Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

TRIBUNE MEDIA COMPANY (Transferor) and SINCLAIR BROADCAST GROUP, INC. (Transferee) Consolidated Applications for Consent to Transfer Control	))))))))))	MB Docket No. 17-179

COMMENTS OF ALLIED PROGRESS* IN OPPOSITION TO THE SINCLAIR-TRIBUNE MERGER

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* **Allied Progress** is a consumer watchdog organization that stands up to Wall Street and powerful special interests and holds their allies in Congress and the White House accountable.

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COMMENTS OF ALLIED PROGRESS
IN OPPOSITION TO THE SINCLAIR-TRIBUNE MERGER

Sinclair Broadcast Group is the largest owner of television broadcast stations in the country. Tribune Media is the second largest. The proposed merger between them would be the largest in television broadcast history. Sinclair already operates 191 TV stations.[1] Combining it with Tribune's 42 stations would bring Sinclair's total to 233 TV stations that reach a whopping 72% of American households.[2] As the CEO of Sinclair acknowledged, the resulting company would be "the largest TV broadcast company in the country,"[3] bringing it closer to Sinclair founder and chairman David Smith's dream for "an instantaneous final consolidation of the industry."[4] Now, with the FCC's unprecedented regulatory rollbacks announced just this past week, the company will be able to pursue Smith's second objective: to make "the over-the-air broadcaster . . . the dominant delivery system of all relevant media in the marketplace."[5]

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[1] Sinclair Broadcast Group, Inc., *Sinclair Broadcast Group Announces Agreement to Purchase Bonten Media Group TV Stations*, PR Newswire (Apr. 21, 2017), https://perma.cc/DG8M-DNQF.

[2] Andy Kroll, *Ready for Trump TV? Inside Sinclair Broadcasting's Plot to Take Over Your Local News*, Mother Jones (Nov./Dec. 2017), http://www.motherjones.com/politics/2017/10/ready-for-trump-tv-inside-sinclair-broadcastings-plot-to-take-over-your-local-news/ (quoting David Zurawik of the *Baltimore Sun*).

[3] Sydney Ember & Michael J. de la Merced, *Sinclair Unveils Tribune Deal, Raising Worries It Will Be Too Powerful*, N.Y. Times (May 8, 2017), https://www.nytimes.com/2017/05/08/business/media/sinclair-tribune-media-sale.html.

[4] Price Colman, *David Smith: Sinclair's Singular Visionary*, TVNewsCheck (Feb. 21, 2014), http://www.tvnewscheck.com/article/74320/david-smith-sinclairs-singular-visionary.

[5] *Id.*

This merger should not and cannot be approved—not without scrapping the entire legal framework that applies to broadcast mergers and the public-interest values underlying that framework. At the heart of the FCC's mandate to regulate mergers is the requirement that a merger serve the "public interest." But this merger proposal runs counter to all the values that make up the "public interest"—diversity, competition, and local control. The merger would restrict viewpoint diversity by further reducing the number of independent media owners necessary to ensure a robust exchange of news, information, and ideas among Americans. It would reduce competition between media corporations in local markets, diminishing the incentive to generate innovative and improved programming for local audiences. And it would undermine local control by enabling broadcast structures that discard programming responsive to local needs and interests in favor of programming created for a national audience.

All of these concerns are exemplified by Sinclair's practice of scripting reporting for news anchors and pushing "must-run" segments on its local stations, requiring them to air slanted, partisan commentary—including that of former Trump White House staffer and media surrogate Boris Epshteyn—amidst local news, weather, and traffic reports. "Sinclair is exploiting that credibility or trust that people have invested in their local stations by injecting a political message into

it," warns one veteran industry observer.[6] A *Slate* columnist is more blunt: "As far as propaganda goes, this is pure, industrial-strength stuff."[7] Sinclair viewers "get a daily dose of pro–White House talking points delivered by an ex-administration official."[8]

Under federal law, the FCC may not approve a merger involving the transfer of a station license unless the proposed transaction would serve "the public interest, convenience, and necessity."[9] To make this determination, the FCC must first consider whether the transaction complies with specific provisions of the Communications Act, other statutes, and the FCC's rules.[10] If so, the FCC must next employ a balancing test—weighing potential public interest harms against potential public interest benefits—to determine if the transaction is in the public interest.[11]

As these comments explain, the merger fails on all counts. It violates FCC rules governing the transfer of licenses: It would create a nationwide behemoth, violating the FCC's national ownership cap. And it would significantly reduce

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[6] Kroll, *Ready for Trump TV?*

[7] Katy Waldman, *News. Traffic. Weather. Trump. How Sinclair Broadcast Group and Boris Epshteyn took administration propaganda from the Oval Office to the local news,* Slate (July 21, 2017), http://www.slate.com/articles/news_and_politics/politics/2017/07/how_boris_epshteyn_and_sinclair_bring_trump_propaganda_to_local_news.html

[8] *Id.*

[9] 47 U.S.C. §§ 214(a), 310(d).

