

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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)

**PETITION TO DENY OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

August 7, 2017

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I. INTRODUCTION AND SUMMARY

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits this Petition to Deny the applications for transfer of control (“Applications”) as described in the above-captioned proceeding.² The Applications fail to demonstrate how the proposed transfer of control of Tribune Media Company (“Tribune”) licenses to Sinclair Broadcast Group, Inc. (“Sinclair”) (jointly “Parties” or the “Applicants”) would, as they attest, serve the public interest or somehow create “greater value” for small MVPDs, including NTCA members. Indeed, the Applicants do not even make a meaningful attempt to substantiate their blanket claims. To the

¹ NTCA represents nearly 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All of NTCA’s service provider members are full service rural local exchange carriers (“RLECs”) and broadband providers. Approximately 75 percent serve as multichannel video programming distributors (“MVPDs”) using a variety of technologies in sparsely populated, high-cost rural markets. NTCA’s members today retransmit certain local broadcast stations owned, and/or managed, by one or both the Applicants, and expect to negotiate with the surviving entity if this merger is approved.

² *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 (rel. Jul. 6, 2017) (“Public Notice”).

contrary, the marriage of Sinclair and Tribune, two of the largest local TV station owners in the U.S., creates a broadcasting behemoth that would result in higher consumer prices, increased blackouts, and substantial harms to small MVPDs, which provide the only means by which broadcasters like Sinclair and Tribune can reach rural consumers who are located outside of the range of over-the-air broadcast signals. Accordingly, the Applications should be denied.

II. APPLICANTS BEAR THE BURDEN OF PROVING THAT THE TRANSACTION IS IN THE PUBLIC INTEREST

The Applicants must prove that the transaction at issue (the “Transaction”) serves “the public interest, convenience, and necessity.”³ The Commission must evaluate whether the Transaction could result in public interest harms by frustrating or impairing the objectives or implementation of the Act or related statutes, and whether the Transaction complies with specific applicable laws and regulations.⁴ If the Transaction is consistent with the Act and its comprehensive objectives, the Commission must assess whether the Transaction would enhance competition in an analysis informed by traditional antitrust principles and its broader public interest mandate. Applicants bear the burden of proving *affirmatively* that the Transaction would serve the public interest, convenience, and necessity and would be beneficial to competition. If the Commission is unable to find that the proposed Transaction serves the public interest for any

³ 47 U.S.C. § 310(d).

⁴ See Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, Memorandum Opinion and Order and Report and Order, 23 FCC Red. 12348, 12363-64 if 30 (2008); News Corp. and DIRECTV Group, Inc. and Liberty Media Corp. for Authority to Transfer Control, Memorandum Opinion and Order, 23 FCC Red. 3265, 3276-77 (2008); SBC Commc'ns Inc. and AT&T Corp. Applications for Approval of Transfer of Control, Memorandum Opinion and Order, 20 FCC Red. 18290, 18300 (2005).

reason, or if the record presents a substantial and material question of fact, the Commission must designate the Application for hearing.⁵

The Commission's public interest determination encompasses the "broad aims of the Communications Act,"⁶ which include a "deeply rooted preference for preserving and enhancing competition in relevant markets . . . and ensuring a diversity of information sources and services to the public."⁷ The Applicants must demonstrate that the competitive harms that could result from the proposed transaction are outweighed by the claimed benefits. Further, those benefits must be: (1) transaction specific—likely to occur as a result of the transaction but unlikely to be realized by other practical means having fewer anti-competitive effects;⁸ (2) verifiable—both in likelihood and magnitude;⁹ and (3) for the benefit of consumers, and not solely for the benefit of the company.¹⁰

⁵ 47 U.S.C. § 309(e); see also *Sirius-XM Order*, 23 FCC Red. at 12364, if 30; *Liberty Media DIRECTV Order*, 23 FCC Red. at 3277 if 22; *General Motors Corp. and Hughes Electronics Corp., and The News Corp. Limited, Memorandum Opinion and Order*, 19 FCC Red. 473, 483 n. 49 (2004) ("*News Corp.-Hughes Order*"); *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp. and EchoStar Communications Corp., Hearing Designation Order*, 17 FCC Red. 20559, 20574 if 25 (2002) ("*EchoStar-DIRECTV HDO*").

