

**Before the
Federal Communications Commission
Washington, DC 20554**

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

COMMENTS OF CINEMOI, RIDE TELEVISION NETWORK, AWE – A WEALTH OF ENTERTAINMENT, MAVTV MOTOR SPORTS NETWORK, ONE AMERICA NEWS NETWORK, THEBLAZE AND ELEVEN SPORTS NETWORK

Roderick M. Sherwood, III
Co-Chairman & CEO
Cinemoi
6380 Wilshire Blvd. Suite 910
Los Angeles, CA 90048

Michael Fletcher
Chief Executive Officer
RIDE Television Network
1025 S. Jennings Avenue
Fort Worth, TX 76104

Charles P. Herring
President
AWE - A Wealth of Entertainment
4757 Morena Blvd.
San Diego, CA 92117

Robert E. Patison
President
MAVTV Motor Sports Network
302 N. Sheridan St.
Corona, CA 92880

Robert Herring
Chief Executive Officer
One America News Network
4757 Morena Blvd
San Diego, CA 92117

Misty Kawecki
Chief Financial Officer
TheBlaze
6301 Riverside Dr., Building One
Irving, TX 75039

Anthony Bailey
SVP and Managing Director North America
Eleven Sports Network
116 Washington Ave., 2nd Floor
North Haven, CT 06473

August 7, 2017

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY	1
II. IT IS PREMATURE FOR THE COMMISSION TO CONSIDER THIS TRANSACTION GIVEN THE UNCERTAINTY SURROUNDING THE BROADCAST OWNERSHIP RULES.	4
III. THE TRANSACTION WILL RESULT IN HIGHER COSTS FOR CONSUMERS.....	7
IV. THE TRANSACTION WILL HARM INDEPENDENT PROGRAMMERS.....	9
V. THE TRANSACTION WILL UNDERMINE DIVERSITY AND LOCALISM WHILE REWARDING A COMPANY THAT DISREGARDS FCC RULES AND POLICIES. .	11
VI. CONCLUSION	13

**Before the
Federal Communications Commission
Washington, DC 20554**

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

COMMENTS OF CINEMOI, RIDE TELEVISION NETWORK, AWE – A WEALTH OF ENTERTAINMENT, MAVTV MOTOR SPORTS NETWORK, ONE AMERICA NEWS NETWORK, THEBLAZE AND ELEVEN SPORTS NETWORK

I. INTRODUCTION AND SUMMARY

Pursuant to Sections 309(d) and 310(d) of the Communications Act of 1934, as amended, and on behalf of independent programmers from across the political spectrum, Cinémoi, RIDE Television Network, Awe – A Wealth Of Entertainment, MAVTV Motor Sports Network, One America News Network, TheBlaze and Eleven Sports Network (together the “Petitioners”) respectfully file these comments to raise substantial concerns with the merger of Sinclair Broadcast Group (“Sinclair”) and Tribune Media Company (“Tribune,” and together, the “Applicants”).¹

The proposed transaction takes place at a critical juncture in the history of American communications. The growing power of conglomerate networks has produced unprecedented leverage and control over content available to the public and has threatened the very freedom of

¹ Applications of Tribune Media Company and Sinclair Broadcast Group for Consent to Transfer Control of Licenses and Authorizations, Comprehensive Exhibit, MB Docket No. 17-179 (June 26, 2017) (“Application”).

expression cherished by people regardless of political persuasion. This transaction has the potential to further cripple the availability of diverse and independent voices in media.

Regardless of political affiliation, we should agree that robust democracy demands a variety of viewpoints from a myriad of sources; yet, the wave of consolidation across the industry threatens this core value. And the Sinclair-Tribune merger would exacerbate this troubling trend.

As a threshold matter, it is premature for the Commission to consider the proposed transaction. The Applicants bear the burden of proving their transaction is in the public interest, but their applications provided insufficient information for the Commission to validate, let alone quantify, the claimed public interest benefits and did not address at all the public interest harms associated with the merger.² Moreover, it simply makes no sense for the Commission to conduct its review of the proposed transaction when the rules of the road on broadcast ownership may be fundamentally altered in the coming months. Rather, the better course – and the one that would be more transparent to all interested parties and American consumers – would be to defer consideration of the transaction until after the Commission acts on the ownership rules.

