

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

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

**REPLY TO SECOND CONSOLIDATED OPPOSITION**

Free Press hereby submits its reply to the Sinclair Broadcast Group, Inc. (“Sinclair”) and Tribune Media Company (“Tribune”; together, “Applicants”) Second Consolidated Opposition to Petitions to Deny (“Second Opposition”),<sup>1</sup> and to the Response of 21st Century Fox, Inc. and Fox Television Stations, LLC (“Fox Response”),<sup>2</sup> in the above-captioned docket.

To defend this unprecedented transaction, Applicants rely on thoroughly debunked public interest claims to bolster their lackluster arguments, misinterpreting and ignoring the concerns raised by Free Press and other petitioners. Meanwhile, the Fox Response reinforces the misguided and incorrect notion that if a transaction arguably does not violate the Commission’s ownership rules, it must consequently be approved. This argument ignores the burden that the Applicants bear to show affirmative public interest benefits from the license transfer. And that is a burden that Applicants must meet, yet have thus far utterly failed to meet.

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<sup>1</sup> Sinclair Broadcast Group, Inc. and Tribune Media Company, Applicants’ Second Consolidated Opposition to Petitions to Deny, MB Docket No. 17-179 (filed July 5, 2018) (“Second Opposition”).

<sup>2</sup> Response of 21st Century Fox, Inc. and Fox Television Stations, LLC to Petitions to Deny, MB Docket No. 17-179 (filed July 5, 2018) (“Fox Response”).

These flimsy arguments should not deter the Commission from recognizing this unprecedented merger, with its sham divestitures, for what it is: an unacceptable threat to the public interest.

**I. Applicants' Supposed Public Interest Benefits Have Already Been Debunked.**

Applicants attempt to support their implausible assertion that this merger would serve the public interest by claiming a series of non-cognizable, non-verifiable, and non-merger-specific benefits that, even should they materialize, would not outweigh the harms of this transaction. Moreover, these purported benefits have already been thoroughly debunked in previous filings.

Sinclair once again claims that operational “efficiencies” and scale will allow it to provide technical upgrades and improve local coverage,<sup>3</sup> but as Free Press made plain in our initial Petition to Deny these claims are dubious at best.<sup>4</sup> Such efficiencies are often just a euphemism for job cuts, leading to local journalist lay-offs to combine multiple competing newsrooms into a single conglomerate. Applicants offer no material, verifiable commitments regarding their alleged plans to expand local coverage or invest in substantial station upgrades.<sup>5</sup>

In fact, viewers have every reason to expect that Sinclair’s expanded control will instead lead to a decrease in local political news coverage and an uptick in highly suspect “must-run” content handed down from Sinclair’s corporate headquarters. Sinclair calls the harm caused by these must-runs insignificant because, by Sinclair’s own opaque calculations, this cookie-cutter propaganda “takes up less than an hour total” per week.<sup>6</sup>

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<sup>3</sup> Second Opposition at 3.

<sup>4</sup> Petition to Deny of Free Press, MB Docket No. 17-179, at 28 (filed Aug. 7, 2017) (“Free Press Initial Petition”).

<sup>5</sup> Id. at 28-29.

<sup>6</sup> Second Opposition at 5.

However as Free Press has explained before in this proceeding, the local viewers that Sinclair stations are licensed to serve see no benefits from, and express no increased demand for, even an hour of content devoted to promoting bigotry and airing Sinclair’s propaganda.<sup>7</sup>

Moreover, if we were to lend any credence to Sinclair’s glowing claims about expanding local news-gathering, then even devoting “less than hour” per week to must-run content necessarily would cut into the time that otherwise could be devoted to airing that additional, and truly local reporting.<sup>8</sup> Applicants’ dismissal of the time spent on must-run content as insignificant, coupled with their simultaneous boasting about plans to expand local news coverage, is a suspect pairing at best and more likely an outright contradiction.

