Before the
Federal Communications Commission
Washington, D.C. 20554

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

To: Office of the Secretary
Federal Communications Commission
Attn: The Chief, Video Division, Media Bureau

Informal Objection of Herndon-Reston Indivisible to Application for Transfer of Control of Tribune Media Company to Sinclair Broadcast Group

The Herndon-Reston Indivisible Leadership Group ("HRI"), pursuant to Section 73.3587 of the Commission's Rules, hereby respectfully opposes grant of the above-captioned applications. In support hereof, HRI respectfully states as follows:

I. The Proposed Merger and The Objector

1. The proposed merger, one of the largest and most wide-reaching in the history of American free, over-the-air television broadcasting, contemplates a 3.9-billion-dollar acquisition. It would be accomplished by transfer of control to Sinclair of some 42 Tribune Media Company stations, many in America's very largest markets (such as New York City, Chicago, and Los Angeles), plus WGN America and WGN Radio. Sinclair is a centralized, monopolistic conglomerate that already owns 189 stations in 89 markets. If the merger is approved, among the enormously influential properties which would come under Sinclair's control would be several legacy stations, owned by a highly respected television operator for decades, such as the

Tribune's WGN. If approved by the FCC and the Department of Justice, the merger would make the new Sinclair the LARGEST OVER THE AIR BROADCASTER IN AMERICA by a substantial margin. Sinclair would then be 61 percent larger by revenues than the next largest competitor. This dominance far exceeds the current differences between successive competitors of typically 10 percent. Sinclair would hold licenses for 230+ stations in 108 markets, complemented by so-called "sidecar" and *de* facto leased stations, the latter owned by ostensible competitors, but in fact dominated by Sinclair and Tribune. The new Sinclair would directly own more than 130 "Big 4" affiliated stations. In 42 markets, in fact, Sinclair would own more than one "Big 4" station. Sinclair would transmit over 500 primary and multicast television stations. Sinclair would hold licenses in 40 out of the 50 top DMA's.

2. After a frenetic buying spree beginning in the 1990's, pouring 7 billion dollars into the absorption of major competitors like Fisher Broadcasting, Albritton Broadcasting, and Bonten Broadcasting most recently, the new Sinclair is poised to dominate local TV in the United States like no other corporation has before. Still worse yet, Sinclair's owners and CEO do not plan to stop with the Tribune acquisition. According to David Smith in the 1990's, Sinclair is determined to fulfill its drive to continue expanding "perpetually, like the universe." Should Sinclair succeed in this merger, there can be little doubt but that the few remaining major TV conglomerates would be forced to follow suit. A successful Sinclair-Tribune merger would set a dangerous precedent for others to follow. Those competitors who cannot afford to expand in the superheated broadcast economy generated by Sinclair's buying spree are at great risk of being absorbed or destroyed in a never-ending cycle of monopolistic takeovers. The proposed merger constitutes a grave threat to local programming and media diversity serving the public.

3. Herndon-Reston Indivisible is a local advocacy group within the Indivisible Movement, which is itself a grass roots coalition formed last year with member groups in every Congressional District to encourage local participation in the political process. These citizen groups arose spontaneously and promote locally-based actions by their members. Indivisible organizes and inspires dialogue about national and local issues between citizens and their elected representatives. HRI reaches over 800 persons who have volunteered their email address or supported initiatives, mostly residents of Herndon and Reston, Virginia in the Northern Virginia suburbs of our Nation's Capital. Critical to HRI's mission is the free and open exchange of views and political positions, which requires an informed electorate and media who see their role as objective purveyors of truth. HRI advocates for a diversity of voices contributing to a vital political discourse as free as possible from fake news, propaganda, and unfounded conspiracy theories. The objector here is the Herndon-Reston Indivisible Leadership Group ("HRI"). HRI clearly has standing to challenge the Sinclair-Tribune merger because of the disconnect between its *raison de etre* and Sinclair's, and because members of HRI are regular viewers of Sinclair's station WJLA-TV in Washington, D.C. (See Statement of Howard M. Weiss attached hereto as Exhibit 1.)

