

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC**

In the Matter of	)	
	)	
Tribune Media Company (Transferor)	)	
	)	
and	)	MB Docket No. 17-179
	)	
Sinclair Broadcast Group, Inc. (Transferee)	)	
	)	
Consolidated Applications for Consent to	)	
Transfer Control	)	

**PETITION TO DENY OF COMPETITIVE CARRIERS ASSOCIATION**

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Competitive Carriers Association (“CCA”)<sup>1</sup> respectfully requests that the Commission deny the proposed transfer of control (the “Transaction”) of licenses from Tribune Media Company (“Tribune”) to Sinclair Broadcasting Group (“Sinclair”).

**I. INTRODUCTION.**

Sinclair and Tribune are two of the largest broadcasters in the United States.<sup>2</sup> Sinclair holds an attributable interest in at least 191 broadcast television stations.<sup>3</sup> Now it seeks to

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<sup>1</sup> CCA is the nation’s leading association for competitive wireless providers and stakeholders across the United States. CCA’s membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents associate members including vendors and suppliers that provide products and services throughout the mobile communications ecosystem.

<sup>2</sup> Alex Sherman, *Changes Sinclair Buys Tribune in \$3.9 Billion Deal, Creating TV Goliath*, Bloomberg (May 8, 2017), <https://bloom.bg/2qR9Aav> (charting the ownership interests of various broadcasters).

<sup>3</sup> Sinclair reported attributable interests in 173 stations in its latest annual filing with the Securities and Exchange Commission. *See* Sinclair Broadcasting Group, Annual Report (Form 10-K), at 18 (Feb. 28, 2017) (“Sinclair 2016 10-K”). In June 2017, the Commission approved

purchase Tribune Media,<sup>4</sup> “the largest independent station group in the United States,” whose 42 stations in 33 markets reach 44 percent of the country.<sup>5</sup> This Transaction would make Sinclair “the largest broadcast group by a country mile,” according to Sinclair’s CEO Christopher Ripley.<sup>6</sup> And through the acquisition of a major purchaser of broadcast antennas, the Transaction would give Dielectric LLC, Sinclair’s equipment-manufacturing subsidiary, as much as 90 percent of the upstream market in the sale of broadcast antennas.

The Commission must deny this Transaction. There is an urgent need to expeditiously clear the recently auctioned 600 MHz spectrum for mobile broadband services. Sinclair is already a vertically integrated broadcaster that controls one of two dominant equipment manufacturers, and Sinclair has demonstrated an incentive and ability to delay the post-auction repack. Allowing Sinclair to expand through this proposed combination would give it extensive leverage over wireless carriers; inject delay and uncertainty into the post-auction transition process; and undermine the deployment of broadband services in rural markets, jobs, education, healthcare, and the ability of the United States to compete in a global economy. Increased concentration of the equipment market, meanwhile, would allow Sinclair to significantly impede

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the transfer of 18 stations from Bonten Media Group to Sinclair. *See Bonten Media Grp. LLC and Sinclair Television Grp.*, Letter, CDBS File No. BTCCDT-20170505ABL, DA 17-638 (MB June 30, 2017); *see also* Press Release, *Sinclair Broadcast Group Announces Agreement To Purchase Bonten Media Group TV Stations* (Apr. 21, 2017), <http://prn.to/2ugCYZD>.

<sup>4</sup> *See Applications of Sinclair Broadcast Group, Inc. and Tribune Media Company for Consent to Transfer Control of Licenses*, FCC Form 315, Comprehensive Exhibit, MB Docket No. 17-179, (filed June 28, 2017) (“Application” or “Comprehensive Exhibit”).

<sup>5</sup> Tribune Media, Tribune Broadcasting, <http://bit.ly/2u2qTud> (last accessed June 10, 2017).

<sup>6</sup> Jeff Blumenthal, *PHL17 parent company acquired by Sinclair Broadcast Group*, BizJournals (May 8, 2017), <http://bit.ly/2tCu76H>.

the repack by denying its rivals of critical inputs necessary to relocate. By contrast, the purported public interest benefits that Sinclair invokes are not transaction specific or supported by any evidence.

The proper remedy is for the Commission to designate the Application for a hearing and deny the proposed Transaction.

## II. STANDARD OF REVIEW.

### A. The Public Interest Standard Requires a Thorough Assessment of Competitive Impairment and Myriad Other Factors.

Section 310(d) of the Communications Act requires the Commission's prior consent to transfer a broadcast license.<sup>7</sup> The Commission may approve a proposed transfer only if it affirmatively serves the public interest. Even where a proposed transfer does not violate a specific rule, "the Commission considers whether a grant could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes. Where, as here, the Commission has adopted rules to promote diversity, competition or other public interest concerns, those rules and the decision may form the basis for determining whether the transfer applications and/or waivers are on balance in the public interest."<sup>8</sup>

Sinclair bears the burden to prove that the merger would affirmatively benefit the public interest. It must show that such benefits are: (1) transaction-specific and unlikely to be realized by other practical, less anti-competitive means; (2) verifiable in likelihood and magnitude; and

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<sup>7</sup> 47 U.S.C. § 310(d).

<sup>8</sup> *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, 9163-64 ¶ 24 (July 24, 2014) ("Sinclair-Allbritton Order").

(3) for the benefit of consumers, and not solely for the benefit of the company.<sup>9</sup> The Commission calculates these claimed benefits and the net cost of achieving them on a “sliding scale,” requiring a heightened showing where, as here, the potential harms are both substantial and likely.<sup>10</sup> If the Commission finds that Sinclair has failed to prove that the proposed Transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, the Commission must designate the Application for hearing.<sup>11</sup>

The Commission’s public interest review incorporates a “deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private-sector deployment of advanced services, [and] ensuring a diversity of information sources and services to the public.”<sup>12</sup> Among other things, the Commission considers traditional antitrust principles and the Department of Justice’s Horizontal Merger Guidelines, which require the antitrust agencies to “interdict competitive problems in their incipiency” by identifying and preventing

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<sup>9</sup> *Id.*

<sup>10</sup> See *Applications of Comcast Corp., General Electric Co. and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4247 ¶ 227 (2011) (“Comcast-NBCU Order”); *Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 26 FCC Rcd 16184, 16190 ¶ 127 n.362 (2011) (observing that “[c]ourts have generally found proof of efficiencies to be inadequate to rebut a finding of likely competitive harm”); *News Corp. and DIRECTV Group, Inc. and Liberty Media Corp. for Authority to Transfer Control*, Memorandum Opinion and Order, 23 FCC Rcd 3265, 3330-31 ¶ 141 (2008); *Applications of Ameritech and SBC Commc’ns for Consent to Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14825 ¶ 256 (1999).

<sup>11</sup> 47 U.S.C. § 309(e).

