

Law Firm of Howard M. Weiss
3061 Mt. Vernon Avenue, #N405
Alexandria VA 22305

December 27, 2017

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington DC 20554

Re: Applications of Tribune Media Company and Sinclair Broadcast Group
for Consent to Transfer Control of Licenses and Authorizations, MB
Docket No. 17179.

Dear Madam Secretary:

On December 19, 2017, representatives of Herndon-Reston Indivisible ("HRI"), the undersigned and Robert Anthony, met with James Bird and Joel Abramovitz of the Office of General Counsel's Transactions Team to discuss matters related to the Sinclair-Tribune merger in Docket No. 17-179. HRI submitted a written presentation, a copy of which is attached. It also submitted a subsequent email concerning the issues discussed. A copy is also attached.

HRI argued at the meeting that Sinclair's numerous violations of the Communications Act and the Commission's rules, culminating in a 2016 9.5-million-dollar consent decree for violation of Section 325 of the Act and a 13.3 million dollar fine yesterday for airing 1700 spots and infomercials without sponsorship ID announcements designed to appear as news programming over a period of months constituted a pattern of lawlessness and refusal to comply with fundamental FCC rules and the Act. HRI contended that this misconduct has been so pervasive and Sinclair so oblivious to its trusteeship obligations that a substantial and material question was presented, placing into question its character qualifications to be a licensee. HRI therefore called for designation of Sinclair's merger applications for hearing before an Administrative Law Judge was warranted. HRI noted that this remedy was supported by prior FCC precedent and language on the Transactions Team's Website page.

HRI further urged that the proposed Sinclair merger is unprecedented and would be inimical to the public interest. Approval would undermine localism, diversity of voices, and competition-the core principles of the public interest standard. It would cede control of stations serving more than 70% of America's households, plus innumerable "sidecars", ostensibly owned or controlled by independent entities, such as the Smith brothers' elderly mother and trusts in their names. Sinclair's power would extend to retransmission consent negotiations with cable operators across the nation, as exemplified by the scenario for which Sinclair was sanctioned in 2016. The inevitable result would be spiking fees paid by MSO's and consequent increasing fees to cable consumers.

Finally, HRI contended that Sinclair's argument that the Commission's structural ownership rules are outdated due to the availability of Internet, cable and social media sources to TV audiences is baseless and illogical. HRI pointed out to the Commission participants that a substantial portion of the TV audience does not have access to the Internet or cable due to technology or economics. The size of this excluded audience is substantially higher in rural areas. Moreover, seniors, Hispanics and other minorities, and the economically disadvantaged often do not have access to non-broadcast sources. And studies show that these groups and indeed most Americans trust in and rely on local television news more so by a large margin than non-broadcast sources. Thus, the multiplicity of competitors argument advanced by Sinclair stands on clay feet.

Respectfully submitted,
Herndon-Reston Indivisible

/s/ Howard M. Weiss, Esq.

Howard M. Weiss, Esq.
Its Attorney

Attachments

cc: Joel Abramovitz, FCC (via email only)
Robert Anthony, FCC (via email only)
James Bird, FCC (via email only)

From: Howard Weiss [mailto:h.weiss496@gmail.com]
Sent: Thursday, December 21, 2017 11:38 AM
To: james.bird@fcc.gov; joel.rabinovitz@fcc.gov
Cc: Allan Zendle (allan.zendle@verizon.net); 'Robert Anthony'
(rwanthony71940@comcast.net)
Subject: Meeting Re Sinclair Merger

Gentlemen,

I write on behalf of HRI to thank you for your time and attention when we met on Tuesday. They were greatly appreciated.

Our conversation did not alter HRI's strongly-held view that approval of the Sinclair merger would be disastrous for the American television industry, viewers of local television stations, and, most importantly America's citizens, who own the spectrum on which Sinclair is permitted to operate. We believe the merger would have grossly anti-competitive consequences throughout the country. It would in no way contribute to the components of the public interest-localism, diversity and competition-established by decades of federal case law that the Chairman and his Republican majority are compelled to defer to. Stated another way, Sinclair has utterly failed to meet its burden to warrant favorable action by the Commission on these applications.

