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ONE HUNDRED FIFTEENTH CONGRESS

# Congress of the United States

## House of Representatives

### COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

Majority (202) 225-2927

Minority (202) 225-3641

September 29, 2017

The Honorable Ajit V. Pai  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Dear Chairman Pai:

As a follow-up to our August 14, 2017 letter, we write again to request that you provide answers to questions that have yet to be answered regarding Sinclair Broadcast Group (Sinclair). We intended our letter last month to serve as an opportunity for you to address the allegations that you and your staff provide preferential treatment to Sinclair. We received your September 8, 2017 letter, and we appreciate the efforts of Commission staff to collect the information included in your response, but the narrative you provided failed to respond to several of our specific questions and raised additional questions.

Your failure to provide the requested correspondence between your office and Sinclair representatives is most troubling. In your response to our letter, you note that “[c]orrespondence between me or members of my office and representatives of Sinclair have been the subject of multiple FOIA requests,” and that you are “sending such correspondence that has been produced to date in response to those FOIA requests.”<sup>1</sup> This is not fully responsive to the original request.

The Freedom of Information Act (FOIA) is specific in its instruction that FOIA is not to be used as authority to withhold information from Congress.<sup>2</sup> FOIA cannot be used as an excuse to limit or fail to provide the requested documents, nor does it preclude you from sending Congressional committees of jurisdiction information beyond what FOIA requires. We reiterate our request that you provide *all* correspondence between you or members of your office and representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016, regardless of whether it is subject to a FOIA request.

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<sup>1</sup> Letter from Ajit V. Pai, Chairman, FCC, to Rep. Frank Pallone, Ranking Member, House Committee on Energy and Commerce (Sept. 15, 2017).

<sup>2</sup> See 5 U.S.C. §552(d).

We continue to have concerns regarding the timing of (1) the reinstatement of the UHF discount rule, and (2) the review of the proposed merger between Sinclair and Tribune Media Company (Tribune). In your response to us, you claim that neither Sinclair nor Tribune informed you of a possible transaction prior to the FCC voting to reinstate the UHF discount rule, but news reports were already circulating in early March 2017 of a possible merger.<sup>3</sup> The fact that the Commission released a draft UHF discount reinstatement order at the end of March for consideration at the April Commission Open Meeting continues to raise questions about whether the reinstatement of the UHF discount rule and the merger announcement were merely coincidental.

You also claim in your response letter to us that the initial comment periods for the proposed Sinclair-Tribune merger were adequate to provide the public with an opportunity to review and comment on the proposed transaction. Yet the day before you responded to our letter, the FCC released an information request to the applicants seeking additional details. It is concerning that it took the FCC so long – approximately 70 days into its review – to request basic information such as, but not limited to: (1) Sinclair’s current national audience reach, (2) steps taken or planned to comply with the national ownership limit or the local television ownership rule, and (3) a complete list of all sharing agreements or options in which either applicant is a party in the DMAs where Tribune stations are located.<sup>4</sup> Interested parties requested similar information nearly two months earlier when they filed a motion for information and an extension of time.<sup>5</sup> A request that the FCC has never acted on.

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<sup>3</sup> See, e.g., Jessica Toonkel, Liana B. Baker, *Exclusive: Sinclair approaches Tribune Media about possible deal – sources*, Reuters (March 1, 2017) (<http://www.reuters.com/article/us-tribunemedia-m-a-sinclairbroadcast/exclusive-sinclair-approaches-tribune-media-about-possible-deal-sources-idUSKBN16843R?il=0>).

<sup>4</sup> Letter to Mr. Miles S. Mason and Mr. Mace J. Rosenstein from Michelle M Carey, Chief, Media Bureau, *Re: Applications to Transfer Control of Tribune Media Company to Sinclair Broadcast Group, Inc.*, MB Docket no. 17-179 (Sept. 14, 2017).

<sup>5</sup> Motion of Dish Network, American Cable Association, and Public Knowledge for Additional Information and Documents and Extension of Time, *In the Matter of Application of Tribune Media Company and Sinclair Broadcast Group for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179 (Jul. 12, 2017).

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We ask that you respond to the attached list of questions by October 12. If you choose to respond in narrative form instead of providing specific responses to the individual questions, please note within your narrative the question that you are addressing.

Sincerely,



Frank Pallone, Jr.  
Ranking Member



Mike Doyle  
Ranking Member  
Subcommittee on Communications  
and Technology



Diana DeGette  
Ranking Member  
Subcommittee on Oversight  
and Investigations

Enclosure

## ATTACHMENT

### Correspondence:

1. Please provide all correspondence between you or members of your office and representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016. [*Second Request*]
2. Have you or members of your office corresponded with representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016, using a non-government email account? If so, please provide this correspondence. [*Second Request*]
3. Have you or members of your office corresponded with representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016, using social media messaging services or other messaging applications, such as, but not limited to, Facebook Messenger? If so, please provide this correspondence.
4. Please provide a copy of every FOIA request, both completed and pending, that relate specifically to Sinclair.

### Sinclair-Tribune Proposed Merger:

1. When did you or your staff become aware of a possible transaction between Sinclair and Tribune?
2. When did you direct the Media Bureau to begin drafting an order to reinstate the UHF discount?
3. When did the Media Bureau begin to draft the September 14 Information Request letter to the applicants?
4. Will the Media Bureau seek the additional information requested by interested parties in the July 12, 2017 Motion for Additional information and Documents and Extension of Time?
5. Will the Media Bureau pause the informal 180-day clock, as it has done in previous merger reviews,<sup>1</sup> once the applicants respond to the information request in order for interested parties to have time to review and respond to the new information?

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<sup>1</sup> The Commission has paused the 180-day informal clock in at least seven prior media-related merger reviews going back to 2003. We note that there was no pause in the clock for the Nexstar/Media General merger even though there was an information request. But that appears to be the exception, and likely is off-set by the fact the total time for that review was 329 days.

**Processing Guidance on License Transfer Applications:**

1. Will you start a process for the full Commission's consideration on how the Media Bureau should review license transfer applications with sharing agreements or financial agreements? Specifically, what is your plan to ensure that the Media Bureau has specific procedures to fully evaluate the impact of such transactions on the local markets and consumers? If you do not plan to put these specific procedures in place, please explain your reasons for not doing so. [*Second Request*]

**Other Potential Proceedings:**

1. Please provide a specific time frame for the Commission's consideration of revisions to the current TV Joint Sales Agreement attribution rule.
2. Please provide a specific time frame for the Commission's consideration of revisions to the current local TV ownership ("duopoly") rule.
3. Please provide a specific time frame for the Commission's consideration of revisions to the current national TV ownership cap.
4. Please provide a specific time frame for the Commission to start the next Quadrennial Review of Broadcast Ownership rules.