

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

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

**Petition to Deny of
Communications Workers of America
National Association of Broadcast Employees and Technicians – CWA
The NewsGuild – CWA**

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I. Introduction and Executive Summary

The Communications Workers of America (CWA), the National Association of Broadcast Employees and Technicians-CWA (NABET-CWA), and The NewsGuild-CWA (TNG-CWA) submit this petition to deny in response to the Federal Communications Commission's (Commission) *Public Notice* regarding the applications of Sinclair Broadcast Group (Sinclair) and Tribune Media Company (Tribune) (collectively Applicants) to transfer control of 42 television stations in 33 markets, as well as WGN America, WGN Radio, and a 31 percent stake in Food Network from Tribune to Sinclair as well as Sinclair's most recent divestiture application.¹ CWA represents 700,000 workers in telecommunications and information technology, the airline industry, news media, broadcast and cable television, education, health care and public service, manufacturing, and other fields. CWA, NABET-CWA, and The News Guild-CWA have an interest in this proceeding as representatives of Sinclair and Tribune employees, as workers in the broadcast and media industries, and as consumers of broadcast media.

The Commission should deny the Sinclair-Tribune applications. Applicants have a responsibility to demonstrate "the public interest, convenience, and necessity will be served by the transfer."² To evaluate the application, the Commission's public interest analysis embodies a "deeply rooted preference for preserving and enhancing competition in relevant markets [...] and ensuring a diversity of information sources and services to the public."³ More than a year has

¹ See Media Bureau Establishes Consolidated Pleading Cycle for Amendments to the June 26, 2017 Applications to Transfer Control of Tribune Media Company to Sinclair Broadcast Group, Inc., Related New Divestiture Applications, and Top-Four Showings in Two Markets, MB Docket No. 17-179, *Public Notice*, DA 18-530 (rel. May 21, 2018); Applications of Sinclair Broadcast Group and Tribune Media Company for Consent to Transfer Control of Licenses and Authorizations, Comprehensive Exhibit (filed July 19, 2017). (Sinclair-Tribune Application).

² 47 USC §310(d).

³ See Applications of Comcast Corporation, General Electric Company and NBC Universal for Consent to Assign Licenses and Transfer Control of Licenses, *Memorandum Opinion & Order*, MB Docket No. 10-56 (2011) p. 11.

passed since Sinclair and Tribune announced their merger,⁴ almost one year since the Commission's initial pleading cycle,⁵ and more than five months since the Commission paused its 180-day merger review shot clock in response to Sinclair's then-latest – but not final – divestiture amendments.⁶ In all this time, Sinclair and Tribune have failed to demonstrate in their application and in the ensuing months that any purported merger-related benefits exceed the substantial public interest harms. On the contrary, it remains clear that the Sinclair-Tribune merger does not serve the public interest because it would violate the congressionally mandated 39 percent national audience cap, reduce competition, harm localism, eliminate jobs, and diminish viewpoint diversity. Sinclair's most recent divestiture proposal does not resolve these merger-related harms. In fact, the details of the divestiture proposal indicate that the inadequate plan will exacerbate these harms, as Sinclair will maintain effective control over at least six of those stations through ownership relationships and sidecar agreements.

There is broad opposition to the Sinclair-Tribune merger and broad agreement that the proposed divestitures fail to address the significant public interest harms associated with the merger. The Coalition to Save Local Media, representing a diverse coalition of organizations opposed to the merger, includes American Cable Association, Asian Americans Advancing Justice | AAJC, A Wealth of Entertainment channel, Cinemoui, Citizens for the Republic, Common Cause, Competitive Carriers Association, the Computer and Communications Industry Association, DISH, Indivisible–Herndon & Reston, International Cinematographers Guild, ITTA, Latino Victory Project, Leased Access Programmers Association, NTCA—The Rural Broadband

⁴ Sydney Ember and Michael J. de la Merced, "Sinclair Unveils Tribune Deal, Raising Worries It Will Be Too Powerful," *New York Times* (May 8, 2017).

⁵ See 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, MB Docket No. 17-179, *Public Notice*, DA 17-647 (rel. July 6, 2017).