<sup>12</sup> Comcast-NBCU Order, 26 FCC Rcd at 4248 ¶ 23 (citing 47 U.S.C. § 532(a); 47 U.S.C. § 521(4)).

mergers that are likely to result in highly concentrated markets.<sup>13</sup> As the Commission conducts its public interest review, it must be especially mindful of Congress’s mandate to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans ... by utilizing, in a manner consistent with the public interest ... methods that remove barriers to investment” and “by promoting competition in the telecommunications market.”<sup>14</sup> The Commission need not define potential anticompetitive effects with absolute certainty to find the Transaction unlawful under well-established antitrust principles.<sup>15</sup>

Furthermore, the Commission must ensure that competition “is shaped not only by antitrust rules, but also by regulatory policies that govern the interactions of industry players.”<sup>16</sup> In particular, the Commission must “open all communications markets to competition ... and the acceleration of private sector deployment of advanced service[]”<sup>17</sup> and determine whether the Transaction would “affect the quality and diversity of communications services, or will result in the provision of new or additional services to customers.”<sup>18</sup> The proposed Transaction cannot withstand this robust analysis.

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<sup>13</sup> Dep’t of Justice and Federal Trade Comm’n, Horizontal Merger Guidelines § 1 (2010), <http://bit.ly/1fSaLt3> (“Horizontal Merger Guidelines”).

<sup>14</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), § 706(a), (b) (codified at 47 U.S.C. § 1302(a), (b)).

<sup>15</sup> Horizontal Merger Guidelines § 1.

<sup>16</sup> *Applications for Consent to Transfer Control of Licensees and Section 214 Authorizations from MediaOne Group, Inc. to AT&T Corp.*, Memorandum Opinion and Order, 15 FCC Red. 9816, 9821 ¶ 10 (2000) (emphasis added).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 9821-22 ¶¶ 10, 11.

## **B. CCA Has Standing To File This Petition On Behalf Of Its Members.**

Only a “party in interest” has standing to file a petition to deny.<sup>19</sup> The petition to deny must contain specific allegations of fact demonstrating that the petitioner is a party in interest and that grant of the application would be inconsistent with the public interest, convenience and necessity.<sup>20</sup> A petitioner in a transfer proceeding also must establish that: (1) it has suffered or will suffer an injury in fact; (2) there is a causal link between the proposed assignment and the injury in fact; and (3) that not granting the assignment would remedy or prevent the injury in fact.<sup>21</sup> CCA meets this standard.

Allowing Sinclair to acquire Tribune would inflict concrete and imminent economic injury to CCA’s individual members. As discussed below, the proposed Transaction would give Sinclair the incentive and market power to impede the transition of 600 MHz spectrum from broadcasters to mobile broadband operators, which would, in turn, prevent CCA’s members from effectively competing against the dominant two incumbent wireless carriers that hold most of the low-band spectrum.<sup>22</sup> The Commission has repeatedly found that trade associations such as

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<sup>19</sup> 47 U.S.C. § 309(d); 47 C.F.R. § 73.3584.

<sup>20</sup> *Applications for Consent to Transfer Control of License Subsidiaries of Media Gen., Inc., from Shareholders of Media Gen., Inc. to Nexstar Media Grp., Inc., et al.*, Memorandum Opinion and Order, MB Docket No. 16-57, DA 17-23, ¶ 15 (Jan. 11, 2017) (“Nexstar-Media General Order”).

<sup>21</sup> *Id.*

<sup>22</sup> Moreover, as mobile broadband providers progressively rely on video content as an essential offering, excessive concentration of exclusive programming rights would injure CCA’s members by depriving them of an increasingly critical input necessary for robust competition. *See, e.g.,* PWC, *An industry at risk: Commoditization in the wireless telecom industry* 14 (2017) <http://pwc.to/2oQntJu> (“Rethinking the connectivity business must lead in turn to the development of an entirely new set of connectivity-based, differentiated, value-added offerings that can provide sustained competitive advantage and that won’t suffer in competition with over-the-top (OTT) players and digital device ecosystems. These might include services for the smart

CCA have organizational standing to challenge transactions on behalf of their constituents.<sup>23</sup> Inhibiting effective competition among non-incumbent wireless carriers, and against Sinclair itself, constitutes tangible and well-established public interest harm under the Commission's precedents. Accordingly, CCA has standing to file this petition on behalf of its members, each of which would be entitled to challenge the Transaction in its own right.

**III. THE TRANSACTION WOULD HARM THE PUBLIC INTEREST BY GIVING SINCLAIR SUFFICIENT POWER TO RESTRAIN COMPETITION IN THE MOBILE BROADBAND MARKET DURING THE POST-AUCTION REPACK.**

The Transaction threatens higher consumer prices and reduced output in the wireless market. Expediently transitioning 600 MHz spectrum from broadcasters to mobile broadband operators will enhance wireless competition, which will enable next-generation 5G offerings, improve speeds, and reduce prices.<sup>24</sup> Approving this Transaction, however, will give Sinclair the horizontal and vertical market power to grind the repack to a halt. That outcome is almost certain to occur, given Sinclair's repeated attempts to obstruct the repack. The Commission must therefore deny the proposed Transaction.

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home, connected driving, and smart cities, as well as a means to gain some control over how content and advertising is distributed to consumers."); Reply Comments of T-Mobile USA, Inc., MB Docket No. 16-41, at 4-6 (Apr. 19, 2016).

<sup>23</sup> See, e.g., Nexstar-Media General Order ¶ 12 (finding that American Cable Association had organizational standing to challenge a proposed transfer among broadcasters).

<sup>24</sup> See, e.g., *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Eighteenth Report, 30 FCC Rcd 14515, 14549-52 ¶¶ 47-52 (2015).

**A. Efficiently and Promptly Transitioning 600 MHz Spectrum from Broadcasters to Mobile Broadband Operators Serves a Compelling Public Interest.**

Access to low-, mid-, and high-band spectrum is necessary for effective competition in the wireless broadband market.<sup>25</sup> Low-band spectrum, in particular, allows service providers to offer a cost-effective coverage layer of broadband connectivity,<sup>26</sup> including wide-area and in-building connectivity.<sup>27</sup> Wireless operators continue to secure low-band spectrum assets as a foundational component of any large-scale network deployment. In 2012, Congress enacted the Spectrum Act, which directed the Commission to conduct an incentive auction to make broadcasters' 600 MHz spectrum available for mobile broadband deployment.<sup>28</sup>

The Commission structured the 600 MHz incentive auction to promote wireless competition by preventing incumbents from foreclosing entry. For many years, the two dominant incumbents held most of the available low-band spectrum, which they acquired through non-competitive lotteries and beauty contests. The 600 MHz incentive auction therefore represented a once-in-a-lifetime opportunity for CCA's members to acquire valuable low-band

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<sup>25</sup> See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report & Order, 29 FCC Rcd 6567, 6796-802 ¶¶ 559-73 (2014) (establishing a 39-month post-auction transition period for broadcasters that are assigned new channels in the repacking process, which includes a three-month period during which broadcasters will complete and file their construction permit applications followed by a 36-month period consisting of varied construction deadlines). See also *Nat'l Ass'n of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) (upholding the FCC's 39-month transition period).

