

*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

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

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CCIA respectfully submits these reply comments in the above-referenced proceeding.<sup>2</sup>

For over four decades, CCIA has stood for open markets and competition and has serious concerns regarding this proposed transaction. CCIA joins the variety of diverse parties<sup>3</sup> urging the Commission to deny this transaction.

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<sup>1</sup> 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>.

<sup>2</sup> 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).

<sup>3</sup> Petition to Deny of the American Cable Association (ACA), MB Docket No. 17-179 (filed Aug. 7, 2017); Petition to Deny of the Competitive Carriers Association (CCA), MB Docket No. 17-179 (filed Aug. 7, 2017); Petition to Deny of DISH Network, L.L.C., MB Docket No. 17-179 (filed Aug. 7, 2017); Petition to Deny of Public Knowledge, Common Cause, and United Church of Christ, OC Inc., MB Docket No. 17-179 (filed Aug. 7, 2017), at 6 ("Petition to Deny of Public Knowledge, et al."); Comments of Cinemoui, et al., MB Docket No. 17-179 (filed Aug. 7, 2017).

## Summary.

The Commission must reject this transaction. This merger would transfer the control of licenses for full-power broadcast television stations, low-power television stations, and TV translator stations from Tribune Media Company (“Tribune”) to Sinclair Broadcasting Group (“Sinclair”). This takeover would dramatically alter the U.S. media landscape, adversely affect competition, and limit the diversity of voices. In short, it would lead to higher prices and less choices for consumers.

Sinclair has the burden to prove that the transaction will benefit the public interest with “verifiable . . . sufficient evidence to support each claimed benefit.”<sup>4</sup> Sinclair seems to believe that bigness will cure any deficiencies: “We will be the largest broadcast group by a country mile.”<sup>5</sup> However, the combined company would reduce the existing number of competitors, and Sinclair’s emphasis on concentrating its news production from would eviscerate the “diversity of information sources and services to the public.”<sup>6</sup> Sinclair’s actions at recently-acquired stations show that in pursuing “operational efficiencies”<sup>7</sup> and despite claimed “natural synergies,”<sup>8</sup> Sinclair has actually hurt local audiences. Furthermore, Sinclair has not explained how its burgeoning debt load, which would be exacerbated by this merger, would affect its ability to promote local voices.

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<sup>4</sup> 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.”).

<sup>5</sup> Joe Flint and Austen Hufford, *Sinclair Broadcast to Buy Tribune Media for \$3.9 Billion*, WALL ST. J. (May 8, 2017 1:36 p.m. ET), <https://www.wsj.com/articles/sinclair-broadcast-to-buy-tribune-media-for-3-9-billion-1494250624>; see also *Applicants’ Consolidated Opposition to Petitions to Deny*, MB Docket No. 17-179 (filed Aug. 22, 2017), at 7 [hereinafter *Opposition to Petitions to Deny*] (“While the Petitioners make general allegations about the ‘size’ of the combined company, it is precisely this size that will allow Sinclair to compete with much larger companies offering competitive programming for a fee”).

<sup>6</sup> *Comcast-NBCU Order*, 26 FCC Rcd at 4247, ¶ 23.

<sup>7</sup> *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 1-2 (filed July 19, 2017) (“Comprehensive Exhibit”).

<sup>8</sup> *Opposition to Petitions to Deny*, MB Docket No. 17-179, at i.

The Commission should take a forward-looking view of how the media landscape would be affected but also consider how this transaction “will affect the quality of communications services or will result in the provision of new or additional services to consumers”.<sup>9</sup> Sinclair has tried numerous times to delay the repacking process;<sup>10</sup> with this transaction, Sinclair would have outsized influence in the repacking of spectrum through its control of Tribune and the dominant companies that make the equipment necessary for the repack, Dielectric LLC and Acrodyne Services. The combined company could adversely affect the public interest by delaying the availability of spectrum that is necessary to bring broadband to rural and underserved areas. Sinclair has not shown verifiable public interest benefits beyond vague assertions that are devoid of real evidence. The Commission must reject this merger.

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<sup>9</sup> *Comcast/NBCU Order*, 26 FCC Rcd. at 4249-50, ¶23.

<sup>10</sup> Comments of Sinclair Broadcast Group, Inc., GN Docket No. 12-268 (filed Jan. 25, 2013), at 7 (“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.”); *See Nat’l Ass’n of Broadcasters 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”).