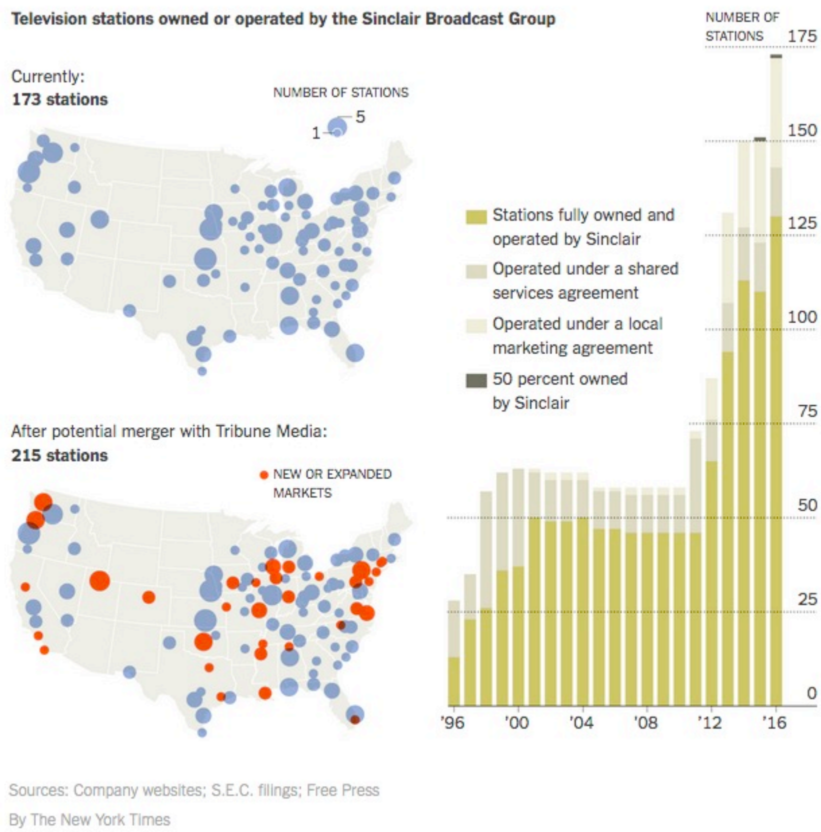
[10] *Re: AT&T Inc. & Bellsouth Corp.*, 22 F.C.C. Rcd. 5662, 5672 (2007).

[11] *Id.*

viewpoint diversity in local markets, violating the FCC's local duopoly rule. The merger also fails the public-interest balancing test: it would rob Americans of a real choice between televised sources of news and information, imposing a significant public-interest harm that cannot be outweighed by any public-interest benefit. For these three independent reasons, the merger therefore may not be lawfully approved.

The stakes for our democracy are hard to overstate. Television continues to be the most widely used news platform: 57% of U.S. adults "often" get news from television.[12] More specifically, 46% of U.S. adults get their news from *local* television—which exceeds the number of adults who get their news from the internet (38%) or from print newspapers (20%). So long as television remains the dominant platform on which Americans get their news, the integrity of our democracy depends on which organizations are doing the broadcasting.

[12] Pew Research Center, *The Modern News Consumer* (July 7, 2016), http://www.journalism.org/2016/07/07/pathways-to-news.



I.

This Merger Would Violate The FCC's National Ownership Cap.

To ensure that the American people have access to a diversity of voices on air, Congress has capped the number of viewers that any individual broadcast company can reach nationwide.[13] By rule, no individual broadcasting company can own a set of television stations that together reach more than 39% of American households.[14] This cap on national ownership advances the FCC's core value of

[13] *See* Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004) (requiring a "39 percent national audience reach limitation for television stations").

[14] 47 C.F.R. § 73.3555(e)(1).

promoting viewpoint diversity. Multiple independent media owners are needed to guarantee a robust exchange of news, information, and ideas among Americans.

The proposed Sinclair-Tribune merger would violate this rule. Before the merger was announced, Sinclair already reached 38% of American households.[15] After the merger, the combined company would—on Sinclair's own calculation—reach a stunning 72% of American households.[16] The combined company would "own and operate the largest number of broadcast television stations" of any broadcasting entity.[17]

This 72% figure, however, ignores an obscure rule that the FCC reinstated just this past April. When calculating national reaches, the FCC used to exclude certain stations operating in ultrahigh frequencies, or UHFs. Back in the age of analog technology, UHF channels faced technical limitations that prevented them from reaching as many viewers as ordinary broadcasters. UHF channels were therefore seen as less desirable. Accordingly, the FCC discounted the audience reach of any UHF station by 50%, reflecting the reality that they reached fewer households than ordinary channels.[18]

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[15] Michael J. de la Merced & Cecilia Kang, *TV Station Owners Rush to Seize on Relaxed F.C.C. Rules*, N.Y. Times (May 1, 2017), https://www.nytimes.com/2017/05/01/business/dealbook/tv-station-owners-rush-to-seize-on-relaxed-fcc-rules.html.

[16] Sinclair and Tribune, MB Docket 17-179, Federal Communications Commission, https://www.fcc.gov/transaction/sinclair-tribune.

[17] *Id.*

[18] 47 C.F.R. § 73.3555(e)(2)(i).