⁶ See Michelle M. Carey, FCC Media Bureau Chief, *ex parte*, MB Docket No. 17-179 (rel. Jan. 11, 2018). Available at: https://ecfsapi.fcc.gov/file/01113103321641/DA-18-38A1_Rcd.pdf

Association, One America News Network, Parents Television Council, Public Knowledge, RIDE TV, the Sports Fans Coalition, TheBlaze, and UCC, OC Inc.⁷ In addition, labor unions;⁸ civil rights, consumer, and public interest organizations;⁹ cable, satellite TV, and rural broadband providers;¹⁰ independent news and entertainment programmers;¹¹ as well as many members of Congress,¹² state attorneys general,¹³ and members of the general public¹⁴ stand united in their opposition to this anti-competitive merger that would violate statutory ownership limits and reduce the diversity of news and information that forms the bedrock of our democracy.

II. New Sinclair would violate the 39 percent national audience reach limit mandated by Congress

The Commission has repeatedly stated and courts have repeatedly affirmed that structural rules to promote diversity in media ownership are essential to preserve the free flow of ideas and

⁷ For more information visit SaveLocalMedia.com. *See also*, Letter from 15 members of the Coalition to Save Local Media to Marlene H. Dortch, FCC Secretary, MB Docket No. 17-179 (Feb. 28, 2018).

⁸ *See* Reply Comments of Communications Workers of America, the National Association of Broadcast Employees and Technicians, and The NewsGuild, MB Docket No. 17-179 (filed Aug. 29, 2017). The International Cinematographers Guild also opposes the merger as a member of the Coalition to Save Local Media. *See also*, Letter from Lonnie R. Stephenson, International President of the International Brotherhood of Electrical Workers, to Michelle M. Carey, FCC Media Bureau Chief, MB Docket No. 17-179 (Aug. 7, 2017).

⁹ *See* Petition to Deny of Free Press, MB Docket No. 17-179 (filed Aug. 7, 2017); Petition to Deny of Public Knowledge, Common Cause, United Church of Christ, OC Inc., MB Docket No. 17-179 (filed Aug. 7, 2017); Comments of Consumers Union, MB Docket No. 17-179 (filed Nov. 2, 2017).

¹⁰ *See* Petition to Deny of American Cable Association, MB Docket No. 17-179 (filed Aug. 7, 2017); Petition to Dismiss or Deny of DISH Network, LLC, MB Docket No. 17-179 (filed Aug. 7, 2017); Petition to Deny of NTCA—The Rural Broadband Association, MB Docket No. 17-179 (filed Aug. 7, 2017).

¹¹ *See* Comments of Cinemai, Ride Television Network, AWE – A Wealth of Entertainment, MAVTV Motor Sports Network, One American News Network, TheBlaze, Eleven Sports Network, MB Docket No. 17-179 (Aug. 7, 2017).

¹² *See* Letter from Tony Cárdenas et al. to Ajit Pai, FCC Chairman, on the transaction between Sinclair and Tribune. (June 12, 2018). (US House Letter). *See also*, Letter from Hon. Bill Nelson et al. to Ajit Pai, FCC Chairman, (Apr. 26, 2018). (The Commission should “not approve any pending transfers of control of broadcast licenses as part of proposed mergers or acquisitions . . . until the agency has conducted and completed a holistic look at the state of broadcasting and the media and waited for a ruling from the US Court of Appeals for the DC Circuit.”)

¹³ *See* Reply Comments in Opposition to the Merger by the Attorneys General of Illinois, Maryland, Massachusetts, and Rhode Island, MB Docket No. 17-179 (filed Nov. 2, 2017). In addition, attorneys general from eight states called on the Commission to maintain strict national audience reach limits. The attorneys general argued that maintaining the UHF discount is “unjustified and arbitrary,” and cited the Sinclair-Tribune transaction as a threat to media diversity. *See* Revised Comments of the Attorneys General of the States of Illinois, California, Iowa, Maine, Massachusetts, Pennsylvania, Rhode Island, and Virginia, MB Docket 17-318 (filed Feb. 27, 2018).

