



Pillsbury Winthrop Shaw Pittman LLP  
1200 Seventeenth Street NW | Washington, DC 20036-3006 | tel 202.663.8000 | fax 202.663.8007

Miles S. Mason  
tel: 202.663.8195  
miles.mason@pillsburylaw.com

**REDACTED – FOR PUBLIC INSPECTION**

August 22, 2017

***Via ECFS***

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Tribune Media Company and Sinclair Broadcast Group, Inc.,  
Consolidated Applications for Consent to Transfer Control, MB  
Docket No. 17-179**

Dear Ms. Dortch:

In accordance with the *Protective Order* in the above-captioned proceeding,<sup>1</sup> Sinclair Broadcast Group, Inc. and Tribune Media Company (collectively, the “Applicants”) submit the enclosed public, redacted version of Applicants’ Consolidated Opposition to Petitions to Deny (“Opposition”), including supporting exhibits. The Applicants have denoted with {{Begin HCI  
END HCI}} where Highly Confidential Information has been redacted. The Highly Confidential Information in the Opposition and supporting exhibits is the Highly Confidential Information of the Applicants and, where Applicants reference Highly Confidential Information contained in DISH Network L.L.C.’s (“DISH”) Petition to Deny, of DISH. A Highly Confidential version of this filing is being filed with the Commission and will be made available pursuant to the terms of the *Protective Order*.

Respectfully submitted,

/s/ Miles S. Mason

Miles S. Mason

*Counsel for Sinclair Broadcast Group, Inc.*

Enclosure

---

<sup>1</sup> *Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee) Consolidated Applications for Consent to Transfer Control, MB Docket No. 17-179, Protective Order, DA 17-678 (July 14, 2017).*

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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

**APPLICANTS' CONSOLIDATED OPPOSITION TO PETITIONS TO DENY**

Miles S. Mason  
Jessica T. Nyman  
Joseph A. Cohen  
**PILLSBURY WINTHROP SHAW PITTMAN LLP**  
1200 Seventeenth Street, NW  
Washington, D.C. 20036  
202-663-8195  
*Counsel to Sinclair Broadcast Group, Inc.*

Mace Rosenstein  
Ann West Bobeck  
Mark Chen  
**COVINGTON AND BURLING LLP**  
One CityCenter  
850 Tenth Street, NW  
Washington, D.C. 20001  
202-662-5460  
*Counsel to Tribune Media Company*

August 22, 2017

**SUMMARY**

As Sinclair and Tribune have demonstrated, the proposed transaction will serve the public interest in myriad ways, including by advancing the health and sustainability of free, over-the-air broadcast television and the benefits that medium provides to the viewing public. In a challenging media landscape in which broadcasters face growing competitive pressures from online streaming services that produce their own compelling content, massive national or near-national MVPDs (such as DISH Network), consolidated cable programming networks, and other sources, the natural synergies of bringing Sinclair and Tribune together will enable the combined company to invest in unique programming that addresses the news, information, and public safety needs of local communities—programming that will continue to be completely free for the tens of millions of households that do not or cannot subscribe to a paid multi-channel video service.

In overlooking these public interest benefits, the petitions to deny filed in this proceeding suffer from two primary flaws: (1) they rely on speculative assumptions and exaggerations that lack any basis in fact, and (2) petitioners' arguments are entirely inappropriate in an adjudicatory proceeding like this one. The petitions should accordingly be dismissed and denied and the applications for Commission consent to Sinclair's acquisition of Tribune should be promptly approved.

As is demonstrated in the applications and reiterated in more detail herein, the proposed transaction will generate substantial public interest benefits. Among other things, the efficiencies and economies that the transaction will create will make possible investments in programming initiatives that are generally not otherwise economically feasible. As but some examples of the quantifiable and transaction-specific benefits detailed below, Sinclair's

Washington, D.C. News Bureau and other unique resources such as *Connect to Congress* will virtually transport viewers in Tribune markets to their Representatives and Senators in the nation's capital. Additionally, those stations in Tribune markets will be able to direct more resources to covering local news stories. Petitioners' allegations of harm are entirely unsupported by facts and are merely based on hearsay and innuendo (and a number of them raise obvious First Amendment viewpoint discrimination issues).

Indeed, Sinclair has continuously demonstrated a strong record of broadcasting in the public interest. Petitioners attempt to minimize the relevance of Sinclair's stations' strong ratings and numerous awards; but these are proof positive of Sinclair's dedication to its local viewers and their appreciation thereof. Petitioners can point to nothing suggesting that Sinclair will fail to bring this same dedication to broadcasting excellence to Tribune markets.

Moreover, despite claims to the contrary, none of the petitioners provides a shred of evidence demonstrating that the post-merger company will violate any Commission rule. Instead, a number of petitioners ignore or blatantly mischaracterize the applicants' repeated commitment to take actions as necessary to comply with the Commission's rules. In so doing, petitioners attempt to circumvent the rulemaking procedures and beseech the Commission to ignore rules and precedent they don't like, and to apply stricter standards in reviewing this transaction. There is, of course, no legitimate reason to treat this transaction disparately from prior transactions where applicants have committed to complying with applicable Commission rules.

Petitioners' retransmission consent arguments are self-serving and unsupported. Moreover, the Commission has consistently ruled that the proper forum to make such arguments is a rulemaking proceeding, and not a transaction-specific docket such as this one.

At bottom, each of the petitioners is either trying to use this proceeding to stifle competition for its own economic interests or is still living in a pre-cable, pre-internet, pre-smartphone world, untethered from the economic realities of the current media market. Sinclair and Tribune ask the Commission to see these transparent and/or naïve attempts for what they are, dismiss or deny the petitions in full, and grant consent to the proposed transaction.

	Page
<b>I. INTRODUCTION .....</b>	<b>1</b>
<b>II. STANDARD OF REVIEW .....</b>	<b>2</b>
<b>III. ARGUMENT .....</b>	<b>4</b>
<b>A. Grant of the Transaction Is in the Public Interest .....</b>	<b>4</b>
1. <i>The Transaction supports the survival of free and local over-the-air television. ....</i>	<i>4</i>
2. <i>Sinclair has a history of investment in the stations it acquires. ....</i>	<i>8</i>
3. <i>The Transaction and the combined operations of the Applicants will produce significant specific benefits to the public. ....</i>	<i>10</i>
4. <i>Petitioners offer no transaction-specific harms. ....</i>	<i>14</i>
<b>B. Sinclair Has Demonstrated Its Continuing Commitment and Ability to Produce Quality News, and Will Extend That Same Commitment to Quality Programming to the Tribune Stations. ....</b>	<b>18</b>
<b>C. The Transaction Is Fully Consistent With Commission Rules and Precedent .....</b>	<b>21</b>
<b>D. Petitioners’ Retransmission Consent Arguments Are Erroneous, and in any Event, Irrelevant to this Proceeding .....</b>	<b>26</b>
1. <i>Petitioners distort the history and current state of the retransmission consent marketplace. ....</i>	<i>27</i>
2. <i>Allowing Sinclair to grow in accordance with the Commission’s ownership rules would not give Sinclair undue bargaining leverage. ....</i>	<i>31</i>
<b>E. Petitioners’ Argument that the Transaction Will Give Sinclair Too Much National Control at the Expense of Local Control Has No Merit .....</b>	<b>41</b>
<b>F. Allegations that Sinclair Intends to Delay the Post-Auction Transition Are Absurd and Unfounded. ....</b>	<b>42</b>
<b>G. Petitioners Are Motivated By Self-Interest, Rather Than Public Interest .....</b>	<b>44</b>
<b>IV. CONCLUSION .....</b>	<b>47</b>

- Exhibit A:** Investments in Allbritton and Fisher
- Exhibit B:** Investments in Local News
- Exhibit C:** Sample of *Connect to Congress* interviews
- Exhibit D:** Sample of Town Halls
- Exhibit E:** Declaration of Gautam Gowrisankaran
- Exhibit F:** Market Cap Chart
- Exhibit G:** Declaration of Barry Faber
- Exhibit H:** Declaration of Scott Livingston
- Exhibit I:** Declaration of Steve Marks

## I. INTRODUCTION

Sinclair Broadcast Group, Inc. (“Sinclair”) and Tribune Media Company (“Tribune,” and together with Sinclair, the “Applicants”) hereby oppose the petitions to deny (collectively, the “Petitions”)<sup>1</sup> filed in the above-referenced proceeding.<sup>2</sup>

The Petitions were filed in connection with applications (the “Applications”) seeking FCC consent to the transfer of control of Tribune, as necessary to permit a transaction (the

---

<sup>1</sup> Petition to Dismiss or Deny of DISH Network, L.L.C. (“DISH”), MB Docket No. 17-179 (Aug. 7, 2017) (“DISH Petition”); Petition to Deny of the American Cable Association (“ACA”), MB Docket No. 17-179 (Aug. 7, 2017) (“ACA Petition”); Petition to Deny of NTCA-The Rural Broadband Association (“NTCA”), MB Docket No. 17-179 (Aug. 7, 2017) (“NTCA Petition”); Petition to Deny of the Competitive Carriers Association (“CCA”), MB Docket No. 17-179 (Aug. 7, 2017) (“CCA Petition”); Comments of T-Mobile USA, Inc. (“T-Mobile”), MB Docket No. 17-179 (Aug. 7, 2017) (“T-Mobile Comments”); Comments of the American Television Alliance (“ATVA”), MB Docket No. 17-179 (Aug. 7, 2017) (“ATVA Comments”); Petition to Deny of Free Press, MB Docket No. 17-179 (Aug. 7, 2017) (“Free Press Petition”); Petition to Deny of Public Knowledge, Common Cause, and the United Church of Christ, OC Inc. (“Public Knowledge”), MB Docket No. 17-179 (Aug. 7, 2017) (“Public Knowledge *et al.* Petition”); Comments of Cinémoi, RIDE Television Network, Awe – A Wealth Of Entertainment, MAVTV Motor Sports Network, One America News Network, TheBlaze and Eleven Sports Network (“Independent Programmers”), MB Docket No. 17-179 (Aug. 7, 2017) (“Independent Programmer Comments”); Petition to Dismiss or Deny of Newsmax Media, Inc. (“Newsmax”), MB Docket No. 17-179 (Aug. 7, 2017) (“Newsmax Petition”); Petition to Deny of Steinman Communications, Inc. (“Steinman”), MB Docket No. 17-179 (Aug. 7, 2017) (“Steinman Petition”). Each of DISH, ACA, NTCA, CCA, T-Mobile, ATVA, Free Press, Public Knowledge, Independent Programmers, Newsmax, and Steinman, collectively referred to herein as, the “Petitioners.” We note that ATVA, Independent Programmers and T-Mobile filed comments rather than Petitions to Deny, but for the purposes of this Opposition we have included them in the definition of Petitioners.

<sup>2</sup> 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*, Public Notice, MB Docket 17-179, DA 17-647 (rel. July 6, 2017).

“Transaction”) pursuant to which Sinclair will acquire the licenses of television stations currently owned and operated by Tribune.<sup>3</sup>

As demonstrated below, the Petitions misunderstand the economics and market realities of the television broadcast industry, mischaracterize the Applications, misconstrue the purpose of this proceeding, fail to comprehend that Sinclair is one of the greatest champions for the continuation and growth of free over-the-air broadcast television, and, in the end, are based on little more than unsubstantiated speculation, innuendo, and blatant falsehoods that are irrelevant to the Commission’s reasoned review of the pending Applications. The Applicants have committed in the Applications to ensure that the Transaction will comply with the applicable FCC rules, and have more than demonstrated that the grant of the Applications is in the public interest. In that regard, the Applicants have agreed to voluntarily divest as necessary to comply with the local and national ownership cap rules. The UHF discount is in effect, and therefore must be considered in assessing the national audience reach following consummation of the Transaction. The grant of the Applications would be consistent with other transactions approved by the Commission, and the Petitions present no reason for this Transaction to be treated differently. Accordingly, consistent with precedent, the Commission should dismiss or deny the Petitions and approve the Applications.

## **II. STANDARD OF REVIEW**

A petitioner challenging grant of a transfer or assignment application is required to establish a *prima facie* case that grant of the application would be inconsistent with the public

---

<sup>3</sup> The Applicants seek consent to the transfer of control of Tribune’s 33 license subsidiaries to Sinclair. See FCC File No. BTCCDT-20170626AGH *et al.*, Comprehensive Exhibit at 1 (“Comprehensive Exhibit”).

interest.<sup>4</sup> Under Section 309(d)(1) of the Communications Act of 1934, as amended (the “Communications Act”), the Commission will “determine whether the petition and its supporting affidavits contain specific allegations of fact sufficient to show that a grant of the application would be prima facie inconsistent with the public interest.”<sup>5</sup> The petition “must show the necessary specificity and support; mere conclusory allegations are not sufficient.”<sup>6</sup>

If a petitioner can satisfy this threshold requirement, the Commission must then determine “on the basis of the application, the pleadings filed, or other matters which [the Commission] may officially notice,” if the petitioner has raised a substantial and material question of fact as to whether the grant of the application would serve the public interest.”<sup>7</sup>

Petitioners have not met either burden. The Petitions certainly claim that grant of the Applications would be inconsistent with the public interest, but fail to support that claim with any “specific allegations of fact.” The Petitions instead rely on broad speculation, factually incorrect premises, and inaccurate, misleading, and clearly biased newspaper articles and similar sources,<sup>8</sup> which the Commission has repeatedly held are the equivalent of hearsay and do not satisfy the personal knowledge and specificity requirements for a petition to deny required by Section 309(d) of the Communications Act.<sup>9</sup>

---

<sup>4</sup> See, e.g., *Astroline Communications Co., Ltd. Partnership v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988) (“Astroline”); 47 U.S.C. § 309(d).

<sup>5</sup> *North Idaho Broadcasting Company*, Memorandum Opinion and Order, 8 FCC Rcd 1637, 1638 (1993).

<sup>6</sup> *Kola, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 14297, 14305 ¶ 15 (1996) (quoting *Beaumont Branch of the NAACP v. FCC*, 854 F.2d 501, 507 (D.C. Cir. 1988)).

<sup>7</sup> *Astroline*, 857 F.2d at 1561; 47 U.S.C. § 309(e).

<sup>8</sup> See e.g., Free Press Petition at 20-26; see also DISH Petition at 47; see also CCA Petition at 27.

<sup>9</sup> See *Applications of DFW Radio License, LLC*, 29 FCC Rcd 804, 810 ¶ 16 (2014); see also *American Mobile Radio Corporation*, 16 FCC Rcd 21431, 21436 (2001) (“the Commission has

Moving beyond this lack of specific factual support (and the Commission need not, as that alone is fatal to the Petitions), many of the arguments made in the Petitions are inappropriate in an adjudicatory proceeding, as they argue not to apply the Commission’s rules, but to change or simply ignore those rules.<sup>10</sup> The Commission has repeatedly stated that where a petitioner urges the Commission to ignore the language of its rules in order to reach the result petitioner seeks, the appropriate forum is not an adjudicatory proceeding, but a rulemaking proceeding.<sup>11</sup> As a result, these claims and arguments have no place in the Commission’s review of the Applications.

### III. ARGUMENT

#### A. Grant of the Transaction Is in the Public Interest.

1. *The Transaction supports the survival of free and local over-the-air television.*

---

consistently held that newspaper and magazine articles are the equivalent of hearsay and do not meet the specificity and personal knowledge requirements in a petition to deny.”). Under Section 309(d) of the Communications Act, a petition to deny an application must contain “specific allegations of fact sufficient to show that . . . a grant of the application would be prima facie inconsistent with [the public interest, convenience, and necessity]. Such allegations of fact shall . . . be supported by affidavit of a person . . . with personal knowledge thereof. 47 U.S.C. § 309(d); *see also North Idaho Broadcasting Co.*, 8 FCC Rcd at 1638 (quoting *Gencom Inc. v. FCC*, 832 F.2d 171, 180 n.11) (Allegations that consist “of ultimate, conclusionary facts or more general allegations on information and belief, supported by general affidavits . . . are not sufficient” to establish a prima facie case). Free Press’s Petition in particular ignores this standard by filing numerous nearly identical affidavits clearly based on a form statement with baseless allegations and conjecture, all failing to produce any actual factual knowledge of the affiant.

<sup>10</sup> For example, NTCA argues against the “skewed retransmission consent rules.” NTCA Petition at 6.

<sup>11</sup> *Spanish Radio Network*, 10 FCC Rcd 9954, 9556 ¶ 9 (1995) (“Insofar as Miami Petitioners would have the rule recast so as to prohibit broadcast concentration in a market defined by language comprehension, the appropriate course of action is to request that the Commission institute a generic rulemaking proceeding to change its multiple ownership rules and policies.”) (*citing Patteson Brothers, Inc.*, 8 FCC Rcd 7595, 7596 (1993)).

The Transaction is in the public interest for myriad reasons outlined in the Applications and discussed further below, not the least of which is that it advances the health and sustainability of free over-the-air broadcast television, and the benefits that medium provides to the viewing public. There can be no doubt that a healthy local broadcast industry serves the public interest—as the Commission has many times recognized<sup>12</sup>—by uniquely addressing the news, information, and public safety needs of local communities and by doing so completely for free for the tens of millions of households that do not or cannot subscribe to a paid multi-channel video service. Today, the local broadcast industry is significantly challenged by declines in its primary revenue stream, local advertising, as well as other profound changes in the media ecosystem. These challenges include the consolidation and presence of MVPDs with nationwide or virtually nationwide footprints, the consolidation of national programming networks, the rapidly increasing cost of programming, including from national broadcast networks, the fragmentation of viewership, and the entry of massive competitors, such as Apple, Google, Netflix and Facebook, into the programming space.<sup>13</sup> To the extent that Petitioners complain about the impacts of the combined size of Sinclair and Tribune, the reality is this would be true of any large television broadcaster that acquired Tribune. Broadcasting is a mature industry that faces a challenging competitive landscape (including from cable programmers, highly

---

<sup>12</sup> See John Eggerton, “Pai: A Healthy Broadcast Industry Is in Public Interest,” *BroadcastingCable* (June 12, 2017) ( <http://www.broadcastingcable.com/news/washington/pai-healthy-broadcast-industry-public-interest/166467> (last visited Aug. 21, 2017)).

<sup>13</sup> For example, recent press reports indicate that Apple has committed to spending \$1 billion on producing original programming over the next year, and Netflix and Amazon have committed \$7 billion and \$4.5 billion, respectively, in the next year alone. See Richard Morgan, “Apple’s \$1B bet on original content isn’t much of a gamble,” *N.Y. Post* (Aug. 16, 2017), <http://nypost.com/2017/08/16/apples-1b-bet-on-original-content-isnt-much-of-a-gamble/> (last visited, Aug. 17, 2017).

consolidated MVPDs, over-the-top providers, and other sources of compelling content), and the synergies that result from growing scale as a broadcaster in that environment make it natural that another large broadcaster with a similar size would be Tribune's merger partner—rather than, for example, other media, tech, telecom, or non-broadcast companies. Public reports on the bidding process for Tribune confirm this dynamic.<sup>14</sup> In effect, Petitioners would have the Commission prohibit broadcasters from attaining the scale that increasingly is necessary to compete against much larger rivals in the media sector, including nationwide MVPDs like DISH, even when those transactions are fully consistent with U.S. antitrust laws. Petitioners ignore the reality of the television broadcasting business in 2017, with rapidly increasing competition and alternative video options for viewers that did not exist 20 or even 10 years ago.

If broadcast companies, with their distinctly local focus and presence, are going to be able to continue to serve their communities, they will need to grow in size and scale to have the resources to invest in local news and sports (among other programming) and to advance and leverage technological innovation. In short, the opponents to this deal have things backwards. Far from disserving the public interest, the combination of Tribune and Sinclair will advance that interest by strengthening local broadcasting's ability to compete in the modern media landscape and by staving off the devastating pressures that have decimated the newspaper business.

Sinclair is a true broadcaster in every sense of the word—one that believes in local broadcasting's mission and its future. Sinclair was founded by engineers and is a broadcast-first company, whose past behavior has aptly demonstrated that it is willing to continue to invest in

---

<sup>14</sup> See, e.g., Linda B. Baker and Jessica Toonkel, *Sinclair Broadcast Nears Deal for Tribune Media*, Reuters, May 7, 2017 (reporting on negotiations between Sinclair and Tribune and reporting that other possible bidders at this stage were Nexstar Media Group and a joint venture of 21st Century Fox and Blackstone Group LP), <http://www.reuters.com/article/us-tribune-media-m-a-sinclair-exclusive-idUSKBN1830QH?il=0>.

the business in a manner and degree unmatched by others without Sinclair’s deep experience and technical resources. Sinclair is one of the only broadcasters dedicating significant engineering research and development to technical innovations to make full use of TV spectrum and to keep free over-the-air broadcasting thriving in the 21<sup>st</sup> century. While the Petitioners make general allegations about the “size” of the combined company, it is precisely this size that will allow Sinclair to compete with much larger companies offering competitive programming for a fee.<sup>15</sup> As the Applications point out, the Transaction will create efficiencies that will ultimately benefit the public. In a world of rapidly increasing video competitors, scale is not the enemy of broadcasting, stagnation is. Allowing broadcasters to grow as competition demands is essential to preventing broadcasting from suffering the same fate as the newspaper industry.

Sinclair cares deeply about the broadcast industry and the viewers that rely on it for high quality local and national news, entertainment and emergency information. In that regard, Sinclair knows well something that some Petitioners apparently do not (and that other Petitioners perhaps understand all too well): the efficiencies and geographic reach created by this

---

<sup>15</sup> Just this past week it was announced that Shonda Rhimes, one of the most prominent and successful female television producers in the business, will be leaving ABC for Netflix. Now if a viewer wants to see her new programs, they will have to pay ten dollars per month for it. The efficiencies and increased national footprint resulting from the Transaction will help the combined Sinclair-Tribune to compete with this new competition, and keep valuable programming free over-the-air. See Joe Flint, “Netflix Signs ‘Scandal’ Creator Shonda Rhimes Away From ABC, as Battle for Talent Escalates,” *Wall St. J.* (Aug. 14, 2017), <https://www.wsj.com/articles/netflix-signs-scandal-creator-shonda-rhimes-away-from-abc-as-battle-for-talent-escalates-1502683261> (last visited Aug. 15, 2017). Further, it has been reported that CBS has announced that two of its new programs for the fall, a new *Star Trek* series and a sequel to *The Good Wife*, will only be available on-line on CBS All Access. See Hayley Tsukayama and Sintia Radu, “Freedom from cable isn’t free: Flood of streaming services will make cutting the cord more complicated,” *Washington Post* (Aug. 11, 2017), [https://www.washingtonpost.com/business/economy/freedom-from-cable-isnt-free-flood-of-streaming-services-will-make-cutting-the-cord-more-complicated/2017/08/11/01f9ade0-7d1f-11e7-a669-b400c5c7e1cc\\_story.html?utm\\_term=.98121dc59199](https://www.washingtonpost.com/business/economy/freedom-from-cable-isnt-free-flood-of-streaming-services-will-make-cutting-the-cord-more-complicated/2017/08/11/01f9ade0-7d1f-11e7-a669-b400c5c7e1cc_story.html?utm_term=.98121dc59199) (last visited Aug. 17, 2017).

transaction will enable Sinclair to continue offering this programming for free over-the-air to those who cannot afford expensive pay-TV packages, the very people that certain Petitioners claim will be harmed by this transaction.<sup>16</sup> What the Petitioners are really protesting is not this proposed acquisition, but the long-standing ownership rules that would allow it. As noted above, Commission precedent is clear that the appropriate document for seeking such a result is a petition for rulemaking, not a petition to deny.<sup>17</sup>

2. *Sinclair has a history of investment in the stations it acquires.*

The FCC has in the past recognized that previous investments in local news programming indicate a commitment to investing in this type of programming in the future.<sup>18</sup> As the Applications demonstrate, recent acquisitions prove Sinclair’s dedication to investing in its stations. For example, since its acquisition of Fisher Broadcasting in 2013 and Allbritton Communications in 2014, Sinclair has invested \$40 million in capital expenditures in those stations.<sup>19</sup>

---

<sup>16</sup> See Free Press Petition at 22-23.

<sup>17</sup> See e.g., *Applications for Consent to Transfer of Control from Shareholders of Belo Corp. to Gannett Co., Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 16867, 16880 ¶ 31 (2013) (rejecting calls to address retransmission consent issues raised in an application proceeding, stating that “[w]e decline to address in this licensing order an issue posed in th[e] retransmission consent] rulemaking proceeding, at the behest of parties that petitioned to commence it”); see also e.g., *Local TV Holdings, LLC*, 28 FCC Rcd 16850, 16856 ¶ 13 (2013) (“*Local TV Holdings*”) (“The proper forum in which to seek changes in the way the Commission treats SSAs in general is a rulemaking.”).

<sup>18</sup> *Consent to Transfer Control of License Subsidiaries of Media General, Inc. from Shareholders of Media General, Inc. to Nexstar Media Group, Inc. et al*, Memorandum Opinion and Order, 32 FCC Rcd 183, 195 ¶ 29 (2016) (“*Media General/Nexstar*”) (“Applicants provided numerous instances of their previous investments in local news programming that indicate their commitment to investing in this type of programming.”).

<sup>19</sup> See Exhibit A.

Instead, Petitioners disproportionately focus on changes to on-air personalities and other staffing decisions, while neglecting to mention that while anchors may have been replaced or staffing may have been reduced at some stations, Sinclair has added staff and news programming to many of the stations it has acquired, and that the news ratings of a number of these stations are up in a very material way—indicative of the overall positive effect Sinclair has on the stations and programming decisions.<sup>20</sup> Over the past three years, Sinclair has increased its local news and other content by 221.5 hours per week.<sup>21</sup>

Further, Sinclair commits significant resources to local sports programming, which it intends to bring to the Tribune stations after consummation of the Transaction. Sinclair recognizes that sports are deeply embedded in American culture, and is deeply committed to connecting its viewers with local sports programming—from high school to college to the NFL. As Sinclair has grown in size through the acquisition of stations and station groups, its commitment to local sports programming has greatly expanded. Between 2012 and 2016, Sinclair added approximately 6,148 hours of local sports programming, including high school and college football and basketball, an increase of 373%.<sup>22</sup> Sinclair's growth has allowed it to increase production efficiencies across markets, and establish new programs such as High School

---

<sup>20</sup> Note that while Free Press alleges staff reductions at certain Sinclair stations (without any affidavits supporting the allegations), Petitioners have not shown evidence that staffing decisions have had a negative impact on Sinclair's station programming or its delivery of local news to its communities. *See* Free Press Petition at 21.

<sup>21</sup> *See* Exhibit B.

<sup>22</sup> *See* Declaration of Steve Marks (attached as Exhibit I) ¶ 3. During the 2016-2017 season alone, Sinclair aired 336 total football games across its stations, totaling approximately 1,008 hours of programming, and 101 total high school basketball games, totaling approximately 202 hours, including multiple state championship games in the following markets: Baltimore, Washington, DC, Charleston, Columbia, Greenville, Myrtle Beach, Savannah, Las Vegas, Reno, Nashville, Chattanooga, and Salt Lake City. Over 95% of these games aired during Prime Time. *Id.* ¶ 4.

Hoops and Thursday Night Lights/Friday Night Rivals.<sup>23</sup> In collaboration with local sponsors, Sinclair has created scholar athlete programs resulting in student scholarships and high school grants that are expected to exceed \$1,000,000 by the end of the 2017-2018 sports season.<sup>24</sup> Sinclair expects to increase the overall number of hours of high school sports on its stations again this year and to bring that same commitment to the Tribune stations and markets, which it sees as a significant public interest benefit to the Transaction.

3. *The Transaction and the combined operations of the Applicants will produce significant specific benefits to the public.*

In addition to the capital investments Sinclair notes above, the Applications present a number of transaction-specific public interest benefits of the proposed Transaction, some of which we will elucidate here.

(a) Sinclair's Washington, D.C. News Bureau

Tribune has a station licensed to the Washington-Hagerstown DMA, but no Washington, D.C. news bureau. Sinclair has a vibrant Washington, D.C. News Bureau that provides unique national content to its stations across the country and that will allow it to bring coverage of developments in Washington, D.C. that are relevant to viewers in the Tribune markets. The Washington, D.C. News Bureau contributes not only to the quantity and quality of information available to local viewers around the country, but adds to the diversity of viewpoints on national issues by providing a new voice in addition to those of ABC, NBC, and CBS, which currently dominate the national broadcast news offerings in most local markets. Sinclair's local stations

---

<sup>23</sup> See *id.* ¶ 5. Sinclair spends millions of dollars a year in promotion, production costs, and other commitments, including approximately \$4 million annually in production costs alone to broadcast local high school sports through its Thursday Night Lights/Friday Night Rivals programs.

<sup>24</sup> See *id.* ¶ 6.

provide the local perspective on these issues, and Sinclair plans to replicate this in the Tribune markets, which is unquestionably in the public interest. The Commission has previously found just such a Washington, D.C. News Bureau to be a significant public interest benefit of a proposed transaction and there is no reason for a different conclusion here.<sup>25</sup> Despite the Petitioners' arguments to the contrary, the ability to provide national news is a public interest benefit, not a detriment.<sup>26</sup> As described above, many stations have no Washington, D.C. presence, and must obtain news material from the aforementioned broadcast networks or national news services such as the AP. Further, the cost savings associated with a national news operation support localism by allowing more resources at the station level to be devoted to covering more local stories.

(b) Connect to Congress

In addition to its Washington, D.C. News Bureau, Sinclair has a unique offering in *Connect to Congress*, an initiative that gives Members of Congress direct access to their constituents from Washington, D.C. Sinclair has invested in the people and technology that virtually bring its local TV stations to the Capitol, allowing Members of Congress to be interviewed remotely by their local anchors and to appear on their local stations when news breaks on issues that matter most to the viewers back home. Since launching *Connect to Congress* in 2015, Sinclair has conducted hundreds of interviews with Senators and Representatives from both sides of the aisle and the popularity of this convenient way to appear

---

<sup>25</sup> *Media General/Nexstar*, 32 FCC Rcd at 194 ¶ 26-27 (recognizing “that the proposed transaction offers certain benefits related to the establishment of state news bureaus and access to the Washington DC news bureau . . .”).

<sup>26</sup> *Media General/Nexstar* 32 FCC Rcd at 195 ¶ 29 (finding “that increased access to reporting on federal and state policies and laws would increase the combined company’s viewers’ awareness of issues that may directly affect them.”).

on local TV stations continues to grow. As a result of the Transaction, the Tribune stations will be added to *Connect to Congress*, providing viewers in many additional markets a direct connection with their elected officials that they do not currently have. No other broadcaster offers Members of Congress this kind of immediate access to their districts in real time. A sampling of previous *Connect to Congress* interviews is set out in Exhibit C.

(c) Town Hall Initiative: *Your Voice Your Future*.

In 2012, Sinclair launched its Town Hall project. Since then Sinclair has produced over 400 community town halls, including 129 already in 2017 alone.<sup>27</sup> These town halls bring together civic leaders, local government, Members of Congress, community activists, and viewers to debate all sides of issues of local importance, often supplemented with web interaction and follow-on phone banks. The town halls cover topics ranging from local government elections to the heroin crisis, gun control, distracted driving, medical marijuana, drought, race relations, poverty, and state budget crises. Sinclair intends to expand its town halls to Tribune markets as an additional significant public interest benefit of the Transaction.

(d) The Addition of Tribune's News Gathering Resources

Tribune has a significant news gathering operation of its own, and in some markets Sinclair will be able to leverage Tribune's operations for the benefit of its existing stations. One such example is St. Louis,<sup>28</sup> where Sinclair does not currently air a traditional local newscast, but

---

<sup>27</sup> See Exhibit D for examples of recent Town Halls.

<sup>28</sup> DISH criticizes Sinclair for its St. Louis news operation, but fails to address the economics. When it discontinued its St. Louis news production in 2001, Sinclair had been losing more than \$1 million per year on the station. See Declaration of Scott Livingston (attached as Exhibit H) ("Livingston Decl.") ¶ 8. In any event, as set forth above, the proposed Transaction will enable improvements in Sinclair's local news operations which will provide just the public interest benefits to that market that DISH itself claims are needed.

due to the economics of the marketplace, offers more limited, albeit still locally produced, news programming. One of the benefits of the combination with Tribune is that Sinclair will be able to take advantage of Tribune's strong news operation in St. Louis to offer more and better local news on its stations in that market. In addition, by having news producing stations in markets where it currently does not, Sinclair will be able to utilize news gathering personnel in such markets to provide coverage to viewers of all of Sinclair's stations of stories of national interest that occur in such markets, adding an additional voice to the Sinclair markets for such stories.<sup>29</sup>

(e) ATSC 3.0.

Despite Petitioners' skepticism, the ATSC 3.0 benefits are real and transaction-specific. By giving Sinclair a more national spectrum footprint, rather than having to put together a patchwork of separate broadcast stations, the merger will allow Sinclair to deploy ATSC 3.0 more widely, efficiently, and quickly, thereby accelerating its roll-out. Further, another significant benefit would come from markets where Sinclair would acquire duopolies as a result of the Transaction, such as Washington, D.C., allowing the stations in those markets to transition to ATSC 3.0 faster while simulcasting. The faster roll-out of ATSC 3.0 will benefit all consumers with more robust over-the-air signals and higher quality viewing choices.<sup>30</sup>

---

<sup>29</sup> For example, Sinclair syndicated to all of its stations local new stories about the Pulse nightclub shootings from WPEC in West Palm Beach, and stories about the drinking water crisis in Flint, MI, from WEYI in Flint.

<sup>30</sup> With Next Gen TV, the NAB says that viewers "can expect stunning pictures, immersive and customizable audio, improved reception and innovative new features to enhance and expand" their broadcast viewing experience. See *Unleashing the Next Generation of Broadcast Innovation*, Nat'l Ass. of Broadcasters, <http://www.nab.org/innovation/nextGenTV.asp> (last visited Aug. 15, 2017). The NAB goes on to explain that Next Gen TV "will also support enhanced mobile reception, so viewers can access unlimited live local and national news, the most popular sports and entertainment programs and children's shows on mobile devices – like your smartphone or tablet – over the air without having to rely on cellular data services." *Id.*

(f) Advertising

By increasing the national footprint in which Sinclair stations broadcast and sell advertising, particularly by adding stations in the largest markets, such as New York, Los Angeles and Chicago, Sinclair will be better situated to sell advertising to national advertisers who are seeking a national platform. This will create an additional competitor in the network advertising space and result in new jobs for the Sinclair national, network sales team, as well as benefit the advertisers and eventually the consumers of those advertisers' products.

4. *Petitioners offer no transaction-specific harms.*

The Petitioners' allegations appear to come down to two ideas: (a) big is bad, and (b) we don't like Sinclair's point of view. The Commission is clearly barred from considering the latter point, and neither is a sustainable basis for a petition to deny. Petitioners simply fail to provide evidence of any transaction-specific effects that would not be caused by any other large broadcaster buying Tribune. Moreover, Petitioners fail to offer any evidence that even the transaction-specific effects that may occur would be detrimental to the public interest.

The public interest harms alleged by Petitioners are purely speculative and based on innuendo and often cherry-picked, biased newspaper clippings (many of which are factually in error).<sup>31</sup> Lacking any personal knowledge for the "facts" asserted, Petitioners rely almost solely on news articles for their claims that the Transaction is not in the public interest.<sup>32</sup> That is the

---

<sup>31</sup> CCA, for example, wrongly states in its Petition that Sinclair CEO Christopher Ripley suggested that Sinclair would "strip WGN-TV of its iconic local programming." CCA Petition at 28. This claim is incorrect. Mr. Ripley was referring to the costs of programming on Tribune's "WGN America" **cable network**, and not WGN-TV, the over-the-air broadcast station.