If the Commission nonetheless decides to move forward with its review, it should ensure there is no rush to judgment and that the transaction is properly vetted, with interested parties

² Petitioners have also expressed support for a motion filed jointly by Dish, ACA, and Public Knowledge asking the Commission to require the Applicants to provide more detailed information on the alleged public interest benefits of the transaction, as well as addressing public interest harms. *See* Comments of Newsmax Media, Inc. in Support of the 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 20, 2017); *see also* Comments of AWE – A Wealth of Entertainment, Cinémoi, MAVTV Motorsports Network, One America News Network, and Ride Television, MB Docket No. 17-179, at 2 (July 20, 2017); Motion of DISH Network, American Cable Association and Public Knowledge for Additional Information and Documents and Extension of Time, MB Docket No. 17-179, at 4 (July 12, 2017) (“[T]he Applicants provide no information by which the Commission or interested parties could quantify the claimed public interest benefits”); Comments of NTCA – The Rural Broadband Association in Support of DISH Network, et al. Motion for Additional Information and Documents and Extension of Time, MB Docket No. 17-179, at 2 (July 14, 2017) (“[T]he record in this proceeding is woefully inadequate. There is paltry information on the record to support the asserted public interest benefits of the transaction or to address the potential harms to the public and competition.”); Letter from Todd O’Boyle, Program Director, Common Cause, to Ajit Pai, Chairman, FCC, MB Docket No. 17-179, at 1-2 (July 17, 2017) (“[T]he applications are woefully deficient in demonstrating any meaningful public interest benefits providing merely two and half pages of conclusory statements devoted to the core determination that must be made by the Commission.”). Petitioners reiterate that support here.

given enough information and time to evaluate and comment on the transaction and propose necessary conditions. Sinclair is already the nation’s largest television group owner. If the transaction is approved, it would become an industry behemoth, reaching 72% of U.S. households, operating 233 local broadcast stations (80 more than the its nearest competitor), and broadcasting in 108 local markets (including key markets like New York, Los Angeles, Chicago, Philadelphia, and Dallas). This mega broadcaster would violate the Commission’s local ownership rules by operating more than one (and up to four) major network stations in over a dozen local markets.

Under its transaction review authority, the Commission must determine whether the proposed transfer of broadcast station licenses from Tribune to Sinclair will serve “the public interest, convenience, and necessity.” To make such a determination, the Commission must first determine whether the proposed transaction would comply with the specific provisions of the Act, other applicable statutes, and the Commission’s rules.³ The Commission then must evaluate whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act.⁴ The proposed transaction fails on both accounts. It would violate the Commission’s ownership rules and would cause substantial public interest harms.

³ See, e.g., *Applications for Consent to Transfer Control of License Subsidiaries of Media General, Inc. from Shareholders of Media General, Inc. to Nexstar Media Group, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd. 183 ¶ 19 (MB & WTB 2017) (“Nexstar Media General Order”); *Applications for Consent to Transfer of Control from Shareholders of Belo Corp. to Gannett Co., Inc.*, Memorandum Opinion and Order, 28 FCC Rcd. 16867 ¶ 22 (MB 2013) (“Gannett-Belo Order”); *EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp.*, Hearing Designation Order, 17 FCC Rcd. 20559 ¶ 25 (2002) (“EchoStar-DirecTV HDO”).

⁴ See, e.g., Nexstar-Media General Order ¶ 19; Gannett-Belo Order ¶ 22; EchoStar-DirecTV HDO ¶ 25. In assessing the “broad aims of the Communications Act,” the Commission must look to, “among other things, preserving and enhancing competition in relevant markets” and “ensuring that a diversity of voices is made available to the public.” See, e.g., EchoStar-DirecTV HDO ¶ 26; *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor to AT&T Corp., Transferee*, 14 FCC Rcd. 3160 ¶ 14 (1990); see also Nexstar-Media General Order ¶ 35; Gannett-Belo Order ¶ 30.