⁶ *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 (2011); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc. to AT&T Corp., Memorandum and Order*, 15 FCC Red. 9816 (2000).

⁷ *Comcast-NBCU Order* at 4248.

⁸ *Applications of AT&T and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations, Order*, WT Docket No. 11-65, 266 FCC Rcd. 16184, 16247-48 (2011).

⁹ *Comcast-NBCU Order*, 4330-31.

¹⁰ *Id* at 4331.

Although the Applicants assert that the merger between Sinclair and Tribune would benefit the public interest,¹¹ they have not met their burden of proof to demonstrate this claim.¹² In fact, the Parties offer little to substantiate their declaration that the Transaction benefits the public. The entire so-called “public interest” showing consists of a paltry two-page “Comprehensive” Exhibit that is nothing more than a short list of supposed efficiencies and three brief bullet points touting Sinclair’s community service.¹³ The Applications provide no actual evidence in support of the claimed benefits to the public interest, convenience, and necessity as required. To the contrary, as noted below, evidence demonstrates that the proposed merger will harm, rather than serve, the public.

III. CONTRARY TO THE APPLICATIONS’ UNSUBSTANTIATED PUBLIC INTEREST CLAIM, THE TRANSACTION STANDS TO INCREASE RETRANSMISSION CONSENT FEES

Multiple parties have already noted that the transaction presents “substantial competition and media law questions at both the national and local level.”¹⁴ As the Applications admit, the transaction would exceed the national ownership cap and violate the Commission’s duopoly rule in at least 11 markets.¹⁵ However, despite the depth and complexities of the issues raised by the proposed transaction, the Applications “are woefully deficient in demonstrating any meaningful

¹¹ Applications of Tribune Media Company and Sinclair Broadcast Group for Consent to Transfer Control of Licenses and Authorizations, Comprehensive Exhibit, MB Dkt. No. 17-179, at 2 (June 26, 2017) (“Applications”).

¹² 47 U.S.C. 310(d). *See also*, 47 U.S.C. 309(e).

¹³ Applications at 2-4.

¹⁴ *See, e.g.*, Motion of DISH Network, American Cable Association and Public Knowledge for Additional Information and Documents and Extension of Time, MB Docket No. 17-179 (July 12, 2017) at 3,

¹⁵ Applications at 12, 26, n. 48.

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.”¹⁶

Among the myriad of issues that demand serious consideration in light of the proposed transaction, retransmission fees, in particular, are among the most significant to the public interest, and especially to small MVPDs and their consumers. These fees continue their unabated climb. According to S&P Global Market Intelligence, retransmission fees are estimated to climb 18 percent this year alone, from \$7.9 billion in 2016 to \$9.3 billion this year, with increases expected to continue to nearly \$12.8 billion by 2023.¹⁷ And this comes after retransmission fees have skyrocketed from \$28 million in 2005 to \$6.3 billion in 2015, a staggering 22,400 percent increase in ten years.¹⁸ The staggering rise in retransmission consent fees is due, in part, to the increased leverage broadcasters enjoy and the competitive imbalance in the marketplace.

The proposed merger would create the single largest broadcast station group in the nation, further consolidating the combined entity’s market power. While Sinclair already describes itself as “one of the largest and most diversified television broadcasting companies in the country,”¹⁹ the proposed merger would increase the number of stations that Sinclair owns and/or operates from 191 to 233 (a 22% increase), while their number of markets served would

¹⁶ Letter from Todd O’Boyle, Common Cause, to Ajit Pai, Chairman, FCC, MB Docket No. 17-179 (July 17, 2017).

¹⁷ *Kagan Releases Updated Retransmission Projections - U.S. TV Station Owners Retransmission Fees Expected To Reach Nearly \$12.8 B By 2023*, June 19, 2017, available at <https://marketintelligence.spglobal.com/our-thinking/newsroom/kagan-releases-updated-retransmission-projections>.

¹⁸ See “Tegna Broadcasting Blocks Out Millions: TV Takedown Affects 38 Markets for DISH Network Customers,” American Television Alliance (Oct. 10, 2015), available at: <http://www.americantelevisionalliance.org/teгна-broadcasting-blacks-out-millions/>.