<sup>32</sup> See Free Press Petition at 20-26; see also DISH Petition at 47; see also CCA Petition at 27. Free Press's statement that "... Sinclair's political agenda in particular poses ... serious threats to communities of color [in the areas of diminished local news coverage and criminalized

very definition of hearsay, as Petitioners offer these articles for the truth of the matters asserted therein, matters which are not within their personal knowledge and thus do not meet the evidentiary standard set forth in Section 309(d) of the Communications Act and therefore can have no bearing on this proceeding.<sup>33</sup>

The majority of Petitioners' complaints are focused on selected short commentaries and internally syndicated programming. Nowhere do the Petitions provide any evidence that Sinclair's stations do not cover local news stories or that the coverage is insufficient, biased, based on corporate directive, or not in the public interest. In fact, the over 700 awards Sinclair has won and other recognitions that Sinclair has received for its programming over the last three years demonstrate just the opposite.<sup>34</sup>

Similarly, Petitioners attempt to paint an inaccurate and misleading picture of Sinclair as a company that runs all of its stations from a single national command center, eschewing the interests of its local stations' communities. This is blatantly untrue and Petitioners have

---

representations]" is speculative and so patently offensive that it has no place in this proceeding. Free Press Petition at 23.

<sup>33</sup> See *Pikes Peak Bcstg Co.*, 12 FCC Rcd 4626, 4630 (1997). One of the reasons for this has to do with lack of reliability. In fact, many of the news stories that Free Press relies on are inaccurate. For example, Free Press cites a Slate article which incorrectly states that commentaries by Boris Epshteyn run on local news for 13.5 minutes each day (they actually run approximately 13.5 minutes each *week*). Free Press Petition at 26. Free Press further incorrectly asserts (at footnote 98), based on an article in the *Nation*, that Sinclair Executive Chairman David Smith appeared as a guest of honor in the Trump inaugural parade. Free Press Petition at 25. In fact, Mr. Smith did not even attend the Trump inaugural parade.

<sup>34</sup> See, e.g., Sinclair Broadcast Group, *Awards*, <http://sbgi.net/awards/> (last visited Aug. 13, 2017); see also Press Release, Sinclair Broadcast Group, Inc., *Sinclair Wins 33 Regional Edward R. Murrow Awards* (May 3, 2017), <http://sbgi.net/pr-news/sinclair-wins-33-regional-edward-r-murrow-awards/> (last visited Aug. 13, 2017); see also SBG San Antonio, *SBG San Antonio receives 2017 St. Jude Dream Home Station of the Year Award* (Jul. 24, 2017), <http://news4sanantonio.com/news/local/sbg-san-antonio-receives-2017-st-jude-dream-home-station-of-the-year-award> (last visited Aug. 13, 2017).

presented no evidence whatsoever to support their outrageous claim and cannot, since none exists. In fact, Sinclair employs more than 3,850 station-level employees to independently produce local news across numerous markets and employs only 14 corporate-level news employees at its corporate office and 11 employees that staff Sinclair’s on-air news operations at its Washington, D.C. News Bureau.<sup>35</sup> In other words, more than 99% of Sinclair’s news employees providing services to its local newscasts are in fact at its local stations, a percentage that is likely to *increase* because of the Transaction.

The Petitions’ focus on the less than 1% exception rather than the 99% applies to programming as well. Petitioners’ specious claims about Sinclair programming are mostly limited to one or two brief commentaries that constitute less than 1% of the average total weekly news hours offered by Sinclair’s stations.<sup>36</sup> All “must-run” news programming in total (including news from the Washington, D.C. News Bureau) makes up approximately 2.5% of the total average news minutes per week.<sup>37</sup> The remaining 97.5% of the news program time is devoted to local news, with the rest of each station’s schedule consisting of local sports programming, network news and programming, syndicated programming, or other programming purchased or developed by Sinclair employees in the various local markets where Sinclair owns television stations. Yet the Petitioners absurdly focus on the less than 1% of weekly program content they dislike, ignoring the overwhelming majority of other program content that makes up

---

<sup>35</sup> See Livingston Decl. ¶ 5.

<sup>36</sup> Approximately 16.5 minutes per week out of an average of 37.5 hours (2,250 minutes) of news per week. See *id.* ¶ 10.

<sup>37</sup> Approximately 57.5 minutes per week out of an average of 37.5 hours (2,250 minutes) of news per week. See *id.*

a broadcast week, and arrive at the unfounded conclusion that Sinclair stations do not operate in the public interest.

Petitioners further allege that the Transaction is against the public interest because Sinclair presents biased or “conservative” news coverage.<sup>38</sup> Taken at face value, Petitioners’ arguments would suggest Sinclair’s acquisition of Tribune would increase diversity because it is adding a different “voice” to the marketplace, just a voice with which Petitioners apparently disagree.<sup>39</sup> Notably, however, none of the Petitioners have shown any evidence of news slanting by any Sinclair station, only that the commentators on some Sinclair stations (whose commentaries are clearly labeled as such) do not meet their taste. As the Commission and the Petitioners are well aware, such arguments have no place in this or any FCC proceeding. The First Amendment to the Constitution generally and Section 326 of the Communications Act specifically, clearly “prohibit any Commission actions that would improperly interfere with the programming decisions of licensees.”<sup>40</sup> Indeed, the Communications Act and the Commission’s authority are based on the principle that “licensees are afforded broad discretion in the scheduling, selection and presentation of programs aired on their stations, and the Commission will not substitute its judgment for that of the station regarding programming matters.”<sup>41</sup> The

---

<sup>38</sup> See Free Press Petition at 23-26. As discussed above, these claims are based on hearsay and as such should be ignored by the Commission.

<sup>39</sup> See DP Opinion, “Should Denver TV viewers be concerned about conservative Sinclair Broadcast Group? (2 letters)” *Denver Post* (Jul. 17, 2017) <http://www.denverpost.com/2017/07/17/should-denver-tv-viewers-be-concerned-about-conservative-sinclair-broadcast-group-2-letters> (last visited Aug. 17, 2017).

<sup>40</sup> *Univision Communications Inc. and Broadcasting Media Partners, Inc. (Transfer of Control of Univision Subsidiaries)*, 22 FCC Rcd 5842, 5855-56 ¶ 28 (2007) (“Univision Communications”); 47 USC § 326; U.S. Const., amend. I.

<sup>41</sup> *Univision Communications* 22 FCC Rcd at 5855-56 ¶ 28; see also *Entertainment Formats*, 60 FCC 2d 858 (1976), *recon. denied*, 66 FCC 2d 78 (1977); *FCC v. WNCN Listeners Guild*, 450

Commission has consistently held that “[b]ecause journalistic or editorial discretion in the presentation of news and public information is the core concept of the First Amendment’s free press guarantee, licensees are entitled to the broadest discretion in the scheduling, selection and presentation of news programming.”<sup>42</sup> Therefore, “with regard to news programming in particular, the Commission has repeatedly held that ‘[t]he choice of what is or is not to be covered in the presentation of broadcast news is a matter to the licensee’s good faith discretion,’ and that ‘the Commission will not review the licensee’s news judgments.’”<sup>43</sup> Contrary to the Petitioners’ allegations, it is not the Commission’s job to regulate viewpoints.

**B. Sinclair Has Demonstrated Its Continuing Commitment and Ability to Produce Quality News, and Will Extend That Same Commitment to Quality Programming to the Tribune Stations.**

Petitioners baldly allege that Sinclair has ignored local coverage for national coverage.<sup>44</sup> Not only is this allegation incorrect and unsupported, but it misses an important point. In many cases the option is not between news produced 100% locally and news produced in part elsewhere, it is a choice between *no* news and news that is not produced 100% locally. As stated

---

US 582, 595-598 (1981) (“Commission has provided a rational explanation for its conclusion that reliance on the market is the best method of promoting diversity in entertainment formats.”).

<sup>42</sup> *Univision Communications* 22 FCC Rcd at 5855-56 ¶ 28; *see also National Broadcasting Company v. FCC*, 516 F2d 1101, 1112-1113, 1119-1120, 1172 (D.C. Cir. 1974), *cert. denied sub. nom. Accuracy in Media Inc. v. National Broadcasting Company*, 424 US 910 (1976); *see also Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 US 94, 124 (1973); *Hunger in America*, 20 FCC 2d 143, 150-51 (1969).

<sup>43</sup> *Univision Communications* 22 FCC Rcd at 5855-56 ¶ 28; *American Broadcasting Companies, Inc.*, 83 FCC 2d 302, 305 (1980); *see also Dr. Paul Klite*, 12 Com. Reg. (P&F) 79, 81-82 (1998), *recon. denied sub nom. McGraw-Hill Broadcasting Co.*, 16 FCC Rcd 22739 (2001) (denying petition that cited excess of news stories dedicated to “mayhem” and under-coverage of issues involving the environment, arts, science, education, poverty, AIDS, children and local elections).

<sup>44</sup> DISH Petition at 47; Free Press Petition at 24-25; Public Knowledge *et al.* Petition at 6-7; CCA Petition at 27-29.

above, in some markets it is simply not economically viable to produce news on all of the stations Sinclair owns. An article cited by DISH recognizes as much: “[t]o the company, it is an efficient way to cut the costs of local journalism, bringing news to small stations *that otherwise would go without*.”<sup>45</sup>

The Petitions also attack Sinclair’s national news coverage. In truth, news stories from its Washington, D.C. News Bureau make up less than 1% of a Sinclair station’s average weekly hours on its broadcast stations.<sup>46</sup> Moreover, Petitioners provide no evidence that national news coverage is not of interest to a station’s local community. Indeed, the Commission specifically found to the contrary recently in *Media General/Nexstar*, holding that giving local stations access to a Washington, D.C. news bureau was a significant factor in finding that merger to be in the public interest.<sup>47</sup> Moreover, by removing the burden of covering these stories from the local market Sinclair can enhance the product produced at the local station by allowing the local staff to better focus on local stories. Again, Petitioners’ complaints show a complete lack of understanding of the economics of the television business. They would have the Commission believe that every station, no matter what the market, could afford a large news staff—if that were true, every independent station would be producing its own news.

Relying on a similar theme, DISH’s Petition attempts to create a false impression of Sinclair’s newsroom staffing with misleading, outdated and incomplete data, attempting to create a sensationalist picture of mass firings and shuttering of otherwise functioning newsrooms, none

---

<sup>45</sup> DISH Petition at 47 (emphasis added).

<sup>46</sup> See Livingston Decl. ¶ 10.

<sup>47</sup> *Media General/Nexstar*, 32 FCC Rcd at 194 ¶¶ 26-27.

of which is accurate.<sup>48</sup> In general, all of the news-producing stations listed in DISH's Petition enjoy local news staff and operations appropriate for their market size. While there have been staffing reductions over the years consistent with a variety of different businesses in highly competitive fields,<sup>49</sup> most if not all of the employees who have lost positions have by now been replaced so that staffing at many of the stations Sinclair has acquired, now exceed those original staff levels.<sup>50</sup> Of course more pertinent to the Applications, Petitioners have not been able to show any evidence that any Sinclair stations are understaffed or unable to serve their local communities. For example, Sinclair's ABC affiliate KOMO in Seattle still employs 150 news staff. After investing approximately \$2,000,000 in that station over the past three years, KOMO has expanded its local news coverage to over 7 hours per day, and now enjoys the number one rated newscast in every time slot other than 11:00 P.M.<sup>51</sup>

In fact, Sinclair's news coverage has been praised from journalists from various outlets.<sup>52</sup> Sinclair is proud of these results, and believes that the increase in audience share demonstrates its

---

<sup>48</sup> A number of the instances of staff reductions cited by DISH occurred almost 20 years ago, and those staffs have since been fully replaced or now exceed their original number. Note also that DISH's claims regarding WICD, KOKH, and WDKY are completely false. Since making such modifications, most if not all of the stations cited by DISH have advanced from being number three or four to competing for the number one or two ratings slot across various dayparts. *See* Exhibit E.

<sup>49</sup> Such staff reductions are not unique to the television industry or to Sinclair, as DISH and the other Petitioners well know. *See* Greg Avery, "Dish Network shed thousands of jobs as it overhauled technology," *Denver Business Journal* (May 3, 2016), [https://www.bizjournals.com/denver/blog/boosters\\_bits/2016/05/dish-network-shed-thousands-of-jobs-as-it.html](https://www.bizjournals.com/denver/blog/boosters_bits/2016/05/dish-network-shed-thousands-of-jobs-as-it.html) (last visited Aug. 13, 2017).

<sup>50</sup> *See* Livingston Decl. ¶ 6.

<sup>51</sup> *See id.* ¶ 7.

<sup>52</sup> *See* Jim Rutenberg, "Will the Real Democracy Lovers Please Stand Up?" *N.Y. Times* (Feb. 25, 2017) (praising KOKH for breaking the story that Scott Pruitt "conducted some state business by private email during his time as Oklahoma's attorney general, despite denying that he did so in

commitment, ability and success at improving local news choices for the benefit of the public interest.<sup>53</sup>

**C. The Transaction Is Fully Consistent With Commission Rules and Precedent.**

Contrary to the protestations of many of the Petitioners, Applicants are not asking the Commission to approve a transaction that violates the FCC's ownership rules. Rather,

---

recent Senate testimony”), [https://www.nytimes.com/2017/02/25/business/media/trump-media-republicans.html?\\_r=0](https://www.nytimes.com/2017/02/25/business/media/trump-media-republicans.html?_r=0) (last visited Aug. 20, 2017); *see also* Rachel Maddow citing Sinclair’s station’s “great original local reporting,” <https://mobile.twitter.com/maddow/status/837371370552053761> (last visited Aug. 20, 2017); *see also* Trudy Lieberman, “TV station’s breast implant exposé: When lower regulations meet high-caliber reporting,” *Columbia Journalism Review* (Mar. 23, 2017) (praising investigative reporting of Kimberly Suiters, and that “WJLA has a long history of good consumer watchdog journalism. In the current regulatory climate, the kind of reporting that Suiters and the station delivered is needed more than ever.”) [https://www.cjr.org/united\\_states\\_project/breast-implants-medical-regulations.php](https://www.cjr.org/united_states_project/breast-implants-medical-regulations.php) (last visited Aug. 20, 2017).

<sup>53</sup> Certain Petitioners negatively referenced Sinclair’s changes since it acquired WJLA two and a half years ago (it was then ranked number three or four, depending on the day part). *See* DISH Petition at 53-55; *see also* CCA Petition at 27. After major capital investments, which are expected to total \$10,000,000 by the end of 2018, WJLA is now rated number one for its 6:00 pm weekly newscast, and this year won 6 regional Edward R. Murrow awards, including one for Overall Excellence. This year WJLA also won 20 regional Emmy awards, including its fourth consecutive regional Emmy for Overall Excellence. To improve those numbers Sinclair looked to reach audiences with the content that matters to them. That required some staff changes at all levels, including on-air talent and among news departments. Sinclair did not let go any full-time investigative reporters, as DISH claims, but actually increased this staff to where Sinclair believes it is now the largest local investigative news team in Washington, D.C. DISH also complains about the supposed harms done to WOAI, WUHF, and WNWO as a result of operational consolidation. *See* Dish Petition at 51-52. In the cases of WOAI and WUHF, consolidating operations has driven vast improvements to their news production. For example, the merged news operations of KABB and WOAI make it what Sinclair believes is the largest newsroom in San Antonio. It produces two completely separate newscasts for two unique audiences: the NBC audience for WOAI and the Fox audience for KABB, which is the leading local news source for the young Hispanic male demo in San Antonio. In the case of WNWO in Toledo, the financial challenges of small market news operations did cause Sinclair to move news technical production to South Bend, IN. However, the content for WNWO’s local reporting continues to be done by a news staff on the ground in Toledo. Sinclair is proud to have found a creative, technical solution for this newscast, which otherwise would have gone off the air, due to the inability of that small station to support its costs.

Applicants make clear their intention to comply with both the FCC's local and national ownership rules. The Applications state that the Applicants will "take actions in [overlap markets] as necessary to comply with . . . the Commission's local television ownership rules."<sup>54</sup>

Applicants also acknowledge that, absent divestiture, the combined company would exceed the national audience reach limitation by approximately 6.5%,<sup>55</sup> and further state that "[t]o the extent that divestitures may be necessary, applications will be filed upon locating appropriate buyers . . ."<sup>56</sup> The Commission's precedent in this area is quite clear. The Commission has long held that a "divestiture pledge removes any concern as to a violation of Section 73.3555 of our Rules."<sup>57</sup>

The Petitioners weakly attempt to sidestep this unavoidable result by loudly complaining that Applicants have indicated they will divest, but intend to wait for the outcome of the review of the Transaction by the Department of Justice ("DOJ"), as well as the ownership proceeding currently under reconsideration by the Commission. Rather than being unusual, such timing, and notification of exactly which licenses might be divested, if necessary, is par for the course in similar recent transactions. As a practical matter, as Petitioners well know, the Transaction cannot be closed until the DOJ review is complete anyway.

Petitioners' arguments that the Commission should wait until the outcome of the UHF Discount pending court action or until a future proceeding is complete also would be inconsistent

---

<sup>54</sup> Comprehensive Exhibit at 12.

<sup>55</sup> Comprehensive Exhibit at 1, 26.

<sup>56</sup> Comprehensive Exhibit at 12.

<sup>57</sup> *Scripps Howard Broadcasting Co.*, 8 FCC Rcd 2326 ¶ 3 (1993).

with precedent.<sup>58</sup> When the ownership rules were being considered by the Third Circuit for years, the Commission did not halt all related business. In contrast, it applied the rules that were in place at the time, as it should today.<sup>59</sup> The Commission has already indicated that it intends to act on the currently pending Petitions for Reconsideration of the ownership rules later this year.<sup>60</sup> The Applicants are not asking the Commission to guess at what rule changes it will make and then apply those changes to a grant of the Applications now; they are simply asking the Commission to apply any rule changes it adopts prior to acting on the Applications. Indeed, it would be nonsensical for the Commission to conclude that the public interest mandates that it revise its ownership rules and then insist on applying a rule it has found to no longer be in the public interest to a pending application.

The Applicants also feel it necessary to address Free Press's reckless and factually incorrect allegations that Applicants failed to disclose the existence of two overlap markets in the Applications to the Commission, and that such failure demonstrates an unwillingness to provide sufficient and truthful information to the Commission and raises character issues.<sup>61</sup> These

---

<sup>58</sup> It is worth noting that contrary to the impression intended to be created by Petitioners, but for a brief period of several months, the UHF Discount has been in effect continuously for more than 30 years, including at the time Congress established the 39% national cap. *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*, Memorandum Opinion and Order, 100 FCC 2d 74, 88-94 ¶¶ 33-44 (1985).

<sup>59</sup> *See Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004); *see also Prometheus Radio Project v. FCC*, 652 F.3d 431 (3d Cir. 2011); *see also Prometheus Radio Project v. FCC*, 824 F.3d 33 (3d Cir. 2016).

<sup>60</sup> Ajit Pai, "Infrastructure Month at the FCC," *FCC Blog* (Mar. 30, 2017) ("... we'll launch a comprehensive review of the national ownership cap ... later this year."), <https://www.fcc.gov/news-events/blog/2017/03/30/infrastructure-month-fcc> (last visited Aug. 22, 2017).

<sup>61</sup> Free Press Petition at 9-10. Free Press falsely suggests that Sinclair will "acquire" stations in Norfolk and Wilkes-Barre which they know is not true. Free Press Petition at 5-10. Tribune

allegations are at their best negligent, and at their worst an intentional attempt to mislead the Commission. But Free Press should check whether its own representations to the Commission are accurate and truthful: the markets singled out by Free Press, Wilkes-Barre and Norfolk, are not FCC overlap markets. Tribune owns no stations in either of those markets.<sup>62</sup> The reason that these stations were not included in the Applications was because they do not raise any attributable interest issues (nor do they evoke the Commission’s JSA grandfathering or similar rules).<sup>63</sup>

---

does not own any stations in either of those markets and that is why those are not “overlap” markets, which would need divestiture to comply with FCC rules. As Free Press knows, Tribune has non-attributable services agreements with stations in those markets, but does not own such stations.

<sup>62</sup> Tribune has non-attributable shared services agreements with subsidiaries of Dreamcatcher Media, LLC with respect to television stations, WGNT and WTKR in Norfolk, VA, and WNEP-TV in Scranton, PA, but such stations are not attributable to Tribune and therefore raise no FCC multiple ownership issues. In fact, the Free Press Petition itself makes clear that Free Press is fully aware neither of these markets contains a Tribune station. Free Press Petition at 12. Free Press incorrectly posits that a statement made during a Sinclair earnings call “suggests Sinclair considers Dreamcatcher markets as obvious overlap markets, although Sinclair’s applications did not treat them as such.” Since Sinclair sells advertising on stations in the Wilkes-Barre market pursuant to a services agreement, it agreed in the Transaction merger agreement to divest in that market as may be necessary to comply with the DOJ, even though there are no multiple ownership issues in that market that would require such divestiture under the Commission’s rules. But again, whether Sinclair believes the DOJ might require certain divestitures for antitrust purposes based on advertising revenues has nothing to do with Applications to the Commission.

<sup>63</sup> Free Press also falsely claims, that a subsidiary of Sinclair is the licensee of WOLF-TV in Hazelton, PA, WQMY in Williamsport, PA and WSWB in Scranton, PA. Free Press Petition at 8. In fact, WOLF-TV and WQMY(TV) are owned by New Age Media of Pennsylvania License LLC, as stated in the very article to which Free Press cites. Free Press Petition at 12. In addition, WSWB(TV) is licensed to MPS Media of Scranton License, LLC. As set forth in the previous footnote, Sinclair does have services agreements with such stations, but since it does not own any stations in Wilkes-Barre, these stations are not attributable to Sinclair. Note that the article also praises WOLF for producing its own newscast, and hiring anchors, meteorologists, multimedia journalists, photographers, and news managers to do so. *See Roly Ortega, “WOLF now produces its own newscast by themselves. No help needed anymore,” Changing Newscasts*

The Free Press Petition also falsely alleges that Sinclair violated the Commission’s conditions associated with the Allbritton merger. It seeks to support this false allegation by incorrectly claiming that Sinclair “owns both WMMP and WTAT-TV outright and maintains control of WCIV through a sharing agreement with . . . HSH [in Charleston, SC].”<sup>64</sup> Every single one of those assertions is false. In reality, Sinclair owns only one of those stations—WCIV. WMMP (which changed its call sign to WGWG) is owned by a subsidiary of Howard Stirk Holdings II, LLC, and has no sharing agreements with Sinclair in that market. WTAT-TV is owned by a subsidiary of Cunningham Broadcasting Corporation and is not party to any JSA, SSA, LMA, or any other attributable sharing agreement with Sinclair.<sup>65</sup> These false claims are a poorly crafted attempt by Free Press to throw as much mud on the Transaction as possible with the hope that something will stick, regardless as to the truth of the underlying facts. It is for this very reason that Section 309(d)(1) of the Communications Act requires that a petition to deny contain “specific allegations of fact” that are “supported by affidavit of a person with personal knowledge thereof.” Such evidence is sorely absent here, requiring the Applicants to expend considerable time and resources responding to fictional allegations, and the Commission to expend precious resources sorting through these specious claims.<sup>66</sup>

---

*Blog* (Jan. 2, 2017), <https://changingnewscasts.wordpress.com/2017/01/02/wolf-now-produces-own-news-by-themselves-no-help/> (last visited Aug. 13, 2017).

<sup>64</sup> Free Press Petition at 15-16.

<sup>65</sup> Sinclair is in compliance with the terms of the Allbritton Order. Sinclair provides news services to WTAT pursuant to a news sharing agreement in compliance with FCC rules, and which was disclosed to the Commission staff in accordance with the reporting conditions following the Allbritton merger.

<sup>66</sup> Applicants raise throughout this Opposition numerous other inaccuracies and misstatements in the Petitions. As just a few other examples, Melisa Ordonez’s Declaration is false in its assertion that Sinclair’s representatives went so far as to acknowledge violation of the Commission’s good faith rules in its negotiations with DISH. *See* DISH Petition at Exhibit C ¶ 22. No representative

**D. Petitioners’ Retransmission Consent Arguments Are Erroneous, and in any Event, Irrelevant to this Proceeding.**

DISH and various other parties erroneously assert that the Applications should be denied because the post-Transaction Sinclair would have the market power to extract excessive retransmission consent fees from MVPDs.<sup>67</sup> To support such arguments, these parties present a distorted picture of the retransmission consent market, which ignores key contextual factors such as the fees paid to non-broadcast programmers, the historical *undercompensation* of broadcasters (which Congress sought to address by establishing the retransmission consent regime), and the effects of consolidation among the major MVPDs. Pay-TV interests—including many of these same parties—have been rehashing the same arguments about broadcasters’ supposed market power for years, most recently in the Commission’s review of the good-faith negotiation rules and of the Nexstar-Media General transaction.<sup>68</sup> The Commission correctly rejected these arguments then,<sup>69</sup> and they are no more persuasive here.

---

of Sinclair ever made such a statement. *See* Declaration of Barry Faber, General Counsel and Executive Vice President of Distribution and Network Relations for Sinclair (attached as Exhibit G) (“Faber Decl.”) ¶ 24; and NTCA’s claims that representatives of Sinclair have given a “take it or leave it” retransmission consent offer (*see* NTCA Petition at 8), are also false (although obviously there can come a time in any negotiations where a party may present a last and final, best offer). *See* Faber Decl. at ¶ 23. Further, Petitioners’ claims that Sinclair was issued fines for violation of FCC rules in the past is inaccurate. Free Press Petition at 24 and DISH Petition at 65-70. In reality, in one matter referenced by Petitioners, Sinclair was not fined, but entered into a Consent Decree, which both Sinclair and the Commission agreed was not an admission of liability, and in the other matter referenced by Petitioners, although a Notice of Apparent Liability (“NAL”) was issued by the FCC, Petitioners neglect to mention that Sinclair opposed the NAL, and no final order was ever issued in the matter.

<sup>67</sup> *See* DISH Petition at 16; *see also* CCA Petition at 21; Free Press Petition at 3; ACA Petition at 11-18; NTCA Petition at 6; ACA Comments at 6.

<sup>68</sup> *See, e.g.*, Tom Wheeler, FCC Chairman, “An Update on Our Review of the Good Faith Retransmission Consent Negotiation Rules” *FCC Blog* (July 14, 2016) (“Based on the staff’s careful review of the record, it is clear that more rules in this area are not what we need at this

1. *Petitioners distort the history and current state of the retransmission consent marketplace.*

DISH and some of the other Petitioners argue that the transaction threatens to drive up retransmission consent fees (and consumer prices) and to increase the risk and incidence of broadcast programming blackouts in the impacted DMAs. This is an argument that the Commission has appropriately and consistently rejected in the past and the Petitions do not give the Commission any reason to find differently here.<sup>70</sup>

Before addressing the many specific flaws in the Petitioners' arguments, we observe that the Commission can and should simply refuse to entertain those arguments, as they are not relevant to the public interest determination the Commission must make. As established by

---

point.”), <https://www.fcc.gov/news-events/blog/2016/07/14/update-our-review-good-faith-retransmission-consent-negotiation-rules> (last visited Aug. 21, 2017).

<sup>69</sup> *Media General/Nexstar*, 32 FCC Rcd at 197 ¶ 35 (“With regard to the claims that the Applicants will increase their bargaining leverage by the common ownership of multiple stations in a region broader than the local market, the Commission has not previously found that, with regard to retransmission consent negotiations, where the ownership of multiple stations does not violate the national audience reach cap, increasing the number of stations owned at the regional or national level leads to public interest harms, and we decline to do so here based on the evidence before us. Moreover, we find Petitioners’ claims fail to raise substantial and material questions of fact as to why the public interest would not be served by grant of the applications, because Petitioners do not provide any basis for the assertion that the merged entity will have ‘market power’ vis-à-vis MVPDs with national or at least broad coverage of their own.”); *see also* Petition to Deny or Impose Conditions of DISH Network L.L.C., the American Cable Association, and ITTA, MB Docket No. 16-57, at 3, 6-8, 10, 12-13 (March 18, 2016); Reply to Opposition of DISH Network L.L.C., the American Cable Association, and ITTA, MB Docket No. 16-57, at 5-6 (May 5, 2016); Reply Comments of DISH Network L.L.C., MB Docket No. 15-216 (Jan. 14, 2016); Comments of Public Knowledge and Open Technology Institute at New America, MB Docket No. 15-216 (Dec. 1, 2015); Notification of Ex Parte Communication of American Cable Association, Charter Communications, DIRECTV, DISH Network, New America Foundation, and Time Warner Cable in *Amendment of the Commission’s Rules Related to Retransmission Consent*, MB Docket No. 10-71 (Jan. 30, 2014); Letter from Ross Lieberman, ACA, *et al.*, to Marlene H. Dortch, FCC Secretary, MB Docket No. 09-182 *et al.* (Feb. 12, 2014) (signed by ACA, Charter Communications, DIRECTV, DISH, and Time Warner Cable).

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

Congress in the 1992 Cable Act, the purpose of the retransmission consent regime is to allow *the marketplace* to determine whether retransmission fees are justified and, when they are, the appropriate amount of those fees. The Senate Conference report on S.12, which ultimately became the 1992 Cable Act, makes this abundantly clear:

It is the Committee's intention to establish a marketplace for the disposition of the rights to retransmit broadcast signals; it is not the Committee's intention in this bill to dictate the outcome of the ensuing marketplace negotiations.<sup>71</sup>

Congress understood that the television marketplace is complex and inter-related, and that it is impossible for a government agency to dictate, or even to attempt to shape, the appropriate rates for retransmission of broadcast signals by MVPDs. When the fees are determined by the give and take of the marketplace, the public interest is served. It is not up to the Petitioners, the Commission, or anyone else, to extract certain facts and statistics and construct arguments that the marketplace rates do not serve the public interest. Like the Petitioners here, such efforts invariably embody their arguments with a slew of caveats and assumptions, even while ignoring all externalities beyond their models.

Contrary to Petitioners' assertions, the marketplace has functioned generally well and served the public interest.<sup>72</sup> In particular, retransmission consent revenues are a crucial source of the funding needed for local broadcast stations to maintain and expand their local programming, including news, in the face of intense market pressures. With core advertising revenues

---

<sup>71</sup> S.Rep. No. 102-92, at 35-36 (1991), accompanying S.12, 102nd Cong. (1991).

<sup>72</sup> To the extent the retransmission consent marketplace has functioned poorly, this has actually been to the detriment of broadcast stations, which for many years after 1992 received no consideration for carriage and which continue to receive a disproportionately small share of programming expenditures by MVPDs. This has actually harmed the public interest by allowing less popular cable channels, which are available only to those willing to pay a fee, to outbid broadcast stations and networks for some of the most important programming, particularly local and national sports.

essentially flat,<sup>73</sup> and programming costs (such as network affiliation fees) increasing sharply,<sup>74</sup> broadcasters cannot maintain—let alone expand—the local news and other valuable services they provide to the public without continuing to negotiate for compensation from MVPDs that more closely reflects the fair value of broadcast programming.

Nor are broadcasters’ retransmission consent fees in any way inconsistent with an ordinary, well-functioning market. Petitioners such as DISH and ACA repeat the well-worn canard that the percentage growth in retransmission consent revenues demonstrates some form of market failure.<sup>75</sup> In fact, as NAB conclusively demonstrated only last year, such arguments speciously ignore that these revenues started from an artificially low baseline, thus allowing pay-TV interests to cite eye-popping—but fundamentally misleading—percentage growth figures.<sup>76</sup> For decades, MVPDs were able to retransmit the signals of local broadcast stations without

---

<sup>73</sup> Ben Umson, “Local broadcast TV ad revenue to only grow in low single digits this year, analyst says,” *FierceCable* (Apr. 28, 2017), <http://www.fiercecable.com/broadcasting/local-broadcast-tv-ad-revenue-to-only-grow-low-single-digits-year-analyst-says> (last visited Aug. 21, 2017); Janet Stilson, “Spot TV 2017: Total Down 8%; Core up 1.3%,” *TVNewsCheck* (Sept. 29, 2016) (noting that despite cyclical political advertising revenues, core revenue “will rise just 1.3% next year”), <http://www.tvnewscheck.com/article/98096/spot-tv-2017-total-down-8-core-up-13> (last visited Aug. 21, 2017).

<sup>74</sup> Jan Dawson, “*Retransmission Fees Are on the Rise, But How Long Will It Last?*,” *Variety* (Jun. 3, 2016) (“[I]n practice, much of that [retransmission consent] revenue is passed on to network owners who have renegotiated their cut. As a result, margins haven’t really budged for these companies; in fact, most of the station owners have seen margins decline over the past few years.”), <http://variety.com/2016/voices/columns/retransmission-fees-on-rise-1201785968/> (last visited Aug. 21, 2017); Moody’s Investors Service, *Moody’s: US Broadcasters Face Revenue Threat from Networks* (Nov. 29, 2011) [https://www.moody.com/research/Moodys-US-Broadcasters-Face-Revenue-Threat-from-Networks-Reverse-Compensation--PR\\_232063](https://www.moody.com/research/Moodys-US-Broadcasters-Face-Revenue-Threat-from-Networks-Reverse-Compensation--PR_232063) (last visited Aug. 21, 2017) (noting that “reverse-compensation fees that the networks have begun putting in their contracts with broadcasters will dilute the value of these retransmission fees, and will negate the near-term increases in retransmission fees that the broadcasters receive”).

<sup>75</sup> See DISH Petition at 36; ACA Petition at 12.

<sup>76</sup> Reply Comments of the National Association of Broadcasters, MB Docket No. 15-216, at 19 (Jan. 14, 2016) (“NAB Good Faith Reply”).

paying them any compensation at all. That began to change only after DISH and DirecTV developed the technology and gained the right to retransmit local-into-local signals in the early 2000s. Since then, broadcast stations have been able to negotiate for some compensation for the retransmission of their signals, but the compensation they receive on a ratings-adjusted basis remains much less on a per-subscriber basis than that paid to a large number of cable networks.

Viewing retransmission consent fees in the context of MVPDs' video revenues and the fees paid to other programmers tells a far different story. As NAB has noted, retransmission consent fees amounted to only 0.3 percent of MVPDs' video revenue in 2006, and by 2015 still had equaled only 5.4 percent of MVPDs' video revenues, despite broadcasters providing much of the most popular programming carried by MVPDs.<sup>77</sup> Moreover, over that same period “just the *increase* in MVPD video revenue since 2006 (\$46 billion) [was] *more than seven times* the *total* amount paid to broadcasters [in 2015].”<sup>78</sup> Put another way, in 2014 “[e]ach broadcast station accounted for 0.9% of average revenue per video subscriber per month and 2% of programming costs per subscriber per month.”<sup>79</sup> Compared to the fees MVPDs pay lower-rated cable channels, broadcast stations are—if anything—undercompensated.<sup>80</sup>

---

<sup>77</sup> NAB Good Faith Reply at 20.

<sup>78</sup> *Id.* at 20-21.

<sup>79</sup> Comments of The Writers Guild of America, West, Inc., MB Docket No. 15-216, at 7 (Dec. 1, 2015) (*citing* SNL Kagan, Broadcast Retransmission Fee Projections, 2006-2021 (June 17, 2015), <https://www.snl.com/Interactivex/Doc.aspx?ID=33008135> (last visited Aug. 21, 2017)).

<sup>80</sup> *See* Comments of Gray Television Group, Inc., MB Docket No. 15-216, at 15-16 (Dec. 1, 2015) (comparing estimated Big 4 station monthly per-subscriber fees of \$1.11 in 2015 to higher fees paid to, *e.g.*, Fox News Channel (\$1.25), TNT (\$1.65), and ESPN (\$6.61)); *see also* Cork Gaines, *Cable and satellite TV customers pay more than \$9.00 per month for ESPN networks whether they watch them or not*, Business Insider (Mar. 7, 2017) (noting estimated ESPN per-subscriber rate of \$7.21), <http://www.businessinsider.com/cable-satellite-tv-sub-fees-espn-networks-2017-3> (last visited Aug. 13, 2017).