But times have changed, and the UHF discount no longer makes any sense. Since the advent of digital television technology, the disparity between UHF channels and other channels has been entirely eliminated.[19] In fact, UHF channels now have "*superior* propagation characteristics" for purposes of digital television.[20] Nowadays, 74% of America's television stations operate on UHF channels, and 80% of the national audience is serviced by UHF stations.[21] Even Commissioner Ajit Pai—the current Chairman of the FCC—recognizes that "our nation's transition from analog to digital television has eroded the basis for the UHF discount" and that "the time probably has come for the UHF discount to take its place in the history books alongside the Fairness Doctrine, the Morse Code exam requirement, and other outdated regulations."[22] Thus, the FCC repealed the outdated UHF discount rule in 2016.[23]

This year, however, the FCC revived the UHF discount. On April 21, 2017—a few weeks after it was reported that Sinclair first approached Tribune about a

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[19] National Television Multiple Ownership Rule, 81 Fed. Reg. 73,035, 73,037 (Oct. 24, 2016) (to be codified at 47 C.F.R. pt. 73) ("Thirty years after its adoption, however, it is clear that the UHF discount cannot be justified in the digital world.").

[20] *Id.* (emphasis added).

[21] *Id.*

[22] Dissenting Statement of Commissioner Pai, *Re: Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, Report and Order, (Sept. 7, 2016), https://apps.fcc.gov/edocs_public/attachmatch/FCC-13-123A4.pdf.

[23] National Television Multiple Ownership Rule, 81 Fed. Reg. at 73,035.

possible merger[24]—the FCC voted 2–1 to reinstate the UHF discount.[25] Under the reinstated rule, Sinclair's household coverage percentage dropped from 38% to 25%, "opening the door to new mergers and acquisitions" that would no longer violate the 39% cap.[26] Two weeks after the rule was reinstated, Sinclair and Tribune unveiled their plans to merge.[27]

But even with the reinstated UHF discount, the combined company would have—on Sinclair's own reckoning—an audience reach of approximately 45.5%, which is 6.5% more than the limit.[28] Without divestitures, then, the merger would still violate the FCC's national ownership cap. Troublingly, despite the FCC's request that the parties "[d]escribe in detail . . . what specific steps [Sinclair and Tribune] plan to take to comply with the national ownership limit,"[29] Sinclair declined to identify any specific divestitures: "[I]t is premature at this point for

[24] Jessica Toonkel, Liana B. Baker, *Exclusive: Sinclair Approaches Tribune Media About Possible Deal — Sources*, Reuters (Mar. 1, 2017, 6:11 AM), http://www.reuters.com/article/us-tribunemedia-m-a-sinclairbroadcast/exclusive-sinclair-approaches-tribune-media-about-possible-deal-sources-idUSKBN16843R?il=0 ("If the companies decide to combine, they would collectively reach more people than the [FCC] currently allows.").

[25] *Re: Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, Order on Reconsideration, FCC 17-40 (Apr. 20, 2017), https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-40A1.pdf.

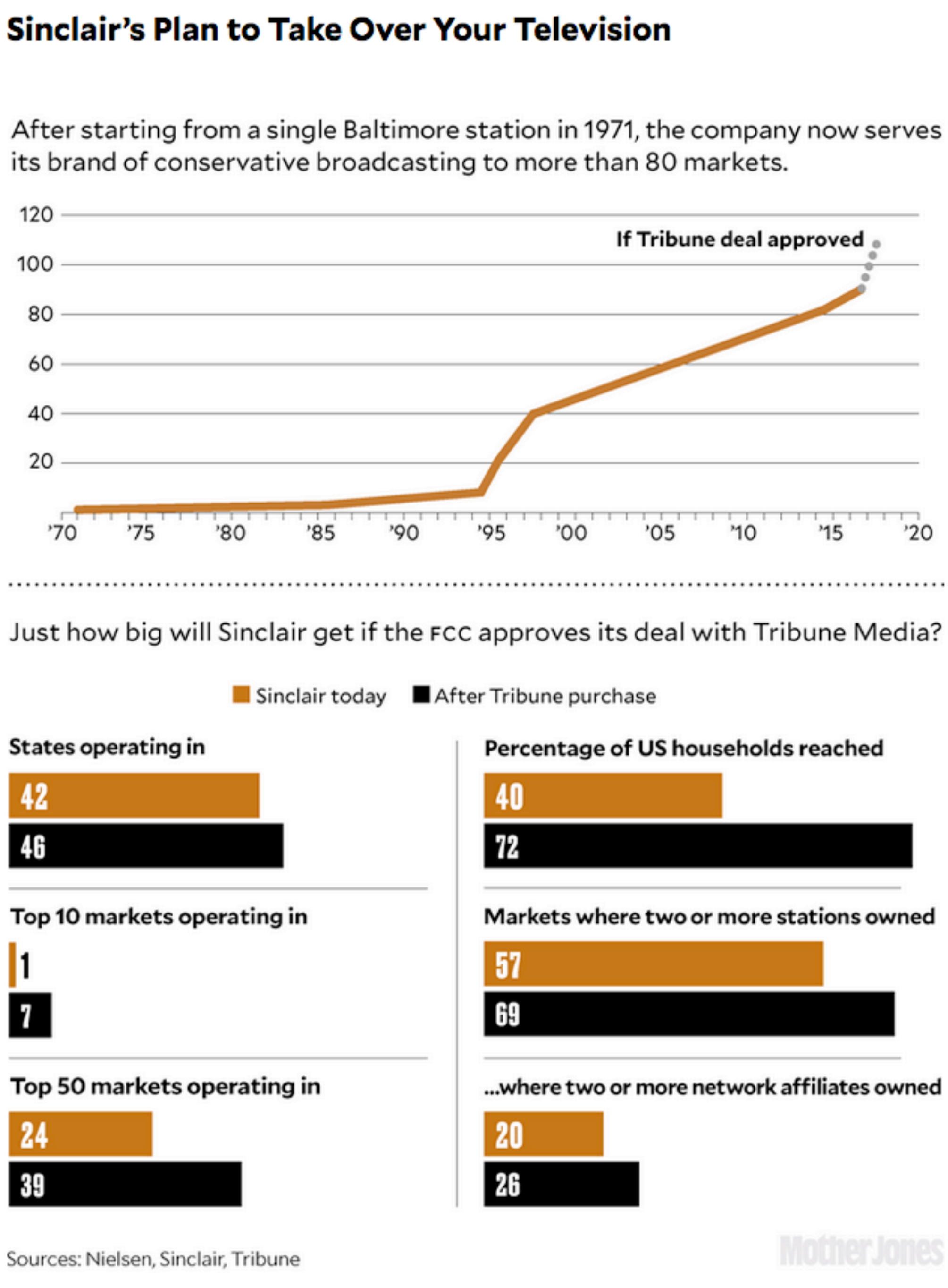
[26] Michael J. de la Merced & Cecilia Kang, *supra* note 15.