- **Harm to Consumers:** Sinclair charges among the highest retransmission consent fees in the broadcast industry – those fees jumped 43.8% in the past year alone. Sinclair has made clear that it sees the transaction as a way to extract much higher fees in the future. Sinclair has not been shy about using station blackouts (or threats of blackouts) as leverage to obtain higher fees, and such pressure tactics will only increase post-transaction. Ultimately, consumers are the ones who will pay these higher costs.
- **Harm to Independent Programmers.** In addition to the higher retransmission consent fees, Sinclair’s increased leverage would enable it to make greater demands on MVPD resources, including more bandwidth and carriage fees for Sinclair’s affiliated cable networks, multicast broadcast signals, and ATSC 3.0 broadcast signals. More carriage and higher license fees for Sinclair will have the effect of crowding out independent networks in MVPDs’ channel lineups and squeezing licensing fees for such networks.
- **Harm to Localism and Diversity.** Sinclair has a reputation for slashing budgets and downsizing newsrooms, and has described cutbacks at acquired stations as a key benefit of the Tribune deal. Likewise, Sinclair will continue to undermine the quality and independence of local journalism by spreading its centralized news operation to more markets and stations.

While a rushed consideration of the transaction would serve the interests of Sinclair and Tribune, it would not serve the public interest. Consumer costs for Sinclair content would skyrocket, and press freedom and media diversity would be seriously harmed. As a result, Petitioners urge a full, fair, and proper review, and that all possible measures to address these harms be considered.

II. IT IS PREMATURE FOR THE COMMISSION TO CONSIDER THIS TRANSACTION GIVEN THE UNCERTAINTY SURROUNDING THE BROADCAST OWNERSHIP RULES.

As the Applicants have admitted in their public interest statement, the transaction is predicated on changes to the Commission’s broadcast ownership rules that are or will soon be under Commission review.⁵ The transaction was enabled by reinstatement of the UHF discount, a decision the Commission has said it would further revisit in conjunction with the 39% national

⁵ The Applicants have said that they intend to file amendments to their applications to address “any changes or proposed changes” to the rules. *See* Application at 12, 26 n.48.

ownership cap later this year.⁶ Petitioners believe there is no legitimate basis for reinstatement of the discount. As the Commission acknowledged just last year, “experience since the DTV transition demonstrates that UHF channels are equal, if not superior, to VHF channels for the digital transmission of television signals.”⁷ Even now, all Commissioners agree that the UHF discount “no longer has a sound technical basis following the digital television transition.”⁸ Moreover, reinstatement of the UHF discount effectively overturns more than three decades of bipartisan consensus and rulemaking, as well as Congressional intent, with respect to the national ownership cap. That cap was first promulgated by the Commission during the Reagan administration to protect the public against the concentration of media power that could endanger press freedom and media diversity.⁹ These are the very consolidation concerns raised by the Sinclair/Tribune transaction.

⁶ See, e.g., *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, Order on Reconsideration, 32 FCC Rcd. 3390, 3405 (2017) (statement of Chairman Ajit Pai) (“*UHF Discount Reinstatement Order*”).

⁷ *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, Report and Order, 31 FCC Rcd. 10213 ¶ 2 (2016) (“*UHF Discount Elimination Order*”).

⁸ *UHF Discount Reinstatement Order* ¶ 14; Dissenting Statement of Commissioner Ajit Pai, *UHF Discount Elimination Order* at 10246 (“To be sure, the technical basis for the UHF discount no longer exists. In the analog era, UHF stations were technically inferior to VHF stations. But with the digital transition, that is no longer true. Indeed, UHF stations are now technically superior to VHF stations.”); Dissenting Statement of Commissioner Michael O’Rielly, *UHF Discount Elimination Order* at 10251 (“It is clear that UHF television stations are no longer less desirable or less technology-capable than VHF stations. The conversion of television stations from analog to digital, the excessive prevalence of multichannel video programming distributors, changing personal media consumption habits, and other factors have essentially eliminated the original differences between the two frequencies. The stations are rather interchangeable and shouldn’t be treated differently for purposes for our market audience reach calculations.”).

⁹ See *UHF Discount Elimination Order* ¶¶ 4-5. Subsequent changes to ownership cap took place in 1985, 1996, and 2004. See *Amendment of Section 73.3555 [formerly Sections 73.35, 73.240, and 73.636] of the Commission’s Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations*, Report and Order, 100 FCC 2d 17 ¶¶ 108-112 (1984); Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(c)(1), 110 Stat. 56, 111 (1996) (“1996 Act”); see also *Implementation of Sections 202(c)(1) and 202(e) of the Telecommunications Act of 1996 (National Broadcast Television Ownership and Dual Network Operations)*, Order, 11 FCC Rcd. 12374 (1996); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004).

