

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

COMMENTS OF FREE PRESS

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INTRODUCTION AND SUMMARY

Sinclair's response to the Commission's request for further information fails to assuage any of the well-founded concerns established in our initial petition to deny this unprecedented and harmful merger. The proposed transaction would violate federal statute¹ and numerous federal regulations, including the local and national television ownership rules.² Even if the Commission were to change every rule that is within its power to change to make way for Sinclair -- which the agency's preposterous reinstatement of the UHF discount,³ its elimination of the main studio rule,⁴ and its most recent proposal to slash a host of critical media ownership protections⁵ all seem to suggest it will do -- the transaction would still violate federal statute.

Nothing in Sinclair's most recent filing changes these facts. Indeed, the remarkable intransigence Sinclair displays even when explicitly prompted by the Commission for clarification, regarding either the broadcaster's plans to comply with the statute or the Application's vague and illogical public benefit claims, serves only to highlight Sinclair's utter lack of interest in complying with the law and serving the public interest.

Repeatedly, Sinclair hides behind the absurd argument that it is unable to explain how it would comply with media ownership rules because such decisions would be "premature."⁶ It is also apparently "premature" to offer any meaningful promises about maintaining news staff or improving local news

¹ See Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004) ("Consolidated Appropriations Act"); *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*, MB Docket No. 17-179, FCC Press Release (rel. July 6, 2017).

² See 47 C.F.R. § 73.3555(b); 47 C.F.R. § 73.3555(e).

³ See *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, MB Docket No. 13-236, Order on Reconsideration, FCC 17-40 (rel. Apr. 20, 2017).

⁴ See *Elimination of Main Studio Rule*, MB Docket No. 17-106, Report and Order, FCC 17-137 (rel. Oct. 3, 2017).

⁵ See *Review of the Commission's Broadcast Ownership Rules, Joint Sales Agreements, and Shared Services Agreements, and Comment Sought on an Incubator Program*, MB Docket Nos. 14-50, 09-182, 07-294, 04-256, 17-289, Order on Reconsideration and Notice of Proposed Rulemaking, (Circulation Draft, rel. Oct. 26, 2017).

⁶ Responses of Sinclair Broadcasting Group, Inc. to FCC Request for Information, MB Docket No. 17-179, at 3 (filed Oct. 5, 2017) ("Sinclair Response").

coverage outside major metropolitan markets. This transparent excuse is insufficient to meet Sinclair's burden of demonstrating how the proposed transaction would affirmatively benefit the public interest.

On several points, Sinclair relies on misdirection to cover its less-than-noble intentions. In response to the Commission's question regarding the merged entity's plans to increase local news coverage, Sinclair instead pontificates about existing national broadcasts that will now reach more markets. Not only does this feeble response fail to answer the Commission's question, it is framed in a way that seems designed to mislead the Commission in its evaluation of Sinclair's plans.

The few cognizable commitments Sinclair does make are either wholly unsupported or flatly contrary to the public interest. Sinclair's promise to compete with major syndicators in original programming is hardly a logical extension of merger approval, and Sinclair fails to explain the logical (and financial) leaps it would take to achieve this goal. The shared newsroom efficiencies Sinclair boasts of would diminish the quality and quantity of local news, particularly by reducing the number of independent and diverse voices and viewpoints.

Sinclair has already proven it is not a trustworthy steward of the public airwaves. This latest filing gives the Commission no reason to overlook Sinclair's extensive history of acting against the interests of the communities it is licensed to serve.

I. Sinclair's Refusal to Identify Divestiture Candidates Demonstrates Disdain for Media Ownership Rules.

Sinclair outright refuses to answer the Commission's request for further information, which specifically asked that Sinclair specify which stations it intends to divest in order to comply with both the national audience reach cap and local television multiple ownership rules. To defend this bizarre evasion, Sinclair argues that "it is premature at this point for Sinclair to know what specific steps will be required to comply with Section 73.3555(e), including what specific license divestures [sic] it will need to make."⁷

⁷ *Id.* at 3.

This claim is factually absurd. Section 73.3555(e) is abundantly clear, and Sinclair has understood it well enough thus far to be able to identify the numerous areas in which this sprawling merger proposal would violate the statute.⁸ In overlap markets where the merged entity would own a combination of stations that violates the duopoly rule, Sinclair must take specific steps to divest one or more of those stations. To comply with the national audience limit, Sinclair notes that it would need to divest stations in at least two markets.⁹ Sinclair is well aware of the actions required to bring this merger proposal into compliance with current media ownership laws and FCC rules.