4. Approval by this agency of Sinclair's proposed local TV station aggregation would make a mockery of the rule of law imposed by the Communications Act of 1934 and the Congressionally-mandated national and local ownership caps adopted pursuant to them. It would serve to undermine the fundamental democratic principles whose application undergirds local advocacy groups like HRI. Diminished or eliminated competition, price hikes to carriers and broadcast and cable consumers, reduced diversity of programming and news media personnel, increased centralized control and homogeneity of both programming sources and programming

content, and downsized or eliminated local broadcast news operations with the concomitant loss of creative professional talent and management jobs would almost certainly follow as Sinclair pursues its current management policies through this proposed merger. These management policies do not serve the broad public interest and specifically HRI's goals for an America with a respected, diverse, and locally responsive media. Consent to the proposed merger should be denied. It is manifestly not in the public interest nor that of HRI and other democratic grassroots entities.

II. The Merger Is Anti-Competitive and Would Undermine Ownership and Voice Diversity in America's Largest Television Markets

5. As it has grown in spurts over the last few decades, Sinclair has heretofore avoided national public scrutiny by focusing on TV markets outside the largest markets like New York, Chicago and Los Angeles. Now this has changed. In 2013, Sinclair turned a corner, purchasing Albritton's stations, including, *inter alia*, WJLA-TV, the ABC affiliate, and News Channel 8, its sister outlet in the Nation's Capital. In short order, Sinclair fired nationally-renowned, award-winning African-American, female anchorwoman Maureen Bunyan. This 71-year old icon had devoted decades of her career to service to the community and coverage thereof. Shortly thereafter, Ms. Bunyan's co-anchor, Gordon Peterson, also a decades-long, distinguished journalist in DC, left WJLA, stating he could not work for a broadcaster like Sinclair, driven by the bottom line and a narrow ideology with little tolerance for diversity or First Amendment values. Other key talent and managers followed Bunyan and Peterson out the door. Severe cost-cutting was imposed. Further, Sinclair commenced implementation of its "central casting" and "must carry" programming policies. Pursuant to these policies, Sinclair produces, distributes to stations, and mandates the broadcast of news that is not respected for

either its accuracy or balance. Such programming is designed not to reflect WJLA's local audience's needs and interests, but rather those of Sinclair's owners.

6. Should the merger be approved, similar programming policies and practices, so alien to Constitutional and Communications Act principles, would take root in New York, Chicago, Los Angeles and the other 30+ Tribune markets. Eventually, according to Sinclair's CEO, Chris Ripley, its goal and business plan would be to "consolidate to two to three large broadcasters in each market and really one to two strong local players in each market". This goal is antithetical to the principles of local origination and diversity of views. Further, it should be clear to all as to whom Sinclair expects these "two strong local players" disseminating news and public affairs programming will be in the major markets. How can such a nightmare vision of our media future be in the public interest?

III. The Merger Violates Both the National and Local TV Ownership Caps in the Commission's Rules

7. While pledging to come into compliance with all pertinent FCC rules, the merger proposal acknowledges that it would <u>not</u> be in compliance without waivers of the duopoly rules and divestiture of stations rules. Furthermore, the merger requires an interpretation of the UHF "discount" that has no logical basis under current market circumstances. The obsolete, counter-intuitive UHF discount, pushed through while reversing an earlier action by the Commission's majority in 2016, is under challenge in the D.C. Circuit. It is likely that the Court will once again eliminate this provision. Thus, the Commission must act decisively <u>now</u> to block or delay the merger at least until the Court rules. Otherwise, Sinclair will have managed to slip its proposed deal through a narrow window blatantly ignoring the Congressional intent expressed in the mandated 39% national cap.

