

February 28, 2018

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

**Re: Tribune Media Company and Sinclair Broadcast Group, Inc., Consolidated
Applications for Consent to Transfer Control, MB Docket No. 17-179**

Dear Ms. Dortch:

Effective January 4, 2018, the Media Bureau suspended the 180-day transaction shot clock in the above-captioned proceeding until after Sinclair had filed, and staff had a chance to review, amendments and divestiture applications explaining how Sinclair intended to come into compliance with the Commission's ownership rules.¹ The Bureau explained that such filings were necessary to ensure that the Commission had a "full and complete record upon which to base its decision in this proceeding."²

As explained further below, the documents filed by Sinclair on February 21, 2018³ do not adequately satisfy the Bureau's request. Consequently, the 15 members of the *Coalition to Save Local Media* listed on the signature page urge the Commission not to restart the shot clock until Sinclair submits, and staff and all interested parties have had a chance to review and comment on, a filing that is genuinely responsive to the Bureau and sets forth clearly and unambiguously how Sinclair *will* comply with the ownership rules.

Sinclair purports to provide a detailed plan for divestiture of stations, but the "plan" is an empty vessel. Sinclair says it is applying for authority to place 23 stations in 10 markets into a divestiture trust. However, buried in a footnote, Sinclair acknowledges that this is not a definitive list of what will actually get divested, but rather a placeholder list subject to further changes.⁴ Sinclair does not explain, nor could it, how this gives Commission staff a "full and complete record" on which to decide the application.

Of perhaps even greater concern, the Sinclair Submission takes an extraordinarily distorted view of what qualifies as a station "divestiture." Sinclair says it will divest Tribune stations in New York (WPIX), Chicago (WGN), and San Diego (KSWB) in order to come into compliance with national ownership cap, and that it already has buyers lined up for the New

¹ See Letter from Michelle Carey, Chief, Media Bureau, to Miles S. Mason and Mace J. Rosenstein, MB Dkt. No. 17-179 (Jan. 11, 2018) (pausing the shot clock as of January 4, 2018).

² *Id.*

³ See Amendment to June Comprehensive Exhibit (February 2018) ("Sinclair Submission" or "Submission").

⁴ See *id.* at 3 n.6 (setting forth various contingencies that will affect the list of stations ultimately placed in the divestiture trust).

York and Chicago stations.⁵ But, again buried in footnotes, Sinclair shows that this is not the complete story. In the case of the New York and Chicago stations, the purchase agreements provide that, upon closing of the sales, Sinclair will enter into “an option and master services agreement” with the buyers.⁶ In plain English, these sidecar arrangements give Sinclair the ability to continue to manage the stations after they have been acquired by third parties, with the option to buy them back at some future time. If Sinclair regains ownership of these stations, its audience reach would soar above the current ownership cap to 45 percent with the technologically obsolete UHF discount or over 70 percent without it.

Sinclair takes its misleading statements one step further in its plans for coming into compliance with the Commission’s local ownership rule. In so-called “overlap markets,” Sinclair says, on one side of its mouth, that it intends to divest stations in eight different markets, but then, on the other side of its mouth, it says that with respect to three of these markets – Seattle/Tacoma, Oklahoma City, and Greensboro -- it will enter into the same type of “option” and “services agreements” as described above.⁷ And in three other markets – Indianapolis, Greensboro, and Harrisburg – Sinclair asks the Commission for waivers of the top-four duopoly rule. *When all is said and done, Sinclair’s clear expectation is that it will continue to own or manage most of the stations that it has listed in its divestiture plan.*⁸

Sinclair has used these methods before to try to skirt the Commission’s rules. Less than two years ago, it was fined nearly \$10 million for using sidecar arrangements to violate the Commission’s prohibition on joint retransmission consent negotiations.⁹ And while Sinclair has said it will divest top-four duopoly stations, it has made no commitment to end its practice of broadcasting two top-four affiliates from the *same* station in a given market – another deficiency that allows Sinclair to do an end-run around the duopoly prohibition.

The Commission should take no further action in this proceeding until Sinclair has identified the specific stations it will divest, and has further committed to *fully* divesting the stations, without any accompanying service agreements or options to repurchase. The Department of Justice has specifically barred these types of misleading divestitures in a number of recent broadcast transactions, including the 2016 *Nexstar* and 2014 *Sinclair-Allbritton*

⁵ See *id.* at 31-32.

⁶ See *id.* at 32 nn.86-87.

⁷ See *id.* at 4 n.9 (plans for KZJO in Seattle), 5 n.15 (plans for KOCB in Oklahoma City) & 6 n.17 (plans for WMYV in Greensboro).

⁸ With the elimination of the eight-voices test last year, Sinclair is now able to retain duopolies in Portland and St. Louis. These are in addition to the duopolies Sinclair already has in Washington, DC, Milwaukee, New Orleans, and Denver. Sinclair has no plans to divest any of its network affiliations.

⁹ See *In the Matter of Sinclair Broadcast Group*, Order & Consent Decree, 31 FCC Rcd. 8576 (2016). Moreover, Sinclair has a history of playing fast and loose with FCC ownership and control rules. See *Edwin L. Edwards, Sr. (Transferor) and Carolyn C. Smith (Transferee) for Consent to the Transfer of Control of Glencairn, Ltd., parent entity of Baltimore (WNUV-TV) Licensee, Inc. Licensee of Television Station WNUV-TV, Baltimore, Maryland et al.*, Memorandum Opinion and Order and Notice of Apparent Liability, 16 FCC Rcd 22236 ¶ 29 (2001) (fining Sinclair and its sidecar, Glencairn, \$80,000 for orchestrating an unauthorized transfer of control).

transactions,¹⁰ and the Commission should follow the same approach here. Until Sinclair unambiguously takes these steps in a further amended filing, and the Commission issues a Public Notice allowing interested parties to comment on a concrete plan for Sinclair’s compliance with the media ownership rules, the Commission should not restart the shot clock in this transaction.¹¹

Respectfully submitted,

/s/ _____

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¹⁰ See, e.g., Final Judgment, *U. S. v. Nexstar Broadcasting Group, Inc.*, No. 1:16-cv-01772-JDB at 16 (D.D.C. Nov. 16, 2016) (“Defendants may not (1) reacquire any part of the Divestiture Assets, (2) acquire any option to reacquire any part of the Divestiture Assets or to assign the Divestiture Assets to any other person, (3) enter into any local marketing agreement, joint sales agreement, other cooperative selling arrangement, or shared services agreement, or conduct other business negotiations jointly with the Acquirers with respect to the Divestiture Assets, or (4) provide financing or guarantees of financing with respect to the Divestiture Assets, during the term of this Final Judgment.”); Final Judgment, *U.S. v. Gray Television, Inc., and Schurz Communications, Inc.*, No. 1:15-cv-02232-RC at 15-16 (D.D.C. Mar. 3, 2016) (using the same language); Final Judgment, *U.S. and Commonwealth of Pennsylvania v. Sinclair Broadcast Group, Inc. and Perpetual Corporation*, No. 1:14-cv-01186-TSC at 14 (D.D.C. Nov. 25, 2014) (using substantially similar language).

¹¹ To be clear, the Commission should not put the Sinclair Submission out for public comment given the various defects in the Submission. Rather, it should seek public comment at such time as Sinclair submits a filing that clearly and unambiguously states how Sinclair will comply with the ownership rules.

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