Before the

Federal Communications Commission

Washington, DC 20554

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

REPLY COMMENTS OF CINEMOI, RIDE TELEVISION NETWORK, AWE – A WEALTH OF ENTERTAINMENT, ONE AMERICA NEWS NETWORK, AND THEBLAZE

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August 29, 2017

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Pursuant to Sections 309(d) and 310(d) of the Communications Act of 1934, as amended, and on behalf of independent programmers from across the political spectrum, Cinémoi, RIDE Television Network, Awe – A Wealth of Entertainment, One America News Network, and TheBlaze (together the "Independent Programmers")[1] respectfully submit these comments in response to the Consolidated Opposition filed by Sinclair Broadcast Group ("Sinclair") and Tribune Media Company ("Tribune," and together, the "Applicants").[2]

[1] Independent Programmers continue to have concerns about the accelerated timeframe established for the transaction given the substantial public interest concerns raised by the Sinclair/Tribune deal and the inadequacy of the Applicants' public interest statement. *See, e.g.,* Newsmax Petition to Deny at 4-5; Cinemoi *et al.* Comments at 2 n.2.

[2] Applicants' Consolidated Opposition to Petitions to Deny, MB Docket No. 17-179 (August 22, 2017) ("Opposition").

Applicants assert that parties opposing the transaction bear the burden of proving that the transaction is inconsistent with the public interest, and state further that transaction opponents have failed to meet that burden with any specific allegations of fact.[3] As detailed further below, Applicants misstate the standard of review in transfer-of-control proceedings. It is incumbent upon the Applicants to prove to the Commission that the proposed transaction is in the public interest. The Applicants want to flip the burden of proof because they simply cannot justify this transaction under the public interest standard.

As the American Cable Association noted, "it is not enough for the Applicants to prove that the transaction will not be harmful; they must prove that it will affirmatively promote the "broad aims of the Communications Act," which include a deeply rooted preference for preserving and enhancing competition."[4] Moreover, as Dish points out, any claimed benefits must be transaction-specific, verifiable, and for the benefit of consumers, and not solely for the benefit of the applicants.[5]

Applicants have utterly failed to meet their burden. Independent Programmers and other opponents of the transaction have catalogued the numerous and substantial harms that will flow from the transaction, and Applicants' attempts to waive those harms off as hearsay, or not transaction-specific, or unsubstantiated don't withstand scrutiny.

On the issue of retransmission consent, for example, the record, which includes economic analyses from Dish, underscores that the proposed transaction would give Sinclair increased bargaining leverage to impose higher retransmission consent costs on MVPDs, directly affecting

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[3] *Id.* at 3.

[4] ACA Petition at 4.

[5] Dish Petition at 10-11.

consumers in the form of higher bills.[6] Sinclair already has among the highest retransmission consent fees in the industry, and has demonstrated a propensity for using station blackouts and flouting the Commission's ownership rules – all in an effort to gain leverage and demand higher retransmission consent fees from MVPDs. According to SNL Kagan, industry-wide retransmission consent fees increased five-fold from 2010 to 2015, and they are expected to increase almost eleven-fold (to $12.8 billion) from 2010 levels by 2023.

The colossus created by the transaction – which would reach 72% of U.S. households, operate 233 local broadcast stations (80 more than the nearest competitor), and broadcast in 108 local markets -- would significantly worsen the situation for consumers, distributors, and upstream program suppliers. Sinclair can withhold broadcast television content from 72% of pay-TV households. This gives Sinclair the necessary leverage to extort more payments from MVPDs and, by extension, from the pockets of consumers, to the detriment of consumer choice and media diversity. ACA explained that "[t]he Combined Entity's vast scale would . . . harm consumers by leading to more and more widespread blackouts and ultimately to higher retransmission consent fees that will be passed to consumers in the form of higher subscription fees."[7] Likewise, ATVA noted that the transaction "would result in higher retransmission consent fees in all Sinclair markets. It would also result in Sinclair having even more leverage to compel carriage of unwanted and unpopular programming, as it has already compelled carriage of the Tennis Channel."[8] And "[t]he economic data DISH's experts analyzed demonstrate that

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[6] *See id* at 14-43 & supporting economist declarations; ACA Petition at 10-20; Comments of Cinemoi *et al.* at 7-9; Comments of American Television Alliance ("ATVA") at 3-10.

[7] ACA Petition at 19.

[8] ATVA Comments at 8.

allowing Sinclair and Tribune to merge will likely raise prices for the American consumer."[9]

Applicant's public interest claims are equally suspect. For example, Applicants assert that the transaction "advances the health and sustainability of free over-the-air broadcast television."[10] As an initial matter, Sinclair's own business plans belie this claim, given its stated interest in deploying its ATSC 3.0 platform for datacasting, wireless, and other *non-broadcast* services.[11] And to the extent Sinclair cites the increasing costs of programming, the fragmentation of viewership, and other competitive pressures,[12] the Applicants offer nothing concrete to addresses these concerns other than stating they need more resources, presumably through demanding higher licensing fees and broader carriage for their content. More carriage and higher license fees for their content will have the effect of crowding out independent networks in MVPDs' channel lineups and squeezing licensing fees for such networks.

Likewise, Applicants' statement that the transaction is consistent with Commission rules and precedent[13] also rings hollow. As Independent Programmers have previously explained,[14] reinstatement of the UHF discount grossly distorts the magnitude of the proposed transaction. Until April 20th of this year, the Commission's rules would have prohibited this transaction. By law, Congress has specifically prohibited broadcasters from reaching more than 39% of national

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[9] Dish Petition at 3.

[10] Opposition at 5.

[11] In fact, Sinclair has created a consortium with other broadcasters to "promote spectrum aggregation, innovation and monetization and enhance their abilities to compete in the wireless data transmission sector." *See* http://www.prnewswire.com/news-releases/nexstar-media-group-and-sinclair-broadcast-group-establish-consortium-to-promote-broadcast-spectrum-aggregation-innovation-and-monetization-300424026.html.

[12] *See* Opposition at 5.

[13] *See id.* at 21.

[14] *See* Cinemoi *et al.* Comments at 4-7.

television households. This merger is only enabled by reinstating a technologically outdated regulation. With the UHF discount, which the Commission has said it will revisit later this year, the combined company would reach 45% of TV households, still in excess of the 39% ownership cap. In contrast, if UHF and VHF signals are treated the same, as they should be, the combined company would reach a staggering 72% of TV households, almost double the cap. The transaction would also create substantial violations of the local ownership rules.[15] Sinclair pays lip service to divesting stations to comply with these rules,[16] but has made plain that it does not expect to make divestitures.

Even divestitures would be insufficient to address the public interest harms associated with a mega-Sinclair that reaches over 70% of U.S. households. The only way to protect consumers is to place far more direct limits on the new Sinclair's ability to demand above-market local television fees and address the other public interest harms detailed in the record.

[15] Multiple parties have expressed concern about the local ownership rule violations that would result from the proposed transaction. *See, e.g.,* Dish Petition at 73 ("[T]he degree to which the proposal would deviate from the [media ownership] rules is unprecedented. Diligent research has not uncovered any prior broadcast consolidation that would create a duopoly in 11 markets on top of the Applicants' existing duopolies . . ."); ACA Petition at 5-6; NTCA—The Rural Broadband Association Petition at 4-7.

[16] *See* Opposition at 21-23.

CERTIFICATE OF SERVICE

I, Ellen Schned, hereby certify that on August 29, 2017, a true and correct copy of the foregoing Reply was filed with the Federal Communications Commission and copies were served by e-mail upon the following:

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