Sinclair's feigned uncertainty implies that the ownership rules it stands to violate are too malleable to be taken at face value -- an implication that shows utter disdain for current law and a perhaps all too realistic expectation that this current Commission will knock down any rules it can to help. But the national audience limit was established by Congress.¹⁰ And the local duopoly rule has repeatedly been upheld by the Commission as critical for protecting localism and a diversity of voices.¹¹ These rules are not subjective, nor is their application to and violation by the proposed transaction in dispute.

Sinclair's belief that the rules may change before the Commission makes a final decision regarding the transaction represents an absurd double-standard at best, or an understanding that the fix is in at worst. Congress is not currently considering any legislation to adjust the national ownership cap, and while the Commission has recently proposed loosening the local television ownership rules,¹² that proposal had not yet been announced when Sinclair filed its remarkably unhelpful response to the Commission's request for information. Even with the Commission's media ownership proposal in motion, the proposed transaction still clearly violates current law. Sinclair has accepted the reassertion of the UHF discount at face value, although that decision currently faces legal challenges, and summarily dismissed

⁸ *Id.* at 4-7.

⁹ *Id.* at 2.

¹⁰ See 47 C.F.R. § 73.3555(e); Consolidated Appropriations Act.

¹¹ *In the Matter of Review of the Commission's Regulations Governing Television Broadcasting and Television Satellite Stations Review of Policy and Rules*, MM Docket No. 91-221, Report and Order, 14 FCC Rcd 12903, ¶ 7 (1999).

¹² "FCC Announces Tentative Agenda for November Open Meeting," Press Release (Oct. 26, 2017).

all Petitioners' related concerns.¹³ But somehow the potential for future regulatory shifts renders the national and local ownership limits an unknowable mystery? Sinclair's hesitancy to comply with existing ownership limitations based on the expectation of potential future changes is hypocritical in the extreme.

Moreover, the number and nature of Sinclair's planned divestitures has a material impact on the public interest calculations the Commission must perform when assessing the transaction. If Sinclair feels it is "premature" for the applicants to identify such divestitures, it is plainly also "premature" for the Commission to approve this deal.

II. Sinclair Fails to Offer Any Specific Plans to Substantially Improve Local News Coverage.

The Commission rightly requested that Sinclair provide tangible specifics regarding its proclaimed intention of boosting local news coverage should the transaction be approved, and once again Sinclair fails to deliver.

While Sinclair touts a hypothetical expansion of local news as a primary public interest benefit of the proposed transaction, it exclusively names large metropolitan markets as opportunities for this growth.¹⁴ It is disingenuous for Sinclair to boast that adding two hours of newscasts to the largest and most saturated media market in the nation is a substantial boon to the public. There are underserved media markets across the nation -- many of which already have a Sinclair presence -- that could benefit tremendously from an expansion of local news coverage, but Sinclair has expressed no plans to deepen coverage in these markets. Nor is this omission a matter of Sinclair simply choosing to note only projects that it has had time to fully assess -- Sinclair also names Chicago and Los Angeles as potential markets for expansion, despite having not yet identified specific opportunities.¹⁵

Sinclair does announce its intention to extend two previously existing national news broadcasts to newly acquired stations, but we must highlight the words "national" and "previously existing" in this

¹³ See Applicants' Consolidated Opposition to Petitions to Deny, MB Docket No. 17-179, at 22-23 (filed Aug. 22, 2017) ("Opposition").

¹⁴ Sinclair Response at 19.

¹⁵ *Id.*

context.¹⁶ Expanding the reach of *Full Measure* and *Morning Dose* may be a positive development for some markets, in theory; but it fails to satisfy the Commission’s question regarding plans to expand local newscasts as a result of the merger. Additionally, it is misleading to suggest that this expansion is the result of increased investment in news programming when all Sinclair has promised is to air previously packaged content to a wider audience without any additional resources.