Further, we trust that the Commission is not laboring under the naive misconception that approval of this unprecedented merger would by any means satisfy Sinclair's expansionist ambitions. Given Sinclair's public statements about its destiny and business goals and the obsolescence of FCC broadcast structural regulation, the Commission can fully expect Sinclair to seek approval subsequently to acquire additional station groups, either for itself or its sidecars. Approval of this merger will set an insuperable precedent that the FCC will not be able to distinguish from subsequent cases. Further, the Commission will have opened the floodgates to other mergers by Sinclair's competitors, who will be forced to keep pace with Sinclair to survive.

At our meeting, we provided you data and arguments that demonstrate local TV

remains the dominant transmitter of local news and is trusted by more Americans by far than the Internet and cable and network TV. This showing underlines the fallacy of Sinclair's contention that its stranglehold on local TV is irrelevant because of the multiplicity of non-broadcast, non-regulated voices. We trust the FCC will study this showing and address it in the FCC's decision.

Finally, we note that, in our view, the issues raised above are not partisan issues, or at least they should not be. We are all Americans and you and I have been involved with the communications industry for decades. We all have an interest in ensuring that America's elections are not interfered with by distortion, propaganda, or monopolistic viewpoints on American television. In this context, we must assume that the fact that the Transactions Team's official website continues to have posted on it what we consider an accurate description of your obligation regarding mergers drafted by a Democratic General Counsel is deliberate and sensible.

We will file a copy of our presentation at the meeting, this memo, and a formal ex parte notice on the FCC's ECFS data base, as required by the Commission's rules.

Howard Weiss

Presentation to
FCC General Counsel's
Transaction Team
by
Herndon-Reston Indivisible

Howard Weiss

Allan Zendle

Robert Anthony

December 2017

Discussion Topics

- Opposition to the Proposed Sinclair-Tribune Merger by Elected Officials
- Sinclair Has Failed to Serve the Public Interest
- The Merger Would Create Unprecedented and Dangerous Market Dominance
- Most Americans Still Depend on TV News
- Critical Ongoing Role for Broadcast TV News
- Key Legal Issues Re: Consideration of the Merger

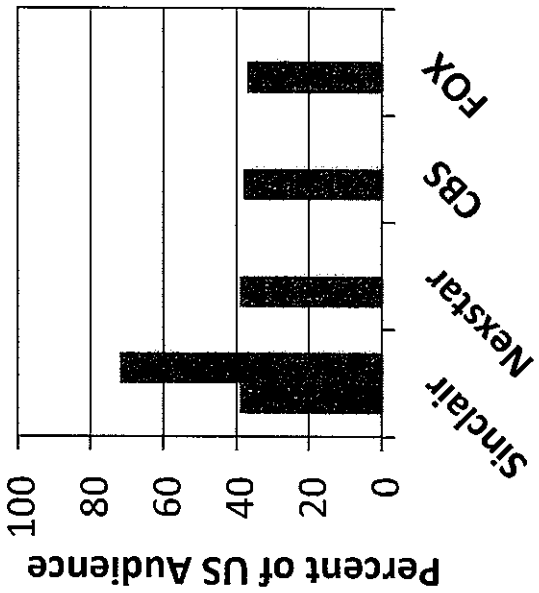
Opposition to the Merger by Elected Officials

- Letter to FCC Chairman Ajit Pai dated 11/15/17 from 15 U.S. Senators expressing concerns about the independence of his leadership, particularly as it relates to the proposed merger
- Letter to FCC Inspector General David Hunt from same U.S. Senators dated 11/15/17 requesting an investigation to determine if FCC review of proposed merger is impartial
- Letter to FCC Inspector General David Hunt from two U.S. Congressmen dated 11/13/17 stating similar concerns and requesting a similar investigation
- Attorneys General for the States of MD, IL, MA and RI filed FCC reply comments opposing the proposed merger, claiming:
 - The proposed merger will limit consumer choices
 - The FCC should reject the merger due because it relies on the obsolete UHF Discount Rule
 - Absent the UHF Discount Rule, the combined Sinclair-Tribune entity would reach 72% of U.S. households – well in excess of the 39% ownership cap
 - With reinstatement of the UHF Discount, the merged entity would reach less than 45% of U.S. households – well within range of the 39% cap with limited station divestitures
 - The FCC should delay consideration of the merger until the D.C. Circuit Court of Appeals completes its review of the UHF discount rule
 - FCC reinstatement of the UHF Discount Rule has been challenged in *Free Press v. FCC* - if successful, Sinclair will be legally barred from acquiring Tribune Media

