Comments of the Regulatory Action Center

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

November 2, 2017

The Regulatory Action Center at FreedomWorks Foundation is dedicated to educating Americans about the impact of government regulation on economic prosperity and individual liberty. FreedomWorks Foundation is committed to lowering the barrier between millions of FreedomWorks citizen activists and the rule-making process of government bureaus to which they are entitled to contribute.

Introduction

FreedomWorks Foundation appreciates the opportunity to offer comments to the Federal Communications Commission (FCC) in support of the proposed acquisition of Tribune Media Company (Tribune) by Sinclair Broadcast Group (Sinclair) (collectively referred to as Applicants).

The FCC's task is to ensure transactions involving the ownership of broadcasting licenses, such as this one, serve the "public interest,"[1] as specified in the Communications Act of 1934. As an advocacy organization representing over 5.7 million activists nationwide, FreedomWorks Foundation is also committed to advancing the public interest by supporting constitutionally-limited government, free markets, and the protection of individual and economic liberty. In-line with these core beliefs, we assert that a transaction in the marketplace reached voluntarily between parties is already a good sign that the transaction serves the public interest.

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[1] Sallet, Jon, "FCC Transaction Review: Competition and the Public Interest," Federal Communications Commission, August 12, 2014. https://www.fcc.gov/news-events/blog/2014/08/12/fcc-transaction-review-competition-and-public-interest

Therefore, it is the position of FreedomWorks Foundation that the proposed acquisition of Tribune by Sinclair not only serves the public interest, but that blocking this transaction will actually harm the public interest.

First we wish to note that it is our position the Communications Act and subsequent regulations governing the ownership of broadcast media assets are woefully outdated and do not serve any sort of public interest in-and-of-themselves. However, we also agree with the Applicants that "the Commission has consistently ruled that the proper forum to make such arguments is a rulemaking proceeding, and not a transaction-specific docket such as this one."[2] Therefore, our comments will seek to justify the proposed acquisition under the active regulatory regime and address the criteria within FCC's current framework for transaction reviews.

Technological Advance Has Served the Public Interest

By the criteria which FCC claims to weigh mergers, the proposed transaction between the Applicants advances the goals of Congress and the Commission. The overarching goal is to promote "the public interest, convenience, and necessity," through "preserving and enhancing competition in relevant markets, accelerating private-sector deployment of advanced services, ensuring a diversity of information sources and services to the public, and generally managing spectrum in the public interest."[3] These are all laudable aspirations. However, present market factors render useless the close and individual evaluation of each of these criteria.

FCC can no longer narrowly focus on competition, investment, and diversity individually within broadcast when weighing transactions of this kind. This is because the full scope of the

[2] Applicants Consolidated Opposition to Petitions to Deny (Applicants Opposition), MB Docekt No. 17-179, August 22, 2017. Page ii
[3] Sallet

market does not exist narrowly within the broadcast spectrum. The market at issue here is the market for information. When evaluated in this proper context, it is patently clear that allowing the Applicants to proceed would not harm competition, investment, or diversity.

Broadcasters no longer face competition solely from the printing press in the mass information market. Cable, satellite, and internet networks and platforms all provide ample and growing competition to broadcasters such as Sinclair and Tribune—who, as primarily television broadcasters, face competition from radio broadcasters as well. It is hardly necessary to remind that the advents of cable, satellite, and internet technologies have also dramatically increased investment in the information marketplace and given platforms to a limitless array of diverse voices. The cost of utilizing these technologies continues to fall as their reach expands.

There is certainly an instinctive concern about the ability of subscription-based services such as internet and cable to adequately compete with and substitute free over-the-air broadcasting in terms of information distribution and diversity. However, these concerns are without merit.

According to a 2015 study by the Pew Research Center, 84 percent of American adults use the internet—up from 52 percent in 2000. [4] The study also shows the overwhelming majority of Americans in various categories of concern used the internet in 2015:

- Senior Citizens: 58 percent
- Less-than a High School Education: 66 percent
- Households Earning Less Than $30,000 Per Year: 74 percent

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[4] Perrin, Andrew and Maeve Duggan, "Americans' Internet Access: 2000-2015," Pew Research Center, June 26, 2015. http://www.pewinternet.org/2015/06/26/americans-internet-access-2000-2015/

The last figure is a testament to the growing affordability of internet access, as only 34 percent of these households used the internet in 2000.

Excessive scrutiny of a merger or acquisition within only one component of a rapidly growing mass information market is unnecessary. It is the equivalent of fretting over the impact on local transportation by the merger of two taxi companies in the Washington, DC metro area—which is also served by light rail, commuter rail, buses, bike-sharing, multiple ride-sharing apps such as Uber and Lyft, and street cars (allegedly).

Let Economics Protect the Public Interest

None of these comments so-far seek to say broadcast is an irrelevant medium. We believe it is fair to say both those who support and oppose the proposed Sinclair-Tribune transaction understand there is value and need for traditional local broadcasting. Allied Progress, a disproportionately vocal opponent to this transaction, stated the following in their comments to FCC:

> "Local news is a pillar in any community. Sinclair's acquisition of Tribune Media would result in less competition, fewer local program options and higher costs for consumers."[5]

While we agree on the importance of local news, Allied Progress is committing the nirvana fallacy in their opposition to the Sinclair-Tribune transaction—weighing the level of

[5] Frisch, Karl, In the matter of MB Docket No. 17-179, Applications of Tribune Media Company and Sinclair Broadcast Group for Consent to Transfer Control of Licenses and Authorizations, August 7, 2017. https://ecfsapi.fcc.gov/file/108072383701717/20170807%20-%20AP%20Letter%20-%20FCC%20Public%20Comment%20on%20Sinclair%20Merger%20-%20FINAL.pdf

competition and diversity in a post-merger broadcast sector against an idyllic vision unsustainable by current market trends. Per a July 2017 *MediaPost* article:

