

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

In the matter of	)	
	)	
Tribune Media Company	)	
(Transferor)	)	
	)	
and	)	MB Docket 17-179
	)	
Sinclair Broadcast Group, Inc.	)	
(Transferee)	)	
	)	
Consolidated Applications for Consent to	)	
Transfer Control	)	
	)	

**REPLY COMMENTS IN OPPOSITION TO THE MERGER BY THE ATTORNEYS  
GENERAL OF THE STATES OF ILLINOIS, MARYLAND, MASSACHUSETTS, AND  
RHODE ISLAND**

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November 2, 2017

The Attorneys General of the states of Illinois, Maryland, Massachusetts, and Rhode Island submit the following Comments in opposition to the Tribune Media Company (Transferor) (“Tribune”) and Sinclair Broadcast Group, Inc. (Transferee) (“Sinclair”) Consolidated Applications for Consent to Transfer Control, which seek the Federal Communications Commission’s (“FCC” or “Commission”) consent to transfer control of Tribune's full-power broadcast television stations, low-power television stations, and television translator stations to Sinclair. As the chief consumer protection and law enforcement officers in our respective states, we are responsible for promoting and defending the public interest. The proposed consolidation fails to further the public interest by allowing for increased consolidation that will decrease consumer choices and voices in the marketplace.

The Commission should conclude that the proposed merger does not serve “the public interest, convenience, and necessity,” as required under the Communications Act of 1934.<sup>1</sup> Sinclair’s Responses to the FCC’s Request for Information<sup>2</sup> (redacted for public inspection) (hereafter “Responses”) dated October 5, 2017, clearly demonstrate that Sinclair cannot satisfy the statutory limits on market consolidation without the use of an obsolete rule that is currently under review by the D.C. Circuit. The FCC has acknowledged that the combination of Sinclair and Tribune’s television stations would create an entity capable of reaching 72 percent of U.S. television households. Even if Sinclair is permitted to use an obsolete method for calculating its reach, its estimated market share would still be 45.2 percent, above the statutory limit for

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<sup>1</sup> 47 U.S.C. § 310(d).

<sup>2</sup> Responses of Sinclair Broadcast Group, Inc. to FCC Request for Information, *In the Matter of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee) Consolidated Applications for Consent to Transfer Control*, Exhibit 2, MB Docket No. 17-179 (Oct. 5, 2017).

national audience reach of 39 percent. Sinclair would need to still divest certain entities to bring it below the permissible cap of 39 percent.<sup>3</sup>

The proposed transfers will increase market consolidation above the acceptable statutory limit, reduce consumer choices, and threaten the diversity of voices in media. Because of this, we urge the Commission to reject this proposal or, at a minimum, postpone consideration of the proposal until the D.C. Circuit completes its review of the Commission's Ultra High Frequency Discount Rule ("UHF Discount Rule") in *Free Press v. FCC*.<sup>4</sup>

**I. The Proposed Merger Will Limit Consumer Choices.**

The chief concern of our states is the effect of this proposed merger on consumers. Our offices receive and mediate thousands of complaints a year from consumers about their video, Internet, and telecommunications services. These complaints allege high prices, poor service quality, misleading information in advertisements and from customer service representatives, and ineffective responses to customer complaints. The proposed merger has the potential to exacerbate these problems. Further, states have embraced the policy of allowing competition. For example, Illinois has enacted the Cable and Video Competition Act of 2007, to promote competition for video services and provide consumers with choices in as many video markets as possible.<sup>5</sup> We urge the Commission to consider the effect this transaction would have on our states' residents and the choices they will have for choosing among television competitors.

**II. The Commission Should Reject the Proposed Merger Because Sinclair Has Relied on the UHF Discount Rule Which is Obsolete.**

Sinclair and Tribune's proposed consolidation inappropriately relies on an obsolete method for calculating national audience reach that does not reflect the reality of today's

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<sup>3</sup> *Id.* at 2.

<sup>4</sup> Case No. 17-1129 (D.C. Cir. filed May 12, 2017).