¹⁴ Lorraine Mirabella, “Opponents of Sinclair Broadcast takeover of Tribune Media protest outside shareholders meeting,” *The Baltimore Sun* (June 7, 2018).

information that is vital to democracy.¹⁵ In 1985, the Commission determined that a national television audience reach limit was necessary to protect localism, competition, and viewpoint diversity. Eleven years later, in the Telecommunications Act of 1996, Congress directed the Commission to increase the national audience reach cap from 25 to 35 percent, and in 2004 directed the Commission to set the cap at 39 percent of national television households, where the limit remains today.¹⁶ Following the proposed merger, New Sinclair would be the largest broadcaster in the country, owning, operating, programming, and providing sales and advertising services for 223 television stations in 108 markets, including 39 of the top 50 markets. Sinclair's footprint would expand to reach 72 percent of US television households, violating the limit by 33 percent.¹⁷ Even with Sinclair's latest divestiture amendments, New Sinclair would own or operate 215 stations in 102 markets, reaching 59 percent of television households and violating the cap by 20 percent.¹⁸

In addition to exceeding the national audience reach limit, Sinclair has been a leader in

¹⁵ See *Sinclair Broadcast Group v. FCC*, 284 F.3d 148 (DC Circuit 2002) (“In Sinclair, the Court of Appeals noted that ownership limits encourage diversity in the ownership of broadcast stations, which can in turn encourage a diversity of viewpoints in the material presented over the airwaves. The court added that diversity of ownership as a means to achieving viewpoint diversity has been found to service a legitimate government interest...”); Notice of Proposed Rulemaking, *In the Matter of 2002 Biennial Regulatory Review-Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross- Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets*; MB Docket No. 02-277, MM Docket No. 01- 235, MM Docket No. 01-317, MM Docket No. 00-244, (adopted Sept. 12, 2002). See also *Turner Broadcasting System v. FCC*, 512 U.S. 622, 662 (1994) (“The Supreme Court has determined that ‘promoting the widespread dissemination of information from a multiplicity of sources’ is a government interest that is not only important, but is of the ‘highest order,’ Notice, 11 (quotation marks omitted); *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets*, 16 FCC Rcd 19861, 19877 (2001) (“Commission policy presumes that multiple owners are more likely to provide ‘divergent viewpoints on controversial issues,’ which the Commission has stated is essential to democracy.”).

¹⁶ See *Amendment of Section 73.35555 of the Commission's Rules relating to Multiple Ownership of AM, FM, and Television Broadcast Stations*, Memorandum Opinion and Order, 100 FCC 2d 74, 87-92 (1985); Telecommunications Act of 1996, Pub. L. No. 104-04 § 202(c)(1), 110 Stat. 56, 111 (1996); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199 § 629, 118 Stat. 3, 99-100 (2004); 47 CFR § 73.3555(e)(1): “No license for a commercial television broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors having a cognizable interest in television stations which have an aggregate national audience reach exceeding thirty-nine (39) percent.”

¹⁷ Sinclair-Tribune Application.

¹⁸ See *Sinclair Broadcasting Group, Amendment to Comprehensive Exhibit* (Apr. 24, 2018). Fifty-nine percent is a generous calculation, since, as we discuss below, the proposed divestiture will still leave Sinclair with effective control over at least six stations reaching 6.9 million households.

joint service agreements (JSAs) and shared service agreements (SSAs), also known as sidecar agreements. In essence, these agreements are consolidation by another name. As Free Press notes, JSAs and SSAs “effectively subvert public interest-based media ownership limitations, allowing the larger broadcaster in such agreements to exert significant control over stations while a shell or sidecar corporation maintains nominal ownership.”¹⁹ The practical result of JSAs and SSAs is that there are fewer stations producing news, fewer TV stations competing to present a diversity of viewpoints, fewer broadcast station employees, fewer journalists, less time devoted to local news coverage, and less competition to constrain advertising rates. In 2015, Sinclair had 44 sharing agreements across the 162 broadcast stations it owns. If the merger is approved, Sinclair would have a controlled duopoly or sidecar arrangement in 63 television markets, or almost 60 percent of the merged company’s total markets.

The Sinclair-Tribune merger relies on the UHF discount to avoid the 39 percent national audience reach limit mandated by Congress. However, the technical disparity that the discount addressed no longer exists and the discount’s recent reinstatement by the Commission is under court review.²⁰ Sinclair’s extensive use of SSAs and JSAs to skirt media ownership limits coupled with its post-merger scale in violation of the national audience reach limit present a significant structural threat to viewpoint diversity and competition and are reason enough to deny the merger. The threats to localism, viewpoint diversity, and jobs compound the merger-related public interest harms.

III. The Sinclair-Tribune merger would reduce viewpoint diversity and localism

The Supreme Court has affirmed that “assuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values

¹⁹ See Petition to Deny of Free Press, MB Docket 17-179 (Aug. 7, 2017), p. 13.

