

**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 and)
Authorizations)
)

**PETITIONERS’ REPLY TO APPLICANTS’ JOINT OPPOSITION TO MOTION FOR
ADDITIONAL INFORMATION AND DOCUMENTS AND EXTENSION OF TIME**

I. INTRODUCTION AND SUMMARY

Pursuant to Section 1.45(c) and 1.46(b),¹ DISH Network L.L.C. (“DISH”), the American Cable Association (“ACA”), and Public Knowledge (collectively, the “Petitioners”) submit this reply to the joint opposition filed by Sinclair Broadcast Group, Inc. (“Sinclair”) and Tribune Media Company (“Tribune”) (collectively, “Applicants”). First, the Petitioners agree with the Applicants that the Commission’s “well-established procedures” include the development by Commission staff of “written requests for specific additional information from the applicants.”² The Petitioners have no interest in changing this procedure, and are not seeking to propound third party discovery. Rather, the Petitioners are identifying information that they believe is missing from the application, is necessary for the Commission’s evaluation of the proposed transaction, and therefore should be included in such requests from the Commission. Second, the Applicants did not engage with the substance of the motion, and fail to explain why the

¹ 47 C.F.R. §§ 1.45(c), 1.46(b).

² Applicants’ Joint Opposition to Motion for Additional Information and Documents and Extension of Time at 2, Applications of Tribune Media Company and Sinclair Broadcast Group, Inc. For Consent to Transfer Control of Licenses and Authorizations, MB Docket No. 17-179 (July 19, 2017) (“Opposition”).

requested information is not relevant to the public interest analysis. In Petitioners' view, such information is not merely "relevant;" it is crucial and necessary to any public interest analysis the Commission might undertake.

Since the Petitioners filed their motion, a steady stream of support has emerged. AWE – A Wealth of Entertainment, Cinémoi, MAVTV Motorsports Network, One America News Network, and Ride Television agreed with the Petitioners that “the applications provide insufficient information for the Commission to validate, let alone quantify the claimed public interest benefits.”³ Common Cause explains that the “applications are woefully deficient in demonstrating any meaningful public interest benefits providing merely two and [one-]half pages of conclusory statements devoted to the core determination that must be made by the Commission.”⁴ Newsmax Media, Inc. also supports the requests put forward by the Petitioners.⁵ And NTCA – The Rural Broadband Association has agreed.⁶

II. THE COMMISSION CANNOT FIND THAT THIS TRANSACTION IS IN THE PUBLIC INTEREST UNLESS ADDITIONAL INFORMATION IS SUBMITTED

The Applicants bear the burden of proving that their transaction is in the public interest.⁷ But Applicants cannot make such a showing with the paltry amount of information provided.

³ Comments of AWE – A Wealth of Entertainment, Cinémoi, MAVTV Motorsports Network, One America News Network, and Ride Television, MB Docket No. 17-179, at 2 (July 20, 2017).

⁴ Letter from Todd O’Boyle, Common Cause, to Ajit Pai, Chairman, FCC, MB Docket No. 17-179 (July 17, 2017).

⁵ Comments of Newsmax Media, Inc., MB Docket No. 17-179, at 3 (July 21, 2017).

⁶ Comments of NTCA – The Rural Broadband Association, MB Docket No. 17-179, at 3 (July 14, 2017) (“NTCA Comments”).

⁷ *AT&T Inc. and DIRECTV*, 30 FCC Rcd. 9131, 9237 ¶ 274 (2015) (“[A] claimed [merger] benefit must be verifiable. Because much of the information relating to the potential benefits of a transaction is in the sole possession of the Applicants, they have the burden of providing sufficient evidence to support each claimed benefit to enable the Commission to verify its likelihood and magnitude.”).

The two and one-half pages asserting public interest benefits include *no* documentary sources or affidavits that would allow their confirmation. Nor does the application contain any expert economic or other testimony to verify or quantify the claimed public interest benefits or explain why the benefits offset the transaction's clear anti-competitive effects. And the application concedes that, as it stands, it violates several provisions of the Commission's ownership rules, without offering a concrete plan for how to cure these violations. The Commission cannot conclude that the transaction is in the public interest based on the record as it currently exists.