¹⁹ Press release, “Sinclair Broadcast Group to Acquire Tribune Media Company for Approximately \$3.9 Billion,” <http://sbgi.net/wp-content/uploads/2017/05/SBG-Trib-Final.pdf>, p. 3.

group from 89 to 108 (a 21% increase).²⁰ Separately, Sinclair and Tribune each already enjoy a stranglehold over content today due to skewed retransmission consent rules. Yet the proposed consolidation would even further enhance the unified entity's ability to demand retransmission consent rate increases with impunity, in the absence of market restraints.²¹

The consequences to consumers of the proposed merger would likely be all too familiar. First, consumers are most likely to face a combination of higher prices and/or reduced investment in broadband infrastructure by small MVPDs that will inevitably be forced to absorb and/or pass along increased retransmission consent fees. Secondly, consumers will also be more likely to experience blackouts, which have occurred with alarming frequency. There were 142 instances of blackouts in the first quarter of this year alone,²² as broadcasters increasingly leverage retransmission rules that enable them to operate without the need to respond to market forces.

These ramifications are especially concerning to rural consumers, many of whom rely on MVPDs to obtain access to any television broadcast signals at all, since the transition to digital television reduced the effective range of many over-the-air broadcast stations. Nearly one-fourth of NTCA's members report that 90 percent or more of the customers in their service areas cannot receive any over-the-air broadcast signals, and must rely upon MVPD services in order to receive local news, weather reports, and similar benefits of local broadcasts.²³ Put another way, small rural MVPDs pay (and keep paying more and more) for the "privilege" of carrying content

²⁰ *Ibid.*

²¹ See NTCA comments, MB Docket Nos. 17-105, 15-216, and 10-71, at 2-5 (filed Jul. 5, 2017).

²² See "Broadcasters Go Nuclear on Blackouts," American Television Alliance (Apr. 3, 2017), available at <http://www.americantelevisionalliance.org/broadcasters-go-nuclear-on-blackouts/>.

²³ See Comments of NTCA – the Rural Broadband Association, MB Docket No. 15-216, p. 3 (filed Dec. 1, 2015).

that Sinclair or Tribune otherwise could not deliver to consumers in rural America. These consumers are thus at the complete mercy of broadcasters who are able to raise rates or punitively remove MVPDs' access to signals, even though the consumers cannot access the signals otherwise without the MVPD's network in many rural areas. Clearly, these circumstances contravene the public interest, convenience and necessity.

The Applications make no attempt to address these key facts. They do not explain how providing a larger broadcasting conglomerate with even more ability to dictate rates, and even to revoke access to broadcast signals entirely, in the absence of market forces might conceivably benefit the public. Perhaps understandably, the Applications neglect to even mention these factors in any way. Instead of undertaking the impossible task of trying to explain how the prospects of higher retransmission rates and increased blackouts could possibly serve the public interest, convenience, and necessity, the Applications simply and transparently attempt to sidestep these clear harms. Consequently, the Applications fail the public interest test, and thereby merit denial by the Commission.

IV. THE MERGER WOULD BE PARTICULARLY HARMFUL TO RURAL MVPDS AND THE CONSUMERS THEY SERVE

The Applications also declare, once again without explanation or support, that the creation of the proposed new broadcasting conglomerate will “offer even greater value to” MVPDs.²⁴ However, data derived from a July 2017 survey of NTCA members demonstrates that the larger the broadcaster, the greater the prospects for harm rather than so-called “value.” As noted above, the proposed merger would increase the prospects of higher retransmission rates and signal blackouts. Either circumstance clearly would harm MVPDs, and would be especially

²⁴ Application, p. 2.

damaging to small providers that lack economies of scope and scale, and often serve a single high-cost rural market.

NTCA's members report that they generally encounter greater difficulties dealing with broadcasting conglomerates, including the Parties, than with single stations.²⁵ The majority of respondents to the July NTCA membership survey indicated that obtaining retransmission consent from a company that controls multiple broadcast stations is more difficult than obtaining it from a single station. As discussed more fully below, small MVPDs which obtain content from either or both of the Parties report that while interactions with Tribune are difficult, the obstacles to obtaining content from the larger Sinclair are even more pronounced. As a result, granting the Parties' Applications will only serve to exacerbate an already difficult situation.