**I. Sinclair has Failed to Meet its Burden for Showing How This Merger Benefits the Public Interest.**

When reviewing a license transfer, under Section 310(d) of the Communications Act, the Commission must evaluate whether the transaction would serve “the public interest, convenience, and necessity.”<sup>11</sup> This public interest standard makes the Commission unique compared to its sister agencies like the Department of Justice (DOJ) and the Federal Trade Commission.<sup>12</sup> Thus, an applicant for the transfer of licenses bears the burden to prove that the transaction will benefit the public interest, and that applicant must do so by a preponderance of the evidence.<sup>13</sup> Furthermore, an applicant has to provide “verifiable . . . sufficient evidence to support each claimed benefit.”<sup>14</sup>

Sinclair must therefore prove to the Commission that this merger will yield real benefits to consumers—not just to the combined company—and that those benefits outweigh the transaction’s resulting harms.<sup>15</sup> But, Sinclair has wholly failed to meet this burden. As an initial matter, Sinclair’s Application and accompanying Comprehensive Exhibit was neither comprehensive nor did it exhibit anything short of lip service in the fewer than two and a half pages it spent on the public interest benefits of this merger.<sup>16</sup> Sinclair’s Opposition to Petitions to Deny,<sup>17</sup> filed just last week, did nothing to prove the merger is in the public interest, nor did it

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<sup>11</sup> 47 U.S.C. § 310(d) (2012).

<sup>12</sup> Alexander (Alexi) Maltas, at al., *A Comparison of the DOJ and FCC Merger Review Processes: A Practitioner’s Perspective*, theantitrustsource (Aug. 2016), at 1, [https://www.americanbar.org/content/dam/aba/publishing/antitrust\\_source/aug16\\_maltas\\_8\\_5f.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publishing/antitrust_source/aug16_maltas_8_5f.authcheckdam.pdf)

<sup>13</sup> See *Comcast-NBCU Order*, 26 FCC Rcd at 4247, ¶ 22 (footnotes omitted); *Sirius-XM Order*, 23 FCC Rcd at 12364, ¶ 30, *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277, ¶ 22; *SBC-AT&T Order*, 20 FCC Rcd at 18300, ¶ 16; *Comcast-AT&T Order*, 17 FCC Rcd 23246, 23255, ¶ 26.

<sup>14</sup> 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.”).

<sup>15</sup> *Charter-TWC-BrightHouse Order*, 31 FCC Rcd at 6479-80 ¶¶ 316-318; *Comcast-NBCU Order*, 26 FCC Rcd at 4330-31 ¶ 226.

<sup>16</sup> Comprehensive Exhibit, MB Docket No. 17-179, at 2-4.

<sup>17</sup> *Applicants’ Consolidated Opposition to Petitions to Deny*, MB Docket No. 17-179 (filed Aug. 22, 2017).

rebut the many harms presented by parties who filed Petitions to Deny. The Commission must, therefore, deny this merger.

**A. Sinclair’s Application Cannot Survive the Commission’s Balancing Test.**

The Commission must review whether the transaction “complies with the specific provisions of the (Communications) Act, other applicable statutes, and the Commission’s Rules.”<sup>18</sup> If the Commission does not find violations, then it considers whether there could be public interest harms from the transaction, which involves “a balancing test, weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.”<sup>19</sup> This balancing test reflects the Commission’s “deeply rooted preference for preserving and enhancing competition in relevant markets . . . and ensuring a diversity of information sources and services to the public.”<sup>20</sup>

*1. Sinclair Has Not Shown How it Would “Enhanc[e] Competition in Relevant Markets.”*

*“We will be the largest broadcast group by a country mile.”<sup>21</sup>  
-- Sinclair Broadcast Group President and CEO Chris Ripley*

The effects of this merger were best encapsulated by Sinclair’s President and CEO Christopher S. Ripley when he said that the combined Sinclair-Tribune would be “the largest broadcast group by a country mile.”<sup>22</sup> Sinclair currently “owns or operates 173 broadcast television stations, consisting of 528 channels, in 81 markets, with affiliations with all major networks, and is the largest local news provider in the country”.<sup>23</sup> The combined company

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<sup>18</sup> *Comcast-NBCU Order*, 26 FCC Rcd at 4247, ¶ 22 (footnotes omitted).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at ¶ 23.