2. *Allowing Sinclair to grow in accordance with the Commission's ownership rules would not give Sinclair undue bargaining leverage.*

DISH's Petition models a few conveniently selected variables and argues that the merger will lead Sinclair to seek and obtain higher retransmission fees—from DISH. Whether DISH's assumptions and models are reliable or not, they at best show the impact on DISH's private interest. The public interest instead lies in a freely functioning retransmission consent marketplace.

The gravamen of DISH's (and the other Petitioners') opposition is that simply by getting larger, Sinclair will be able to negotiate for higher retransmission consent fees from an MVPD. Even if that were true, which it is not, so long as Sinclair (and the MVPDs with which it negotiates) conduct their negotiations in good faith, those higher rates reflect the marketplace at work. Consolidation, without a doubt, is a fact of the marketplace. MVPDs have been consolidating almost constantly for the last two decades. To be sure, Sinclair would prefer a marketplace in which MVPDs were not permitted to consolidate simply because, as they have gotten larger, they have demanded lower retransmission fees. But that is Sinclair's private interest, and it would be of no avail for Sinclair to argue that the Commission should reject an otherwise legal combination of MVPDs simply because the post-merger entity, negotiating in good faith, might be able to drive down the retransmission fees Sinclair would be able to negotiate.

DISH attempts to buttress its claims with a flawed economic study that is easily refuted. Attached at Exhibit E is a Declaration from Gautam Gowrisankaran, which addresses the many

flaws in Petitioners’ arguments and DISH’s purported economic study.<sup>81</sup> Dr. Gowrisankaran shows in his declaration that the conclusions drawn by DISH are not justified based on the economic theory and empirical results presented in its experts’ declarations. Specifically, Dr. Gowrisankaran shows that DISH’s experts have not provided evidence that the transaction would result in upward pressure on retransmission fees. In fact, the evidence provided by DISH’s experts either does not speak to, or actually contradicts, the condition needed for the transaction to result in upward pressure on retransmission fees given the bargaining models that they use. And even if one were to accept Petitioners’ arguments, which Applicants do not, their objections are not transaction-specific but would apply to any consolidation amongst broadcasters of a certain size, even if the combinations clearly complied with the national ownership cap and local ownership rules. Again, their argument appears to be with the ownership rules in general, and not this specific Transaction.

DISH’s Petition claims that “other things being equal” broadcast consolidation leads to higher prices.<sup>82</sup> Not only is this not proven, but “other things” are not equal. Consolidation amongst MVPDs in the past decade has resulted in the top 10 MVPDs now serving approximately 95% of subscribers nationwide.<sup>83</sup> And this understates the scale of consolidation, which has been far more significant at the top: the top four MVPDs (of which DISH is one and of which two represent the combinations resulting from the mergers of AT&T/DirecTV and

---

<sup>81</sup> See Declaration of Gautam Gowrisankaran (“Gowrisankaran Decl.”) ¶ 3. Professor Gowrisankaran is an expert in the fields of industrial organization and applied microeconomics. He is the Arizona Public Service Professor of Economics at the University of Arizona. He earned his Ph.D. in Economics from Yale University in 1995.

<sup>82</sup> DISH Petition at 3.

<sup>83</sup> Gowrisankaran Decl. ¶ 27.

Charter/Time Warner Cable) today account for roughly 80% of MVPD subscribers nationwide.<sup>84</sup>

Focusing on this Transaction, the top 10 MVPDs account for over 90% of the subscribers in all but one of the ten overlap markets.<sup>85</sup>

The argument that a merged Sinclair-Tribune would have market power vis-à-vis MVPDs is specious at best. Each of the top five MVPDs as of the beginning of 2017<sup>86</sup> has both a market capitalization and annual revenues many times greater than the combined company resulting from this proposed transaction.<sup>87</sup> The idea that this combination will give Sinclair unequal leverage over such entities is absurd. As DISH itself notes, negotiations with large nationwide providers such as DISH cover all of the DMAs in the footprint of both the MVPD and the broadcast group involved in the negotiations. In fact, in a stunning contradiction to the very premise of DISH's objections, DISH's own empirical analysis shows that there is no statistically significant effect of duopolies in local markets on the rates DISH pays for retransmission rights.<sup>88</sup> While DISH attempts to explain away this inconsistency by suggesting

---

<sup>84</sup> *See id.*

<sup>85</sup> *See id.* ¶ 28.

<sup>86</sup> Mike Farrell, *Top 25 MVPDs*, Multichannel News (Feb. 27, 2017), <http://www.multichannel.com/top-25-mvpds/411157> (last visited Aug. 17, 2017).

<sup>87</sup> According to Google Finance, as of August 16, 2017, AT&T/DIRECTV had a market cap of \$233 billion and 2016 annual revenue of \$163 billion, Verizon had a market cap of \$197 billion and 2016 annual revenue of \$126 billion, Comcast had a market cap of \$194 billion and 2016 annual revenue of \$80 billion, Charter Communications had a market cap of \$102 billion and 2016 annual revenue of \$29 billion, and DISH had a market cap of \$27 billion and 2016 annual revenue of \$15 billion. In contrast, Sinclair had a market cap of \$3 billion and 2016 annual revenue of \$2.7 billion, and Tribune had a market cap of \$3.5 billion and 2016 annual revenue of \$3.1 billion. *See also* Exhibit F.

<sup>88</sup> DISH Petition at 32 (“Regression analysis of the DISH retransmission agreements does not show a statistically significant effect from duopolies on rates . . .”).

that the absence of any such relationship may “likely”<sup>89</sup> be due to other variables such as size, that explanation appears to be nothing more than a guess not based on any statistical data.

The following is a short list of several important factors in determining retransmission fees that DISH does not mention or include in its model, but which play an important role in determining market rates:

- In seeking compensation for their copyrighted programming, broadcast stations face competition from the more than 900 cable networks that are competing for carriage and licensing fees. These cable networks received more than 85% of the licensing fees MVPDs pay for the programming they distribute. Broadcast stations including the owned-and-operated stations of the major broadcast networks, receive only about 15%. Of this amount, only about 10% goes to network affiliates like the stations owned by Sinclair and Tribune, and the broadcast networks, through reverse retransmission fees, take roughly half that amount.<sup>90</sup>
- Once the cable networks are included, as they must be, concentration in the market for licensing content to MVPDs falls well below the thresholds set in the 2010 Horizontal Merger Guidelines for raising any competitive concerns whatsoever.<sup>91</sup> This is true whether the geographic scope of the market is national,

---

<sup>89</sup> *Id.*

<sup>90</sup> See Gowrisankaran Decl. ¶¶ 11, 18.

<sup>91</sup> See U.S. Dept. of Justice and Federal Trade Commission, *Horizontal Merger Guidelines* at 19 (Aug. 19, 2010), <https://www.justice.gov/atr/file/810276/download> (last visited Aug. 21, 2017) (mergers in concentrated markets where the Herfindahl-Hirschman Index (“HHI”) is below 1500 or in moderately concentrated markets where the HHI is between 1500 and 2500, but the

at the level at which retransmission agreements are negotiated with large MVPDs, or is local, at the level at which they are sometimes negotiated with small local cable operators. With cable content providers included, as they should be, the HHI for retransmission and cable affiliate revenues at the national level would be in the unconcentrated range with an HHI of 1237, which Sinclair's merger with Tribune would increase by only three points, well below the level required to raise any competitive concerns under the Merger Guidelines.<sup>92</sup> If, instead, the cable networks were excluded, leaving only the broadcast stations, the post-merger concentration level, as measured by the pre-merger HHI, would be even lower, with an HHI of 624, and would be increased by only 81 points to 705, falling into the unconcentrated range at less than half of what would be required under the Merger Guidelines to give rise to any competitive concerns.<sup>93</sup>

- Perhaps the most material factor, because it is not just a general concept impacting retransmission consent negotiations in a vacuum, but is rather a real-world, transaction-specific impact of the Sinclair-Tribune combination itself, is the mix of Big-4 vs. non-Big-4 stations in a broadcaster's portfolio of stations. As explained in more detail below, in this specific transaction, acquiring Tribune will burden Sinclair with a significantly higher percentage of non-Big-4 stations,

---

increase in the HHI is less than 100 points "are unlikely to have adverse competitive effects and ordinarily require no further Analysis").

<sup>92</sup> See Gowrisankaran Decl. ¶ 23.

<sup>93</sup> *Id.* As Dr. Gowrisankaran shows in his declaration, in each of the ten Overlap DMAs in which Sinclair and Tribune both own Big-4 stations, the HHI would fall in the moderated concentrated range if the cable networks are included, but the increases would still be well below the level required to give rise to competitive concerns under the Merger Guidelines. See Gowrisankaran Decl. ¶ 25.

{{BEGIN HCI

END HCB}}

While the size of a broadcast group might be another factor that could affect retransmission fees, the empirical analysis of DISH's own experts shows only that broadcast groups with "annual revenues of \$500 million **or more**" receive higher rates for their Big-4 stations than small broadcast owners with revenues below that level.<sup>94</sup> Both Sinclair and Tribune already exceed that benchmark, and Petitioners offer no analysis or evidence to show that a further increase in their size through this Transaction would be likely to enable them to increase their retransmission rates because of their increase in size alone.

DISH's further argument that retransmission fees have been increasing faster than inflation is a red herring. The rates of the cable networks have also been rising faster than the rate of inflation and, in fact, account for most of the increase in the programming costs of MVPDs over the last five years.<sup>95</sup> In any event, the FCC does not have authority to regulate the rates MVPDs pay for programming. Congress left that to the free market.

DISH attacks such increases as "above-normal,"<sup>96</sup> but it offers nothing to show that the market is not functioning efficiently in setting those rates. The simple fact is that for decades MVPDs were able, by law inconsistent with normal copyright protection, to retransmit the signals of local broadcast stations without paying them any compensation for their copyrighted programming. That began to change only after the advent of MVPD competition which eroded cable monopolies when two major direct broadcast satellite distributors developed the

---

<sup>94</sup> DISH Petition at 4 (emphasis added).

<sup>95</sup> See Gowrisankaran Decl. ¶¶ 20-21.

<sup>96</sup> See DISH Petition at 4.

technology and gained the right to retransmit local-into-local signals in the early 2000s. Only since then have broadcast stations have been able to negotiate for financial compensation for the retransmission of their signals. Since rates began at zero a decade ago—even though retransmission had value broadcasters were not paid for it—the compensation they receive has naturally had to increase faster than the rate of inflation in order for them to receive anything close to what their programming is worth in terms of its value to the MVPDs. Despite those increases, broadcast stations are still paid much less for their programming per-subscriber on a ratings point basis than the major cable networks are.

It would make no sense for the Commission to intervene to interfere in the operation of the free market to achieve some arbitrary equilibrium in the fees paid to broadcast stations and cable networks for their programming, yet that is exactly what DISH is asking the Commission to do. Having nationwide reach itself, DISH believes that the government should protect it from having to negotiate with broadcasters that also have substantial reach nationwide.<sup>97</sup> DISH, however, has provided no evidence that adding the Tribune stations to the group of stations for which Sinclair negotiates retransmission consent will lead to higher retransmission fees or higher

---

<sup>97</sup> DISH also apparently believes that the government should protect it from contractually agreed to obligations which DISH would prefer to avoid, such as the after-acquired clauses included in retransmission consent agreements. DISH Petition at 35. No doubt there are a variety of provisions in such contracts which one party or the other would prefer to have deleted from their contracts, but it is inappropriate for parties to look to the government to make decisions on assignment applications based on the impact such assignments will have on freely negotiated contractual rights which were obtained through a free market negotiation in which various concessions were made in order to have such provisions included. MVPDs also negotiate for their own after-acquired clauses when they buy a new system and these clauses are negotiated in the context of a larger negotiation, which includes price and other terms that may favor the MVPD. Regardless, the Commission has previously held that “[a]fter-acquired station clauses are negotiated by the parties outside of this transaction, and there is no apparent reason for the Commission to step in and deny one party the benefit of the negotiated bargain absent evidence of anticompetitive practices or other wrongdoing not apparent here.” *Media General/Nexstar* 32 FCC Rcd at 197 ¶ 36. There is no reason for a different conclusion here.

subscription fees for households. Indeed, DISH has admitted that the regression analyses of their own experts show no statistically significant relationship between retransmission fees and the presence of a duopoly in any local market—an admission that completely undercuts their argument that having the ability to threaten a “dual blackout” of two Big-4 stations in the same DMA gives a broadcaster the ability to increase retransmission fees.

Looking at this on a transaction-specific basis, Petitioners have not shown how the combination of Sinclair and Tribune would give Sinclair additional negotiating leverage which could then cause fees to go up.<sup>98</sup> {{BEGIN HCI

<sup>99</sup> END HCI}}

---

<sup>98</sup> DISH cites, out of context, a statement by Sinclair CEO Christopher Ripley that Sinclair expects its retransmission consent fees to increase. DISH Petition at 43. Mr. Ripley was referring primarily to the effect of after-acquired station clauses in Sinclair’s retransmission consent agreements, not to increased leverage in future negotiations.

<sup>99</sup> See Faber Decl. ¶ 18.

Petitioners cite a number of “blackouts” of both Sinclair and Tribune stations and speculate that the Transaction may lead to more “blackouts.”<sup>100</sup> Not only in many instances are the Petitioners’ claims misleading (for example, the DISH blackout with Sinclair lasted one day), but they fail to point out that such blackouts are extremely rare. In the past four years, Petitioners could only cite three blackouts for Sinclair and one for Tribune out of the hundreds of such negotiations completed by Sinclair.<sup>101</sup> Further, the article Petitioners cite describing the TWC/CBS blackout (neither of which are a party to this transaction) states that TWC lost 306 thousand subscribers, yet TWC’s revenues increased for that quarter by 2.9% to \$5.5 billion.<sup>102</sup> This increase in revenues shows that large MVPDs can absorb whatever small subscriber losses they suffer from a “blackout.”

The simple fact is that of the 39 “blackouts” that have occurred in the last two years, 17 of those—more than 40%—have involved DISH itself with 17 different station owners on the other side, most of them very small.<sup>103</sup> What this suggests is that these blackouts were the result

---

<sup>100</sup> DISH Petition at 2, 71-72; ATVA Comments at 7; CCA Petition at 23; NTCA Petition at 6. Applicants dispute the proposition that impasses are caused by the stations, when in effect they are a result of both sides failing to come to agreement. Were they caused purely by stations, it would be extremely difficult to explain why DISH was involved in 50% of retransmission disputes in 2015. *See* Atif Zubair, *2015 retrans roundup: Industry consolidation leads to larger renewals, high-profile disputes*, SNL Kagan at 2-3 (Jan. 22, 2016). DISH is negotiating with the same broadcast stations as other MVPDs, yet those other MVPDs were able to routinely obtain retransmission rights without such difficulties.

<sup>101</sup> *See* DISH Petition at 9, 71-73; *see also* CCA Petition at 23; *see also* ACA Petition at 19; *see also* Public Knowledge *et al.* Petition at 11.

<sup>102</sup> Joe Flint, “Time Warner Cable loses 306,000 subscribers, cites fight with CBS,” *L.A. Times* (Oct. 31, 2013), <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-time-warner-cable-cbs-earns-20131031-story.html> (last visited Aug. 18, 2017); *See* Public Knowledge *et al.* Petition at 8.

<sup>103</sup> *See* SNL Kagan, *Retrans Estimates 2015-2016*, at tab Publicly announced TV station retrans agreements and signal disruptions - Jan. 1, 2015 to Sept. 14, 2016 (Sept. 16, 2016) (“SNL Kagan”); *See also* ATVA, *Retrans Black Outs*, <http://www.americantelevisionalliance.org/wp->

of DISH seeking to exercise its own bargaining leverage against much smaller station group owners. This is not behavior that the FCC should reward by blocking a merger that is so clearly in the public interest.

DISH's complaints about the "blackouts" generally or about the possibility of "dual blackouts" ignore one of the most fundamental principles of how the free market operates. As the Supreme Court held in 1919 in *United States v. Colgate & Co.*, "in the absence of any purpose to create or maintain a monopoly" the antitrust laws do "not restrict the long recognized right of trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal," and on what terms.<sup>104</sup> This principle is fundamental to the efficient functioning of a free market.<sup>105</sup> Having exercised this right itself on multiple occasions, it is disingenuous for DISH to object to a broadcaster doing so.

As Congress decided in the 1992 Cable Act, only the marketplace can determine the "right" level of retransmission consent fees. The free market rate is the rate that best serves the public interest. DISH and other Petitioners are attempting to use this proceeding to advance their own private commercial interests and to interfere with what is a fundamental right of any business to refuse to deal with any distributor that is not willing to pay what it views as a fair price for its copyrighted programming.

---

[content/uploads/2017/05/Copy-of-Retrans-Blackouts-04.25.171.xlsx](#) (last visited Aug. 19, 2017). DISH conveniently omits that in 2015 alone, it was involved in half of all retransmission consent disputes.

<sup>104</sup> See *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919); accord, *Pacific Tel. Co. v. LinkLine Comms., Inc.*, 555 U.S. 438, 448 (2009) ("As a general rule, businesses are free to choose the parties with whom they will deal, as well as the prices, terms, and conditions of that dealing.").

<sup>105</sup> While true that Congress prohibited the combined negotiation of retransmission consent for certain non-commonly controlled television stations, Congress took no action to prohibit such joint negotiation of same-market stations which are commonly-owned.

DISH’s suggestion that Sinclair’s merger with Tribune may lead to more “dual blackouts” is, in any event, highly speculative at best. In reality, dual blackouts are extremely rare. This is because, as Barry Faber explains in his Declaration, a broadcast station is likely to suffer a much larger loss of revenue from any blackout than an MVPD will, and a dual blackout would double that loss of revenue to the broadcast station.<sup>106</sup> By contrast, as Dr. Gowrisankaran explains in his Declaration, the loss of revenue an MVPD is likely to suffer from any blackout is much smaller, and a dual blackout is unlikely to double the losses an MVPD would suffer, as it would for a broadcast station.<sup>107</sup> Moreover, their much greater size gives MVPDs like DISH a much greater ability to absorb those losses than a broadcast station group owner, which may explain why 25 of the 39 blackouts in 2015 and 2016 involved either DirecTV or DISH, which are two of the four largest MVPDs and the only ones that have a truly national footprint.<sup>108</sup>

**E. Petitioners’ Argument that the Transaction Will Give Sinclair Too Much National Control at the Expense of Local Control Has No Merit.**

Petitioners’ arguments that the Transaction will create too big a company are unsupported and have no basis in law. Accepting Petitioners’ arguments, no company of any size could acquire Tribune or Sinclair or ION or Univision or FOX or any other large station group, despite whether the FCC ownership rules permitted such a transaction.<sup>109</sup> As noted above, the bidding

---

<sup>106</sup> See Faber Decl. ¶¶ 21-22.

<sup>107</sup> See Gowrisankaran Decl. ¶¶ 83-84.

<sup>108</sup> See SNL Kagan, *supra* note 103.

<sup>109</sup> See *Mr. Kurt Weiland*, 25 FCC Rcd 15277, 15279 (MB 2010) (“To the extent that the Prior Consent Term may be interpreted to require Bexley’s prior consent to the proposed license assignment, we find that this term constitutes an improper limitation on Simply Living’s licensee right to make a core operational decision, namely the assignment of the Station License to a qualified buyer of its choosing.”); see also *Hispanic Broadcasting Corp.*, 18 FCC Rcd 18834, 18850-51 (2003) (television network’s approval right over the sale of affiliate stations licensed to

process for Tribune confirms that the natural merger partners for a broadcaster like Tribune is another large broadcaster, given the incredibly competitive environment in which broadcasters operate against mega-MVPDs like DISH, among other. Petitioners claim that post-Transaction Sinclair will be too big nationally for fair retransmission consent negotiations or will reduce diversity nationwide. Not only have Petitioners provided no evidence at all to support such speculation, but in addition the Commission has a national cap rule<sup>110</sup> specifically designed to establish what “too big” is and, as demonstrated in the Applications and discussed above, Applicants fully intend to comply with that rule.<sup>111</sup> In addition, while post-Transaction Sinclair will be on par with its broadcasting competitors as a matter of overall revenue, it will still fall far short of the revenues earned by, or market capitalizations of, large MVPDs.<sup>112</sup>

**F. Allegations that Sinclair Intends to Delay the Post-Auction Transition Are Absurd and Unfounded.**

Some Petitioners have alleged that Sinclair intends to use this Transaction to gain leverage to delay the repack.<sup>113</sup> These allegations are based on pure speculation and have no basis in the real world. To the contrary, perhaps more than any other broadcasters, Sinclair has urged the Commission to adopt a repacking plan that will lead to the *shortest actual* repacking

---

another party disallowed as an improper level of influence over the core operations of licensee’s stations).

<sup>110</sup> 47 C.F.R. § 73.3555(e) (expressly permitting a party to own television stations with an aggregate national audience reach up to 39%).

<sup>111</sup> See Comprehensive Exhibit at 1, 26 (“As described above, without divestiture, the combined company would have an audience reach approximately 6.5% in excess of the 39% cap. The applicants will take such actions to the extent required to comply with the terms of the Merger Agreement and the national television ownership limit (including the UHF Discount) . . . .”); see also *supra* Section C.

<sup>112</sup> See *supra* note 87.

<sup>113</sup> See, e.g., T-Mobile Comments at 9.

period, rather than pursue a shorter *theoretical* schedule that does not account for inevitable delays that are beyond the control of any stakeholder, including the FCC. The disruption of repacking will be costly for broadcasters and Sinclair has no interest in a process that takes any longer than necessary. Since the beginning of the auction, Sinclair has cooperated with the Commission in the repack and there is no evidence to the contrary provided by any of the Petitioners.

Further, the assertion that Sinclair wishes to delay repacking to allow more time for ATSC 3.0 to be available in the market is purely speculative—and flatly wrong. It is a baseless “throwaway” argument that reflects a fundamental misunderstanding of the path to ATSC 3.0 deployment. Most transmitters available today—those that will be installed in the transition—are already ATSC 3.0 capable. The faster they are delivered, installed, tested and brought online, the faster ATSC 3.0 can reach scale. Faster repacking will *accelerate* the realistic timeline for a coordinated ATSC 3.0 service launch. The earlier the repack is complete, the earlier ATSC 3.0 service can be launched in earnest.

Some Petitioners go so far as to suggest, again without any support, that Sinclair’s ownership of Dielectric LLC (“Dielectric”) will somehow be used to delay the repack.<sup>114</sup> Sinclair’s ownership of Dielectric is irrelevant to this Transaction. These claims are preposterous and more than a little ironic. In the wake of the FCC’s pre-auction TV freeze, Dielectric had little business and its owner had announced it would shut Dielectric down effective June 29, 2013. This raised alarms from stations, wireless carriers, engineers, and even among FCC staff, as it was widely recognized Dielectric—as the leading supplier of antennas, transmission lines, and other necessary transmission components—would be essential to a timely

---

<sup>114</sup> See, e.g., *id.* at 2.

and orderly repacking process.<sup>115</sup> Sinclair bought Dielectric less than two weeks before the shutdown, absorbed substantial operating losses for many years, and has kept it operating ever since, for the benefit of the entire broadcast industry. As Sinclair's David Smith said at the time, "if and when a spectrum repack occurs, Dielectric will be there to support that effort."<sup>116</sup> In fact, Sinclair's investment in Dielectric at a time when no one wanted it and it was insolvent with no clear prospects for future growth should be seen as a public interest benefit, not a harm.

**G. Petitioners Are Motivated By Self-Interest, Rather Than Public Interest.**

The Commission should reject Petitioners' cynical attempts at leveraging the merger review process to their own competitive advantage. As the Commission has noted on many occasions:

Petitions are specifically intended to enable interested parties to provide factual information to the Commission as to whether grant of an application would serve the public interest. To the extent that they are used for other than their intended purpose, *e.g.*, for private financial gain, to settle personal claims, or as an emotional outlet, the public interest is disserved.<sup>117</sup>

That statement pretty much condemns the panoply of Petitions filed in this proceeding, all of which are extremely short on facts supported by affidavits of personal knowledge, but long on speculation, surmise, and demonstrably false statements. The Petitioners seek not to promote the actual interests of the public in an economically vibrant broadcast service, but are instead trying to use the regulatory process to suppress competition or promote outdated agendas. The

---

<sup>115</sup> See "Dielectric Demise Raises Repacking Alarm," *TVTechnology* (Apr. 23, 2013), <http://www.tvtechnology.com/news/0086/dielectric-demise-raises-repacking-alarm/219066> ) (last visited Aug. 18, 2017).

<sup>116</sup> See "Sinclair to Buy Dielectric for <\$5 Million," *TVTechnology* (June 18, 2013), <http://www.tvtechnology.com/news/0086/sinclair-to-buy-dielectric/219921>) (last visited Aug. 18, 2017).

<sup>117</sup> *Amendment of Section 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 67 R.R.2d 1526, 1530 (1990) (citation omitted).

Commission’s obligation is not to protect MVPDs, including DISH; its duty is to promote the interests of viewers. Viewers are not harmed when broadcasters obtain fair retransmission consent fees to support their programming and operations. That is particularly true where the resulting signal (and programming) is available for free-over-the-air viewing that competes with, and supplements, the nearly uncountable other video options those viewers have available. DISH and other MVPDs do not object to the Transaction for the sake of the consumer, but for their own profit margins.

Similarly, Independent Programmers and Newsmax are only trying to protect their competitive positions and are not raising any regulatory or legal issues. The Independent Programmers have provided no evidence that as a result of this Transaction Sinclair will increase licensing fees or make it more difficult for independent programmers to get their programming carried on MVPDs—this is pure unfounded speculation. Newsmax makes an even more outrageous claim, that the deal will somehow “harm . . . democracy,”<sup>118</sup> without actually citing how the Transaction would not be in the public interest, rather than just not in Newsmax’s own business interests. Those volatile unsupported claims are better suited for the pages of its website (which we note is available in every market in the country), and have no place in proceedings before the FCC such as this.

In its comments, T-Mobile alleges that Sinclair has announced plans to use ATSC 3.0 to launch a wireless over-the-top service that would directly compete with other facilities-based video providers, including T-Mobile, thus providing Sinclair with an additional incentive to delay T-Mobile’s access to its newly acquired 600 MHz spectrum.<sup>119</sup> While this claim is pure

---

<sup>118</sup> Newsmax Petition at 2.

<sup>119</sup> T-Mobile Comments at 7.

speculation based on little more than conjecture, and T-Mobile has offered no evidence that Sinclair intends to use the Transaction to delay the repack, if in fact Sinclair was to offer a new service to compete with T-Mobile, how is that bad for consumers?

And Free Press and Public Knowledge are reiterating the same outdated complaints about the broadcast industry they have been making for the past 20 years. As noted above, what they seek can only be obtained through rulemaking proceedings, and having been unsuccessful in obtaining such rule changes over the years, their Petitions seek to improperly use this adjudicatory proceeding to seek yet one more bite at the regulatory apple. As the articles discussed above indicate, the media platform has changed and we have to adapt.<sup>120</sup> And as the Chairman pointed out, “it’s clearer than ever that the way Americans produce and consume media today is dramatically different than it was a generation ago.”<sup>121</sup> What the Free Press and Public Knowledge Petitioners fail to understand is that this Transaction will help save free over-the-air TV to allow it to serve the very people these groups claim to protect.

---

<sup>120</sup> See *supra* note 15.

<sup>121</sup> Remarks of FCC Chairman Ajit Pai at the National Association of Broadcasters Show, Las Vegas, Nevada (Apr. 25, 2017), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-344558A1.docx](https://apps.fcc.gov/edocs_public/attachmatch/DOC-344558A1.docx) (last visited Aug. 19, 2017). Public Knowledge’s Petition appears to want to return to the broadcasting scheme of the 1940s. Public Knowledge *et al.* Petition at 5.

#### IV. CONCLUSION

For the foregoing reasons, Applicants request that the Commission dismiss or deny the Petitions in full and grant the Applications.

Respectfully submitted,

/s/ Miles S. Mason

Miles S. Mason

Jessica T. Nyman

Joseph A. Cohen

**PILLSBURY WINTHROP SHAW PITTMAN LLP**

1200 Seventeenth Street, NW

Washington, D.C. 20036

202-663-8195

*Counsel to Sinclair Broadcast Group, Inc.*

/s/ Mace Rosenstein

Mace Rosenstein

Ann West Bobeck

Mark Chen

**COVINGTON AND BURLING LLP**

One CityCenter

850 Tenth Street, NW

Washington, D.C. 20001

202-662-5460

*Counsel to Tribune Media Company*

August 22, 2017

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2017, I caused a redacted copy of the foregoing Applicants' Consolidated Opposition to Petitions to Deny to be filed electronically with the Commission using the ECFS system and to be served upon the following individuals by electronic mail.

Jeffrey H. Blum  
Senior Vice President & Deputy General Counsel  
DISH Network LLC  
1110 Vermont Avenue, N.W., Suite 750  
Washington, D.C. 20005  
[jeffrey.blum@dish.com](mailto:jeffrey.blum@dish.com)

David Roberts  
Federal Communications Commission  
Video Division, Media Bureau  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
[David.Roberts@fcc.gov](mailto:David.Roberts@fcc.gov)

Pantelis Michalopoulos  
Andrew Golodny  
Counsel to DISH Network LLC  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036-1795  
[pmichalopoulos@steptoe.com](mailto:pmichalopoulos@steptoe.com)  
[agolodny@steptoe.com](mailto:agolodny@steptoe.com)

David Brown  
Federal Communications Commission  
Video Division, Media Bureau  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
[David.Brown@fcc.gov](mailto:David.Brown@fcc.gov)

Mace Rosenstein  
Covington & Burling LLP  
One CityCenter  
850 Tenth Street, N.W.  
Washington, D.C. 20031-4956  
[MRosenstein@cov.com](mailto:MRosenstein@cov.com)

John Bergmayer, Senior Counsel  
Harold Feld, Senior Vice President  
Public Knowledge  
1818 N Street, NW Suite 410  
Washington, D.C. 20036  
[john@publicknowledge.org](mailto:john@publicknowledge.org)  
[hfeld@publicknowledge.org](mailto:hfeld@publicknowledge.org)

Jill Canfield  
Vice President, Legal & Industry  
Assistant General Counsel  
NTCA – The Rural Broadband Association  
4121 Wilson Boulevard, Suite 100  
Arlington, VA  
[jcanfield@ntca.org](mailto:jcanfield@ntca.org)

Ross J. Lieberman  
Senior Vice President of Government Affairs  
American Cable Association  
2415 39<sup>th</sup> Place, NW  
Washington, D.C. 20007  
[rlieberman@americancable.com](mailto:rlieberman@americancable.com)

**REDACTED - FOR PUBLIC INSPECTION**

Todd O'Boyle  
Program Director  
Common Cause  
805 15<sup>th</sup> Street, N.W., Suite 800  
Washington, D.C. 20007  
[toboyle@commoncause.org](mailto:toboyle@commoncause.org)

Rebecca Murphy Thompson  
EVP & General Counsel  
Competitive Carriers Association  
805 15<sup>th</sup> Street N.W., Suite 401  
Washington, D.C., 20005  
[rthompson@ccamobile.org](mailto:rthompson@ccamobile.org)

Michael Nilsson  
Counsel to the American Television  
Alliance  
Harris, Wiltshire & Grannis LP  
1919 M Street, N.W.  
The Eight Floor  
Washington, D.C. 20036  
[mnilsson@hwglaw.com](mailto:mnilsson@hwglaw.com)

Jessica J. González  
Deputy Director and Senior Counsel  
Free Press  
1025 Connecticut Ave, NW  
Suite 1110  
Washington, D.C. 20036  
[jgonzalez@freepress.net](mailto:jgonzalez@freepress.net)

Marissa G. Repp  
Counsel to Steinman Communications, Inc.  
Repp Law Firm  
1629 K Street, N.W., Suite 300  
Washington D.C. 20006  
[marissa@repplawfirm.com](mailto:marissa@repplawfirm.com)

*/s/ Joseph Cohen*  
\_\_\_\_\_  
Joseph Cohen

**REDACTED – FOR PUBLIC INSPECTION**

**EXHIBIT A**

**Investments in Allbritton and Fisher**

**REDACTED – FOR PUBLIC INSPECTION**

{{Begin HCI

Redacted - HCI

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCl

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCl

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCl

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCl

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCl

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCl

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCI

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCI

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCl

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCI

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCI

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCI

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCI

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCI

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCI

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCI

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCI

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCI

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCI

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCI

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCI

**REDACTED – FOR PUBLIC INSPECTION**

Redacted - HCI

End HCI}}

**REDACTED – FOR PUBLIC INSPECTION**

**EXHIBIT B**

**Local News Investments**

# REDACTED – FOR PUBLIC INSPECTION

## News/Lifestyle Show Expansions

Market	Station	M-F Time Period	Sa-Su Time Period	total Added Hrs/Week	Project Notes
Albany	WCWN	10:30p-11p		2.5	
Austin	KEYE	9a-10a		5.0	Lifestyle
Austin	KEYE	6:30p-7p		2.5	
Bakersfield	KBAK	4:30a-5a		2.5	
Baltimore, MD	WBFF	4:30a		2.5	
Baltimore, MD	WBFF	4p-5p		5.0	
Charleston	ECIV	5p-6p		5.0	
Charleston, WV	WCHS	5p-6p		5.0	
Charleston, WV	WVAH	6:30p-7p		2.5	
Chattanooga	ETVC	7a-9a		10.0	
Cincinnati	WSTR	8a-9a		5.0	Pending Corp. Approval
Columbia, SC	WACH	5p-5:30p		2.5	Pending Corp. Approval / Sep 2017 launch
Corpus Christi	KUQI	9a-10a		5.0	Lifestyle Show
El Paso	KDBC	5a-7a		10.0	
El Paso	KDBC	6p-6:30p		2.5	
El Paso	KDBC	11p-11:30p		2.5	
Eugene	KVAL	9a-10a		5.0	
Flint	WSMH	7a-9a		10.0	
Green Bay	WLUK	10p-10:30p		2.5	
Green Bay	WLUK	4:30a-5a		2.5	
Harlingen	KGBT	9a-10a		5.0	
Harlingen	KGBT	12p-12:30p		2.5	
Las Vegas	KVCW	9a-10a		5.0	
Las Vegas	KVCW	10p-10:30p		2.5	
Little Rock	KATV	3p-4p		5.0	News/Lifestyle
Nashville	WZTV	4a-6a		10.0	
Nashville	WZTV	5:30p-6p		2.5	
Oklahoma City	KOKH	5p-6p		5.0	
Oklahoma City	KOKH	9a-10a		5.0	Lifestyle
Portland, ME	WGME	7p-7:30p		2.5	Launches Sep 2017
Portland, OR	KATU	3p-4p		5.0	Lifestyle
Reno	KFOX	7a-9a		10.0	
Rochester	WUHF	7a-9a		10.0	
Rochester	WUHF	10p-11p		5.0	
Salt Lake City, UT	KJZZ	8a-9a		5.0	
Salt Lake City, UT	KJZZ	9p-9:30p		2.5	
San Antonio	KABB	11:30a-noon		2.5	
San Antonio	WOAI	12:30-1p		2.5	
Seattle, WA	KOMO	3:30-4p		2.5	
Seattle, WA	KOMO		4p-5p	2.0	
Sioux City	KMEG		5p-5:30p	1.0	
Sioux City	KMEG		10p-10:30p	1.0	
South Bend	ESBT	7a-9a		10.0	
Springfield/Champaign	WCCU	5:30p-6p		2.5	
St. Louis	KDNL	6:30a-7a		2.5	
St. Louis	KDNL	5p-5:30p		2.5	
St. Louis	KDNL	10p-10:30p		2.5	
Steubenville	ETOV	7-8a		5.0	
Tulsa	KTUL	11a-12p		5.0	
Tulsa	KTUL	12p-12:30p		2.5	Pending Corp. Approval
West Palm Beach	WPEC	3p-3:30p		2.5	
West Palm Beach	WTVX	10p-10:30p		2.5	

