

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

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

REPLY TO CONSOLIDATED OPPOSITION

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INTRODUCTION AND SUMMARY

Free Press provided clear evidence that the Applicants' proposed transaction would violate the Commission's ownership rules to an unprecedented degree in local markets and on a national scale. With little to no substantive basis on which to dispute this evidence, Applicants resorted to mischaracterizing the arguments in our Petition to Deny ("Petition"), harping on minute technical discrepancies, and conjuring up empty procedural claims suggesting that relevant issues be addressed in a rulemaking proceeding instead. Their energies, and transparent attempts to distract the Commission from the issues at hand, are misplaced. The Applicants once again failed to address the extensive ownership rule violations that the proposed transaction would engender in the undisputed overlap markets and with respect to the national ownership cap. They also failed to disprove our arguments regarding the functional common control that the transaction would create in two additional overlap markets discussed in our Petition.

The Applicants also attempted to dismiss our objections to this transaction stemming from Sinclair's history of distorting reality and failing to serve local communities with its news coverage. The Opposition's poorly articulated free speech defense does not carry as much water as Applicants might hope. Sinclair's track record of flouting ownership rules and overriding locally-responsive news coverage, all in order to aggressively promote the national company's political agenda, is a legitimate area of analysis for the Commission's public interest calculation here.

The Applicants' repeated attempts to discredit all of the articulated public interest harms amount to a gross mischaracterization of several petitions to deny this merger. Applicants chose not to address the substantive issues that petitioners raise, perhaps because Sinclair and Tribune lack any substantive evidence to dispute the egregious damage the proposed transaction would do to the public interest. Indeed, the Opposition merely reiterated the same tired assertions of equivocal public interest benefits that appeared in the original (and deficient) public interest statement, relying on incomplete and misleading representations of Sinclair's broadcasting track record.

REPLY TO CONSOLIDATED OPPOSITION

Free Press hereby submits this Reply to the Consolidated Opposition to Petitions to Deny (“Opposition”) filed by Sinclair Broadcast Group (“Sinclair”) and Tribune Media Company (“Tribune”); together with Sinclair, “Applicants”) in the above-captioned proceeding.

I. The Proposed Transaction Violates Both the Letter and Spirit of the Commission’s Media Ownership Rules.

For all of Sinclair’s mock outrage in the Opposition, it does not and cannot contest that the proposed transaction would newly violate the Commission’s local multiple ownership rule (“duopoly rule”) in ten markets, nor dispute that the combined entity would significantly exceed the national audience cap established by Congress with or without the so-called UHF discount. The Applicants’ unwillingness to address these violations with specific or concrete proposals to cure them demonstrates an astonishing carelessness at best and an utter disrespect for Commission rules at worst.¹ Nothing in the Opposition mitigates this grievous oversight or detracts from the seriousness of these violations. The Applicants’ concession on this score alone should be enough for the Commission to deny the transaction.² And that could be the end of our conversation here. For all of the ink that Sinclair’s and Tribune’s attorneys spilled in discussing the slightly more complicated ownership questions in a handful of markets, it does nothing to blot out the clear violations that the transaction would create everywhere else.

Yet, because Applicants found it necessary to distract from the main issue at hand, we are compelled to explain again the situation that would exist in these additional overlap markets. Though admittedly fewer in number than the ten markets in which the combined entity undeniably would violate

¹ See *Applications of Tribune Media Company and Sinclair Broadcast Group for Consent to Transfer Control of Licenses and Authorizations*, Comprehensive Exhibit, FCC Form 315, at 12 & 26 (June 28, 2017) (“Sinclair Comprehensive Exhibit”).

² *In the Matter of Applications for Consent to Transfer Control of License Subsidiaries of Media General, Inc., from Shareholders of Media General, Inc. to Nexstar Media Group, Inc.*, MB Docket No. 16-57, Memorandum Opinion and Order, 32 FCC Rcd 183, ¶ 19 (2017) (“[T]he Commission must first determine whether the proposed transaction would comply with the specific provisions of the Act, other applicable statutes, and the Commission’s rules.”) (“Media General MO&O”).

the duopoly rule, the two additional overlap markets Free Press discusses in our Petition are likewise relevant to an assessment of the public interest impact of the proposed transaction -- no matter the attributable interest gymnastics that Sinclair clumsily attempts.³ The Commission's public interest calculation must extend beyond technical rule violations to take into account harms that may not be explicitly proscribed in its media ownership rules, particularly if those harms subvert the public interest by "substantially frustrating or impairing the objectives or implementation of the Act or related statutes."⁴