<sup>26</sup> Coleman Bazelon & Giulia McHenry, *Mobile Broadband Spectrum: A Vital Resource for the U.S. Economy*, The Brattle Group 3 (May 11, 2015), <http://bit.ly/1PKEM5F>.

<sup>27</sup> See *Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993*, Nineteenth Report, 31 FCC Rcd 10534 ¶¶ 50-51 (2016).

<sup>28</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012).

spectrum necessary to strengthen the competitive potential of national and regional networks for the benefit of American consumers. Once the transition is complete, it will prove “vital to expanding mobile broadband coverage into underserved areas.”<sup>29</sup>

Although the auction has successfully concluded, the Commission’s work is far from complete. The continued success of the auction depends on the speed with which broadcasters can vacate their bands so that non-incumbent wireless carriers can put their newly acquired spectrum to productive use.<sup>30</sup> Only when the 600 MHz spectrum reaches the hands of mobile operators can consumers experience the benefits of additional competition. The Commission has properly recognized “the consumer benefits that stem from multiple providers” using different types of spectrum, and the “substantial likelihood of competitive harm if providers that currently lack sufficient access” to different bands cannot secure it.<sup>31</sup> Chairman Pai recognized the importance of timely clearing the 600 MHz spectrum at the close of bidding when he stressed the “imperative” of “mov[ing] forward with equal zeal to ensure a successful post-auction transition,

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<sup>29</sup> Testimony of Steven K. Berry, President and Chief Executive Officer, Competitive Carriers Association, Before the U.S. House of Representatives Committee on Energy and Commerce Subcommittee on Communications and Technology, *Broadband: Deploying America’s 21st Century Infrastructure* (Mar. 21, 2017), <http://bit.ly/2qbuekY>.

<sup>30</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order 29 FCC Rcd 6567, 6801 ¶ 572 (2014) (noting that a lengthier transition period could discourage forward auction participation, depress the value of investments made by forward auction winners, and delay the deployment of innovative services).

<sup>31</sup> *Policies Regarding Mobile Spectrum Holdings Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133 ¶¶ 58, 60 (2014).

including a smooth and efficient repacking process.”<sup>32</sup> Both Commissioners Clyburn and O’Rielly have likewise stressed the need for rapid assignment of additional spectrum to support wireless services,<sup>33</sup> and Commissioner Clyburn has voiced strong support for Commission policies to expand high-speed wireless throughout the entire country.<sup>34</sup> Given the expected increase in demand for network capacity,<sup>35</sup> any additional delay will lead to tremendous consumer harm by preventing CCA’s members from holding the spectrum assets necessary to compete against the two dominant incumbents.<sup>36</sup>

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<sup>32</sup> Press Release, FCC, Statement of Chairman Ajit Pai On the Completion of the Incentive Auction and the Start of the Post-Transition Period (Apr. 13, 2017), <http://bit.ly/2ovd8Oy>.

<sup>33</sup> See, e.g., *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, Statement of Commissioner Michael O’Rielly (2016), <http://bit.ly/2qbOqDr> (“we must aggressively push forward. It’s the only way we will create the necessary spectrum pipeline for both future licensed and unlicensed use”).

<sup>34</sup> See, e.g., *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, Statement of Commissioner Mignon Clyburn (2016) <http://bit.ly/2p1IjDO> (“When we think about what the goals of our next generation networks should be, ubiquity and affordability have to be a part of the success matrix, for we must be sure that we are not just giving those who already have the most even more, while doubling down and widening the digital divide for those with none or not enough”).

<sup>35</sup> See generally Cisco, *The Zettabyte Era: Trends and Analysis* (June 2016), <http://bit.ly/2aeYBCg>.

<sup>36</sup> Thomas K. Sawanobori & Robert Roche, *From Proposal to Deployment: The History of Spectrum Allocation Timelines*, CTIA 2 (2015), <http://bit.ly/2ckvn2A>; Cramton Report at 4-5 (“A delay in the auction would be a gift to the dominant incumbents at the expense of all other parties.”).

**B. The Proposed Combination Would Give Sinclair the Incentive and Ability to Harm Competition in the Wireless Broadband Market by “Holding Out” and Delaying the Post-Auction Repack.**

A robust market involving individualized, bilateral negotiations typifies current efforts to expedite the post-auction transaction. Similar to commonplace real property transactions, the “buyers” (mobile operators) are presently bargaining with “sellers” (broadcasters) to help vacate their channels to expedite mobile broadband deployment. CCA’s members have undertaken significant steps to help broadcasters transition to their new bands so that the 600 MHz spectrum can be put to its highest and most productive use this year.<sup>37</sup> Many full and low power broadcasters welcome the opportunity the transition provides to secure financial support for new broadcasting equipment that will feature lower operating costs and greater sustainability than the broadcast equipment in the field today.<sup>38</sup>

Sinclair, however, has repeatedly attempted to delay the repack. Sinclair already demonstrated its reluctance to comply with the post-auction transition when it unsuccessfully

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<sup>37</sup> See, e.g., Letter from Steve Sharkey, Vice President, T-Mobile, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (July 17, 2017) (notifying the Commission “of a voluntary commitment that T-Mobile USA, Inc. is making to compensate certain low power television stations that operate on a secondary basis and are unable to obtain a permanent channel in time to accommodate T-Mobile’s rapid deployment of broadband service in the 600 MHz band”), <http://bit.ly/2u7JNzb>; Tom Brant, *T-Mobile Pays to Keep PBS on the Air in Rural Areas*, PC Magazine (June 29, 2017), <http://bit.ly/2uzYonN>.

<sup>38</sup> See, e.g., John Eggerton, *T-Mobile to Pay for Some LPTV Repack Moves*, Broadcasting & Cable (July 17, 2017), <http://bit.ly/2u2CGYU> (noting that the LPTV Spectrum Rights Coalition “applauds T-Mobile in doing the right thing in assisting displaced by the auction LPTV stations from having to incur the costs of moving twice in response to the T-Mobile rapid deployment of the spectrum they won in the auction,” and “this commitment by T-Mobile to assist some of the most vulnerable LPTV is most welcomed.”).

appealed the 39-month repacking schedule before the D.C. Circuit.<sup>39</sup> Thanks to Sinclair’s litigation, the incentive auction was delayed by a year, which resulted in billions of dollars of lost consumer welfare. Sinclair also has lobbied the Commission at every available opportunity to delay the 39-month transition deadline, recycling the same, stale complaints about the time and costs of the repack.<sup>40</sup> Sinclair even tried to convince the Commission to postpone the auction until unrelated ATSC 3.0 standards were developed.<sup>41</sup> The Commission has repeatedly rebuffed these stall tactics.<sup>42</sup>

Acquiring Tribune would give Sinclair—an entity that has repeatedly questioned the feasibility of a 39-month repack and currently controls an inordinate amount of the total antenna manufacturing capacity needed to complete the repack—the horizontal and vertical market

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<sup>39</sup> See *Nat’l Ass’n of Broadcasters*, 789 F.3d at 180-82 (noting that “Sinclair takes issue with the Commission’s establishment of a 39-month construction period within which reassigned broadcasters are expected to transition their services to their new channels” but finding “nothing arbitrary or capricious about the Commission’s choice of that cut-off point” and that “the Commission reasonably balanced the Spectrum Act’s competing imperatives”).