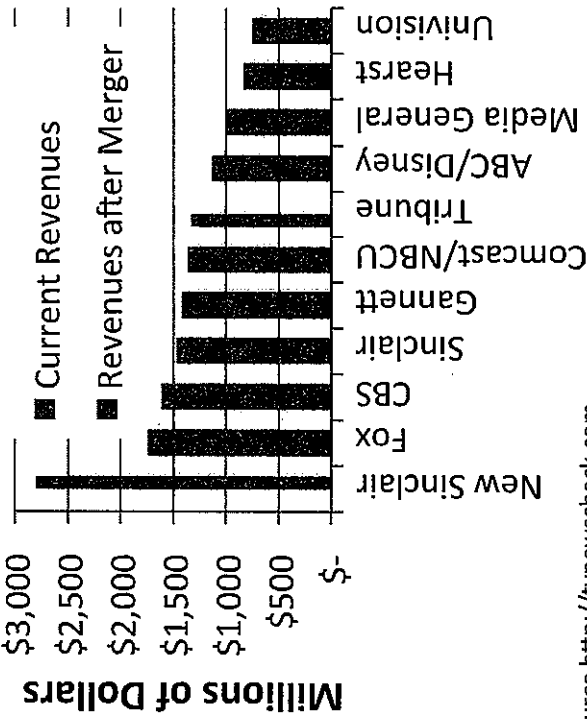
Sinclair Has Failed to Serve the Public Interest

- ***Free use of public airwaves carries a unique responsibility for the highest levels of broadcast journalism integrity***
 - Compliance with Communication Act and related FCC rules is minimum requirement
 - Sinclair has historically not met the Character Qualifications to be a broadcast licensee
- ***Sinclair undermines the localism standard of the Communications Act***
 - Centralized control of news programming, advertising and station operations
 - Must-run programming overriding local journalistic and audience needs
 - Highly biased editorial segments by Boris Epshteyn, Mark Hyman, Scott Livingston
 - Replacement of trusted local station personnel -news anchors, reporters - by corporate staff
- ***Distortion and blurring of news, political commentary and advertising***
 - Advertisements in the guise of news: Huntsman Cancer Center case alleges broadcast of lengthy unlabeled infomercials as news segments – see 2016 FCC investigation
 - Political commentary in the guise of news: “must-run” documentary and ads disparaging John Kerry’s Vietnam service record aired by all Sinclair stations during 2004 presidential race
 - Selective blocking of major network news program feeds: Nightline Iraq Casualties Report pulled by all Sinclair stations in 2004 and replaced with documentary on merits of Iraq war
- ***Violations of federal law and FCC regulations***
 - \$9M ‘treasury contribution’ paid by Sinclair in 2016 for violation of Section 325 of the Communications Act, and for news distortion
 - \$80K fine paid in 2001 for unauthorized transfer of control of sidecar entity

