

Before the
Federal Communications Commission
Washington, D.C.

In the matter of

Applications of Tribune Media Company and
Sinclair Broadcast Group for Consent to
Transfer Control of Licenses and
Authorizations

MB Docket No. 17-179

**ADDITIONAL COMMENTS OF THE
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)**

John A. Howes, Jr.
Computer & Communications
Industry Association (CCIA)
655 15th Street, NW Suite 410
Washington, D.C. 20005
(202) 783-0070
jhowes@ccianet.org

November 2, 2017

Table of Contents

I. Introduction and Summary.....4

II. The Commission Must Abide by Its Standard of Review for Transfers of Licenses.....5

A. Sinclair Has Not Made Any Real Commitments to Creating Jobs Through This Transaction.....5

B. Sinclair’s Burgeoning Debt Will Prevent It from Creating Jobs.....6

III. Sinclair Has No Regard for Maintaining the Diversity of Voices in Local Broadcasting.....8

IV. The Combined Company Could Fulfill Sinclair’s Long-time Goals of Delaying, Dictating, and Dominating the Spectrum Repacking Process.....9

V. Conclusion.....11

Before the
Federal Communications Commission
Washington, D.C.

In the matter of

Applications of Tribune Media Company and
Sinclair Broadcast Group for Consent to
Transfer Control of Licenses and
Authorizations

MB Docket No. 17-179

**ADDITIONAL COMMENTS OF THE
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)¹**

In response to the extension of the comment period,² CCIA respectfully submits these additional comments in the above-referenced proceeding³ to further explain why Sinclair has not met its burden to prove that the transaction will benefit the public interest with “verifiable . . . sufficient evidence to support each claimed benefit.”⁴ The Commission must reject this transaction.

¹ CCIA represents large, medium, and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications, and Internet products and services. Our members employ more than 750,000 workers and generate annual revenues in excess of \$540 billion. A list of CCIA’s members is available online at <http://www.ccianet.org/members>.

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, MB Docket No. 17-179 (Oct. 18, 2017).

³ 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 No. 17-179, (July 6, 2017).

⁴ See *AT&T Inc. & DIRECTV Order*, 30 FCC Rcd. 9131, 9237 ¶ 274 (2015) (“[A] claimed [merger] benefit must be verifiable. Because much of the information relating to the potential benefits of a transaction is in the sole possession of the Applicants, they have the burden of providing sufficient evidence to support each claimed benefit to enable the Commission to verify its likelihood and magnitude.”).

I. Introduction and Summary.

For over four decades, CCIA has stood for open markets and competition. CCIA has serious concerns regarding this proposed transaction. The fact remains that Sinclair has made little to no effort to prove to the Commission, by a preponderance of evidence, that this transaction would serve “the public interest, convenience, and necessity.”⁵ Sinclair is not only wrong on the law,⁶ but it is also wrong on the facts. Furthermore, Sinclair has made little to no effort to refute the many serious claims raised by parties opposing this takeover; therefore, Sinclair’s failure to rebut should be deemed admitted, as DISH posited.⁷

Sinclair has shown that it has consistently eliminated jobs and eviscerated local newsrooms, it has no regard for maintaining the diversity of voices in local broadcasting, and it would be in an enhanced position to fulfill its long-time goals of delaying and dominating the spectrum repacking process. Sinclair has admitted that this transaction would violate the Commission’s rules;⁸ moreover, Sinclair has not shown how this transaction can survive the Commission’s balancing test that weighs public interest harms against public interest benefits.⁹ The Commission must reject this transaction.

⁵ 47 U.S.C. § 310(d) (2012).

⁶ See Reply Comments of DISH Network, L.L.C., MB Docket No. 17-179 (Aug. 29, 2017), at 17 (suggesting that Sinclair, in its Opposition, claimed erroneously that the evidentiary burden is on those petitioning to deny this transaction). *But see* AT&T Inc. and DIRECTV, 30 FCC Rcd. 9131, 9237 ¶ 274 (2015) (“[A] claimed [merger] benefit must be verifiable. Because much of the information relating to the potential benefits of a transaction is in the sole possession of the Applicants, they have the burden of providing sufficient evidence to support each claimed benefit to enable the Commission to verify its likelihood and magnitude.”).

⁷ Reply Comments of DISH Network, L.L.C., MB Docket No. 17-179 (Aug. 29, 2017), at 15-16.