<sup>5</sup> 220 ILCS 5/21-100 *et. seq.*

technology. Without employing this obsolete rule, Sinclair is unable to satisfy the statutory limit on national audience reach.

In 2004, Congress directed the FCC to amend the regulations governing limits on media ownership to prohibit a single entity from owning television stations that – in the aggregate – have a national audience reach of more than 39 percent of the total television households in the United States (“national cap”).<sup>6</sup> Until 2016, the method for calculating compliance with the national cap was premised on the lower household reach associated with weaker UHF signals in the 1980s.<sup>7</sup> This accommodation has been known as the UHF Discount Rule. In 2016, the FCC issued an order to repeal the UHF Discount Rule, finding that “technological change has eliminated the justification for the discount” and that eliminating the discount from the calculation of the national audience reach served to preserve the effectiveness of the 39 percent statutory cap on national audience reach.<sup>8</sup>

Under new leadership, the Commission reinstated the UHF Discount Rule earlier this year and indicated that it is going to “begin a new proceeding to review comprehensively the future of the national cap, including the UHF discount.”<sup>9</sup> Chairman Ajit Pai asserted that the UHF Discount Rule and the national cap are “inextricably linked.”<sup>10</sup> If the Commission were to approve the merger relying on the UHF Discount Rule, it would be applying an obsolete rule that understates the audience reach of a UHF station by 50 percent. The UHF Discount Rule does not

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<sup>6</sup> Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004); *see also* 47 CFR § 73.3555(e)(1) (implementing regulation).

<sup>7</sup> Federal Communications Commission, *National Television Multiple Ownership Rule, Final Rule, FCC 16-116*, MB Docket No. 13-236, 81 Fed. Reg. 73035 (October 23, 2016).

<sup>8</sup> Federal Communications Commission, *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, MB Docket No. 13-236, 31 FCC Rcd 10213 (2016) (hereinafter 2016 UHF Discount Order).

<sup>9</sup> *Id.*

<sup>10</sup> Statement of Chairman Ajit Pai, *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule FCC 17-40*, MB Docket No. 13-236 (April 21, 2017).

accurately or fairly measure the reach of broadcast stations and adversely effects the calculation of the Congressionally mandated national cap on broadcast market consolidation.

The Sinclair and Tribune merger consolidates the national television markets to unacceptable levels. The FCC states that under the proposed transaction, “the combined company would reach 72 percent of U.S. television households and would own and operate the largest number of broadcast television stations of any station group.”<sup>11</sup> This is well above the statutory 39 percent national cap for national audience reach. By applying the UHF Discount Rule, Sinclair estimates that its market share is 45.2 percent,<sup>12</sup> still above the 39 percent cap. Sinclair has offered to divest a few media entities to bring it below the permissible national audience reach level of 39 percent.<sup>13</sup> Even with the benefit of the restored but obsolete UHF Discount Rule, Sinclair’s Responses acknowledge that divestiture “in at least two markets may be necessary to comply with the FCC’s national ownership limit.”<sup>14</sup> The People of Illinois also have a specific interest in such divestiture, as the St. Louis, Missouri market, which includes Illinois counties, is identified in the Responses as a potential location for divestiture.<sup>15</sup> The St. Louis market is one of 10 Designated Market Areas where Sinclair would be acquiring a station in a market where it already owns at least one station.<sup>16</sup>

Although the Commission reinstated the UHF Discount Rule in its 2017 Reconsideration Order, it reaffirmed its position that the UHF Discount Rule is obsolete. The rule was enacted in

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<sup>11</sup> Federal Communications Commission, “Sinclair and Tribune, MB Docket 17-179,” <https://www.fcc.gov/transaction/sinclair-tribune> (accessed October 31, 2017).

<sup>12</sup> Responses of Sinclair Broadcast Group, Inc. to FCC Request for Information, *In the Matter of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee) Consolidated Applications for Consent to Transfer Control*, Exhibit 2, MB Docket No. 17-179 (Oct. 5, 2017).

<sup>13</sup> *Id.* at 2.

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

<sup>15</sup> *Id.* at 4.