Unprecedented and Dangerous Market Dominance



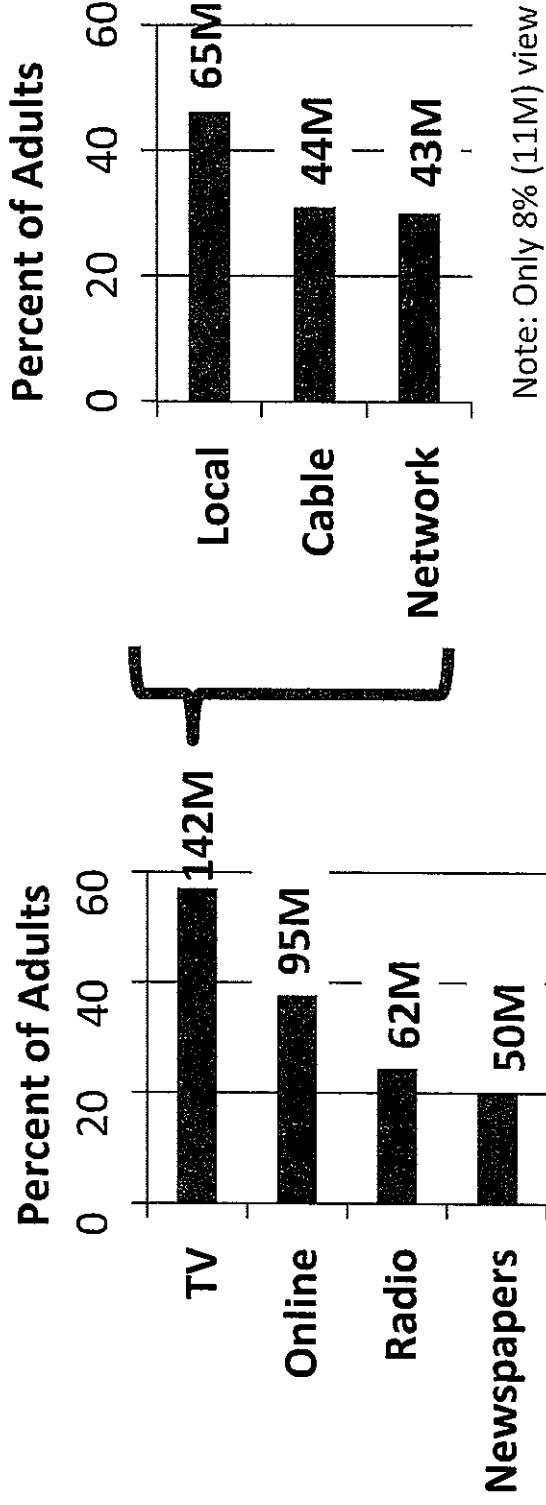
Source: the Coalition to Save Local Media



Source <http://tvnewscheck.com>

- Merged company would reach 72% of U.S. homes
- Sidecar deals further expand market coverage
- Merger provides huge competitive advantage for Sinclair
- Supports Sinclair stated goal of monopolistic domination of every local TV market
- Highly concentrated TV ownership is inconsistent with diversity of voices and localism standards for broadcast television

