November 2, 2017

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Re: FCC MB Docket No.17-179

Sinclair Tribune Merger

(Tribune Media Company and Sinclair Broadcasting Group, Inc. Consolidated Applications for Consent to Transfer Control)

My name is Jill Leukhardt and I live in Baltimore, Maryland. As a retired business executive with forty years’ experience, most of it in an internet company, I fully understand the benefits of open competition and the risks of concentrated ownership which drives out competition, and as a result, increases prices for consumers and stifles innovation.

I strongly oppose the Tribune Media Company and Sinclair Broadcasting Group, Inc. Consolidated Applications for Consent to Transfer Control. The merger of two media giants is not in the interests of the American people. Respectfully, I ask the Federal Communications Commission (FCC) to reject the application.

The proposed Sinclair Broadcasting and Tribune Media merger, if approved, would overturn over thirty years of FCC rulemaking, bipartisan consensus, and Congressional intent. It would raise grave issues in the quality and diversity of news and information delivered to American citizens in local media markets; raise the costs to consumers; and create serious competitive concerns in the media industry.

Although it is true that the media landscape has changed, giving Americans more options in where to get their news, television remains the preferred source for most Americans, according to Pew Research. Because there is no widespread, meaningful access to local news and information on the internet and cable TV, broadcast TV is the primary means by which Americans access local news and other local programming.

“The most important force shaping public opinion continues to be local, over-the-air television. That’s the underlying premise of the FCC continuing to regulate broadcast ownership,” notes a leading communications law expert at Georgetown University Communications and Technology Law Clinic. For this reason, competitive and unconcentrated broadcast ownership is essential to providing a diversity of opinions and programming in local media markets.

Approving the proposed $3.9 billion business combination would give a single media company reach into nearly three out of four American homes. Sinclair is already the largest TV broadcasting company in our country; Tribune Media is the second largest. The proposed merger would unite two giants to create a colossus to give the combined titan unprecedented control over local media. No single company should have that much power over our citizens’ local news and programming.

The proposed Sinclair Broadcasting-Tribune Media merger is not just inconsistent with America’s values of diversity of opinion in news reporting, free speech, and unique local programming. It clearly violates FCC rules. The “new Sinclair” would expand its reach to 72 percent of American homes, far exceeding the long-established FCC ownership cap which limits a single entity’s reach to 39 percent of households.

How would Sinclair accomplish this? Only with the direct assistance of the FCC. The Commission revived a loophole, known as the “UHF discount” which has long been technologically obsolete and has even been termed a “technology relic.” (UHF, “Ultra High Frequency” is a term referring to the portion of the TV spectrum higher than Channel 13. At one time, the UHF spectrum was filled with low-budget stations having poor reception over the analog rabbit ear antennas in prevalent use at the time. That quality gap no longer exists.)

But with the FCC re-instatement of the obsolete “UHF discount” policy, Sinclair is able to avoid counting half of its current stations which are in the UHF range, even though with the advent of digital TVs, the designation of that range is no longer relevant and subtracting these stations from the total number of Sinclair stations is nonsensical. The stations in this range operate in the same technical fashion and have the same reception as the stations in the lower end of the frequency spectrum.

By employing the obsolete “UHF discount,” Sinclair has counted just half of its stations toward the total in its merger proposal, reducing its “apparent reach” from approximately 38 percent to 19 percent. The use of the “UHF discount” policy is a transparent tactic explicitly allowing Sinclair to dodge the 39 percent cap. Once Sinclair has apparently reduced its station ownership in this manner, the Sinclair-Tribune merger proposal avoids counting these existing Sinclair stations when tallying its proposed total national reach in order to dodge the FCC limit on reach.

Nonetheless, the actual and effective reach of the proposed merger is 72 percent of American homes—far above the long-established permissible limit imposed by the FCC. Sinclair Broadcasting lobbied the FCC directly and vigorously for the revival of this obsolete regulation. The proposed merger precedes directly from this change in FCC rules.

The undercounting of Sinclair’s actual, operating stations—enabled by the FCC revival of its long-outdated rule—intentionally obscures the result of the Sinclair Broadcasting and Tribune Media merger: a monopoly domination of the local media markets that the combination would serve. The FCC relaxed ownership limits of UHF stations have generated widespread consternation across TV and media companies because it so clearly puts small local media companies at a competitive disadvantage.

“It doesn’t make any sense. It is a sham,” said Jim Goodmon, president of Capitol Broadcasting Company, a small television and radio company in Raleigh, NC. “It becomes a game of scale and the big guys will have everything.”