<sup>40</sup> See, e.g., Reply Comments of Sinclair Broadcast Group, MB Docket No. 16-306, GN Docket No. 12-268, at 1 (Nov. 15, 2016), <http://bit.ly/2uAgNkm> (urging the Commission to “provide for delays” and “acknowledge” that a timely transition “is unlikely to occur”). See also Petition for Reconsideration of the National Association of Broadcasters, GN Docket No. 12-268, MB Docket No. 16-306 (Mar. 17, 2017) (seeking to undermine the established 39-month transition period years after the fact by filing a Petition for Reconsideration collaterally attacking the repack schedule); Opposition of Competitive Carriers Association to the Petition for Reconsideration Filed by the National Association of Broadcasters, GN Docket No. 12-268, et al. (Apr. 26, 2017).

<sup>41</sup> Andrew Dodson, *Lake: FCC Won’t Delay Auction For ATSC 3.0*, TVNewsCheck (May 9, 2013), <http://bit.ly/2ff1IPq>.

<sup>42</sup> See, e.g., *id.* (noting that “FCC Media Bureau Chief Bill Lake shot down the idea of syncing the rollout of a next-generation television standard and the pending spectrum auction and subsequent channel repack”).

power to delay the post-auction transition. There are only two major manufacturers of broadcast antennas: Dielectric LLC and Electronics Research, Inc. (“ERI”). In 2013, Sinclair acquired Dielectric, “the nation’s largest manufacturer of broadcast television, radio and wireless antennas, transmission lines, and RF systems.”<sup>43</sup> Dielectric supplies more than two-thirds of the TV industry’s high power antennas to Sinclair and its broadcast competitors.<sup>44</sup> ERI, which currently supplies antennas to Tribune, is estimated to have at least 20 percent market share.<sup>45</sup> Combined, the two manufacturers have potentially as much as 90 percent of the market for broadcast antennas.<sup>46</sup> The remaining manufacturers each have market share of less than 10 percent.<sup>47</sup>

The Transaction would consolidate the market power of Sinclair’s equipment manufacturing subsidiary, Dielectric, by providing incentives for Sinclair to cause Tribune to abandon any existing and future equipment contracts with competitive providers. The Horizontal Merger Guidelines recognize that in industries involving intermediate services (here, negotiations to incent broadcasters to vacate their bands early), “buyers and sellers negotiate to

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<sup>43</sup> Press Release, *SBG Announces Agreement to Purchase the assets of Dielectric* (June 18, 2013), <http://bit.ly/2u2Dm0X>.

<sup>44</sup> *Id.*

<sup>45</sup> T-Mobile, *Repacking the Broadcasters in 39 Months or Less* (Feb. 12, 2016), <http://bit.ly/2uxPoji>.

<sup>46</sup> See, e.g., Digital Tech Consulting, Inc., *Response to T-Mobile & CCA Reports on the Broadcast Spectrum Repacking Timeline, Resource and Cost Analysis Study* at 14 (Mar. 2016), <http://bit.ly/2tohq0W> (“A detailed analysis of 1,320 Full Power UHF TV stations reporting on their facilities via FCC Schedule 381 shows that 89.1% of these stations employ antennas from either Dielectric or ERI. A third supplier, RFS, has 2.2% of the Full Power business, while the remaining suppliers have between 1 and 2% of the market.”).

<sup>47</sup> See *id.*

determine prices and other terms of trade. In that process, buyers commonly negotiate with more than one seller, and may play sellers off against one another.”<sup>48</sup> Therefore, “[a] merger between two competing sellers prevents buyers from playing those sellers off against each other in negotiations,” which can “can significantly enhance the ability and incentive of the merged entity to obtain a result more favorable to it, and less favorable to the buyer, than the merging firms would have offered separately absent the merger.”<sup>49</sup> Concentration among sellers can result in a “hold out” situation and impede efficient market activity.

Sinclair also could harm its competitors by starving broadcasters of the resources necessary for a successful and timely transition out of the 600 MHz band. Sinclair views mobile as the key to its future and wireless connectivity as critical to the near-term success of its business.<sup>50</sup> To realize its near-term objectives, Sinclair has sought to convince the government to require manufacturers to support ATSC 3.0 tuners in their devices.<sup>51</sup> The Commission has rightly taken a hands-off approach to the market that allows wireless carriers to make independent business decisions on whether or not to incorporate ATSC 3.0 into the handsets their networks support.<sup>52</sup> But authorizing Sinclair’s acquisition of Tribune will allow Sinclair to

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<sup>48</sup> Horizontal Merger Guidelines § 6.2.

<sup>49</sup> *Id.*

<sup>50</sup> Sinclair Broadcasting Group and One Media, “*Mobile First*”- *The Future of Broadcasting* (May 16-17, 2017), <http://bit.ly/2vedxcr>.

<sup>51</sup> *See, e.g.*, Comments of One Media, LLC, GN Docket No. 16-142, at 52 (May 9, 2017). Sinclair has a substantial ownership interest in One Media.

<sup>52</sup> *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Notice of Proposed Rulemaking, GN Docket No. 16-142, ¶ 71 (rel. Feb. 24, 2017); *see also id.* (statement of Commissioner O’Rielly) (noting that “this item appropriately makes clear that any

combine its market dominance in broadcast-television equipment production with a new post-combination dominance in broadcast-television equipment consumption.

According to Sinclair, “it is rational for each broadcaster to further its self-interest in obtaining equipment and services as quickly as possible, regardless of its impact on other stations’ ability to meet their phase completion dates,” which “forces every licensee into an ‘every man for himself’ mindset that is certain to slow progress even while increasing both costs and disruption.”<sup>53</sup> The most obvious way for Sinclair to capitalize on its “every man for himself” mentality and slow the pace of the post-auction transaction is by withholding equipment that its rivals need to construct new facilities on their reassigned channels. Sinclair has stated in public shareholder filings that it “expect[s] that Dielectric will be critical in the repack of the broadcast spectrum for both our stations and other broadcasters.”<sup>54</sup> According to Nobel Laureate economists Oliver Hart and Jean Tirole, “there is a new motive for integration. An upstream firm may merge with a downstream firm to ensure that the downstream firm purchases its supplies from this upstream firm rather than from others.”<sup>55</sup> The Commission recognized this risk in the Sirius-XM merger, among others, when it found that horizontal concentration in the

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use of the new standard will be completely voluntary for all participants – broadcasters, distributors, and consumers alike”).

