

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the 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 )

**REPLY COMMENTS OF THE  
SPORTS FANS COALITION**



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Sports Fans Coalition Inc. (hereinafter “SFC” or the “Sports Fans Coalition”), submits these Reply Comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice regarding the applications of Sinclair Broadcast, Inc. (“Sinclair”) and Tribune Media Company (“Tribune”) (collectively, “Applicants”) to transfer control of Tribune to Sinclair.<sup>1</sup> Sports Fans Coalition is a grassroots, fan-driven sports fans advocacy organization. We represent sports fans who want a say in how they are treated as fans and who believe that fans should be the number one priority of the sports industry. Established in 2009, SFC has members across the country and is one of the largest fan-oriented consumer groups with a membership that transcends geographic, demographic and socio-economic boundaries. We have an engaged digital community of fan activists who are deeply concerned with issues of

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<sup>1</sup> See 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*, DA 17-647 (rel. July 6, 2017).

access to local sports programming and the affordability of sports media more broadly. The proposed transaction threatens both and therefore SFC opposes this merger.

## **I. Introduction and Summary**

Sports Fans Coalition concludes that this transaction will harm, not help, fans. If Sinclair's past behavior after acquiring broadcast TV stations is any indicator, sports fans in every Tribune market should expect less local sports coverage if the Commission approves this proposed transaction. Fans rely on local broadcast stations for the best coverage of local high school, college, and professional teams. Sinclair's strategy of gutting local sports personnel and replacing them with generic feeds from corporate headquarters does not portend well for sports fans across the country. Sinclair's fig leaf of professed sports programming increases and sports scholarships falls away with a little scrutiny, and its claims that the Internet addresses fans' needs flies in the face of its own statements to Wall Street.

After past station acquisitions, Sinclair:

- fired the entire sports department at the FOX affiliate in Oklahoma City;
- fired the entire sports anchor team at the FOX affiliate in Rochester;
- fired sports reporter Mike Raita, who had been with ABC affiliate WBMA in Birmingham, Alabama since its inception in 1996; and
- fired longtime Washington sports anchor Tim Brant.

Chicago sports fans in particular, should be worried about the loss of these legendary sportscasters:

- Lauren Magiera, WGN’s first female sports anchor, whose experience on the field and in the studio has taken her all across the country reporting on sports. She even co-hosted pre-game shows with Packers Hall of Famer Larry Mccarren.<sup>2</sup>
- Pat Tomasulo, WGN’s Morning News Sports Anchor, who has been a mainstay at the station for 12 years.<sup>3</sup> By his own admission, “Pat Tomasulo is the funniest morning sportscaster in America, mainly because he is the only morning sportscaster in America.”<sup>4</sup> His wit and insight are unparalleled in the field of sports journalism.
- Dan Roan, who first joined the sports staff in 1984 and has since won “multiple Emmy Awards for his work as host, producer, reporter and play-by-play announcer.” He won three Emmy Awards in 1994 alone for sports-related programming. Without him and his work on WGN Evening News at Five and Six, WGN News at Nine, and Instant Replay (a sports-specific newscast), WGN would not have earned as much success in sports journalism.

If Sinclair, in keeping with its past post-acquisition behavior, cuts local personnel at WGN and eliminates these and other sports anchors, the Sox, Cubs, Bears, Bulls, and Blackhawks fans will be the big losers. The same story would be repeated at every Tribune station, from New York to L.A., Philadelphia to St. Louis, where true sports fans who rely on local broadcasters will find their local sports coverage decimated. Fans rely on local broadcast stations for the best

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<sup>2</sup> WGNTV, LAUREN MAGIERA: WGN SPORTS REPORTER AND WEEKEND ANCHOR CHICAGO’S VERY OWN WGN9 (Copyright 2017), <http://wgntv.com/author/lauren-magiera/> (last visited Aug 19, 2017).

<sup>3</sup> WGNTV, PAT TOMASULO CHICAGO’S VERY OWN WGN9 (Copyright 2017), <http://wgntv.com/author/pat-tomasulo/> (last visited Aug 18, 2017).

<sup>4</sup> Pat Tomasulo, PAT TOMASULO > ABOUT PATTOMASULO.COM (Copyright 2017), <http://pattomasulo.com> (last visited Aug 19, 2017).

coverage of local high school, college, and professional teams. Sinclair's strategy of gutting local sports personnel and replacing them with generic feeds from corporate headquarters does not portend well for sports fans across the country. Sinclair's fig leaf of professed sports programming increases and sports scholarships falls away with a little scrutiny, and its claims that the Internet addresses fans' needs flies in the face of its own statements to Wall Street.