[27] Sydney Ember & Michael J. de la Merced, *supra* note 1.

[28] Comprehensive Exhibit to Application at 1 (June 2017), https://licensing.fcc.gov/cdbs/CDBS_Attachment/getattachment.jsp?appn=101759797&qnum=5140&copynum=1&exhcnum=2.

[29] Responses of Sinclair Broadcasting Group, Inc. to FCC Request for Information at 2, MB Docket No. 17-179 (Oct. 5, 2017), https://ecfsapi.fcc.gov/file/1005298846277/20171005%20-%20PUBLIC%20REDACTED%20Sinclair%20Response%20to%20FCC%20Request%20for%20Information%20(with%20Exhibits%201-6).pdf ("Sinclair Responses").

Sinclair to know what specific steps will be required to comply with [the national ownership limit], including what specific license divestitures it will need to make."[30]



[30] *Id.* at 3.

II.

The Merger Would Violate The FCC's Duopoly Rule.

In addition to the national ownership cap, the FCC must ensure that the American people have access to a diversity of voices by prohibiting a broadcasting company from dominating any individual local market. Under FCC rules, no broadcasting company can own more than one of the top four television stations in any local market.[31] Like the national ownership cap, this rule advances the FCC's core value of promoting viewpoint diversity in local markets. Requiring that each of the top four stations retains an independent owner ensures that each will produce an independent local newscast.

The proposed Sinclair-Tribune merger would violate this rule. Sinclair itself has identified fourteen local markets[32] where the combined company would own two of the Top Four television stations, including: Seattle, St. Louis, Salt Lake City, Oklahoma City, Greensboro, Grand Rapids, Harrisburg, Richmond, Des Moines, and Portland.[33] Without divestitures, then, the merger would violate the FCC's television duopoly rule. But despite the FCC's request that the parties "[d]escribe in detail . . . what steps [Sinclair and Tribune] plan to take to comply with the local television ownership rules, including a complete list of stations that

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[31] 47 C.F.R. § 73.3555(b)(1).

[32] Ben Munson, *2 Winners and 2 Losers from the $3.9B Sinclair-Tribune Deal*, FierceCable (May 10, 2017), http://www.fiercecable.com/broadcasting/winners-and-losers-3-9b-sinclair-tribune-deal.

[33] Sinclair Responses at 4–7.

would be divested to comply with [the duopoly rule]," Sinclair declined to identify any specific divestitures: "[I]t is premature at this point for Sinclair to know what specific steps it will take to comply with [the duopoly rule]."[34]

But even if the required divestitures occur, there is reason to be skeptical that Sinclair is complying with the duopoly rule. Sinclair has historically used "sharing agreements"—agreements that permit it to manage the day-to-day operations of stations it does not technically own[35]—to skirt the requirements of the duopoly rule. In the past, Sinclair has evaded the duopoly rule by vesting the ownership of a second Top Four station in trusted employees and family members.[36] Under a sharing agreement, the "independently owned" station would then broadcast the same content as the Sinclair-owned station. In one transaction, Sinclair acquired a Pittsburgh station and sold its existing station to a Sinclair employee on extremely favorable terms. Sinclair opened its new station but "continued to program its original station through a Local Marketing Agreement."[37] In another transaction, Sinclair acquired a company with two

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[34] *Id.* at 8.

