

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these comments in response to the Public Notice issued on October 18, 2017² in the above-captioned proceeding, which concerns the proposed transfer of control of Tribune Media Company (“Tribune”) licenses to Sinclair Broadcast Group, Inc. (“Sinclair”) (jointly “Applicants”).³ With respect to the Public Notice, the Media Bureau (“Bureau”) of the Federal Communications Commission (“Commission”) paused the 180-day transaction shot clock to enable interested parties to comment on “additional information” provided by the Applicants in

¹ NTCA represents nearly 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All of NTCA’s service provider members are full service rural local exchange carriers (“RLECs”) and broadband providers. Approximately 75 percent serve as multichannel video programming distributors (“MVPDs”) using a variety of technologies in sparsely populated, high-cost rural markets.

² Media Bureau Pauses 180-Day Transaction Shot Clock In The Proceeding For Transfer Of Control Of Tribune Media Company To Sinclair Broadcast Group, Inc. To Allow For Additional Comment, Public Notice, DA 17-1026 (rel. Oct. 18, 2017) (“Public Notice”).

³ Applications of Tribune Media Company and Sinclair Broadcast Group for Consent to Transfer Control of Licenses and Authorizations, Comprehensive Exhibit, MB Dkt. No. 17-179 (Jun. 26, 2017) (“Applications”).

response to a “Request for Information” issued on September 14, 2017 by the Bureau.⁴ NTCA submits these comments in response to that Public Notice and in response to the Applicants’ answers to the Bureau’s Request for Information.⁵ NTCA also submits these comments as a supplement to and a reiteration of its August 7, 2017 Petition to Deny.⁶

As in similar proceedings, the Commission here must evaluate whether the Transaction could result in public interest harms by frustrating or impairing the objectives or implementation of the Act or related statutes, and whether the Transaction complies with specific applicable laws and regulations.⁷ If the Transaction is consistent with the Act and its overall objectives, the Commission must assess whether it would enhance competition in an analysis informed by traditional antitrust principles and its broader public interest mandate. Most importantly, *applicants bear the burden of proving affirmatively that the Transaction would serve the public interest, convenience, and necessity and would be beneficial to competition.*⁸ If the Commission is unable to find that the proposed Transaction serves the

⁴ Request for Information from Sinclair and Tribune, Media Bureau, Federal Communications Commission, MB Docket No. 17-179 (Sep. 14, 2017) (“Request for Information”).

⁵ Letter from Miles S. Mason to Marlene H. Dortch, Sinclair Broadcast Group Response to Media Bureau, MB Docket No. 17-179 (fil. Oct. 5, 2017) (“Sinclair Response”).

⁶ Petition to Deny of NTCA, MB Docket No. 17-179 (Aug. 7, 2017) (“NTCA Petition to Deny”).

⁷ See Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, Memorandum Opinion and Order and Report and Order, 23 FCC Red. 12348, 12363-64 if 30 (2008); News Corp. and DIRECTV Group, Inc. and Liberty Media Corp. for Authority to Transfer Control, Memorandum Opinion and Order, 23 FCC Red. 3265, 3276-77 (2008); SBC Commc'ns Inc. and AT&T Corp. Applications for Approval of Transfer of Control, Memorandum Opinion and Order, 20 FCC Red. 18290, 18300 (2005).

⁸ *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc.*, MB Docket No. 10-56, Memorandum Opinion and Order, FCC 11-4 (rel. Jan. 20, 2011), ¶ (stating that in transactions such as the one at issue here, “[a]pplicants bear the burden of proving, by a preponderance of the evidence that the proposed transaction, on balance, serves the public interest.”).

public interest for any reason, or if the record presents a substantial and material question of fact, the Commission must designate the Application for hearing.⁹

Nothing provided by Applicants in response to the Bureau's "Request for Information" changes the inescapable conclusion that Applicants have failed to meet this burden of proving that the Transaction, if approved, would benefit the public interest. NTCA therefore reiterates its request that the Commission deny the proposed Transaction.

