

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Applications of Tribune Media Company)
and Sinclair Broadcast Group)
For Consent to Transfer Control of)
Licenses and Authorizations)

MB Docket No. 17-179

**PETITION TO DENY OF PUBLIC KNOWLEDGE, COMMON CAUSE, AND UNITED
CHURCH OF CHRIST, OC INC.**

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I. INTRODUCTION AND SUMMARY

Public Knowledge, Common Cause, and United Church of Christ, OC Inc. file this Petition to Deny in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice regarding the applications of Sinclair Broadcast Group, Inc. (“Sinclair”) and Tribune Media Company (“Tribune”) (collectively, “Applicants”) to transfer control of Tribune to Sinclair.¹ The applications should be denied. Because the Applicants have not demonstrated that the transaction will serve the public interest, they have not met the requisite burden of proof. In fact, the Applicants fail to make a convincing case that the transaction will provide any public interest benefits at all. To the contrary, the record as it stands shows that this merger would bring about numerous and significant public interest harms, including harms to broadcast localism, retransmission consent leverage, delays in mobile broadband deployment, and stifled innovation in the 600 MHz spectrum band and in TV White Spaces. Because the evidence shows that this merger would harm consumers and the public interest, the Commission should block it.

II. THE APPLICANTS HAVE NOT MET THE BURDEN OF PROOF

The Applicants have the burden of proving the proposed merger serves “the public interest, convenience, and necessity.”² The Commission’s public interest analysis embodies a “deeply rooted preference for preserving and enhancing competition in relevant markets . . . and

¹ See Media Bureau Establishes Pleading Cycle for Applications to Transfer Control of Tribune Media Company to Sinclair Broadcast Group, Inc. and Permit-But-Disclose *Ex Parte* Status for the Proceeding, MB Docket No. 17-179, *Public Notice*, DA 17-647 (rel. July 6, 2017); Applications of Tribune Media Company and Sinclair Broadcast Group for Consent to Transfer Control of Licenses and Authorizations, Comprehensive Exhibit, at 2-4 (filed July 19, 2017) (“Sinclair-Tribune Application”).

² 47 U.S.C. § 310(d).

ensuring a diversity of information sources and services to the public.”³ While “[t]he FCC’s actions are informed by competition principles,” its “‘public interest’ standard is not limited to purely economic outcomes.”⁴ Therefore, the Applicants must show that the transaction will not harm the public, frustrate the goals of the Communications Act, harm competition, or otherwise break the law.⁵ The Applicants must also demonstrate that the transaction will result in positive public interest benefits, not merely attempt to rebut claims of harms to the public interest.

Based on their initial application, the Applicants have not met this burden. The proposed merger of the Applicants presents harms to the public interest in broadcast localism, retransmission consent, and next-generation TV technologies, specifically the Advanced Television System Commission (“ATSC 3.0”) digital broadcast standard, and mobile broadband deployment. In their three pages outlining putative public interest benefits,⁶ the Applicants fail to meet their burden of proof by making no effort to address these public interest harms. As a result, the initial application should be rejected.

³ *Applications of Comcast Corporation, General Electric Company and NBC Universal for Consent to Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion & Order, 26 FCC Rcd 4238, 4248 ¶ 23 (2011) (“*Comcast-NBCU Order*”).

⁴ Jon Sallet, FCC Transaction Review: Competition and the Public Interest, FCC Blog (Aug. 12, 2014), <http://www.fcc.gov/blog/fcc-transaction-review-competition-and-public-interest>.

⁵ See *Comcast-NBCU Order*, 26 FCC Rcd at 4247 ¶ 22 (explaining that the Commission “must assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission’s Rules.”).

⁶ See Sinclair-Tribune Application at 2-4.