These kinds of hypocritical and unsupported claims callously ignore the serious concerns raised by Sinclair’s own viewers about the lack of public interest benefits – and the actual harms caused instead – from slanted, bigoted, and false reporting about the communities Sinclair stations are supposed to serve. And Applicants’ similar (and similarly overgeneralized and unsupported) claims about expanded local coverage ring no truer when made specifically with regard to the proposed Top-Four combinations in Indianapolis and St. Louis.<sup>9</sup>

Applicants also claim that the transaction will allow the combined entity to “deploy ATSC 3.0 more widely, efficiently, and quickly,”<sup>10</sup> but as Free Press has said before, “Applicants have failed to demonstrate anything specific about this merger and its effect on ASTC 3.0, and it is impossible to conclude any public interest benefits for the technology (if any) will be the result

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<sup>7</sup> See Letter from Dana J. Floberg to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 17-179 (filed Apr. 17, 2018).

<sup>8</sup> See Sinclair Broadcast Group, Inc. and Tribune Media Company, Applicants’ Consolidated Opposition to Petitions to Deny, MB Docket No. 17-179, at 12-13 (filed Aug. 22, 2017) (“First Opposition”).

<sup>9</sup> See Second Opposition at 4.

<sup>10</sup> Id.

of this transaction.”<sup>11</sup> Once again, Sinclair touts its Washington, D.C. News Bureau and public affairs programs such as Connect to Congress as benefits to which former-Tribune stations will gain access<sup>12</sup> – but once again, Sinclair fails to compare these “benefits” to current public-service programming offerings available from Tribune stations. As Free Press noted last August in our first petition to deny, “while the stated nature of these programs may be public interest oriented, simply duplicating existing Sinclair programming across a greater number of stations in overlap markets is not qualitatively or quantitatively an increase in news.”<sup>13</sup>

In fact, Applicants’ only remotely fresh claim now is a cynical boast that the proposed divestitures to Howard Stirk Holdings (“HSH”) and Standard Media will “boost minority ownership.”<sup>14</sup> As Free Press demonstrated in our Petition to Deny the divestiture applications, HSH is merely a shell corporation – a legal subsidiary of Sinclair whose stations are operated almost entirely by Sinclair through sharing agreements.<sup>15</sup> Sinclair has proposed yet again making Armstrong Williams into a convenient front-man for its otherwise blatantly violative expansion, and now asks the Commission to call this transparent deception a public benefit.

It is not enough for Applicants simply to demonstrate nominal compliance with the few bare-bones ownership limits still standing after this Commission’s consistent weakening of those rules. For the Commission to approve the instant transaction and divestitures, Applicants must prove affirmative public interest benefits that are merger-specific and verifiable.<sup>16</sup> Despite Applicants’ and Fox’s insistence that Free Press and other petitioners should save all of our

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<sup>11</sup> Free Press Initial Petition at 32.

<sup>12</sup> Second Opposition at 4.

<sup>13</sup> Free Press Initial Petition at 30.

<sup>14</sup> Second Opposition at 4.

<sup>15</sup> Free Press, Petition to Deny Divestiture Applications, MB Docket No. 17-179, at 10-11 (filed June 20, 2018) (“Free Press Divestiture Petition”).

<sup>16</sup> See Free Press Initial Petition at 26-27.

concerns about Applicants' rule-skirting for a rulemaking proceeding,<sup>17</sup> the Commission must consider those broader concerns in order to accurately calculate the public interest impact of the transaction. Applicants cannot wax poetic regarding these (thoroughly debunked) benefits, which must at least purport to extend far beyond nominal rule compliance, while simultaneously attempting to restrict petitioners' harm showing to barest compliance with the rules.