<sup>21</sup> Joe Flint and Austen Hufford, *Sinclair Broadcast to Buy Tribune Media for \$3.9 Billion*, WALL ST. J. (May 8, 2017 1:36 p.m. ET), <https://www.wsj.com/articles/sinclair-broadcast-to-buy-tribune-media-for-3-9-billion-1494250624>.

<sup>22</sup> *Id.*

<sup>23</sup> *Sinclair and Tribune*, MB Docket 17-179, FED. COMMC’NS COMM’N, <https://www.fcc.gov/transaction/sinclair-tribune> (last visited Aug. 29, 2017).

would include Tribune’s forty-two broadcast television stations in thirty-three markets—significantly expanding Sinclair’s reach to stations in the top three markets in the country—an additional seven stations in the top ten markets, and thirty-four stations in the top fifty markets, ultimately reaching seventy-two percent of U.S. television households.<sup>24</sup> As the American Cable Association explained, “[t]he combination of the two companies would create a broadcasting behemoth.”<sup>25</sup>

Sinclair has not shown how it would promote competition in local markets. In addition, there are many markets where the combined company would have multiple stations in violation of the Commission’s rules. Sinclair identified ten “Overlap Markets where current FCC rules would not allow Sinclair to acquire the Tribune licenses”,<sup>26</sup> and one market “where Tribune currently owns multiple stations and current FCC rules would not allow Sinclair to acquire the Tribune licenses.”<sup>27</sup> There are also four additional overlap markets.<sup>28</sup> While Sinclair acknowledges that this transaction would violate the Commission’s rules, it provides no detail about how such violations will be cured. As the American Cable Association noted, Sinclair has “provide[d] only vague, non-committal, statements that they will cure those violations ‘as required,’ suggesting that the Applicants intend to attempt to skirt their obligations.”<sup>29</sup> Therefore, the Commission cannot allow this transaction to proceed.

As “the largest broadcast group by a country mile”, the combined company would reduce the existing number of competitors in major markets across the country. When reviewing a transaction under its public interest standard, the Commission is “informed by, but not limited to,

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<sup>24</sup> *Id.*

<sup>25</sup> Petition to Deny of ACA, MB Docket No. 17-179, at 1.

<sup>26</sup> Comprehensive Exhibit, MB Docket No. 17-179, at 13-14.

<sup>27</sup> *Id.* at 14.

<sup>28</sup> *Id.* at 14-15.

<sup>29</sup> Petition to Deny of ACA, MB Docket No. 17-179, at 9.



traditional antitrust principles.”<sup>30</sup> Its review can be “broader” than DOJ’s as the Commission may “consider[] whether a transaction will enhance, rather than merely preserve, existing competition, and (it) often takes a more expansive view of potential and future competition in analyzing that issue.”<sup>31</sup> Furthermore, the Commission has a “deeply rooted preference” for preserving and enhancing competition. However, Sinclair has not provided any information to demonstrate how this transaction would promote competition.<sup>32</sup> Instead, Sinclair would have greater bargaining power with multiple stations in multiple markets, and the combined company would have significant ability and strong incentives to crowd out competition from other stations. The result would be higher prices and less choice for consumers, an outcome, as discussed below, Sinclair appears to acknowledge. There is no public interest rationale for this transaction to move forward.

2. *Sinclair Has Not Shown How it Would “Ensur[e] a Diversity of Information Sources and Services to the Public.”*

*“[R]eally just one to two strong local players in each market”<sup>33</sup>  
-- Sinclair Broadcast Group President and CEO Chris Ripley*

If approved, the substantially larger combined company would reach the vast majority of the country and gain the ability to crowd out and silence local voices. Sinclair has not addressed the question of how it plans to “ensur[e] a diversity of information sources and services to the public.”<sup>34</sup> In fact, Sinclair’s President and CEO Christopher S. Ripley’s comments on a recent earnings call point in the opposite direction as he told investors: “Overall, we think the industry needs to consolidate to two or three large broadcasters, and really just one to two strong local

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<sup>30</sup> *AT&T Inc.-DIRECTV Order*, 30 FCC Rcd. 9131, 9140, ¶ 20.