III. THE PROPOSED MERGER WOULD NEGATIVELY IMPACT BROADCAST LOCALISM

A. The Commission Has Established Broadcast Localism As Important to the Public Interest.

The Commission has long established that broadcasters must serve the needs and interests of the communities to which they are licensed.⁷ In the early days of radio broadcasting, the Federal Radio Commission (“FRC”) recognized that local interests should play an important part when deciding to grant a license to a broadcaster.⁸ Shortly after its creation, the FCC considered a broadcast applicant’s familiarity with a local area in determining whether to grant a license.⁹ Today, when the FCC awards licenses to provide broadcast service, it does so using local licenses relating “to the principal community or other political subdivision which it primarily serves.”¹⁰ The Commission requires broadcasters to provide service within certain technical parameters to ensure that members of its community can receive the service.¹¹ Further, full-power broadcast TV stations must keep their main studio in or near its community of license and

⁷ See FCC, Broadcasting and Localism: FCC Consumer Facts, https://transition.fcc.gov/localism/Localism_Fact_Sheet.pdf.

⁸ See 1931 FRC Ann. Rep. at 84 (General Order 28 issued by the FRC in 1928 and revised in 1930, protected localism by ensuring the main studio of each licensee was located inside of the “borders of the city, state, District, Territory, or possession in which it is located.”); see also 1928 FRC Ann. Rep. at 168 (stating that “there should be a provision [of frequencies] for stations which are distinctly local in character and which aim to serve only the smaller towns in the United States without any attempt to reach listeners beyond the immediate vicinity of such towns.”).

⁹ See H.K. Glass and M.C Kirkland (New), Eustis, F.L., for Construction Permit, Lake Region Broadcast Company (New), Lakeland, F.L., for Construction Permit, Robert Louis Sanders (New), Palm Beach, F.L., for Construction Permit, Hazlewood, Inc. (New), West Palm Beach, F.L., for Construction Permit, *Statement of Facts and Grounds for Decision*, 2 FCC Rcd 365, 372 (Mar. 3, 1936).

¹⁰ See 47 C.F.R. § 73.1120.

¹¹ See 47 C.F.R. § 73.1125(a)(1), (e).

calls from citizens in the community to the station must be toll-free.¹² These rules exist because broadcast programming continues to remain a critical source of news and local information for communities. According to the Pew Research Center, about 23 million Americans watch the local evening news and 12 million view early morning local news.¹³ Local news also plays an important role in shaping voters' opinion of political candidates and informing the electorate.¹⁴ Thus, local broadcasting remains critically vested in the public interest to respond to the needs and interests of the community.

As part of its efforts to promote broadcast localism, the Commission has adopted rules specifically designed to give local broadcasters more control over their programming. For example, the FCC's network affiliate rules protect broadcast stations against interference by national and regional networks, including prohibiting network exclusivity agreements, prohibiting stations from optioning airtime to networks, and granting stations the right to preempt network programming for programming the station believes is of "greater local or national importance."¹⁵

Further, the Commission adopted numerous pro-localism principles in its *2008 Declaratory Ruling* on a petition from the Network Affiliated Stations Alliance.¹⁶ These policies

¹² See 47 C.F.R. § 73.1125.

¹³ Katerina Eva Matsa, *State of the News Media 2016*, Pew Research Center (June 2016), at 28, <http://assets.pewresearch.org/wp-content/uploads/sites/13/2016/06/30143308/state-of-the-news-media-report-2016-final.pdf>.

¹⁴ See Jeffrey Gottfried, Michael Barthel, and Elisa Shearer, *The 2016 Presidential Campaign – a News Event That's Hard to Miss*, Pew Research Center (Feb. 4, 2016), *available at* <http://www.journalism.org/2016/02/04/the-2016-presidential-campaign-a-news-event-thats-hard-to-miss/>.

¹⁵ See 47 CFR § 73.658(a),(d)-(e).

¹⁶ See Network Affiliated Stations Alliance (NASA) Petition for Inquiry into Network Practices and Motion for Declaratory Ruling, *Declaratory Ruling*, 23 FCC Rcd 13610 (2008).

grant broadcasters increased autonomy and control over programming and other critical decisions pertaining to serving the community.¹⁷

Lastly, the Commission has promulgated chain broadcasting rules to further limit the ability of networks to control the programming of affiliated broadcast stations. Chain broadcasting is defined as the “simultaneous broadcasting of an identical program by two or more connected stations.”¹⁸ The FCC’s rules “provide, in general, that no licenses shall be granted to stations or applicants having specified relationships with networks.”¹⁹ The Commission concluded that chain broadcasting hindered stations in developing a local program service.²⁰

These limitations on network control over broadcast affiliates reaffirm that broadcasters are public trustees and required to serve the needs of their local communities. The proposed transaction would likely increase Sinclair’s control over local broadcast affiliates, in direct violation of the Commission’s public interest commitment to localism.