In their opposition, the Applicants do not cure any of these problems. They instead falsely accuse the Petitioners of "dictating the pleading cycle," when all that has been filed is a normal request for an extension of time. They claim that the Petitioners are trying to "fundamentally alter" the merger review process by "propounding" information requests, even though the Petitioners are merely identifying information that is clearly missing and that will be helpful to the Commission and commenters. In fact, much of the information requested by the Petitioners is routinely provided in initial transfer and assignment applications, and, if it is not provided therein, the Commission will often request such information through information requests. The Commission is not a judicial tribunal waiting for litigants to choose the information it will consider. Rather, it is conducting an investigation in which it has an independent interest in ensuring a complete record to determine whether the merger is in the public interest or not.

Applicants, in other words, have refused to address the merits of the Petitioner's motion.⁸ They never explain why the specific information that is sought is unnecessary for the

⁸ The Applicants' assert that Petitioners lack standing to file the motion. Opposition at 3 n.6. First, the party in interest requirement of the Communications Act applies to petitions to deny, not to motions for additional information. The Applicants make no attempt to show otherwise.

Commission to consider, and third parties to comment on, as the FCC evaluate the proposed transaction. One would have expected a point-by-point analysis of each of the twelve categories of information, but Applicants have foregone that opportunity. Perhaps that failure arises from the fact that the Commission has historically sought just this kind of information:

Information Request	Proceeding with Similar Information Requested by the Commission
1. All documents addressing the process by which each company considered the merits of this transaction, the reasons why the transaction would be advantageous, and, specifically, any information demonstrating any consideration in either company that the transaction could affect the going-forward rate of fees charged to MVPDs or OVDs and availability of streaming video services.	Charter Communications/Time Warner Cable ⁹ Comcast/Time Warner Cable ¹⁰ AT&T/DTV ¹¹ Comcast/NBCU ¹²
2. Analyses to support and quantify the Applicants’	Nexstar Broadcasting/Media General ¹³

In any event, Petitioners are parties in interest and they intend to participate in this proceeding. 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. The ACA’s members include cable operators that have retransmission consent agreements with both Sinclair and Tribune. Public Knowledge is a not-for-profit institution dedicated to preserving and protecting consumer rights in connection with broadcast and other communications services. It has worked extensively to improve affordable, non-discriminatory access to such services, and has participated in numerous merger proceedings before the Commission. Thus, Petitioners are parties in interest under Section 309(d)(1) of the Communications Act. *See* 47 U.S.C. § 309(d)(1).

⁹ *See* Letter from William T. Lake, FCC, to Catherine Bohigian, Charter Communications, Information and Data Request to Charter Communications, Inc., MB Docket No. 15-149 (Sept. 21, 2015) (multiple specifications).

¹⁰ *See* Letter from William T. Lake, FCC, to Kathryn A. Zachem, Comcast Corp., Information and Data Request to Comcast Corp., MB Docket No. 14-57 (Apr. 21, 2014) (multiple specifications) (“Comcast/TWC RFI”).

¹¹ *See* Letter from William T. Lake, FCC, to Robert W. Quinn Jr., AT&T Inc., Information and Data Request to AT&T Inc., MB Docket No. 14-90 (Mar. 3, 2015) (multiple specifications) (“AT&T RFI”).

¹² *See* Letter from William T. Lake, FCC, to Michael H. Hammer, Counsel for Comcast Corp., Information and Data Request to Comcast Corp., MB Docket No. 10-56 (May 21, 2010) (“Comcast RFI”) (multiple specifications).

