Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY OF PUBLIC KNOWLEDGE

I. INTRODUCTION AND SUMMARY

Public Knowledge files this Reply in the above-captioned proceeding in response to Sinclair Broadcast Group, Inc.'s ("Sinclair") and Tribune Media Company's ("Tribune") (collectively, "Applicants") Consolidated Opposition To Petitions To Deny ("Opposition").[1] In their opposition to the consumer groups, independent programmers, competitive broadband carriers, and cable and satellite operators who petitioned the Federal Communications Commission ("FCC" or "the Commission") to deny this transaction, the Applicants largely repeat their initial arguments while casting aspersions on the motivations of petitioners who pose

[1] *See* Applicants' Consolidated Opposition To Petitions To Deny, MB Docket No. 17-179 (filed Aug. 22, 2017) ("Sinclair-Tribune Opposition").

legitimate public interest harms that would result from this merger. Neither the Applicants' initial application[2] nor their Opposition address these public interest harms.

The Applicants have not met their burden of proof to demonstrate that the transaction would serve the "public interest, convenience, and necessity."[3] Instead, they have further demonstrated the public interest harms that would result from the merger. The Applicants brand themselves as a savior of local broadcasting by touting their plan to become a national network. Sinclair's plan to become a national network, along with its centralized news model, directly contradicts the Commission's public interest mandate to promote broadcast localism. The Applicants also misconstrue the retransmission consent regime and admit they would maximize their post-transaction leverage to charge higher fees, ultimately harming consumers. Finally, the record demonstrates the proposed transaction would delay the repack of the 600 MHz band during the ATSC 3.0 transition. The Applicants have not demonstrated the merger creates any public interest benefits, nor have they rebutted the clear public interest harms outlined by Public Knowledge and several other petitioners. The Commission should reject their application.

II. THE RECORD DEMONSTRATES THE PROPOSED TRANSACTION WOULD HARM BROADCAST LOCALISM

A. The Applicants Confuse Their Desire To Be A National Network As A Commitment To Broadcast Localism.

The Applicants contend that the only way to save local broadcasting is through consolidation – essentially preserving the façade of local broadcasting while eliminating local

[2] Applications of Tribune Media Company and Sinclair Broadcast Group for Consent to Transfer Control of Licenses and Authorizations, Comprehensive Exhibit, at 2-4 (filed July 19, 2017) ("Sinclair-Tribune Application").
[3] 47 U.S.C. § 310(d).

ownership and local news coverage.[4] Specifically, the Applicants argue that the transaction will allow Sinclair to compete with over the top content distributors and cable operators for national programming by creating efficiencies and increasing its geographic reach.[5] The Applicants also tout Sinclair's Washington D.C. News Bureau as a public interest benefit that will provide an alternative viewpoint on the news compared to ABC, NBC, and CBS.[6] These assertions make it quite evident Sinclair wants to be a national network. However, Sinclair's plan is inconsistent with the Commission's public interest mandate to promote broadcast localism. The Commission has long established that broadcasters must serve the needs and interests of the communities to which they are licensed.[7] In doing so, the Commission has adopted rules such as the network-affiliate rules to give local broadcasters more control over programming and ensure communities have access to a critical source of local news and information.[8] The Applicants' touted public interest benefits of increased national news and programming do nothing to promote broadcast localism. As evidenced in the record and discussed in the next section, Sinclair's history of replacing local programming in favor of central casting and 'must-run' segments are in direct contradiction of broadcast localism.

[4] *See* Sinclair-Tribune Opposition at 5-7.
[5] *See id*.
[6] *See id.* at 10.
[7] *See* Broadcasting and Localism: FCC Consumer Facts, https://transition.fcc.gov/localism/Localism_Fact_Sheet.pdf.
[8] *See, e.g.,* 47 C.F.R. § 73.1125(a)(1), (e).

B. Sinclair's History of Central-Casting Is Well-Documented And Goes Against The Interests Of Broadcast Localism.

Several petitioners cite to Sinclair's practices of central casting and forcing broadcast affiliates to air must-run segments as direct evidence of their efforts to undermine localism.[9] These practices not only substitute local programming for centrally originated programming but also appear intended to mislead viewers into believing the segments are locally produced content.[10] Sinclair seeks to minimize the evidence in the record by claiming it only forces a small number of stations to air this centrally originated programing disguised as local programming.[11] Nevertheless, Sinclair does not deny it engages in these practices. The Commission should treat any practice of central casting as an attempt to disguise a national perspective with a trusted local voice.

Central casting gets to the core of what the Commission's broadcast localism principles seek to prevent. Indeed, the FCC's chain broadcast rules prohibit two or more connected stations from simultaneously running the same program.[12] If the merger is approved, Sinclair could potentially run "pseudo-networks" – controlling the local programming of hundreds of broadcast stations, ultimately undermining the value consumers are supposed to derive from their local broadcast stations. The Commission should take heed that Sinclair makes no promises to eliminate these practices should the Commission approve the transaction.