Total expanded hrs/week

221.5

**REDACTED – FOR PUBLIC INSPECTION**

**EXHIBIT C**

**Sample *Connect to Congress* Interviews**

## REDACTED – FOR PUBLIC INSPECTION

1. [Cortez Masto: Repeal and replace is dead -- a bipartisan health care bill is coming](#)<sup>1</sup>
2. [Sen. Richard Shelby 8/2](#)<sup>2</sup>
3. [Sen Merkley: Trump-backed GOP immigration reform could hurt the economy](#)<sup>3</sup>
4. [Senator John Boozman: Sessions "is not a perfect individual..."](#)<sup>4</sup>
5. [Lois Frankel: what congress can do to aid officers in attacks](#)<sup>5</sup>
6. [Rep. Blumenauer on veto override, BLM and lead in the water](#)<sup>6</sup>
7. [Lamar Smith](#)<sup>7</sup>
8. [U.S. Rep. Brian Babin addresses health care, terrorism and more](#)<sup>8</sup>
9. [Rep. David Cicilline](#)<sup>9</sup>
10. [Tennessee Senator Corker questions President Trump's 'competence'](#)<sup>10</sup>
11. [A president 'needs allies,' experts say as Trump attacks Republicans over Charlottesville](#)<sup>11</sup>
12. [McCarthy on Charlottesville and hate groups: 'We are better than that'](#)<sup>12</sup>
13. [Net neutrality group targets Tennessee Rep. Marsha Blackburn as FCC decision looms](#)<sup>13</sup>
14. [Democrats blast Trump over 'inappropriate' undisclosed conversation with Putin](#)<sup>14</sup>
15. [Democrats seek compromise as Republicans struggle to salvage Obamacare repeal](#)<sup>15</sup>

---

<sup>1</sup> <http://news3lv.com/news/connect-to-congress/interviews/connect-to-congress-08-02-2017>

<sup>2</sup> <http://local15tv.com/news/connect-to-congress/connect-to-congress-sen-richard-shelby-82>

<sup>3</sup> <http://katu.com/news/connect-to-congress/sen-merkley-trump-backed-gop-immigration-reform-could-hurt-the-economy>

<sup>4</sup> <http://katv.com/news/connect-to-congress/connect-to-congress-senator-john-boozman-02-08-2017>

<sup>5</sup> <http://cbs12.com/news/connect-to-congress/connect-to-congress-lois-frankel-09-21-2016>

<sup>6</sup> <http://katu.com/news/connect-to-congress/connect-to-congress-rep-blumenauer-on-veto-override-blm-and-lead-in-the-water>

<sup>7</sup> <http://news4sanantonio.com/news/videos/connect-to-congress-lamar-smith-03-16-2017>

<sup>8</sup> <http://kfdm.com/news/local/connect-to-congress-us-rep-brian-babin-addresses-health-care-terrorism-and-more>

<sup>9</sup> <http://turnto10.com/news/connect-to-congress/interviews/connect-to-congress-rep-david-cicilline-05-03-2017>

<sup>10</sup> <http://wjla.com/news/connect-to-congress/tennessee-senator-corker-questions-president-trumps-competence>

<sup>11</sup> <http://wjla.com/news/nation-world/a-president-needs-allies-experts-say-as-trump-attacks-republicans>

<sup>12</sup> <http://wjla.com/news/connect-to-congress/this-is-america-we-are-better-than-that-mccarthy-on-charolettesville-hate-groups>

<sup>13</sup> <http://wjla.com/news/connect-to-congress/net-neutrality-group-targets-tennessee-rep-marsha-blackburn-as-fcc-decision-looms>

<sup>14</sup> <http://wjla.com/news/connect-to-congress/democrats-blast-trump-over-inappropriate-undisclosed-conversation-with-putin>

**REDACTED – FOR PUBLIC INSPECTION**

16. [Hatch teaches internet 'valuable jargon lesson'](#)<sup>16</sup>
17. [Partisan divide grows over Trump Jr.'s meeting with Russian lawyer](#)<sup>17</sup>
18. [Dems: Trump's FBI nominee must prove he is independent](#)<sup>18</sup>
19. [Senators show little sign of unity on health care reform](#)<sup>19</sup>
20. [Lawmakers call for civility after congressional baseball practice shooting](#)<sup>20</sup>
21. [Trump budget 'astounding document' built on 'fantasy numbers,' Dems say](#)<sup>21</sup>
22. [Senator: Manchester attack 'a wake-up call' for U.S.](#)<sup>22</sup>
23. [Both sides await CBO score as Senate prepares to tackle health care reform](#)<sup>23</sup>
24. [Senators question timing, rationale of Comey's firing](#)<sup>24</sup>
25. [Nobody should do 'victory lap' over spending bill, House members say](#)<sup>25</sup>
26. [Sen. Cardin: Trump trying to 'shift attention' with attacks on Rice](#)<sup>26</sup>
27. [Senators blast 'war criminal' Assad after gas attack in Syria](#)<sup>27</sup>
28. [Republicans impressed by Trump's tone, but Dems doubt sincerity of address](#)<sup>28</sup>
29. [Trump's talk of merit-based immigration intrigues House Republicans](#)<sup>29</sup>

- 
15. <http://wjla.com/news/connect-to-congress/democrats-seek-compromise-as-republicans-struggle-to-salvage-obamacare-repeal>
  16. <http://wjla.com/news/connect-to-congress/hatch-delivers-valuable-jargon-lesson-on-wads>
  17. <http://wjla.com/news/connect-to-congress/partisan-divide-grows-over-trump-jrs-meeting-with-russian-lawyer>
  18. <http://wjla.com/news/connect-to-congress/dems-trumps-fbi-nominee-must-prove-he-is-independent>
  19. <http://wjla.com/news/connect-to-congress/senators-show-little-sign-of-unity-on-health-care-reform>
  20. <http://wjla.com/news/connect-to-congress/lawmakers-call-for-civility-after-congressional-baseball-practice-shooting>
  21. <http://wjla.com/news/connect-to-congress/interviews/trump-budget-astounding-document-built-on-fantasy-numbers-dems-say>
  22. <http://wjla.com/news/connect-to-congress/senator-manchester-attack-a-wake-up-call-for-us>
  23. <http://wjla.com/news/connect-to-congress/both-sides-await-cbo-score-as-senate-prepares-to-tackle-health-care-reform>
  24. <http://wjla.com/news/connect-to-congress/senators-question-timing-rationale-of-comeys-firing>
  25. <http://wjla.com/news/connect-to-congress/nobody-should-do-victory-lap-over-spending-bill-house-members-say>
  26. <http://wjla.com/news/connect-to-congress/sen-cardin-trump-trying-to-shift-attention-with-attacks-on-rice>
  27. <http://wjla.com/news/connect-to-congress/senators-blast-war-criminal-assad-after-gas-attack-in-syria>
  28. <http://wjla.com/news/connect-to-congress/republicans-impressed-by-trumps-tone-but-dems-doubt-sincerity-of-address>
  29. <http://wjla.com/news/connect-to-congress/trumps-talk-of-merit-based-immigration-intrigues-house-republicans>

**REDACTED – FOR PUBLIC INSPECTION**

30. [Dems prepare for Senate battles over Supreme Court, abortion rights<sup>30</sup>](#)
31. [Democrats concerned by Trump's executive orders on immigration<sup>31</sup>](#)
32. [Democrats on Trump's first week<sup>32</sup>](#)
33. [Democrats eye infrastructure, trade as possible areas of compromise with Trump<sup>33</sup>](#)
34. [Congressman working to make mental health care as accessible as treating a broken arm<sup>34</sup>](#)

---

<sup>30</sup> <http://wjla.com/news/connect-to-congress/interviews/dems-prepare-for-senate-battles-over-supreme-court-abortion-rights>

<sup>31</sup> <http://wjla.com/news/nation-world/democrats-concerned-by-trumps-executive-orders-on-immigration>

<sup>32</sup> <http://wjla.com/news/connect-to-congress/connect-to-congress-democrats-on-trumps-first-week>

<sup>33</sup> <http://wjla.com/news/connect-to-congress/interviews/democrats-eye-infrastructure-trade-as-possible-areas-of-compromise-with-trump>

<sup>34</sup> <http://wjla.com/news/connect-to-congress/congressman-working-to-make-mental-health-care-as-accessible-as-treating-a-broken-arm>

**REDACTED – FOR PUBLIC INSPECTION**

**EXHIBIT D**

**Sample of Local Town Halls**

**REDACTED – FOR PUBLIC INSPECTION**

<b><u>2015 Q1</u></b>	<b><u>Market</u></b>	<b><u>Topic</u></b>	<b><u>Host Station</u></b>
1/13/2015	Charleston, SC	Domestic Violence	WCIV
1/19/2015	Washington, DC	Moving Beyond...	WJLA
1/22/2015	Dayton, OH	Race Relations in America	WKEF
1/28/2015	Charleston, WV	Crime	WCHS
1/29/2015	Baltimore, MD	Common Core	WBFF
2/4/2015	WPB, FL	Cuban Crisis	WPEC
2/9/2015	Washington, D.C.	Free Speech	WJLA
2/19/2015	San Antonio, TX	Food Stamp Card Abuse	WOAI
2/19/2015	Fresno, CA	Fresno Gang Violence	KMPH
2/23/2015	Chattanooga, TN	Gang Violence	WTVC
3/5/2015	Austin, TX	Distracted Driving	KEYE
3/9/2015	Myrtle Beach, SC	Closing South Carolina University	WPDE
3/10/2015	Vegas, NV	Terrorism	KSNV
3/11/2015	Cincinnati, OH	Heroin Epidemic	WKRC
3/12/2015	Seattle, WA	Vaccination Debate	KOMO
3/18/2015	Columbus, OH	Mayoral Debate	WSYX
3/19/2015	Oklahoma, OK	Fracking Debate	KOCB
3/26/2015	Springfield, IL	Mayoral Debate	WICS
<b><u>2015 Q2</u></b>			
4/7/2015	Little Rock, AR	Education in Arkansas	KATV
4/8/2015	Portland, ME	Vaccination Debate	WGME
4/16/2015	Grand Rapids, MI	Road Tax Debate	WWMT
4/30/2015	Steubenville, OH	Fracking Debate	WTOV
5/13/2015	Baltimore, MD	Police in the Grey	WBFF
5/21/2015	Columbia, SC	SC Gas Tax	WACH
5/28/2015	Traverse City, MI	Vaccination Debate	WPBN
6/3/2015	Nashville, TN	Mayoral Debate	WZTV
6/8/2015	Birmingham, AL	Code Blue	WBMA
6/9/2015	Asheville, NC	Law Enforcement & the Community	WLOS
6/11/2015	Harrisburg, PA	Medical Marijuana	WHP
6/23/2015	Seattle, WA	Cyber Security	KOMO
6/25/2015	Fresno, CA	Water Drought Town Hall	KMPH
6/29/2015	Bakersfield, CA	Water Drought Town Hall	KBAK
<b><u>2015 Q3</u></b>			
7/9/2015	Albany, NY	Law Enforcement & the Community	WRGB
7/14/2015	Myrtle Beach, SC	Law Enforcement & the Community	WPDE
7/22/2015	Myrtle Beach, SC	Hurricane Prep	WPDE
7/23/2015	Amarillo, TX	Downtown Development	KVII
7/30/2015	Johnstown, PA	Heroin	WJAC
8/6/2015	Springfield, IL	State of Illinois	WICS
8/15/2015	West Palm Beach, FL	Race Relations	WPEC
8/25/2015	Charleston, WV	West Side Story	WCIV
8/26/2015	San Antonio, TX	Campus Carry Law	WOAI
9/2/2015	Nashville, TN	Mayoral Debate	WZTV
9/3/2015	Little Rock, AR	Medical Marijuana	KATV
9/10/2015	Baltimore, MD	Freddie Grey	WBFF

**REDACTED – FOR PUBLIC INSPECTION**

9/15/2015	Seattle, WA	Cyber Security	KOMO
9/21/2015	West Palm Beach, FL	Minority Lending	WPEC
9/28/2015	Salt Lake, UT	Mayoral Debate	KUTV
9/30/2015	Tulsa, OK	Code Blue	KYUL
<b><u>2015 Q4</u></b>			
10/1/2015	Myrtle Beach, SC	Healthcare	WPDE
10/8/2015	Cedar Rapids, IO	Crime	KGAN
10/14/2015	Charleston, SC	Mayoral Debate	WCIV
10/20/2015	Columbus, OH	Legalizing Marijuana	WSYX
10/20/2015	Lynchburg, VA	Guns in America	WSET
10/20/2015	Portland, ME	Mayoral Debate	WGME
10/22/2015	Syracuse, NY	Mayoral Debate	WSTM
10/22/2015	Toledo, OH	Mayoral Debate	WNWO
10/27/2015	Baltimore, MD	Black Lives Matter	WBFF
10/27/2015	Portland, ME	Mayoral Debate	WGME
10/29/2015	Green Bay, WI	Cost of College	WLUK
11/5/2015	Birmingham, AL	Heroin Epidemic	WBMA
11/12/2015	Pensacola, FL	Mental Illness & Guns	WEAR
11/19/2015	Austin, TX	Austin Traffic	KEYE
12/3/2015	Reno, NV	Medical Marijuana	KRXI
12/10/2015	El Paso, TX	Mayoral Debate	KFOX
12/17/2015	Asheville, NC	Domestic Violence	WLOS
<b><u>2016 Q1</u></b>	<b><u>Market</u></b>	<b><u>Topic</u></b>	<b><u>Host Station</u></b>
1/12/2016	San Antonio, TX	MLK	KABB
	Lynchburg, VA	Gun Violence	WSET
1/21/2016	Cedar Rapids, IO	The Iowa Impact	KGAN
2/2/2016	Seattle, WA	Guns In America - Roundtable	KOMO
2/3/2016	San Antonio, TX	Debate: Sheriff Candidates	WOAI
2/15/2016	Charleston, SC	Primary February 20 Roundtable	WCIV
	Harlingen, TX	Congressional Debate	KGBT
2/16/2016	Columbus, OH	Turning Point for Youth	WSYX
2/24/2016	Birmingham, AL	Black History Month	WBMA
3/1/2016	Washington, DC	Election Special	WJLA
3/10/2016	Portland, OR	Legislative Special Session	KATU
3/15/2016	Washington, DC	Election Special	WJLA
3/18/2016	Little Rock, AR	Open Carry in Arkansas	KATV
3/21/2016	Cincinnati, OH	Childhood Poverty Crisis	WKRC
3/22/2016	Dayton, OH	Gun Control	WKEF
3/24/2016	Baltimore, MD	Republican Senatorial Debate	WBFF
3/29/2016	Washington, DC	Democratic Senatorial Debate	WJLA
3/29/2016	Harlingen, TX	Immigration	KGBT
3/30/2016	Nashville, TN	Nashville Traffic Problems	WZTV
3/31/2016	Amarillo, TX	911 Calls	KVII
<b><u>2016 Q2</u></b>			
4/14/2016	Albany, NY	Hoosick Falls Water	WRGB
4/18/2016	Charleston, WV	Democratic Gubernatorial Debate	WCHS

**REDACTED – FOR PUBLIC INSPECTION**

4/19/2016	San Antonio, TX	Bullying	WOAI
4/20/2016	Washington, DC	Free Speech	WJLA
4/21/2016	Asheville, NC	Heroin Addiction	WLOS
4/28/2016	Fresno, CA	Homelessness	KMPH
5/2/2016	Steubenville, OH	Drugs\Crime in Steubenville	WTOV
	Portland, OR	Portland Mayoral Debate	KATU
5/4/2016	Traverse City, MI	Prescription Drug Abuse	WPBN
5/10/2016	Columbus, OH	Talk with Carson	WSYX
5/17/2016	Harrisburg, PA	Minimum Wage	WHP
5/19/2016	Las Vegas, NV	Communications- Teachers/Students	KSNV
5/25/2016	Washington, DC	Heroin Addiction National TH	WJLA
5/26/2016	Portland, ME	Heroin Addiction	WGME
6/1/2016	Myrtle Beach, SC	Mayoral Debate	WPDE
6/3/2016	Columbia, SC	Roads Bill Legislation	WACH
6/6/2016	Baltimore, MD	Baltimore Moving Forward	WBFF
6/8/2016	Toledo, OH	Heroin Addiction	WNWO
6/13/2016	Washington, DC	Terror Alert (WPB/Chatt)	WJLA
6/16/2016	Washington, DC	Women Voters	WJLA
6/23/2016	Grand Rapids, MI	Legalizing Marijuana Roundtable	WWMT
6/30/2016	Chattanooga, TN	Muslims and Christians in USA	WTVN
<b><u>2016 Q3</u></b>			
7/7/2016	Green Bay, WI	Gaffney - Grid Issues	
7/18/2016	Washington, DC	RNC Convention Special	WJLA
7/19/2016	Washington, DC	RNC Convention Special	WJLA
7/20/2016	Washington, DC	RNC Convention Special	WJLA
	Myrtle Beach, SC	Hurricane Prep	WPDE
	Portland, ME	Race Relations	WGME
7/21/2016	Washington, DC	RNC Convention Special	WJLA
	Johnstown, PA	Diocese of Altoona-Johnstown	WJAC
7/25/2016	Washington, DC	DNC CONVENTION SPECIAL	WJLA
7/26/2016	Washington, DC	DNC CONVENTION SPECIAL	WJLA
7/27/2016	Washington, DC	DNC CONVENTION SPECIAL	WJLA
7/28/2016	Washington, DC	DNC CONVENTION SPECIAL	WJLA
8/2/2016	West Palm Beach, FL	District 7 County Commissioner	WPEC
	Tulsa, OK	Our Children Our Future	KTUL
8/4/2016	Springfield, IL	Budget Dysfunction	WICS
8/9/2016	Baltimore, MD	Police and the Community	WBFF
8/11/2016	Little Rock, AR	Improving Education	KATV
8/25/2016	Pensacola, FL	Bridging the Gap	WEAR
8/29/2016	Austin, TX	Campus Carry Debate	KEYE
9/6/2016	Asheville, NC	Police & Race Relations	WLOS
9/12/2016	San Antonio, TX	Sheriff Debate	WOAI
9/13/2016	Myrtle Beach, SC	The Future of Education	WPDE
9/14/2016	Birmingham, AL	Millennials	WBMA
9/20/2016	Bakersfield, CA		KBAK
9/21/2016	Salt Lake City, UT	Attorney General Debate	KUTV
9/23/2016	Asheville, NC	11th District Congressional Debate	WLOS

**REDACTED – FOR PUBLIC INSPECTION**

9/26/2016	Seattle, WA	Gubernatorial Debate	KOMO
	Salt Lake City, UT	Gubernatorial Debate	KUTV
9/27/2016	Washington, DC	Political Reaction to Debate	WJLA
9/28/2016	Oklahoma City, OK	Education Improvement Fund	KOCB
<b><u>2016 Q4</u></b>			
10/3/2016	Fresno, CA	Senate Debate	KMPH
10/4/2016	Salt Lake City, UT	2ND Congressional Debate	KUTV
	Charleston, WV	Gubernatorial Debate	WCHS
10/5/2016	West Palm Beach, FL	District 18 Debate	WPEC
10/6/2016	Portland, ME	2ND Congressional Debate	WGME
10/7/2016	Traverse City, MI	1st District Congressional Debate	WPBN
10/10/2016	Salt Lake City, UT	4th Congressional Debate	KUTV
	Washington, DC	Debate Reaction	WJLA
10/11/2016	Fresno, CA	Gun Control	KMPH
	Charleston, WV	Gubernatorial Debate	WCHS
10/12/2016	Salt Lake City, UT	Senate Debate	KUTV
	Asheville, NC	119th House District Debate	WLOS
	Columbus, OH	Hooked on Heroin	WSYX
10/14/2016	Green Bay, WI	US Senate Debate	WLUK
10/16/2016	Seattle, WA	US Senate Debate	KOMO
10/17/2016	Salt Lake City, UT	1st Congressional Debate	KUTV
	Portland, OR	Ballot Measure	KATU
	Pensacola, FL	US Senate Debate	WEAR
10/18/2016	Baltimore, MD	Mayorial Debate <b>**Taping**</b>	WBFF
10/19/2016	Salt Lake City, UT	3rd Congressional Debate	KUTV
	Seattle, WA	Gubernatorial Debate	KOMO
10/20/2016	Las Vegas, NV	Debate Fallout	KSNV
	Washington, DC	Political Reaction to Debate	WJLA
10/23/2016	Seattle, WA	US Senate Debate	KOMO
	Baltimore, MD	Mayorial Debate	WBFF
	Myrtle Beach, SC	Heroin Roundtable	WPDE
10/24/2016	Washington, DC	Opiod Recovery <b>**TAPING**</b>	WJLA
10/26/2016	Pensacola, FL	US Senate Debate	WEAR
10/27/2016	Cedar Rapids, IO	Upcoming Election	KGAN
	Asheville, NC	50th District Senate Debate	WLOS
	Springfield, IL	US Senate Debate	WICS
10/31/2016	Green Bay, WI	Election Special	WLUK
11/2/2016	Syracuse, NY	24th Congressional Debate	WSTM
11/3/2016	Nashville, TN	Local TV News Coverage	WZTV
	Columbus, OH	Obamacare	WSYX
11/7/2016	Washington, DC	Your Voice Your Future	WJLA
11/9/2016	Washington, DC	Election Reaction	WJLA
11/14/2016	Washington, DC	Commutation/Probation <b>**TAPING</b>	WJLA
11/17/2016	Asheville, NC	Affordable Housing in Ashville	WLOS
	Charleston, SC	Vietnam Anniversary	WCIV
11/21/2016	Myrtle Beach, SC	Hurricane Mathews Aftermath	WPDE
12/6/2016	Cincinnati, OH	Childhood Poverty Crisis	WKRC

**REDACTED – FOR PUBLIC INSPECTION**

12/7/2016	Pensacola, FL	Florida, Florida, Florida	WEAR
12/8/2016	San Antonio, TX	Drug Corridor	WOAI
12/13/2016	Las Vegas, NV	Meet Senator Cortez Masto	KSNV
12/14/2016	Baltimore, MD	Sanctuary Cities	WBFF
<b><u>2017 Q1</u></b>	<b><u>Market</u></b>	<b><u>Topic</u></b>	<b><u>Host Station</u></b>
1/18/2017	Beaumont, TX	Race Relations	KFDM
1/26/2017	Columbia, SC	Leadership in SC	WACH
1/31/2017	Chattanooga, TN	Hamilton County Schools in Crisis	WTVC
2/2/2017	Little Rock, AR	Crime	KATV
2/9/2017	Asheville, NC	Obamacare Repeal & Replace	WLOS
2/13/2017	Nashville, TN	Trump First 100 Days	WZTV
2/16/2017	Harlingen, TX	Immigration-Refugees	KGBT
2/21/2017	Harrisburg, PA	Guns Control	WHP
2/26/2017	Baltimore, MD	Operation Baltimore	WBFF
2/28/2017	West Palm Beach, FL	Opioid Crisis	WPEC
	Charleston, SC	Beneath the Surface - Mental Health	WCIV
3/2/2017	Portland, OR	2017 Legislative Session	KATU
3/9/2017	Macon, GA	Community & Police Relations	WGXA
	San Antonio, TX	Bathroom Bill	WOAI
3/14/2017	Myrtle Beach, SC	Opioid Crisis	WPDE
	Steubenville, OH	The WV Budget Crisis	WTOV
3/20/2017	Columbus, OH	State of the Union	WSYX
3/28/2017	Seattle, WA	Heroin - A Community Crisis	KOMO
3/30/2017	Salt Lake City, UT	Opioid Crisis	KUTV
<b><u>2017 Q2</u></b>			
	Johnstown, PA	Heroin Epidemic	WJAC
4/9/2017	Seattle, WA	Immigration	KUNS
4/13/2017	Lynchburg, VA	Republican Gubernatorial Debate	WSET
	Bakersfield/Fresno, CA	Immigration Policies	KBAK
4/18/2017	Birmingham, AL	Transgender Bill	WBMA
4/20/2017	Charleston, SC	Healthcare Vote with Sanford	WCIV
4/24/2017	Cincinnati, OH	Mayoral Debate	WKRC
	Austin, TX	SCHOOL CHOICE / VOUCHERS	KEYE
5/3/2017	Portland, OR	Portland Public Schools	KATU
5/4/2017	Syracuse, NY	Immigration	WSTM
5/11/2017	Columbus, OH	1x1 with Kasich	WSYX
5/15/2017	Syracuse, NY	Town Hall with Congressman	WSTM
5/16/2017	South Bend, IN	Opioid Epidemic	WSBT
5/18/2017	Kalamazoo, MI	Legalized Marijuana	WWMT
5/22/2017	Charleston, WV	Partnership for Drug Free Kids	WCHS
5/25/2017	Green Bay, WI	Ready for Retirement?	WLUK
5/31/2017	Traverse City, MI	School Treats	WPBN
	Salt Lake City, UT	Domestic Violence	KUTV
6/6/2017	West Palm Beach, FL	Fighting Hunger	WPEC
6/8/2017	Baltimore, MD	Project Baltimore	WBFF
	Albany, NY	Guns Control	WRGB

**REDACTED – FOR PUBLIC INSPECTION**

6/14/2017	Asheville, NC	Immigration	WLOS
	Springfield, IL	Budget Talk with the Governor	WICS
6/20/2017	Las Vegas, NV	Talk with Senator Heller	KSNV
6/22/2017	Seattle, WA	Climate Change	KOMO
6/27/2017	Pensacola, FL	Sex Trafficking	WEAR
<b><u>2017 Q3</u></b>			
7/11/2017	Dayton, OH	Opioid Epidemic	WKEF
7/12/2017	San Antonio, TX	Sanctuary Cities	WOAI
7/13/2017	Portland, ME	Trump Report Card	WGME
7/19/2017	Myrtle Beach, SC	Hurricane Preparedness	WPDE
7/25/2017	Lincoln, NE	Suicide Prevention	KHGI
7/31/2017	Columbus, OH	Politics in Ohio	WSYX
8/15/2017	Asheville, NC	Bullying	WLOS
8/17/2017	Chattanooga, TN	The Great Eclipse	WTVC
8/23/2017	Seattle, WA	Minimum Wage	KOMO
8/28/2017	Salt Lake City, UT	Medical Marijuana	KUTV
8/29/2017	Tulsa, OK	Education	KTUL
9/5/2017	Columbus, OH	Republican Gubernatorial Debate	WSYX
	El Paso, TX	Opioid Abuse	KFOX
9/6/2017	Amarillo, TX	STARR testing	KVII
9/12/2017	Cedar Rapids, IA	Retirement Planning	KGAN
9/13/2017	Baltimore, MD	Project Baltimore	WBFF
9/14/2017	Nashville, TN	Opioid Epidemic	WZTV
9/19/2017	Jefferson City, MO	Senator McCaskill Talks	KRCG
9/21/2017	Charleston, SC	Tourism	WCIV
9/26/2017	West Palm Beach, FL		WPEC
9/27/2017	Little Rock, AR	Teen Suicide	KATV
9/28/2017	Harrisburg, PA	Opioid Epidemic	WHP

**REDACTED – FOR PUBLIC INSPECTION**

**EXHIBIT E**

**Declaration of Gautam Gowrisankaran**

**Declaration of Gautam Gowrisankaran**

**August 22, 2017**

## Declaration of Gautam Gowrisankaran

### I. Assignment and Summary of Opinions

1. Counsel for Sinclair Broadcast Group, Inc. (“Sinclair”) asked me to review and comment on the Petition to Dismiss or Deny filed by DISH Network LLC (“DISH”). In particular, my analysis in this declaration focuses on the declarations submitted by Janusz Ordover and William Zarakas/Jeremy Verlinda as part of DISH’s Petition and the economic analysis on bargaining and price effects resulting from the proposed transaction contained in these declarations.
2. I have not had access to the data and programs relied upon by DISH’s experts and reserve the right to amend or supplement my opinions if those materials become available to me.
3. A summary of my main opinions is as follows:
  - DISH’s experts have not provided any theoretical or empirical justification for the conclusion that the proposed transaction will result in upward pressure on retransmission fees.
  - DISH’s experts ignore the broader market context in which retransmission consent negotiations take place and in which this transaction is taking place. Perhaps most importantly, DISH’s experts do not account for the large number of cable networks with which Sinclair and Tribune broadcast stations compete for carriage and viewership. In addition, Dr. Ordover provides misleading numbers on the “footprints” of Sinclair and Tribune without acknowledging the low concentration and low shares of Sinclair and Tribune in video programming markets. See **Section III**.
  - Dr. Ordover states that the presence of upward pricing pressure due to the transaction depends on DISH’s “surplus” function being concave, but he does not empirically demonstrate any such concavity. Rather, DISH and its experts provide arguments and empirical results that contradict the supposed concavity of DISH’s surplus function and, if anything, show convexity of the surplus function. Without concavity of DISH’s surplus function, the transaction will not result in upward pricing pressure. See **Section IV**.
  - The most simple explanation of Dr. Ordover’s theory is that by saying that DISH’s surplus function is concave, he is simply stating that he believes that DISH will lose more subscribers if DISH were to drop two television stations in a market at the same time (e.g., if owned by a single owner) than it would lose in total if it were to drop the same two stations separately. In other words, concavity means that the sum of the parts is less than the whole. Dr. Ordover’s analysis, however, is not persuasive

because he has not provided any support whatsoever for the conclusion that DISH's surplus function is in fact concave. Moreover, even if one were to believe that concavity did exist in a single DMA (which, as noted, DISH's experts' analysis does not support), such an analysis has no practical application to the specific transaction at issue here where multiple DMAs are involved. See **Section IV**.

- The empirical analyses in DISH's experts' declarations do not provide reliable evidence on the effects of the transaction on retrans fees. The claimed finding of a positive relationship between retrans fees and broadcast station group size relies on a comparison of small to larger broadcast station groups that is not relevant for this transaction. Their empirical analyses do not correctly account for the facts that (1) Sinclair operates in multiple DMAs and with multiple stations, many of which are non-Big-4 and (2) this transaction involves two companies that each already have in excess of \$500 million in revenues. Moreover, the results showing DISH's lost subscriber growth during supply disruptions of two stations relative to supply disruptions of one station actually show, if anything, that DISH's surplus function is convex and therefore that the transaction would tend to result in downward pricing pressure. See **Section V**.

## II. Qualifications

4. I am the Arizona Public Service Professor of Economics at the University of Arizona. I earned my B.A. from Swarthmore College in 1991 and my Ph.D. in Economics from Yale University in 1995. I have previously served as a visiting or regular faculty member at Harvard University, HEC Montreal, Universidad de los Andes (Chile), the University of Michigan, the University of Minnesota, Northwestern University, Washington University in St. Louis, and Yale University. I am a Research Associate of the National Bureau of Economic Research and a recipient of a Doctorate *Honoris Causa* from the University of Oulu (Finland).

5. I am an expert in the fields of industrial organization and applied microeconomics. My research has been published in the leading economics journals including the *American Economic Review*, *Econometrica*, and the *Journal of Political Economy*. I serve on the editorial boards of four economics journals, including the *American Economic Review* and the *RAND Journal of Economics*. I have received several research grants from the National Science Foundation, other federal agencies, and private foundations. I am frequently invited to present my work in keynote speeches, at professional conferences, and at invited seminars. I have

## **REDACTED – FOR PUBLIC INSPECTION**

served as a consulting expert or expert witness on a number of antitrust cases, on behalf of the Federal Trade Commission (“FTC”), state agencies, and private clients.

6. I have specific expertise in three areas that relate to this matter. First, I am an expert on theoretical and empirical bargaining models, and in particular in using these models to evaluate the effects of mergers. My work in this area includes a paper published in the *American Economic Review* that won the Antitrust Writing Award for Best Academic Paper on Mergers in 2015. Second, I am an expert on two-sided markets. Finally, I am expert in evaluating fees and arrangements for media services. I have consulted and submitted expert reports in all three of these areas.

7. My curriculum vitae is included as Appendix A to this declaration.

### **III. Industry Environment and Implications for This Transaction**

8. Before I provide my analysis of the Ordovery and Zarakas/Verlinda declarations, it is important to explain the broader context in which the Sinclair-Tribune transaction is taking place. In this section, I briefly describe (1) the bargaining process and contractual arrangements between broadcast station groups and multi-channel video programming distributors (“MVPDs”), (2) trends in viewer shares for broadcast station, cable network and online video programming, (3) the evolution of retransmission fees and other content fees paid for carriage of television programming by MVPDs, and (4) concentration levels of the broadcast television and overall video programming sectors, both by Designated Market Areas (“DMAs”) and nationally. By failing to appropriately account for these industry facts in their declaration, DISH’s experts present an incomplete and one-sided picture of the industry and the competitive forces operating in it, which in turn results in misleading and incorrect conclusions.

#### **A. History of Content Fees between Broadcast Stations and MVPDs**

9. MVPDs pay fees for almost all of the content that they carry—whether broadcast stations, cable networks, premium networks, or on-demand libraries. It is therefore not surprising that broadcast station groups seek fees to reflect the value of the content they provide to MVPDs. MVPDs generally pay retransmission consent fees (“retrans fees”) to broadcast

## REDACTED – FOR PUBLIC INSPECTION

station groups for the right to carry their channels. This process started in 1992 with the Cable Television Consumer Protection Act, which gave broadcast stations the right to negotiate with cable systems for compensation for carriage.<sup>1</sup> Previously, MVPDs were provided the right to carry broadcast stations without consent or compensation. However, cash compensation for retransmission consent did not start until several years later. The start of cash compensation for retransmission consent may have been due in part to increased competition among MVPDs, which decreased the leverage any particular MVPD had over a broadcast station, and in part to a strategic decision by broadcast networks to reduce or eliminate cash payments made to affiliate stations.<sup>2</sup>

10. In the years immediately following the passage of the Act, according to the FCC, “cable operators — particularly the largest multiple system operators (“MSOs”) — were not willing to enter into agreements for cash, and instead sought to compensate broadcasters through the purchase of advertising time, cross-promotions, and carriage of affiliated channels.”<sup>3</sup> It was not until 2005 that Sinclair reported cash retrans fee revenues for the first time.<sup>4</sup>

11. Retransmission consent negotiations occur on a periodic basis. Under the Cable Television Consumer Protection Act, every three years stations must choose between negotiating for retransmission consent and “must carry.”<sup>5</sup> In practice, negotiations between a broadcast station group and an MVPD occur approximately every three years, although terms may be longer or shorter.<sup>6</sup> As part of those negotiations, retrans fees generally are set as a payment level per-subscriber/station (based on the number of MVPD subscribers who will have access to the station).<sup>7</sup> Note that out of the retrans fees that the broadcast station receives from

<sup>1</sup> Alternatively, broadcast stations could opt to forego compensation from the cable system in return for guaranteed carriage on the cable system (so-called “must carry”).

<sup>2</sup> Charles B. Goldfarb, “Retransmission Consent and Other Federal Rules Affecting Programmer-Distributor Negotiations: Issues for Congress,” CRS Report for Congress, July 9, 2007 (“CRS Report”), pp. CRS-11–13, CRS-28.

<sup>3</sup> FCC Report, “Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004,” September 8, 2005, ¶ 10.

<sup>4</sup> Sinclair Broadcast Group, Inc., Form 10-K for the Period Ending 12/31/05.

<sup>5</sup> CRS Report, p. CRS-2–3.