In its August 2017 Petition to Deny, NTCA noted that Applicants failed to meet their burden of proof, having provided no meaningful, substantiated evidence in support of the claimed benefits to the public interest that would result from the approval of the transaction. The Sinclair Response to the Request for Information is similarly deficient, providing bald assertions unsupported by any data.

The marriage of Sinclair and Tribune, two of the largest local TV station owners in the United States, would create a broadcasting behemoth that would result in higher consumer prices, increased blackouts, and substantial harms to small MVPDs. Among the issues that demand serious consideration in light of the proposed transaction, retransmission fees are among the most significant to the public interest, and especially to small MVPDs and consumers in rural America. These fees continue their unabated climb. While Sinclair already describes itself as "one of the largest and most diversified television broadcasting companies in

⁹ 47 U.S.C. § 309(e). *See, also* Sirius-XM Order, 23 FCC Red. at 12364, if 30; Liberty Media DIRECTV Order, 23 FCC Red. at 3277 if 22; General Motors Corp. and Hughes Electronics Corp., and The News Corp. Limited, Memorandum Opinion and Order, 19 FCC Red. 473, 483 n. 49 (2004) ("News Corp.-Hughes Order"); Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp. and EchoStar Communications Corp., Hearing Designation Order, 17 FCC Red. 20559, 20574 if 25 (2002) ("EchoStar-DIRECTV HDO").

the country,”¹⁰ the proposed merger would increase the number of stations that Sinclair owns and/or operates from 191 to 233 (a 22% increase), while their number of markets served would group from 89 to 108 (a 21% increase).¹¹

As explained in NTCA’s Petition to Deny, consumers, especially rural consumers, would pay the price of this merger.¹² NTCA’s members report that they generally encounter greater difficulties dealing with broadcasting conglomerates, including the Applicants, than with single stations.¹³ The majority of respondents to a July NTCA membership survey indicated that obtaining retransmission consent from a company that controls multiple broadcast stations is more difficult than obtaining it from a single station. As discussed more fully in NTCA’s Petition, small MVPDs that obtain content from either or both of the Applicants report that while interactions with Tribune are difficult, the obstacles to obtaining content from the larger Sinclair are even more pronounced.¹⁴ Granting the Applications will further consolidate the market and offer Sinclair more power to demand “take it or leave it” contracts with higher fees that cannot be justified by cost or market forces alone. This is especially troubling for rural consumers who frequently lack competitive alternatives to receive broadcast content.¹⁵

¹⁰ Press release, “Sinclair Broadcast Group to Acquire Tribune Media Company for Approximately \$3.9 Billion,” <http://sbg.net/wp-content/uploads/2017/05/SBG-Trib-Final.pdf>, p. 3.

¹¹ *Id.*

¹² NTCA Petition to Deny, pp. 4-7.

¹³ Surveys were sent via electronic mail to 593 NTCA members in July, 2017. One hundred fourteen unique responses were received, representing a 19 percent response rate.

¹⁴ NTCA Petition to Deny, p. 8.

¹⁵ Nearly one-fourth of NTCA’s members report that 90 percent or more of the customers in their service areas cannot receive any over-the-air broadcast signals, and must rely upon MVPD services in

With that as background, as NTCA noted in its Petition to Deny, nothing in the Applicants’ original application even attempts to address this critical consumer issue. Far from even attempting to explain how the prospects of higher retransmission rates and increased blackouts could possibly serve the public interest, or even argue that such a result would not occur, the Applicants’ simply and transparently attempt to sidestep these clear harms. Unfortunately, the Sinclair Response is simply more of the same, a continued side-stepping of the harms that increasing retransmission consent fees have on consumers.