B. The Proposed Merger Would Give Sinclair Control Over a Substantial Amount of Broadcast Stations Harming Broadcast Localism.

If completed, the proposed merger would give Sinclair control over more than 200 local broadcast stations, reaching more than 70 percent of the country.²¹ This level of control would

¹⁷ *See id.* at ¶¶ 6, 8-9.

¹⁸ *See* 47 U.S.C. § 303(i); *see also* 47 U.S.C. § 153(10).

¹⁹ *NBC v. US*, 319 U.S. 190, 196 (1943).

²⁰ *See id.* at 203.

²¹ Sinclair-Tribune Application, Comprehensive Exhibit, at 4-6; *see also* Sydney Ember and Michael de la Merced, Sinclair Unveils Tribune Deal, Raising Worries It Will Be Too Powerful, NY Times (May 8, 2017), *available at* https://www.nytimes.com/2017/05/08/business/media/sinclair-tribune-media-sale.html?_r=0.

not only put Sinclair over the Commission’s national ownership cap,²² but would also violate the Commission’s public interest commitment to broadcast localism.

By its own admission, Sinclair believes that centralized news operations for national and international news is an effective cost-savings model.²³ Further, it is well-documented that Sinclair engaged in the practice of “central casting” – substituting centrally originated programming for local programming.²⁴ Central casting gets to the core of what the Commission’s localism principles seek to prevent. Indeed, the FCC’s chain broadcast rules prohibit two or more connected stations from simultaneously running the same program. The principles the Commission adopted in its *2008 Declaratory Ruling* granting broadcast affiliates more control and autonomy would also be violated. Indeed, if Sinclair is allowed to merge, the company could potentially run “pseudo-networks” – controlling the local programming of hundreds of broadcast stations.

The Applicants assert Sinclair’s commitment to localism is demonstrated by investments in the news and local programming of newly acquired stations; however, the Applicants fail to make any assurances that it will not engage in central casting, or that the newly acquired stations will have autonomy.²⁵ Given the unprecedented amount of control Sinclair would have over

²² See 47 C.F.R. § 73.3555(e)(1).

²³ See Comments of Sinclair Broadcast Group, Inc., Broadcast Localism, MB Docket No. 04-233, at 6 (filed April 28, 2008) (stating that “centralized news operations ... which consolidate the production of national and international news, can result in cost savings allowing broadcasters to reallocate resources to stations for the provision of additional and more in-depth local news.”) (emphasis omitted).

²⁴ See, e.g., Jim Rutenberg and Micheline Maynard, *TV News that Looks Local, Even if it’s Not*, New York Times (June 2, 2003), available at <http://www.nytimes.com/2003/06/02/business/tv-news-that-looks-local-even-if-it-s-not.html>; Jeffrey Layne Blevins, *Sinclair’s proposed purchase of Tribune Media is bad news for Des Moines*, azcentral (June 29, 2017), available at <https://www.azcentral.com/story/opinion/columnists/2017/06/29/sinclairs-proposed-purchase-tribune-media-bad-news-des-moines/439884001/>.

²⁵ See Sinclair-Tribune Application, Comprehensive Exhibit, at 2.

affiliated broadcasters post-merger and its past practices of central casting, the Applicants have not shown that the transaction will serve the public interest by promoting the Commission's longstanding commitment to broadcast localism. In fact, Sinclair's past practices make clear that it is likely to engage in actions that are contrary to the public interest and broadcast localism.

IV. THE PROPOSED MERGER WOULD FURTHER EXACERBATE THE BROKEN RETRANSMISSION CONSENT REGIME

A. Broadcasters Already Abuse the Retransmission Consent Regime.

The current retransmission consent regime, where cable operators must negotiate in good faith with broadcasters to carry their programming, already gives undue power to broadcasters. The retransmission consent marketplace was originally created to protect the rights of local broadcasters, who often lacked leverage against monopoly cable companies.²⁶ However, the marketplace has changed.