⁸ *Applications of Tribune Media Company and Sinclair Broadcast Group for Consent to Transfer Control of Licenses and Authorizations*, Comprehensive Exhibit, MB Docket No. 17-179, FCC Form 315, at 12 (July 19, 2017) (“Comprehensive Exhibit”) (“[T]he applicants own stations in several markets where Sinclair’s common ownership of the combined stations would exceed the current limits imposed by the Commission’s local television ownership rules.”).

⁹ See *Comcast-NBCU Order*, 26 FCC Rcd at 4247, ¶ 22 (providing “a balancing test, weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.”) (footnotes omitted).

II. The Commission Must Abide by Its Standard of Review for Transfers of Licenses.

A. Sinclair Has Not Made Any Real Commitments to Creating Jobs Through This Transaction.

Sinclair has a unique history of slashing on-air and off-air jobs at stations it acquires.¹⁰ The facts surrounding this merger show that, if approved, Sinclair will continue cutting jobs. If the Commission seeks to promote job creation, this merger is not the way to go about it because Sinclair has said it plans to do the opposite. Sinclair has continued to make vague pronouncements about “significant operational efficiencies”, etc.¹¹ yet it has made no commitments to hiring additional staff. In fact, these assertions simply confirm that Sinclair intends to continue its long-established business practices of shedding jobs whenever it acquires a new station. Beneath the corporate-speak of “operational efficiencies and economies of scale”,¹² lies the reality that whenever Sinclair buys a new station, it routinely guts its staff.

To inform its deliberations, the Commission should look at what “Sinclair has done in previous acquisitions,”¹³ for Sinclair has not made any real commitments to creating jobs through this transaction. Sinclair claims “a history of investing in stations it acquires” and lists a number of hardware improvements,¹⁴ but in reality, at twenty-seven stations, Sinclair has laid off numerous investigative reporters, anchors, managers, producers, and even entire news departments.¹⁵ In its initial Comprehensive Exhibit, Sinclair claimed that it “has increased headcount at many of [the stations it acquired from Fisher Broadcasting and Allbritton

¹⁰ *TV Update: Longtime Anchor Maureen Bunyan Leaving WJLA-TV, Joining Growing Number “Ousted” by Sinclair*, CAPITOL COMMUNICATOR (Jan. 10, 2017), <http://www.capitolcommunicator.com/longtime-anchor-maureen-bunyan-leaving-wjla-tv-joining-growing-number-ousted-by-sinclair-broadcast-group/>.

¹¹ Responses of Sinclair Broadcasting Group, Inc. to FCC Request for Information, MB Docket No. 17-179 (Oct. 5, 2017), (“Sinclair Response”) at 9.

¹² Comprehensive Exhibit At 2.

¹³ Sinclair Response at 9.

¹⁴ *Id.* at 9-10.

¹⁵ See Petition to Deny of DISH Network, L.L.C., MB Docket No. 17-179 (Aug. 7, 2017), at Sec. VI.E.

Communications], including the number of investigative journalists in newsrooms”,¹⁶ citing twenty positions. Sinclair initially claimed one of those twenty was at Washington, D.C.’s WJLA, where it “recently added another investigative journalist”,¹⁷ yet Sinclair now claims to have increased its investigative journalist team at WJLA by seven since it acquired that station.¹⁸ It is unclear which number that Sinclair submitted to the Commission is correct.

In reality, Sinclair aims to eliminate positions at newly-acquired stations,¹⁹ many of which are in rural areas that have seen significant job losses and low economic growth. Sinclair does not deny that it guts the stations it has acquired: “. . . anchors may have been replaced or staffing may have been reduced at some stations . . .”²⁰ and “. . . there have been staffing reductions over the years . . .”²¹ Indeed, on a recent earnings call, Sinclair’s CEO said the company would achieve “significant savings” by consolidating news operations.²² Sinclair will not be serving these communities by eliminating their jobs.

B. Sinclair’s Burgeoning Debt Will Prevent It from Creating Jobs.

What Sinclair has not fully disclosed to the Commission is how its significant debt load from its recent buying spree will balloon if this transaction is approved, which will prevent it from creating jobs. As of December 31, 2016, Sinclair was \$4.2 billion in debt as stated in its Form 10-K, submitted earlier this year to the Securities and Exchange Commission (SEC).²³ Sinclair has made almost no reference to its burgeoning debts and liabilities in the documents it

¹⁶ Comprehensive Exhibit at 2.

¹⁷ *Id.* at 2-3.

¹⁸ Sinclair Response at 22.

¹⁹ *See Id.* at 9 (referring to “savings” that Sinclair expects to realize due to “corporate overhead synergies over the first two years after it acquires Tribune.”).

