



Congress of the United States
House of Representatives
Washington, DC 20515-0529

The Honorable Makan Delrahim
Assistant Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

March 22, 2018

Dear Mr. Delrahim,

We write to express our strong concerns with the proposed merger between Sinclair Broadcast Corporation and Tribune Media¹. We believe the merger should be rejected outright. If the merger is approved, it will have substantial negative competitive consequences nationwide, resulting in higher consumer prices and lower quality and less local content. In any case, a thorough and impartial antitrust review by the Department of Justice is particularly important given the significant questions that remain after Sinclair's latest filings with the Federal Communications Commission ("FCC"),² as well as questionable actions by FCC Chairman Ajit Pai that prompted an investigation by the FCC Inspector General.

In addition, according to the Department's own Policy Guide to Merger Remedies, structural remedies require divestiture of all assets necessary for the purchaser to be an effective, long term-competitor. Moreover, among its safeguards to protect divestiture remedies, the Department states that: 1) the parties must take all steps necessary to ensure that the assets to be divested are maintained as separate, distinct, and saleable, 2) the purchaser must have the incentive to use the divestiture assets to compete in the relevant market(s), and 3) seller financing of divestment, whether in the form of debt or equity, "raises a number of potential problems."³ We urge the Department to stand firm on any required station divestitures, given its prohibition of the use of "option and services agreements" to evade such divestitures in prior transactions.

The Sinclair-Tribune proposed transaction, as originally proposed, would create an industry behemoth, reaching 72% of U.S. households, operating 233 local broadcast stations (80

¹ Applications and Comprehensive Exhibit of Shareholders of Tribune Media Company, Transferor, to Sinclair Broadcast Group, Inc., Transferee, (June 26, 2017), as amended on February 21, and March 7, 2018.

² See March 2018 Amendment to Amendment to Comprehensive Exhibit ("Sinclair Second Amendment" or "Second Amendment").

³ U.S. Department of Justice, Antitrust Division *Antitrust Division Policy Guide to Merger Remedies* (June, 2011), at 6-12, 32, <https://www.justice.gov/atr/merger-enforcement>.

more than its nearest competitor), and broadcasting in 108 local markets (including key markets like New York, Los Angeles, Chicago, Philadelphia, and Dallas).

In a claimed attempt to avoid violations of the FCC's national and local ownership rules, Sinclair recently filed a Second Amendment with the FCC seeking to place 18 stations in 10 markets into a divestiture trust⁴. However, as detailed further below, the arrangement proposed in the Second Amendment is a sham. Not only does Sinclair state that it may not actually divest these stations, but Sinclair also makes plain that it aims to use "option and services agreements" to manage and potentially repurchase some of these stations. If Sinclair is allowed to proceed with its plan, it will have succeeded in effectively holding on to stations in the original transaction without remedying the fundamental competition concerns with the merger.⁵

Sinclair has a storied history of skirting government rules through these types of sidecar arrangements. For example, just two years ago, Sinclair was fined almost \$10 million for using agreements to violate Congress' prohibition on joint retransmission consent negotiations.⁶ This time, it is trying to evade the local and national ownership rules.

In its Second Amendment, Sinclair states that certain stations would be placed into a divestiture trust. However, a closer reading of the Second Amendment makes clear that Sinclair intends to continue managing most of these stations even after they are "divested." For example, two major Tribune stations Sinclair purportedly plans to sell to third parties – WGN-TV in Chicago and WPIX-TV in New York – would be sold, according to reports, to a Maryland executive whose car dealership is controlled by Sinclair Executive Chairman David Smith, and to Mr. Smith's mother's estate, respectively.⁷ Furthermore, Sinclair explains that it would have the option to buy back these stations at a later date, considerably eroding the significance of this supposed divestiture proposal.⁸

Sinclair is aiming to pursue "option and services agreement" with stations in three duopoly markets – Seattle/Tacoma, Oklahoma City, and Greensboro -- to skirt the local ownership rules.⁹ And in two markets – Indianapolis and Greensboro – Sinclair asks the Commission to allow it to own two top-four ranked stations.¹⁰ When the dust clears on these various arrangements, Sinclair will continue to own or manage a number of the stations included in its list of divestiture stations. The Department has specifically barred these types of sham divestitures in a number of recent consent decrees involving merging broadcast entities.¹¹

⁴ Second Amendment, Appendix I, at 30.

⁵ For a summary of major antitrust concerns with the Sinclair-Tribune merger, see Letter from Representative Cicilline to Attorney General Jeffrey Sessions and FCC Chairman Ajit Pai, at https://cicilline.house.gov/sites/cicilline.house.gov/files/images/Sinclair_Letter.pdf.

⁶ See *Sinclair Broadcast Group, Inc.*, Order, 31 FCC Rcd 8576 (MB 2016).

⁷ See Todd Shields, *Sinclair Station Buyers in Tribune Deal Would Have Company Ties*, *Bloomberg News*, Mar. 2, 2018.

⁸ See Second Amendment at 32 nn.86-87.

⁹ 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).

¹⁰ See *id.* at 7-29.