As Free Press has explained for years, broadcast conglomerate shell games establish functional if not attributable ownership of multiple stations within local markets -- allowing for the type of *de facto* control that the duopoly rule was specifically designed to combat.⁵ The Dreamcatcher stations in Norfolk-Portsmouth-Newport News, VA and Wilkes Barre-Scranton-Hazleton, PA, while not technically attributable to Tribune, are functionally controlled by Tribune. As the Petition clearly stated, Dreamcatcher is a shell company under the auspices of Tribune, for which Tribune provides technical, promotional, back-office and programming services, as well as guarantees for Dreamcatcher's debt obligations.⁶ Tribune reports the profits from the Dreamcatcher stations to its shareholders and operates all Dreamcatcher stations in a way that makes them indistinguishable to viewers.⁷

Applicants continue to pretend that their sharing agreements and sidecar arrangements are irrelevant to the public interest analysis because the companies don't technically hold the licenses to these stations, despite acting as *de facto* owners. While the Commission's rules have yet to fully catch up with broadcasters' shell games that are specifically designed to avoid ownership rules, the Securities and

³ See Applicants' Consolidated Opposition to Petitions to Deny, MB Docket No. 17-179 (Aug. 22, 2017) ("Opposition") at 24.

⁴ Media General MO&O ¶ 19.

⁵ See S. Derek Turner, Free Press, *Cease to Resist: How the FCC's Failure to Enforce its Rules Created a New Wave of Media Consolidation*, at 4-5 (2014).

⁶ Petition to Deny of Free Press, MB Docket No. 17-179 (Aug. 7, 2017) ("Petition") at 11 (citing Tribune Media Company, Form S-1 Registration Statement, filed with Securities and Exchange Commission at 54 and 59 (Apr. 8, 2015), <https://www.sec.gov/Archives/edgar/data/726513/000119312515122050/d900252ds1.htm>).

⁷ See *id.* (citing Tribune Media Company, Form 10 General Form for Registration of Securities Pursuant to Section 12(b) or 12(g) of the Securities Exchange Act of 1934, filed with Securities and Exchange Commission (Sept. 19, 2014), <https://www.sec.gov/Archives/edgar/data/726513/000119312514347373/d779310d1012b.htm>).

Exchange Commission has no difficulty understanding the beneficial ownership interests at play in these situations. Both Sinclair and Tribune report all their sidecar stations (including those cited in our Petition) as “Variable Interest Entities” (“VIEs”): businesses for which the parent company is the primary beneficiary, and for which that parent has the power to direct all activities impacting the economic performance of those businesses.

If this transaction were approved, the Dreamcatcher stations would be functionally controlled by Sinclair instead of Tribune, even though Sinclair already owns and operates stations in these markets. Sinclair knows this, of course, because it considers the Wilkes Barre DMA a possible target for what it euphemistically styles a DOJ-oriented divestiture.⁸ And Sinclair certainly understands the VIE shell game. Indeed, in its own SEC filings, Sinclair consolidates the financial results from its SSA sidecars into its financial results, as required by the Financial Accounting Standards Board.⁹ As Sinclair notes, “we have determined that certain third-party licensees of stations for which we perform services pursuant to arrangements, including LMAs and JSAs/SSAs, are VIEs and we are the primary beneficiary of those variable interests because, subject to the ultimate control of the licensees, we have the power to direct the activities which significantly impact the economic performance of the VIE through the services we provide and because we absorb losses and returns that would be considered significant to the VIEs ... [W]e are absorbing a majority of the entity’s economic risks or receiving a majority of the entity’s economic rewards, based on the terms of the arrangements with the entity.”¹⁰ The claim in the Opposition boils down to a suggestion that Sinclair won’t really control the Dreamcatcher stations -- so long as the Commission ignores all of the indicia of ownership that the SEC, Tribune, and Sinclair itself know to be determinative.

⁸ Opposition at 24, note 62.

⁹ “Summary of Interpretation No. 46,” Financial Accounting Standards Board, October (2016).

¹⁰ Sinclair Broadcasting Group Inc., 2016 10-K at 40.