Reinstatement of the UHF discount grossly distorts the magnitude of the proposed transaction. With the UHF discount, the combined company would reach 45% of TV households, still in excess of the 39% ownership cap. In contrast, if UHF and VHF signals are treated the same, as they should be, the combined company would reach a staggering 72% of TV households, almost double the cap. The transaction would also create substantial violations of the local ownership rules. According to the Applicants' own filing, a combined Sinclair/Tribune would violate the Commission's duopoly rule in at least 11 markets,¹⁰ and likely result in violations of the top-four rule in 10 markets.

Sinclair pays lip service to divesting stations to comply with these rules, but has made plain elsewhere that it does not expect to make divestitures given the Commission's plans to consider changes to the ownership rules later this year, including the local ownership rules and revisiting the UHF discount in a broader proceeding relating to the national ownership cap. Sinclair's CEO has candidly said: "We don't think we need to sell any of [the stations]. . . . When you take a look at all the overlaps, they really have no impact on overall competition, and we hope the regulators will agree with us."¹¹

It simply makes no sense for the Commission to conduct its review of the proposed transaction when the rules of the road on broadcast ownership may be fundamentally altered in the coming months. Rather, the better course – and the one that would be more transparent to all interested parties and American consumers – would be to defer consideration of the transaction

¹⁰ See Application at 12, 26 n.48.

¹¹ See, e.g., Robert Channick, *Sinclair to buy WGN owner Tribune Media for \$3.9 billion plus debt*, Chi. Trib., May 8, 2017, <http://www.chicagotribune.com/business/ct-sinclair-acquires-tribune-media-0509-biz-20170508-story.html>. Ripley reiterated that he believes there is "no competitive reason" to divest stations at a presentation to the Media Institute in June. See Gary Arlen, *Sinclair Eyes 'Overlay Network' for Dayparts of National Footprint*, Broadcasting & Cable (June 20, 2017), <http://www.broadcastingcable.com/news/local-tv/sinclair-eyes-overlay-network-dayparts-national-footprint/166662>; see also Application at 12, 26 n.48.

until after the Commission acts on the ownership rules. To the extent the Commission decides to move forward with its transaction review anyway, Petitioners urge that all possible measures to address the harms detailed below be considered.

III. THE TRANSACTION WILL RESULT IN HIGHER COSTS FOR CONSUMERS.

The proposed transaction would give Sinclair increased bargaining leverage to impose higher retransmission consent costs on MVPDs, directly affecting consumers in the form of higher bills. In recent years, broadcasters have used the threat of blackouts, or actual blackouts, as leverage in negotiations to extract increasing retransmission consent fees.¹² Retransmission consent fees increased five-fold from 2010 to 2015, and they are expected to increase almost eleven-fold from 2010 levels by 2023, even as MVPD subscribership declines.¹³ These rising retransmission consent fees lead to higher prices for consumers.

As the nation's largest television station group owner, Sinclair *already* has enormous leverage, which it has used to obtain ever-higher retransmission consent fees. Sinclair has among the highest retransmission consent fees in the industry.¹⁴ And Sinclair's average monthly per-subscriber retransmission consent fees grew 43.8% *just last year*.¹⁵

¹² In 2017 alone, broadcasters have blacked out the Super Bowl, NFL and College Football post-season Games, the Grammys, and network TV premiers. *Broadcasters Go Nuclear on Blackouts*, American Television Alliance, Apr. 3, 2017, <http://www.americantelevisionalliance.org/broadcasters-go-nuclear-on-blackouts>.

¹³ See Justin Nielson, *Retrans projections update: \$12.8B by 2023*, SNL Kagan, June 14, 2017, https://www.snl.com/web/client?auth=inherit#news/article?id=40988301&KPLT=6&s_data=si%3D3%26kpa%3D10fac70-9c9a-42fe-814e-80e77344e29b%26sa%3D.

¹⁴ Sinclair raised its fees by \$1.21 between 2012 and 2016, while the average fee increase among non-Sinclair station owners during that same period was \$1.03. SNL Kagan data.

¹⁵ See Peter Leitzinger, *Retrans per sub rates rise 26% in Q1 '17*, SNL Kagan, June 19, 2017, <https://www.snl.com/web/client?auth=inherit#news/article?id=41039076&keyproductlinktype=2>.