8. Moreover, as FreePress persuasively urges in its pleadings, Sinclair's merger contravenes the local ownership cap in at least 10 markets and likely more. Based on its prior regulatory practices, one could expect that the Commission will almost inevitably permit Sinclair to avoid sales of these excess stations by securing waivers, not enforce divestiture promises, and continue to enter into *de facto* leases with competitors. Indeed, in Sinclair's management's public pronouncements since the Tribune deal was announced, they have predicted that no sales will be necessary. Thus, there is little chance that the merger will add to the pitifully low number of minority or female TV owners or even add non-minority, but non-consolidated, owners. Why should the Commission or anyone else believe Sinclair's pledges? These pledges should be entirely discounted in the FCC's deliberations.

9. Nor should Sinclair's insistence that Shared Services, Joint Sales, or Local Market Agreements, whatever semantic reference is used, are arm's length transactions be taken seriously when Sinclair is the parent station. All amount to the same thing: *de facto* centralized control of local broadcast stations. The inevitable legal consequence should be, for the purposes of evaluation of the merger, attribution of the brokered or subordinate stations with which Sinclair and Tribune are affiliated to Sinclair. Alternatively, the FCC should defer action on the merger until the Commission's promised reevaluation of these vehicles occurs later this year.

10. The rationale for a wholesale waiver of these long standing ownership rules, that were established to promote an informed public, is absent in Sinclair's three-page public interest statement in Exhibit 15. Essentially, Sinclair espouses a pervasive "bigger is better" philosophy. Sinclair bases its arguments for consolidation on the benefits of scale and pooling resources, reducing overhead, expansion into other business sectors and markets, and national uniformity of policy and content. But such consolidation is the antithesis of the public interest in local

broadcasting because it undermines the overriding importance of localism, a code of journalistic diversity and excellence, and a scrupulous adherence to FCC rules and policies. These attributes that are foundational to our democracy seem alien to Sinclair, based on its documented history and review of its stations' current operations. The extremely well-researched and data-driven pleadings of Dish Network and others proffer empirical evidence that Sinclair's boasts of superior programming and performance are belied by the record. Indeed, the merger will not have a salutary effect on the Tribune stations because they already are widely recognized as representing superior outlets *vis-à-vis* Sinclair's existing stations

Sinclair's Programming Has Evinced a Pattern of News Distortion, Scandalous and Defamatory Propaganda and Conspiracy Theory, A Track Record that Is Almost Certain to Repeat Itself at The Tribune Stations

11. The pleadings filed by FreePress, Public Knowledge, and Dish provide numerous examples of slanted, xenophobic and misogynistic programming Sinclair compels its local outlets to air. Sinclair's centralized editorial policy approach ignores and overrides the views of its local managers, journalists and audiences. Graphic examples of Sinclair's programming distortions are also excerpted on at least one episode of John Oliver's award-winning HBO show, Last Week Tonight, aired on July 1, 2017. While the First Amendment and Section 326 of the Communications Act bar censorship of broadcasters' programming, that is not the absolute defense Sinclair assumes. Sinclair's programming is not local and it is the equivalent of shouting "Fire" in a (national) crowded theater. It is designed to incite ethnic animus and ultimately the sort of ethnic confrontations that occurred in Charlottesville and inevitably will recur in other communities. Much of Sinclair's programming is inaccurate, "alternative facts", with no empirical basis, much of it undiscriminatingly pulled off the Internet.

As recent revelations attest, pulling "news" from Internet sources with questionable origin invites repeating Russian-inspired or authored articles of the type that was used to meddle in our election last year. The fundamental issue for the FCC is then this: is it in the public interest to foster and facilitate the airing of such material in over 240 TV markets across America? HRI believes that the traditional bargain of the FCC with broadcasters should be restored – use of the public airwaves in exchange for investment in relevant and credible information communicated to an informed electorate.