Most Americans Still Depend on Television for Local News

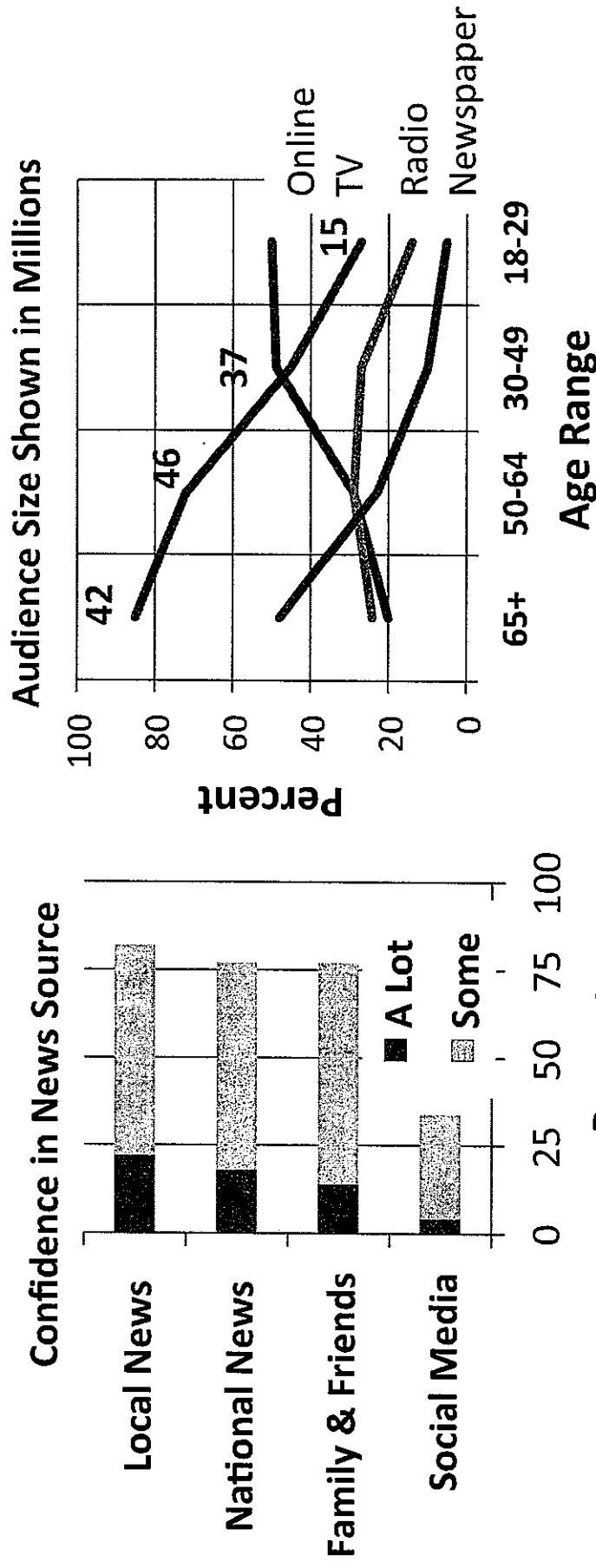


Note: Only 8% (11M) view more than one source hence about 54 M depend on local TV news

Source: Pew Research Center: The Modern News Consumer, July 7, 2016

- Most adults get news from TV and **Local Broadcast TV News remains dominant**
- 10% of U.S households have no broadband Internet access (about 25 million adults)
- Internet access unavailable in 39% of homes in rural areas (about 19 million adults)
- Disproportionate impact on minority and economically disadvantaged populations

Americans Still Trust and Rely On Local Television



Source: PewResearchCenter

- Local news programs and news anchors are more trusted than national news and much more trusted than Internet news
- Social media and online sources are yet to prove themselves
- Local cable news is primarily derivative of broadcast TV news
- Broadcast TV news especially important for large segment of population over 50

Key Legal Issues Re: Merger

- Sinclair's proposed merger violates the Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, which explicitly limits a single broadcaster's reach to 39% of the nation's TV households
 - In its response to the FCC's questions, Sinclair acknowledges its reach pre-merger exceed 45%, even taking advantage of the UHF discount
 - Reinstatement of the UHF Discount is under challenge in the DC Circuit, and it would make no sense for the FCC to act on this massive merger premised on a policy which is still under attack in the Court
 - As Commissioner O'Rielly has testified to the House Oversight Sub-Committee, the Commission has no legal authority to raise the 39% cap without Congressional consent
- Sinclair's history of statutory and rule transgressions indicates its consequent lack of character qualifications to be a Commission licensee
 - This decades-long pattern of intentional refusal to function as a public trustee has now repeated itself again, two years after a consent decree finding massive violation of Section 325 of the Act led to a "voluntary" 9 million dollar contribution to the Treasury
 - Trade Press reports indicate that Sinclair will be fined 13.3 million dollars for a pattern of violations of Section 317 of the Act, deceiving its audience regarding infomercials broadcast in 30 markets
 - This huge fine is not sufficient here; instead Sinclair's applications should be designated for hearing, like those of RKO in the 1970's

Key Legal Issues Re: Merger (cont.)

- “Internet news” is unreliable and often inaccurate hence not an alternative to more reliable broadcast TV news
 - Foreign and domestic operatives are using social media to undermine American institutions, influence public opinion and sway elections
 - Internet platforms being are co-opted to disseminate ‘fake news’
 - Immature fact and source checking still typifies platform providers
 - “Open” (unregulated) standards for Internet content cannot be applied to broadcast television
- Local broadcast TV must remain a diverse and reliable source of news
 - A Sinclair-Tribune entity reaching 70% of the nation’s living rooms plus sidecar deals extending further undermines the diversity of voices essential to a national political dialog
 - About 54 million local TV viewers still rely heavily or exclusively on broadcast TV news
 - Public will be dependent on accurate local broadcast TV and print news for years to come
 - Sinclair has a history of slanted editorial content, “must-run” news segments, and advertising posing as news
 - Broadcast TV must not be “weaponized” like Internet platforms to sway elections

HRI strongly advocates for FCC denial or indefinite delay of consent to the Sinclair-Tribune merger