<sup>31</sup> *Comcast-NBCU Order*, 26 FCC Rcd at 4247, ¶ 24; *AT&T-DIRECTV Order*, 30 FCC Rcd. at 9141, ¶ 21.

<sup>32</sup> *Charter-TWC-BrightHouse Order*, 31 FCC Rcd at 6336-37 ¶ 26.

<sup>33</sup> 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>.

<sup>34</sup> *Comcast-NBCU Order*, 26 FCC Rcd at 4247, ¶ 23.

players in each market.”<sup>35</sup> By eliminating competitors and whittling down the number of broadcasters in a market to “really just one to two strong local players in each market”,<sup>36</sup> Sinclair would eviscerate the “diversity of information sources and services to the public.”<sup>37</sup>

The combined company would lead to a greater concentration of news production from Sinclair’s headquarters. In addition to its strategy of acquisition, as Public Knowledge noted, Sinclair has a long history of producing “centrally originated programming for local programming.”<sup>38</sup> This is a central part of Sinclair’s business model—Sinclair’s CEO recently said on an earnings call that consolidating news operations would lead to “significant savings.”<sup>39</sup> Centralizing news operations among Sinclair stations and cutting on-air and off-air staff positions would indeed give yield “significant savings” for the combined company; however, that is not a factor of the Commission’s public interest standard. This takeover would eliminate competing stations that are often independent voices and lead to a decline in local journalism, which will adversely affect local news coverage and communities across the country, including the 108 markets where Sinclair would own stations.

**B. Sinclair’s Past Behavior at Recently Acquired Stations Speak More Loudly than its Words.**

The crux of Sinclair’s public interest argument is that the merger “will increase the merged company’s capability to serve the public by increasing its operational efficiencies, allowing Sinclair to upgrade the stations’ facilities, expand the stations’ local coverage (including local news), offer even greater value to multi-channel video distributors, and increase

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<sup>35</sup> 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>.

<sup>36</sup> *Id.*

<sup>37</sup> *Comcast-NBCU Order*, 26 FCC Rcd at 4247, ¶ 23.

<sup>38</sup> Petition to Deny of Public Knowledge, et al., MB Docket No. 17-179, at 6.

<sup>39</sup> 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>.

syndicated and original programming offerings.”<sup>40</sup> Sinclair added in its Opposition to Petitions to Deny that “the natural synergies of bringing Sinclair and Tribune together will enable the combined company to invest in unique programming that addresses the news, information, and public safety needs of local communities.”<sup>41</sup> Sinclair claims that it is “is a broadcast-first company, whose past behavior has aptly demonstrated that it is willing to continue to invest in the business in a manner and degree unmatched by others without Sinclair’s deep experience and technical resources”,<sup>42</sup> yet its past behavior speaks otherwise. Sinclair’s actions taken after other recent mergers show that in the spirit of achieving “operational efficiencies” and despite claimed “natural synergies,” Sinclair has actually hurt local audiences.

Sinclair listed “headcount” as an area where it has made investments in newly acquired stations. But, these claims become unsupportable in the face of the facts.<sup>43</sup> Sinclair claims that is “has increased headcount at many of [the stations it acquired from Fisher Broadcasting and Allbritton Communications], including the number of investigative journalists in newsrooms” and then cites twenty positions.<sup>44</sup> However, DISH noted twenty-seven stations where Sinclair has laid off numerous investigative reporters, anchors, managers, producers, even entire news departments.<sup>45</sup> Furthermore, Sinclair’s management has created high turnover, low morale, and even instances of bullying.<sup>46</sup>

Sinclair highlights WJLA in Washington D.C., which it bought from Allbritton in 2014, as an example of its success. Sinclair touts that the station “recently added another investigative journalist to its growing staff and now has one of the largest investigative news teams in

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<sup>40</sup> Comprehensive Exhibit, MB Docket No. 17-179, at 2

<sup>41</sup> Opposition to Petitions to Deny, MB Docket No. 17-179, at i.

<sup>42</sup> *Id.* at 6-7.

<sup>43</sup> Comprehensive Exhibit, MB Docket No. 17-179, at 2.

<sup>44</sup> *Id.*

<sup>45</sup> See Petition to Deny of DISH Network, MB Docket No. 17-179, at Sec. VI.E.