Thus the Opposition flippantly dismisses Free Press's concern about overlap markets with Tribune's Dreamcatcher sidecars, going so far as to completely disclaim any potential public interest concerns. But Tribune claims Dreamcatcher as a VIE in its SEC filings. Tribune also discloses the financial arrangement between itself and Dreamcatcher, which puts truth to the lie of such VIEs' operational or financial independence. As Tribune tells the SEC, it formed Dreamcatcher in 2013 "specifically to comply with FCC cross-ownership rules related to the Local TV Acquisition." And even though Dreamcatcher's stations brought in \$73 million in revenues during 2016, the SSA agreement between Dreamcatcher and Tribune is structured such that Dreamcatcher is only "guaranteed a minimum annual cumulative net cash flow of \$0.2 million."¹¹

Given that Sinclair and Tribune are liable for the entirety of all of their respective sidecar companies' debts and liabilities, and given that Sinclair and Tribune reap the near entirety of the financial windfalls from these stations, and given the Commission's previous concern about such sidecars in the Sinclair-Allbritton transaction, it is certainly reasonable to expect Applicants to be more forthcoming in disclosing all such stations and markets. While the Dreamcatcher licenses would not transfer to Sinclair in Norfolk and Wilkes Barre, unlike the licenses in ten other markets where the new overlap indisputably violates the local ownership rules, the situation in these additional two markets clearly deserves scrutiny in the public interest analysis of this transaction. If Sinclair wished to demonstrate the strength of its character to the Commission it ought to have been more forthcoming in its acknowledgment of these functionally equivalent overlap markets.

Moreover, Sinclair's strident objection to our Petition's characterization of its ownership structure in Charleston, SC, sheds light on the very problem Free Press identifies: sidecar arrangements and sharing agreements effectively neuter divestiture conditions by making it near impossible to enforce the Commission's duopoly rule. Prior to the Sinclair-Allbritton transaction in 2014, Sinclair owned WMMP

¹¹ Tribune Company Inc., 2016 10-K, p. F-12.

and operated WTAT through a local marketing agreement with a Sinclair shell company, Cunningham Broadcasting. When the Commission ordered that Sinclair dissolve the agreement with WTAT and divest WMMP to obtain Allbritton station WCIV, Sinclair nominally complied.¹² However, after claiming it had tried and failed to sell WMMP, Sinclair chose to sell newly-acquired WCIV to Howard Stirk Holdings -- another shell company -- which would operate out of the same facilities as Sinclair-owned WMMP. Later Sinclair swapped the call-signs, so that HSH now owned WMMP, which shared facilities with Sinclair-owned WCIV. Then even later, WMMP changed its call sign to WGWG.

What has not changed in this convoluted game of broadcast bait-and-switch is Sinclair's functional control of all three stations in Charleston. Sinclair now owns WCIV (formerly WMMP) outright,¹³ shares facilities with shell company-owned WGWG (formerly WMMP, formerly WCIV),¹⁴ and provides news services to shell company-owned WTAT through what Sinclair openly describes as a non-attributable sharing agreement.¹⁵ These overlapping programming and financial relationships raise serious concerns about Sinclair's influence over nominally independent WGWG and WTAT -- concerns that the Commission attempted (unsuccessfully) to address with its conditioned approval of the Sinclair-Allbritton transaction.

Whatever the specific combination of mechanisms and machinations that Sinclair currently uses to maintain common control of the three Charleston stations, Sinclair has successfully evaded the Commission's efforts to protect the public interest by using a constantly shifting repertoire of ownership loopholes to avoid technical attribution. Sinclair made no attempt to deny this functional state of common control in the Opposition. The fact that our Petition did not quite keep up with the three-card monte that

¹² See *In the Matter of Applications for Consent to Transfer of Control From License Subsidiaries of Allbritton Communications Co. to Sinclair Television Group, Inc.*, MB Docket No. 13-203, Memorandum Opinion and Order, 29 FCC Rcd 9156, ¶ 11 (2014) ("Allbritton MO&O").

¹³ Opposition at 25.

¹⁴ Michael Mallone, "Howard Stirk Holdings Grabs WCIV for \$50,000," *Broadcasting & Cable*, Sep. 17, 2014, <http://www.broadcastingcable.com/news/local-tv/howard-stirk-holdings-grabs-wciv-50000/134123>; Turner, *Cease to Resist* at 29.

¹⁵ Opposition at 25, note 65 ("Sinclair provides news services to WTAT pursuant to a news sharing agreement"); Turner, *Cease to Resist* at 26-28.

Sinclair used to shuffle its control of these stations and evade the rules says more about Sinclair than about us. The Charleston stations are a clear example of Sinclair once again exercising *de facto* control of multiple stations in a market in violation of the duopoly rule, and in direct contravention of the Commission's attempts to enforce it.