<sup>53</sup> Comments of Sinclair Broadcasting Group, Inc., GN Docket No. 12-268, MB Docket No. 16-306, at 1 (Oct. 31, 2016), <http://bit.ly/2vgqty3>; see also Phil Kurz, *Repack Problematic Despite Some Progress*, TV News Check (Feb. 2, 2017), <http://bit.ly/2k0e4IR> (similar statement of Rebecca Hanson, Senior Vice President of Strategy and Policy at Sinclair).

<sup>54</sup> Sinclair 2016 10-K at 18.

<sup>55</sup> Oliver Hart & Jean Tirole, *Vertical Integration and Market Foreclosure*, Brookings Papers: Microeconomics, 210 (1990).

satellite radio market threatened to chill innovation in the upstream market for satellite radio equipment, which the two dominant satellite radio companies happened to manufacture. Due to the risks of vertical foreclosure, the Commission accepted the applicants' voluntary commitment to permit any device manufacturer to develop equipment that could deliver the merged entity's satellite radio service and to provide, on commercially reasonable terms, the intellectual property to permit a device manufacturer to develop such equipment.<sup>56</sup>

Sinclair's post-auction dominance in both sides of the market for broadcast-television equipment risks multiple adverse outcomes. First, Sinclair's acquisition of Tribune promises to substantially lessen competition in the *wireless* telecommunications market and permit the introduction of unfair methods of competition. Post-acquisition, Sinclair would have the power and incentive to delay or deny broadcast-television equipment to broadcast stations that must relocate to frequencies outside of the 600 MHz band. Sinclair could selectively target equipment deliveries to an expanded number of stations it would control post-acquisition to a much greater degree than it could prior to the acquisition. And directing resources to a larger pool of post-acquisition stations would deny broadcast stations in strategic markets the resources they need to clear the 600 MHz band on schedule. These delays, in turn, would threaten to prevent wireless carriers from earning revenue on the 600 MHz spectrum that they have spent nearly \$20 billion to acquire in the recent incentive auction. Sinclair would have the incentive and ability to take these actions as a means of encouraging wireless carriers to incorporate ATSC 3.0 into their

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<sup>56</sup> *Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., To Sirius Satellite Radio Inc.*, Memorandum Report and Order, 23 FCC Rcd 12348, 12378-79, ¶¶ 62-68 (Aug. 5, 2008).

handsets, notwithstanding the considerable public interest harm of postponing broadband deployment for tens of millions of Americans.

Second, Sinclair's acquisition of Tribune promises to substantially lessen competition in the broadcast television market. Post-acquisition, Sinclair would have the ability and incentive to deny competing television broadcasters access to the new broadcast equipment they need to relocate, which would jeopardize hundreds of millions of dollars in government relocation subsidies, and which Sinclair's competitors will lose if they cannot satisfy the Commission's relocation deadlines. With an overwhelming presence in *both* television equipment consumption and production, Sinclair's tying arrangement would play out in both the wireless and broadcast markets in ways that will prove difficult, if not impossible, for the Commission to untangle through post-acquisition remedies.

Sinclair seeks an accumulation of upstream and downstream market power that imminently threatens a range of anticompetitive unilateral effects, such as slowing down the post-auction repack or foreclosing other non-integrated broadcaster (and, potentially, wireless carrier) rivals from acquiring critical resources necessary to compete with Sinclair. The Commission should not allow Sinclair to assemble the resources through this acquisition that could allow it to undertake any one of these value-destroying activities.

#### **IV. THE PROPOSED TRANSACTION WOULD VIOLATE THE COMMISSION'S BROADCAST OWNERSHIP RULES.**

Sinclair's proposed acquisition of Tribune is unlawful under the national broadcast ownership rules. "No 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.”<sup>57</sup> Post-transaction, Sinclair would have a national footprint that would reach approximately 72 percent of the U.S. population, exceeding the national ownership cap by a staggering 33 percent.<sup>58</sup> Even if the Commission were to apply the ultra-high frequency (“UHF”) discount here,<sup>59</sup> Sinclair’s own calculations show that it would surpass the 39 percent ownership limit by 6.5 percent.<sup>60</sup>

The Transaction also runs afoul of the Commission’s local ownership rules. Under those rules, an entity may not own two or more stations within a Designated Market Area (“DMA”) if the stations’ service contours overlap and (i) one of the stations is ranked within the top four stations in the DMA, or (ii) at least eight independently owned and operating, full-power commercial and noncommercial television stations would not remain in the post-merger DMA.<sup>61</sup> Here, Sinclair acknowledges that the Transaction would violate the duopoly rule in at least

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<sup>57</sup> 47 C.F.R. § 73.3555(e).

<sup>58</sup> Sinclair and Tribune, MB Docket 17-179, <http://bit.ly/2uibQt6>.

<sup>59</sup> The continued viability of the UHF discount remains subject to a pending appeal before the D.C. Circuit, and even when the Commission reinstated the UHF discount in April 2017, it committed to revisit the discount “later this year” as part of a holistic review of its media ownership rules. *National Television Multiple Ownership Rule*, 82 FR 21124-01 ¶¶ 7, 13, 19 (May 5, 2017). All Commissioners agree that the discount represents a technological anachronism premised on the purported inferiority of UHF frequencies. *See, e.g., Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, Report and Order, 31 FCC Rcd 10213, 10247-52 (2016) (statements of Chairman Pai and Commissioner O’Rielly); *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, Order on Reconsideration, MB Docket No. 13-236, FCC 17-40 (rel. Apr. 21, 2017) (statement of Commissioner Clyburn).

<sup>60</sup> Comprehensive Exhibit at 1.

<sup>61</sup> 47 C.F.R. § 73.3555(b).

eleven DMAs.<sup>62</sup> Unfortunately, the Applicants do not specify how they propose to address such overlaps.

This Application is therefore defective on its face and must be dismissed. Under Section 73.3566 of the Commission's rules, "applications which are determined to be patently not in accordance with the FCC rules, regulations, or other requirements ... will be considered defective and will not be accepted for filing or if inadvertently accepted for filing will be dismissed."<sup>63</sup> The Commission has routinely dismissed applications similar to those under review here that patently violate the FCC's rules and for which the applicants have not sought a waiver.<sup>64</sup> The Applicants do not seek waiver of the local or national ownership caps, but instead state—without further elaboration—that they "intend to take such actions as necessary to comply with the terms of the Merger Agreement and the Commission's rules as required to obtain FCC approval of the Transaction."<sup>65</sup> Non-specific statements like these are inadequate to avoid dismissal.