¹¹ 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

The need for the Department to take a strong stance on station divestitures is particularly urgent given concerns about the FCC's handling of Sinclair-related matters to date. Notably, the FCC Inspector General is currently investigating a potentially improper relationship between Chairman Pai and Sinclair¹². As detailed in the August 14, 2017¹³ and September 29, 2017¹⁴ letters from Representatives Pallone, Doyle and DeGette, and the January 4, 2018 letter from Senator Klobuchar and several other Senators to Chairman Pai,¹⁵ the FCC's systematic undoing of media ownership protections and the aforementioned investigation have raised questions as to whether the FCC is conducting an impartial review.¹⁶

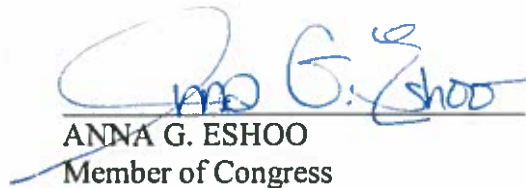
We urge the Department to remain firm in its review of the anticompetitive issues raised by this transaction. Once again, we believe the merger should be rejected outright.

Sincerely,


TONY CARDENAS
Member of Congress


YVETTE D. CLARKE
Member of Congress


JAN SCHAKOWSKY
Member of Congress


ANNA G. ESHOO
Member of Congress

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).

¹² See Cecilia Kang, *F.C.C. Watchdog Looks Into Changes That Benefited Sinclair*, *New York Times*, Feb. 15, 2018.

¹³ See Letter from Representative Pallone *et al.* to FCC Chairman Ajit Pai, at https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/FCC.08.04.2017.%20Letter%20to%20Chairman%20Pai%20on%20Sinclair%20Broadcasting.CAT_OI.pdf.

¹⁴ See Letter from Representative Pallone *et al.* to FCC Chairman Ajit Pai, at <https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/FCC.2017.09.28.%20Sinclair%20Follow%20Up%20Letter.%20CAT.pdf>.

¹⁵ See Letter from Senator Klobuchar *et al.* to FCC Chairman Ajit Pai, at <https://www.klobuchar.senate.gov/public/index.cfm/2018/1/klobuchar-durbin-senators-urge-department-of-justice-and-federal-communications-commission-to-closely-scrutinize-media-mergers-particularly-the-proposed-sinclair-broadcasting-tribune-media-merger>.

¹⁶ *Id.*

Eliot L. Engel

ELIOT L. ENGEL
Member of Congress

Betty McCollum

BETTY MCCOLLUM
Member of Congress

Jamie Raskin

JAMIE RASKIN
Member of Congress

J. Luis Correa

J. LUIS CORREA
Member of Congress

Earl Blumenauer

EARL BLUMENAUER
Member of Congress

Raul M. Grijalva

RAUL M. GRIJALVA
Member of Congress

Grace F. Napolitano

GRACE F. NAPOLITANO
Member of Congress

Bob A. Brady

ROBERT A. BRADY
Member of Congress

Lucille Roybal-Allard

LUCILLE ROYBAL-ALLARD
Member of Congress

Bobby L. Rush

BOBBY L. RUSH
Member of Congress

Gregory W. Meeks

GREGORY W. MEEKS
Member of Congress

Ferry McNerney

FERRY MCNERNEY
Member of Congress

Richard M. Nolan

RICHARD M. NOLAN
Member of Congress

Mike Quigley

MIKE QUIGLEY
Member of Congress




JARED HUFFMAN
Member of Congress



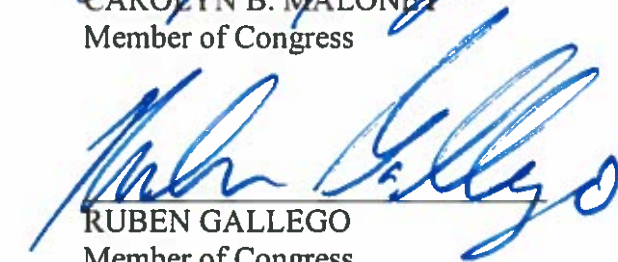
STEVE COHEN
Member of Congress



CAROLYN B. MALONEY
Member of Congress



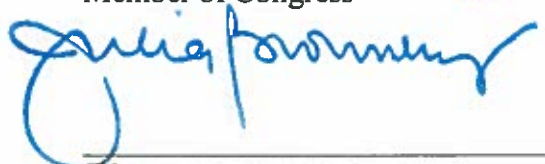
PETER A. DEFAZIO
Member of Congress



RUBEN GALLEGO
Member of Congress



SUZANNE BONAMICI
Member of Congress



JULIA BROWNLEY
Member of Congress



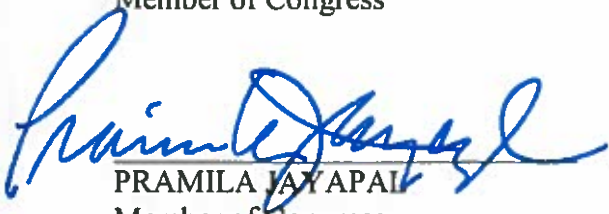
MICHAEL E. CAPUANO
Member of Congress



CHARLIE CRIST
Member of Congress



KEITH ELLISON
Member of Congress



PRAMILA JAYAPAL
Member of Congress



HENRY C. "HANK" JOHNSON, JR.
Member of Congress



RO KHANNA
Member of Congress



BILL PASCRELL, JR.
Member of Congress

Carol Shea-Porter

CAROL SHEA-PORTER
Member of Congress

Adam Smith

ADAM SMITH
Member of Congress

Juan Vargas

JUAN VARGAS
Member of Congress

Peter Welch

PETER WELCH
Member of Congress

Donald S. Beyer Jr.

DONALD S. BEYER JR.
Member of Congress

Gwen S. Moore

GWEN S. MOORE
Member of Congress