The proposed transaction would harm sports fans in other ways. Sinclair already has proven its willingness and ability to harm millions of sports fans by taking down local broadcast signals from pay-TV platforms, particularly around the time of major sporting events, in order to extract higher retransmission consent fee payments. The proposed transaction will only make matters worse. Sports fans historically have been collateral damage in negotiations between big broadcasters and pay-TV companies, with broadcasters typically using the popularity of sporting events as leverage in their retransmission consent negotiations with big cable and satellite companies. The ultimate victim is the fan, who pays her bills, pays her taxes, supports her local team, and just wants to watch the game.

Sinclair's acquisition of Tribune's key sports rights, combined with Sinclair's current ownership of pay-TV sports networks, could reduce fans' access to Cubs, Mets, and Yankees games. By acquiring Tribune's "must have" sports rights in Chicago and New York, Sinclair not only would be able to withhold games from pay-TV providers unwilling to pay its ransom, it could migrate those games from broadcast to its own proprietary sports networks, just as The Walt Disney Company did when it moved Monday Night Football from broadcast (ABC) to pay-TV (ESPN), denying millions of fans access to popular games. As Chairman Pai, Commissioner O'Reilly, Commissioner Clyburn, and Commissioner Rosenworcel articulated when they voted to eliminate the Sports Blackout Rule, the Commission has sought to avoid the migration of

sports from broadcast to pay-TV. The proposed transaction could result in just that, harming fans who rely on free, over-the-air broadcast for access to their teams' games.

Finally, Sinclair could leverage its increased bargaining power with pay-TV providers to favor its own sports networks at the expense of independent, unaffiliated networks, reducing competition in sports markets and ultimately denying fans access to sports. In multiple ways, the proposed transaction is a bad deal for sports fans.

## **II. Sinclair's Cuts to Local Sports Personnel Will Harm Fans' Ability to Watch Local High School, College, and Professional Games**

Commenters in this proceeding have demonstrated in great detail how Sinclair systematically harms local broadcast news coverage through cuts to local news personnel and centralizing news production in Sinclair's East Coast headquarters. For the same reason that local news coverage will suffer if this transaction is consummated, sports fans will be harmed by Sinclair's inevitable evisceration of local sports staff. If past is prologue, Sinclair will fire sports reporters in legendary stations from Chicago to New York, replacing local talent with corporate stuffed shirts in Sinclair's Baltimore office. From local high school sports coverage, to local collegiate and NFL team coverage, this merger will do to local sports coverage what Wayne Huizenga did to the World-Series winning Florida Marlins in the 1990's: remove the team's best talent, bleed the organization in the name of profit, and leave fans disillusioned and underserved.<sup>5</sup>

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<sup>5</sup> Steve Goldman, Throwback Thursday: When The Florida Marlins Burned Down A World Series Champion Sports.Vice.Com (2015),[https://sports.vice.com/en\\_us/article/gvapxy/throwback-thursday-when-the-florida-marlins-burned-down-a-world-series-champion](https://sports.vice.com/en_us/article/gvapxy/throwback-thursday-when-the-florida-marlins-burned-down-a-world-series-champion) (last visited Aug 20, 2017).

**A. Sinclair’s use of a “central casting” staffing model cuts local news staff and guts local sports programming to the detriment of local high school, college, and professional sports fans.**

The proposed transaction puts local sports coverage at risk because Sinclair’s practice of eliminating local sports reporters and production staff likely will mean the end of great local sports reporting at Tribune stations across the country. Sinclair acquires local broadcast stations, eliminates local reporters and other local production staff, and then centralizes programming operations at its Baltimore headquarters. The record overwhelmingly demonstrates that Sinclair’s business model has been and will remain one of cutting staff at the local level and centralizing functions in the company’s corporate headquarters in order to save money. Sinclair’s “central casting” replaces potentially hundreds of jobs in a local market with a single reporter in Baltimore,<sup>6</sup> and the local personnel that remain often find themselves reading a generic script that has been drafted by a corporate employee at headquarters.<sup>7</sup>