Sinclair makes similarly misleading claims regarding statehouse and local government reporting, suggesting that it is improving coverage by distributing the statehouse reporting Sinclair already produces to newly acquired stations within the state.¹⁷ It’s worth noting that these initiatives are not necessarily geared towards serving the public interest -- on a recent town hall-style event, Sinclair featured Sebastian Gorka making the baseless, contentless and wildly racist claim that “black young men are murdering each other by the bushel.”¹⁸ Public affairs programming should help inform communities; simply offering former presidential spokespeople a platform to spout bigotry does not.

Sinclair also fails to examine or account for what news programming currently exists at Tribune stations, and thus fails to make any coherent argument that replacing them with its own products would improve the experience of Tribune viewers. Without those comparisons, these claims are meaningless.

What Sinclair seems to be articulating is a view that only major metropolitan markets are worthy of (allegedly) increased resources and improved local news products, while smaller markets are not worth the investment. This is the attitude of a broadcaster that sees localism and public interest commitments not as the heart of its operation, but as an unpleasant obligation it would prefer to ditch via deregulation.

¹⁶ *Id.* at 19-20.

¹⁷ *Id.* at 21-22.

¹⁸ Taylor Link, “Sebastian Gorka warns of ‘black African gun crime’ in Sinclair Broadcast appearance,” *Salon* (Oct. 24, 2017), <https://www.salon.com/2017/10/24/sebastian-gorka-warns-of-black-african-gun-crime-in-sinclair-broadcast-appearance/>

III. Sinclair's Stated Plan to Compete with Major Syndicators is Vague and Unsupported.

As a result of a merger approval here, Sinclair claims that it would be able to expand original programming and “expects to be able to produce shows of equal or better quality than a substantial portion of the programming it currently purchases from the major syndicators.”¹⁹ However Sinclair provides next to no explanation as to why this particular merger is necessary for such a dramatic shift in the company's business model.

Producing content that could compete with major syndicated shows like *Jeopardy*, *Modern Family* and *Seinfeld*, would require an immense influx in cash flow that Sinclair can't reasonably expect from the proposed transaction. The “revenue synergies”²⁰ Sinclair cites would simply be insufficient -- unless, of course, Sinclair is planning for exactly the type of newsroom budget-slashing and staff-layoffs Petitioners have warned against.

Perhaps sensing the inherent weakness of this argument, Sinclair attempts to bolster its case with an even stranger one: suggesting the merger will lead to world-class content production by “giving Sinclair the exposure necessary to financially justify the risk inherent in original content production.”²¹ But as any budding artist or street musician will tell you, “exposure” isn't all it's cracked up to be. Does Sinclair plan to go into debt to achieve this monumental change in its business operations? In an attempt to connect the nebulous value of “exposure” to the highly calculable cost of producing original content, Sinclair proceeds to suggest that, “although Sinclair typically can produce attractive programming for less than the cost of most syndicated programming, such an investment is not profitable with its current congruent nationwide reach of approximately only 20%.”²²

But suggesting that Sinclair's current audience exposure is “only 20%” is an out-and-out lie. Earlier in the very same filing, Sinclair notes that with the application of the recently exhumed UHF

¹⁹ Sinclair Response at 14.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 13.

discount, its legally attributable audience reach is 24.7%, better approximated to a quarter of the population rather than a fifth. Moreover, while the UHF discount is once again relevant for determining whether or not a broadcaster violates the national television audience reach cap, it is utterly irrelevant when determining functional audience. The overwhelming majority of broadcast station viewers tune in via cable, where Sinclair's signal is crystal clear regardless of whether the station is broadcasting over UHF spectrum. What's more, for homes watching over-the-air in the digital era, UHF signals are no longer technologically inferior, as even UHF discount supporters such as Commissioner O'Reilly have publicly acknowledged.²³ According to its stations' websites, Sinclair's functional audience reach is neither 20% nor 25%, but currently 38.7% of television households.²⁴ Not only does Sinclair fail to support its vague and perplexing promise of original production benefits, but it blatantly misrepresents its own size and business plan justifications to the Commission.

IV. Shared Newsrooms that Sinclair Touts as Benefits Instead Promise Harmful Consolidatory Impacts for Viewers.

One of the primary "efficiencies" Sinclair claims in its filing is "the streamlining of Sinclair's news gathering infrastructure."²⁵ Specifically, the company declares that it would establish "shared newsrooms" in markets where the combined entity would own multiple stations.²⁶

Sharing newsrooms between stations may allow Sinclair to produce quantitatively more news (or to repeat those newscasts more often and on more stations) than it was producing before the merger, but it would inevitably result in a net loss of diverse and competing news content for viewers. In markets where Sinclair and Tribune both own stations, residents currently enjoy the efforts of two separate entities trying to cover the important issues of the day, each trying to outdo the other and differentiating their newscasts

²³ *Hearing on Oversight of the Federal Communications Commission* by the Subcommittee on Communications & Technology (Oct. 25, 2017),

<https://energycommerce.house.gov/hearings/oversight-federal-communications-commission-fcc/>.