The exaggerated indignation in the Opposition is symptomatic of the Applicants' desire to distract the Commission with technical attribution questions in a fraction of the markets in question in this deal, all to avoid addressing this stark reality: Sinclair has a long history of violating media ownership rules and abusing its resulting market power, which this transaction would only exacerbate. In light of Sinclair's established pattern of evading the Commission's divestiture requirements, the Application's vague divestiture "promise" continues to be insufficient to justify granting approval for the proposed transaction.

II. Sinclair Has an Established Track Record of News Bias and Distortion Which is Relevant to the Current Proceeding.

The Opposition attempts to dismiss the devastating public interest harms caused by Sinclair's aggressive political bias and its efforts to distort the news, suggesting that these issues are merely "hearsay."¹⁶ This is ridiculous. Sinclair has a well-established track record of forcing its political bias into news coverage by local stations, and distorting that coverage with misleading, "must-run" political commentary segments masquerading as news.¹⁷ Just one day after our Petition was filed, Sinclair released another must-run segment from commentator Mark Hyman, opining that activist movements calling for the removal of Confederate statues are equivalent to the Taliban destroying Buddhist statues in Afghanistan and dictators airbrushing advisors they've since executed out of official photos.¹⁸ This despicable comparison between non-violent demonstrators and oppressive regimes is just the latest

¹⁶ Opposition at 17, note 38.

¹⁷ Petition at 23-26. Sinclair's propensity to distort local news in order to support its national editorial positions is widely reported, and also widely attested to by viewers, including those who submitted affidavits in support of the Free Press Petition and the now nearly 25,000 Free Press members and Sinclair viewers who submitted comments in the docket opposing the Sinclair-Tribune transaction.

¹⁸ Mark Hyman, "Ignoring History," *Beyond the Headlines*, Aug. 8, 2017, <http://behindtheheadlines.net/8817-ignoring-history/>.

example of Sinclair using its outsized megaphone -- built up by years of evading the Commission's rules -- to promulgate its views. Sinclair cannot claim that its track record on other matters is dispositive with respect to its post-merger conduct while arguing that its track record of promoting racial bias and distortion in local news is merely "speculative" with regard to its post-merger news coverage.¹⁹

Sinclair avoids addressing the substance of Free Press arguments regarding rule violations and biased reporting by hiding behind a vaguely articulated First Amendment defense.²⁰ What Sinclair fails to comprehend is that we do not object to its constitutionally protected right to have an editorial point of view; instead, we object to Sinclair's practice of actively distorting the news in order to favor its particular point of view, failing to provide news coverage that is accurate and responsive to local community needs, and ignoring or subverting local and national broadcast ownership rules in order to propagate its views to an audience greater than otherwise allowed under those rules.

When a broadcaster's political perspective is so strident that it inhibits local editorial control and subverts localism, the Commission must consider whether that broadcaster is acting in the public interest. The obligatory nature of Sinclair's "must-runs" and its Central Casting national news initiatives prevent local stations from airing locally responsive news, forcing them to carry content that does not serve their communities' needs or values. To see the impact, the Commission need look no further than KOMO-TV in Seattle, where local Sinclair employees are fighting these must-runs as damaging to their journalistic credibility.²¹ As the union representative in negotiations with Sinclair management specifically argued in that instance, "[o]ur view is that news isn't liberal or conservative ... News is just factual or not factual, and we don't want our reputations tangled up in this kind of controversy."²² And the facts matter for more

¹⁹ See Opposition at 14.

²⁰ *Id.* at 17.

²¹ David Kroman, "KOMO employees will take on Trump-friendly bosses," Crosscut (Mar. 28, 2017), <http://crosscut.com/2017/03/komo-news-labor-battle-media-trump-friendly-bosses/>.

²² Sydney Ember, "Sinclair requires stations, including KOMO, to air segments tilting to the right," *Seattle Times*, May 23, 2017, <http://www.seattletimes.com/seattle-news/sinclair-requires-tv-stations-including-komo-to-air-segments-that-tilt-to-the-right/>.

than just the sake of journalistic integrity. For example, Muslim communities know that viewers are substantively harmed by the xenophobic and anti-Islam rhetoric of Sinclair's Terrorism Alert Desk, but local stations are unable to make alternative programming choices. As a coalition of racial justice groups told the Commission this week, "At a time when civil rights advocacy organizations are reporting a rise in hate crimes, particularly those against Muslims, Sinclair is fanning the flames of racial and religious animus that put our communities in danger."²³

Sinclair's aggressive consolidation of local television news operations exacerbates these concerns by dramatically reducing the number of alternative newscasts in the market. Having fewer independent voices means Sinclair's distortion will have an even greater impact on the public consciousness, and the people this hurts will have an even harder time making their voices heard. Sinclair's conception of "free" speech is one in which Sinclair drowns out all other speakers by violating broadcast ownership limits and actively seeking to close the marketplace of ideas that makes free speech a democratic ideal. The Commission cannot ignore the serious harm that Sinclair's news distortion and lack of local responsiveness inflicts upon communities of color and other marginalized people in the media markets that Sinclair monopolizes and in which it newly seeks outsized control here.