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<sup>62</sup> *Id.*

<sup>63</sup> 47 C.F.R. § 73.3566. *See also United States v. Dunifer*, 219 F.3d 1004, 1008 n.9 (9th Cir. 2000); *Blue Lake Academy, Inc.*, Letter, 20 FCC Rcd 12066, 12068-69 (MB 2005) (holding that failure to properly incorporate as a nonprofit corporation prior to filing a noncommercial broadcast application is a defect that cannot be cured); *Gary S. Smithwick, Esq. and John Garziglia, Esq.*, 28 FCC Rcd 8929, 8931 (2013) ("We do not agree with Lake Country that a permittee can "cure" a technically defective application, after grant, by modifying the construction permit to relocate the violating facilities to a rule-compliant site. Such a policy would potentially waste staff resources and undermine our application processing rules by encouraging applicants to file defective applications or build violating facilities with the expectation that such defect or violation could be rectified through a modification application.").

<sup>64</sup> *In Re Aerco Broad. Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 24417, 24419-20 (2003) ("Section 73.3566(a) *directs* the staff to dismiss nonconforming applications" and "[c]onsistent with this directive, the staff routinely dismisses defective applications, and the Commission has affirmed this practice.") (emphasis added).

<sup>65</sup> Comprehensive Exhibit at 2.

**V. SINCLAIR HAS NOT IDENTIFIED A SINGLE TRANSACTION-SPECIFIC BENEFIT THAT SERVES THE PUBLIC INTEREST.**

Sinclair enumerates the supposed public interest benefits of the Transaction in two-and-a-half pages of generic, bare-bones statements. It provides no evidence or reasoning to meet its burden of proof or for the Commission to evaluate the pro-consumer benefits of the Transaction. The Commission should dismiss these substance-free arguments out of hand. The benefits Sinclair invokes are not transaction-specific, are unsupported by evidence or, in reality, are competitive injuries. The Commission should therefore deny the Transaction. Or at minimum, the FCC should stop the shot clock and demand concrete evidence of articulable public interest benefits before evaluating the Transaction.<sup>66</sup>

**A. Unsubstantiated Invocations of “Scale” or “Efficiencies” Do Not Establish Any Transaction-Specific Benefit.**

Sinclair baldly asserts that “the Transaction will produce both operational efficiencies and economies of scale, as well as greater audience reach which will make Sinclair more attractive to programmers, including networks and syndicators, generating revenues that can be reinvested in the broadcast operations in a manner that improves service to the public.”<sup>67</sup>

Sinclair’s assertions fail to demonstrate the public interest benefits the Commission requires of its licensees. The Commission has made clear that “benefits must flow through to

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<sup>66</sup> See Motion of DISH Network, American Cable Association, and Public Knowledge for Additional Information and Documents and Extension of Time, MB Docket No. 17-79 (July 12, 2017).

<sup>67</sup> Comprehensive Exhibit at 2-4.

consumers, and not inure solely to the benefit of the company.”<sup>68</sup> Sinclair, however, does not attempt to explain how the public, as opposed to its shareholders, might benefit from these claimed “operational efficiencies and economies of scale.” Nor does Sinclair mention a single way in which it will deploy its new scale to improve or expand the diversity of its programming or to achieve other public interest benefits. The Commission has repeatedly rejected the “theoretical argument that increased scale would result in additional innovation and investment” when the applicants provide no evidence to support such naked assertions.<sup>69</sup> Where, as here, the applicants make no effort to address why the largest party “does not already possess sufficient scale to support innovation,” the Commission will not credit claims of increased scale and, absent other compelling public interest benefits, will deny the proposed acquisition.<sup>70</sup>

**B. The Ability to Charge Inflated Retransmission Fees Is Not a Transaction-Specific Benefit.**

While Sinclair asserts that increased economies of scale will “generat[e] revenues that can be reinvested in the broadcast operations in a manner that improves service to the public,”<sup>71</sup> it provides little detail about where the revenue will come from or how Sinclair will improve service. Elsewhere, however, Sinclair makes its intentions clearer: one of the main purposes of this Transaction is to inflate retransmission fees charged to MVPDs. As Sinclair CEO

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<sup>68</sup> *Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 31 FCC Rcd 6327, 6479-80 ¶ 318 (2016) (“Charter-TWC Order”).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Comprehensive Exhibit at 2.

Christopher Ripley has stated on multiple occasions, “the largest [synergy] bucket” of the Transaction is “on the net retrans side.”<sup>72</sup> He also has noted that “Tribune generally had fairly low [retransmission] rates in the industry, and we have some of the highest, if not the highest, in the industry. So that's the biggest driver.”<sup>73</sup>

Inflated retransmission fees are not public interest benefits. They are competitive injuries that raise prices and decrease the output of MVPD programming. Broadcasters have exploited their growing bargaining power in recent years by using the threat of blackouts to extract exorbitant retransmission fees from MVPDs.<sup>74</sup> Retransmission consent fees have risen more than 22,000 percent since 2005.<sup>75</sup> Whereas retransmission fees were \$22 million in 2005, they increased to \$6.4 billion in 2015, and they are projected to reach more than \$10 billion by 2020.<sup>76</sup> Through its acquisition of Tribune, Sinclair has made clear that it plans to capitalize on

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<sup>72</sup> Statement of Christopher Ripley at Sinclair Broadcast Group Inc. at JPMorgan Tech, Media and Telecom Conference – Final (May 22, 2017).

<sup>73</sup> Statement of Christopher Ripley at Sinclair Broadcast Group Inc Conference Call to Discuss its Definitive Agreement to Acquire Tribune Media Company – Final (May 8, 2017).

<sup>74</sup> Steven C. Salop, *Economic Analysis of Broadcasters' Brinkmanship and Bargaining Advantages in Retransmission Consent Negotiations*, ¶57 (June 3, 2010), <http://bit.ly/2sYJdEK> (“The potential for blackouts advantages the broadcaster, relative to the situation where there is an interim carriage agreement. The combination of blackouts, public blackout threats and associated brinkmanship tactics cause more harm to the MVPD than the broadcaster. As a result, the MVPD faces more risk from holding out for a more favorable RTC fee than does the broadcaster.”). See also Ben Munson, *CBS earned \$1B in broadcast retransmission fees in 2016*, FierceCable (Feb. 15, 2017), <http://bit.ly/2sJzdvb>.

<sup>75</sup> See Comments of the American Television Alliance, MB Docket No. 15-216, p. ii (Dec. 1, 2015).

<sup>76</sup> SNL Kagan Releases Updated Retransmission Projections (Jun. 29, 2016), <http://bit.ly/2u7ulTX>; Michael Balderston, *Report: U.S. Retransmission Fees to Hit \$7.7B in 2016*, TVTechnology, (June 29, 2016), <http://bit.ly/2wequ6m>.

this trend. Mobile operators, such as CCA’s members, could suffer from higher retransmission fees and Sinclair’s extortive bargaining gambits as they become more intensively involved in video transmission to their subscribers.