[35] *Re: Various Applications for Assignment of License and Transfer of Control of Certain Television Licenses to Sinclair Broadcast Group, Inc. and Glencairn, Ltd.*, FCC 01-336, https://apps.fcc.gov/edocs_public/attachmatch/FCC-01-336A1.doc [hereinafter *Various Applications*].

[36] Eric Klinenberg, *Beyond 'Fair and Balanced,'* Rolling Stone (Feb. 24, 2005) ("Smith was equally creative when it came to skirting federal rules that forbid broadcasters from controlling two television stations in the same market. The scheme was simple: Smith's mother, Carolyn, and Sinclair employee Edwin Edwards would buy a station in a market where the company already owned an outlet . . . .").

[37] *Various Applications* at 25.

stations in markets where Sinclair was already operating. Sinclair's CEO "proposed that his mother finance the acquisition."[38] Sinclair opened the new stations, and the old stations "were operated through [sharing agreements] by the Sinclair-owned stations in their markets."[39] For these violations of the duopoly rule, the FCC levied a fine of $40,000.[40]

Faced with this obvious challenge to the integrity of the duopoly rule, the FCC in 2014 released a guidance document on the permissible use of sharing agreements. The guidance document expressed concern that broadcasting companies—through the use of sharing agreements—would be able to control more stations than permitted by the FCC's duopoly rule. The guidance therefore outlined how the FCC should scrutinize transactions involving sharing agreements—requiring assurances that these were "arm's-length transaction[s]" that "would not impair the existing licensee's control over station operations and programming" or be "otherwise contrary to the public interest."[41]

Unfortunately, Sinclair's acquisition of Tribune will not receive any such scrutiny. In an unprecedented move, the FCC's guidance document was

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[38] *Id.*

[39] *Id.*

[40] *Id.* at 16.

[41] Federal Communications Commission, Public Notice, *Processing of Broadcast Television Applications Proposing Sharing Arrangements and Contingent Interests* at 2, DA 14-330 (Mar. 12, 2014), https://apps.fcc.gov/edocs_public/attachmatch/DA-14-330A1.pdf.

rescinded—*without any explanation*—on February 3, 2017.[42] At the very least, the FCC owes the public an explanation for this suspicious about-face.

The FCC's unexplained rollback is especially troubling because the proposed Sinclair-Tribune merger already involves a sharing agreement in one of the fourteen local markets where a divestiture would be required by the duopoly rule.[43] And, in the absence of scrutiny from the FCC, there is no guarantee that any divestitures Sinclair eventually pursues will lead to genuine independence of content and programming for the divested station. If anything, Sinclair's history with sharing agreements suggests the opposite, and the company has already indicated the new proposed FCC rules are "helpful"[44] to it in this regard. Instead of divestitures, Sinclair CEO Chris Ripley says the company may now seek "swap alternatives, some of which include[] in-market swap alternatives which can be very accretive" since selling outright would not be "defendable . . . from an economic perspective."[45]

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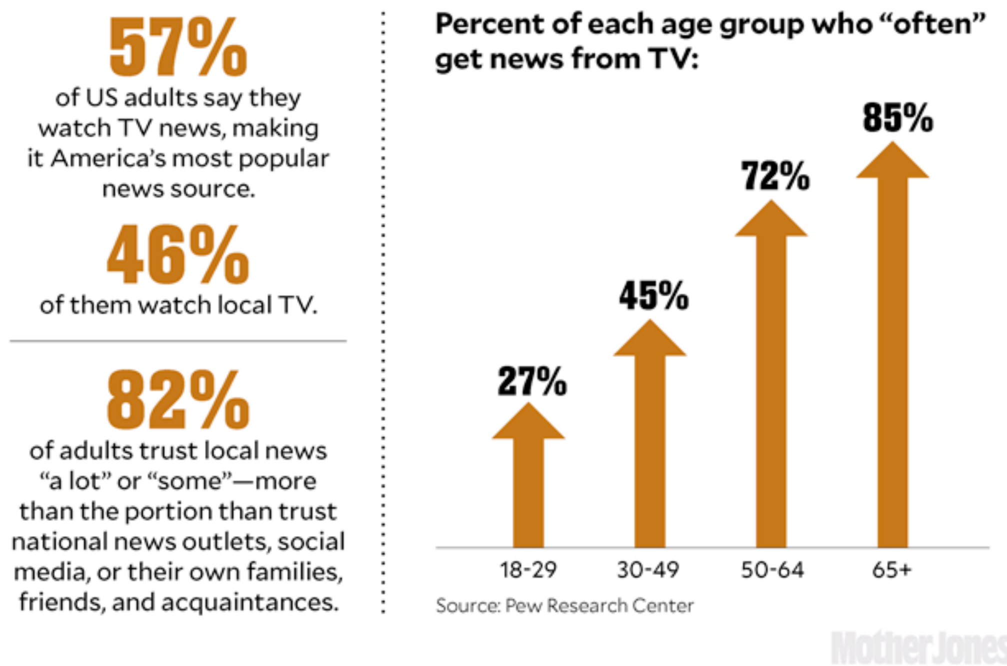
[42] Federal Communications Commission, Public Notice, *Rescission of March 12, 2014, Broadcast Processing Guidance Relating to Sharing Arrangements and Contingent Interests*, DA 17-130 (Feb. 3, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DA-17-130A1.pdf.