²⁰ Tribune Media Company and Sinclair Broadcast Group, Inc., Consolidated Opposition to Petitions to Deny, MB Docket No. 17-179 (Aug. 22, 2017) (“Opposition”) at 9.

²¹ *Id.* at 20.

²² Diana Marszalek, *Sinclair’s Ripley: Fewer Local TV News Teams Would Strengthen Output*, BROAD. & CABLE (Aug. 2, 2017), <http://www.broadcastingcable.com/news/local-tv/sinclairs-ripley-fewer-local-tv-news-teams-would-strengthen-output/167631>.

²³ Sinclair, Annual Report (Form 10-K) (Feb. 3, 2017), at 21, 35, 36, available at http://sbgi.ir.edgar-online.com/fetchFilingFrameset.aspx?FilingID=11891724&Type=HTML&filename=SINCLAIR_BROADCAST_GROUP_INC_10K_20170228.

has submitted to the Commission regarding this merger. Yet, in its 2017 Form 10-K, Sinclair disclosed that one of its biggest risks is “[its] ability to service [its] debt obligations and operate [its] business under restrictions contained in [its] financing agreements.”²⁴ Sinclair told the SEC and its investors that because of this growing debt, “the amount available for working capital, capital expenditures, dividends and other general corporate purposes may be limited because a significant portion of cash flow is used to pay principal and interest on outstanding debt.”²⁵ Sinclair also stated that it faces “various risks and increase[d] leverage, . . . which could have a material adverse effect on [its] results of operations and could strain [its] human resources” due to debt from future “strategic acquisitions and investments, which would include this \$3.9 billion deal.”²⁶

Sinclair’s burgeoning debt is likely a main reason why it has actually under-invested at its acquired stations. Sinclair has trumpeted a “long tradition of investing in newly acquired stations with the goal of improving the quality of their news and local programming,”²⁷ and in its Opposition sought to back up that claim with another — that it has invested \$40 million at the stations it acquired from Fisher in 2013 and Allbritton in 2014. However, as DISH points out, this amounts to about \$2 million per station, which is actually “less than the per station capital expenditures that Allbritton made between 2010-12 (\$2,273,000 per station)”.²⁸ Indeed, this is significantly less than what Tribune invested at its stations during a similar time period: \$3,085,000 per station.²⁹ Sinclair’s history of chronic underinvestment is not good for job creation, and it is not good for consumers who rely on their local broadcast stations for critical

²⁴ *Id.* at 4.

²⁵ *Id.* at 21.

²⁶ *Id.*

²⁷ Comprehensive Exhibit At 2.

²⁸ Reply Comments of DISH Network, L.L.C., MB Docket No. 17-179 (Aug. 29, 2017), at 46.

²⁹ *Id.*

information. Sinclair’s planning to cut jobs could also adversely affect the combined company’s ability to cover local news.

III. Sinclair Has No Regard for Maintaining the Diversity of Voices in Local Broadcasting.

The Commission has a “deeply rooted preference” for preserving and enhancing competition;³⁰ however, the combined Sinclair-Tribune would actually reduce competition and the variety of voices covering local issues. In addition to cutting staff at newly-acquired stations, the transaction would violate the Commission’s rules, for there are many markets where the combined company would have multiple stations.³¹ By possessing multiple stations in the same market, the combined company would reduce the existing number of competitors in those markets. Yet, despite the Commission requesting “detail”, “documents”, and “specific steps [Sinclair and Tribune] have taken and/or what specific steps they plan to take to comply with the national ownership limit, including a complete list of stations that would be divested”, Sinclair has not made any commitments to ameliorating these violations.³²

Even though the Commission must “ensur[e] a diversity of information sources and services to the public”,³³ Sinclair has not addressed how it plans to do so. Indeed, this transaction would actually thwart that objective as Sinclair’s President and CEO, Christopher S. Ripley, recently told investors: “Overall, we think the industry needs to consolidate to two or three large broadcasters, and really just one to two strong local players in each market.”³⁴

³⁰ *Charter-TWC-BrightHouse Order*, 31 FCC Rcd at 6336-37 ¶ 26.

³¹ Comprehensive Exhibit At 13-15 (identifying ten “Overlap Markets where current FCC rules would not allow Sinclair to acquire the Tribune licenses”, one market “where Tribune currently owns multiple stations and current FCC rules would not allow Sinclair to acquire the Tribune licenses”, and four additional overlap markets).

³² Sinclair Response at 2 (“Under current rules Sinclair would need to divest licenses in at least two markets to comply with the FCC’s national ownership limit; *however, as of this date it has not identified specific divestitures.*”) (emphasis added).