Already, the FCC “UHF discount” action has been challenged in the US District Court for the District of Columbia Circuit with a request for a stay. Although the Court denied this request, finding that the public interest groups arguing had failed to clear the very high bar which required proof that the FCC action resulted in “irreparable harm.” But stays are rarely granted; the case will continue to be fully briefed and argued. The Court’s rejection of the stay could have had nothing to do with the merits of the case; since it found lack of irreparable harm from not imposing a stay, the Court may believe that any mergers approved in reliance on the “UHF discount” could be undone if the Court were to ultimately reject the FCC decision.

Clearly, the reliance of the proposed Sinclair-Tribune Media merger on the “UHF discount” circumvents the historically established intent of the FCC and Congress to limit the reach of a single media company into American households. No governing organization intended one media company to reach nearly three-quarters of American households. This makes the legality of the “UHF discount” untenable. The only equitable remedy is for the FCC to reverse its rule on use of the outdated and obsolete “UHF discount” in the accounting of stations and market coverage—and specifically for the purpose of the proposed Sinclair-Tribune Media merger.

The “new Sinclair,” should the FCC approve the merger, would reduce competition through its duopolies in at least eleven media markets. This violates another core FCC rule, limiting multiple outlet ownership in a single media market.

When the FCC required Sinclair Broadcasting to indicate which stations the company would divest in order to comply with FCC requirements, Sinclair did not respond—flouting the authority of the FCC, its rules, and the public interests of American citizens. In May, the Sinclair Chief Executive Officer said that he, “…didn’t think Sinclair needed to sell any of these stations,” and denied that the consolidation would have an impact on competition, clearly signaling the intention of the company to further concentrate its reach and single media market domination should the FCC allow the merger to proceed.

Concentrated local ownership clearly contradicts long-standing FCC rules and is unlikely to withstand legal challenges. “The local television ownership changes would appear to be very clearly targeted toward getting the Sinclair merger done… I think the Third Circuit (Court) is going to have something to say about this,” noted one legal expert.

The combination of expanded and concentrated ownership resulting from the proposed merger of Sinclair and Tribune Media would undermine local control of news and reduce the diversity of viewpoints and competition in local media markets. Should the FCC permit the merger to proceed, the result would be anti-competitive. The marketplace of ideas would suffer because fewer local, independent media sources would provide news and information unique to their communities. The delivery of media services would be impaired because smaller media outlets would be at a disadvantage in selling advertising at competitive prices.

The FCC must give particular scrutiny to the impact on the diversity of opinions in local broadcasting through this proposed merger. Sinclair Broadcasting has increasingly become known for its right-leaning political views combined with its corporate policy mandating that this programming occupy a prescribed portion of available hours in its local outlets. The Sinclair-Tribune promise to invest more in local news and other local programming such as high school sports has a hollow ring. Sinclair has a demonstrated corporate history of reducing staffs at the stations it acquires and cutting costs by requiring the stations to share news coverage which reduces unique local content. It requires stations to air “must run” segments, produced at its Baltimore headquarters such as law-and-order features from its “Terrorism Alert Desk,” as well as editorial content from former staff members of the current president, including one who still lobbies the White House, even after joining Sinclair, giving the appearance of impropriety. The proposed merger would stifle localism and hurt independent media diversity.

Our cherished value for a free press, grounded in the First Amendment, guarantees the right to present the opinions of a broadcaster. However—whatever the political viewpoint—a national outlet imposing programming on hundreds of local media markets dramatically reduces the variety of views presented. The FCC has a mandate to protect the diversity of views presented in local markets.

America’s political leadership, including President Trump, has expressed serious concerns about “the concentration of media power.” This argues directly against combinations such as the proposed Sinclair-Tribune Media merger which does not further the presentation of a diversity of views in local media.

Consider the potential impact of a Sinclair-Tribune Media merger on a political battleground state such as Wisconsin. The proposed merger would give the “new Sinclair” six stations in the biggest markets of Milwaukee, Green Bay, and Madison, permitting the company to coordinate a statewide editorial strategy that could not be counter-balanced by local media an outcome which is counter to the charter and goals of the FCC.

Veteran reporter David Zurawik of The Baltimore Sun has said that Sinclair, “comes as close to classic propaganda as I think I’ve seen in thirty years of covering local television or national television.” The presentation of a strongly-slanted view by a media outlet may be espoused under the First Amendment—but the FCC has a duty to balance diversity in local media outlets with the overwhelming power that would result from the merger of Sinclair Broadcasting and Tribune Media.