<sup>6</sup> See, e.g., CRS Report, pp. CRS-31, 32, 42, 46, 51, 53, 66.

<sup>7</sup> *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, FCC MB Docket No. 16-247 (“FCC 18<sup>th</sup> Video Competition Report”), ¶ 124.

## REDACTED – FOR PUBLIC INSPECTION

the MVPD, the broadcast station pays a portion of those fees to the affiliated network (a payment sometimes referred to as “reverse retrans”).<sup>8</sup> In recent years, these “reverse retrans” fees have comprised an increasing share of the retrans fees (approximately 50% in 2017).<sup>9</sup>

12. Broadcast television stations air a variety of programming, some of which is targeted at specific audiences (such as Spanish-language programming). However, the four major broadcast networks— ABC, CBS, FOX, and NBC—and their broadcast network affiliates, have historically received the highest viewership among broadcast stations.<sup>10</sup> These four networks are known as the “Big 4” and throughout this declaration I will refer to the stations affiliated with these networks as “Big 4 stations.” In addition to the Big 4 networks, there are several other networks with smaller geographic presence and/or lower viewership. Two widely distributed smaller networks are The CW (jointly owned by CBS and Time Warner) and MyNetworkTV (owned by 21<sup>st</sup> Century Fox).

13. The Commission licenses television stations to station owners to serve local communities within DMAs. The Commission describes DMAs as follows:<sup>11</sup>

A DMA is a geographic area defined by The Nielsen Company as a group of counties that make up a particular television market. These counties comprise the major viewing audience for the television stations located in their particular metropolitan area. For the most part, the metropolitan areas correspond to the standard metropolitan statistical areas defined by the Federal Government Office of Management and Budget.

There are 210 DMAs in the United States. DMAs are used as a geographic unit for selling local advertising.

<sup>8</sup> FCC 18<sup>th</sup> Video Competition Report, ¶ 124.

<sup>9</sup> SNL Kagan.

<sup>10</sup> See, e.g., SNL Kagan, Broadcast Network Ratings.

<sup>11</sup> *In the Matter of Designated Market Areas: Report to Congress Pursuant to Section 109 of the STELA Reauthorization Act of 2014*, FCC MB Docket No. 15-43, June 3, 2016.

## **REDACTED – FOR PUBLIC INSPECTION**

### **1. Retrans Fees are Negotiated for an MVPD and Broadcast Station Group's Common Footprint**

14. Importantly, even though DMAs serve an important role in local viewing and advertising, contracts between an MVPD and a broadcast station group are not negotiated on a DMA basis but are instead negotiated on a national basis across all the DMAs and broadcast stations that are served by both the MVPD and broadcast station group. For DISH and the other large MVPDs that comprise the vast majority of subscribers nationwide, these negotiations comprise many (or in the case of DISH and DirecTV, all) DMAs served by the broadcast station group. I understand that a typical agreement between a broadcast station group and an MVPD sets a single per-subscriber/station uniform retrans rate for all Big 4 stations, and lower rates (if they are paid at all) for non-Big 4 stations. Given that retrans fees are the result of these national negotiations, the retrans fees for an MVPD and a broadcast station group will be determined by (1) the relative values that an agreement bring to both parties relative to not carrying the stations of the broadcast station group, and (2) the relative bargaining acumens of the different parties.

### **B. Broadcast Television Viewer Shares Have Been Declining**

15. The retrans fees that a broadcast station group is able to obtain from an MVPD depends upon, among other things, the value that the broadcast stations in the group's portfolio provides to the MVPD. Broadcast stations have some of the most popular entertainment, including prime-time comedies and dramas, many major sporting events, and local news programming. This means that an MVPD might find it hard to replace a broadcast station with other programming that its subscribers would find as attractive. Overall, consumer viewing habits indicate that broadcast stations provide substantial value to MVPDs' programming packages.

16. That said, consumers currently have a wide array of other options for viewing video programming. Although broadcast television stations once accounted for the vast majority of television viewing, these stations are no longer the primary avenue by which consumers obtain video programming. Since the 1980s, there has been a proliferation of cable networks, which

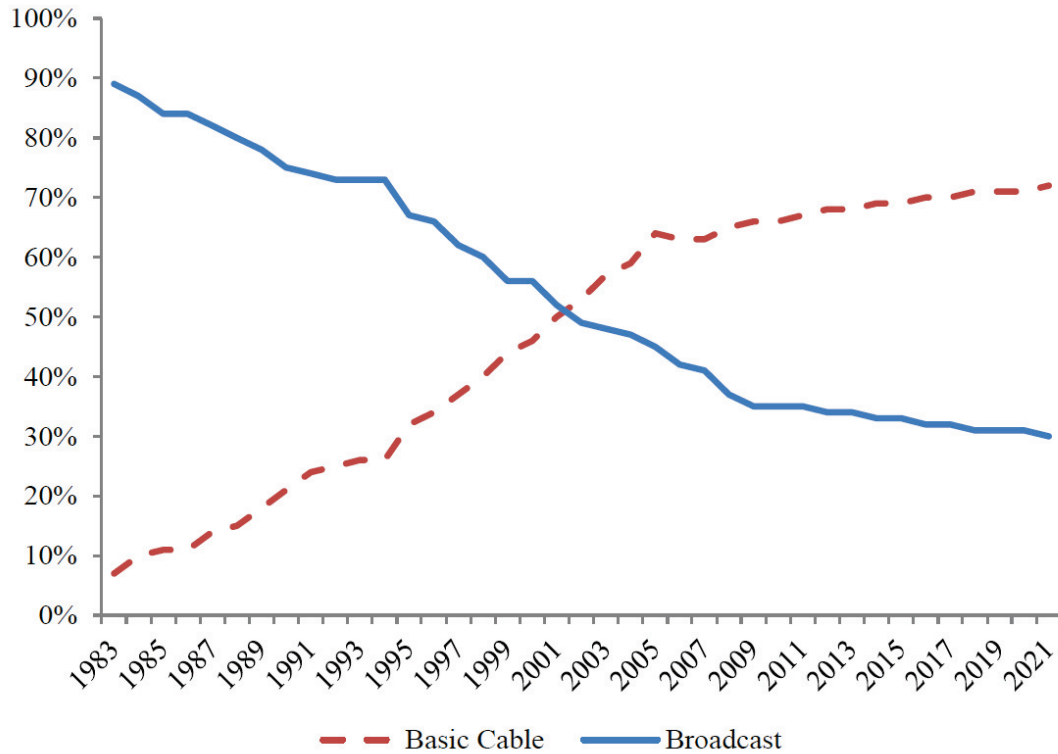
## **REDACTED – FOR PUBLIC INSPECTION**

are programming networks distributed via MVPDs but not broadcast over the air.<sup>12</sup> Since the 2000s, there has been an expansion in video content available via the Internet. With the increase in options available to consumers, a smaller share of viewing occurs on broadcast stations.

17. Viewership of broadcast stations has been declining relative to other outlets for video programming for the past 30 years. This decline was initially mirrored by the increase in viewing of cable networks. In the last several years, the advent and growth of online video distributors (“OVDs”) and over-the-top (“OTT”) streaming services has further changed the landscape for video programming, resulting in new competitors in this market, and further reducing the share of viewing going to broadcast stations. Exhibit 1 shows how viewing of traditional TV has shifted from broadcast stations to cable networks over the past 30 years. Exhibit 2 shows the growth of subscribers of just three online video services: Netflix, Amazon Prime, and Hulu. Note that there are many online video services other than these three, but this exhibit shows the general trend toward increasing access to video outside of traditional pay TV service.

<sup>12</sup> Cable networks are owned by large media companies like Walt Disney Company, 21<sup>st</sup> Century Fox, Time Warner, Viacom, and Comcast, as well as sports leagues (e.g., NFL, MLB) and independent media companies.

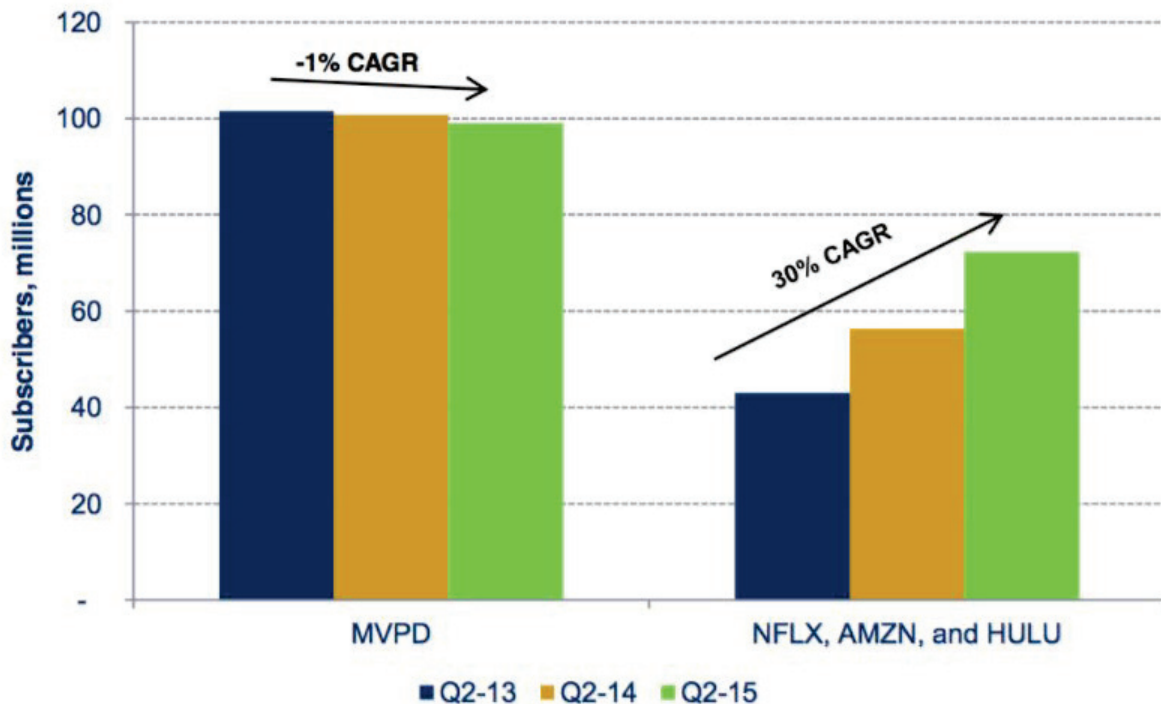
**Exhibit 1**  
**Broadcast and Basic Cable Shares of Traditional TV Viewing**  
**1983 – 2021 (proj.)**



Source: Kevin Caves and Hal Singer, “Competition in Local Broadcast Television Advertising Markets,” August 4, 2014, p. 9. FCC MB Docket Nos. 14-50, 09-182, 07-294, 04-256.

Note: Data sources are SNL Kagan, Cable/Broadcast TV Advertising Billings Database (2012). Post-2012 data are projections.

**Exhibit 2**  
**Online Video Subscriber Growth**



Source: Udland, Myles, “This is the scariest chart in the history of cable TV,” *Business Insider*, August 18, 2015.

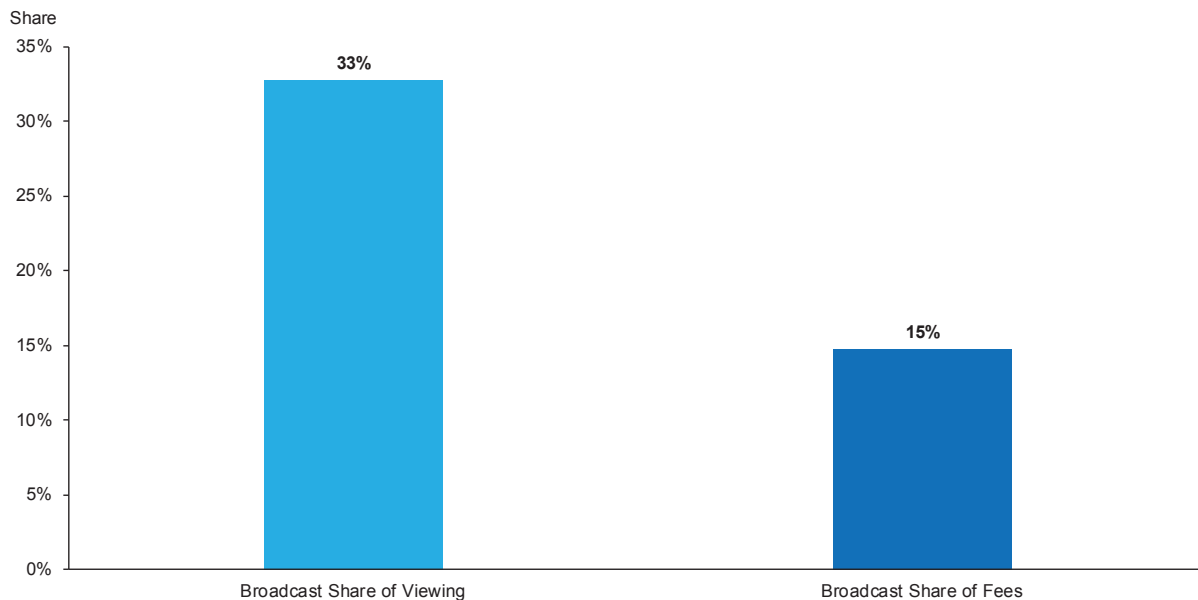
Note: CAGR is short for “compound annual growth rate”, and it measures the annual growth rate between Q2 2013 and Q2 2015.

**C. Broadcast Television Earns Less in Programming Fees Than Do Other Video Programmers**

18. DISH’s experts’ declarations focus on the retrans fees charged to MVPDs by broadcast station groups to allow MVPDs to carry their signals. These declarations miss the basic fact that, relative to their viewership, broadcast stations are paid less than cable networks for their content, both currently and historically. For example as of 2016, broadcast stations (including both network affiliates and network owned and operated stations) accounted for approximately 30% of TV viewership but only 15% of the content fees paid by MVPDs for linear television

programs.<sup>13</sup> See Exhibit 3.<sup>14</sup> Thus, retrans fees for broadcast stations comprise only a small share of content fees paid by MVPDs. Therefore, it is crucial, when analyzing the impacts of this transaction on content fees, to consider the 85% of the content fees paid by MVPDs that go to content providers other than broadcast stations.

**Exhibit 3**  
**Broadcast Network Share of Viewing and MVPD Affiliate/Retrans Fees**  
**2016/2017**



Source: SNL Kagan; Nielsen

Note:

[1] Broadcast share of viewing is based on Nielsen data from May 2017 sweeps.

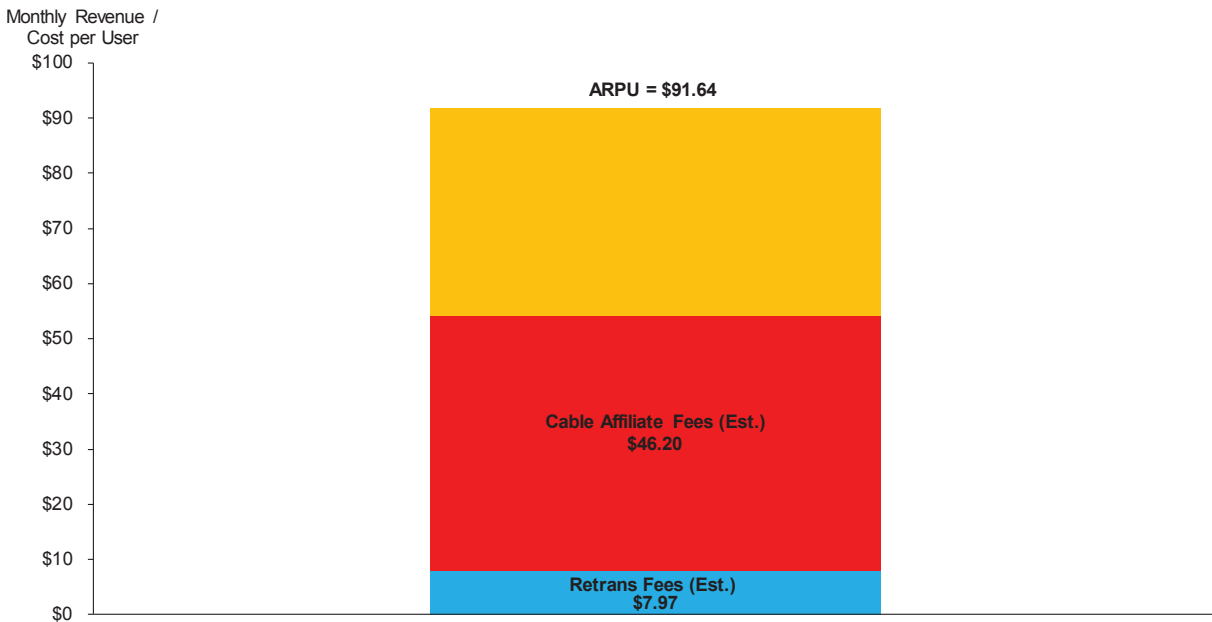
19. Exhibit 4 shows that broadcast station retrans fees account for only a small portion of the average DISH customer's subscription package price. DISH reported that its average revenue per subscriber for 2016 was approximately \$92 per month, of which per-subscriber expenses comprised approximately \$54 per month. Based on the division of content fees between retrans fees and cable network affiliate fees across all MVPDs reported by SNL Kagan, I estimate that

<sup>13</sup> FCC 18<sup>th</sup> Video Competition Report; SNL Kagan. Note that approximately one third of retrans fees go to stations owned and operated by the broadcast network, meaning that only about 10% of content fees go to network affiliates like Sinclair's and Tribune's stations.

<sup>14</sup> Broadcast stations' share of total content fees, which include fees paid for OVD content, are even lower.

retrans fees are approximately \$8 per month, which is under 10% of DISH’s average revenue per subscriber.

**Exhibit 4**  
**DISH Average Revenue per User and Estimated Programming Costs**  
**2016**



Source: DISH Network Corporation Form 10-K for the Fiscal Year ended December 31, 2016; SNL Kagan Data

Note:

[1] Total ARPU is calculated as DISH's Subscriber-Related Revenue divided by total Pay-TV Subscribers for the fiscal year ended December 31, 2016.

[2] Total ACPU is calculated as DISH's Subscriber-Related Expenses divided by total Pay-TV Subscribers for the fiscal year ended December 31, 2016.

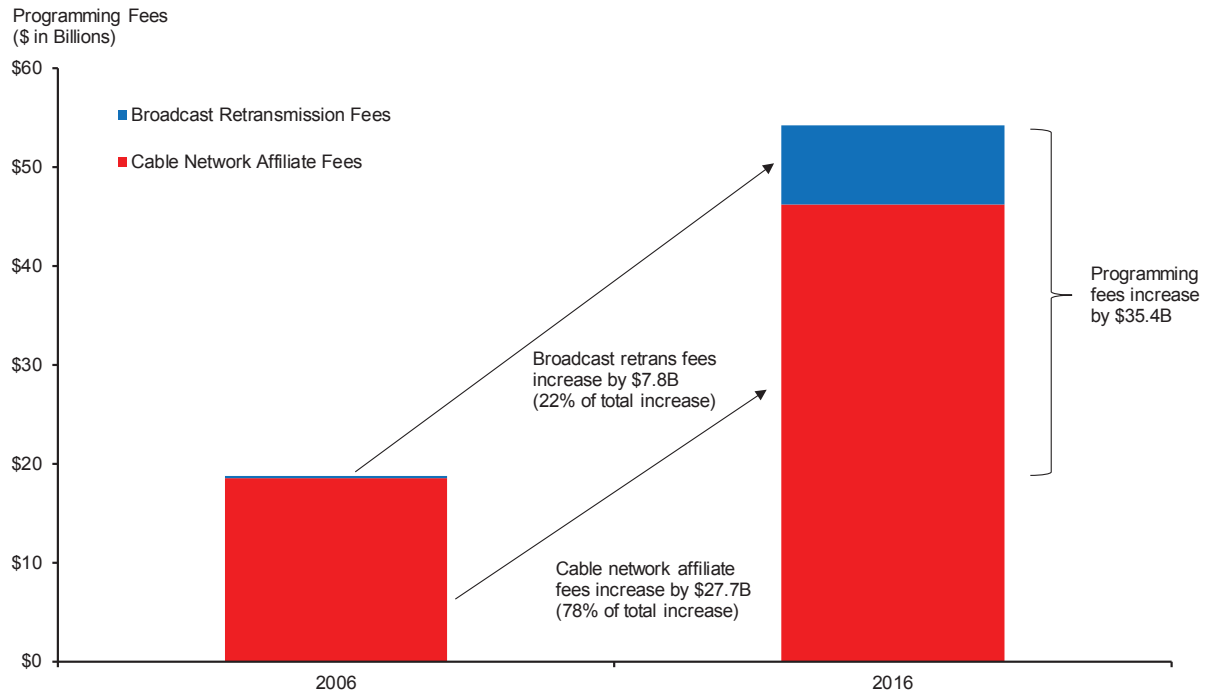
[3] The division of programming costs into cable affiliate fees and retrans fees is based on the ratio of cable affiliate fees to retrans fees for all MVPDs according to SNL Kagan.

20. DISH and Dr. Ordovery discuss the increase in retrans fees since 2006 without placing this increase in context. The increase in retrans fees since 2006 parallels the general trend of increased fees for all types of content included in MVPD subscription packages, but broadcast retrans fees actually account for *less* of the increase than one would expect based on their share of viewing.<sup>15</sup> The majority of the increase in MVPD programming fees between 2006 and 2016 are comprised of the increase in cable network affiliate fees. Although broadcast networks

<sup>15</sup> DISH claims that the increase in retrans fees between 2006 and 2016 is due in part to “broadcast industry consolidation.” *In the Matter of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee) Consolidated Applications for Consent to Transfer Control*, FCC MB Docket No. 17-179, Petition to Dismiss or Deny of DISH Network L.L.C., August 7, 2017 (“DISH Petition”), p. 4. However, DISH’s experts have not established any such link.

accounted for at least 30% of viewing over this period, broadcast retrans fees only accounted for 22% of the increase in content fees between 2006 and 2016. See Exhibit 5.

**Exhibit 5**  
**Increase in MVPD Programming Fees Due to**  
**Cable Network Affiliate Fees and Retrans Fees**  
**2006 – 2016**



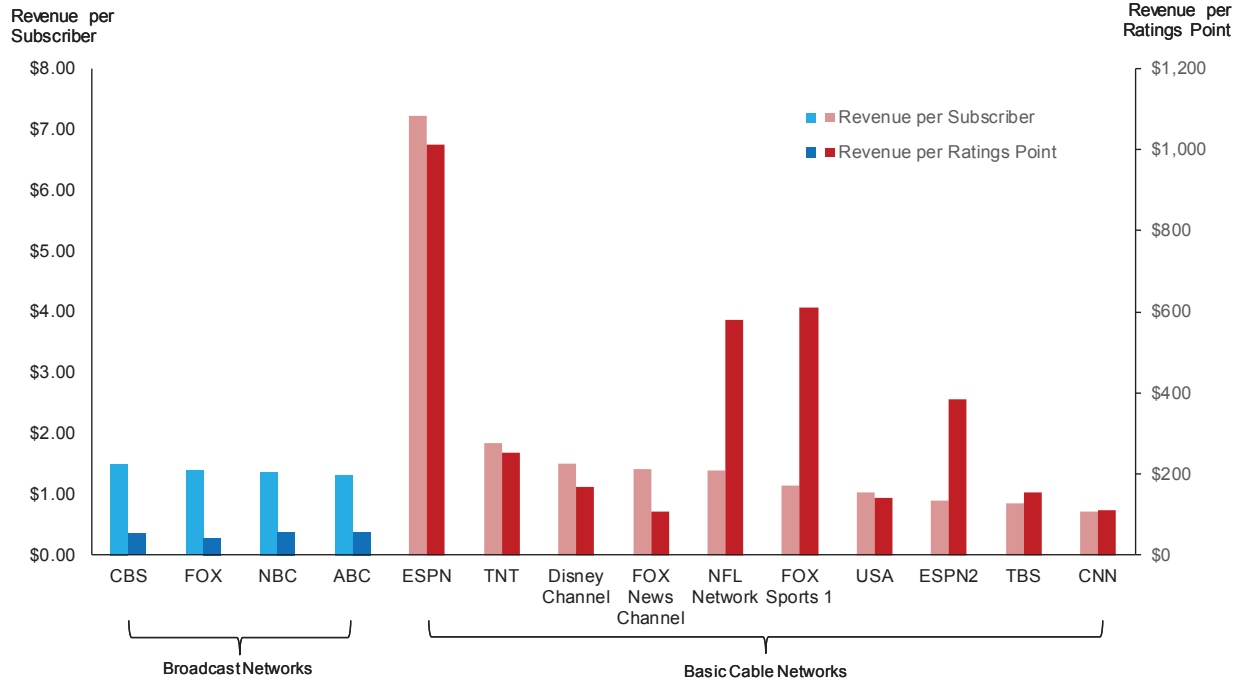
Source: SNL Kagan Data

Note: Cable networks include regional cable networks, such as regional sports networks (RSNs) and local cable networks.

21. Therefore, despite an increase in retrans fees over the last ten years, the per-subscriber content fees MVPDs pay to broadcast stations, even those paid to affiliates of the four major broadcast networks (ABC, CBS, NBC, and FOX) are still lower than those paid to the leading cable networks and are even lower if measured on a per-viewer basis rather than a per-subscriber basis. See Exhibit 6, which shows the monthly retrans fees per subscriber and per ratings point for the Big 4 broadcast networks and the monthly affiliate fees per subscriber and per ratings point for 10 cable networks.<sup>16</sup>

<sup>16</sup> This analysis does not incorporate advertising revenue that MVPDs may receive from networks.

**Exhibit 6**  
**Monthly Affiliate Fees and Retrans Fees for**  
**Selected Cable and Broadcast Networks**  
**2016**



Source: SNL Kagan Data.

Note: Basic cable networks included in the analysis are the networks with the highest affiliate fees per subscriber per month in 2016. Revenue per ratings point is calculated as the total monthly revenue divided by average Nielsen rating according to SNL Kagan.

**D. For Most DMAs and Nationally, Video Programming is Unconcentrated and Would Remain So after the Proposed Transaction, While MVPDs Are More Concentrated**

22. In its filing, DISH and its experts have given the impression that Sinclair would have a vast national market share following the proposed transaction.<sup>17</sup> For instance, Dr. Ordoover states in his declaration that "[t]he transaction combines two multi-station broadcasters with very large footprints, which would cover 72 percent of U.S. households post-merger."<sup>18</sup> Further, DISH

<sup>17</sup> On the other hand, Dr. Ordoover accepts that there are a "large number of cable networks and online video programming" available to consumers, but he does not factor these into his analysis. Declaration of Dr. Janusz A. Ordoover, August 7, 2017 ("Ordoover Declaration"), ¶ 6.

<sup>18</sup> Ordoover Declaration, ¶ 35.

claims that "New Sinclair would, among other things, own more than one Big-4 signal in at least 21 markets and more than one station in at least 37 markets..."<sup>19</sup>

23. These numbers give a misleading impression of the market realities. Nationally (i.e., across the DISH footprint), without cable networks, the HHI among broadcast networks, as measured by retransmission revenues, is 624 and would rise by 81 points to 705 following the transaction. With cable content providers included, the HHI among broadcast stations and cable networks combined is 1,237<sup>20</sup> and would rise by 3 points to 1,240 following the transaction, implying that, in both cases, video programming would be considered “unconcentrated”—both before and after the proposed transaction—under the Horizontal Merger Guidelines. See Exhibit 7.

**Exhibit 7  
National Programming Concentration**

<b>Programmers Included</b>	<b>Pre-Transaction HHI</b>	<b>Post-Transaction HHI</b>	<b>Change in HHI</b>
Broadcast	624	705	81
Broadcast and Cable	1237	1240	3

Source: SNL Kagan Data

24. Thus, whether or not cable networks are included in the calculation of concentration, video programming is unconcentrated at a national level (HHI below 1,500). Moreover, the Sinclair-Tribune transaction will have only a minimal impact on concentration and does not trigger a structural presumption of competitive harm from the transaction.

25. In addition, the level of concentration of video programmers is relatively low within DMAs. Focusing on the 10 DMAs in which both Sinclair and Tribune have Big 4 stations (“overlap DMAs”), video programming is at most “moderately” concentrated and lower than concentration among MVPDs (see below). Exhibit 8 shows the HHI for each of the 10 overlap DMAs.

<sup>19</sup> DISH Petition, p. 5.

<sup>20</sup> This increase in the HHI when including cable networks results from the large number of cable networks owned by a few, large companies, notably Walt Disney, Comcast, and 21<sup>st</sup> Century Fox.

### Exhibit 8 Programming Concentration in Overlap DMAs

DMA	Pre-Transaction HHI	Post-Transaction HHI	Change in HHI
Seattle-Tacoma, WA	1667	1750	83
Harrisburg-Lancaster-Lebanon-York, PA	1763	1818	55
Wilkes Barre-Scranton-Hazleton, PA	1762	1815	52
St. Louis, MO	1796	1845	48
Grand Rapids-Kalamazoo-Battle Creek, MI	1643	1691	48
Greensboro-High Point-Winston Salem, NC	1769	1813	44
Oklahoma City, OK	1734	1778	44
Richmond-Petersburg, VA	1813	1853	40
Salt Lake City, UT	1539	1577	38
Des Moines-Ames, IA	1801	1830	29

Source: SNL Kagan Data

Note: This analysis includes all broadcast stations with non-missing retransmission fees and the top 20 basic cable networks. Revenues included in share calculations include the sum of affiliate revenue from basic cable networks and retransmission revenues from broadcast stations. Sinclair JSA/MSA stations are included in Sinclair's share in the HHI calculation.

26. In the U.S., most households obtain television programming, including broadcast stations, by subscribing to an MVPD service.<sup>21</sup> Therefore, broadcast stations and cable networks negotiate to obtain carriage on MVPDs in order to reach viewers.<sup>22</sup> In each DMA, there are a relatively small number of MVPDs, typically four or fewer that account for 90% or more of subscribers. Moreover, the largest MVPDs in each DMA are generally companies that have large national or regional footprints.<sup>23</sup>

27. Nationally, MVPDs would be considered moderately concentrated under the Horizontal Merger Guidelines.<sup>24</sup> The top 10 MVPDs account for approximately 95% of MVPD subscribers nationwide and the HHI is 1,739 based on subscriber shares. See Exhibit 9.

<sup>21</sup> FCC 18<sup>th</sup> Video Competition Report, ¶ 7.

<sup>22</sup> While broadcast stations are also available over-the-air, most households view broadcast station programming as part of their MVPD subscriptions. FCC 18<sup>th</sup> Video Competition Report, ¶ 7.

<sup>23</sup> See Exhibit 11.

<sup>24</sup> Horizontal Merger Guidelines, Section 5.3.

**Exhibit 9  
National MVPD Subscriber Shares and Concentration**

<b>Rank</b>	<b>MVPD</b>	<b>Subscribers</b>	<b>Subscriber Share</b>
1	AT&T/DirecTV	24,598,483	26.2%
2	Comcast	21,519,998	22.9%
3	Charter/Time Warner/Bright House	16,735,999	17.8%
4	DISH Network	11,501,013	12.3%
5	Verizon Communications	4,626,329	4.9%
6	Cox Communications	3,822,065	4.1%
7	Suddenlink/Cablevision	3,499,989	3.7%
8	Frontier Communications	1,051,471	1.1%
9	Mediacom Communications	809,305	0.9%
10	WOW!	459,292	0.5%
<b>Total</b>		<b>88,623,944</b>	<b>94.5%</b>
<b>HHI</b>		<b>1,739</b>	

Source: SNL-Kagan Data

28. MVPDs are more concentrated at the DMA level than at the national level. Focusing on the 10 Big-4 overlap DMAs, in 9 of these 10 DMAs, the MVPD side has an HHI of 2,500 or higher (with seven of those nine over 3,000) and in the 10<sup>th</sup> DMA, the MVPD HHI is 1,840. See Exhibit 10 for a list of the MVPD HHIs in each of the 10 overlap DMAs. Note that these concentration measures at a DMA level understate the concentration faced by any particular household because some MVPDs operate only in distinct geographic areas within a DMA. Finally, Exhibit 11 shows that the top 10 MVPDs nationally account for a large share of the subscribers in each of the 10 overlap DMAs. In 9 out of the 10 overlap DMAs, these 10 large MVPDs account for more than 90% of subscribers.

29. The preceding brief summary of the industry is useful to keep in mind when evaluating the arguments in DISH's experts' declarations, to which I turn next. Importantly, broadcast station retrans fees cannot be looked at in isolation, because they only comprise a small share of the content fees paid by MVPDs. In addition, video programming, both across the DISH footprint and within particular overlap DMAs, is relatively unconcentrated and is less concentrated than the MVPDs that are on the other side of the retrans fee negotiations. In the next section, I discuss the arguments and empirical results in DISH's experts' declarations and

**REDACTED – FOR PUBLIC INSPECTION**

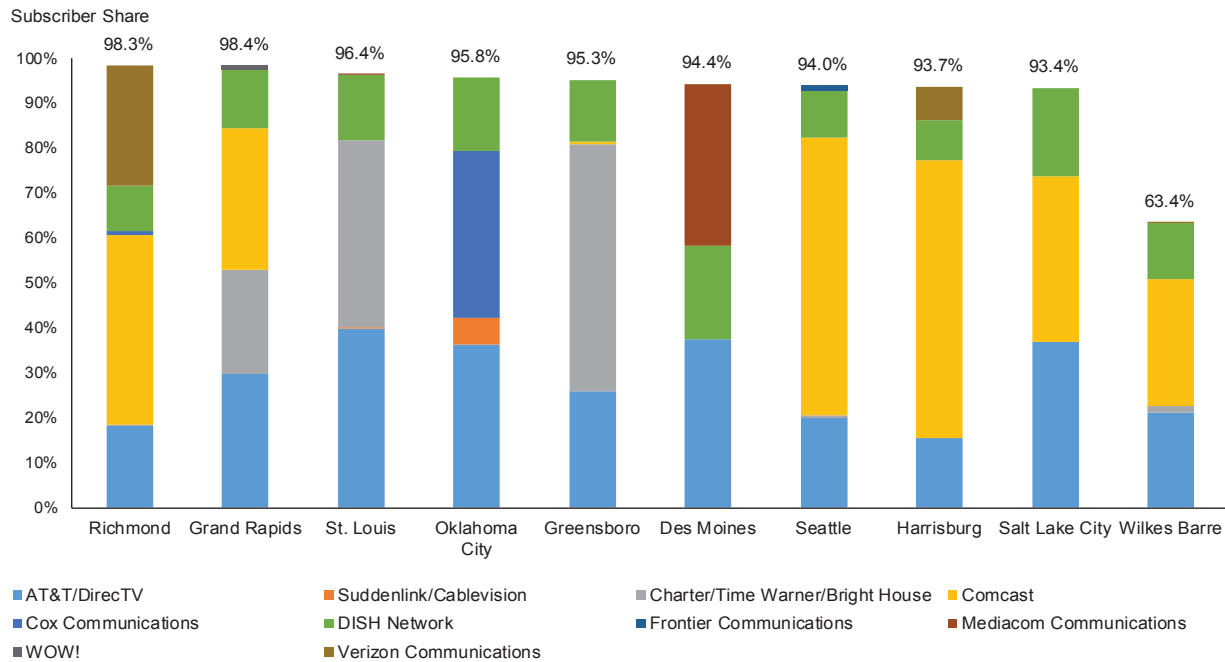
how they lead to flawed conclusions in part because they omit relevant aspects of the industry described above.