Nearly three-quarters (74.4 percent) of the respondents to NTCA's July survey reported experience in seeking retransmission consent rights with Sinclair. When asked how difficult the process was on a scale of 1 to 10, with 1 being extremely easy and 10 being extremely difficult, 67.9 percent reported the difficulty level at 8 or higher. Over one third, at 37.3 percent, rated the difficulty level at 10. None rated the experience easier than level 4.

When those who rated the experience at level six or higher were asked for specifics, respondents indicated that both Sinclair's lack of willingness to negotiate, and the difficulty in obtaining content at reasonable rates, were equally responsible for the difficulty rating (at 72.5 percent each). Most respondents who have had dealings with Sinclair reported that they had been presented with a "take it or leave it" retransmission consent offer (57.1 percent). Several respondents also cited forced carriage of an unknown channel as a reason for the high difficulty

²⁵ Surveys were sent via electronic mail to 593 NTCA members in July, 2017. One hundred fourteen unique responses were received, representing a 19 percent response rate.

rating. Sinclair, it must also be noted, just last year entered into a consent decree with the Commission and paid \$9.5 million into the U. S. Treasury for its alleged failure to negotiate retransmission consent agreements in good faith.²⁶

NTCA's members also have experience seeking retransmission consent from Tribune. Forty-one percent of survey respondents indicated that have negotiated with Tribune and while these respondents indicated that obtaining content was not quite as challenging as those dealing with Sinclair, the challenges of dealing with any holder of multiple broadcast stations are still notable. When asked how difficult the process was on a scale of 1 to 10, with 1 being extremely easy and 10 being extremely difficult, most reported a difficulty level of 8 or higher and only 6.2 percent rated the experience easier than level 4. Post-merger, there is no reason to believe – and no reason given in the Applications – to believe that the difficulty in negotiations will migrate downward toward the levels of Tribune standing alone, never mind becoming *easier* than dealing with Tribune alone today. To the contrary, based upon the trends, NTCA suspects that dealing with the Tribune stations will migrate upward to become *more difficult* and *more expensive* once combined with Sinclair, highlighting a clear and unmistakable merger-specific harm.

In contrast to such negative indications from NTCA members in the field, the Applications offer absolutely no support to the claim that the transaction would offer “greater value” to MVPDs. This alone merits denial of the Application by the Commission. Furthermore, the experiences of NTCA's small MVPD members demonstrate that, contrary to the “value” the Applications claim, the Parties have individually engaged in behaviors that are damaging to small MVPDs and the rural consumers that they serve. The proposed surviving entity of the

²⁶ See, Sinclair Broadcasting Group, *Order*, Acct. No.: MB- 201641420017, FRN: 0004331096 (July 29, 2016).

merger, Sinclair, has presented the most challenges. With more negotiating power than it enjoys today, Sinclair has every incentive to bully small MVPDs into unfavorable retransmission contracts and the price will be paid by rural consumers. The Commission should therefore not allow the Applications to create an even larger entity from companies with this track record, under the hollow guise of offering “greater value” to MVPDs.

V. CONCLUSION

The Applications do not, as they claim, provide the required demonstration that the transaction would serve the public interest, convenience, or necessity. Indeed, they do not even attempt to do so. The Applications’ claim of greater value for MVPDs is equally hollow, and again there is not even an attempt at substantiation. In contrast, there are strong indicators that increased public harms, in form of higher retransmission consent rates and potential blackouts, are likely should the Parties combine. Furthermore, small MVPDs’ experiences with the parties as separate entities indicate even stronger likelihood that the proposed conglomerate would leverage its even greater market power, unrestrained by market forces, to the detriment of small

MVPDs and the rural consumers they serve. The ultimate result of granting the Applications will be increasing the size and market power of an entity—Sinclair—that has an established track record of failing to negotiate in good faith with MVPDs. Subsequently, the Applications should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Barbara Fitzpatrick, hereby certify that on August 7, 2017, I caused true and correct copies for the foregoing to be served by electronic mail upon the following:

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