[43] Sinclair Responses at 5 n.4 ("[A] subsidiary of Sinclair currently has a [sharing agreement] with Ruby Mountain Broadcasting LLC with respect to television station KENV-DT, NV . . . .").

[44] Ben Munson, *Sinclair urges DOJ to fall 'in line with the realities of the marketplace' in $3.9B Tribune deal*, FierceCable (Nov. 1, 2017), https://perma.cc/QCL3-PDZ6.

[45] *Id.*



III.

The Merger Does Not, On Balance, Serve The Public Interest.

Even if these specific violations of FCC rules are ignored, however, the merger cannot be said to serve the public interest. To make this determination, the FCC must weigh the potential harm to the public interest against any potential benefits.[46] An evaluation of the harms and benefits should be made with reference to the broad aims of the Communications Act—including enhancing competition in relevant markets and ensuring a diversity of voices is made available to the public.[47] Sinclair and Tribune bear the burden of proving that the merger would

[46] *Re: At&T Inc. & Bellsouth Corp.*, 22 F.C.C. Rcd. 5662, 5672 (2007).

[47] *Id.*

serve the public interest.[48] Here, the potential harms from the merger are disqualifying, and the potential benefits are illusory.

First, this merger would be devastating to viewpoint diversity. The Supreme Court has repeatedly emphasized that the FCC's duty is to promote diversity among voices in the media: "it has long been a basic tenet of national communications policy that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[49] To achieve this goal, the FCC has always reasoned that "the public would be exposed to wide variety of viewpoints if ownership of media outlets were diffused among more rather than fewer firms."[50] This reasoning, for instance, underlies the duopoly rule: the rule promotes the diversity of media "voices" in a particular market by requiring separate ownership of each station and thus assuring that each television station "counts as [an independent] voice."[51] The same reasoning applies here—approval of the merger "would diminish viewpoint diversity by reducing the two 'voices' of [Sinclair] and [Tribune] to one."[52]

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[48] *See, e.g.*, *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Telecommunications, Inc., Transferor to AT&T Corp., Transferee,* 14 FCC Rcd 3160, 3168-70 (1999).

[49] *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 663 (1994) (internal quotation marks omitted).

[50] *In Re Echo Star Commc'ns Corp.*, 17 F.C.C. Rcd. 20,559, 20,581 (2002).

[51] *Id.* at 20,583.

[52] *Id.*

Further, the merger threatens viewpoint diversity by risking the crowding out of smaller broadcasting companies. This would further eliminate the number of voices in local media markets. In the Seattle media market, for instance, the combined company would account for 43.3% of the advertising revenue in the entire commercial broadcasting market—by far the biggest share of advertising revenue in the area.[53] Worse, in the Salt Lake City media market, the combined company would account for 61.2% of all advertising revenue.[54] In the Grand Rapids media market, the combined company would account for 46%.[55] In Des Moines, 41.4%.[56] The list goes on and on. In many media markets, then, the combined firm would have sufficient market power to drive many smaller broadcasters out of business—a disastrous result for both liberal and conservative local news coverage. As Chris Ruddy, CEO of conservative media outlet Newsmax, noted in his opposition to the merger, "a free press is predicated on a diverse press."[57] This is no isolated trend; former FCC commissioner Michael J. Copps argues, "[i]t's symptomatic of what is happening in this market, which is fewer and fewer organizations controlling more and more of the information on which our

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[53] Sinclair Responses at Exhibit 3.

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] Chris Ruddy, *The FCC's Recent Actions May Lead to a Homogenization of News*, Wash. Post (Oct. 23, 2017), https://perma.cc/NNU5-8RLA.

democracy rests."[58] If the merger is not blocked, this trend — and its destructive consequences for viewpoint diversity — will only continue.

But over and beyond a generalized concern for a diversity of voices, Sinclair's particular business practices threaten viewpoint diversity. Sinclair executives have at times directly dictated the reporting done by local news anchors. Following the September 2001 terror attacks, the company required station anchors and "even weather forecasters" to read editorials "explicitly conveying full support for the Bush administration's fight against terrorism."[59] When employees raised objections, Sinclair nevertheless insisted that the messaging be read out, but allowed for anchors to qualify the statement as coming from "station management."[60] This is hardly sufficient, since viewers might reasonably assume the anchors meant the *local* station management.

Additionally, unlike many broadcasting companies, Sinclair pushes so-called "must-run" segments onto its local stations, which means that "news directors and station managers from Baltimore to Seattle ha[ve] to find room for [them]" in their daily broadcasts.[61] These must-run segments are uniquely troubling because they are extremely ideologically slanted.

