

to Sinclair (Sinclair Applications) as part of a proposed merger between Sinclair and Tribune.⁵ The Tribune subsidiaries that are the subject of the Sinclair Applications are the same ones at issue in this proceeding. Under the Commission's inconsistent application rule, "[w]hile an application is pending, no subsequent inconsistent or conflicting application may be filed by or on behalf of or for the benefit of the same applicant."⁶ Because it is not possible for the Commission to grant both the Nexstar Applications and the Sinclair Applications, it cannot accept the subsequently filed Nexstar Applications for filing, absent a waiver.⁷ On July 19, 2018, the Commission released the *Sinclair HDO*, referring the Sinclair Applications to an Administrative Law Judge (ALJ) for an evidentiary hearing to "resolve substantial and material questions of fact" and to determine whether the applications should be granted.⁸ As required by the *Sinclair HDO*, the Media Bureau has held the Sinclair Applications in abeyance pending a final order in the proceeding, which remains before the ALJ with no hearing date yet established.⁹ In the *Sinclair HDO*, the Commission explained that the Sinclair Applications are restricted under the *ex parte* rules.¹⁰

3. According to the Applicants, because Tribune terminated its merger agreement with Sinclair on August 9, 2018, it no longer seeks, nor has any basis to seek, approval for the transfers of control contemplated by the Sinclair Applications.¹¹ Furthermore, on the same date the agreement was terminated, Sinclair filed a Notice of Withdrawal of Applications and Motion to Terminate Hearing (Sinclair Notice).¹² On August 10, 2018, the Enforcement Bureau filed a response to Sinclair's Notice in which it stated, *inter alia*, that it did not oppose dismissal with prejudice of the Sinclair Applications.¹³ The Sinclair Notice is pending.

4. *Discussion.* Without in any way prejudging the ongoing hearing proceeding, we find that a waiver of Section 73.3518 to allow for filing and consideration of the Nexstar Applications is appropriate based on the unique facts of this case. Prior to filing the Nexstar Applications, Tribune terminated its previous agreement with Sinclair, and Sinclair attempted to withdraw the Sinclair Applications. Both parties made clear, months before the filing of the Nexstar Applications, that they did not wish to pursue the Sinclair Applications. Also, as stated above, the Enforcement Bureau has stated that it does not oppose dismissal with prejudice of the Sinclair Applications. Although the Sinclair Applications remain pending, because Sinclair and Tribune no longer seek the grant of those applications, they are not as a practical matter inconsistent or in conflict with the Nexstar Applications. Thus, waiving Section 73.3518 to allow for filing and consideration of the Nexstar Applications does not undermine the purpose of the rule to avoid a waste of resources, prejudice to other applicants, or delay in service to the

⁵ *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, 32 FCC Rcd 5481 (MB 2017).

⁶ 47 CFR § 73.3518.

⁷ See Comprehensive Exhibit at 34.

⁸ See *Applications of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee)*, Hearing Designation Order, MB Docket No. 17-179, 33 FCC Rcd 6830, 6831, para. 3 (2018) (*Sinclair HDO*).

⁹ *Id.*

¹⁰ *Id.* at n.6. See 47 CFR § 1.1208.

¹¹ Comprehensive Exhibit at 35.

¹² See *Applications of Tribune Media Company (Transferor) and Sinclair Broadcasting Group, Inc. (Transferee)*, Sinclair Notice of Withdrawal of Applications and Motion to Terminate Hearing, MB Docket No. 17-179, File Nos. BTCCDT-20170626AGW, *et al.* (Aug. 9, 2018).

¹³ See *Applications of Tribune Media Company (Transferor) and Sinclair Broadcasting Group, Inc. (Transferee)*, Enforcement Bureau's Response to Sinclair Notice of Withdrawal of Applications and Motion to Terminate Hearing, MB Docket No. 17-179, File Nos. BTCCDT-20170626AGW, *et al.* (Aug. 10, 2018).

public.¹⁴ Recognizing that the decision regarding the disposal of the Sinclair Applications, the resolution of the issues pending in those applications, and the impact of such a resolution on the parties to that proceeding rests with the ALJ in the first instance, we believe that processing the Nexstar Applications, putting them out for public comment, and commencing staff review is administratively efficient and will facilitate public participation in this process. Therefore, in these unique circumstances, we waive Section 73.3518 of our rules to permit filing of the Nexstar Applications.¹⁵

5. **ACCORDINGLY, IT IS ORDERED**, That the Motion for Waiver of 47 CFR Section 73.3518 by Tribune Media Company and Nexstar Media Group, Inc. is GRANTED. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's Rules.¹⁶

FEDERAL COMMUNICATIONS COMMISSION

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¹⁴ *Hispanic Broadcasting Institute, Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 10560, 10562, para. 4 (2015).

¹⁵ We remind interested parties that the applications designated for hearing in the HDO are restricted under our *ex parte* rules. *Sinclair HDO*, 33 FCC Rcd at 6831, n.6. *Ex parte* presentations with respect to these applications are prohibited until the proceeding is no longer subject to administrative reconsideration or review or judicial review. 47 CFR § 1.1208.

¹⁶ 47 CFR § 0.283.