III. The Commission Must Address Petitioners' Merger-Specific Claims of Harm Here, Not in a Rulemaking.

Sinclair accuses Free Press and other petitioners of improperly seeking rule changes through this adjudicative proceeding.²⁴ Not only is this accusation unfounded, but it is particularly strange coming from Applicants whose unprecedented transaction could only be approved after massive rule changes.

The proposed transaction would violate current Commission rules in at least ten local markets, as well as on a national scale. Far from seeking "yet one more bite at the regulatory apple," Petitioners urge the Commission to uphold the longstanding media ownership rules that make this transaction completely

²³ Letter to Chairman Ajit Pai from leaders of the Latino Victory Project, Emgage, AAPI Victory Fund, and Color of Change, Aug. 28, 2017.

²⁴ Opposition at 4.

untenable.²⁵ Asserting that the transaction would violate Commission rules is not an attempt to “apply stricter standards” than the rules prescribe, but a call to enforce the existing but all-too-often circumvented standards that Sinclair contemptuously declines to acknowledge as barriers to this acquisition.²⁶

Furthermore, as explained above, the question of whether the transaction would functionally violate the duopoly rule in two additional markets is wholly appropriate for a licensing adjudication. Nothing precludes the Commission from considering this question in the context of determining whether a proposed merger promotes or harms the public interest. And indeed, the Commission routinely shapes or establishes policy through adjudications, and the Supreme Court has upheld its authority to do so.²⁷

It is also worth noting that Free Press has only existed for 14 years, not 20, and will continue to defend the public interest from Sinclair’s predatory consolidation for as long as the broadcaster continues to pursue it.²⁸ Our objections to the currently proposed merger can hardly be outdated; but if Sinclair is tired of hearing the same objections to its mergers, we suggest it abandon its 30-year-old playbook of accumulating excessive market power and gutting local news operations for profit.

IV. Applicants Failed Once Again to Establish that the Proposed Transaction is in the Public Interest.

The Opposition laughably accuses all petitioners of foregoing merger-specific objections in arguments that amount to nothing more than “big is bad,”²⁹ but in reality the Applicants’ public interest claims go no further than blithely asserting that “big is good.”

²⁵ *Id.* at 46.

²⁶ *Id.* at ii.

²⁷ *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 520 (2009) (“[T]he agency’s decision to consider the patent offensiveness of isolated expletives on a case-by-case basis is not arbitrary or capricious.”).

²⁸ *See* Opposition at 46 (“And Free Press and Public Knowledge are reiterating the same outdated complaints about the broadcast industry they have been making for the past 20 years.”). To our knowledge, Public Knowledge is also less than 20 years old.

²⁹ *Id.* at 14.

The Free Press Petition raises a series of highly detailed and merger-specific critiques, supported by academic analysis of the media ownership landscape and public interest concerns, as well as Sinclair’s track record regarding station acquisition and management.³⁰ Petitioners’ collective concerns about the proposed transaction being leveraged to eliminate diverse voices, localism and competition are explicitly born out in Sinclair’s own statements touting the merger to investors, where for example Sinclair President and CEO Christopher Ripley admitted that, “[O]verall, we think the industry needs to consolidate to two or three large broadcasters, and really just one or two strong local players in each market.”³¹ After openly describing this transaction as a pathway towards these monopolistic structures to dominate the broadcasting market, it is utterly disingenuous for Sinclair to paint these petitions as non-specific or unsupported.