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[9] *See* Petition to Dismiss or Deny of DISH Network LLC, MB Docket No. 17-179, at 47-56 (filed Aug. 7, 2017) ("Dish Petition"); Petition to Deny of Free Press, MB Docket No. 17-179, at 24-26 (filed Aug. 7, 2017) ("Free Press Petition"); Petition to Deny of Competitive Carriers Association, MB Docket No. 17-179, at 27-29.
[10] *See* Dish Petition at 7; *see also* Free Press Petition at 24.
[11] *See* Sinclair-Tribune Opposition at 16.
[12] See 47 U.S.C. § 303(i); see also 47 U.S.C. § 153(10).

III. THE APPLICANTS MISCONSTRUE THE RETRANSMISSION CONSENT REGIME AND ADMIT THE TRANSACTION WOULD GIVE SINCLAIR INCREASED BARGAINING POWER

A. The Retransmission Consent Regime Is A Congressionally-Mandated Regime Intended To Serve The Public Interest.

The Applicants contend that retransmission consent is not a transaction-specific issue because the regime is based on the free market.[13] Specifically, the Applicants reason that the free market dictates the rates cable providers pay for broadcast programming, and the Commission has no authority to intervene.[14] This rationale misconstrues the public interest purpose and intent behind the retransmission consent regime. The retransmission consent marketplace was originally created to protect the rights of local broadcasters, who often lacked leverage against monopoly cable companies.[15] Because communities only had a single cable provider for multichannel video services, Congress recognized "the importance of local broadcast stations as providers of local news and public affairs programming."[16] Without a framework in place, Congress was concerned communities would lose out on programming that specifically addressed their interests and concerns.[17] Therefore, the ultimate goal of retransmission consent was to enhance the public interest by ensuring consumers still had access to local programming.

In addition to the Congressional purpose and intent behind retransmission content, Section 325 of the Communications Act mandates the Commission ensure the basic cable rates consumers pay are not affected by retransmission consent negotiations between cable providers

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[13] *See* Sinclair-Tribune Opposition at 27-28.
[14] *See id.* at 27-28, 36-37.
[15] *See Implementation of Section 103 of the STELA Reauthorization Act of 2014,* Notice of Proposed Rulemaking, 30 FCC Rcd 10327, 10238 ¶ 2 (2015).
[16] *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004* at 5, ¶ 8 (Sept. 5, 2005).
[17] *See id.*

and broadcasters.[18] The Commission also has rulemaking authority to ensure all entities negotiate in good faith,[19] which it has exercised in the past.[20] The statutory framework was designed for the FCC to make certain the retransmission consent regime served the public interest; however, as discussed in the next section, its current rules do not reflect the problems with today's marketplace.

B. The Applicants Falsely Claim The Current Retransmission Consent Regime Serves The Public Interest.

Despite claiming that retransmission consent is not a transaction-specific issue, the Applicants go on to attest that the current regime serves the public interest.[21] The Applicants contend, that the market is healthy because local broadcasters can use revenues to maintain and expand their programming.[22] However, the Applicants largely ignore the myriad of problems in the current regime caused by large broadcasters that use their leverage to demand higher fees from MVPDs.[23] Programming blackouts that result from failed negotiations between broadcasters and cable operators are one such problem. The Applicants attempt to minimize prior programming blackouts caused by Sinclair and Tribune by citing to their rarity and short durations.[24] The Applicants nonchalant attitude toward programming blackouts illustrates their inability to understand how programming blackouts harm the public interest and should give the Commission cause for concern that the transaction would increase Sinclair's leverage to demand higher retransmission fees, potentially causing addtional programming blackouts. As discussed

[18] *See* 47 U.S.C. § 325(b)(3)(A).
[19] *See* 47 U.S.C. § 325(b)(3)(C).
[20] *See, e.g., Amendment of the Commission's Rules Related To Retransmission Consent*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 3351 (2014).
[21] *See* Sinclair-Tribune Opposition at 28.
[22] *See id*.
[23] *See* Public Knowledge et al Petition at 7-8.
[24] *See* Sinclair-Tribune Opposition at 38.

below, Sinclair essentially concedes the transaction would allow it to raise retransmission fees to the detriment of the public interest.

C. The Applicants Admit The Transaction Would Allow Sinclair To Raise Retransmission Consent Rates

The Applicants state that the current retransmission consent market allows parties to respond to their private interests and negotiate accordingly.[25] Further, the Applicants explain that the consolidation of several cable operators has allowed MVPDs to demand lower retransmission fees.[26] The Commission should treat this rationale as a direct admission that Sinclair would use its newfound bargaining leverage to demand higher rates. If Sinclair believes, the market allows it to attain the best deal for itself by maximizing its bargaining leverage, the Commission must apply its public interest mandate to determine what effect a post-transaction Sinclair will have on consumers when it comes to potentially higher cable rates or programming blackouts.