²⁰ See *Free Press et al. v. Federal Communications Commission et al.*, case number 17-1129, in the United States Court of Appeals for the District of Columbia Circuit.

central to the First Amendment.”²¹ The Sinclair-Tribune merger would reduce viewpoint diversity and localism, especially for marginalized groups like communities of color and low-income households, which rely heavily on local news broadcasts.

Despite the growth of the Internet, television remains the dominant screen for news consumption, particularly local news. About fifty-seven percent of Americans report that they often watch TV to get their news²² and about 23 million American households watch the local evening news.²³ In addition, people of color view broadcast television at a disproportionate rate. Communities of color represent 44 percent of all broadcast-only homes in 2012, but only represented 37 percent of the population.²⁴ According to the National Association of Broadcasters, more than 7.7 million African-Americans, 14.6 million Hispanics, and 2.6 million Asian American and Pacific Islander households rely on over-the-air broadcast TV.²⁵ Since these communities rely disproportionately on broadcast television, they will be disproportionately impacted by the reduction in localism and viewpoint diversity that would result from the massive consolidation implicated by the proposed transaction.

Sinclair’s corporate editorial policy that requires its stations to air “must-run” segments (also called “central casting”) compounds the serious merger-related harms to localism and viewpoint diversity. Sinclair’s “must-runs” substitute locally produced broadcasts with centrally originated programming, undercutting localism by forcing stations to cover particular issues in a

²¹ *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 663 (1994).

²² Amy Mitchell, Jeffrey Gottfried, Michael Barthel, & Elisha Shearer, *The Modern News Consumer: News attitudes and practices in the digital era*, Pew Research Center (July 2016). Available at: <http://www.journalism.org/2016/07/07/pathways-to-news/>

²³ Katerina Eva Matsa, *State of the News Media 2016*, Pew Research Center (June 2016). Available at: <https://assets.pewresearch.org/wp-content/uploads/sites/13/2016/06/30143308/state-of-the-news-media-report-2016-final.pdf>

²⁴ See National Association of Broadcasters, *Over-the-air TV Viewership Soars to 54 Million Americans* (June 18, 2012).

²⁵ The National Association of Broadcasters, “Broadcast Television and Radio in African-American Communities” (Jan. 2017); “Broadcast Television and Radio in Hispanic Communities” (Jan. 2017); “Broadcast Television and Radio in Asian-American Communities” (Jan. 2017). See also, Comments of The Leadership Conference on Civil and Human Rights, MB Docket No. 17-318 (Mar. 19, 2018).

particular way with a particular viewpoint regardless of local station decisions.²⁶ This is longstanding practice at Sinclair,²⁷ which it claims to use to cut costs.²⁸ And while this practice results in less original news reporting and research, leading to job cuts, there are additional dangers of these must-run segments. Forcing a particular viewpoint across stations – as opposed to letting local stations compete for stories and elevate issues important to local communities – results in widespread uniformity of thought. When uniformity of thought is used to push a political narrative, it becomes propaganda. This danger was demonstrated by a video showing news anchors from numerous local news networks owned by Sinclair reading talking points that support one political party’s narrative about the media.²⁹ “This is a danger to our democracy,” anchors from across the country said in unison. They are right.

IV. The Sinclair-Tribune merger would result in significant job loss

Sinclair has a long history of scaling back quality news and cutting jobs. When Sinclair buys a station, cutting local news operations is not far behind. To cite a few examples:

- **KOMO in Seattle, WA**, Sinclair cut the station’s investigative reporting team, resulting in a revolt against Sinclair’s management practices.³⁰
- **WNWO in Toledo, OH**, Sinclair moved the news operation out of the state, producing news out of WSBT in South Bend, IN.³¹
- **WUHF in Rochester, NY**, Sinclair fired the entire news, weather, and sports anchor teams, and half of the remaining news staff.³²
- **WXLV in Greensboro, NC**, Sinclair fired the entire staff of 35.³³

²⁶ Jim Rutenberg with Micheline Maynard, “TV News That Looks Local, Even if It’s Not,” *The New York Times* (June 2, 2003). Available at: <http://www.nytimes.com/2003/06/02/business/tv-news-that-looks-local-even-if-it-s-not.html>; Jeffrey Layne Blevins, “Sinclair’s proposed purchase of Tribune Media is bad news for Des Moines, AZ Central (June 29, 2017). Available at: <https://www.azcentral.com/story/opinion/columnists/2017/06/29/sinclairs-proposed-purchase-tribune-media-bad-news-des-moines/439884001/>

²⁷ NABET-CWA staff who represent Sinclair bargaining units report that Sinclair management requires local stations to run editorials generated from corporate headquarters in Baltimore, MD, and has done so for the last 18 years.