For its own part, Sinclair can offer nothing by way of public interest benefits but decontextualized boasting and a bombastic insistence that petitioners “fail to comprehend that Sinclair is one of the greatest champions for continuation and growth of free over-the-air broadcast television.”³²

The Opposition reiterates Sinclair’s now-customary brag that after acquiring Fisher Broadcasting and Allbritton Communications, it has invested \$40 million in capital expenditures in those stations³³ -- but invested in what, specifically? As DISH pointed out in its petition, “there is no evidence that these investments were not already planned before Sinclair arrived or what they were spent on.”³⁴ Substantially increased investment in local news programming and staffing arguably might (or might not) be a potential public interest benefit; but investment in new office furniture would definitely not be. The DISH petition continues by noting that while Applicants’ trumpet Sinclair’s hiring of a single investigative reporter at

³⁰ Petition at 26-37.

³¹ *Id.* at 12-13.

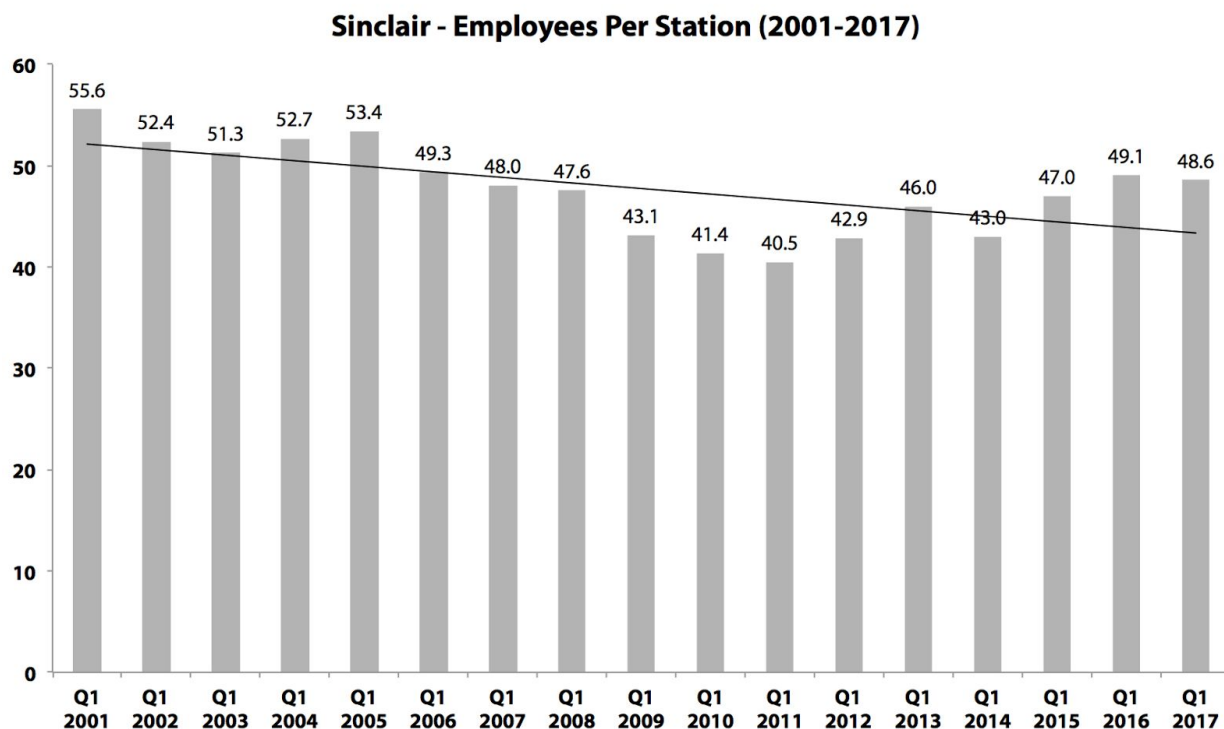
³² Opposition at 2.

³³ *Id.* at 8.

³⁴ Petition to Dismiss or Deny of DISH Network, L.L.C. (“DISH”), MB Docket No. 17-179 (Aug. 7, 2017) (“DISH Petition”) at 61.

WJLA,³⁵ that hiring fails to offset drastic cuts, according to “reports that Sinclair fired upwards of 20 news staff when it took over the station.”³⁶ Even Sinclair can’t seem to get its story straight regarding headcount: the Opposition claims that many of the stations that experienced dramatic staff cuts have now replaced those staff,³⁷ while also insisting there’s no evidence to suggest staff reductions have a negative impact on local news.³⁸

Perhaps the reason Sinclair fails to provide any comprehensive data to disprove arguments about its reduced staff levels is that it cannot do so. According to the company’s annual 10-K filings, its number of employees per station has indeed been in gradual decline since 2001.



Source: Sinclair Broadcasting Group Form 10-K, 2001-2017

³⁵ See *Application of Tribune Media Company and Sinclair Broadcast Group, Inc.*, MB Docket No. 17-179 (June 28, 2017) at 2-3.