<sup>46</sup> *Id.*

Washington, D.C.”<sup>47</sup> Despite recently adding a single investigative journalist, shortly after Sinclair took over WJLA, the station began shedding many of its best known, long-serving, and locally-trusted, on-air journalists. Sinclair let go of its entertainment reporter, Arch Campbell, a fixture of local news for over forty years; longtime sports reporter and alumnus of nearby University of Maryland Tim Brant; anchor Leon Harris; anchor Maureen Bunyan, who had anchored WJLA since 1999 and was one of the first African American women to anchor a local evening newscast in the late 1970s; and anchor Gordon Peterson, considered a dean of broadcast news in Washington, D.C. and longtime host of the local political program *Inside Washington*.<sup>48</sup>

The departures of these local fixtures, in such a short period of time not only raised eyebrows in the D.C. area, but it also reflects poorly on how Sinclair’s claimed “long tradition of investing in newly acquired stations with the goal of improving the quality of their news and local programming.”<sup>49</sup> However, Sinclair’s actions in laying off staff, especially respected, local reporters and anchors, makes it more difficult for Sinclair to provide local coverage. While Sinclair may call these “operational efficiencies and economies of scale”,<sup>50</sup> viewers trust their local anchors and reporters, so reduced staff and fewer familiar faces behind news desks could adversely affect the combined company’s business. Broadcast journalism professor, Al Tompkins, noted that “Anchors influence newsroom culture and provide goodwill that keeps bringing viewers back.”<sup>51</sup>

Indeed, it has been widely noted that Sinclair frequently cleans house of on-air and off-air staff, like producers and editors, at newly acquired stations and changes the direction of local

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<sup>47</sup> Comprehensive Exhibit, MB Docket No. 17-179, at 2-3.

<sup>48</sup> Paul Farhi, *Longtime D.C. TV anchor Maureen Bunyan is latest casualty of Sinclair’s cuts*, WASH. POST (Jan. 9, 2017), [https://www.washingtonpost.com/lifestyle/style/veteran-dc-tv-anchor-maureen-bunyan-out-at-wjla-possibly-ending-her-career/2017/01/08/8877aae8-d522-11e6-9cb0-54ab630851e8\\_story.html?utm\\_term=.5e697078c442](https://www.washingtonpost.com/lifestyle/style/veteran-dc-tv-anchor-maureen-bunyan-out-at-wjla-possibly-ending-her-career/2017/01/08/8877aae8-d522-11e6-9cb0-54ab630851e8_story.html?utm_term=.5e697078c442).

<sup>49</sup> Comprehensive Exhibit, MB Docket No. 17-179, at 2.

<sup>50</sup> *Id.*

<sup>51</sup> Andrew Beaujon, *WJLA’s TV Legends Are Vanishing. Does It Matter?*, WASHINGTONIAN (Mar. 15, 2017), <https://www.washingtonian.com/2017/03/15/wjlas-tv-legends-are-vanishing-does-it-matter/>.

reporting.<sup>52</sup> Gordon Peterson, a D.C. news veteran over nearly six decades, explained why he left Sinclair: “After taking a hard look at Sinclair Broadcasting, I concluded that I would not be comfortable working in the new environment.”<sup>53</sup>

**C. Sinclair Has Not Explained how its Burgeoning Debt Will Affect its Operations.**

A major hindrance to Sinclair’s ability to promote local voices is its debt load, which would be exacerbated by this merger. According to its Form 10-K, submitted earlier this year to the Securities and Exchange Commission (SEC), as of December 31, 2016, Sinclair had “a high level of debt” of \$4.2 billion, assets of about \$5.96 billion, with about \$2.7 billion in total revenue and \$245 million in net income.<sup>54</sup> Although Sinclair makes scant reference to its debts and liabilities in the documents it has submitted to the Commission regarding this merger, it noted in its most recent Form 10-K that one of the top risks specific to the company is “[its] ability to service [its] debt obligations and operate [its] business under restrictions contained in [its] financing agreements.”<sup>55</sup> The practical effect of Sinclair’s significant debt is that “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.”<sup>56</sup> Furthermore, Sinclair admitted that debt from future “strategic acquisitions and investments could pose various risks and increase [its] leverage, . . . which

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<sup>52</sup> *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/>.