²⁴ "Contact," *WJLA* Washington DC, retrieved Oct. 30, 2017, <http://wjla.com/station/contact>.

²⁵ Sinclair Response at 9.

²⁶ *Id.* at 10.

to compete for the attention of different parts of the community. Should the transaction be approved and these stations squashed into a single shared newsroom, residents will lose one entity's point of view. Sinclair can't replace that by buying a few additional trucks and adding a few hours to the singular newscast it would now broadcast over multiple channels.

Sinclair insists that these joint newsrooms "would follow the successful approach it has taken in San Antonio," where KABB and WOAI share facilities but also have "distinct newscasts" developed by "different anchor teams" with a "distinct brand and focus."²⁷

Despite the repetition of the word "distinct," we are forced to conclude that Sinclair is unfamiliar with the term. We are happy to provide the relevant definition here:

distinct (adj)
: distinguishable to the eye or mind as being discrete (see discrete 1) or not the same²⁸

Even a cursory glance at the websites of KABB and WOAI suggest that there is very little distinction between them.²⁹ A majority of top news articles are duplicated exactly across the two websites -- including a majority of top local news articles. The vast majority of these stories do not have an individual reporter's byline, or even an individual station's byline, but are authored by the conglomerate "SBG San Antonio." The two stations have more employees in common than either station employs alone, according to the "People" section of both websites.³⁰ This directly contrasts what Sinclair promised reporters and the public when it acquired WOAI in 2012, when then-general manager John Seabers insisted, "You will not see changes in the products. You will not see merged news operations. You will not see reporters and anchors switching from one station to the other."³¹ Less than a year after that

²⁷ *Id* at 10-11.

²⁸ "distinct," *Merriam-Webster.com*, retrieved Oct. 30, 2017.

²⁹ FOXSanAntonio.com, <http://foxsanantonio.com/>; News4SA.com, <http://news4sanantonio.com/>.

³⁰ "People," FOXSanAntonio.com, <http://foxsanantonio.com/station/people>; "People," News4SA.com, <http://news4sanantonio.com/station/people>

³¹ Jeanne Jakle, "WOAI, KABB won't join forces," *San Antonio Express-News* (Dec. 5, 2012), <http://www.mysanantonio.com/business/article/WOAI-KABB-won-t-join-forces-4091407.php>.

announcement, Sinclair hired a joint news director for both stations.³² Now, clicking on the “Careers” tab for either station brings you to the exact same webpage, where every opening besides a part-time producer and a local sales manager are listed as working for both stations, including openings such as Investigative News Intern, News Photojournalist, Multimedia Journalist.³³

Sinclair’s response also fails to note that KABB and WOAI are not the only broadcast stations to share its facilities in San Antonio; KMYS, owned by Deerfield media but operated by Sinclair through sharing agreements, is also located in the same facility.³⁴ KMYS offers primarily entertainment and sports content with no newscast of its own, and virtually every news story on its website is contributed by “SBG San Antonio,” a duplicate from the other two stations. The KMYS website even directs those seeking to contact the News Desk to email KABB’s News Desk.³⁵ Since the KMYS website does not include any links to team members or career openings, it’s unclear whether or not KMYS has a separate staff at all.

Sinclair is effectively using its existing duopoly ownership and sharing agreements in the San Antonio market to promote duplicative news content generated by duplicative staff across three separate channels, stifling opportunities for diverse broadcast voices and frustrating viewers seeking multiple perspectives from these supposedly “distinct” news outlets.

And this is Sinclair’s definition of a successful shared newsroom.

³² W. Scott Bailey, “Sinclair names new director of news for KABB, WOAI television stations,” *San Antonio Business Journal* (Aug. 13, 2013),

<https://www.bizjournals.com/sanantonio/blog/2013/08/sinclair-names-new-director-of-news.html>.