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<sup>6</sup> See DISH Network, Re: Tribune Media Company and Sinclair Broadcast Group, Inc., Consolidated Applications for Consent to Transfer Control, MB Docket No. 17-179; Petition to Dismiss or Deny of DISH Network L.L.C. (2017), (“Petition to Dismiss or Deny of DISH Network”), [https://ecfsapi.fcc.gov/file/108071485102843/REDACTED--DISH%20PTD%20Combined%207Aug%20\(final\).pdf](https://ecfsapi.fcc.gov/file/108071485102843/REDACTED--DISH%20PTD%20Combined%207Aug%20(final).pdf) (last visited Aug 20, 2017) at p. 7 (“More national programming means less local programming. Indeed, Sinclair’s business model seems based on the idea that one job in Baltimore makes more business sense than 100 jobs at news desks across the country. Sinclair has a long record of buying a station, hollowing out its talent, and replacing its locally-produced programming with centrally produced content.) See also Public Knowledge, Common Cause & United Church of Christ, In the Matter of Applications of Tribune Media Company and Sinclair Broadcast Group For Consent to Transfer Control of Licenses and Authorizations MB Docket No. 17-179; Petition to Deny of Public Knowledge, Common Cause, and United Church of Christ, OC Inc. (2017), (“Public Knowledge Petition to Deny”), <https://ecfsapi.fcc.gov/file/108081245021866/PK, CC, UCC Petition to Deny Sinclair ERRATUM.pdf> (last visited Aug 20, 2017) at p. 6 (“By its own admission, Sinclair believes that centralized news operations for national and international news is an effective cost-savings model. Further, it is well-documented that Sinclair engaged in the practice of “central casting” – substituting centrally originated programming for local programming).

<sup>7</sup> As Public Knowledge correctly argues, Sinclair’s “central casting” model undermines the precise principles localism seeks to prevent by violating longstanding Commission principles. See Public Knowledge Petition to Deny at p. 6 and at fn 23 (The Commission’s 2008 Declaratory ruling, granting broadcast affiliates more control and autonomy. The FCC’s chain broadcasting rules prohibiting two or more connected stations from running the same program. “Central casting gets to the core of what the Commission’s localism principles seek to prevent. Indeed, the

This pattern of replacing local personnel with corporate multitaskers has harmed local sports coverage in Sinclair stations from coast to coast. Sinclair has a well-documented history of cutting entire sports departments after acquiring a local station. Following its acquisition of local affiliates, Sinclair:

- fired the entire sports department at the FOX affiliate in Oklahoma City;
- fired the entire sports anchor team at the FOX affiliate in Rochester;
- fired sports reporter Mike Raita, who had been with ABC affiliate WBMA in Birmingham, Alabama since its inception in 1996; and
- fired longtime Washington sports anchor Tim Brant.<sup>8</sup>

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FCC's chain broadcast rules prohibit two or more connected stations from simultaneously running the same program. The principles the Commission adopted in its 2008 Declaratory Ruling granting broadcast affiliates more control and autonomy would also be violated. Indeed, if Sinclair is allowed to merge, the company could potentially run "pseudo-networks" – controlling the local programming of hundreds of broadcast stations).

<sup>8</sup> Petition to Dismiss or Deny of DISH Network, citing to Sinclair Watch Project, *Sinclair and the Public Airwaves – A History of Abuse 1–11* (2004), [https://www.freepress.net/sites/default/files/resources/Sinclair\\_Report.pdf](https://www.freepress.net/sites/default/files/resources/Sinclair_Report.pdf) at p. 51; fn 151-152 ("At KOKH-25, the FOX affiliate in Oklahoma City, Sinclair fired the entire sports department, the entire weather department, one photojournalist, one reporter and 6 other full and part-time staff. At the FOX affiliate in Rochester, WUHF, Sinclair fired the entire news, weather, and sports anchor team, and half of the remaining news staff.") See also Petition to Dismiss or Deny of DISH Network, at p. 52; fn 154 citing to Rob Owen, TUNED IN: WPGH'S LAYOFFS, "NEWS CENTRAL" RISKY OLD.POST-GAZETTE.COM (2003), <http://old.post-gazette.com/tv/20030423owen5.asp>. ("With 11 employees laid off – including meteorologist Matt Morano, weekend sports anchor Matt Fine and reporter Bill Clack – Sinclair will attempt to create a new broadcast model using News Central, a centralized news operation in Hunt Valley, Md.") See also, Petition to Dismiss or Deny of DISH Network, citing to Bob Carlton, SPORTSCASTER MIKE RAITA, NEWS ANCHOR LINDA MAYS LET GO AT BIRMINGHAM TV STATION ABC 33/40 AL.COM (2017), [http://www.al.com/entertainment/index.ssf/2017/01/longtime\\_birmingham\\_sportscast.html](http://www.al.com/entertainment/index.ssf/2017/01/longtime_birmingham_sportscast.html) at p. 53 ("This year, at ABC affiliate WBMA in Birmingham, Alabama, a station that Sinclair had acquired from Allbritton, Sinclair fired sports reporter Mike Raita and news anchor Linda Mays, both of whom had been with the station since it went on the air in 1996.") See also Petition to Dismiss or Deny of DISH Network, at p. 54 ("Sinclair quickly began the firing process that comes with its broad strategy of cost-cutting. It terminated on-air talent, including legendary entertainment reporter Arch Campbell, longtime Washington sports anchor Tim Brant, anchor Leon Harris, and many behind-the-scenes news producers and photographers.") See also Petition to Dismiss or Deny of DISH Network Table at p. 164 ("KOKH - Oklahoma City- Fired the entire sports department, the entire weather department, and 8 other news staff; WUHF-Rochester- Fired the entire news, weather and sports anchor team, and half of the remaining news staff").