³⁶ DISH Petition at 62.

³⁷ Opposition at 9.

³⁸ *Id.*, note 20.

Unsurprisingly then, Sinclair fails to sufficiently address legitimate questions regarding its noncommittal investment commitments in the Opposition. Instead, Applicants attempt to paint cherry-picked examples of increased investment, isolated from all relevant context, as transaction-specific and verifiable public interest benefits. Without providing the Commission and petitioners sufficient detail on its investment claims, and the purported benefits to viewers from such investments, Sinclair's public interest claims remain overly vague and entirely speculative.

When the Opposition argues that Sinclair has demonstrated a commitment to providing quality local news coverage, again we have to ask: Compared to what? Once again the Applicants fail to address the current status of the Tribune stations Sinclair intends to acquire. Sinclair can regurgitate its highlights and shining moments *ad nauseum*, but the reality remains (as the DISH Petition notes) that "Sinclair grows local news content at a demonstrably lower rate than does Tribune."³⁹ This is particularly true for locally produced news programming.⁴⁰ The Applicants' public interest claims regarding local news coverage suggest that the merged entity would export Sinclair's existing programming practices to newly acquired stations -- but that would clearly be a step down for viewers accustomed to the more robust news services currently offered on Tribune stations.

Nearly every claim the Applicants make to support their portrayal of Sinclair as a "champion" of broadcast excellence falls apart upon drilling down to the next layer. The Opposition relies heavily on the "numerous awards" Sinclair stations have won in recent years to rebut petitioners' critiques of poor local news coverage, but again these boasts fail to account for Tribune's comparative history. Indeed, over the past five years Tribune-owned broadcast stations have received four Emmy nominations for Outstanding Regional News Story, while Sinclair-owned stations received none.⁴¹ The notion that awards counts could prove or do prove that current Tribune audiences would be better served by Sinclair is suspect, at best.

³⁹ DISH Petition at 58.

⁴⁰ *Id.* at 60.

⁴¹ Nominees for the 33rd-37th Annual News & Documentary Emmy Awards, The National Academy of Television Arts & Sciences (2013-2016).

As with its contradictory series of staffing claims, Sinclair also ties itself in rhetorical knots regarding the impact of the prepackaged national content to which Free Press and other petitioners raised objections. The Applicants allege that Sinclair’s national programming initiative represents a public interest benefit for local stations, asserting that “the cost savings associated with a national news operation support localism by allowing more resources at the station level to be devoted to covering more local stories.”⁴² However the Opposition simultaneously tries to defend the practice by insisting that “news stories from its Washington, D.C. News Bureau make up less than 1% of a Sinclair station’s average weekly hours.”⁴³ Sinclair ought to make up its mind: Does its internally-syndicated news free up substantial resources, or is it so minimal as to have essentially no impact on stations’ local coverage?

Sinclair willfully misinterprets petitioners’ arguments that must-runs and prepackaged content represent a threat to local news coverage by casting the debate as one about the importance of national news versus local news. The Opposition blusters back at this imaginary foe by boldly asserting that national news coverage is of interest to local communities.⁴⁴ We agree. In fact, we contend that local communities also have an interest in receiving locally responsive coverage of national news items. Forcing local stations to accept and broadcast one nationally mandated perspective on national news topics does not remove a burden so much as it removes choice and power from local communities.

By stripping away the context of Tribune’s existing public interest efforts, the Applicants hope to obscure the inevitable fact that exporting Sinclair’s status quo operations to newly acquired Tribune stations would be a significant blow to the public interest in those markets. Without any specific plans to improve local coverage at Tribune stations beyond what currently exists, Sinclair is asking the

⁴² Opposition at 11.

⁴³ *Id.* at 19.

⁴⁴ *Id.*

Commission to assume without evidence that allowing the broadcaster to become bigger would automatically lead to better things -- an assumption that runs counter to all relevant experience.⁴⁵

Moreover, despite the dire-sounding nature of Sinclair's rhetoric in the Opposition, neither Sinclair nor Tribune need this transaction to survive. Both Applicants are very healthy firms, financially and operationally. Tribune's operating profit went from \$304 million in 2014 to \$434 million in 2016, a 42 percent increase.⁴⁶ These operating profits were generated from operating revenues of \$1.78 and \$1.95 billion for 2014 and 2016. Thus Tribune's operating profit margin increased from 17 percent in 2014 to 22 percent in 2016. This is approximately double the operating profit margin for the average S&P 500 company.⁴⁷ Sinclair's operating profit margins were at a similar level in recent years,⁴⁸ and the company's earnings per share ("EPS") in 2016 were \$2.62, a 20 percent increase from 2014 and the highest level in Sinclair's history.⁴⁹ Indeed, Sinclair's stock price increased by more than 150 percent during the past 5 years, double the level of growth in the broader market.⁵⁰

