture is ordered."[36] Like the use of injunctions in judicial proceedings, holding this proceeding in abeyance would be a similarly pragmatic solution that would prevent the undesirable process of compelling divestitures following the merger.

IV. APPLICANTS BLATANTLY DISREGARD HARMS RAISED BY PETITIONERS AND APPROVAL OF THE TRANSACTION WOULD RUN CONTRARY TO THE COMMISSION'S LONG STANDING GOALS OF PROMOTING LOCALISM, DIVERSE OWNERSHIP, AND VIEWPOINT DIVERSITY

Approving this merger would run contrary to the Commission's Congressional mandate to promote media diversity, and make the FCC complicit in destroying the foundation of local news. As DISH accurately states, "while the Applicants claim localism as a benefit to the transaction, the record has demonstrated the opposite."[37] Sinclair's operating model of reaching economies of scale via central command and controlling editorial practices will harm localism and viewpoint diversity.[38] Applicants' Second Opposition intentionally dismisses how this transaction will markedly diminish opportunities for diverse ownership,[39] and have a negative impact on

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[34] *FTC v. Dean Foods Co.*, 384 U.S. 597, 607 n. 5 (1966).
[35] *United States v. Crescent Amusement Co.*, 323 U.S. 173, 186 (1944). *See also*, *U.S. v. First City Nat. Bank of Houston*, 386 U.S. 361, 371 (1967) ("The legislative history is replete with references to the difficulty of unscrambling two or more banks after their merger.").
[36] *FTC v. Warner Comm. Inc.*, 742 F.2d. 1156, 1165 (9th Cir. 1984).
[37] Petition to Deny of DISH Network L.L.C., MB Docket No. 17-179 at 4 (June 20, 2018) (DISH Petition).
[38] *See* Petition to Deny of American Civil Liberties Union, MB Docket No. 17-179 at 8 (June 20, 2018) (ACLU Petition). *See also* Communications Workers of America, MB Docket No. 17-179 at 6 (June 20, 2018). *See also* DISH Petition at 4; Free Press Petition at 14.
[39] *See* Free Press Petition at 14 ("Women and people of color have long lagged behind white men in broadcast ownership, and studies have shown that unrestrained market forces and media ownership consolidation have contributed to the depletion of minority owners.").

communities of color.[40] For instance, Applicants claim that the sale of 12 stations to Howard Stirk Holding and Standard Media Group LLC will "significantly boost minority ownership."[41] In reality, these are sweetheart deals in which Sinclair will maintain operational control. Even in the most generous light, the addition of 12 minority broadcast stations adds less than one percent to minority ownership of almost 1800 broadcast stations in the U.S.[42]

The proposed merger would also reduce choice for low-income and marginalized consumers and given the market power that Sinclair would command, thwart the diversity of ownership. Petitioners agree with the ACLU that, "[g]reater consolidation of the television broadcasting industry will make it more difficult for new licensees to enter this industry. Sinclair's acquisition of Tribune Media only serves to consolidate the industry further, without taking meaningful steps to diversify an already racially stratified market."[43] Simply, this transaction would further diminish already dismally low levels of media ownership opportunities for women and people of color. Additionally, the proposed merger would create a 'David and Goliath' dynamic between small broadcasters and the largest broadcaster in the history of America, leading to additional mergers and consolidation as other companies seek to grow larger in order to compete. Small broadcasters owned by people of color and women will be disproportionately disadvantaged, some rendered unable to compete with firms whose market capitalizations and resources are greater by magnitudes of billions of dollars.

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[40] *See* Petition to Deny of National Hispanic Media Coalition, Common Cause, and United Church of Christ, MB Docket No. 17-179 at 10-11 (June 20, 2018). *See also* ACLU Petition at 11-12; Free Press Petition at 13.
[41] *See* Applicants' Second Opposition at 4.
[42] *See* List of Full Service Stations as of November 2016, FCC Media Bureau, https://transition.fcc.gov/mb/docs/eng/list_of_full_service_stations_11_2016.xlsx (last visited Jul. 12, 2018).
[43] ACLU Petition at 13.

While Sinclair's proposal will increase its viewership and revenue, it does nothing to support the Commission's long-standing commitment to localism and diversity. The ACLU rightly characterized the the effects of the merger as "a crowding out of local ownership of broadcasting stations and reduced viewpoint diversity in the television news market."[44] The Commission should reject this merger on grounds that it would run contrary to its Congressional mandate to promote "policies...favoring diversity of media voices."[45]

V. CONCLUSION

For the foregoing reasons, the National Hispanic Media Coalition, Common Cause, and United Church of Christ, OC Inc., respectfully request that the Commission deny the Applicants' proposed transaction.

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[44] *Id.* at 8.
[45] *See* 47 U.S.C. § 257(b).

CERTIFICATE OF SERVICE

I, Yosef Getachew, hereby certify that on the 12th day of July, 2018, I caused a true and correct copy of the foregoing Petition to Deny via email to the following:

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