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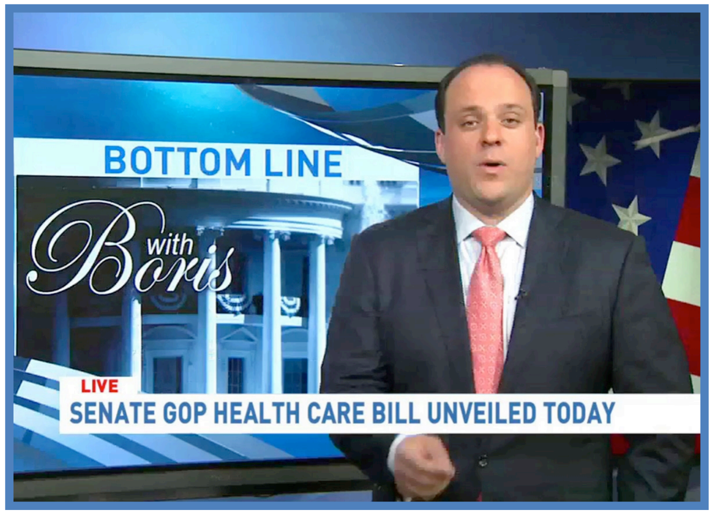
[58] Ember & de la Merced, *supra* note 1.

[59] David Folkenflik, *Sinclair Broadcast Group has Deal to Buy Tribune Media's TV Stations*, NPR (May 8, 2017), https://perma.cc/6BAX-4U26.

[60] *Id.*

[61] Todd C. Frankel, *A TV Company Warned Its Viewers About the Media's 'Fake News.' Now It's About to Take Over Some of the Nation's Biggest Stations*, Wash. Post (May 8, 2017), https://goo.gl/7C7y4r.

In April 2017 Sinclair hired Boris Epshteyn, a former Trump media surrogate and White House staffer, as its chief political analyst. Commentaries by Epshteyn, billed under the tagline "The Bottom Line with Boris," are among the must-run segments. *Mother Jones* recently described "Epshteyn's softball interviews with administration officials and brusque commentaries" as "slavishly pro-Trump."[62] The television columnist for *The Baltimore Sun* deems these segments "as close to classic propaganda as anything I have seen in broadcast television in the last 30 years."[63]



Although other broadcasters sometimes push "must-runs" onto their stations, those are "typically station promotions." By contrast, Sinclair is "unique" for requiring its stations to broadcast partisan programming.[64] Sinclair's "top-down news philosophy" limits the natural diversity of voices that would otherwise be heard on local airwaves—especially in local markets where Sinclair controls multiple stations.[65]

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[62] Kroll, *Ready for Trump TV?*

[63] *Id.*

[64] *Id.*

[65] *Id.*

Sinclair's reaction to local employees frustrated by this top-down philosophy is equally worrisome. KOMO journalists in Seattle, for example, were caught off guard by an "unusual request" to report on the purported recruiting of paid protestors at President Trump's 2017 inauguration—a story later proven to be false. Not only did the journalists find that such mandated coverage from Sinclair "undercut their professionalism," but they were further frustrated that "the company did not understand [their] progressive market." Instead of attending to these local market concerns raised by employees, Sinclair has repeatedly chosen to suppress employee pushback. As then-Sinclair CEO David Smith made clear in one meeting with the company's local journalists, "[r]esistance is futile."[66] This threat to viewpoint diversity weighs heavily against a public interest finding.

Second, this merger would vitiate local control of television broadcasting. The FCC has always considered localism to be in the public interest because local control ensures that broadcast stations are responsive to the needs and interests of their communities. As the Supreme Court has recognized, "[l]ocal program service is a vital part of community life. A station should be ready, able, and willing to serve the needs of the local community."[67] This merger threatens those values because Sinclair's "top-down news philosophy" is inimical to the very concept of

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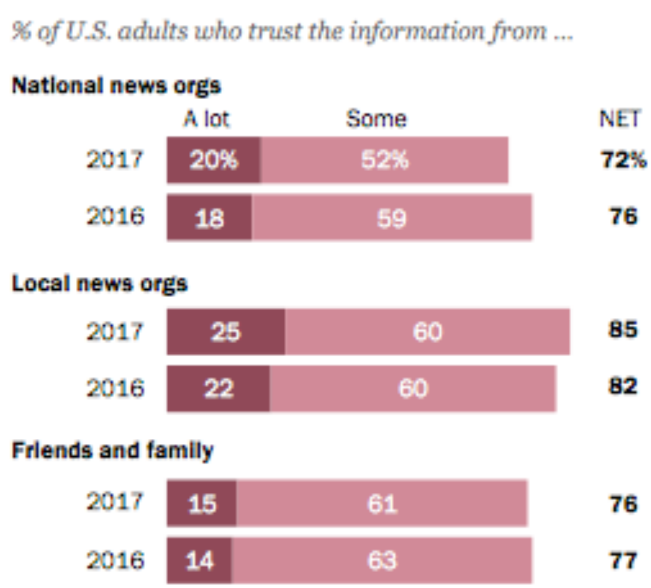
[66] Pam Vogel, *Sinclair Insiders Speak Out About Its Plans to Transform Local News*, Salon (Sept. 23, 2017), https://www.salon.com/2017/09/23/sinclair-insiders-are-sounding-the-alarm-about-its-plans-to-transform-local-news_partner/

[67] *NBC v. United States*, 319 U.S. 190, 203 (1943).

local control. As news outlets have reported, Sinclair's local stations have already complained that Sinclair's practice of "must-run spot[s] interfere[] with their jobs as journalists."[68] Sinclair's top-down approach of news broadcasting cannot serve the value of local control.

