

**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)
)

PETITION TO DISMISS OR DENY OF NEWSMAX MEDIA

I. INTRODUCTION AND SUMMARY

Pursuant to Sections 309(d) and 310(d) of the Communications Act of 1934, as amended, Newsmax Media, Inc. (“Newsmax”) respectfully urges the Commission to deny the merger of Sinclair Broadcast Group (“Sinclair”) and Tribune Media Company (“Tribune,” and together, the “Applicants”).¹

This transaction creates an unprecedented concentration of power in the hands of one broadcaster while setting the stage for other television broadcast networks to amass similar market penetration. A free and diverse press, a bedrock principle of American democracy, will be crippled by this proposed merger. The Federal Communications Commission is seeking to enable this transaction through regulatory sleight of hand, an approach that will end decades of bipartisan consensus on the importance of limiting television broadcast networks’ market reach and, consequently, their influence and power. The Commission’s approval of this merger

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”).

blatantly subverts congressionally mandated media ownership rules. As a result, the level of media concentration proposed by this transaction will homogenize the content available to US consumers, eliminate unique viewpoints and reduce press diversity, especially in the delivery of local news. These actions cannot be justified under the FCC's public interest standard and this the transaction should be denied.

II. THE TRANSACTION WILL HARM INDEPENDENT VOICES AND THREATENS A DIVERSE MEDIA LANDSCAPE

Democracy demands access to a panoply of voices from a variety of viewpoints. If this transaction is approved, the FCC will allow a single entity to reach 72% of U.S. households, operate 233 local broadcast stations (78 more than the its nearest competitor), and broadcast in 108 local markets (including key markets like New York, Los Angeles, Chicago, Philadelphia, and Dallas). The Commission's move will effectively end the concept of ownership caps, instituted during the Reagan administration, which then allowed networks to reach no more than 25% of U.S. household while owning no more than 12 stations. The harm to democracy by the proposed merger will be immeasurable. The proposed transaction will cause a chain reaction of industry consolidation as other industry participants respond to Sinclair's monopolization of the media marketplace. These transactions will continue a downward trend in which unique and diverse voices are replaced by megaphones for a handful of corporate entities. According to the Pew Center, 71% of Americans watch local news, the most watched news broadcasts in the nation.² Today, a diverse number of broadcast stations and station groups provide local news to

² Pew found that among TV news viewers, 71% watch local television news, 65% view network newscasts and 38% of adults watch some cable news during the month. Kenneth Olmstead et al., *How Americans Get TV News at Home* Pew Research Center's Journalism Project(2013), <http://www.journalism.org/2013/10/11/how-americans-get-tv-news-at-home/> (last visited Aug 7, 2017).

consumers. It is important to note that the internet and technological transformation has not led to the creation of new local television news providers. Local broadcast stations will continue to hold a monopoly or near monopoly for local news offerings, at least for the foreseeable future. By effectively gutting all media ownership regulations through the approval of this transaction, Sinclair (followed shortly other major broadcast corporations like Nexstar, CBS, Fox, NBC, Tenga and Disney will be allowed to dramatically increase their market penetration by acquiring more stations. By doing so, a handful of media conglomerates will have effective control over all local news production, nationwide. Such a likelihood will effectively end local news diversity, thwarting the intent of the ownership caps promulgated by an act of Congress.

The proposed merger offers consumers other significant harm, including allowing broadcast content providers to gain enormous leverage to demand higher license fees for their station's retransmission from cable operators (a cost that will inevitably be passed on to MVPD subscribers) and to demand carriage of the broadcast networks wholly-owned cable channels, further reducing the limited market space now available to independent cable operators

III. GIVEN THE IMPACT ON MEDIA DIVERSITY IT IS PREMATURE FOR THE COMMISSION TO CONSIDER THIS TRANSACTION.

The extent to which a single entity should be able to utilize this spectrum to control the content American television audiences consume is a political question that has historically been decided by legislators, not bureaucrats. As the Commission knows, the current 39% national media ownership cap was not determined by the agency, but by Congress in the Consolidated Appropriations Act, 2004.³ The cap that preceded it, the 35% national ownership cap, was also

³ See Section 629 of PL 108-199

determined by Congress as part of the Telecommunications Act of 1996.⁴ Now, while admitting that “the technical basis for the UHF discount no longer exists”⁵ the FCC has taken herculean steps to undermine the Congressional intent of these national ownership caps by reinstating the obsolete UHF discount.

Both Chairman Pai and the Applicants have noted the Commission may take up a proceeding to modify existing media ownership rules.⁶ Specifically, Chairman Pai noted that “[l]ater this year, the Commission will launch a new proceeding that will broadly consider both whether the national ownership cap should be modified and whether the UHF discount should be retained. Any decision on whether the UHF discount remains necessary will be based on the facts compiled in that proceeding along with the relevant law.”⁷ In a period of less than 12 months, the FCC has sunset the UHF discount, reinstated it on reconsideration and announced to Congress plans to reexamine the practicality of the UHF discount. As Newsmax and others have already noted, it defies logic for the FCC to review a merger predicated upon the UHF discount while the agency rulemaking on that issue is not fully determined.⁸ For a Commission that preaches regulatory certainty, the timing of the review of this transaction is not only

⁴ See Section 202 of PL 104-104

⁵ See Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule, MB Docket No. 13-236 Dissenting Statement of Commissioner Ajit Pai at 3 (August 24, 2016).

⁶ 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. See questions of Senator Roy Blunt, Nominations Hearing United States Senate Committee on Commerce Science & Transportation July 19, 2017.

⁷ Id

⁸ Newsmax has 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)

incompressible, but gives the appearance of benefitting one broadcast network, Sinclair, to the detriment of long held precedent, legislative intent, competition, consumer cost, and a core principle of our democracy – a free and diverse press. The highly unusual and unprecedented actions in relation to the merger have already undermined public confidence in the Commission. An approval of this merger will demonstrate a politicization of the Commission that seriously harms the public interest.

The better approach - and the path forward that is more congruent with regulatory certainty and transparent government - would be to finalize rulemakings on the UHF discount or seek new Congressional action relating to the national ownership cap before proceeding to a historic transaction that appears to flout the intent of Congress and a long-held bipartisan consensus on the limitations of broadcast media ownership.

IV. CONCLUSION

The FCC should dismiss this application and complete a full review of the agency's media ownership rules before moving forward. If the outcome of that media ownership rulemaking allows a single entity to control more than 70% of American television households, the Applicants can resubmit their application to the FCC at that time. However, if the FCC chooses to move forward, the proposed transaction should be denied on its face. It cannot be justified under the confines of the public interest standard and is only enabled by apparent political rulemaking.

Respectfully submitted

/s/

John B. Simpson
Consultant to Newsmax Media, Inc

CERTIFICATE OF SERVICE

I, John B. Simpson 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:

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