³³ *Comcast-NBCU Order*, 26 FCC Rcd at 4247, ¶ 23.

³⁴ Transcript of Sinclair Broadcast Group Q2 Earnings Call (Aug. 2, 2017), <https://seekingalpha.com/article/4093745-sinclair-broadcast-group-sbgi-q2-2017-results-earnings-call-transcript>.

Indeed, Sinclair only plans to invest in its largest markets at the expense of more rural areas that need programming and news coverage.³⁵

Sinclair would eviscerate the “diversity of information sources and services to the public”³⁶ that the Commission has traditionally sought to protect. Unfortunately, the Commission’s recent elimination of the “main studio rule” would further reduce the diversity of truly local voices: “By now eliminating the need for a main studio in a station’s hometown, there is conceivably nothing to stop a company from purchasing broadcast outlets in a city and then replacing all local news with national content created out of state.”³⁷ This is exactly what Sinclair would now be able to do.

IV. The Combined Company Could Fulfill Sinclair’s Long-time Goals of Delaying, Dictating, and Dominating the Spectrum Repacking Process.

This first-of-its-kind auction of broadcast spectrum was a resounding success, raising nearly \$20 billion.³⁸ Chairman Pai has noted the importance of an expeditious repacking process: “It’s now imperative that we move forward with equal zeal to ensure a successful post-auction transition, including a smooth and efficient repacking process.”³⁹ The expeditious deployment of that spectrum serves the public interest, because it will facilitate 5G technologies, which will promote economic growth and ensure U.S. global competitiveness. However, this transaction could present substantial hurdles to the repacking process.

³⁵ See Sinclair Response at 19 (“Sinclair believes the large markets specifically present opportunities for expansion of local newscasts”).

³⁶ *Comcast-NBCU Order*, 26 FCC Rcd at 4247, ¶ 23.

³⁷ Editorial Board, *Localism Needed in TV*, IRONTON TRIB. (Oct. 29, 2017), <http://www.irontribune.com/2017/10/29/localism-needed-in-tv/>.

³⁸ Fed. Commc’ns Comm’n, *Broadcast Incentive Auction and Post-Auction Transition* (May 9, 2017), <https://www.fcc.gov/about-fcc/fcc-initiatives/incentive-auctions>; Colin Gibbs, *T-Mobile, Dish and Comcast Top Bidders in Incentive Auction While Verizon Looks On*, FIERCEWIRELESS (April 13, 2017, 2:41 PM), <http://www.fiercewireless.com/wireless/t-mobile-dish-and-comcast-top-bidders-incentive-auction-while-verizon-looks>.

³⁹ *Statement Of FCC Chairman Ajit Pai “On the Completion of the Incentive Auction and the Start of the Post-Auction Transition Period”*, FED. COMM’NS COMM’N (Apr. 13, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-344399A1.pdf.

When reviewing mergers, the Commission may also consider additional factors, like how the transaction “will affect the quality of communications services or will result in the provision of new or additional services to consumers”, and “technological and market changes as well as trends within the communications industry, including the nature and rate of change.”⁴⁰ However, the combined company could adversely affect “the quality of communications services” and slow the rollout of 5G due to its longstanding goal of delaying the repacking process.⁴¹ In 2013, Sinclair tried to delay the incentive auction until ATSC 3.0 standards were developed.⁴² Then, Sinclair’s challenged the thirty-nine-month repacking schedule, but the D.C. Circuit denied its arguments.⁴³

The combined entity would be able to achieve this goal of delaying and therefore dominating the repacking process because it would be the dominant seller and buyer of broadcast equipment that is essential for broadcasters that need to move to other frequencies. Sinclair owns Dielectric LLC, which “has supplied more than two-thirds of the TV industry’s high power antennas.”⁴⁴ It also owns Acrodyne Services, a television equipment servicing company.⁴⁵ Sinclair is already by far the largest seller of these antennas. After taking control of Tribune,

⁴⁰ *Comcast/NBCU Order*, 26 FCC Rcd. at 4249-50, ¶23.

⁴¹ Reply Comments of Sinclair Broadcast Group, Post-Incentive Auction Transition, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, MB Docket No. 16-306, GN Docket No. 12-268, at 1-2 (filed Nov. 15, 2016).

⁴² Comments of Sinclair Broadcast Group, Inc., GN Docket No. 12-268, at 7 (filed Jan. 25, 2013) (“But a rush to complete the auction and repacking years before the statutory window closes would squander the opportunity for broadcasters to deploy, at their option and to the benefit of the American public, new technology at the time of the repacking.”).