Moreover, Sinclair has demonstrated a propensity for using station blackouts¹⁶ and flouting the Commission’s ownership rules – all in an effort to gain leverage and demand higher retransmission consent fees from MVPDs. Sinclair has been involved in three blackouts since 2010, including a 2013 blackout of one station for 212 days and a 2015 dispute that blacked out 125 stations.¹⁷ And in 2016, Sinclair paid a \$9.5 million settlement to resolve a Commission investigation into numerous instances in which Sinclair allegedly conducted prohibited joint retransmission consent negotiations on behalf of non-commonly-owned stations in the same market.¹⁸

Going forward, a combined Sinclair/Tribune would have leverage to extract even higher retransmission consent rates. The proposed transaction would allow Sinclair to control multiple top-four networks in many local markets, enabling Sinclair to threaten devastating dual blackouts that could result in the loss of “must have” programming for consumers. In a 2016 Industry Report, SNL Kagan noted that stations with multiple top-four networks charge above average rates and that “major affiliate group owners like Sinclair . . . will be able to push second-tier network affiliate station rates higher than the average duopoly markets with a major network

¹⁶ See Cynthia Littleton, *Sinclair Broadcast Group Sets \$3.9 Billion Deal to Acquire Tribune Media*, Variety, May 8, 2017, <http://variety.com/2017/tv/news/sinclair-tribune-merger-station-group-1202416416/>.

¹⁷ In 2013, Sinclair blacked out an NBC affiliate on Buckeye Cable for 212 days. See Press Release, American Cable Association, *ACA Condemns Sinclair TV’s 212-Day Blackout of Buckeye CableSystem Customers* (July 15, 2014), <http://www.americancable.org/aca-condemns-sinclair-tvs-212-day-blackout-of-buckeye-cablesystem-customers/>. In 2015, it blacked out 125 stations on Dish in 76 markets. See Erik Pedersen and Dominic Patten, *Blackout News: FCC Chair Calls Dish Network & Sinclair to Meeting to End Dispute – Update*, Deadline, Aug. 26, 2015, <http://deadline.com/2015/08/dish-network-sinclair-blackout-1201506316/>. This year, it blacked out ABC affiliates in multiple markets on Frontier. See *Sinclair, Frontier End Blackout*, Broadcasting & Cable, Feb. 9, 2017, <http://www.broadcastingcable.com/news/local-tv/sinclair-frontier-end-blackout/163230>.

¹⁸ See *Sinclair Broadcast Group, Inc.*, Order, 31 FCC Rcd. 8576 (2016). Sinclair was required to (1) pay a settlement of \$9.5 million; (2) appoint a compliance officer; (3) implement a three-year compliance plan; and (4) submit biannual compliance reports and lists of stations with which it has JSAs, LMAs, and SSAs. *Id.* ¶¶ 13, 14, 16, 18. And in 2001, the FCC fined Sinclair \$40,000 for rule violations related to illegal exercise of de facto control over Glencairn Ltd. See *Glencairn, Ltd. And Sinclair Acquisition Group*, Memorandum Opinion and Order and Notice of Apparent Liability, 16 FCC Rcd. 22236 ¶¶ 23-30 (2001).

affiliate.”¹⁹ Indeed, a Sinclair investor presentation cited increased retransmission consent fees as a *benefit* of the transaction, touting “immediate contracted step-ups” to Sinclair’s net retransmission revenue.²⁰ And, as noted, these and other increases will translate into higher prices for consumers.²¹

IV. THE TRANSACTION WILL HARM INDEPENDENT PROGRAMMERS.

The transaction would also enable Sinclair to use its increased leverage to force MVPDs to carry – and pay increased licensing fees for – its affiliated cable networks, multicast broadcast signals, and planned ATSC 3.0 broadcast signals as a condition to renewing or carrying Sinclair’s ATSC 1.0 broadcast signals, which often include “must have” programming. These increased licensing fees, combined with the higher retransmission consent fees discussed above, would siphon off MVPD resources that could otherwise be used for independent programming. And Sinclair’s increased leverage would put downward pressure on licensing fees for *sellers* of

¹⁹ *Economics of Broadcast TV Retransmission Revenue*, SNL Kagan (Aug. 2016).