Sinclair has a demonstrated track record of employing abusive negotiating tactics to secure exorbitant retransmission fees. In 2015, Sinclair shut off carriage from 129 of its stations—the largest blackout in U.S. history—during its retransmission dispute with DISH, which led to emergency intervention by the Commission.<sup>77</sup> In July 2016, the Commission imposed a record fine of \$9.5 million on Sinclair for violating its obligations to negotiate retransmission agreements in good faith.<sup>78</sup> Sinclair also pioneered the use of opaque sidecar arrangements and other local marketing agreements (“LMAs”) to operate stations for which it holds no licenses, thereby concealing its attributable interests and driving up retransmission fees through impermissible joint negotiations.<sup>79</sup> When it approved its 2014 acquisition of Albritton stations, for example, the Commission observed that “the facts show that Sinclair apparently violated the local TV ownership rule with respect to its continued operation of the LMA in the

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<sup>77</sup> Cynthia Littleton, Dish, *Sinclair Reach Deal to End Massive Station Blackout*, Variety (Aug. 26, 2015), <http://bit.ly/2v63KDY>.

<sup>78</sup> *Sinclair Broadcast Group, Inc.*, Order, DA 16-856 (July 29, 2016), <http://bit.ly/2t7ZHpt>.

<sup>79</sup> Keach Hagey, *Sinclair Draws Scrutiny Over Growth Tactic*, Wall St. J. (Oct. 20, 2013), <http://on.wsj.com/2uonlQq>.

Charleston market.”<sup>80</sup> Sinclair appears to continue to use sidecar arrangements to this day to exert *de facto* control over stations to which it is not the licensee.<sup>81</sup>

There is no assurance that, if left to its own devices, Sinclair would behave any differently following the acquisition of Tribune than it has in the past. The Commission may “treat any violation of any provision of the Act, or of the Commission’s rules, as predictive of an applicant’s future truthfulness and reliability and, thus, as having a bearing on an applicant’s character qualification.”<sup>82</sup> The Commission may decline a proposed transfer based on the transferee’s prior rule violations if “the number, nature and extent” of the violations indicate that the transferee “cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission’s Rules.”<sup>83</sup> Sinclair’s history of past misconduct invites heightened scrutiny from the Commission.

The proposed acquisition of Tribune will also give Sinclair ownership of highly differentiated programming that MVPDs and mobile operators nationwide will consider “must-have” content. In particular, Sinclair would obtain Tribune’s exclusive rights to professional basketball, hockey and baseball games in major metropolitan markets, including those of the

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<sup>80</sup> Sinclair-Allbritton Order ¶ 24.

<sup>81</sup> See, e.g., DTS Experimental Special Temporary Authority Application, LMS File No. 0000025417 (filed June 30, 2017) (suggesting that Sinclair employees are filing and signing on behalf of unaffiliated companies, like OneMedia, for ATSC 3.0 testing).

<sup>82</sup> AT&T/BellSouth Merger Order, at ¶ 191.

<sup>83</sup> See *Eli and Harry Daniels, D.B.A. The Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 2000 (1971) (recon. denied, 36 FCC 2d 568 (1972)). See generally *Jefferson Radio v. FCC*, 340 F.2d 781 (D.C. Cir. 1964) (upholding the Commission’s refusal to approve an assignment or transfer based on the licensee’s lack of character qualifications to hold the licenses at issue).

Chicago Cubs and New York Yankees. As the economist Philip Napoli has noted, access to this type of differentiated content (especially sports programming) is a key bargaining advantage in nationwide retransmission negotiations with MVPDs.<sup>84</sup> As wireless companies expand their content offerings, these harms will not be limited to cable operators but will extend directly to the wireless providers that comprise CCA's membership.

The Commission need not adjudicate the extent to which inflated retransmission fees harm the public. It need only find that higher fees will not benefit consumers. Sinclair's ability to overcharge MVPDs and mobile broadband providers for programming is a public interest harm, not a benefit, and, in any case, does not establish a public interest benefit for the Transaction.

**C. Deployment of ATSC 3.0 Is Not a Transaction-Specific Benefit.**

Sinclair's proposed reductions in fixed costs following the Transaction are questionable and entitled to little weight if they even exist at all. Sinclair claims that "[t]he Transaction will make implementing ATSC 3.0 more efficient by offering economies of scale in equipment purchasing and installation services. Achieving a nationwide build is essential for television manufacturers to create a sufficiently large market to justify production of ATSC 3.0 televisions and for mobile device manufacturers and consumer electronics retailers to begin producing and selling ATSC 3.0 mobile devices."<sup>85</sup>

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<sup>84</sup> Philip M. Napoli, *Retransmission Consent and Broadcaster Commitment to Localism*, 20 *CommLaw Conspectus* 345 (2012), available at <http://bit.ly/2tHRD0D>.

<sup>85</sup> *Id.*

“[T]hese indirect overhead cost savings are largely fixed costs.”<sup>86</sup> Reductions in fixed costs, as opposed to variable costs, are entitled to minimal weight in favor of the proposed transaction.<sup>87</sup> Moreover, Sinclair does not explain why, as the largest owner of broadcast stations to date, it cannot achieve scale in rolling out ATSC 3.0, especially given its ownership of Dielectric and its participation in the ATSC 3.0 Spectrum Consortium.<sup>88</sup> Nor does Sinclair offer any reasons why its acquisition of Tribune is uniquely necessary when compared to less anti-competitive measures. Indeed, Sinclair is currently seeking taxpayer subsidies to finance ATSC 3.0 from the Relocation Fund for the incentive auction repack, even though that technology is totally unrelated to the costs associated with displacement.<sup>89</sup>

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<sup>86</sup> Charter-TWC Order ¶ 413.

<sup>87</sup> *Applications of AT&T Inc. and DIRECTV For Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9237-38, ¶ 275 (2015) (stating that “we generally find reductions in marginal costs cognizable as compared to reductions in fixed costs, because reductions in marginal costs are more likely to result in lower prices”); *In the Matter of Verizon Communications Inc. and MCI, Inc. Applications for Approval to Transfer Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18536, ¶ 211 (2005) (stating that “because most of these positions are overhead and thus represent savings in fixed costs, we will not give them the same weight as savings in marginal cost (which are more likely to flow through in the form of retail price reductions)”).

<sup>88</sup> Diana Marszalek, *Sinclair, Nexstar Form Group to Maximize ATSC 3.0*, Broadcasting & Cable (Mar. 15, 2017), <http://bit.ly/2mPKrxA>.

<sup>89</sup> Letter from Rebecca Hanson, SVP, Sinclair Broadcasting Group, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 16-306; GN Docket No. 12-268 (July 10, 2017) (asking the Commission to reimburse “headroom” costs related to construction that Sinclair subjectively believes supports its broadcast operations).