**Exhibit 10**  
**MVPD Concentration in Overlap DMAs**  
**Q1 2017**

<b>DMA</b>	<b>MVPD Subscribers</b>	<b>MVPD HHI</b>
Seattle-Tacoma, WA	1,624,905	4,345
Harrisburg-Lancaster-Lebanon-York, PA	631,957	4,220
Greensboro-High Point-Winston Salem, NC	538,654	3,883
St. Louis, MO	918,404	3,542
Des Moines-Ames, IA	300,054	3,147
Salt Lake City, UT	696,506	3,106
Oklahoma City, OK	523,356	3,016
Richmond-Petersburg, VA	469,489	2,942
Grand Rapids-Kalamazoo-Battle Creek, MI	586,315	2,582
Wilkes Barre-Scranton-Hazleton, PA	485,683	1,840

Source: SNL-Kagan Data

**Exhibit 11**  
**Subscriber Share of Top 10 National MVPDs in Overlap DMAs**



Source: SNL-Kagan Data

Note:

[1] Top 10 MVPDs are determined by all video subscribers in Q1 2017.

#### **IV. Dr. Ordover's Conclusions Are Based on an Incomplete Analysis that is Not Empirically Supported**

30. Dr. Ordover presents a bargaining framework under which he concludes that the proposed Sinclair-Tribune transaction will result in upward pricing pressure due to New Sinclair increasing its bargaining leverage and hence likely lead to higher retrans fees.<sup>25</sup> In his view, the proposed transaction will increase post-Transaction Sinclair's relative bargaining leverage because DISH's surplus function<sup>26</sup> is concave in the number of broadcast stations that it can retransmit.<sup>27</sup>

<sup>25</sup> Ordover Declaration, ¶ 15.

<sup>26</sup> Dr. Ordover refers to DISH's profits as its surplus function. For ease of exposition, I adopt his terminology here.

<sup>27</sup> Ordover Declaration, ¶¶ 36, 41.

31. Before delving into *whether* DISH's surplus function is concave, I will explain (1) what is meant by DISH's surplus function being concave in the number of broadcast stations, (2) why concavity leads to upward pricing pressure (and its opposite, convexity, does not), and (3) the relation between concavity of DISH's surplus function and substitutability of broadcast stations for DISH.

32. First, concavity of DISH's surplus function in the number of broadcast stations means that if DISH were to add more and more broadcast stations, its surplus would increase by less and less with each additional station. For our later bargaining analysis, it will also be useful to phrase this same property in reverse: equivalently, concavity means that the non-carriage of a second station would cause a greater additional loss than the non-carriage of a first station. In layperson's terms, abstracting from subscription price changes and heterogeneity across broadcast stations, Dr. Ordoover's thesis that DISH's surplus function is concave simply means that discontinuing carriage of two stations at the same time would cause a greater loss of subscribers than the sum of the losses that would result from discontinuing carriage of such stations separately.

33. It is perhaps easiest to understand concavity with an example. Suppose that DISH contracts with all broadcast stations and that if it dropped carriage of one station it would lose 20,000 subscribers. Then, concavity would be consistent with the second non-carriage causing DISH to lose more than 20,000—say 24,000—*additional* subscribers on top of the original 20,000 that it lost from non-carriage of the first station. Convexity, the opposite of concavity, would be consistent with the second non-carriage causing DISH to lose fewer than 20,000—say 16,000—*additional* subscribers. Linearity, the intermediate case, would be consistent with the second non-carriage causing DISH to lose the same *additional* number of subscribers—20,000—as the first non-carriage.

34. Second, Dr. Ordoover argues that concavity of DISH's surplus function is necessary for the current transaction to result in upward pricing pressure. To understand this point, consider the following three cases. First, suppose that we are in the linear case described in the example in the previous paragraph. This might occur if there were two identical stand-alone stations in two separate but identical DMAs without any linkages between them, in which case the non-

**REDACTED – FOR PUBLIC INSPECTION**

carriage of each station would result in DISH losing 20,000 subscribers. Now suppose that the two stations merged into a broadcast station group. Without carriage of either station, DISH would now lose 40,000 subscribers—20,000 in each of the two DMAs. Thus, the merger would make non-carriage of both stations in the group result in twice as many subscriber losses for DISH as non-carriage of each of the individual stations. The total amount that DISH would agree to pay in retrans fees for the broadcast station group would be double what it paid to each station before the merger. Importantly, however, the number of viewers lost would also be double. Thus, under linearity of the surplus function, the per-subscriber/station retrans fee would be unchanged.

35. Now suppose that DISH's surplus function for the two stations were concave, perhaps because the two stations are in the same DMA and some viewers consider those broadcast stations to be substitutes. With the numbers given above, the non-carriage of both stations would result in DISH losing a total of 44,000 subscribers, or 22,000 per non-carried station. Thus, in this hypothetical, the per-subscriber/station bargaining leverage of the broadcast network group would have gone up 10% due to the merger. This is the way in which concavity would generate upward pricing pressure.

36. Finally, suppose that DISH's surplus function in the two stations were convex, perhaps because having both broadcast stations is necessary in order to meet the "minimum line-up of local stations" for some subscribers, as described by Dr. Ordovery.<sup>28</sup> With the numbers given above, the non-carriage of both stations would result in DISH losing a total of 36,000 subscribers, or 18,000 per non-carried station. Thus, in this case, the per-subscriber/station bargaining leverage of the broadcast network group would have gone down 10% due to the merger. This example illustrates why upward pricing pressure from the transaction will generally occur only if DISH's surplus function is concave in Sinclair and Tribune stations.

37. Third, I explain the relation between concavity of DISH's surplus function and substitutability of broadcast stations for DISH. Two broadcast station groups are substitutes for DISH if DISH's loss in surplus from the non-carriage of both broadcast station groups is less than the sum of its loss in surpluses from the non-carriage of each station separately. The

<sup>28</sup> Ordovery Declaration, ¶ 27.

definition of substitutes here is synonymous with the definition of concavity above. The opposite of substitutes is complements. Two broadcast station groups are complements for DISH if DISH's loss in surplus from the non-carriage of both broadcast station groups is greater than the sum of its loss in surpluses from the non-carriage of each station individually. The definition of complements here is synonymous with the definition of convexity above. Thus, the premise that DISH's surplus function is concave is equivalent to the premise that Sinclair and Tribune's stations are substitutes to DISH. Fundamentally then, Dr. Ordoover's conclusion that the sum of the parts of dropping two stations is less than the whole is driven by the premise that dropping a broadcast station causes DISH to lose less surplus at the margin (i.e., with carriage of all other stations) than would dropping that station without the carriage of some other stations.

38. I agree with Dr. Ordoover's general use of a bargaining model and indeed, I have used and developed bargaining models to understand the impact of mergers on negotiated prices in my research, including in a paper cited by Dr. Ordoover in his declaration.<sup>29</sup> However, Dr. Ordoover's analysis is incomplete and hence his conclusions are fundamentally flawed in their goal of showing that the proposed transaction would lead to upward pricing pressure, even taking his empirical results and those in the Zarakas/Verlinda declaration as given.

39. Dr. Ordoover's analysis is incomplete because his theoretical bargaining model alone does not provide a sharp prediction of whether or not the proposed transaction would generate upward pricing pressure. Instead, the theoretical model only pins down the condition under which the proposed transaction would generate upward pricing pressure. That condition is that DISH's surplus function is, in fact, concave. The model alone, without further empirical analysis, does not imply that the transaction would generate upward pricing pressure. Ultimately, the question is empirical: is the surplus function concave or not? Thus, to make his determination of upward pricing pressure, Dr. Ordoover relies on documentary evidence and empirical analyses by DISH, himself, and Zarakas/Verlinda that seek to explain that DISH's surplus function is concave. However, the documentary evidence and empirical analysis, which

<sup>29</sup> Gautam Gowrisankaran, Aviv Nevo, and Robert Town (2015), "Mergers When Prices Are Negotiated: Evidence from the Hospital Industry," *American Economic Review*, 105(1): 172–203.

are the basis for Dr. Ordoover's conclusion, either do not speak to the concavity of DISH's surplus function or actually directly show that it is convex (the opposite of concave). Yet, it is his use of a bargaining model together with the—unsubstantiated or contradicted—finding that DISH's surplus function is concave that together generate his result.

40. In addition, Dr. Ordoover conflates arguments for concavity of the surplus function within a DMA with concavity of the surplus function over the footprint of Sinclair and Tribune.<sup>30</sup> In reality, his analysis does not show concavity either within a DMA or nationally. Thus, the Ordoover declaration makes purely theoretical claims without providing any supporting evidence. In sum, the declaration has not shown that the proposed transaction would generate upward pricing pressure either within overlap DMAs or over the footprint of Sinclair and Tribune.

41. In this section, I explain how Dr. Ordoover's results rely on the *assumption* of concavity—rather than any proof thereof—for DISH's surplus function. I then show why his arguments and empirical tests do not show concavity of DISH's surplus function either within a DMA or over the footprint of Sinclair and Tribune. In Section V, I address the empirical work presented by DISH's experts, and show in more detail why this empirical work does not support concavity of DISH's surplus function and is unreliable.

**A. Dr. Ordoover's Conclusion Relies on the Concavity of DISH's Surplus Function (or Equivalently the Substitutability Between Broadcast Stations) to Generate Upward Pricing Pressure**

42. In the Nash-in-Nash bargaining model upon which Dr. Ordoover relies, the price negotiated between a buyer and a seller is determined by two factors.<sup>31</sup> The first factor is the bargaining leverage of both parties. The bargaining leverage of a party is the relative amount of surplus that agreement brings to the party relative to walking away from the agreement. If a party can credibly make the value to its rival from walking away from the agreement worse, then this will increase the party's relative bargaining leverage and hence increase the amount

<sup>30</sup> Ordoover Declaration, ¶ 35.

<sup>31</sup> Ordoover Declaration, fn. 21. For more on the Nash-in-Nash bargaining model see, e.g., Collard-Wexler, Allan, Gautam Gowrisankaran, and Robin S. Lee, "Nash-in-Nash Bargaining: A Microfoundation for Applied Work," NBER Working Paper No. 20641, October 2014.

that it can earn, all else equal. The second factor is the relative bargaining acumen of the two parties. Bargaining acumen is sometimes referred to as *bargaining skill* or *bargaining power*. Bargaining acumen will affect the portion of the surplus that the party will keep. The higher its relative bargaining acumen, the greater the share of the surplus that it will keep.

43. Dr. Ordovery's analysis is based on this general bargaining paradigm. Using this paradigm, Dr. Ordovery claims that the proposed transaction will lead to upward pricing pressure by increasing Sinclair's bargaining leverage when negotiating with DISH.<sup>32</sup> Underlying this view is the following premise: the loss in surplus to DISH from not carrying two broadcast stations is worse than the sum of the losses from not carrying each of the two stations separately. Given this premise, the merger of two broadcast stations into one broadcast station group decreases DISH's relative bargaining leverage. This in turn leads the merged party to capture more of the surplus, all else equal, which leads to upward pricing pressure.

44. As noted above, the merger of two unrelated stations will not lead to upward pricing pressure, because bargaining leverage will increase equally on both sides of the market. Such a merger will yield higher revenues for the broadcast station group (it now owns an additional station), but the retrans fee per subscriber/station will not change under this scenario. Mathematically, what is needed for upward pricing pressure is that the loss from the non-carriage of two stations is worse than the sum of losses from non-carriage of each station separately, which is the same as saying that DISH's surplus function is concave. In contrast, if DISH's surplus is convex, then a merger between the two stations would decrease their relative bargaining leverage and hence would not lead to upward pricing pressure (and indeed may result in downward pricing pressure).<sup>33</sup>

45. Given this basic bargaining framework, an evaluation of whether the proposed transaction would lead to upward pricing pressure needs to consider whether DISH's surplus function is concave or convex.<sup>34</sup> As above, this is equivalent to considering whether Sinclair

<sup>32</sup> Ordovery Declaration, ¶¶ 15–25.

<sup>33</sup> See, e.g., Aviv Nevo (2014), "Mergers that Increase Bargaining Leverage," Remarks as Prepared for the Stanford Institute for Economic Policy Research and Cornerstone Research Conference on Antitrust in Highly Innovative Industries.

<sup>34</sup> Other factors not considered within Dr. Ordovery's bargaining framework may also play a role. For example, I am assuming, as Dr. Ordovery implicitly does, that the broadcast station group has no curvature to its surplus function.

and Tribune's stations are substitutes or complements for DISH. Concavity of DISH's surplus function implies that adding a second station would add less surplus to DISH than would adding a first station. This would only occur if the two stations are substitutes. Despite the importance of substitutability for Dr. Ordovery's conclusions, DISH itself does not appear to fully believe that broadcast stations are substitutes for DISH; see Section IV.B.

46. Fundamentally, then, DISH's experts need to consider the empirical question of whether adding the ultimate broadcast station or station group adds more or less surplus to DISH than adding the penultimate broadcast station or station group. Yet, as I detail in the rest of this section, the empirical analyses either find no concavity in this regard or simply do not speak to whether the surplus function is concave at these points.

47. In addition to not showing concavity, Dr. Ordovery's framework fundamentally muddles concavity within a DMA and across Sinclair and Tribune's footprint, without explaining precisely the level of concavity to which he is referring. Given this, I first explain how DISH's experts do not show concavity within a DMA and then show that they do not show concavity across Sinclair and Tribune's footprint.

**B. The Ordovery and Zarakas/Verlinda Analyses Do Not Show Concavity within a DMA**

48. Dr. Ordovery argues that DISH's surplus function is concave in broadcast stations within a DMA.<sup>35</sup> Equivalently, he argues that adding the fourth Big 4 broadcast stations in a DMA would result in a smaller additional surplus to DISH than adding the third Big 4 broadcast station, etc. Based on this, Dr. Ordovery then claims that there would be upward pricing pressure in the few DMAs where both Sinclair and Tribune have broadcast stations.<sup>36</sup>

49. Despite this argument, DISH and its experts provide both documentary and empirical evidence that give reason to believe that the DISH's surplus is not concave within a DMA, and indeed may be convex within a DMA (which is the opposite of concave). I first describe the documentary evidence and then turn to the empirical evidence.

<sup>35</sup> Ordovery Declaration, ¶ 31, fn. 31.

<sup>36</sup> Ordovery Declaration, fn. 31.

**REDACTED – FOR PUBLIC INSPECTION**

50. Both Dr. Ordoover and DISH implicitly acknowledge that their own finding of concavity, where additional Big 4 stations in a DMA provide declining surplus to DISH, may be incorrect. This then provides reasons to believe that DISH's surplus function is convex in broadcast stations within a DMA. Specifically, Dr. Ordoover states that "[i]t is also possible that an MVPD has to offer some minimum line-up of local stations in order to have a viable MVPD package in competition with its rival MVPDs."<sup>37</sup> If such a condition were true, then this is essentially saying that, if the MVPD does not offer at least the minimum line-up, it would attract very few subscribers in a DMA. This is not consistent with concavity. Instead, it would imply that MVPD's surplus function is convex below the point of the minimum line-up because adding the last local station that gets the MVPD to the "minimum line-up of local stations" provides much more value than the previous stations.

51. To see this, consider the following numerical example. Suppose that the "minimum line-up" for viability included all of the Big 4 stations and suppose further that without this "viable MVPD package" of all Big 4 stations, the MVPD would only obtain 25% of its total potential subscribers. In this case, abstracting from any price change, adding the third Big 4 station would contribute at most 25% of revenues to the MVPD, while adding the final one would contribute 75% of revenues. This would be consistent with DISH's surplus function being convex at the point of having three stations, and hence inconsistent with the proposed transaction leading to upward pricing pressure.

52. Similarly, the DISH Petition states that "[w]hile less popular than they once were, the four networks are must-have staples for pay-TV customers,"<sup>38</sup> and that "...the four network stations are complements to one another just as much they are substitutes for one another."<sup>39</sup> Again, under this condition, the MVPD's surplus function is convex, not concave as it must be for Dr. Ordoover's conclusion to be true. The complementarity between stations implies that the carriage of one station increases the MVPD's demand for another station, meaning that adding the last station delivers more value than the previous stations. Indeed, the above example—of

<sup>37</sup> Ordoover Declaration, ¶ 27: "It is also possible that an MVPD has to offer some minimum line-up of local stations in order to have a viable MVPD package in competition with its rival MVPDs."

<sup>38</sup> DISH Petition, p. 38.

<sup>39</sup> DISH Petition, p. 39.

must-have stations—is an example of complementarities, where the third and fourth stations are complements.

53. In addition to the documentary evidence that speaks against Dr. Ordovery's contention of concavity of DISH's surplus function within a DMA, DISH's experts provide no empirical support for his claim of concavity. In fact, consistent with the documentary evidence above, the two main analyses put forward by DISH's experts argue *against* the concavity of the surplus function within a DMA.

54. First, Mr. Zarakas and Dr. Verlinda perform a series of regressions of retrans fees.<sup>40</sup> In these regressions, there are 43 observations, each of which is a broadcast station group. The dependent variable for all the regressions is the 2017 retrans fee for Big 4 stations negotiated between DISH and the broadcast station group. The regressors in these regressions include the size of the broadcast station group (measured as total DISH subscribers covered by the contract) and the exposure of DISH to multiple stations within a DMA (measured as the number of DISH subscribers in DMAs covered by the contract that have two or more stations owned by the broadcast station group). These regressions allow them to report whether there is a (statistically significant) difference between retrans fees in DMAs with multiple stations owned by a single broadcast station group and DMAs with no joint ownership of stations.<sup>41</sup> If Dr. Ordovery's premise regarding DISH's surplus function being concave were accurate, we would expect that DMAs with joint ownership of stations would have higher prices, all else equal. As I discuss in more detail in Section V.A.1, Mr. Zarakas and Dr. Verlinda find no statistically significant difference here, implying that they find no evidence of concavity of DISH's surplus function with respect to the number of stations within a DMA.<sup>42</sup>

55. Second, Mr. Zarakas and Dr. Verlinda perform an analysis of temporary "blackouts" that occurred due to negotiation breakdowns between DISH and broadcast station groups. Their analysis compares how DISH's subscriber growth changed in DMAs for which the supply of one station was disrupted to DMAs for which the supply of two stations were disrupted. In both

<sup>40</sup> Declaration of William P. Zarakas and Jeremy A. Verlinda, August 7, 2017 ("Zarakas/Verlinda Declaration"), Table 4.

<sup>41</sup> Zarakas/Verlinda Declaration, ¶ 21.

<sup>42</sup> Zarakas/Verlinda Declaration, ¶ 21.

cases, the comparison is made relative to a set of DMAs for which the supply of broadcast stations was not disrupted. As I analyze in more detail in Section V.A.2, these results show that losing two stations is *less* than twice as painful as losing one station. Thus their results are again supportive of the *convexity* of DISH’s surplus function—but not of the concavity of this function.

56. Finally, as I described in Section III, the majority of the programming offered by MVPDs—and viewed by their subscribers—is comprised of cable networks, not broadcast stations. For instance, Exhibit 12 shows the number of broadcast and cable networks included in two of DISH’s popular programming packages in one of the overlap DMAs: Salt Lake City. The two packages shown are the two middle packages in terms of price (i.e., excluding the lowest-priced and highest-priced packages). Approximately 90% of the channels in each of these packages are cable networks.

**Exhibit 12**  
**Most Networks in DISH’s Popular Programming Packages Are Cable Networks**  
Salt Lake City

Package	Number of Networks		Percent of Total Networks	
	Broadcast	Cable	Broadcast	Cable
America's Top 120 Plus	16	126	11.3%	88.7%
America's Top 200	16	194	7.6%	92.4%

Source: SNL Kagan Data; DISH website

57. The concavity condition provided by Dr. Ordoover must be evaluated in the context of the full set of inputs to the MVPD’s surplus function. One cannot evaluate concavity without accounting for cable networks because viewers choose between all channels, not just broadcast stations. It would be inappropriate to consider the MVPD’s surplus function while ignoring perhaps the largest input into that surplus function—cable networks. Doing so may lead to an incorrect inference about the presence of concavity or the magnitude of concavity in the surplus function.

58. Instead, the concavity or convexity of the surplus function must be evaluated based on the marginal impacts on the MVPD of adding or dropping a broadcast station *in the presence of all of the cable networks* that the MVPD offers in its subscription packages. Given the large

number of channels and the fact that Sinclair and Tribune would provide at most a small handful of these channels in any DMA, I would expect that the concavity of DISH's surplus, if any, in the number of broadcast stations within a DMA would be very minor. Despite this, nowhere in Dr. Ordoover's discussion of the shape of the MVPD's surplus function does he consider cable networks.<sup>43</sup>

**C. The Ordoover and Zarakas/Verlinda Analyses Do Not Show Concavity Across Sinclair and Tribune's Footprint**

59. Just as Dr. Ordoover does not show that there is concavity for DISH's surplus function within a DMA, Dr. Ordoover also does not show that there is concavity for DISH's surplus function across Sinclair and Tribune's footprint. In particular, he provides no theoretical or empirical arguments regarding this point. I now analyze both of these points.

60. Outside of the DMAs where Sinclair and Tribune broadcast stations overlap, Sinclair and Tribune stations are not substitutes for any viewer and, therefore, they would not be expected to be substitutes for any MVPD either. Thus, for the many non-overlap DMAs in which only Sinclair or Tribune has a station, DISH's surplus would be expected to be linear (neither strictly concave nor convex) in the Sinclair and Tribune stations – a dollar of profit made by DISH in a Sinclair DMA is just as valuable regardless of the profits made by DISH in a Tribune DMA. Indeed, Dr. Ordoover acknowledges that if the surplus function is linear, then “a merger would not have an impact on bargaining and so would not impact retransmission rates.”<sup>44</sup>

61. The fact that retransmission consent contracts between DISH and broadcast station groups are generally negotiated across their footprint does not change this basic point. Absent complementarity or substitutability of the surplus function across DMAs, the nationally negotiated price between an MVPD and a broadcast station group will reflect the average bargaining leverage of the parties across their different stations and their relative bargaining acumen. The proposed transaction will not change these averages.

<sup>43</sup> Dr. Ordoover mentions the “large number of cable networks and online video programming” in his declaration, but does not discuss how these viewing options affect his analysis of the competitive effects of the transaction. Ordoover Declaration, ¶ 6.

<sup>44</sup> Ordoover Declaration, fn. 27.

62. While Dr. Ordoover argues that there will be concavity across DMAs, he does not provide any valid economic substantiation here. Dr. Ordoover argues that “if DISH has been forced to a blackout by, say, Nexstar, and the Sinclair contract comes up for renewal during the blackout, DISH is more likely to agree to a high price demand by Sinclair. Conversely, if DISH has already secured from Nexstar the right to retransmit programming to all subscribers in its footprint, it will be in a better position to resist price demands by Sinclair.”<sup>45</sup> This argument appears to be assuming sequential bargaining – the outcome of the negotiation with Sinclair depends on the preceding negotiation with Nexstar – and hence is not even consistent with the Nash-in-Nash bargaining assumption that Ordoover makes, in which, in equilibrium, all agreements form simultaneously.<sup>46</sup> Dr. Ordoover acknowledges that all negotiations take place simultaneously under Nash-in-Nash bargaining,<sup>47</sup> but then proposes the above argument that is inconsistent with the bargaining model that he is using. Even if Dr. Ordoover were to adopt a sequential bargaining model, he has not provided any reasoning or empirical support for why the transaction would result in upward pricing pressure under such a model.

63. Dr. Ordoover also argues that within-DMA empirical findings of concavity (which I do not believe he has demonstrated) translate into cross-DMA findings of concavity. For instance, Dr. Ordoover states that substitutability within a DMA “carries over” into aggregate substitutability.<sup>48</sup> His justification is that “subscriber losses from failing to reach a retransmission agreement are costly to an MVPD, like DISH, irrespective of where they occur.”<sup>49</sup> While I agree that subscriber losses are costly to MVPDs, this does not in any way show that there is *concavity* in the surplus function—that the loss of two stations in two different DMAs for an MVPD is larger than the sum of the losses of the two stations, individually.

64. Dr. Ordoover further provides three reasons why “national competitive effects are likely to be present” in the current transaction: (1) the transaction combines two multi-station

<sup>45</sup> Ordover Declaration, ¶ 20.

<sup>46</sup> Collard-Wexler, Allan, Gautam Gowrisankaran, and Robin S. Lee, “Nash-in-Nash Bargaining: A Microfoundation for Applied Work,” NBER Working Paper No. 20641, October 2014.

<sup>47</sup> Ordover Declaration, fn. 21.

<sup>48</sup> Ordover Declaration, ¶ 35.

<sup>49</sup> Ordover Declaration, ¶ 35.

broadcasters that will have a large footprint post-transaction, (2) DISH bargains for retrans fees at a national level and its contracts set one rate over the footprint of the broadcast station group, implying that the current transaction will change rates for some stations, and (3) there is “aggregate substitutability” between Sinclair and Tribune programming at a national level.<sup>50</sup> Even if these arguments were true (and I agree with arguments (1) and (2)), they would not generate the concavity that Dr. Ordover says is required for the transaction to increase retrans fees.

65. Specifically, as far as I can tell, Dr. Ordover provides no justification why his argument (1) would result in “national competitive effects.”

66. With respect to argument (2), Dr. Ordover is correct that mechanically, because contracts between DISH and broadcast station groups set one rate for Big 4 stations over the footprint of the broadcast station group, a merger between two broadcast station groups without any overlap will result in rates changing to reflect a weighted average of the previous rates, all else equal. However, absent some concavity across DMAs, any such change will not result in changes in the total payments from DISH to the merged entity due to upward pricing pressure, relative to the payments before the merger. Even though the terms of the contract may look different as a result of the fact that DISH’s contracts set one price over the footprint of each broadcast station group, this does not represent a real change to any party. In sum, these contracts would not generate any additional “national competitive effect” in the absence of concavity or substitution across DMAs, which Dr. Ordover has not shown.

67. With respect to argument (3), Dr. Ordover argues that there is aggregate substitutability, or equivalently that DISH’s surplus function may be concave with respect to stations in different DMAs, because “DISH’s operations are characterized by significant fixed costs that are also sunk.”<sup>51</sup> An important principle of economics is that fixed costs that are sunk will not affect decisions. Thus, in this case, fixed costs that are sunk will not cause DISH to change its objective function in its bargaining process. They will not affect DISH’s bargaining leverage and will not create upward pricing pressure.

<sup>50</sup> Ordover Declaration, ¶ 35.

<sup>51</sup> Ordover Declaration, ¶ 36.

68. Another possibility is that Dr. Ordoover is also considering fixed costs that are not sunk, i.e., fixed costs that DISH would not spend if it were to go out of business. However, fixed costs that are not sunk are likely to increase DISH's bargaining leverage, and help it negotiate lower retrans fees. To understand this point, suppose that DISH would find it optimal to go out of business—and hence not spend the fixed costs of operation—if it were to not contract with both Sinclair and Tribune, though to remain in business if were to contract with one of them.<sup>52</sup> In this case, DISH would have made the determination that if it did not contract with Sinclair and Tribune, it would be better off by not bearing the fixed costs than by bearing the fixed costs. This makes DISH's unconstrained surplus without Sinclair and Tribune larger than its surplus without Sinclair and Tribune, if it were constrained to remain in business in this event. Thus, the avoided fixed costs from the non-carriage of two stations makes the loss of two stations *less* painful to DISH than it otherwise would be. This generates *convexity* of DISH's surplus function, not concavity. In other words, a credible threat of going out of business will, if anything, increase DISH's bargaining leverage, not lower it. Hence, fixed costs that are not sunk are more likely to lead to downward pricing pressure than upward pricing pressure.

69. Finally, Dr. Ordoover draws parallels to the DOJ review of the Comcast-Time Warner Cable proposed transaction to argue that there could be harm to competition even in areas where Sinclair and Tribune do not have overlapping stations.<sup>53</sup> Dr. Ordoover states that, here also, “one must recognize the possibility of geographically broad-ranging competitive effects that extend beyond the narrower geographic markets in which traditional competitive concerns are present.”<sup>54</sup> However, Dr. Ordoover has not coherently articulated any such broad-ranging effects in the current proposed transaction or argued that they imply that the proposed transaction will result in upward pricing pressure.

70. DISH's experts also present no empirical evidence that Sinclair and Tribune stations are substitutes across DMAs. In the next section, I discuss the empirical results in the Ordoover and

<sup>52</sup> This may be what Dr. Ordoover means when he says that the “loss of programming from Tribune's (say) local stations across its footprint could be ‘manageable,’” but that “the loss of programming from combined Sinclair and Tribune local stations” would not. Ordoover Declaration, ¶ 36.

<sup>53</sup> Ordoover Declaration, ¶ 33.

<sup>54</sup> Ordoover Declaration, ¶ 34.

Zarakas/Verlinda declarations in more detail, but I note briefly here that their analyses do not support the claim of cross-DMA substitution or concavity.

71. In total, they present two empirical analyses: (1) an analysis of two within-DMA “blackouts,” which finds *convexity* within a DMA but otherwise has no bearing on across-DMA concavity; (2) an analysis of the relationship between station owner size across its footprint and retrans fees,<sup>55</sup> one specification of which measures the impact of joint ownership of two stations in a DMA on retrans fees. This second analysis finds a positive relationship between station owner size across its footprint and retrans fees, which is not a sufficient condition for the concavity of DISH’s surplus function or for the proposed transaction to result in upward pricing pressure. Moreover, this analysis finds no statistically significant effect of joint ownership within a DMA on retrans fees and hence is not supportive of within-DMA concavity.

72. In sum, none of the empirical results put forward by DISH’s experts, which I discuss in more detail in Section V, provide a basis for concluding that the merger of two stations across DMAs would lead to upward pricing pressure.

## **V. DISH’s Experts’ Empirical Results Do Not Support Their Conclusions**

73. DISH’s experts present the results of empirical analyses that they claim support the theory presented in Dr. Ordovery’s declaration and the conclusions he reaches.<sup>56</sup> However, the empirical results presented in their declarations do not support—but actually contradict—Dr. Ordovery’s conclusions. In this section, I discuss several ways in which the empirical analyses in the Ordovery and Zarakas/Verlinda declarations either are not relevant for evaluating this transaction or directly argue against a finding of competitive harm from the transaction, including: (1) both the Zarakas/Verlinda retrans fee analysis and their “blackout” analysis show that the MVPD surplus function is not concave and, if anything, convex, (2) DISH’s experts’ finding of a relationship between broadcast station group size and retrans fees is not dispositive with respect to the effects of this transaction, and, (3) DISH’s experts’ empirical analyses are flawed in ways that may overstate the magnitude and statistical significance of their findings.

<sup>55</sup> Versions of this second analysis are performed both by Dr. Ordovery and by Zarakas/Verlinda.

<sup>56</sup> Ordovery Declaration, ¶¶ 25, 41. Zarakas/Verlinda Declaration, ¶¶ 9, 23.

74. I note that my discussion is based on the results as reported in DISH's experts' declarations and takes those results as given; I have not had access to the underlying data to confirm the validity or robustness of their findings.

**A. The Zarakas/Verlinda Analysis Shows that Dish Network's Surplus Function Is Not Concave**

75. Two aspects of the Zarakas/Verlinda analysis speak directly to the concavity or convexity of DISH's surplus function: their analysis of retrans fees in the presence of "duopolies" within a DMA and their "blackout" analysis of the impact of the loss of two stations relative to one station. Importantly, the results of the Zarakas/Verlinda analyses both argue *against* the concavity of the surplus function for DISH. Significantly, as Dr. Ordover acknowledges in his declaration, without that concavity, there is no upward pricing pressure due to the transaction.<sup>57</sup>

**1. The Zarakas/Verlinda Retrans Fee Regression Finds That "Duopolies" Do Not Result in Significantly Higher Retrans Fees**

76. Mr. Zarakas and Dr. Verlinda estimate several regressions that correlate retrans fees paid by DISH for Big 4 stations with broadcast station group size (as measured by number of DISH subscribers reached) as well as other factors.<sup>58</sup> These regressions are summarized in Zarakas/Verlinda Table 4. One of their regression specifications (model 5) includes a variable that measures the number of DISH subscribers in DMAs with two or more stations under common ownership. The coefficient on this variable measures the extent to which joint ownership of two Big 4 stations in a DMA is related to higher retrans fees. They find that joint ownership is not statistically significantly associated with higher retrans fees.<sup>59</sup>

<sup>57</sup> Ordover Declaration, ¶ 25, fn. 27.

<sup>58</sup> Zarakas/Verlinda Declaration, ¶¶ 13–15. The other factors, reported in Zarakas/Verlinda Declaration, Table 4, are contract age, whether a network is owned-and-operated by the broadcast network, and DISH subs in DMAs with 2+ stations. Mr. Zarakas and Dr. Verlinda also include specifications in which they allow for a quadratic term in broadcast station group size (DISH subs squared) or allow broadcast station group size to enter in logs (log of DISH subs).

<sup>59</sup> Zarakas/Verlinda Declaration, Table 4. The coefficient on "DISH Subs in DMAs with 2+ Stations" is not statistically distinguishable from zero. Having failed to show a relationship in the main regression analysis, Zarakas/Verlinda do a comparison of two data points (two broadcast station groups) to conclude that "the retransmission fees charged to DISH are consistently higher for broadcast station groups that control two or more local broadcast stations." (Zarakas/Verlinda Declaration, ¶ 23) In fact, Mr. Zarakas and Dr. Verlinda have shown no

77. Under the theory presented by Dr. Ordovery, if the Big 4 stations within a DMA were substitutes and the MVPD's surplus function were concave, one would see higher retrans fees in such "duopoly" DMAs. The fact that the available evidence on duopoly DMAs does not support Dr. Ordovery's theory and conclusions suggests that Dr. Ordovery's conclusions about the effects of the Sinclair-Tribune transaction on "overlap DMAs"—in which both Sinclair and Tribune have Big 4 stations—are unreliable.

**2. The Zarakas/Verlinda "Blackout" Analysis Also Shows that the Surplus Function Is Convex, Not Concave**

78. The Zarakas/Verlinda "blackout" analysis seeks to evaluate the shape of the MVPD surplus function by analyzing the extent to which DISH has lost subscribers (and hence profits) at varying levels of station carriage. They obtain variation in the level of station carriage across DMAs during negotiation breakdowns that resulted in temporary suspensions of carriage between DISH and one broadcast station group (either Tribune or Hearst).<sup>60</sup> Zarakas/Verlinda report the DISH subscriber losses in DMAs with one station disrupted, and in DMAs with two stations disrupted. Both of these are compared to "control" groups of DMAs without any disrupted supply that they consider to be otherwise similar.<sup>61</sup>

79. If one accepts the Zarakas/Verlinda methodology as capturing the true causal effect of an exogenous drop in carriage, then this provides evidence on the shape of DISH's surplus function. This evidence comes from comparing the subscriber losses when one station is disrupted to the subscriber losses two stations are disrupted.<sup>62</sup>

80. The Zarakas/Verlinda analysis attempts to infer losses to DISH from changes in subscriber growth (i.e., quantity), but does not consider changes in price or profit per subscriber in calculating those losses. Thus, their analysis abstracts from any price change and implicitly

such "consistent" relationship, but rather just a comparison of two broadcast station groups, the choice of which was not explained, which could be different on many other dimensions, including the mix of networks, the mix of DMAs of each broadcast station group, and historical factors.

<sup>60</sup> Zarakas/Verlinda Declaration, ¶¶ 26–27.

<sup>61</sup> Zarakas/Verlinda Declaration, Tables 6 and 7. Note that I do not have access to data that would allow me to verify the "similarity" of the control DMAs selected by Mr. Zarakas and Dr. Verlinda.

<sup>62</sup> This comparison can be thought of as a "difference-in-difference" methodology where one difference is between DMAs (those with two stations disrupted and those with one station disrupted) and one difference is over time (before and during the disruption).

assumes that the surplus function is proportional to lost quantity of subscribers. Under a *concave* surplus function for DISH, the non-carriage of a second station leads to more surplus loss than the non-carriage of a first station. Under a *convex* surplus function for DISH, the non-carriage of a second station leads to less surplus loss than the non-carriage of a first station.