> "All four main local TV newscasts sank in 2016 versus 2015, when looking at combined viewership on ABC, NBC, CBS and Fox affiliates, according to Pew Research Center analysis of Nielsen results for the four sweep periods.
>
> Late news sank 11% to 20.3 million in 2016, from 22.8 million the previous year. Morning news fell 9% to 10.8 million from 11.9 million. Early evening news lost 9%, from 22.8 million to 20.7 million.
>
> These stats represent an ongoing downward trend since 2007 -- in which late news has dropped 31%, early evening news 19% and morning news has lost 12%."[6]

The customers of broadcasters are advertisers. Advertisers are buying viewers. A dwindling supply of viewers therefore imperils the viability of broadcasting businesses. Considering population growth and urbanization, the number of viewers broadcasters can reach is rising, creating an opportunity for revenue growth. However, as the above figures demonstrate, competition from other information platforms has increased the supply of advertising space and reduced the number of viewers choosing to watch broadcasting. As a result, instead of rising, local television broadcast revenue has been gently declining since at least 2004. In fact, local

[6] Friedman, Wayne, "TV Stations' Local News Viewership Continues Decline," MediaPost, July 14, 2017. https://www.mediapost.com/publications/article/304350/tv-stations-local-news-viewership-continues-decli.html

television over-the-air advertising revenue is projected to be nearly $3 billion lower in 2017 than it was in 2004.[7]

There is simply no denying the duress the broadcaster sector is under. However, this is a reason to support such transactions as Sinclair-Tribune, not cling to an untenable status-quo. The broadcasting sector is not immune to basic economics and thus mergers and acquisitions, such as that proposed by the Applicants, allow firms to achieve economies of scale. A 2009 Federal Reserve report entitled, "A Dynamic Analysis of Consolidation in the Broadcast Television Industry" concludes:

> "[C]onsolidation in this industry offers both revenue and cost advantages, but that they operate through different mechanisms. Firms are able to generate more revenue per station if the total population coverage of their stations is greater. Advertisers are probably willing to pay more to reach more viewers per contract. On the other hand, the cost advantages of consolidation come not through wider population coverage, but through simply owning a large number of stations."[8]

In addition to the benefits of expanded audience reach and consolidated overhead costs, larger firms also enjoy increased leverage in negotiating retransmission fees for their content. Retransmission fees make-up an increasingly important source of revenue for broadcasters, projected to reach $11.9 billion by 2021, at which time advertising revenue is projected to be

[7] *Local TV News Fact Sheet*, Pew Research Center, July 13, 2017. http://www.journalism.org/fact-sheet/local-tv-news/

[8] Stahl, Jessica C., "A Dynamic Analysis of Consolidation in the Broadcast Television Industry," Finance and Economics Discussion Series, Divisions of Research & Statistics and Monetary Affairs, Federal Reserve Board, Washington, D.C., October 2009. https://www.federalreserve.gov/pubs/feds/2009/200948/200948pap.pdf

$22.1 billion. In 2004, retransmission fees were a mere $215 million versus $22.4 billion in advertising.[9]

Opponents of this merger agree that consolidation will allow a unified Sinclair-Tribune to command higher retransmission fees, but contend this is a reason to block the merger. We strongly disagree and wish to echo the sentiments of the Applicants regarding rising retransmission fees:

> "When the fees are determined by the give and take of the marketplace, the public interest is served."[10]

Retransmitting firms have also undergone significant recent consolidation. The recent mergers of AT&T-DirecTV as well as Charter-Time Warner are perfect examples. If consolidation increases a broadcaster's negotiating power, then certainly the same holds true for retransmitters. More to the point, the public interest is hardly served by FCC doing its best impression of a Soviet planning board and attempting to control prices.

Economies of scale in broadcasting also help to promote the creation of local content and news programming. By consolidating overhead costs and increasing the reach of content, broadcasters are incentivized to divert more resources to content production. Following spikes in television station mergers and acquisitions in 2006 and 2013, the average number of hours broadcasters devoted to local news increased as well. From 2006 to 2011, the average number of hours devoted to local television news increased from 4.1 to 5.5 before dipping to 5.3 in 2013. Then, following a smaller spike in mergers and acquisitions, local news content rose to 5.7 hours

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[9] *Local TV News Fact Sheet*
[10] Applicants Opposition. Page 28

by 2016.[11] Again, basic economics serves the public interest by liberating resources for firms to produce the local news content viewers demand.

Conclusion

FreedomWorks Foundation again appreciates the opportunity to offer these comments in support of the application submitted by Sinclair and Tribune. We firmly believe that free and unfettered markets are the best institutions for protecting the public interest. Technological advance has radically expanded the scope of the market for mass information, ensuring more and more Americans have access to a growing and increasingly-affordable array of information sources and diverse viewpoints. However, standing in the way of natural market forces, such as mergers and acquisitions designed to achieve economies of scale, threatens to greatly diminish, if not eliminate, local broadcasting as one of the myriad options Americans enjoy.

The level of competition, investment, and diversity in the mass information market has never been higher. Yet, if the FCC signals to broadcasters that it is unwilling to let them adapt and survive in this new reality by blocking the proposed Sinclair-Tribune transaction, it will be an enormous step backwards in the pursuit of competition, investment, and diversity of sources.

Respectfully submitted,

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[11] *Local TV News Fact Sheet*