²⁰ Sinclair Broadcast Group Inc., Conference Call to Discuss its Definitive Agreement to Acquire Tribune Media Company, May 8, 2017 (3:00PM GMT). In addition, Sinclair has publicly stated that it plans to use its repacking reimbursement funds to upgrade its stations to ATSC 3.0 as quickly as possible. For example, during a call with investors, Sinclair’s CFO stated that “the repack will be timed with the 3.0 [transition]. So a lot of the 3.0 costs will be covered in the repack.” See Sinclair Broadcast Group Inc. Earnings Call, May 3, 2017 (1:30PM GMT). Sinclair’s increased size could empower it to condition retransmission consent for its ATSC 1.0 signals on MVPDs’ carriage of Sinclair’s planned ATSC 3.0 signals (including multicast signals), resulting in higher retransmission consent costs for MVPDs, and requiring MVPDs to undertake capital expenditures to upgrade cable systems before they are prepared to do so. Consumers will ultimately pay for these added costs.

²¹ The DOJ has recognized this precise theory of harm in prior local broadcast transactions. See, e.g., See Compl. ¶ 29, *United States v. Nexstar Broad. Group, Inc. & Media General Inc.*, No. 1:16-cv-01772 (D.D.C. Sept. 2, 2016) (“After the merger, an MVPD negotiating with Nexstar over a retransmission agreement could be faced with the prospect of a dual blackout of major broadcast networks (or worse), a result more likely to cause the MVPD to lose subscribers and therefore to accede to Nexstar’s retransmission fee demands. For these reasons, the loss of competition between the Nexstar and Media General stations in each DMA Markets would likely lead to an increase in retransmission fees in each DMA and, because increased retransmission fees typically are passed on to consumers, higher MVPD subscription fees.”) (emphasis added).

programming to the combined company as well, including many small and minority-owned production companies that sell content in syndication.²²

In addition, the increased carriage of Sinclair’s affiliated content— much of which may have little consumer demand or may not otherwise be carried by MVPDs – would consume an ever larger share of MVPD bandwidth, crowding out space for independent programming. Consumers would ultimately pay the price, as they would be offered less diverse content at higher rates.

Independent programmers have recently raised these same concerns with Sinclair’s *existing* leverage and ability to coerce MVPDs to expand carriage of Sinclair-affiliated networks. For example, One World Sports has said it understands that “Sinclair Television’s recent acquisition of The Tennis Channel was predicated on its strategy of leveraging the retransmission consent rights of Sinclair’s many broadcast stations to coerce MVPDs to agree to greatly expanded carriage of The Tennis Channel.”²³ And INSP, citing Sinclair’s acquisition of The Tennis Channel, noted that “conglomerates [are] overwhelmingly dominating the acquisition pattern and further strengthening their hold on the multichannel marketplace.”²⁴ The proposed transaction would not only exacerbate these harms, but also potentially cause a chain reaction of industry consolidation as other entities strive to match Sinclair’s leverage, making it even more difficult for independent programmers to negotiate for the carriage and licensing fees necessary for their survival.

²² Sinclair plans to use the transaction as leverage for buying syndicated programming. In an investor presentation discussing the transaction, CEO Christopher Ripley stated: “[S]yndicated programming is vital for our stations . . . And this transaction will add significant heft on the buying and ownership side.” Sinclair Broadcast Group Inc., Conference Call to Discuss its Definitive Agreement to Acquire Tribune Media Company, May 8, 2017 (3:00PM GMT).

²³ See Reply Comments of One World Sports, MB Docket No. 16-41, at 4-5 (filed Apr. 19, 2016).

²⁴ See Comments of INSP, LLC, MB Docket No. 16-41, at 16 & n.16 (filed Jan. 26, 2017).

V. THE TRANSACTION WILL UNDERMINE DIVERSITY AND LOCALISM WHILE REWARDING A COMPANY THAT DISREGARDS FCC RULES AND POLICIES.

As the Commission has observed, “[t]he Supreme Court has repeatedly emphasized the Commission’s duty and authority under the Communications Act to promote diversity and competition among media voices: It has long been a basic tenet of national communications policy that ‘the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.’”²⁵ Approval of the proposed transaction would undermine this important public interest goal by furthering the spread of Sinclair business practices that threaten localism and diversity.

Sinclair has a reputation for slashing budgets and downsizing newsrooms. For example, after acquiring Seattle’s KOMO in 2013, Sinclair laid off 20 employees and has since eliminated at least 10 more positions at the news station.²⁶ After acquiring Portland’s KATU in 2013, Sinclair cut nine newsroom positions and four employees from other departments.²⁷ More recently, Sinclair cut dozens of local news positions at its owned stations in 2016, including veteran journalists and investigative teams.²⁸ Other recent newsroom layoffs have occurred at

²⁵ EchoStar-DirecTV HDO ¶ 26 (quoting *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 663 (1994)); see also *United States v. Midwest Video Corp.*, 406 U.S. 649, 668 n.27 (1972).