The concerns about the views expressed by Sinclair programming and the requirement by its management that its programming be regularly scheduled in local markets is widespread across the political spectrum. For example, when a Nightline episode was to include reading the names of soldiers killed in Iraq, Sinclair ordered its ABC affiliates not to air the show, saying it was, “motivated by a political agenda.” Republican Senator John McCain called the decision “unpatriotic.” It is not the content that is at issue—it is the national control of content of local markets in three of four American households.

Mark Feldstein, Chair of Broadcast Journalism at the University of Maryland, in our state, worries about the consolidation of opinions that would be expressed in local media markets should the merger go ahead. “This is about ideas and information that the public needs to make wise choices as democratic citizens.” He points out that with consolidated ownership by Sinclair, “They have a decided agenda and are not shy about pushing it.” The monopoly promulgation of ideas is decidedly different than a commodity market monopoly on the sale of yoyos or apples.

The reduced competition—should the FCC allow the merger of Sinclair and Tribune Media—would raise TV access prices for consumers because of the significantly increased market leverage that the combined entity would exert. If merged, the “new Sinclair” would effectively control the market for certain broadband equipment and impede deployment of mobile broadband, limiting competition and choice for the distribution of content and services, both in local markets and nationwide, because of the control of certain technologies and reach. Smaller media companies operating in the local markets would be at a disadvantage with respect to attracting advertisers and offering competitive advertising rates when vying with an organization with national scale. Surely, this result which is counter to the interests of both the media industry and the American people is not consistent with the goals of the FCC.

Unfortunately, the FCC, which is obligated to operate in an even-handed manner, has given the appearance of favoritism in the matter of Sinclair Communications. This calls the impartial consideration of the proposed merger by the Commission into question. Since the change of leadership and membership of the Commission in 2017, the FCC has taken numerous actions favorable to Sinclair, often after a lengthy exchange of email correspondence (as disclosed in a Freedom of Information Act filing) or in meetings. These include:

* Private meetings between the FCC Chairman and the Sinclair Chairman and Chief Executive Officer, beginning in January.
  + Private meetings including one between the President-elect and the Sinclair Chairman at which FCC rule changes were discussed.
* Ending the FCC effort to curb the use of Joint Service Agreements (JSA), after a January 2017 meeting between the Chairman and Sinclair Executives; this allows wider ownership of local stations by the company.
* Reinstatement of the obsolete “UHF discount”; despite the FCC Chairman’s objection to many FCC regulations, he had never voiced objection with this rule.
  + Almost immediately, Sinclair bought Bonten Media, then announced its proposed merger with Tribune Media.
* Sinclair Broadcasting employs a former FCC senior manager as its lobbyist who has consistent and continuing access to senior FCC decision makers.

The FCC Chairman has not given similar time or attention to inputs from or meetings with public interest groups such as Common Cause and Free Press which oppose the Sinclair-Tribune Media merger, according to available records of his schedule and other public accounts.

The suggestion of possible favoritism raises the burden of proof for Sinclair and Tribune Media in applying for the merger and for the FCC in considering and justifying such an unprecedented merger. Why is this proposal in the American public interest?

The FCC appears favorably disposed to the Sinclair-Tribune Media merger despite the Sinclair history of taking actions counter to the public interest. First, Sinclair has a long history, dating to the early 1990s, of skirting FCC ownership rules. One notable technique used by the company, claiming that it was both legal and good for TV viewers, was the so-called joint-sales agreement (JSA). The use of JSAs allowed Sinclair to give the “paperwork appearance” of unique station ownership, but to allow stations to share resources and programming. The result for viewers in the local media area was a dramatic reduction in the quantity and quality of unique local programming. Regulators at the FCC, in response to consumer complaints examined the maneuver closely. But then in 2017, apparently at the urging of Sinclair Broadcasting, the FCC discontinued its examination of these complaints.

Sinclair has demonstrated other examples of violating its obligations to operate in accordance with the public trust. In July 2016, the FCC announced a $9.5 million settlement with Sinclair for violating “good faith obligations” when negotiating fees from cable and satellite companies that retransmit its broadcasts; the company did not admit to wrong-doing in this case. In a second investigation, which is continuing, commercials by the Huntsman Cancer Institute based in Salt Lake City, which aired on Sinclair, were broadcast as news stories without viewers being alerted to the fact that they were paid content.

Sinclair has offered favorable access to broadcasting time to political candidates, then mandated national broadcasting of this programming in local markets. In December 2016, Presidential Counselor Jared Kushner disclosed the special arrangement that the president’s campaign made with Sinclair to secure more favorable media coverage. The campaign provided preferential access to Mr. Trump; in exchange, Sinclair, which often packages news for its local market affiliates to run, broadcast the candidate’s comments without any commentary, analogous to an infomercial. Consider just one important state, Ohio, where Sinclair reaches a much wider audience of approximately 300,000 than, for example, CNN which reaches about 30,000.