⁴³ See *Nat’l Ass’n of Broad. v. F.C.C.*, 789 F.3d 165, 180-82 (D.C. Cir. 2015) (acknowledging that “Sinclair takes issue with the Commission’s establishment of a 39-month construction period within which reassigned broadcasters are expected to transition their services to their new channels” but finding “nothing arbitrary or capricious about the Commission’s [actions]” and that “the Commission reasonably balanced the Spectrum Act’s competing imperatives”).

⁴⁴ Michael Malone, *Sinclair Acquires Antenna Manufacturer Dielectric*, BROAD. & CABLE (June 18, 2013), <http://www.broadcastingcable.com/news/local-tv/sinclair-acquires-antenna-manufacturer-dielectric/44099>; Press Release, Sinclair Broadcast Group, Inc., Sinclair Broadcast Group Announces Agreement to Purchase the Assets of Dielectric (June 18, 2013), <http://sbgi.net/pr-news/sbg-announces-agreement-to-purchase-the-assets-of-dielectric/> (quoting David Smith, Sinclair president and CEO, in 2013 as saying “Further, if and when a spectrum repack occurs, Dielectric will be there to support that effort.”).

⁴⁵ Malone, *supra* note 44.

which is the major customer of the only other major manufacturer of broadcast antennas, Electronics Research, Inc.,⁴⁶ Sinclair would be by far the largest buyer for those antennas. As both the largest buyer and seller of these important antennas, Sinclair could adversely affect its competitors' abilities to move to other frequencies and free up the auctioned spectrum.

V. Conclusion.

The Commission should not reward Sinclair's lack of clarity in its filings and nonchalance with respect to the law.⁴⁷ Under the Commission's rules, Sinclair must prove that its transaction will provide verifiable, specific public interest benefits, yet Sinclair has only provided the Commission with vague, inadequate responses without sufficiently addressing the evident public interest harms. Sinclair's submissions to the Commission leave many unanswered or simply evaded questions, which prompted forty-nine Members of Congress to send a letter to Sinclair's President and CEO, Christopher S. Ripley, asking for additional clarifications.⁴⁸ Furthermore, the Ranking Member of the House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law, David N. Cicilline, expressed "strong concerns" to the Chairman and U.S. Attorney General that "[t]his unprecedented merger threatens to raise prices for millions of working American families through higher cable bills, result in layoffs in newsrooms and stations across the country, and undermine the freedom and diversity of the press."⁴⁹

⁴⁶ Petition to Deny of CCA, MB Docket No. 17-179, at 13; Comments of T-Mobile USA, Inc., MB Docket No. 17-179 (Aug. 7, 2017), at 9.

⁴⁷ *Supra* notes 6 and 8; see also Cecelia Kang, et al., *How a Conservative TV Giant Is Ridding Itself of Regulation*, N.Y. TIMES (Aug. 14, 2017), <https://www.nytimes.com/2017/08/14/us/politics/how-a-conservative-tv-giant-is-ridding-itself-of-regulation.html> (explaining Sinclair's \$9.5 million settlement for violating "good faith obligations" during retransmission negotiations).

⁴⁸ Letter from Congressman Tony Cárdenas, et al. to Christopher S. Ripley, Chief Executive Officer, Sinclair Broad. Group, Inc. (Nov. 1, 2017), <https://cardenas.house.gov/sites/cardenas.house.gov/files/Sinclair%20Letter%20Final.pdf>.

⁴⁹ Letter from Congressman David N. Cicilline to Attorney General Jefferson Beauregard Sessions III and Fed. Comm'n Chairman Ajit V. Pai (Nov. 1, 2017), https://cicilline.house.gov/sites/cicilline.house.gov/files/images/Sinclair_Letter.pdf.

Sinclair claims that “the Transaction will produce both operational efficiencies and economies of scale”⁵⁰ and “corporate overhead synergies”,⁵¹ but in reality Sinclair has not met its burden to show the Commission that this merger will produce benefits that outweigh harms to the public interest. This transaction means job cuts, less local investment, diminished diversity of voices, and delays for 5G deployment. These are things no Commission should approve. The facts and the law provide no basis for the Commission to allow this merger to proceed. The Commission must reject this merger.

November 2, 2017

Respectfully submitted,

/s/ John A. Howes, Jr.

Policy Counsel

Computer & Communications Industry
Association (CCIA)

655 15th Street, NW Suite 410

Washington, D.C. 20005

(202) 783-0070

jhowes@ccianet.org

⁵⁰ Comprehensive Exhibit At 2.

⁵¹ Sinclair Response at 9.