For example, the Bureau asks the Applicants in Request 6 to “demonstrate how the increased audience reach will make Sinclair more attractive to programmers in a manner that would not occur absent approval of this Transaction, including. . . improved MVPD distribution of Sinclair stations.”¹⁶ The Applicants simply fail to answer the question asked. Instead of discussing MVPD distribution of its programming as instructed, Sinclair offers a non-sequitur focused on its increased ability to compete with MVPDs based upon offering of “skinny” bundles aimed at a particular demographic and content “for free over the air.”¹⁷ This attempt to deflect attention rather than answer the question asked is problematic, as Sinclair neglects to address whether these “skinny” bundles will be available for purchase by MVPDs. It is the experience of small MVPDs that the “take it or leave it” retransmission consent agreements of large broadcasters require carriage of their full suite of programming, requiring MVPDs to take a number of stations they don’t want along with the local broadcast content

order to receive local news, weather reports, and similar benefits of local broadcasts. Comments of NTCA – the Rural Broadband Association, MB Docket No. 15-216, p. 3 (filed Dec. 1, 2015).

¹⁶ Sinclair Response, p. 12.

¹⁷ *Id.*, pp. 12-13.

they desire. There is no indication that this will not continue, making it impossible for MVPDs to even offer “skinny” bundles of programming.

In addition to the fact that small, rural MVPDs may not be able to purchase these skinny bundles and offer them to their subscribers, it cannot be emphasized enough that nearly one-fourth of NTCA’s members report that 90 percent or more of the customers in their service areas cannot receive any over-the-air broadcast signals, and must rely upon MVPD services to receive local news, weather reports, and similar benefits of local broadcasts. Thus, the “competitive advantage” of additional over the air programming to which Applicants refer will not accrue to a large number of rural consumers. In fact, the lack of over-the-air signal available for so many rural consumers enhances the ability of broadcasters to extract retransmission consent fees from MVPDs, and the proposed transaction if approved will only exacerbate what has become an untenable situation for rural MVPDs and an exorbitantly costly one for their subscribers. The programming created by Sinclair therefore affords no benefit to much of rural America unless it can be accessed affordably through a pay service. Sinclair offers no assurance that it will work with MVPDs to ensure that its “higher quality” programming will be available to rural MVPD subscribers or that if it is, it will be affordable or competitively priced.

Similar concerns are littered throughout the Sinclair response. At Request 9, for example, the Bureau asks the Applicants to “[d]escribe in detail and provide documents that support and demonstrate how the Transaction would offer greater value to MVPDs.”¹⁸ In response, Applicants state, without any meaningful explanation or data to back up such a bald

¹⁸ *Id.*, p. 23.

statement, that it would “likely reduce MVPDs’ negotiating costs.”¹⁹ Given the “take it or leave it” nature of Sinclair’s *current* retransmission consent agreements and the more-than-offsetting higher programming costs that will almost certainly be imposed on MVPDs as a result of the Transaction if approved, “negotiating costs” are hardly a material concern; the unsubstantiated prospect of a minor reduction in potential negotiating fees will hardly counter the increased retransmission consent fees and burdensome carriage provisions that the combined entity is likely to demand of rural MVPDs (and their subscribers).

As it relates to rural consumers, approval of the proposed transaction is not in the public interest, and Applicants have failed to meet their affirmative burden that such is the case. Repeated assertions that creation of the proposed new broadcasting conglomerate will “offer even greater value to”²⁰ MVPDs, paired with only promises of reduced negotiating costs and new programming that may not be available over-the-air to a number of rural consumers, simply does not meet that burden. For all the reasons discussed in detail in NTCA’s August 7, 2017 Petition to Deny, the Commission should decline to grant the proposed transaction – and nothing in Applicants’ October 5, 2017 response changes that or helps Applicants’ to meet their affirmative burden.

¹⁹ *Id.*, p. 24.

²⁰ Application, p. 2.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Barbara Fitzpatrick, hereby certify that on November 2, 2017, I caused true and correct copies for the foregoing to be served by electronic mail upon the following:

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