The political leanings of the candidate in this example are irrelevant. No broadcaster should have the ability to reach nearly three in four households with national programming that is slanted to any specific political party or message and which the broadcasted mandates for viewing in local markets. This would be the outcome if the FCC were to approve the proposed merger. The 2016 campaign programming serves as an example of Sinclair Broadcasting providing uniform—and mandated—national content to local markets, which is counter to the interests of diverse local programming. It demonstrates that Sinclair Broadcasting has not met its prior commitments for unique local programming, making its current commitments to provide local news and other local programming suspect. Sinclair has not been a good steward of a scarce national resource—our public airwaves.

Further, the executive management of Sinclair has not demonstrated behavior in accordance with community standards. As one example, a senior executive was arrested with a prostitute by the Baltimore police. One may say that the personal conduct of senior management is not relevant to FCC decisions about a corporate merger. But the proposed Sinclair-Tribune Media merger would further entrust the company and its executives with access to the nation’s public airwaves, an increasingly scarce resource—bandwidth—and through it, national programming for local media markets—delivering information—an essential element of our citizen’s role in America’s democracy. Now, more than ever, control of the access to, and content of, information is power. This power must only be entrusted to organizations and the individuals directing these organizations who have demonstrated constancy of moral fiber.

Sinclair Broadcasting and its management have not established that they are worthy of any exceptional, additional trust—that the FCC, on behalf of America’s citizens, should permit an unprecedented merger extending the company’s reach into 72 percent of our homes.

The proposed Sinclair-Tribune Media merger has raised broad opposition from local media companies and their customers, consumer groups, former FCC commissioners and other regulators, satellite and cable firms, trade unions, and even conservative media. Notably, the American Cable Association which represents approximately 750 smaller telecom/broadband/pay-TV providers in small and rural areas, the media companies which deliver the rich and varied local content to these communities strongly opposes the merger on both diversity of content and anti-competitive grounds. Watchdog groups such as Common Cause that speak for the public interests are also staunchly opposed. “It’s telling that there’s such diverse opposition to this merger, from voices on the left, right, and the center. It attests to the fact that this merger is bad for everyone other than Sinclair and Tribune,” noted the Common Cause Program Director. The unity of opposition across such a spectrum of views illuminates America’s broad public interests allied against the Sinclair-Tribune Media merger.

As the FCC considers the Sinclair Broadcasting-Tribune Media merger, the Commission is not just weighing the effect of this combination on local media in America and on its citizen viewers. Serious harm may result from all future transactions arising from the precedent established should the FCC allow this extraordinary combination which will further limit press freedom and media diversity, leading to an American citizenry that is less well-informed and able to evaluate critically the issues of the day.

The proposed Sinclair Broadcasting-Tribune Media is counter to FCC stated objectives. On the FCC website, the Commission makes a strategic commitment to protecting the public interest, stating, “The rights of network users and the responsibilities of network providers form a bond that includes consumer protection, competition, universal service, public safety and national security. The FCC must protect and promote this National Compact.” The Commission also commits to revise media regulations so that “…new technologies flourish alongside diversity and localism.”

It is obvious that the proposed Sinclair Broadcasting-Tribune Media mega-merger fails the FCC commitments to the American people and communication industry. The proposed merger would reduce competition in local markets, raising prices to consumers, and reducing local programming content as previously demonstrated by Sinclair’s performance in JSAs. The proposed merger would damage not only consumers, but also local media companies which would have to compete with the new media juggernaut enabled by the unprecedented action of the FCC. The proposed merger, if it were allowed, would damage national security by reducing the diversity of information available to Americans, damaging the ability of our citizens to make knowledgeable decisions, essential in our representative democracy.

With respect to the role of the FCC and mergers, the Commission has only one responsibility: to approve only transactions that follow the rules and benefit the public interest. The Sinclair-Tribune merger does neither and, respectfully, must be rejected.

Based on my industry experience, it is clear that the proposed merger of Sinclair Broadcasting and Tribune Media does not further the interests of free speech, diversity of opinions, and competition in local media. Democracy in Baltimore, Maryland, and America depends on its well-informed citizens. As Thomas Jefferson counseled in 1789, “Whenever the people are well-informed, they can be trusted with their own government.” His wisdom endures. I urge the Federal Communications Commission to heed Jefferson and the interests of all American citizens: reject the Tribune Media Company and Sinclair Broadcasting Group, Inc. Consolidated Applications for Consent to Transfer Control.

<http://archives.cjr.org/feature/deja_news.php>

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