Information Request	Proceeding with Similar Information Requested by the Commission
contention that the transaction will facilitate investment in local content and production capabilities, including specific business synergies and efficiencies that will facilitate such investment or otherwise aid the operation of Sinclair were the transaction to be consummated.	
3. All analyses and documents relating to historic and projected future capital expenditures, headcounts, and programming plans for each of Tribune and Sinclair, and for the proposed, consolidated company.	Comcast/Time Warner Cable ¹⁴
4. Documentation and data with respect to recently acquired stations and the addition of local and news programming, specifically breaking out, for each station, the weekly addition (or loss) of hours of 1) local news, 2) other local programming, and 3) news or interest segments not originated by the station.	Specific to Sinclair/Tribune; necessary for the evaluation of the proposed transaction and its effect on localism in light of Sinclair's practice of substituting centrally originated programming for local programming. ¹⁵
5. A description of the relationship between centrally originated programming by Sinclair and any requirements for local stations to air such programming, including without limitation any written agreements or correspondence between Sinclair and the stations with respect to such programming.	Specific to Sinclair/Tribune; necessary for the evaluation of the proposed transaction and its effect on localism in light of Sinclair's practice of substituting centrally originated programming for local programming. ¹⁶
6. All documents related to any shared services or local marketing agreements between Sinclair or Tribune stations and third-party stations.	Specific to Sinclair/Tribune; necessary for the evaluation of the proposed transaction in light of the fact that it would implicate several violations of the Commission's media ownership rules, and further in light of the fact that Sinclair has previously tried to circumvent these rules by means of non-grandfathered local marketing agreements. ¹⁷

¹³ See Letter from William T. Lake, FCC, to Elizabeth Ryder, Nexstar Broadcasting, Inc., Request for Information from Nexstar, MB Docket No. 16-57, ¶ 7 (June 3, 2016).

¹⁴ Comcast/TWC RFI ¶ 80.

¹⁵ See, e.g., Jim Rutenberg and Micheline Maynard, *TV News that Looks Local, Even if it's Not*, New York Times (June 2, 2003), <http://www.nytimes.com/2003/06/02/business/tv-news-that-looks-local-even-if-it-s-not.html>; Shelby Hill, *Affiliates Spar With Parents on Distant Hubs*, Variety, <http://variety.com/2013/tv/news/affiliates-spar-with-parents-on-distant-hubs-1200491954>.

¹⁶ *Id.*

¹⁷ See Applications for Consent to Transfer of Control from License Subsidiaries of Allbritton Communications Co. to Sinclair Television Group, Inc., *Memorandum Opinion and Order*, 29 FCC Rcd. 9156, 9157-58 ¶¶ 7-11 (2014).

Information Request	Proceeding with Similar Information Requested by the Commission
7. All documents or analyses addressing or relating to the use of “most-favored nation” (“MFN”) clauses in retransmission consent agreements to establish pricing floors for retransmission rates in retransmission negotiations with other MVPDs.	Comcast/Time Warner Cable ¹⁸
8. Identification of all changes in station ownership (stations acquired or sold) since 2010 and station affiliation.	Comcast/NBCU ¹⁹
9. Monthly data for 2010 to present on advertising revenues earned, sharing payments for advertising paid to station affiliates, and subscriber and/or viewer bases for advertising fees, by MVPD, by station	Comcast/NBCU ²⁰
10. All retransmission consent agreements with MVPDs and network affiliation agreements since 2010; monthly data (including both total fees and per-subscriber fees) for 2010 to the present on: (i) retransmission fee revenues earned, (ii) reverse retransmission fees paid (retransmission fees remitted to affiliated networks), and (iii) subscriber bases for retransmission fees, by MVPD, by station	Comcast/NBCU ²¹
11. All documents relating or pertaining to retransmission consent strategy and negotiations with MVPDs and affiliated networks, including without limitation all documents relating to strategy and negotiations in connection with all blackouts of local programming in which Applicants have been involved since 2010.	Comcast/NBCU ²²
12. All documents and data with respect to the effects on advertising revenues of any blackouts of local programming in which Applicants’ stations have been involved on such revenues.	AT&T/DirecTV ²³ Comcast/NBCU ²⁴

¹⁸ See Letter from William T. Lake, FCC, to Cynthia L. Gibson, Scripps Networks Interactive, Inc., Request for Information to Scripps, MB Docket No. 14-57, ¶¶ 2, 7 (Feb. 25, 2015).

¹⁹ See Letter from William T. Lake, FCC, to Bryan N. Tramont, Information and Discovery Request for NBC Universal, Inc., MB Docket No. 10-56, ¶¶ 2, 7 (May 21, 2010) (“NBCU RFI”).

²⁰ NBCU RFI ¶¶ 6, 42, 43, 44.

²¹ *Id.* ¶ 33, 34, 35, 37, 38; Comcast RFI ¶ 44.

²² NBCU RFI ¶ 14, 36, 45.

²³ AT&T RFI ¶ 43.