²⁸ See Comments of Sinclair Broadcast Group, Broadcast Localism, MB Docket No. 04-233 (filed Apr. 28, 2008).

²⁹ Deadspin, “Sinclair’s Soldiers in Trump’s War on Media,” (Apr. 2, 2018). Available on the website’s YouTube channel: <https://www.youtube.com/watch?v=fHfgU8oMSo>

³⁰ Rachel Lerman, “KOMO Cuts Positions in Newsroom,” *Seattle Times* (Jan. 5, 2017).

³¹ Scott Jones, Sinclair Cuts Back Ohio Newscast, FTVLive (Feb, 20, 2017).

³² Free Press, *Sinclair and the Public Airwaves – A History of Abuse* (Oct. 11, 2004), p. 2.

³³ *Ibid.*

- **KOKH in Oklahoma City, OK**, Sinclair fired the sports and weather departments, one photo journalist, one reporter, and six other staff.³⁴
- **KDNL in St. Louis, MO**, Sinclair shut down the news operation, making it the only top-four station in a top-25 market without a local newscast.³⁵
- **WLFL in Raleigh, NC**, Sinclair fired approximately one-third of the news staff.³⁶

After Sinclair purchased Washington, DC's WJLA in 2013, it decimated the news operation.³⁷

Sinclair fired several on-air talent, including entertainment reporter Arch Campbell, sports anchor Leon Harris, and 44-year veteran and one of the first female African-American anchors Maureen Bunyan, along with many behind-the-scenes news producers and photographers. Gordon Peterson, a long-time news anchor, left the station on principle along with the news director. Over the past decade, Sinclair has reduced workers per station by more than 8 percent.³⁸ In 1Q2007, Sinclair employed, on average, 48 workers per station. As of Dec. 2016, Sinclair has approx. 8,400 employees working at 191 stations, a ratio of 44 workers per station.

As discussed above, Sinclair has been a leader in joint service and shared service agreements, which destroy jobs while resulting in fewer stations producing news, less time devoted to local news, and fewer broadcast station employees and journalists.³⁹ The primary cost-saving in these models is the reduction of employees through the elimination of locally originated programming at one or more of the affected stations by duplicating (or triplicating) the same programming. As Professor Danilo Yanich concluded in a study of local TV news and joint and shared service agreements: "These arrangements have invariably resulted in a loss of jobs in at

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Paul Farhi, "Here's what happened the last time Sinclair bought a big-city station," *Washington Post* (May 8, 2017).

³⁸ The job-cutting trend extends beyond the last ten years. *See* Free Press, *ex parte*, MB Docket No. 09-182 (Mar. 7, 2014). ("One only need look at Sinclair's employment levels over the past decade to see that the company has a long track record of laying off workers and reducing the number of staff at each of its stations. In early 2001, Sinclair employed 3,500 workers at its 63 owned or operated stations, or an average of 55.6 jobs per station. By the end of February [2014], that number had declined to 43 workers per station.")

³⁹ *See* Comments of Communications Workers of America, The Newspaper Guild, and the National Association of Broadcast Employees and Technicians, MB Docket Nos. 14-50, 09-182, 07-294, 04-256 (filed Aug. 5 2014).

least one of the stations involved in the agreement.”⁴⁰ Following the merger – including so-called divestitures – the new Sinclair will have duopolies in 37 markets, triopolies in 19 markets, and four or more stations in six markets across the country, with the result that these job-eliminating trends are likely to continue.

V. Sinclair’s latest divestiture proposal does not resolve the merger’s public interest or competitive harms

Sinclair’s most recent divestiture proposal – its fifth related to this transaction – contains significant problems that strain the meaning of the word “divestiture.” While Sinclair claims it will sell 23 stations, a careful look at the proposal reveals that the company will maintain control over at least six of those stations. Sinclair proposes selling six stations to companies with close ties to Sinclair. In four of these six locations, Sinclair will enter into joint service agreements and shared services agreements, effectively allowing Sinclair to retain control of these so-called divested stations.