²⁶ See Sydney Ember, *Sinclair Requires TV Stations to Air Segments That Tilt to the Right*, N.Y. Times, May 12, 2017, <https://www.nytimes.com/2017/05/12/business/media/sinclair-broadcast-komo-conservative-media.html>. Shortly after Sinclair acquired KOMO, several meeting attendees reported that Sinclair Executive Chairman David Smith told newsroom employees that everybody at Sinclair “works for sales” and that the most important people at the station were the salespeople, not reporters or anchors. See Felix Gillette, *The Sinclair Revolution Will Be Televised. It’ll Just Have Low Production Values*, Bloomberg, July 20, 2017, <https://www.bloomberg.com/news/features/2017-07-20/the-sinclair-revolution-will-be-televised-it-ll-just-have-low-production-values>.

²⁷ Steve Duin, *As Sinclair Expands Nationwide, The Cuts Are Deep At KATU*, The Oregonian, Oct. 22, 2013, http://www.oregonlive.com/news/oregonian/steve_duin/index.ssf/2013/10/steve_duin_katu.html; Editorial: Media Consolidation decimates KOMO 4, Seattle Times, Oct. 28, 2013, http://old.seattletimes.com/html/editorials/2022143451_fcclinclairconsolidationedit22.xml.html.

²⁸ Paul Farhi, *Here’s What Happened The Last Time Sinclair Bought A Big-City Station*, Wash. Post, May 8, 2017, http://wapo.st/2pUniLM?tid=ss_tw&utm_term=.6246acabed5a; Rachel Lerman, *KOMO Cuts Positions In*

other Sinclair stations, including WLOS in Asheville; WBFF in Baltimore; WBMA in Birmingham; WCIV in Charleston, SC; WCHS in Charleston, WV; WGFL in Gainesville, FL; WOAI in San Antonio; WSBT in South Bend; WNWO in Toledo; and WPEC in West Palm Beach.²⁹ And Sinclair has made clear it expects to achieve at least \$100 million in similar “synergies” as a result of the transaction.³⁰

Sinclair has also faced criticism for imposing “must-runs” on local broadcast stations,³¹ and has a reputation for blurring the lines between journalism and paid advertising content. In 2007, the Commission issued a \$36,000 Notice of Apparent Liability against Sinclair for “willfully and repeatedly violating Section 73.1212(d) of the Commission’s rules,” for

Newsroom, Seattle Times, Jan. 5, 2017, <http://www.seattletimes.com/business/technology/komo-cuts-positions-in-newsroom/>.

²⁹ Kevin Eck, *Longtime WLOS Anchor Out at Sinclair Station*, AdWeek, Jan. 5, 2017, <http://www.adweek.com/tvspy/longtime-wlos-anchor-out-at-sinclair-station/183705>; Kevin Eck, *Sinclair Chops More in Baltimore*, AdWeek, Jan. 13, 2017, <http://www.adweek.com/tvspy/sinclair-chops-more-in-baltimore/184188>; Bob Carlton, *Sportscaster Mike Raita, News Anchor Linda Mays Let Go At Birmingham TV Station ABC 33/40*, AL.com, Jan. 13, 2017, http://www.al.com/entertainment/index.ssf/2017/01/longtime_birmingham_sportscast.html; Scott Jones, “*They Fired Me*,” FTVLIVE (Feb. 9, 2017), <http://www.ftvlive.com/sqsp-test/2017/2/9/they-fired-me>; Scott Jones, *Sinclair Sacks Another One*, FTVLIVE (Jan. 20, 2017), <http://www.ftvlive.com/sqsp-test/2017/1/20/sinclair-sacks-another-one>; Kevin Eck, *News Director Out at Sinclair’s Gainesville Station*, AdWeek, Jan. 24, 2017, <http://www.adweek.com/tvspy/news-director-out-at-sinclair-gainesville-station/184677>; Jeanne Jakle & Richard A. Marini, *S.A. Anchorwoman Evy Ramos Said She Was Fired From WOAI-TV*, MySanAntonio.com, Jan. 20, 2017, <http://www.mysanantonio.com/entertainment/article/Anchorwoman-Evy-Ramos-no-longer-at-the-WOAI-TV-10856714.php>; Dan McGowan, *TV News Share-Up in South Bend*, Inside Indiana Business, July 26, 2016,, <http://www.insideindianabusiness.com/story/32532520/tv-news-shake-up-in-south-bend>; Kirk Baird, *TV Station In Toledo Outsources Most Work*, The Blade, Nov. 30, 2016, <http://www4.toledoblade.com/TV-Radio/2016/11/30/TV-station-in-Toledo-outsources-most-work.html>; Scott Jones, *Sinclair Drops Palm Beach Anchor, Others Sacked As Well*, FTVLIVE, Jan. 10, 2017, <http://www.ftvlive.com/sqsp-test/2017/1/9/sinclair-drops-palm-beach-anchor>.