²⁴ Comcast RFI ¶ 37.

Given the demonstrated importance of the above information, getting such information now and only then moving forward with comments and petitions to deny would actually increase the efficiency of the Commission's process, which benefits all parties – including the Applicants.²⁵

The only request that the Applicants specifically object to is the request for retransmission consent agreements and related information. Applicants contend that disclosure of the retransmission consent agreements would fail the third prong of the D.C. Circuit's standard in *CBS*²⁶ because, in their view, the Commission can make a determination about those agreements without third-party review.²⁷ Of course, their invocation of the Charter/Time Warner Cable/Brighthouse merger proves quite the opposite. There, the Commission did not seek retransmission-consent agreements but the Department of Justice did review them and, accordingly, the Commission did not impose any condition related to programming contracts;²⁸ the Department of Justice, through a consent agreement, *did* impose such a condition.²⁹ Without reviewing these agreements, the Commission cannot review the question that is at the heart of this merger, namely whether the new company would hold greater bargaining power that it could exercise to harm the public interest.

²⁵ In fact, even the Applicants anticipate some level of information request after which new arguments may be raised by noting that the Petitioners “will have the opportunity to submit reply comments and, thereafter, to make *ex parte* presentations to the Commission throughout the course of this proceeding.” Opposition at 4.

²⁶ *CBS Corporation v. FCC*, 785 F.3d 699 (D.C. Cir. 2015)(“*CBS*”).

²⁷ *Id.* at 7.

²⁸ See Charter Communications, Inc., Time Warner Cable, Inc., and Advance/Newhouse Partnership, *Memorandum Opinion and Order*, 31 FCC Rcd. 6327 (2016).

²⁹ *USA v. Charter Communications, Inc., Advance/Newhouse Partnership and Time Warner Cable, Inc.*, Civil Action No. 16-cv-00759, Final Judgment, at 5-6 (Sep. 9, 2016).

In any event, as explained in the original motion, *CBS* is no bar. It does not say that retransmission consent agreements are off limits; it simply holds that the showing made by the Commission in that case was insufficient. As the Petitioners' original motion demonstrates, the requisite legal standard is easily met here. To this, the Applicants simply argue that the Petitioners have "actively participated" in proceedings in which such agreements were not available.³⁰ That, of course, is no answer at all. To be active is not necessarily the same as being well-armed with all of the important information; nor is the issue here whether the Petitioners can do their job, it is whether the Commission can do its job without this information. The Petitioners respectfully submit that it cannot.

Petitioners note that the information they have asked the Commission to require from the Applicants is not an exhaustive list. It is merely "a baseline, minimal list of information that will be necessary to review before the Commission of the public may assess the transaction."³¹ It is very likely that additional information beyond what the Petitioners suggest is needed. And the Commission should request all of the information it needs to undertake a proper public interest determination.

III. AN EXTENSION TO THE PLEADING CYCLE IS WARRANTED

While not routinely granted,³² extensions are considered on a case-by-case basis and they are granted where, as here, they are justified by the circumstances. There is no requirement for a "compelling reason" as the Applicants claim,³³ merely good cause.

³⁰ Opposition at 7-8.

³¹ NTCA Comments at 3.

³² See 47 C.F.R. § 1.46(a).

³³ Opposition at 4.

Good cause exists here. The Applicants must meet their burden of providing some evidence that the transaction is in the public interest before the proceeding can move forward. Vast amounts of information that the Applicants should have already provided are not in the record. The interests of efficiency demand that the information requests be fulfilled before moving forward. Petitioners and other public commenters should have the ability to review this material before determining whether to file petitions to deny. In addition, the responses to the information requests will likely raise new issues that should preferably be raised now rather than in the *ex parte* process.

IV. CONCLUSION

Neither the Commission nor the public can or should be expected to properly assess the proposed transaction by the thin showings made by the Applicants so far. For these reasons, the undersigned respectfully request that the Commission require the Applicants to respond to a comprehensive request for information and data, and extend the pleading cycle in this proceeding.

Respectfully submitted,

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July 24, 2017

CERTIFICATE OF SERVICE

I, Andrew Golodny, hereby certify that on July 24, 2017, I caused true and correct copies of the foregoing to be served by electronic mail upon the following:

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