While cable operators are still dominant, consolidation among programmers and broadcasters, along with increasing video programming competition, has turned carriage negotiations from routine business to high-stakes negotiations. Consequently, retransmission consent fees have increased over the years, with SNL Kagan projecting those fees will reach \$11.6 billion in 2022.²⁷

As a result, large broadcasters are able to extract enormous sums of money from cable operators, turning the retransmission consent process into an additional revenue stream.²⁸ When

²⁶ See *Implementation of Section 103 of the STELA Reauthorization Act of 2014*, Notice of Proposed Rulemaking, 30 FCC Rcd 10327, 10238 ¶ 2 (2015).

²⁷ See Mike Farrell, Kagan: Retrans Fees to Reach \$11.6b by 2022, *Multichannel News* (June 29, 2016), available at <http://www.multichannel.com/news/networks/kagan-retrans-fees-reach-116b-2022/406026>.

²⁸ See *Implementation of Section 103 of the STELA Reauthorization Act of 2014*, Notice of Proposed Rulemaking, 30 FCC Rcd at 10239-40 ¶ 3 (2015).

retransmission consent negotiations come to a standstill, large broadcasters are able to blackout their programming.²⁹ The FCC's rules do not prevent broadcasters from timing the expiration of contracts to coincide with marquee programming events, such as the Super Bowl, or other events of significant public interest. This timing only enhances large broadcasters' leverage over the retransmission consent process forcing cable providers to comply or lose their subscribers.³⁰ The millions of customers whose access to must-have sports, entertainment, and news programming cut off are collateral damage in the broadcasters' game of high-stakes brinksmanship.

B. The Proposed Merger Would Give Sinclair Increased Bargaining Power in Retransmission Consent Negotiations.

Given the increased number of broadcast stations it would own post-merger, the proposed transaction would give Sinclair increased bargaining power in retransmission consent negotiations. As discussed above, this increased bargaining power could lead to merger-specific increases in retransmission consent fees charged to cable providers, resulting in higher cable prices for consumers. Further, disputes in retransmission consent negotiations between Sinclair and cable operators could result in programming blackouts and service disruptions depriving consumers of their local programming.

²⁹ *See id.*

³⁰ *See, e.g.*, Daniel Frankel, Super Bowl blacked out in at least 6 markets due to retrans disputes, ATVA says, FierceCable (Jan. 30, 2017), *available at* <http://www.fiercecable.com/cable/super-bowl-blacked-out-at-least-6-markets-due-to-retrans-disputes-atva-says>; Daniel Frankel, After 1-Day blackout, Dish and Tegna strike long-term retransmission agreement, *available at* FierceCable (Oct. 12, 2015), <http://www.fiercecable.com/cable/after-1-day-blackout-dish-and-teгна-strike-long-term-retransmission-agreement>; Joe Flint, Time Warner Cable loses 306,000 subscribers, cites fight with CBS, Los Angeles Times (Oct. 31, 2013), *available at* <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-time-warner-cable-cbs-earns-20131031-story.html>.

Indeed, Sinclair’s prior retransmission consent disputes with cable and satellite providers have lead to massive programming blackouts affecting millions of consumers.³¹ Further, the Commission has investigated and taken action against Sinclair in the past for improperly negotiating retransmission consent agreements involving broadcast stations it did not own.³²

Imbalances in retransmission consent bargaining power continue to plague the video marketplace and harm consumers’ ability to access local programming; the proposed transaction will only exacerbate this problem and harm consumers. The Applicants make no attempt to address Sinclair’s prior abuses of its leverage as the owner of numerous broadcast stations in prior retransmission consent negotiations, nor do they explain how the proposed merger, which would further increase Sinclair’s bargaining power, promotes, rather than harms the public interest.