81. As an example, if the non-carriage of the first station causes DISH to lose 1% of its subscribers, then concavity of the surplus function would only occur if the non-carriage of the second station causes DISH to lose an additional set of subscribers that is more than 1% of its base subscribers, for a total loss of more than 2% of subscribers from the non-carriage of both stations. In contrast, if the surplus function is convex, then the non-carriage of the second station would cause DISH to lose fewer than 2% of its subscribers. Recall that concavity of DISH's surplus function is needed for Dr. Ordovery's upward pricing pressure argument. In his view, it is this concavity that generates increased bargaining leverage to "New Sinclair" following the proposed transaction and leads to the upward pricing pressure.<sup>63</sup>

82. Despite the fact that Dr. Ordovery's arguments for upward pricing pressure rely on concavity in DISH's surplus function to hold, Mr. Zarakas and Dr. Verlinda find exactly the opposite. Specifically, they find that the Tribune supply disruption reduced DISH subscriber growth by {{BEGIN HCI      END HCI}} percentage points in DMAs that experienced a one-station supply disruption relative to a set of control DMAs that experienced no supply disruption.<sup>64</sup> In DMAs with the two Tribune stations disrupted due to negotiation breakdowns, they find that a two-station supply disruption reduced DISH monthly subscriber growth by {{BEGIN HCI      END HCI}} percentage points relative to control DMAs that experienced no supply disruption. That is, based on their estimates, losing the first station (i.e., the *last* station added) results in a "loss" to DISH of {{BEGIN HCI      END HCI}} and losing the second station (i.e., the second-to-last station added) results in a *smaller* additional "loss" to DISH of {{BEGIN HCI      END HCI}}.<sup>65</sup> These estimates imply *convexity* of the surplus function, not concavity. That is, under these estimates, the last broadcast station

<sup>63</sup> Ordovery Declaration, ¶ 25.

<sup>64</sup> Zarakas/Verlinda Declaration, Table 7.

<sup>65</sup> Zarakas/Verlinda Declaration, Table 7.

(first broadcast station lost) is more valuable to DISH than the second-to-last broadcast station (second broadcast station lost). In addition, I note that it is not even clear whether the **{{BEGIN HCI      END HCI}}** of additional loss due to the second station is statistically distinguishable from zero, meaning that Mr. Zarakas and Dr. Verlinda have not even shown that a supply disruption of two stations is worse for DISH than a supply disruption of one station. To show concavity, Zarakas/Verlinda would need to show that the estimated **{{BEGIN HCI      END HCI}}** is larger than **{{BEGIN HCI      END HCI}}**, which they have certainly not shown, since the point estimate implies that it is smaller.<sup>66</sup>

83. The same result holds in their analysis of the Hearst “blackout.” Zarakas/Verlinda find that the Hearst “blackout” reduced DISH subscriber growth by **{{BEGIN HCI      END HCI}}** percentage points in DMAs that experienced a one-station supply disruption relative to a set of control DMAs that experienced no supply disruption.<sup>67</sup> In DMAs with the supply of two Tribune stations disrupted, they find that a two-station supply disruption reduced DISH monthly subscriber growth by **{{BEGIN HCI      END HCI}}** percentage points relative to control DMAs that experienced no supply disruption. That is, based on their estimates, non-carriage of the first station (i.e., the *last* station added) results in “loss” to DISH of **{{BEGIN HCI      END HCI}}** and non-carriage of the second station (i.e., the second-to-last station added) results in an additional “loss” to DISH of **{{BEGIN HCI      END HCI}}**.<sup>68</sup> Again, it is not even clear whether the **{{BEGIN HCI      END HCI}}** of additional loss due to the non-carriage of the second station is statistically distinguishable from zero (which would be needed for a supply disruption of two stations to be worse for DISH than a supply disruption of one station) and the point estimate again implies convexity.

84. Thus, both these estimates imply *convexity* of the surplus function, not concavity. Temporarily losing the second broadcast station in a DMA is less costly to DISH than is temporarily losing the first station. I discuss some additional concerns with the Zarakas/Verlinda “blackout” analysis in Section V.C below.

<sup>66</sup> Mr. Zarakas and Dr. Verlinda do not report statistical significance or standard errors for any of their “blackout” analysis.

<sup>67</sup> Zarakas/Verlinda Declaration, Table 7.

<sup>68</sup> Zarakas/Verlinda Declaration, Table 7.

**B. A Cross-Sectional Relationship between Broadcast Station Group Size and Retrans Fees Does Not Speak to the Effects of the Proposed Transaction**

85. DISH's experts' analysis of broadcaster group size and retrans fees are driven by a comparison of the retrans fees that DISH pays to certain very small (including many single-station) owners to substantially larger broadcast station groups. Even if there were a difference between the amount paid per subscriber to station owners with less than {{BEGIN HCI

END HCI}} DISH subscribers and larger station owners, such a difference would not be relevant for this transaction. This transaction does not result in broadcast stations changing ownership from small, single- or dual-station owners to large multi-station groups, but rather from existing large multi-station broadcast station groups (Tribune and Sinclair) to a somewhat larger group (post-Transaction Sinclair).

86. The relationship that Dr. Ordover estimates between broadcast station group size and retrans fees appears to be driven largely by the very smallest broadcast station groups.

Although I do not have access to the underlying data used in this analysis, a visual inspection of the scatterplot on Ordover page 25, combined with the subscriber numbers in Zarakas Table 1, indicates that excluding broadcast station owners with less than {{BEGIN HCI END HCI}} DISH subscribers substantially reduces the strength of the relationship between "Dish Subscribers Covered" and retrans fees.<sup>69</sup> Therefore, even if one accepts this analysis, it is not clear that there is a strong relationship between size and retrans fees over the range relevant for the current transaction.

87. If anything, DISH's experts appear to find a difference in retrans fees between very small and somewhat small broadcast station groups.<sup>70</sup> Such a difference is not relevant for this transaction and, in an industry as unconcentrated as this one (see Section III), it is hard to see how a difference in retrans fees between broadcast station groups with less than {{BEGIN HCI

END HCI}} DISH subscribers and those with {{BEGIN HCI  
END HCI}} DISH subscribers could be due to market power.

<sup>69</sup> Ordover Declaration, p. 25. Because the horizontal axis is not labeled in the scatterplot, I cannot tell to which level of subscribers this cutoff corresponds.

<sup>70</sup> Ordover Declaration, p. 25.

88. In fact, there are many reasons unrelated to market power why DISH’s experts may have found that larger broadcast station groups might have higher retrans fees. I briefly discuss two reasons here, although these are not necessarily exhaustive. First, there may be reverse causality: broadcast station groups getting higher retrans fees were better able to expand by acquiring additional stations. Second, DISH’s experts omit potentially relevant factors in their analysis, which I discuss further in Section V.C.2.

89. DISH’s experts interpret the relationship between size and retrans fees as implying that increasing a broadcast station group’s size would increase its retrans fee by providing it with higher relative bargaining leverage.<sup>71</sup> To see how the causality could instead run in the opposite direction, consider that Sinclair has historically received higher retrans fees than other broadcast station groups, even when Sinclair was much smaller than it is now. Because of the “after acquired” clauses in its contracts with MVPDs, there can be a financial benefit for Sinclair to purchase stations (which would then have their retrans fees brought up to the Sinclair level) than for those stations to remain independent.

90. Dr. Ordovery presents data on DISH retrans fees that appear to support this argument. Ordovery pages 8–10 show the time path of retrans fees for Big 4 stations for six different broadcast station groups. These charts show that {{BEGIN HCI

END HCI}}.<sup>72</sup> At a given point in time, one driver of differences across retrans fees in the Ordovery charts is {{BEGIN HCI  
END HCI}}. For example, {{BEGIN HCI

END HCI}}. Therefore, if it is the case that some broadcast station groups (like Sinclair) started getting retrans fees earlier because they negotiated harder and earlier for increases in retrans fees, they will be “ahead” of other broadcast station groups in their time path of retrans fees—for reasons unrelated to market power.

<sup>71</sup> Ordovery Declaration, ¶¶ 3, 41.

<sup>72</sup> Because Dr. Ordovery indexed each owner’s retrans fees to the first period of data, one cannot compare the absolute levels of retrans fees for each owner, but one can compare the relative paths over time.

91. Indeed, a potential likely reason why Sinclair may be able to negotiate more favorable rates than other broadcast station groups is that Sinclair was a better negotiator than others because it recognized the importance of obtaining payment for programming sooner than many others. This is consistent with the fact that Sinclair started negotiating for retrans fees earlier than most other broadcast station groups and has been assertive in getting MVPDs to pay for the content that they receive from them from a relatively early date. For this reason, Sinclair has been more successful in obtaining retrans fees than many other broadcast station groups, though less successful than cable channels have been in getting affiliate fees. In fact, DISH acknowledges this in its submission.<sup>73</sup> Importantly, this explanation reflects better bargaining acumen and not bargaining leverage. It does not reflect any upward pricing pressure generated by a lack of competition.

**C. There Are Problems with the Empirical Analyses by DISH’s Experts that Render Their Results Unreliable**

92. Although I have not had access to the data and code underlying the analyses in DISH’s experts’ declarations, I note that there are flaws in the empirical analyses described in those declarations. In this section, I describe a few of those flaws, including: (1) DISH’s experts may be overstating the magnitude of the relationship between broadcast station group size and retrans fees by omitting relevant factors, (2) the Zarakas/Verlinda supply disruption analysis misrepresents the effects of supply disruptions on broadcast stations and MVPDs, and (3) Mr. Zarakas and Dr. Verlinda do not report the statistical significance of any of the results of the supply disruption analysis.

**1. DISH’s Experts Overstate the Relationship between Broadcast Station Group Size and Retrans Fees**

93. One of the main empirical results in both the Ordoover and Zarakas/Verlinda declarations is the relationship between broadcast station group size and retrans fees. Although I do not

<sup>73</sup> DISH Petition, p. 67: “In DISH’s experience, Sinclair exceeds industry norms in the aggressiveness of its negotiating tactics. Sinclair will threaten takedowns of its stations both earlier and more frequently in the negotiation cycle than other broadcasters.”

have access to the underlying data to verify the claims made in those declarations, it appears, based solely on the reported results, that DISH's experts appear to not be controlling for factors that one would expect to be important determinants of retrans fees for Big 4 stations and may be correlated with broadcast station group size, including the portfolio mix of stations (e.g., what percentage of the broadcast station group's stations are Big-4 stations versus non-Big-4 stations).

**2. DISH's Experts Misrepresent the Effects of Supply Disruptions and the Extent to which Temporary Supply Disruptions Are Informative for Evaluating this Transaction**

94. DISH and Dr. Ordovery describe supply disruptions as if they are uniquely harmful to MVPDs and imply that they are not as harmful to broadcast stations.<sup>74</sup> However, I note that supply disruptions are painful for the broadcaster as much, if not more, so than for the MVPD. The station loses advertising revenue for *all* viewers on that MVPD, while the MVPD retains the vast majority of its subscribers. For example, based on the results of the Zarakas/Verlinda supply disruption analysis, DISH's subscriber losses in DMAs with supply disruptions were approximately {{BEGIN HCI        END HCI}} greater than in the "control DMAs" designated by Mr. Zarakas and Dr. Verlinda. I also understand that MVPDs do not pay retrans fees for the duration of the supply disruption, meaning the MVPD's costs are reduced and the broadcast station's revenues are reduced during that period.

95. In addition, DISH's experts focus on the "greater pressure on the MVPD" from a supply disruption of two local broadcast stations (as opposed to a single station supply disruption), but do not consider that the supply disruption of two local broadcast stations also raises the cost of the supply disruption for the broadcast station group, which loses advertising revenues on both

<sup>74</sup> DISH Petition, p. 39: "The 'pain' experienced by a network station and a distributor during and as a result of a blackout is asymmetric: while the distributor is bleeding subscribers and associated revenues, its subscribers flee to competitive distributors and, as a result, the network does not lose the same number of 'eyeballs' as the distributor. In fact, the broadcaster has so much leverage that, when the blackout is over, it typically receives retroactive payment for each of the subscribers that stayed with DISH. But the distributor never recovers the subscription revenues from customers who left during the blackout, and always loses a portion of those customers and their revenues for good." Ordovery Declaration, ¶ 45: "Because a station owner that can threaten the blackout of two stations rather than one can inflict more harm on the MVPD if a negotiating impasse is reached, the station owner with more than one station in an area has enhanced bargaining leverage over an MVPD."

stations during the supply disruption from the vast majority of subscribers that remain with the MVPD.<sup>75</sup>

96. In any case, an analysis of short term supply disruptions provides relatively little information on the objects of interest for evaluating this transaction. The relevant impact on the MVPD for evaluating the curvature of the surplus function is the impact of “permanent” non-carriage of the broadcast station, which a disruption of a few weeks simply cannot measure. If there were indeed a “permanent” supply disruption, because many of the MVPD subscribers would stay with the MVPD, the broadcast station would likely permanently lose some viewers to other stations, which may yield concavity in the broadcast station’s loss function. Such concavity on the broadcast station side would result in the transaction *lowering* prices all else equal.

97. I also note that DISH has not shown that a portion of the subscribers that DISH loses due to a supply disruption would be gone “for good.”<sup>76</sup> In fact, the subscribers that are first to leave due to a supply disruption are those just on the margin of purchasing DISH’s service and/or those with the lowest switching costs. One would expect those individuals to be likely to switch back to DISH when carriage of the station is restored, especially because they chose to subscribe to DISH in the first place.<sup>77</sup>

98. Finally, DISH claims that the transaction will result in “more station blackouts.”<sup>78</sup> Blackouts, or supply disruptions, are generally the result of negotiations breaking down. Nothing in DISH’s experts’ declarations provides evidence that negotiations with the merged firm will be more prone to break down than with the two firms separately.

<sup>75</sup> Zarakas and Verlinda Declaration, ¶ 21: “Also, the risk of significant and higher levels of subscriber losses from a blackout of two local broadcast stations (as opposed to a single station blackout) can place greater pressure on the MVPD and increase the bargaining power of the broadcast group, which could lead to higher retransmission fees.” Ordovery Declaration, ¶ 45: “Because a station owner that can threaten the blackout of two stations rather than one can inflict more harm on the MVPD if a negotiating impasse is reached, the station owner with more than one station in an area has enhanced bargaining leverage over an MVPD. In the language of bargaining, the MVPD’s disagreement point is worse when a blackout of two stations simultaneously can be imposed, rather than just one, this shifts bargaining leverage to the station owner.”

<sup>76</sup> DISH Petition, p. 39: “But the distributor never recovers the subscription revenues from customers who left during the blackout, and always loses a portion of those customers and their revenues for good.”

<sup>77</sup> See, e.g., Michael H. Riordan, “Competitive Effects of Vertical Integration,” Columbia University Discussion Paper No. 0506-11, p. 38.

<sup>78</sup> DISH Petition, p. 2.

**REDACTED – FOR PUBLIC INSPECTION**

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on August 22, 2017

A handwritten signature in black ink, appearing to read 'Gautam Gowrisankaran', written over a horizontal line.

Gautam Gowrisankaran

**REDACTED – FOR PUBLIC INSPECTION**

**APPENDIX A: CURRICULUM VITAE OF GAUTAM GOWRISANKARAN**

## Gautam Gowrisankaran

### **PERSONAL:**

Department of Economics  
Eller College of Management  
University of Arizona  
P.O. Box 210108  
Tucson, AZ 85721

Phone: (520) 621-2529, Fax: (520) 621-8450  
E-mail: gowrisankaran@eller.arizona.edu  
Citizenship: USA and Canada  
Languages: English, French, fluent, Spanish, moderate  
Date of Birth: March 18, 1971

### **RESEARCH INTERESTS:**

Industrial Organization, Health Economics, Environmental Economics, Applied  
Econometrics

### **EDUCATION:**

Honorary Doctorate (expected), University of Oulu, 2017  
Ph.D., Economics, Yale University, 1995  
M.Phil., Economics, Yale University, 1993  
M.A., Economics, Yale University, 1992  
B.A., Economics, Swarthmore College, 1991

### **PROFESSIONAL EXPERIENCE:**

#### **Current position:**

Arizona Public Service Professor of Economics (with tenure), Department of Economics,  
Eller College of Management, University of Arizona, 2011 –

#### **Other current affiliations:**

Research Associate, National Bureau of Economic Research, 2012 – present  
Professor (by courtesy), Department of Marketing, Eller College of Management,  
University of Arizona, Aug. 2011 –  
Professeur affilié, Institut d'économie appliquée, HEC Montréal, 2007 – present

#### **Past positions:**

Visiting Scholar, Becker-Friedman Institute, Department of Economics, University of  
Chicago, Spring 2016  
Visiting Professor, Department of Economics, Northwestern University, Winter, Spring  
2014  
Visiting Professor, Universidad de los Andes, Santiago, Chile, Fall 2013  
Director of Graduate Studies, Department of Economics, University of Arizona, 2009–13  
Faculty Research Fellow, National Bureau of Economic Research, 2001 – 12  
Associate Professor of Economics (with tenure), Department of Economics, Eller College  
of Management, University of Arizona, 2007 – 2011  
Visiting Scholar, Center for the Study of Industrial Organization, Department of  
Economics, Northwestern University, 2009, 2010  
Research Associate Professor, Department of Ophthalmology and Vision Sciences,  
Washington University in St. Louis School of Medicine, 2007 – 2009  
Visiting Associate Professor, Department of Economics, Eller College of Management,  
University of Arizona, Spring 2007

## REDACTED – FOR PUBLIC INSPECTION

Assistant Professor of Economics, John M. Olin School of Business, Washington University in St. Louis, 2003 – 2007

Visiting Scholar, Federal Reserve Bank of San Francisco, 2001 – 02, 2005

Consultant, Federal Reserve Bank of New York, 2002 – 04

Visiting Assistant Professor, Department of Economics, Yale University, Spring 2003

Visiting Assistant Professor, Department of Economics, Harvard University, Fall 2002

Assistant Professor, Department of Economics, University of Minnesota, 1995 – 2002

Visiting Assistant Professor, Department of Economics, University of Michigan, 1997 – 98

### **REFEREED PUBLICATIONS:**

#### **Published and forthcoming:**

Gowrisankaran, Gautam, Stanley Reynolds and Mario Samano (2016). “Intermittency and the Value of Renewable Energy.” Also NBER Working Paper 17,086. *Journal of Political Economy* 124(4): 1187-1234.

Gautam Gowrisankaran, Aviv Nevo and Robert Town (2015). “Mergers When Prices Are Negotiated: Evidence from the Hospital Industry.” Also NBER Working Paper 18,875. *American Economic Review* 175(1): 172-203.

Gowrisankaran, Gautam, Karen Norberg, Steven Kymes, Michael Chernew, Dustin Stwalley, Leah Kemper and William Peck (2013). “A Hospital System’s Wellness Program Linked To Health Plan Enrollment Cut Hospitalizations But Not Overall Costs.” *Health Affairs* 32(3): 477–85.

Gowrisankaran, Gautam and Marc Rysman (2012). “Dynamics of Consumer Demand for New Durable Goods.” *Journal of Political Economy* 120(6): 1173-1219.

Gowrisankaran, Gautam and John Krainer (2011). “Entry and Pricing in a Differentiated Products Industry: Evidence from the ATM Market.” *RAND Journal of Economics* 42: 1-22.

Gowrisankaran, Gautam, Claudio Lucarelli, Philipp Schmidt-Dengler and Robert Town (2011). “The Impact of the Medicare Rural Hospital Flexibility Program on Patient Choice.” *International Journal of Industrial Economics* 29: 342-344.

Gowrisankaran, Gautam, Robert J. Town and Eric Barrette (2011). “Managed Care, Drug Benefits, and Mortality: An Analysis of the Elderly.” *The B.E. Journal of Economic Analysis and Policy* 11: Issue 2 (*Advances*) Article 3.

Chernew, Michael, Gautam Gowrisankaran and Dennis Scanlon (2008). “Learning and the Value of Information: Evidence from Health Plan Report Cards.” (Also NBER Working Paper 8589.) *Journal of Econometrics* 144: 156-74.

Gowrisankaran, Gautam, Matthew F. Mitchell and Andrea Moro (2008). “Electoral Design and Voter Welfare from the U.S. Senate: Evidence from a Dynamic Selection Model.” (Also NBER Working Paper 10748.) *Review of Economic Dynamics* 11: 1–17.

Akerberg, Daniel A. and Gautam Gowrisankaran (2006). “Quantifying Equilibrium Network Externalities in the ACH Banking Industry.” *RAND Journal of Economics* 37: 738-61.

Gowrisankaran, Gautam and Thomas J. Holmes (2004). “Mergers and the Evolution of Industry Concentration: Results from the Dominant Firm Model.” *RAND Journal of Economics* 35: 561–82. (Also NBER Working Paper 9151.)

## REDACTED – FOR PUBLIC INSPECTION

- Gowrisankaran, Gautam and Joanna Stavins (2004). “Network Externalities and Technology Adoption: Lessons from Electronic Payments.” *RAND Journal of Economics* 35: 260–276. (Also NBER Working Paper 8943.)
- Chernew, Michael, Gautam Gowrisankaran, Catherine McLaughlin and Teresa Gibson (2004). “Quality and Employers' Choice of Health Plan.” *Journal of Health Economics* 23: 471–92. (Also NBER Working Paper 9847.)
- Gowrisankaran, Gautam and Robert J. Town (2003). “Competition, Payers and Hospital Quality.” *Health Services Research* 38: 1403 – 22. (Also NBER Working Paper 9206.)
- Geweke, John, Gautam Gowrisankaran and Robert J. Town (2003). “Bayesian Inference For Hospital Quality in a Selection Model.” *Econometrica* 71: 1215 – 1238. (Also NBER Working Paper 8497.)
- Chernew, Michael, Gautam Gowrisankaran and A. Mark Fendrick (2002). “Payer Type and the Returns to Bypass Surgery: Evidence from Hospital Entry Behavior,” *Journal of Health Economics* 21: 451 – 474. (Also NBER Working Paper 8632.)
- Gowrisankaran, Gautam (1999). “A Dynamic Model of Endogenous Horizontal Mergers,” *RAND Journal of Economics* 30: 56 – 83.
- Gowrisankaran, Gautam (1999). “Efficient Representation of State Spaces for Some Dynamic Models.” *Journal of Economic Dynamics and Control* 23: 1077 – 98.
- Gowrisankaran, Gautam and Robert J. Town (1999). “Estimating the Quality of Care in Hospitals Using Instrumental Variables,” *Journal of Health Economics* 18: 747 – 67.
- Gowrisankaran, Gautam and Robert J. Town (1997). “Dynamic Equilibrium in the Hospital Industry.” *Journal of Economics and Management Strategy* 6: 45 – 74.

### **Submitted papers:**

- Collard-Wexler, Allan, Gautam Gowrisankaran, and Robin Lee (2016). “‘Nash-in-Nash’ Bargaining: A Microfoundation for Empirical Work.” (Also NBER Working Paper 20,640.) Revise and resubmit at *Journal of Political Economy*.
- Gowrisankaran, Gautam, Christina Marsh and Robert Town (2016). “Myopia and Complex Dynamic Incentives: Evidence from Medicare Part D.” (Also NBER Working Paper 21,104.) Revise and resubmit at *The Review of Economic Studies*.
- Gowrisankaran, Gautam, Claudio Lucarelli, Philipp Schmidt-Dengler and Robert J. Town (2016). “Can Amputation Save the Hospital? The Impact of the Medicare Rural Flexibility Program on Demand and Welfare.” Revise and resubmit at *Journal of Health Economics*. (Also NBER Working Paper 18,894.)
- Griffin, Stephanie, David Bui, Gautam Gowrisankaran, Eric A. Lutz, Charles He, Chengcheng Hu, and Jefferey L. Burgess (2016). “Risk Management Best Practices to Reduce Injuries and Maximize Economic Benefits in U.S. Mining.”
- Gowrisankaran, Gautam, Charles He, Eric Lutz and Charles Burgess (2016). “Productivity, Safety, and Regulation in Underground Coal Mining: Evidence from Disasters and Fatalities.” (Also NBER Working Paper 21,129.)

### **Working papers:**

- Fleitas, Sebastian, Gautam Gowrisankaran, and Anthony Lo Sasso (2016). “Reclassification Risk in the Small Group Health Insurance Market.”
- Gowrisankaran, Gautam, Keith Joiner, and Pierre-Thomas Léger (2016). “Physician Quality and Healthcare Costs: Evidence from Emergency Departments.”

## **REDACTED – FOR PUBLIC INSPECTION**

- Gowrisankaran, Gautam, Keith Joiner, and Jianjing Lin (2016). “Does Health IT Lead to Better Information or Worse Incentives?”
- Gowrisankaran, Gautam, Marc Rysman and Minsoo Park (2012). “Measuring Network Effects in a Dynamic Environment.”
- Gowrisankaran, Gautam, and Marc Rysman (2015). “A Framework for Empirical Models of Dynamic Demand.”
- Gowrisankaran, Gautam, Marc Rysman and Grace Yu (2016). “Computing Price-Cost Margins in a Durable Goods Environment.”

### **OTHER PUBLICATIONS:**

- Gowrisankaran, Gautam (2011). “Evaluating the Impact of a Hospital Merger Using the Difference-in-Difference of Prices.” (Comment on article by Steven Tenn.) *International Journal of the Economics of Business* 18: 83 – 89.
- Gowrisankaran, Gautam (2008). “Competition Among Hospitals and Hospital Quality” (2008), Ch. 12 of *Incentives and Choice in Health and Health Care*, F. Sloan and H. Kasper, eds. Cambridge: MIT Press.
- Gowrisankaran, Gautam and John Krainer (2005). “Bank ATMs and ATM Surcharges,” Federal Reserve Bank of San Francisco Economic Letter 2005-36.
- Gowrisankaran, Gautam (2002). “Why Do Americans Still Write Checks?” Federal Reserve Bank of San Francisco Economic Letter 2002-27.
- Gowrisankaran, Gautam (2002). “Productivity in Heart Attack Treatments,” Federal Reserve Bank of San Francisco Economic Letter 2002-20.
- Gowrisankaran, Gautam (2002). “Competition and Regulation in the Airline Industry,” Federal Reserve Bank of San Francisco Economic Letter 2002-01.

### **EDITORIAL POSITIONS:**

- Associate editor, *RAND Journal of Economics*, 2015–
- Associate editor, *International Economic Review*, 2014–
- Member of board of editors, *American Economic Review*, 2011–
- Associate editor, *Journal of Business and Economic Statistics*, 2009–
- Associate editor, *Economic Inquiry*, 2008–13

### **AWARDS AND HONORS:**

- Honorary Doctorate (expected), University of Oulu, May, 2017
- Grossman Lecture, Colby College, March, 2017
- Winner, 2016 Best Paper Award from the Workshop in Health IT and Economics (WHITE), for “Does Health IT Lead to Better Information or Worse Incentives?” (under former title), joint with Keith Joiner and Jianjing Lin
- Invited lecture, Shanghai University of Finance and Economics Industrial Organization Summer School, Shanghai, China, June, 2016
- Keynote speech, International Conference on Innovation and Industrial Economics, Nanjing University, Nanjing, China, June, 2016
- Winner, 2016 Antitrust Writing Award (<http://awards.concurrences.com>) for best academic paper on mergers, for “Mergers When Prices Are Negotiated: Evidence from the Hospital Industry,” joint with Aviv Nevo and Robert Town
- Invited lecture, Martti Ahtisaari Institute, Oulu Finland, August, 2015

## REDACTED – FOR PUBLIC INSPECTION

Invited speaker, Colombian Health Economics Association, Cali, Colombia, 2015  
Invited speaker, Latin American Meetings of the Econometric Society, Sao Paulo, Brazil, 2014  
Invited speaker, European Association for Research in Industrial Economics, Evora, Portugal, 2013  
Keynote speech, Zhejiang University Conference on Industrial Economics, Hangzhou, China, 2013  
Canadian Economic Association State of the Art Lecture, Montreal, Canada, 2013  
Keynote speech, Network of Industrial Economists Conference, London, United Kingdom, 2012  
Keynote speech, Copenhagen Business School Conference, *Common Ground: Recent Work in Empirical Labour and Industrial Organization*, Copenhagen, Denmark, 2012  
Keynote speech, Center for European Economic Research (ZEW) Symposium, *A Framework for Estimating Demand in Consumer Durable Goods Markets*, Mannheim, Germany, 2011  
Participant in Federal Reserve Board of Governors Academic Consultant Meeting, 2011  
Delivered lecture series on *Estimation of Durable Goods Models for Differentiated Products* to the Bureau of Economic Analysis, 2010  
Faculty Advisor for Graduate Student Dissertation Workshop, Western Economic Association International, Portland, OR, 2010  
Grande conférence (keynote speech), Les Journées de CIRPÉE 2009 (Annual Meetings), Québec, Canada  
2009 Kalt Prize Recipient, for Best Doctoral Student Mentorship at the Eller College of Management  
Eller College Fellow, University of Arizona, 2007–11  
Distinguished Visitor, Boston University Department of Economics, June 2008  
American Economic Association, Excellence in refereeing award, 2007–08

### **GRANTS:**

Eller College Small Research Grant and Center for Management Innovations in Healthcare Grant, “Preferred Pharmacy Networks,” 2017, \$12,000 (Role: PI).  
Agency for Healthcare Quality and Research 1R01HS024850-01, “Narrow Network Health Plans: Effects on Access, Cost, Quality, and Selection,” 2016-19, \$383,180 for University of Arizona subcontract only (Role: co-PI; PI of University of Arizona subcontract).  
National Science Foundation Grant SES-1425063, “Bargaining in Bilateral Oligopolies with Application to the Health Sector,” 2014-17, \$256,999 (Role: PI).  
Alpha Foundation for the Improvement of Mine Safety and Health Grant, “Implementation of Risk Management Programs: Identification of Best Practices to Reduce Injuries and Maximize Economic Benefits,” 2013-15, \$668,518 (Role: co-PI).  
University of Arizona Renewable Energy Network Policy Research Initiative Grant, “Intermittency and Multiple Sources in Renewable Energy,” 2012-13, \$11,998 (Role: PI)  
University of Arizona, Center for Management Innovations in Health Care Summer Grants, 2011, 2012, 2013, 2015 (Role: PI)  
Agency for Healthcare Research and Quality Grant R01-HS018424-01A1, “Hospital Choice, Hospital Quality and Patient Welfare for Rural Residents,” 2010–13, \$577,514 (Role: PI)

## REDACTED – FOR PUBLIC INSPECTION

National Science Foundation Grant SES-0922540, “Collaborative Research: Estimation and Computation of Dynamic Oligopoly and Network Effects Model,” 2009–13, \$207,164 (Role: PI)  
NET Institute Fellowship, 2009, 2004, 2003  
Missouri Foundation for Health contract. “Healthy Outcomes: The Impact of Employee Cost-Sharing on Healthcare Costs and Outcomes,” 2007–08, \$416,714 (Role: PI)  
Commonwealth Foundation Grant 20070068. “Healthy Outcomes: The Impact of Employee Cost-Sharing on Healthcare Costs and Outcomes,” 2007, \$121,320 (Role: PI)  
National Science Foundation Grant SES-0551360, “Collaborative Research: Dynamic Demand for New Durable Goods: An Empirical Model and Applications to Pricing and Welfare,” 2006 – 09, \$104,897 (Role: PI)  
National Science Foundation Grant SES-0318170, “Estimating Models of Firm Entry,” 2003 – 06, \$207,645 (Role: PI)  
University of Minnesota, Faculty Summer Research Fellowship, 1999, 1996  
University of Minnesota, Single Quarter Leave, Winter 1998  
Alfred P. Sloan Foundation Doctoral Dissertation Fellowship, 1994 – 95  
Social Sciences and Humanities Research Council of Canada Doctoral Fellowship, 1993 – 95  
Master’s and Doctoral Fellowship (latter declined) from the Government of Quebec, Fonds pour la formation des chercheurs et l’aide à la recherche (FCAR), 1991 – 95  
Yale University Fellowship, 1991 – 95

### **PROFESSIONAL ACTIVITIES:**

#### **Ph.D. student advising:**

Advisor for Sebastian Fleitas, Ph.D. (expected), University of Arizona, 2017, first position, K.U. Leuven  
Advisor for Anatolii Kokoza, Ph.D. (expected), University of Arizona, 2017  
Co-advisor for Nedko Yordanov, Ph.D., University of Arizona, 2016, first position, EconOne Consulting.  
Advisor for Jianjing Lin, Ph.D., University of Arizona, 2015, first position, Postdoctoral Fellow, Tulane University  
Advisor for Chuan (Charles) He, Ph.D., University of Arizona, 2015, first position, Senior Economist, Amazon.com  
Advisor for Leila Asgari, Ph.D., University of Arizona, 2014, first position, Associate Vice President, J.P. Morgan Chase  
Advisor for T.N. (Subra) Subramaniam, Ph.D., University of Arizona, 2014, first position, Senior Associate in Modeling, Discover Card  
Advisor for Chrystie Burr, Ph.D., University of Arizona 2013, first position, Assistant Professor, Department of Economics, University of Colorado – Boulder  
Advisor for Kathleen Nosal, Ph.D., University of Arizona 2012, first position: Assistant Professor, Department of Economics, University of Mannheim  
Advisor for Mario Samano, Ph.D., University of Arizona 2012, first position: Assistant Professor, Institute of Applied Economics, HEC Montreal Business School  
Advisor for Joseph Cullen, Ph.D. University of Arizona 2009, first position: Harvard University Center for the Environment Postdoctoral Fellowship, Assistant Professor, Olin Business School, Washington University in St. Louis

## **REDACTED – FOR PUBLIC INSPECTION**

Advisor for Ivan Maryanchyk, Ph.D. University of Arizona 2009, first position: Senior analyst, Bates White Economic Consulting

Advisor for Oleksandr Shcherbakov, Ph.D. University of Arizona 2008, first position: Cowles Postdoctoral Fellowship, Yale University

Co-advisor for Fumiko Hayashi, Ph.D. University of Minnesota 2001, first position: Federal Reserve Bank of Kansas City

### **Testimony and reports submitted as an expert witness:**

Grasso v. Electrolux Home Products, Inc., United States District Court for the Middle District of Florida, Initial Expert Report (October 3, 2016), Supplemental Expert Report (November 4, 2016), and Deposition (December 9, 2016)

USA v. Cabell Huntington Hospital Inc. and St. Mary's Medical Center Inc., Expert Report (March 2, 2016) in support of defense

Efficient Pricing of ADSL Wholesale Services, joint with Jeffrey MacKie Mason, Australian Competition and Consumer Commission, Expert Report (August 23, 2012) in support of Telstra Corporation Limited

In Re: TFT-LCD (Flat Panel) MDL1827 (State of Missouri et al. v. AU Optronics et al. and State of Florida et al. v. AU Optronics et al.), United States District Court for the Northern District of California, Expert Report (January 17, 2012) and Deposition (March 7, 2012), in support of plaintiffs

Comes v. Microsoft CL82311, Iowa District Court, Expert Report (June 2, 2006), Supplemental Expert Report (June 19, 2006), and Deposition (July 26, 2006), in support of plaintiffs

### **Selected other consulting experience:**

U.S. Department of Justice, Antitrust Division, 2008, 2010, 2013, consultant on cases involving airline and hospital mergers

Federal Trade Commission, 2007–08, consultant on hospital merger case

State of Minnesota, Office of the Attorney General, St. Paul, MN, 2001, consultant on airline merger case

Competition Economics, Inc., Washington, DC, 1998, consultant on airline competition issue

Microeconomic Consulting & Research Associates (MiCRA), Inc., Washington, DC, 1995–97, consultant on a number of merger cases