The Applicants have confused their private interests with the public interest. By all available metrics, it is impossible to believe Sinclair's claims of needing this merger to survive. In fact, the apparent driving financial force behind the proposed transaction is Sinclair's desire to please investors

⁴⁵ DISH Petition at 45, note 31 (citing Sandra Braman, *The Ideal v. the Real in Media Localism: Regulatory Implications*, 12 Comm. L. & Policy 231, 273 (2007) (citing Ronald Bishop and Ernest A. Hakanen, *In the Public Interest? The State of Local Television Programming Fifteen Years after Deregulation*, 26 J. of Comm. Inquiry 261 (2002)); Steven T. Barry and Joel Waldfogel, *Do Mergers Increase Product Variety? Evidence from Radio Broadcasting*, 116 Q.J. Econ. 1009 (2001); Michael Ortner, *Serving a Different Master: The Decline of Diversity and the Public Interest in American Radio in the Wake of the Telecommunications Act of 1996*, 22 Hamline J. Pub. L. & Policy 139 (2000); Jill Howard, *Congress Errs in Deregulating Broadcast Ownership Caps: More Monopolies, Less Localism, Decreased Diversity and Violations of Equal Protection*, 5 Comm. Law Conspectus 269 (1997); Patricia Aufderheide, *Public Television & the Public Sphere*, 8 Critical Stud. Mass Comm. 168 (1991)).

⁴⁶ Tribune Media Co.'s 2016 10-K. Tribune Company Inc., 2016 10-K, p. F-12. We compare even-numbered years to account for the impact of election advertising.

⁴⁷ See Edward Yardeni & Joe Abbott, Yardeni Research, Inc., *Stock Market Briefing: NIPA vs. S&P 500 Profits Margins*, at 4 (2017), <https://www.yardeni.com/pub/sp500marginnipa.pdf>.

⁴⁸ In 2014, Sinclair reported \$494.7 million in operating profit on \$1.98 billion in revenues (a 25 percent operating profit margin). In 2016, Sinclair reported \$602.9 million in operating profit on \$2.7 billion in revenues (a 22 percent operating profit margin).

⁴⁹ Tribune Co.'s EPS was \$0.96 in 2016, well below the \$4.63 earned in 2014. However, the difference was largely driven by a one-time event and losses due to the 2016 sale of its Gracenote assets. See Tribune 2016 10-K.

⁵⁰ From August 23, 2012 to August 23, 2017, Sinclair's stock price increased 153 percent, compared to a 74 percent increase in the S&P 500 index and a 75 percent increase in the Russell 3000 index.

who have come to expect growth in share value through continued consolidation. The benefits of this consolidation accrue to shareholders rather than local viewers, and Sinclair has given no concrete evidence demonstrating otherwise. Furthermore, Tribune appears to be fiscally sound and certainly does not need this merger to continue providing seemingly superior (when compared to Sinclair) local news and information to the communities where it holds broadcast licenses.

The only way in which Sinclair's bottom-scraping commitments to serve the public interest could be construed as meaningful would be if the alternative were worse than the status quo, if for example either broadcaster would be forced to close its doors or shutter services in the absence of the "significant savings" Sinclair promises as a result of the proposed merger. Such an implication is disingenuous, disproved by financial analysis, and yet another example of Sinclair misusing its market power by ransoming its own viewers' well-being to extract regulatory benefits.

The burden is on the Applicants to show that this merger would serve the public interest. They have not only failed to disprove the devastating public interest harms that Free Press and other petitioners allege, but also failed utterly to carry that affirmative burden.

CONCLUSION

For the foregoing reasons, the Commission should not grant the applications and should instead grant the Petition to Deny. Permitting Applicants to effectuate or expand Sinclair's control of multiple broadcast stations within twelve DMAs, as well as allowing the combined entity to exceed the statutory cap on national audience reach, violates the Commission's rules and is an affront to the goals of the Act.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Matthew F. Wood, Policy Director for Free Press, certify that on August 29, 2017, the foregoing Reply to Opposition was served by electronic mail, on the following:

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