V. THE PROPOSED MERGER WOULD ALLOW SINCLAIR TO DICTATE THE ATSC 3.0 TRANSITION TO THE DETRIMENT OF THE PUBLIC INTEREST

A. The Proposed Merger Would Allow Sinclair to Delay Future Repack Harming the Public Interest.

The Applicants claim that the proposed transaction will allow Sinclair to expedite the rollout of an ATSC 3.0 network, which, they argue, will serve the public interest.³³ However, the sheer size of the merger will actually harm the public interest by allowing Sinclair to single handedly delay the repack of the 600 MHz band. In prior proceedings, Sinclair has pressed the

³¹ See, e.g., Cynthia Littleton, Dish, Sinclair Reach Deal to End Massive Station Blackout, *Variety* (Aug. 26, 2015), available at <http://variety.com/2015/tv/news/dish-sinclair-station-blackout-1201579292/> (“The blackout affected an estimated 5 million of Dish’s 13.9 million subscribers.”).

³² See *Sinclair Broadcast Group, Inc.*, Consent Decree, 31 FCC Rcd 8576, 8579 ¶ 4(2016) (finding that “Sinclair negotiated retransmission consent on behalf of, or coordinated negotiations with, a total of 36 Non-Sinclair Stations....”).

³³ See Sinclair-Tribune Application, Comprehensive Exhibit, at 2.

FCC to extend the repack deadline claiming that the agency's current timeline is burdensome to broadcasters.³⁴ Allowing Sinclair to control over 200 broadcast stations that would be part of the repacking process would lead to delays if the company refused to comply.

Next-generation television using the ATSC 3.0 standard promises a wealth of new consumer-friendly features, including sharper pictures, better mobile viewing, improved emergency alerts, new opportunities for community engagement, and novel interactivity with over-the-air television viewers.³⁵ Although the Applicants cite to the benefits of ATSC, these benefits are in no way merger specific and the Commission should not consider them in its public interest evaluation of the transaction.³⁶ Indeed, Further, ATSC innovations should not come at the expense of delaying the repacking process. Any delay in the repacking schedule would interfere with deployment schedules in the 600 MHz spectrum and postpone valuable connectivity benefits to consumers. As wireless carriers attest, more wireless capacity is needed to meet the growing consumer demand for mobile data.³⁷ The Commission's incentive auction established a 39-month transition period for broadcast stations being repacked to transition to their newly assigned frequencies.³⁸ Delaying the repack and postponing the availability of this spectrum for mobile broadband will harm wireless carriers' ability to meet consumer demand,

³⁴ See Reply Comments of Sinclair Broadcast Group, Post-Incentive Auction Transition, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, MB Docket No. 16-306, GN Docket No. 12-268, at 1-2 (filed Nov. 15, 2016).

³⁵ See *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Notice of Proposed Rulemaking, 32 FCC 1670, 1702, ¶ 3 (2017).

³⁶ See, e.g., *Applications of SprintCom, Inc. Shenandoah Personal Communications, LLC, and NTELOS Holdings Corp. for Consent To Assign Licenses and Spectrum Lease Authorizations and To Transfer Control of Spectrum Lease Authorizations and an International Section 214 Authorization*, Memorandum Opinion and Order, 31 FCC Rcd 3631, 3647 ¶ 34 (2016) (stating that "each claimed benefit [of a proposed merger] must be transaction specific.").

³⁷ See Comments of T-Mobile, Inc., *Authorizing Permissive Use of the "Next Generation" Broadcast Standard*, GN Docket No. 16-142, at 4-5 (filed May 9, 2017).

³⁸ See *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Notice of Proposed Rulemaking, 32 FCC 1670, 1702, ¶ 76 (2017).

bring new additional competition to the mobile broadband market, and deploy service in rural communities, helping achieve the Commission's stated goal of closing the digital divide.³⁹ The proposed merger threatens the FCC's ability to repack on timeline and the Applicants fail to commit that the repack will happen as planned post-merger. Therefore, the Applicants have not met their burden in establishing an ATSC 3.0 network would promote the public interest.