<sup>53</sup> Paul Farhi, *Here’s what happened the last time Sinclair bought a big-city station*, WASH. POST (May 8, 2017), [https://www.washingtonpost.com/lifestyle/style/heres-what-happened-the-last-time-sinclair-bought-a-big-city-station/2017/05/08/92433126-33f7-11e7-b4ee-434b6d506b37\\_story.html?utm\\_term=.9da9f1fea7c4](https://www.washingtonpost.com/lifestyle/style/heres-what-happened-the-last-time-sinclair-bought-a-big-city-station/2017/05/08/92433126-33f7-11e7-b4ee-434b6d506b37_story.html?utm_term=.9da9f1fea7c4).

<sup>54</sup> 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\\_G](http://sbgi.ir.edgar-online.com/fetchFilingFrameset.aspx?FilingID=11891724&Type=HTML&filename=SINCLAIR_BROADCAST_GROUP_INC_10K_20170228)

<sup>55</sup> *Id.* at 4.

<sup>56</sup> *Id.* at 21.

could have a material adverse effect on [its] results of operations and could strain [its] human resources.”<sup>57</sup>

Sinclair’s increased debt will likely lead to a consolidation and elimination of staff, which could also adversely affect the combined company’s ability to cover local news. Sinclair submitted its 10-K before it announced the Tribune purchase, and the 10-K makes no reference to Tribune; however, the proposed \$3.9 billion merger would undoubtedly lead to more debt, magnifying the risks identified in the 10-K. As Chicago Tribune columnist Robert Reed recently noted, “The bulked-up company will also be under great pressure to boost earnings, so it is conceivable Sinclair management will chop costs with a vengeance by consolidating, or outright dumping, homegrown news, weather, sports or other programming.”<sup>58</sup> Reduced staffing at the combined company’s stations, either due to consolidation or spending cuts, would also counter its ability to attract audiences for local news.

## **II. The Merger Would Harm the Public Interest by Adversely Affecting Other Industries and Stifling Innovation.**

During its merger review, 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.”<sup>59</sup> This merger would have far-reaching effects beyond the media industry. The combined company could adversely affect the public interest by delaying the availability of spectrum that is necessary to bring broadband to rural and underserved areas.

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<sup>57</sup> *Id.*

<sup>58</sup> Robert Reed, *Why there are big local problems with Sinclair-Tribune Media's national deal*, CHICAGO TRIBUNE (Aug. 24, 2017), <http://www.chicagotribune.com/business/columnists/ct-sinclair-tribmedia-deal-end-robert-reed-0824-biz-20170823-column.html>.

<sup>59</sup> *Comcast-NBCU Order*, 26 FCC Rcd. at 4249-50, ¶23.

The recent first-of-its-kind reverse incentive auction proved to be a great success, raising nearly \$20 billion from carriers seeking 600 MHz spectrum licenses.<sup>60</sup> Ensuring an expeditious transition of that spectrum from broadcasters to mobile operators should be a national priority, for it will speed the introduction of the higher-speed, low-latency 5G technologies that will further promote economic growth and U.S. global competitiveness. Chairman Pai said as much, noting the importance of the work that must be done carrying out the results of the auction: “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.”<sup>61</sup> Broadcasters will have to move their stations to different frequencies “repacking” before the winning bidders can begin using those bands for mobile. The repack will take time—at least thirty-nine months—and it is critically important as carriers seek to accelerate and expand wireless broadband deployment to over a million square miles, including rural and remote portions of the country where residents may have never previously had wireless broadband connections let alone a connection to the Internet. However, the transition could be further delayed unnecessarily by Sinclair.

The combined company would be able to achieve Sinclair’s goal of delaying the repacking process<sup>62</sup> through its sheer size and market power, the addition of a major competitor that also has repacking obligations, and Sinclair’s control of Dielectric LLC, the dominant manufacturer of radio and wireless antennas, transmission lines, and RF systems, as well as

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<sup>60</sup> *Broadcast Incentive Auction and Post-Auction Transition*, FED. COMM’NS COMM’N (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>.

<sup>61</sup> *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](https://apps.fcc.gov/edocs_public/attachmatch/DOC-344399A1.pdf).

<sup>62</sup> Reply Comments of Sinclair Broadcast Group, MB Docket No. 16-306, GN Docket No. 12-268 (filed Nov. 15, 2016), at 1-2.