IV. THE RECORD DEMONSTRATES THE PROPOSED TRANSACTION WOULD DELAY FUTURE REPACK UNDERMINING EFFORTS TO CLOSE THE DIGITAL DIVIDE

The Applicants attest that Sinclair has no desire to delay the repack of the 600 MHz band. In fact, the Applicants claim that Sinclair has urged the Commission to adopt a plan that leads to the shortest repacking period.[27] The Applicants' sudden change of heart contradicts Sinclair's history of repeatedly urging the FCC to delay the repack in favor of ATSC 3.0 deployment.

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[25] *See id*. at 31.
[26] *See id*.
[27] *Id.* at 42.

Indeed, Sinclair has consistently claimed the Commission's 39-month timeline for repack is too burdensome and should be extended.[28]

If Sinclair's own incentives and prior advocacy is not enough, the record demonstrates the proposed transaction would give Sinclair added leverage to delay the repack.[29] The sheer size of the merger will allow Sinclair to single handedly delay the repack timeline. Allowing Sinclair to control over 200 broadcast stations that are being repacked would lead to delays if the company refused to comply. Indeed, the repacking process "must take into account the complex interference relationships among television stations in adjacent markets."[30] Therefore, if one station decides not to comply, the entire repacking process can be jeopardized.

Sinclair argues that next-generation television, using the ATSC 3.0 standard, promises a wealth of new consumer-friendly features.[31] The record makes clear Sinclair has consistently touted the benefits of ATSC, indicating it will use its leverage to promote ATSC 3.0 deployment.[32] However, ATSC should not come at the expense of delaying the repacking

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[28] *See* Comments of Sinclair Broadcast Group, Inc., GN Docket NO. 12-268, at 7 (filed Jan. 25, 2013) (claiming that a rush to complete the repack would "squander the opportunities for broadcasters to deploy, at their option and to the benefit of the American public, new technology at the time of repacking."); Comments of Sinclair Broadcast Group, MB Docket No. 16-306, at 2 (filed Oct. 31, 2016) (claiming that the Commission is "perpetuat[ing] the fiction that all stations can be repacked within 39 months…."); Reply Comments of Sinclair Broadcast Group, MB Docket No. 16-306, GN Docket No. 12-268, at 1-2 (filed Nov. 15, 2016) (stating that the Commission's repack timeline "assumes conditions that are better than ideal, including the flawless performance of all stakeholders….").

[29] *See* Comments of T-Mobile USA Inc., MB Docket No. 17-179, at 8-13 (filed Aug. 7, 2017) ("T-Mobile Comments); Petition to Deny of Competitive Carriers Association, MB Docket No. 17-179, at 8-17 (filed Aug. 7, 2017) ("CCA Petition").

[30] T-Mobile Comments at 9

[31] *See Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Notice of Proposed Rulemaking, 32 FCC 1670, 1702, ¶ 3 (2017).

[32] *See* T-Mobile Comments at 5-6 (outlining Sinclair's substantial investment in ATSC).

process. Any delay in the repacking schedule would interfere with deployment schedules in the 600 MHz spectrum band and postpone valuable connectivity benefits to consumers.

V. CONCLUSION

For the foregoing reasons, Public Knowledge respectfully requests that the Commission deny the Applicant's proposed transaction. The Applicants failed to meet their affirmative burden to demonstrate the contemplated merger will serve the public interest.

Respectfully Submitted,

/s/ Yosef Getachew
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August 29, 2017

PARTY

Public Knowledge is a nonprofit public interest organizaiton that promotes freedom of expression, an open internet, and access to affordable communictions tools and creative works. Working to shape policy on behalf of the public interest, Public Knowledge frequenlty advocates for pro-competitive media policies before the FCC.

DECLARATION of Public Knowledge

I, Yosef Getachew, declare under penalty of perjury that:

1. I have read the foregoing Reply.

2. I am a Policy Fellow at Public Knowledge, an advocacy organization with members, including viewers of broadcast stations owned by Sinclair and Tribune, who in my best knowledge and belief, will be adversely affected if the Commission approves the merger. Public Knowledge's members who rely on mobile broadband will also be adversely affected if the Commission approves the merger.

3. Public Knowledge members will have fewer diverse and independent programming choices and pay higher cable prices as a result of the proposed transaction. Public Knowledge members will also be harmed from the delay in mobile broadband deployment.

4. In my best knowledge and belief, Public Knowledge members will be directly and adversely affected if the Commission allows the proposed merger of Sinclair and Tribune to proceed.

5. The allegations of fact contained in the Reply are true to the bet of my personal knowledge and belief.

Executed August 29, 2017

/s/ Yosef Getachew

Yosef Getachew
Policy Fellow
Public Knowledge

CERTIFICATE OF SERVICE

I, Yosef Getachew, hereby certify that on the 29th day of August, 2017, I caused a true and correct courtesy copy of the foregoing Reply via email to the following:

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