B. The Proposed Merger Could Allow Sinclair to Use ATSC 3.0 to Foreclose the Use of Public Spectrum.

In the ATSC 3.0 proceeding, Sinclair has aggressively pressed the Commission for valuable new spectrum rights.⁴⁰ If the Commission were to grant these sought after new spectrum rights to a post-merger Sinclair, that windfall would come at the public's expense. Allocating vacant broadcast TV spectrum to broadcasters, including Sinclair, would undermine the long-promised nationwide availability of TV White Spaces for rural broadband and other innovative new uses.⁴¹

Broadcasters, such as Sinclair, received their broadcast licenses for free, and for the express purpose of providing free over the air broadcasting to their local communities. The

³⁹ Letter from Chairman Ajit Pai to Senator Tammy Baldwin (Feb. 21, 2017), http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0303/DOC-343756A3.pdf; Remarks of Ajit Pai, Chairman, Federal Communications Commission (Jan. 24, 2017), at 2, https://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0124/DOC-343184A1.pdf.

⁴⁰ See Reply Comments of Sinclair Broadcast Group, Authorizing Permissive Use of the "Next Generation" Broadcast Standard, GN Docket No. 16-142, at 13-14 (filed June 8, 2017) (stating that the "Commission should ... make vacant channels available to broadcasters, or to groups of broadcasters .. to improve service during the transition."); see also Comments of National Association of Broadcasters et al, Authorizing Permissive Use of the "Next Generation" Broadcast Standard, GN Docket No. 16-142, at 10-11 (filed May 9, 2017) ("[A]llowing broadcasters to use vacant in-band channels, subject to FCC approval and for the duration of the transition, could further help reduce viewer disruption. Such action would encourage innovation and help protect viewers while also maximizing the efficient use of scarce spectrum resources.").

⁴¹ See Brad Smith, A rural broadband strategy: connecting rural America to new opportunities, Microsoft (Jul 10, 2017), available at <https://blogs.microsoft.com/on-the-issues/2017/07/10/rural-broadband-strategy-connecting-rural-america-new-opportunities/>.

Commission's interference protection rules for TV White Spaces devices were designed to protect broadcasters because a vital, free over the air television system promotes the creation and availability of news and diverse viewpoints. The interference rules were not designed to allow broadcasters to monetize their free spectrum for their private gain. Indeed, the Applicants make no promises or assert any willingness to utilize a potential spectrum windfall to safeguard consumers or return anything to the public interest.

VI. CONCLUSION

In view of the foregoing, Public Knowledge, Common Cause, and United Church of Christ, OC Inc. respectfully request that the Commission deny the Applicants proposed transaction. The Applicants fail to meet their affirmative burden to demonstrate the contemplated merger will serve the public interest.

Respectfully Submitted,

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PARTIES

Public Knowledge is a nonprofit public interest organization that promotes freedom of expression, an open internet, and access to affordable communications tools and creative works. Working to shape policy on behalf of the public interest, Public Knowledge frequently advocates for pro-competitive media policies before the FCC.

Common Cause is a nonpartisan, nationwide grassroots network of more than 900,000 members and supporters that has advocated open, honest, and accountable government for over 45 years. Because a vibrant informational ecosystem is critical to self-governance, Common Cause public interest communications policies that connect all Americans to the news and information they need to cast informed ballots.

The United Church of Christ, Office of Communication, Inc. (UCC OC Inc.) is the media justice ministry of the United Church of Christ, a faith community rooted in justice that recognizes the unique power of the media to shape public understanding and thus society. Established in 1959, UCC OC Inc. established the right of all citizens to participate at the Federal Communications Commission as part of its efforts to ensure a television broadcaster in Jackson, MS served its African-American viewers during the civil rights movement and continues to press for media justice and communications rights in the present day. The Cleveland-based United Church of Christ has almost 5,000 local congregations across the United States, formed in 1957 through union of the Congregational Christian Churches and the Evangelical and Reformed Church.

DECLARATION

Public Knowledge, Common Cause, and United Church of Christ OC, Inc.'s Petition to Deny was prepared using facts of which I have personal knowledge or upon information provided to me. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my information, knowledge, and belief.

Executed August 7, 2017

/s/ Yosef Getachew

Yosef Getachew
Policy Fellow
Public Knowledge

CERTIFICATE OF SERVICE

I, Yosef Getachew, hereby certify that on the 7th day of August, 2017, I caused a true and correct courtesy copy of the foregoing Petition to Deny via email to the following:

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