<sup>16</sup> Free Press, Petition to Deny, *In the Matter of Application of Sinclair Broadcast Group and Tribune Media Company for Consent to Assign or Transfer Control of Licenses and Authorizations*, 5, MB Docket No. 17-179 (Aug. 7, 2017).

the 1980s to recognize the technical limitations of analog UHF stations.<sup>17</sup> In the 2017 Reconsideration Order that reinstated the rule, the Commission said “we do not disagree with Opponents’ assertion that the UHF discount no longer has a sound technical basis following the digital television transition.”<sup>18</sup> Nor did the Commission dispute their previous findings that “the digital transition eliminated the audience reach disadvantage for UHF stations.”<sup>19</sup> The Commission has expressed a desire to readdress the use of the UHF Discount Rule and its effect on the national ownership cap. The Commission’s Reconsideration Order demonstrates that continuing to apply the UHF Discount Rule goes against the Commission’s own conclusions about whether the rule fairly calculates the audiences for UHF stations and its relevance to today’s markets. Approving this merger based on the UHF Discount Rule – which will result in a consolidation of television stations with an audience reach of more than 70 percent – even though the 2017 Reconsideration Order concluded that “[i]n fact, experience has confirmed that UHF channels are equal, if not superior, to VHF channels for the transmission of digital television signals,”<sup>20</sup> is contrary to the public interest and the intent of the 39 percent statutory limit.

Allowing Sinclair and Tribune to take advantage of a 1980’s rule that is technologically outdated to permit consolidation far above the statutory levels goes against the public interest and is contrary to the Commission’s own findings that the UHF Discount Rule is obsolete. The Commission should therefore reject this merger.

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<sup>17</sup> Federal Communications Commission, *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Ownership Rule, Order on Reconsideration*, ¶ 2, MB Docket No. 13-236, 32 FCC Rcd. 3390 (April 21, 2017) (hereinafter 2017 Reconsideration Order).

<sup>18</sup> 2017 Reconsideration Order ¶ 13.

<sup>19</sup> 2017 Reconsideration Order ¶ 15.

<sup>20</sup> 2017 Reconsideration Order ¶ 8. While the Commission indicated that it will also consider whether the national cap should be modified, it is clear that the Commission cannot change a cap adopted by Congress.

**III. At a Minimum, the Commission Should Delay Consideration of this Merger Until the D.C. Circuit Completes its Review of the UHF Discount Rule.**

The Commission's 2017 Reconsideration Order reinstating the UHF Discount Rule, on which Sinclair relies upon for approval, is currently under review by the U.S. Court of Appeals for the D.C. Circuit in *Free Press v. FCC*.<sup>21</sup> The 2017 Reconsideration Order and the FCC's apparent lack of factual support or authority to reinstate the UHF Discount Rule is the basis of the appellate challenge in the *Free Press* case. Petitioners argue that the Order is arbitrary and capricious and unsupported by the record. If the Petitioners prevail in reversing the Commission's 2017 Reconsideration Order, the UHF Discount Rule would be unavailable to Sinclair and Tribune and the merger would need to be rejected. While the outcome of the *Free Press* case is not certain, the questionable basis for the 2017 Reconsideration Order suggests that the Petitioners may have success on the merits. Prudence dictates, at a minimum, that FCC approval of the merger between Sinclair and Tribune should be delayed until the judicial review of its 2017 Reconsideration Order has been concluded with finality.

**IV. CONCLUSION**

In the public interests of local ownership, diversity in broadcasting, and marketplace competition, we oppose the approval of the Sinclair and Tribune merger. Allowing a merger that permits one television broadcast company to reach 72 percent of U.S. households is contrary to the spirit and letter of the law. To ensure that consumers have access to a variety of content, services, and stations, the Commission should reject this order or, at a minimum, allow the D.C. Circuit to conclude its review of the 2017 Reconsideration Order before considering the proposed application.


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<sup>21</sup> Case No. 17-1129 (D.C. Cir. filed May 12, 2017).

Respectfully submitted,



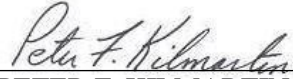
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