IV. The Sheer Size, Pervasiveness and Market Power of The New Sinclair Would Have Crucial Adverse Collateral Consequences for The Economy, Competitors and Viewers

12. As of 2014, there were only seven television broadcasters with revenues above 1.0 billion dollars, and the largest had revenues less than 1.8 billion. Another 15 broadcasters had revenues of over $100 million but less than a billion. The gap between two successive broadcasters in this ranking was never more than $140 million, less than 10 percent of each of the competitor's revenues. The merger of Sinclair with Tribune would create a broadcaster boasting a gap of more than $1,075 million more than its nearest competitor, 61 Percent larger than the current largest broadcast group. Sinclair's market dominance would be unprecedented and necessarily exacerbate the pressures toward further rapid consolidation and loss of ownership diversity. We as Americans must ask ourselves, at what point is this trend toward concentration in local TV markets too great a threat to our national political discourse? HRI believes concentration among TV broadcasters and media in general has already gone to far. If others think not, what criteria do they propose to judge where to halt consolidation? The FCC rules on station ownership were established to preclude excessive concentration, but HRI worries

that these limits continue to erode as a result of *de facto* lease agreements, failure to enforce rules in local markets, and now an arcane interpretation of the UHF discount.

13. Like an 800-pound-gorilla deposited in a cage with smaller primates, releasing the new Sinclair will drastically modify the television ecosystem, and not for the better. First, as the cable and satellite petitioners in this proceeding have articulately urged, approval of the merger will inevitably give Sinclair substantially greater leverage in negotiations regarding retransmission consent fees. In the past, Sinclair has had a history of driving very hard bargains on consent, including acting in concert with other market stations and threatening to black out, or actually blacking out, popular programming, such as the Super Bowl.

14. The capacity to perpetrate such misbehavior would be greatly enhanced if the merger is approved. Sinclair's market power and leverage *vis-à-vis* carriers would be insurmountable in many cases. The consequence for TV viewers would be to create an even more powerful content gatekeeper. The consequences for carriers and distributors would be stunningly anti-competitive and suffocating.

15. Further concerns are raised by the impact a far more dominant Sinclair would have in influencing the development of ASTC 3.0, the most important spectrum sharing technology for television. Sinclair is already the predominant player in the digitalization of TV spectrum, multicasting, and data transmission in the TV band. The New Sinclair, ever ambitious for hegemony, would be well-positioned for far greater domination in these arenas. Doesn't the FCC want to enable a broad adoption of these new technologies in a fair playing field among near equals rather than giving overwhelming advantage to one player?,

V. Conclusion

The FCC stands now at a crossroads that will determine the ownership legacy of free, over-the-air television for generations to come. If the Commission allows the merger between Sinclair and Tribune, this will in effect sweep aside the agency's longstanding rules and the Congressional intent which has informed those rules since their creation. The unprecedented concentration in broadcast TV marketplace will unleash a wave of further media concentration and ignore the principle of holding broadcasters accountable to serve the public interest in exchange for a public resource – the broadcast spectrum. Programming on local television in America and those who depend primarily on broadcasting for their news will suffer a devastating blow. We therefore urge the FCC to deny the instant applications and refuse consent to the proposed merger.

Respectfully submitted,

Herndon-Reston Indivisible Leadership Group

By: ____________________
Howard M. Weiss, Esq.
A member of HRI

October 18, 2017

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CERTIFICATE OF SERVICE

I, Howard M. Weiss, Esquire do hereby certify that copies of the **"Informal Objection of Herndon-Reston Indivisible to Application for Transfer of Control of Tribune Media Company to Sinclair Broadcast Group"** have been sent via first class, U.S. mail, postage prepaid, and via e-mail this 18th day of October 2017, to the following:

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Howard M. Weiss

Exhibit 1

Statement of Howard M. Weiss

I, Howard M. Weiss, a member of Herndon-Reston Indivisible Leadership Group, hereby state under penalty of perjury that I am a regular viewer of station WJLA-TV, Washington, D.C.

Howard M. Weiss

10/17/17

Date