³⁰ See, e.g., Sinclair Broadcast Group Inc., Conference Call to Discuss its Definitive Agreement to Acquire Tribune Media Company, May 8, 2017 (3:00PM GMT); Sinclair Broadcast Group Inc., Investor Presentation (May 8, 2017), http://sbgi.net/wp-content/uploads/2017/05/Sinclair_Tribune-Media-Investor-Presentation_vF.pdf; Sinclair Broadcast Group Inc., Registration Statement (Form S-4) at 68-72 (June 30, 2017).

³¹ See, e.g., Sydney Ember, *Sinclair Requires TV Stations to Air Segments That Tilt to the Right*, N.Y. Times, May 12, 2017, https://www.nytimes.com/2017/05/12/business/media/sinclair-broadcast-komo-conservative-media.html?_r=1. Sinclair has been engaging in these practices for years. See, e.g., Paul Farhi, *TV’s News Central: One Source Fits All*, Wash. Post, May 31, 2003, https://www.washingtonpost.com/archive/politics/2003/05/31/tvs-news-central-one-source-fits-all/afe7d23b-72da-40b2-a609-8a9e052a7395/?tid=a_inl&utm_term=.e68985cb15c4.

airing material without disclosing the sponsorship relationship.³² More recent reported instances of Sinclair playing fast-and-loose with the Commission’s paid promotion rules include segments on Washington D.C.’s WJLA as part of a broader tourism promotion deal across Sinclair stations; an on air “bloop” of a traffic reporter at Baltimore’s WBFF at a drive-through window reported to be part of an ad deal; and nationwide must-runs celebrating a Salt Lake City cancer research and treatment facility that aired for months without disclosing that it was a paid promotion.³³

VI. CONCLUSION

The Applicants have said that they are prepared to divest local broadcast stations to come into compliance with the Commission’s local and national broadcast ownership rules. As discussed above, statements that Sinclair executives have made elsewhere suggest the combined company has other intentions and believes it can get away with no divestitures. But even divestitures would be insufficient to address the public interest harms associated with a mega-Sinclair that reaches over 70% of U.S. households. A post-deal Sinclair will be positioned to make extortionate “take it or leave it” fee offers – backed up by the threat of massive nationwide blackout liability – that no pay-TV company could resist.

The only way to protect consumers is to impose far more direct limits on the new Sinclair’s ability to demand above-market local television fees and address the other public interest harms detailed above.

³² *Sonshine Family Television; Sinclair Broadcast Group, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 07-152, ¶ 17 (rel. Oct. 18, 2007).

³³ See Gillette, Bloomberg (July 20, 2017).

CERTIFICATE OF SERVICE

I, Ellen Schned, hereby certify that on August 7, 2017, a true and correct copy of the foregoing Petition to Deny was filed with the Federal Communications Commission and copies were served by e-mail upon the following:

Mace J. Rosenstein
Covington & Burling LLP
One City Center 850 Tenth Street, NW
Washington, D.C. 20001
mrosenstein@cov.com

Miles S. Mason
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street, NW
Washington, DC 20036
miles.mason@pillsburylaw.com

David Roberts
Federal Communications Commission
Video Division, Media Bureau
445 12th Street, SW
Washington, D.C. 20554
David.Roberts@fcc.gov

David Brown
Federal Communications Commission
Video Division, Media Bureau
445 12th Street, SW
Washington, D.C. 20554
David.Brown@fcc.gov

/s/ _____
Ellen Schned

August 7, 2017