- **WGN-TV in Chicago**, the third largest media market in the country reaching 3.3 million households, will be sold to Steven B. Fader, a business partner of David Smith, Sinclair’s executive chairman.⁴¹ Sinclair plans to enter into sidecar agreements with WGN, effectively allowing Sinclair to retain control of this station.
- **KUNS in Seattle, KMYU in Salt Lake City, and KAUT in Oklahoma City** will be sold to Howard Stirk Holdings (HSH), which is owned by Armstrong Williams, a friend of Sinclair’s owners.⁴² Sinclair plans to enter into sidecar agreements with each of these stations, effectively allowing Sinclair to retain control. Seattle, WA is the twelfth largest media market in the country, reaching 1.9 million households. Salt Lake City, UT is the thirtieth largest media market in the country, reaching 950,000 households. And Oklahoma City, OK is the forty-first largest media market in the country, reaching 705,000 households.

⁴⁰ Danilo Yanich, *ex parte*, “Local TV News and Service Agreements: A Critical Look,” Docket No. 09-182 (Oct. 24, 2011), p. 102.

⁴¹ Joe Flint and John McKinnon, “Sinclair Faces Federal Resistance Over Proposed Purchase of Tribune Media,” *Wall Street Journal* (Apr. 10, 2018). Available at: <https://www.wsj.com/articles/sinclair-faces-fcc-resistance-over-tribune-purchase-1523387359>; Holden Willen, “Sinclair CEO Expects Decisions Soon on Long-Awaited Tribune Acquisition,” *Baltimore Business Journal*, (June 7, 2018). Available at: <https://www.bizjournals.com/baltimore/news/2018/06/07/sinclair-ceo-expects-decision-soon-on-long-awaited.html>

⁴² Jason Schwartz, “Armstrong Williams Got ‘Sweetheart’ Deal from Sinclair,” *Politico* (June 13, 2018). Available at: <https://www.politico.com/story/2018/06/13/sinclair-broadcasting-armstrong-williams-642997>

Moreover, Sinclair will sell HSH these three stations for \$4.9 million, a fraction of the \$50-60 million an industry analyst expected.⁴³ The “sweetheart” deal should raise serious concerns about whether this divestiture is a legitimate, arms-length transaction.

- **KDAF in Dallas** and **KIAH in Houston** will be sold to Cunningham Broadcasting, which is owned and controlled by Michael Anderson, an investment banker with close ties to Sinclair’s owners. Cunningham currently owns, and Sinclair operates, KTXD in Dallas. Acquiring KDAF will give Cunningham Broadcasting a duopoly in Dallas, TX.

In 2014, the Commission required Sinclair, as a condition of its purchase of eight Allbritton Communications’ stations, to eliminate all sidecar agreements in overlapping markets.⁴⁴ In reviewing the Sinclair-Tribune transaction, the Commission should follow this precedent and see these sidecar agreements as what they are: a way to maintain control and skirt divestiture rules.⁴⁵

Moreover, Sinclair has a history of evading Commission rules with its sidecar agreements. Two years ago, the Commission fined Sinclair more than \$9 million for violating Section 325 of the Communications Act, which prohibits broadcast television stations from “failing to negotiate in good faith.”⁴⁶ In the course of its investigation, the Commission’s Media Bureau found that “Sinclair represented numerous Non-Sinclair Stations in retransmission consent negotiations with MVPDs (multi-channel video programming distributors)” and that “Sinclair negotiated retransmission consent on behalf of, or coordinated negotiations with, a total of 36 Non-Sinclair Stations with which it has JSAs, LMAs (local marketing agreements), or SSAs, concurrently with its negotiations for retransmission consent of at least one Sinclair Station in the same local market.”⁴⁷ Sinclair’s past violations of the Commission’s rules on joint retransmission consent negotiations provide further evidence that Sinclair’s post-divestiture sidecar agreements with

⁴³ *Ibid.*

⁴⁴ See, Federal Communications Commission, *Memorandum Opinion and Order*, MB Docket No. 13-203 (rel. July 24, 2014).

⁴⁵ Keach Hagey, “Sinclair Draws Scrutiny Over Growth Tactic,” *Wall Street Journal* (Oct. 20, 2013).

⁴⁶ 47 USC § 325(b)(2)(C).