³³ “Investigative News Intern Spring 2018,” *SBG Careers*, retrieved Oct. 30, 2017, https://sbgvtv-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.jobinfo&jobid=8694&source=ONLINE&JobOwner=993778&company_id=17011&version=1&byBusinessUnit=56&bycountry=&bystate=&byRegion=&byLocation=&keywords=&byCat=&proximityCountry=&postalCode=&radiusDistance=&isKilometers=&tosearch=no&city= ; “News Photojournalist,” *SBG Careers*, retrieved Oct. 30, 2017, https://sbgvtv-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.jobinfo&jobid=8393&source=ONLINE&JobOwner=993778&company_id=17011&version=1&byBusinessUnit=56&bycountry=&bystate=&byRegion=&byLocation=&keywords=&byCat=&proximityCountry=&postalCode=&radiusDistance=&isKilometers=&tosearch=no&city= ; “Multimedia Journalist,” *SBG Careers*, retrieved Oct. 30, 2017, https://sbgvtv-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.jobinfo&jobid=8039&source=ONLINE&JobOwner=993778&company_id=17011&version=1&byBusinessUnit=56&bycountry=&bystate=&byRegion=&byLocation=&keywords=&byCat=&proximityCountry=&postalCode=&radiusDistance=&isKilometers=&tosearch=no&city=.

³⁴ “Contact,” *The CW35*, retrieved Oct. 30, 2017, <http://cw35.com/station/contact>.

³⁵ *Id.*

Sinclair's disastrous history with shared newsrooms demonstrates that the company's priority is cost-cutting and profits, not responsive local news. Rather than a merger-specific public benefit, Sinclair's commitment to replicate this type of damaging consolidation should be a disqualifying harm.

V. Sinclair Statements Regarding Staffing Reductions Raise More Red Flags.

Sinclair attempted to assuage concerns that this merger would lead to yet another wave of layoffs leaving journalists unemployed -- but it left open loopholes for the company to do exactly that.

The filing proclaims, "Sinclair does not plan to make any immediate changes with respect to station-level staffing until it has learned more about the Tribune stations' operations and is able to properly evaluate each station's growth potential and related needs."³⁶ But of course, this is no promise at all. After previous mergers, Sinclair has needed only a quarter to "evaluate" its acquired stations and determine that newsrooms should be slashed.³⁷ Sinclair has openly stated its plans to consolidate duopoly stations into shared newsrooms, as discussed more extensively above, which has historically led to major staff cuts as Sinclair transitions to one newsroom doing the work of two.

Anticipating this concern, Sinclair noted that it "does not expect this process to reduce the number of employees substantially, but does expect to realize an overall saving in costs."³⁸ How many fired journalists does Sinclair consider "substantial"? It refuses to say. This mealy-mouthed commitment contrasts sharply with the specificity of Sinclair's expressly stated plans to improve digital content by "bringing on between 60-90 new hires."³⁹ The Commission asked Sinclair for detailed information, but with regards to newsroom staffing, Sinclair replied with only rhetoric. This double-standard suggests that Sinclair is choosing to keep its news staffing commitments nonspecific because the company has no intention of following through on them, and would rather not be explicitly pinned to an empty promise.

³⁶ Sinclair Response at 9.

³⁷ Steve Duin, "Steve Duin: As Sinclair expands nationwide, the cuts are deep at KATU," *The Oregonian* (Oct. 22, 2013), http://www.oregonlive.com/news/oregonian/steve_duin/index.ssf/2013/10/steve_duin_katu.html.

³⁸ Sinclair Response at 11.

³⁹ *Id* at 23.

CONCLUSION

Sinclair has continued its pattern of evasion and doublespeak in response to the Commission's request for detailed information. Nothing in its most recent filing serves to mitigate the concerns Petitioners have identified -- in fact, many aspects of the response have only illustrated the risk of exacerbated harms. Sinclair has promised to engage in behavior that will cause serious damage to local communities, by consolidating newsrooms and starving marginalized communities of much-needed resources. Sinclair failed to respond fully and faithfully to the Commission's questions, just as it has failed to lay out sufficient information regarding the proposed transaction since the outset, in order to obfuscate public interest calculations that would clearly show this colossal deal violates the law and fails to serve the public interest. The Commission must not reward this deception and abandonment of local communities by approving a transaction that would only worsen the current dismal state of broadcast localism, diversity and competition.