## **II. The Oppositions' Objections Awaiting the UHF Discount Decision is Hypocritical.**

With regards to requests by Free Press and other petitioners that the Commission delay its decision regarding the instant transaction until the UHF discount court proceeding concludes, Applicants insist that the Commission must act immediately to apply the current rules, arguing that "where a petitioner urges the Commission to ignore the language of its rules in order to reach the result petitioner seeks, the appropriate forum is a rulemaking proceeding."<sup>18</sup>

Yet Applicants' initial merger proposal included station ownership combinations that blatantly and explicitly violated nearly every one of the Commission's then-existing media ownership rules.<sup>19</sup> Despite these evident violations, Applicants offered no concrete plans to divest any of the stations, relying exclusively on a vague promise to comply with whatever divestitures the Commission might deem necessary at the time of its decision.<sup>20</sup> Applicants then qualified even that lukewarm promise with a note that they expected these commitments to change "to the extent that there are changes, or proposed changes" to either the local or national ownership rules.<sup>21</sup>

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<sup>17</sup> See Second Opposition at 11-12; Fox Response at 3-4.

<sup>18</sup> Second Opposition at 19-20.

<sup>19</sup> See, e.g., Free Press Initial Petition at 5.

<sup>20</sup> See *id.* at 12-13.

<sup>21</sup> Sinclair Broadcast Group, Inc. and Tribune Media Company, Comprehensive Exhibit, MB Docket No. 17-179, at 12 (filed July 19, 2017); *id.* at 26.

At that point, neither local nor national ownership rulemaking proposals or decisions had been released by this Commission, rendering Applicants' hedge entirely speculative. Petitioners' request that the FCC hold off its final decision on this transaction until the UHF Discount court proceeding concludes, likely in the next few weeks or months at most, is far more reasonable and justifiable than Applicants' request for blank-check approval in their initial application.

### **III. The Oppositions Focus on Rule Semantics While Ignoring Public Interest Concerns.**

The divestiture transactions on which Sinclair and Fox now rely technically do limbo under some ownership limits. That is all thanks to the born-again UHF discount and the insidious sharing agreements Sinclair uses to feign compliance with local and national ownership rules.<sup>22</sup> There is no need for the Applicants or the Fox Response to spend such an inordinate amount of time lecturing Free Press about these rules.<sup>23</sup> We argued that while these broadcasters have found existing loopholes, and while this Commission has torn open new loopholes for them, the transaction nonetheless would grievously harm communities of color specifically and the public interest more generally. Applicants and Fox attempt to counter these arguments by . . . trumpeting that they have indeed found the loopholes.

Far from providing any new or compelling responses to the Commission, Applicants' and Fox's grandstanding only serves to distract from the larger point Free Press and other petitioners make: that the rule violations and other methods here for stretching the ownership limits beyond recognition pose serious threats to the core public interest principles of competition, diversity and localism. For example, Sinclair oh-so-helpfully reminds the Commission that it reinstated the UHF discount (ostensibly pending a comprehensive national audience reach review that is

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<sup>22</sup> Free Press Divestiture Petition at 4; id. at 9-10.

<sup>23</sup> See, e.g., Second Opposition at 6-12, 19-21; Fox Response at 2.

beyond the Commission's authority to undertake), and thus instructs the Commission that it may underestimate the merged entity's national audience reach.<sup>24</sup> But despite all of that pantomime, Sinclair still fails to deny the clear business relationship Free Press identified between itself and Cunningham, or the transparent nature of Sinclair's use of shell companies such as HSH.<sup>25</sup> Sinclair does not address these issues because it cannot do so satisfactorily without admitting that its compliance with Commission rules is paper-thin at best, and fictitious more like.

### CONCLUSION

For the reasons stated above, the transfers contemplated as part of this transaction violate the Commission's rules and do not serve the public interest. Both Applicants' Second Opposition and the Fox Response fail to articulate any substantial arguments to the contrary. As such, the Commission should not grant the applications and should instead grant the Petition to Deny.

Respectfully Submitted,

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<sup>24</sup> See Second Opposition at 19.

<sup>25</sup> See Free Press Divestiture Petition at 10.

**CERTIFICATE OF SERVICE**

I, Matthew F. Wood, certify that on July 12, 2018, the foregoing Reply was served by electronic mail on the following:

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