⁴⁷ See Federal Communications Commission, *Order*, Acct No. MB-201641420017, FRNL 0004331096 (rel. July 29, 2016), p. 5.

WGN in Chicago, KUNS in Seattle, KMYU in Salt Lake City, and KAUT in Oklahoma are not divestitures at all, but are designed to ensure that Sinclair retains effective control over these stations reaching 6.9 million households, giving New Sinclair greater leverage in retransmission consent negotiations and the ability to set anti-competitive advertising prices.

In summary, the Commission should reject Sinclair's divestiture proposal because it does not resolve the public interest and anti-competitive harms resulting from the proposed transaction. Even the most generous post-divestiture calculation that includes the six "non-divested" stations would still give the New Sinclair a 59 percent national audience reach, in clear violation of the 39 percent national audience reach limit mandated by Congress. The Commission should reject the divestiture plan, and by extension, the Sinclair-Tribune transaction applications.

VI. The Commission should not rule on the Sinclair-Tribune merger before the Court of the DC Circuit rules on the Commission's reinstatement of the UHF discount

The Sinclair-Tribune merger relies on the UHF discount to avoid the 39 percent national audience reach limit mandated by Congress. The UHF discount, adopted in 1984, is a technically obsolete method of counting audience reach that is currently under court review. The discount was intended to account for technical differences between UHF and VHF stations. It allowed TV broadcasters to count UHF stations at 50 percent when calculating the broadcast owners' ability to reach television households across the country. But today, after the digital TV transition, the technical disparity that the discount addressed no longer exists and the Commission rightfully eliminated the discount in 2016.⁴⁸ However, in 2017, the Commission reinstated the UHF discount.

Public interest groups challenged the Commission's reinstatement of the UHF discount at

⁴⁸ See Federal Communications Commission, *Report and Order*, MB Docket No. 13-236 (rel. Sept. 7, 2016).

the US Court of Appeals for the DC Circuit.⁴⁹ At the center of the case is whether the Commission under Chairman Pai acted arbitrarily when it reversed an earlier Commission decision to eliminate the discount. A judgement is expected in August, after this pleading cycle ends.

The Commission should not rule on the Sinclair-Tribune merger until the DC Circuit rules on the public interest groups' challenge of the UHF discount reinstatement. From a practical standpoint, if the Commission were to rule on the merger before the court's ruling and if the court vacates the Commission's reinstatement of the UHF discount, the merged company will, even with the current divestiture proposal, far exceed the 39 percent audience reach limit mandated by Congress and it will be difficult to un-do the transaction to comply with the law. Moreover, due process is important. As more than 40 US representatives wrote in a recent letter to Chairman Pai on this matter: "Confidence in the courts ensures confidence in our laws and institutions. Undermining a decision-making process by the court harms public confidence in the FCC's ability to make decisions that are consistent with public interest and current law."⁵⁰ CWA concurs. As both a practical and procedural matter, the Commission should not rule on the Sinclair-Tribune merger before the DC Circuit rules on the Commission's reinstatement of the UHF discount.

VII. Conclusion

Over the past year, across five divestiture proposals, Applicants fail to demonstrate that any purported merger-related benefits exceed the substantial public interest harms. Even with the totally inadequate proposed divestitures, the Sinclair-Tribune merger would violate the 39 percent national audience reach limit mandated by Congress. It would reduce viewpoint diversity, harm localism, diminish competition in the industry, and result in significant job loss. Sinclair's most

⁴⁹ See *Free Press et al. v. Federal Communications Commission et al.*, case number 17-1129, in the United States Court of Appeals for the District of Columbia Circuit.

⁵⁰ See US House Letter, p.2.

recent divestiture proposal does not resolve merger-related harms. Indeed, the proposal strains the meaning of the word “divestiture.” Although Sinclair claims it will sell 23 stations, it will in fact maintain effective control over at least six of those stations through ownership relationships and sidecar agreements with four of those stations. Sinclair’s past history demonstrates that Sinclair uses sidecar agreements to leverage anti-competitive pricing in retransmission negotiations. And while it would be premature for the Commission to rule on the proposed transaction before the DC Circuit issues a decision on the UHF discount, the Commission should deny the Sinclair-Tribune merger.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian Thorn". The signature is fluid and cursive, with a large initial "B" and a long, sweeping tail.

Brian Thorn
Communications Workers of America

June 20, 2018