More generally, Sinclair's requirement that its local stations politicize their news coverage marks a notable departure from how local stations have typically covered the news. Simply put, Sinclair's politicization of local news is "unheard of."[69]



Unlike cable networks, where partisan coverage of news is a "familiar staple," local television stations "rank high in public trust" because they avoid coverage of news events in a partisan manner.[70] This is no accident: local television stations typically serve

[68] Frankel, *supra* note 48.

[69] *Id.*

[70] *Id.*

entire communities, and slanted coverage of news events tends to beget dissatisfaction.[71] By forcing local stations to slant their coverage, Sinclair's "top-down news philosophy" essentially requires stations to be less responsive to the needs and interests of their communities. This can only get worse with the proposed FCC repeal of the "Main Studio Rule," which requires broadcasters to maintain a physical studio in the locality they serve. Reversing this eight-decades-old regulation cannot be reconciled with the FCC's prioritization of localism.

The FCC must balance such harms against any potential benefits to the public interest accruing from the merger.[72] Here, these harms are so severe as to be disqualifying. That fact aside, however, any potential benefits from the merger are likely overstated.

Sinclair identifies many "economies of scale" resulting from the merger that will supposedly permit it to make "specialized programming that would otherwise not be financially feasible."[73] The ability to create original programming, Sinclair claims, will lead to many public interest benefits. It will bring new original content to viewers. It will enable Sinclair to reduce the cost of licensing syndicated programming. And it will permit Sinclair to compete for national advertising,

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[71] Ember & de la Merced, *supra* note 1 ("[T]elevision, where ratings beget advertising revenue, is not a forgiving medium for dissatisfaction . . . .").

[72] *Re: At&T Inc. & Bellsouth Corp.*, 22 F.C.C. Rcd. 5662, 5672 (2007).

[73] Sinclair Responses at 12.

enabling it to compete for more highly rated shows and allowing those shows to remain on over-the-air broadcast television.[74]

These economies of scale, however, have likely already been attained. Sinclair and Tribune are the two largest owners of television broadcast stations in the country. Contra Sinclair's claim, it is simply implausible that this merger alone will enable Sinclair "to reach a critical mass that can significantly reduce the financial risk of producing original content."[75] It stands to reason that if the financial risk for producing original content is financially feasible at ownership of 233 broadcasting stations (Sinclair + Tribune), it likely remains feasible at ownership of 191 stations (Sinclair alone). Better, we *know* this to be true. As Sinclair itself notes, "Sinclair has been able to launch some digital networks on its sub-channels with its current station lineup."[76]

IV.

The Proposed Repeal of Numerous FCC Regulations Does Not Serve The Public Interest

Rather than hold Sinclair accountable to its regulations, FCC Chairman Ajit Pai is looking to extensively repeal the agency's decades old broadcasting rules designed to protect localism, competition, and viewpoint diversity. The changes proposed include the elimination of the Newspaper/Broadcast Cross-Ownership

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[74] *Id.* at 12–16.

[75] *Id.* at 13.

[76] *Id.* at 12.

Rule, which prohibits a single company from owning both a newspaper and broadcast station in the same market; the elimination of the Radio/Television Cross-Ownership Rule, which prohibits a single company from owning more than two TV stations and one radio station in the same market; and the elimination of the Eight-Voices Test, which requires that there be at least eight independently owned TV stations in a market where a merger of two stations occurs. Pai argues that "the marketplace no longer justifies the[se] rules" when considering competition from Internet companies such as Facebook and Alphabet.[77] His remarks indicate an adoption of Sinclair's mischaracterization of who their marketplace competitors are: not the local broadcasting entities outlined in federal law, but large media corporations that operate in entirely different sectors.

If Chairman Pai wants to jettison decades of established law, he should take that request to Congress. Unless and until Congress decides to scrap the public-interest framework, the FCC's job is to enforce it.

[77] David Shepardson, *FCC to Loosen TV, Newspaper Ownership Rules*, Thomson Reuters (Oct. 25, 2017), https://www.reuters.com/article/us-usa-fcc-media/fcc-to-loosen-tv-newspaper-ownership-rules-idUSKBN1CU2TD.

Conclusion

The FCC cannot approve this merger unless Sinclair can demonstrate that it would serve the public interest. It would not. The merger would violate specific FCC rules governing the transfer of licenses—rules specifically formulated to protect the public against media consolidations that reduce viewpoint diversity, competition, and local control of broadcasting. More broadly, the merger fails the FCC's public-interest balancing test, robbing Americans of a real choice between televised sources of news and information without any true countervailing public interest benefit.

Respectfully submitted,

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