**D. Sinclair Adduces No Public Interest Benefits Related to Independent Programming, Diversity, or Localism.**

Sinclair's acquisition of Tribune promises to destroy local, independent programming the Commission has long sought to cultivate. Localism, independent programming, and diversity are critical components of the Commission's public interest analysis.<sup>90</sup> Here, Sinclair asserts that the transaction will allow it to extend its existing public service initiatives, including (i) a Washington D.C. bureau, (ii) health and well-being programming, and (iii) community outreach initiatives.<sup>91</sup> As an initial matter, the Application admits<sup>92</sup> that Sinclair was able to launch these efforts without the Transaction, and Sinclair provides no argument why or how the Transaction would permit it to improve upon these efforts. In any event, Sinclair's commitment to local programming in the Washington D.C. market rings hollow. After it acquired WJLA from Allbritton, veteran reporters with decades of experience serving the community suddenly vanished from the station, and WJLA replaced the local reporting with "must run" programming centrally dictated from Sinclair's corporate headquarters.<sup>93</sup>

Sinclair plans to do the same to Tribune's local programming. In particular, Sinclair intends to dramatically cut support for local programming at Chicago's WGN-TV. The flagship station of Tribune, WGN-TV is a historic national institution and a pillar of the Chicago

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<sup>90</sup> Sinclair-Allbritton Order ¶ 24.

<sup>91</sup> Comprehensive Exhibit at 2-4.

<sup>92</sup> *Id.*

<sup>93</sup> Andrew Beaujon, *WJLA's TV Legends Are Vanishing. Does It Matter?*, Washingtonian (Mar. 15, 2017), <http://bit.ly/2ur9KGI>.

community that broadcasts more than 70 hours of locally produced news content per week.<sup>94</sup> WGN-TV has served the Chicago community since 1948 and has repeatedly recognized throughout its history that it “realized it could better serve the Chicago area audience as an independent station.”<sup>95</sup>

Sinclair, however, views WGN-TV’s independence as a bug, not a feature. According to Sinclair’s CEO, Christopher Ripley, WGN-TV “doesn’t have a revenue problem, it has an expense problem,” because it “spends an awful lot on expensive originals, originals that, for the most part, have received some critical acclaim but really have not driven ratings in any meaningful respect.”<sup>96</sup> Sinclair therefore plans to shift WGN-TV’s “strategy away from high-cost originals into more cost-effective originals and reruns” because “that channel could be run much more profitably just reracking a fraction of what they spend on programming and return that station to profitability.”<sup>97</sup>

If Sinclair were allowed to strip WGN-TV of its iconic local programming, it would represent a betrayal of the Commission’s 2007 Order giving Tribune’s Chicago stations a permanent waiver of the national broadcast cross-ownership rules.<sup>98</sup> In granting the waiver, the

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<sup>94</sup> WGN-TV History, <http://bit.ly/1dYRVpg>.

<sup>95</sup> *Id.*

<sup>96</sup> Statement of Christopher Ripley at Sinclair Broadcast Group Inc. at JPMorgan Tech, Media and Telecom Conference – Final (May 22, 2017).

<sup>97</sup> Statement of Christopher Ripley at Sinclair Broadcast Group Inc Conference Call to Discuss its Definitive Agreement to Acquire Tribune Media Company – Final (May 8, 2017).

<sup>98</sup> *In the Matter of Shareholders of Tribune Co., Transferors & Sam Zell, et al. Transferees & Applications for the Renewal of License of Ktla(TV), Los Angeles, California, et al.*, 22 FCC Red 21266, 21277-78, ¶ 34 (2007).

Commission noted that “the combination in Chicago has been in existence for almost 60 years. WGN-TV is one of the oldest television stations in the country and Tribune, which has published the Chicago Tribune since 1847 and went on the air with WNG(AM) in 1924, is one of the nation's oldest media pioneers.”<sup>99</sup> After thoroughly examining the record, the Commission acknowledged “the myriad public interest benefits that have resulted over the almost 60 years of Tribune's common ownership of WGN-TV, WGN(AM), and the Chicago Tribune in the Chicago DMA.”<sup>100</sup> Accordingly, the “forced separation of the Tribune, WGN-TV, and WGN(AM) would diminish the strength of important sources of quality news and public affairs programming in the Chicago market.”<sup>101</sup> Permitting Sinclair to acquire control of WGN-TV would therefore violate the Commission’s past commitments to localism, diversity, and the public interest.

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<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

## VI. CONCLUSION.

The paucity of articulated public interest benefits, coupled with the concrete risk of harm to the wireless broadband market, including via unnecessary delay of the post-incentive auction repack period, requires the Commission to designate a hearing on this Transaction or, at minimum, pause the shot clock pending further document production from Sinclair and Tribune. Application of the Commission's time-tested sliding scale framework requires nothing less.

Respectfully submitted,

/s/ Rebecca Murphy Thompson

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Rebecca Murphy Thompson  
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August 7, 2017

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC**

In the Matter of )  
 )  
Applications for Consent to Transfer of ) MB Docket No. 17-179  
Control from License Subsidiaries of Tribune )  
Media to Sinclair Broadcast Group, Inc. )

**DECLARATION OF COURTNEY NEVILLE**

1. My name is Courtney Neville. I serve as Policy Counsel for Competitive Carriers Association (“CCA”). My business address is 805 15<sup>th</sup> Street NW, Suite 401, Washington DC 20005.

2. CCA is the nation’s leading association for competitive wireless providers and stakeholders across the United States. CCA’s membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents associate members including vendors and suppliers that provide products and services throughout the mobile communications ecosystem.

3. In my position, I serve as an advocate of CCA on Capitol Hill and at the federal agencies, including the Federal Communications Commission (“FCC”). I assist in the development and implementation of legislative and regulatory efforts that may affect CCA’s members.

4. I have knowledge of the facts set forth herein, and I make this declaration in support of the Petition to Deny filed in connection with the assignment applications associated with the above-captioned docket, which relates to the proposed acquisition of Tribune Media Company (“Tribune”) by Sinclair Broadcasting Group (“Sinclair”).

5. CCA's members are among the winning bidders of spectrum in the 600 MHz incentive auction for the designated market areas ("DMAs") within which Sinclair seeks to acquire Tribune's stations.

6. CCA's members would face serious threats of substantial and imminent harm if the proposed transfer was approved. In particular, CCA's members would be harmed by Sinclair's ability to slow down the post-auction repack by foreclosing its broadcast rivals from accessing necessary broadcast equipment.

7. CCA's members would also face economic injury through higher retransmission fees and increased advertising rates.

8. CCA's members would have standing in their own right to challenge the proposed transfer, but are not required to participate in bringing this Petition.

9. To the best of my knowledge and belief, all other assertions of fact that are contained in the Petition are true and correct.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed August 7, 2017



Courtney Neville  
Policy Counsel  
Competitive Carriers Association

## CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August, 2017, I caused a copy of this Petition to Deny to be served by U.S. First Class mail, postage prepaid, upon the following:

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/s/ Courtney Neville  
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