Acrodyne Services, a television equipment servicing company.<sup>63</sup> Indeed, Sinclair had the spectrum repack in mind when it bought Dielectric for it “has supplied more than two-thirds of the TV industry’s high power antennas.”<sup>64</sup>

For many years, Sinclair has frequently tried to delay or obstruct the repacking process. Without producing any evidence, Sinclair claims that “perhaps more than any other broadcasters, Sinclair has urged the commission to adopt a repacking plan that will lead to the *shortest actual* repacking period, rather than pursue a shorter *theoretical* schedule that does not account for inevitable delays that are beyond the control of any stakeholder, including the FCC.”<sup>65</sup> However, Sinclair initially tried to postpone the incentive auction until ATSC 3.0 standards were developed,<sup>66</sup> and later the D.C. Circuit denied Sinclair’s challenge to the thirty-nine-month repacking schedule.<sup>67</sup>

Taking over Tribune just gives Sinclair more ability to leverage its dominance through Dielectric. As the Competitive Carriers Association explained, “Sinclair is already an integrated broadcaster with dominant equipment manufacturing and distribution verticals, and it has demonstrated the incentive and ability to delay the post-auction repack.”<sup>68</sup> Sinclair has the means of delaying the repack through its subsidiary, Dielectric, which has over two-thirds of a very specific market. The only other major manufacturer of broadcast antennas is Electronics

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<sup>63</sup> 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>

<sup>64</sup> Press Release, Sinclair Broadcast Group, Inc., *Sinclair Broadcast Group Announces Agreement to Purchase the Assets of Dielectric* (June 18, 2013), <http://sbg.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.”).

<sup>65</sup> *Opposition to Petitions to Deny*, MB Docket No. 17-179, at 42-43.

<sup>66</sup> *Comments of Sinclair Broadcast Group, Inc.*, GN Docket No. 12-268 (filed Jan. 25, 2013), at 7 (“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.”).

<sup>67</sup> See *Nat’l Ass’n of Broadcasters 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”).

<sup>68</sup> *Petition to Deny of CCA*, MB Docket No. 17-179, at 2.



Research, Inc., which has about twenty percent of the market, and is the major supplier to Tribune.<sup>69</sup> Now with Tribune, Sinclair would have a great share of the market for those antennas.

By controlling the largest supplier, and being the largest buyer, Sinclair would have outsized influence in the repacking of spectrum, which it has previously sought to delay and obstruct. Sinclair could delay or obstruct the ability of its competitors to build new facilities to meet their repacking obligations. Indeed, Sinclair told its investors in its 10-K to the SEC earlier this year that Dielectric “will be critical in the repack of the broadcast spectrum for both our stations and other broadcasters.”<sup>70</sup> The public interest is served by the expeditious transition of this low-band spectrum, so it can be used to promote economic growth. This merger puts that in serious doubt.

### **III. Conclusion.**

Sinclair bears the burden of proof that its transaction will provide verifiable, specific public interest benefits. Sinclair has not met that burden. Based on Sinclair’s own filings, including its initial exhibit of a meager, two-and-a-half pages of non-comprehensive, speculative public interest benefits, it is more likely that this takeover will instead harm the public interest and violate of the Commission’s rules. Sinclair’s filings simply leave far too many questions unanswered and provide scant evidence of how the public would benefit from this takeover. Sinclair simply claims that “the Transaction will produce both operational efficiencies and economies of scale.”<sup>71</sup> In reality, this would be a massive consolidation of power in the hands of a company that has a record of gutting newsrooms and dramatically harming local news coverage and the diversity of independent voices. Furthermore, this transaction harms the public

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<sup>69</sup> *Id.* at 13; Comments of T-Mobile USA, Inc., MB Docket No. 17-179 (filed Aug. 7, 2017), at 9.

<sup>70</sup> Sinclair Form 10-K at 18; *see also id.* at 12 (“[W]e expect that these subsidiaries (Dielectric and Acroodyne) will be critical in both the repack of the broadcast spectrum.”)

<sup>71</sup> Comprehensive Exhibit, MB Docket No. 17-179, at 2.

interest by enhancing Sinclair's ability to act on its goals of delaying the spectrum repacking process through its control of the largest supplier of antennas and equipment necessary to effectuate that process. The facts and the law provide no basis for the Commission to allow this merger to proceed. The Commission must reject this merger.

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Respectfully submitted,

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