### **Ad-hoc referee for:**

*American Economic Review*

*American Journal of Preventive Medicine*

*B.E. Journals in Economic Analysis & Policy*

*Canadian Journal of Economics*

*Energy Journal*

*Econometrica*

*Economic Journal*

*Economic Inquiry*

*Economica*

*European Economic Review/Journal of the European Economic Association*

*Health Affairs*

*Health Economics*

**REDACTED – FOR PUBLIC INSPECTION**

*Health Economics, Policy and Law*  
*Health Services Research*  
*International Economic Review*  
*International Journal of Industrial Organization*  
*Journal of Applied Econometrics*  
*Journal of Banking and Finance*  
*Journal of Business and Economics Statistics*  
*Journal of Comparative Economics*  
*Journal of Econometrics*  
*Journal of Economic Theory*  
*Journal of Economics and Business*  
*Journal of Economics and Management Strategy*  
*Journal of Health Economics*  
*Journal of Human Resources*  
*Journal of Industrial Economics*  
*Journal of Law and Economics*  
*Journal of Law, Economics and Organization*  
*Journal of Political Economy*  
*Management Science*  
*Quarterly Journal of Economics*  
*RAND Journal of Economics*  
*Review of Economic Dynamics*  
*Review of Economic Studies*  
*Review of Economics and Statistics*  
*Review of Network Economics*  
*Southern Economic Journal*

**Ad-hoc reviewer for:**

*Hong Kong Research Grants Council*  
*National Science Foundation*  
*W.W. Norton & Company*  
*Trinity College Dublin, Institute for International Integration Studies*  
*University of Venice Doctoral Committee*  
*John Wiley & Sons*

**Invited seminar presentations since October, 2001 (with most recent paper title):**

*A Computable Dynamic Oligopoly Model of Capacity Investment*  
University of Chile, September, 2013  
Bank of Canada, July, 2013

*A Hospital System's Wellness Program Linked To Health Plan Enrollment Cut Hospitalizations But Not Overall Costs*  
University of California, Riverside, February, 2012  
Duke University, October, 2010  
Northwestern University, May, 2009

*Bayesian Inference For Hospital Quality in a Selection Model*  
Agency for Healthcare Quality and Research, October, 2003

## REDACTED – FOR PUBLIC INSPECTION

University of Montreal, November, 2002  
Queen's University, October, 2002  
UC Davis, May, 2002  
Duke University, January, 2002  
Yale University, December, 2001  
Federal Reserve Bank of Chicago, November, 2001

### *Causality and the Volume-Outcome Relationship in Surgery*

University of Chicago, Health Economics Seminar, April, 2005  
Syracuse University, April, 2005

### *Computing Price-Cost Margins in a Durable Goods Environment*

Cornell University, November, 2015

### *Does Hospital Electronic Medical Record Adoption Lead to Upcoding or More Accurate Coding?*

University of Chicago, May, 2016  
Emory University, March, 2016

### *Dynamics of Consumer Demand for New Durable Goods*

École Polytechnique/CREST (Paris), October, 2011  
INSEAD Business School, April, 2011  
Katholieke Universiteit Leuven, April, 2011  
University of Texas, September, 2010  
U.S. Bureau of Labor Statistics, December, 2009  
U.S. Bureau of Economic Analysis, September, 2009  
University of Helsinki, August, 2009  
Harvard University, December, 2008  
University of Southern California, October, 2008  
Bristol University, May, 2008  
University of Toronto Rotman School, March, 2008  
Federal Trade Commission, December, 2007  
University College London, May, 2007  
London School of Economics, April, 2007  
University of Minnesota Marketing Department, February, 2007  
Drexel University, December, 2006  
Arizona State University, November, 2006  
University of California Los Angeles, May, 2006  
Stanford University, May, 2006  
Johns Hopkins University, May, 2006  
Purdue University, March, 2006  
University of Arizona, February, 2006  
Duke University, September, 2005  
Federal Reserve Bank of San Francisco, June, 2005  
University of Missouri, April, 2005  
Northwestern University Kellogg School of Management, April, 2005

## REDACTED – FOR PUBLIC INSPECTION

### *Information Feedback and Long-Term Electricity Conservation: Evidence from the Tapestry Building*

HEC Montreal, July, 2013

### *Intermittency and the Value of Renewable Energy:*

Imperial College, London, June, 2015

Universidad de los Andes, Santiago, Chile, May, 2015

University of Michigan, October, 2014

Texas A&M University, April, 2012

University of Texas at Austin, February, 2012

Carnegie Mellon University, November, 2011

Harvard University, September, 2011

University of Gothenburg, May, 2011

University of Mannheim, April, 2011

New York University, March, 2011

Yale University, March, 2011

University of Arizona, March 2011

UC Berkeley, November, 2010

### *Learning and the Value of Information: The Case of Health Plan Report Cards*

Washington State University, April, 2007

University of Toronto, October, 2002

UC San Diego, April, 2002

UC Berkeley, April, 2002

Brown University, April, 2002

Dartmouth College, April, 2002

Stanford University GSB, March, 2002

Columbia University, December, 2001

UC Davis, Agricultural and Resource Economics, November, 2001

UC Berkeley, Agricultural and Resource Economics, October, 2001

### *Managed Care, Drug Benefits, and Mortality: An Analysis of the Elderly*

Medical University of South Carolina, March, 2007

University of Pennsylvania Health Care Management, December, 2006

HEC – Montréal (University of Montreal Business School), March, 2005

University of North Carolina, Department of Health Policy and Administration,

Triangle Health Economics Workshop (long-distance format), September, 2004

Washington University in St. Louis, Work, Family and Public Policy Seminar, April, 2004

Yale University, June, 2003

Boston University (joint with Harvard and MIT), April, 2003

### *Mergers When Prices Are Negotiated: Evidence from the Hospital Industry*

University of Alabama – Birmingham, April, 2014

University of Colorado, Boulder, February, 2014

## REDACTED – FOR PUBLIC INSPECTION

Vanderbilt University, February, 2014  
U.S. Department of Justice, November, 2013  
Charles River Associates, June, 2013  
Stanford University GSB Marketing, May, 2013  
University of Tilburg, May, 2013  
Toulouse School of Economics, May, 2013  
Universidad de los Andes, Santiago, Chile, April, 2013  
University of East Anglia, December, 2012  
Vanderbilt University, December, 2012  
Indiana University, September, 2012  
Clemson University, April, 2012  
Ohio State University, April, 2012  
Columbia University, December, 2011  
Johns Hopkins University, October, 2011

*“Nash-in-Nash” Bargaining: A Microfoundation for Empirical Work*  
Nanjing University, May, 2015

*Network Externalities and Technology Adoption: Lessons from Electronic Payments*  
Federal Reserve Bank of New York, December, 2001  
NYU Stern School of Business, October, 2001

*Policy and the Dynamics of Market Structure: The Critical Access Hospital Program*  
University of Minnesota, May, 2010  
University of Wisconsin, March, 2010  
Bates White Economic Consulting, December, 2009  
Princeton University, November, 2009  
Boston College, November, 2009  
Bank of Canada, June, 2009  
University of California, Davis, April, 2009  
University of California, Irvine, April, 2009  
University of California Los Angeles, October, 2008  
Federal Reserve Bank of Kansas City, October, 2008  
Boston University, June, 2008  
University of Cyprus, May, 2008

*Quantifying Equilibrium Network Externalities in the ACH Banking Industry*  
Yale University, March, 2003  
University of Montreal, January, 2003  
Washington University in St. Louis, December, 2002  
Harvard University, September, 2002

*Reclassification Risk in the Small Group Health Insurance Market*  
University of British Columbia, Sauder School of Business, October, 2016  
Princeton University, September, 2016  
Ohio State University, September, 2016

## REDACTED – FOR PUBLIC INSPECTION

Singapore Management University, August, 2016

*Salience, Myopia and Complex Dynamic Incentives: Evidence from Medicare Part D*

Universitat Autònoma de Barcelona, November, 2016

National University of Singapore, August, 2016

Peking University, National School of Development, June, 2016

Federal Trade Commission, December, 2015

Miami University of Ohio, September, 2015

University of Helsinki, August, 2015

Shanghai University of Finance and Economics, May, 2015

University of Chile, May, 2015

University of Southern California, May, 2015

University of California, Los Angeles, April, 2015

University of Toronto, December, 2014

University of North Carolina at Chapel Hill, November, 2014

Johns Hopkins University, April, 2014

Northwestern University, April, 2014

University of Iowa, April, 2014

*The Welfare Consequences of ATM Surcharges: Evidence From a Structural Entry Model*

Federal Reserve Bank of New York, June, 2004

University of Minnesota, May, 2004

Competition Bureau of Canada, May, 2004

University of Pennsylvania, March, 2004

University of Chicago Graduate School of Business, Marketing Seminar, April, 2004

Trinity College Dublin, Dublin (Ireland) Economics Workshop, March, 2004

Board of Governors of the Federal Reserve, November, 2003

University of Maryland, October, 2003

Pennsylvania State University, September, 2003

Columbia University, September, 2003

University of Wisconsin, September, 2003

*Why Do Incumbent Senators Win? Evidence from a Dynamic Selection Model*

American Enterprise Institute, November, 2005

Washington University in St. Louis, Political Economy Seminar, May, 2004

**Invited or refereed conference presentations of paper since October, 2001 (listed under most recent title):**

*Countervailing Market Power and Hospital Competition*

Allied Social Sciences Association Winter Meetings, Chicago, IL, January, 2017

*Bayesian Inference For Hospital Quality in a Selection Model*

Indiana University Conference on Simulation-Based Econometric Methods, February, 2003

*Causality and the Volume-Outcome Relationship in Surgery*

## REDACTED – FOR PUBLIC INSPECTION

Conference on Evaluating Health Policy, Imperial College, UK, May, 2008  
International Health Economics Association Meetings, Barcelona, Spain, July, 2005  
Consumers, Information and the Evolving Healthcare Marketplace Conference,  
Cornell University, April, 2005

### *Computing Price-Cost Margins in a Durable Goods Environment*

Empirical Models of Differentiated Products Conference, University College London,  
June, 2015  
Ninth Annual Cowles Conference on Theory-Based Econometric Modeling, Yale  
University, June, 2015

### *Dynamics of Consumer Demand for New Durable Goods*

Allied Social Sciences Association Winter Meetings, San Francisco, CA, January,  
2009  
Fifth Annual Bates White Antitrust Conference, Washington, DC, June, 2008  
Ninth CEPR Conference on Applied Industrial Organization, Paris, France, May,  
2008  
Federal Reserve Bank of Minneapolis Applied Microeconomics Conference, October,  
2007  
Economics of ICT Conference, Paris, France, June, 2007  
Econometric Society Summer Meetings, Minneapolis, MN, June, 2006

### *Intermittency and the Value of Renewable Energy*

Marti Ahtisaari Institute Lecture, Oulu, Finland, August, 2015  
Center for European Economic Research (ZEW) Energy Conference, Mannheim,  
Germany, June, 2012  
Pressing Issues in World Energy Policy Conference, University of Florida, March,  
2012  
POWER Conference, University of California, Berkeley, April, 2012  
Fifth Annual Cowles Conference on Theory-Based Econometric Modeling, Yale  
University, June, 2011  
Eighth Annual Bates White Antitrust Conference, Washington, DC, June, 2011  
Twelfth CEPR Conference on Applied Industrial Organization, Tel Aviv University,  
May, 2011

### *Learning and the Value of Information: The Case of Health Plan Report Cards*

Econometric Society Winter Meetings, Chicago, IL, January, 2007  
Quantitative Marketing and Economics Conference, Chicago, IL, October, 2003  
Society for Economic Dynamics Annual Meetings, New York, NY, July 2002  
National Bureau of Economic Research (NBER) Summer Institute, Cambridge, MA,  
July, 2002  
Allied Social Sciences Association Winter Meetings, Atlanta, GA, January, 2002

### *Managed Care, Drug Benefits, and Mortality: An Analysis of the Elderly*

National Bureau of Economic Research (NBER) Summer Institute, Cambridge, MA,  
August, 2004

## REDACTED – FOR PUBLIC INSPECTION

Annual Health Economics Conference, Birmingham, AL, April, 2004

### *Measuring Network Effects in a Dynamic Environment*

4th Annual Penn State University Conference on Auctions and Procurement, April, 2011

### *Mergers When Prices Are Negotiated: Evidence from the Hospital Industry*

First CREST Conference on Advances in the Economics of Antitrust and Consumer Protection, Paris, France, September, 2014

Penn State/Cornell Conference on Econometrics and Industrial Organization, State College, PA, September, 2014

European Association for Research in Industrial Economics Conference, Evora, Portugal, August, 2013

Zhejiang University Conference on Industrial Economics, Hangzhou, China, June, 2013

Canadian Economic Association, Montreal, Canada, May, 2013

Quantitative Marketing and Economics Conference, Durham, NC, October, 2012

National Bureau of Economic Research (NBER) Summer Institute, Cambridge, MA, July, 2012

Common Ground Conference, Copenhagen Business School, May, 2012

Annual Health Economics Conference, Northwestern University, October, 2011

Allied Social Sciences Association Winter Meetings, Denver, CO, January, 2011

### *Network Externalities and Technology Adoption: Lessons from Electronic Payments*

Federal Reserve Bank of Philadelphia, Conference on Payment Systems, Philadelphia, PA, May, 2002

Center for Economic Policy and Research Conference on Productivity and Technology, Alghero, Italy, March, 2002

### *Policy and the Dynamics of Market Structure: The Critical Access Hospital Program*

Third Annual Cowles Conference on Theory-Based Econometric Modeling, Yale University, June, 2009

Penn State University Conference on Procurement and Regulated Markets, April, 2008

HEC Montréal Conference on the I.O. of Health, November, 2007

### *Productivity, Safety, and Regulation in Coal Mining: Evidence from Disasters and Fatalities*

Third Annual IZA Conference on Labor Market Effects of Environmental Policies, Berlin, Germany, August, 2015

### *Quality and Employers' Choice of Health Plan*

Allied Social Sciences Association Winter Meetings, Washington, DC, January, 2003

### *Quantifying Equilibrium Network Externalities in the ACH Banking Industry*

NET Institute 2005 Conference, New York, NY, April, 2005

## REDACTED – FOR PUBLIC INSPECTION

Kiel – Munich Workshop on the Economics of Information and Network Industries, Munich, Germany, August, 2004  
CEPR Conference on Two-Sided Markets, Toulouse, France, January, 2004  
Society for Economic Dynamics Annual Meetings, Paris, France, June, 2003  
University of Iowa Clarence Tow Conference on Industrial Organization, May, 2003  
International Industrial Organization Society Conference, Boston, MA, April, 2003  
Stanford Institute for Theoretical Economics (SITE), July, 2002

### *Reclassification Risk in the Small Group Health Insurance Market*

Marketing Science Conference on Marketing and Health, St. Louis, MO, November, 2016

Lancaster University Management School Conference on Auctions, Competition, Regulation, and Public Policy, May, 2016

### *Salience, Myopia and Complex Dynamic Incentives: Evidence from Medicare Part D*

Colombian Association of Health Economics, Cali, Colombia, February, 2015

National Bureau of Economic Research (NBER) Winter Industrial Organization Meetings, Stanford, CA, February, 2015

Latin American Meetings of the Econometric Society, Sao Paulo, Brazil, November, 2014

Penn State/Cornell Economics on Economics and Industrial Organization, University Park, PA, September, 2014

Eleventh Annual Bates White Antitrust Conference, Washington, DC, June, 2014

Northwestern/Toulouse Industrial Organization Conference, Evanston, IL, May, 2014

### *The Welfare Consequences of ATM Surcharges: Evidence From a Structural Entry Model*

Recent Developments in Consumer Credit and Payments, Federal Reserve Bank of Philadelphia, Philadelphia, PA, September, 2005

National Bureau of Economic Research (NBER) Winter Industrial Organization Meetings, Menlo Park, CA, February, 2005

Allied Social Sciences Association Winter Meetings, Philadelphia, PA, January, 2005

University of British Columbia Summer Industrial Organization Conference, July, 2003

### **Invited panel presentations at conferences:**

*New Models of Healthcare Delivery*, How Is Healthcare Changing? How is the Government Responding? Cornerstone Research and Stanford Institute for Economic and Policy Research, January, 2017

*The Ghosts of Small Group Health Insurance: Past, Present, and Future*, Caribbean Health Economics Symposium, Tortola, BVI, December, 2016

*The Economics of Accountable Care Organizations*, Accountable Care Organizations and Antitrust Conference, University of California, Berkeley, November, 2011

### **Conference organization:**

Co-organizer, Workshop on Healthcare and Industrial Organization in Chile, 2017

**REDACTED – FOR PUBLIC INSPECTION**

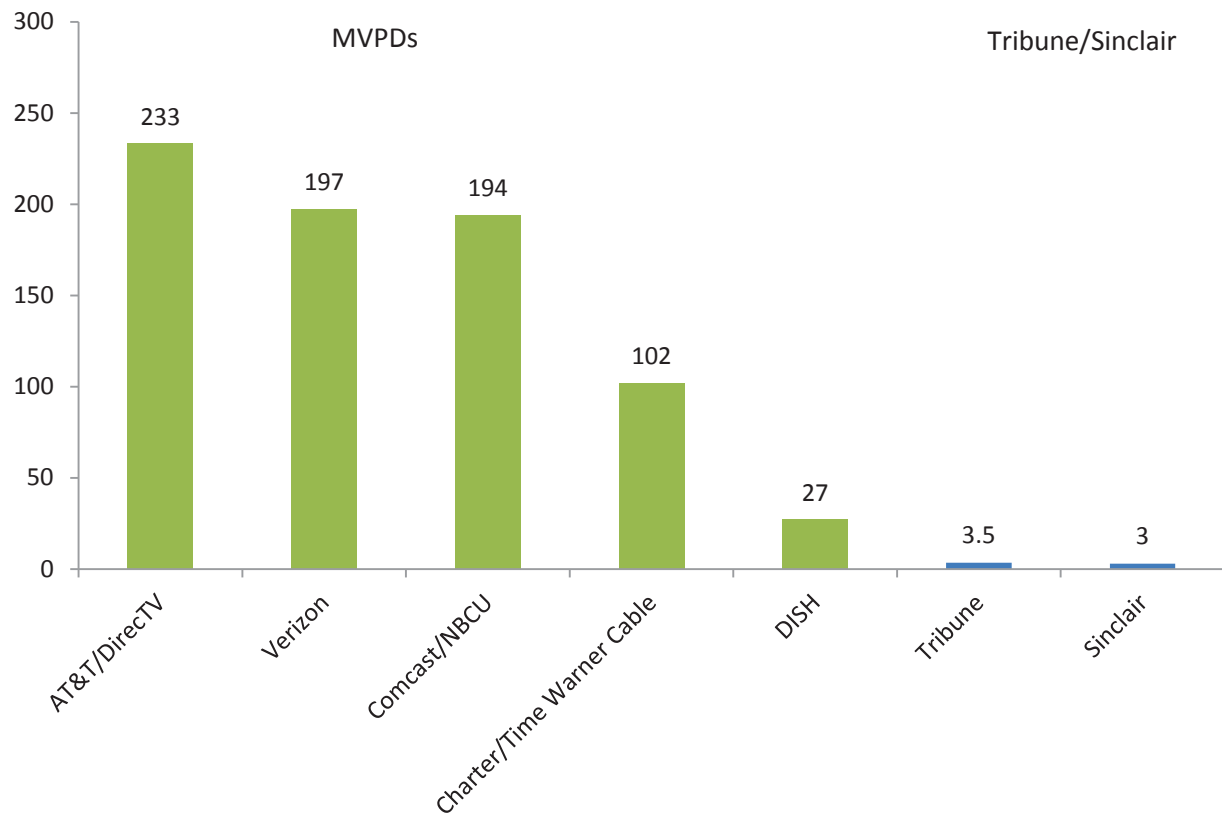
Co-organizer, Center for European Economic Research (ZEW) Energy Conference,  
Mannheim, Germany, 2012, 2013, 2014, 2015, 2016, and 2017  
Co-organizer, 2012 Econometric Society Summer Meetings  
Co-organizer, 2005, 2006 and 2007 International Industrial Organization Conference  
Co-organizer, 2004 and 2005 Washington University CRES Industrial Organization  
Conference

**REDACTED – FOR PUBLIC INSPECTION**

## **EXHIBIT F**

### **Market Cap Comparison**

## Market Cap Comparison (in billions of dollars)



Source: Google Finance 8/16/2017

**REDACTED – FOR PUBLIC INSPECTION**

**EXHIBIT G**

**Declaration of Barry Faber**

**REDACTED – FOR PUBLIC INSPECTION**

**DECLARATION OF BARRY FABER**

I, Barry Faber, being over 18 years of age, swear and affirm as follows:

1. I make this declaration using facts of which I have personal knowledge or based on information provided to me, in connection with the acquisition by Sinclair Broadcast Group, Inc. (“Sinclair”) of Tribune Media Company (“Tribune”).

2. I am currently the General Counsel and Executive Vice President of Distribution and Network Relations at Sinclair. I joined Sinclair in 1996, serving as Associate General Counsel until 1999. I then served as Vice President of SCI, a subsidiary of Sinclair, until 2008. I have also served as an Executive Vice President of Sinclair since 2008, and as General Counsel of Sinclair since 1999. Prior to joining Sinclair, I was associated with the law firm of Fried, Frank, Harris, Shiver, & Jacobson in Washington, D.C.

3. In my current position, I am responsible for the negotiation of retransmission consent agreements with multi-channel video programming distributors (“MVPDs”). I have been negotiating retransmission consent agreements on behalf of Sinclair since 1996. Over this period, I have negotiated or overseen the negotiation of hundreds, perhaps thousands, of retransmission consent agreements. Since 2013, I have been assisted by David Gibber in such negotiations, and since 2017, I have been assisted by Lee Schlazer as well.

**I. A Brief History of My Retransmission Consent Agreement Negotiations**

4. Over the two decades I have negotiated retransmission consent agreements, the television programming landscape has changed enormously. By way of background, Congress enacted the Cable Television Consumer Protection and Competition Act of 1992, which created several new rules regarding retransmission consent and must-carry requirements that were incorporated into the Communications Act, as amended (47 U.S.C. § 534).

**REDACTED – FOR PUBLIC INSPECTION**

5. Under these new rules, local broadcast stations were given the right to choose between (a) negotiating retransmission consent agreements with the MVPDs operating in a station's DMA, or (b) requiring the MVPDs to carry the station's signal, foregoing compensation for the carriage.

6. Until about 2002, multisystem cable operators ("cable MSOs") had a virtual monopoly in the exclusive franchise areas in which they operated. It was not until the Satellite Home Viewer Improvement Act of 1999 gave Direct Broadcast Satellite ("DBS") the right to deliver local broadcast signals to their subscribers in a local market, known as local-into-local service, and the subsequent development of technology that allowed DBS to do so, that cable MSOs began to face competition for the licensing and distribution of broadcast programming. In part, as a result of this new competition between cable and satellite operators for programming and subscribers, local broadcast station owners were able, for the first time, to begin receiving cash compensation for the right to retransmit their signals.

7. Sinclair was one of the first broadcasters to insist that it be paid for its programming and to be successful in doing so. We achieved this result only through a series of difficult negotiations with cable and satellite operators. One example was our negotiation with Mediacom. After a brief period during which Mediacom did not retransmit our stations, we and Mediacom reached an agreement on the payment to Sinclair of retransmission consent fees, and Mediacom publicly announced that it had agreed to our demands. We were able to convince Mediacom to pay for our copyrighted programming only after convincing a federal judge to dismiss their spurious antitrust claims against us and persuading the FCC to deny their petition for emergency relief accusing us falsely of violating our statutory obligation to negotiate in good

faith. After we prevailed in these actions, Mediacom agreed not only to dismiss all FCC and legal proceedings, but to pay our legal fees in defending against their spurious claims.

8. I believe that it was because of negotiations like the one with Mediacom that Sinclair gained a reputation for being willing to terminate the right to carry our stations unless we received appropriate consideration for the right to such carriage. I believe it is this reputation, the fact that we were among the first broadcasters to make a serious effort to be paid fairly for our programming, and other factors such as our unwillingness in the past to enter into long-term contracts or to allow for carriage of our digital signals without consideration, not our size, that have enabled Sinclair to obtain higher retransmission rates than many major television station groups, to my knowledge. In fact, throughout the period from 2005 to 2012, we were just one of several like-sized broadcast group owners and were smaller than many other broadcast groups that I believe did not receive retransmission consent fees equivalent to ours.

9. It is only in the last five years that we have become, through a series of acquisitions, one of the two largest independent station groups. These acquisitions were made possible in part due to the after-acquired clauses in our retransmission consent agreements with the major MVPDs that have enabled us to outbid other companies for the station groups we have acquired. Our size, therefore, is a result of our higher rates, not a cause of them.

## **II. The Level at Which Retransmission Consent Negotiations Take Place**

10. As DISH Network and its experts recognize, negotiations with the large MVPDs, like DISH, take place at the group level. These negotiations result in single agreements that cover all of our stations in any Designated Market Area (“DMA”) that is within the MVPD’s national footprint. These agreements generally set uniform rates across all DMAs in which the

MVPD has subscribers, typically with one rate for the four major network affiliates and different, substantially lower rates for our CW and MyTV stations.

11. As Professor Gautam Gowrisankaran shows in his expert declaration, the four largest MVPDs (AT&T/DirecTV, Comcast, Charter/Time Warner Cable, and DISH) now control access to nearly 80% of all subscribers nationwide.<sup>1</sup> Six other MVPDs control access to another 14% of subscribers nationwide. This means that the ten largest MVPDs control access to over 94% of all subscribers nationwide.

12. The market capitalizations of the four largest MVPDs range from \$30 billion to \$239 billion, far in excess of Sinclair's market capitalization of only \$3 billion, or even the combined market capitalization of Sinclair and Tribune of \$6.5 billion. Because of the number of subscribers they control, as well as their much larger size, Sinclair would suffer much more on a relative basis than would these four large national and regional MVPDs in the event they stopped retransmitting our signals. This gives them enormous bargaining leverage in negotiating retransmission consent agreements with Sinclair and other broadcast TV group owners.

13. Although we have retransmission consent agreements with smaller local cable operators in each of the DMAs in which we own stations, these small local cable operators generally serve fewer than 10% of the subscribers in each DMA.<sup>2</sup> These local cable operators often bargain collectively through the use of intermediaries; in the last round of negotiations of retransmission consent agreements in 2014, one intermediary, the Cinnamon Mueller law firm, represented 52 cable operators in 31 DMAs across 22 states. Therefore, even for these small

---

1. See Declaration of Gautam Gowrisankaran ¶ 27 ("Gowrisankaran Decl.").

2. See *id.* at ¶¶ 26, 28.

**REDACTED – FOR PUBLIC INSPECTION**

cable operators, it no longer makes sense, if it ever did, to think of the market for retransmission consents as purely local.

14. In negotiating retransmission consent agreements with these large MVPDs, and even with smaller local cable operators, I view myself as competing principally against the cable networks, not other broadcast stations. The cable networks, unlike broadcast stations, have always received compensation for their programming in the form of affiliate fees. From the very beginning of my efforts to secure fair compensation for the right to retransmit the signals of our stations, my goal has been to obtain compensation that is at least comparable on a ratings equivalent basis to what the cable networks receive.

15. Despite my efforts, our rates are still substantially lower on a ratings equivalent basis than most cable networks and continue to be lower even on an absolute basis when compared to those of major cable sports networks (including regional sports networks). Because of this, I always argue in my negotiations with the MVPDs that they need to bring our rates more closely in line with the rates they pay the cable networks, taking into account our better ratings. [REDACTED]

[REDACTED]

16. I have never heard an MVPD suggest that it views one owner's portfolio of broadcast stations as a substitute for the portfolio of another group owner. Nor have I ever known MVPDs to try to play one group owner off against another. They have certainly never tried to play Sinclair and Tribune off against one another, even in those DMAs where we both have stations.

IV. The Likely Effect of the Sinclair/Tribune Merger on Retransmission Fees

17.

[REDACTED] As I mentioned, I have been negotiating retransmission consent agreements for the last twenty-one years. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20. In its petition to deny, DISH and its two experts argue that the Tribune merger may enhance Sinclair’s bargaining leverage by increasing the number of markets in which it owns two Big-Four network affiliates or owns a Big-Four network affiliate and has a JSA arrangement with another Big-Four station. Their argument is based on their claim that Sinclair would be able to gain bargaining leverage by threatening to “blackout” both stations during a retransmission negotiation.

21. I do not agree that a broadcaster’s leverage from negotiating for two stations in a single market is greater than the combined leverage of two separate broadcasters negotiating for those stations independently. I know of no evidence to suggest that the number of subscribers that would cancel if two stations were blacked out would be double or more than the number of subscribers that would cancel due to the loss of one station. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**REDACTED – FOR PUBLIC INSPECTION**

22. Even assuming, *arguendo*, that a broadcaster’s leverage might be increased by negotiating on behalf of two stations in the same local market, that would have little or no impact on our negotiations with MVPDs where we are negotiating uniform rates for all of our stations across their entire footprint in multiple local markets. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23. NTCA’s statement in its Petition (p. 8) that “[m]ost 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),” is not true. No representative of Sinclair has ever made a “take it or leave it” offer in its retransmission consent negotiations, although obviously there can come a time in any negotiation where a party may present a last and final, best offer.

24. Melisa Ordonez’s statement in her Declaration (Exhibit C to DISH Petition at para. 22) that “[w]hen [DISH] protested that this negotiation would violate the Commission’s good faith rules, Sinclair’s representatives went so far as to acknowledge the violation,” is not true. No representative of Sinclair ever made such an acknowledgment.

\* \* \* \* \*

The forgoing declaration has been prepared using facts of which I have personal knowledge or based upon information provided to me. I declare under penalty of perjury that the foregoing is true and correct to the best of my current information, knowledge, and belief.

**REDACTED – FOR PUBLIC INSPECTION**

Executed on August 22, 2017

A handwritten signature in blue ink, appearing to read "Barry M. Faber", is written over a horizontal line.

Barry M. Faber

Executive Vice President, General Counsel  
Sinclair Broadcast Group, Inc.

**REDACTED – FOR PUBLIC INSPECTION**

**EXHIBIT H**

**Declaration of Scott Livingston**

**REDACTED – FOR PUBLIC INSPECTION**

**DECLARATION OF SCOTT LIVINGSTON**

I, Scott Livingston, being over 18 years of age, swear and affirm as follows:

1. I make this declaration using facts of which I have personal knowledge or based on information provided to me, in connection with the acquisition by Sinclair Broadcast Group, Inc. (“Sinclair”) of Tribune Media Company (“Tribune,” and together with Sinclair, “Applicants”).

2. I am currently the Vice President of News at Sinclair, and have held this position since 2012.

3. In my capacity as Vice President of News, I establish the news strategy for our stations and oversee the content and creation of the daily news stories produced for distribution across the group.

4. During my time as Vice President of News, I have witnessed firsthand the investments Sinclair has made in its stations to maintain and/or enhance their ability to broadcast quality local news and programming, including investments in local station personnel and its Washington, D.C. News Bureau.

5. Sinclair currently employs more than 3,850 station-level employees to produce local news in the various markets where Sinclair owns stations. Sinclair also employs 14 news employees at its corporate office and 11 employees for its Washington, D.C. News Bureau’s on-air news operations.

6. While Sinclair has had some staff reductions at many of the stations it acquired, many of those stations now exceed original staff levels.

7. KOMO in Seattle employs 150 news employees. After Sinclair invested \$2,000,000 in that station over the past three years, KOMO has expanded its local news coverage

**REDACTED – FOR PUBLIC INSPECTION**

to more than 7 hours per day, and now enjoys the #1 rated newscast at 4:30am, 5am, 6am, 11am, 4pm, 5pm, and 6pm.

8. In St. Louis, Sinclair offers limited, locally produced news programming. Sinclair discontinued its traditional news production in St. Louis in 2001, after losing more than \$1 million a year on the station.

9. On average, Sinclair stations air approximately 37.5 news program hours (or 2,250 minutes) per week.

10. Approximately 57.5 minutes per week of centrally produced programming is broadcast during those 37.5 hours, of which commentaries, including those of Mark Hyman and Boris Epshteyn, constitute approximately 16.5 minutes per week. News stories from the Washington D.C. News Bureau make up less than 1% of a Sinclair's stations' average weekly hours.

11. The remaining news hour programming is comprised of local news developed by Sinclair employees in the various markets where Sinclair owns stations. The remainder of each station's schedule consists of network news and programming, syndicated programming, other programming purchased or developed by local Sinclair employees, and local sports programming.


12. Based on my position with the company, I can confirm the information in Applicants' Consolidated Opposition to Petitions to Deny pertaining to news staffing, news ratings, news programming and coverage, commentaries, local sports programming, Connect to Congress, and local town halls, is true and correct to the best of my knowledge and belief.

\* \* \* \* \*

**REDACTED – FOR PUBLIC INSPECTION**

The forgoing declaration has been prepared using facts of which I have personal knowledge or based upon information provided to me. I declare under penalty of perjury that the foregoing is true and correct to the best of my current information, knowledge, and belief.

Executed on August 22, 2017

  
\_\_\_\_\_  
Scott Livingston  
Vice President of News  
Sinclair Broadcast Group, Inc.

**REDACTED – FOR PUBLIC INSPECTION**

**EXHIBIT I**

**Declaration of Steve Marks**

**REDACTED – FOR PUBLIC INSPECTION**

**DECLARATION OF STEVE MARKS**

I, Steve Marks, being over 18 years of age, swear and affirm as follows:

1. I make this declaration using facts of which I have personal knowledge or based on information provided to me, in connection with the acquisition by Sinclair Broadcast Group, Inc. (“Sinclair”) of Tribune Media Company (“Tribune,” and together with Sinclair, “Applicants”).

2. I am currently the Executive Vice President and Chief Operating Officer at Sinclair, and have held this position since January 2017. From May 2007 to January 2017, I served as Vice President and Co-Chief Operating Officer within Sinclair’s broadcast segment. In my capacity as EVP & COO, I have direct oversight into all Sinclair TV station operations.

3. Sinclair has increased local sports programming by about 373% between 2012 and 2016, adding approximately 6,148 hours of local sports programming, including high school and college football and basketball, and expects to further increase the overall number of hours of high school sports on its stations again this year.

4. Sinclair aired 336 football games across its stations during the 2016-2017 season (equaling approximately 1,008 hours of local sports programming), as well as 101 high school basketball games, including state championship games in the Baltimore, Washington, D.C., Charleston, Columbia, Greenville, Myrtle Beach, Savannah, Las Vegas, Reno, Nashville, Chattanooga, and Salt Lake City television markets (totaling approximately 202 hours of programming). Nearly all (more than 95%) of these games aired during Prime Time.

5. Additionally, Sinclair spends millions of dollars each year in promotion and production costs—including approximately \$4 million annually in production costs to broadcast local high school sports through its Thursday Night Lights/Friday Night Rivals programs.

**REDACTED – FOR PUBLIC INSPECTION**

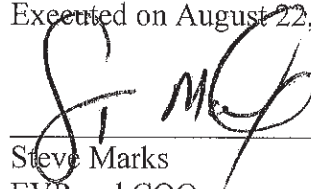
6. In collaboration with local sponsors, Sinclair has created scholar athlete programs and awarded student scholarships and high school grants that are expected to exceed \$1,000,000 by the end of the 2017-2018 season.

\* \* \* \* \*

**REDACTED – FOR PUBLIC INSPECTION**

The forgoing declaration has been prepared using facts of which I have personal knowledge or based upon information provided to me. I declare under penalty of perjury that the foregoing is true and correct to the best of my current information, knowledge, and belief.

Executed on August 22, 2017

A handwritten signature in black ink, appearing to read 'S. Marks', is written over a horizontal line.

Steve Marks  
EVP and COO  
Sinclair Television Group, Inc.