As CCA points out, the history of Sinclair purging local reporting staff shows no signs of letting up. In particular, Sinclair already plans to dramatically cut local programming in Tribune's flagship Chicago station, WGN-TV, and its more than 70 hours per week of locally produced news content.<sup>9</sup>

**B. Sports fans rely on local broadcast stations to provide local sports coverage.**

Perhaps more than any other form of content, sports programming demonstrates why this proposed transaction so threatens localism. American sports fans' team interests tend to originate with a local community, and local broadcasting remains the dominant source of local sports news for fans.

Sports fans generally care more about their local professional teams, as opposed to teams from other markets, and rely on local broadcasters for in-depth coverage. According to one study, 77% of sports fans surveyed cite geographic proximity as a reason to support a team. For some fans, birthplace is the driving factor; for others, migration. While they may no longer live near their favorite team, at some point their locality was an important factor.<sup>10</sup> Similarly, 20% of fans choose their favorite sport because of accessibility and location of a team. If a fan lives closer to a baseball team than a football team, for example, she is more likely to be a baseball

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<sup>9</sup> See Competitive Carriers Association, In the Matter of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee) Consolidated Applications for Consent for Transfer Control (MB Docket 17-179); ("Petition to Deny of Competitive Carriers Association"), [https://ecfsapi.fcc.gov/file/108070451405482/CCA Petition to Deny Tribune\\_Sinclair \(080717\).pdf](https://ecfsapi.fcc.gov/file/108070451405482/CCA%20Petition%20to%20Deny%20Tribune_Sinclair%20(080717).pdf) (last visited Aug 20, 2017) at pp. 26-27 ("Sinclair plans to do the same to Tribune's local programming. In particular, Sinclair intends to dramatically cut support for local programming at Chicago's WGN-TV. The flagship station of Tribune, WGN-TV is a historic national institution and a pillar of the Chicago community that broadcasts more than 70 hours of locally produced news content per week.").

<sup>10</sup> Sid Groeneman, American's Sports Fans and Their Teams: Who Roots for Whom and Why (2017) at p. 88

fan.<sup>11</sup> The correlation between geographic proximity and team selection is especially prominent among older sports fans. 61% of fans 60 and older indicated locality as the driving factor in team selection.<sup>12</sup>

Local broadcasting plays an integral role in driving sports fans' allegiances to a local community. In addition to the proximity of sports arenas, it is "easier to watch games on television without an expensive supplemental cable subscription; and easier to be exposed to available media news and commentary by reporters, bloggers, talk shows, and team representatives."<sup>13</sup> 88% of fans access the games via television, compared to 51% who use a computer.<sup>14</sup> Finally, older sports fans in particular rely on local broadcast and are the largest category of traditional television viewer,<sup>15</sup> with an increasing trend of hours viewed.<sup>16</sup>

Original local sports programming. Avid sports fans enjoy original programming that digs deep into a team's roster, strategy, organization, and culture. National networks, both broadcast and non-broadcast, do not fill this need. Local broadcasters do. For example, to the

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<sup>11</sup> *Id* at p. 56

<sup>12</sup> *Id* at p. 91

<sup>13</sup> *Id* at at p. 92.

<sup>14</sup> Video Advertising Bureau, NO DAYS OFF! Celebrating the Everyday Communal Experience of Sports 1–48 (2017), <http://www.thevab.com/wp-content/uploads/2017/05/No-Days-Off-Sports-Report-Final.pdf> (last visited Aug 25, 2017) at slide no. 14.

<sup>15</sup> 85% of Americans 65+ often get news from TV. *See* AMY MITCHELL ET AL., THE MODERN NEWS CONSUMER: NEWS ATTITUDES AND PRACTICES IN THE DIGITAL ERA 1–47 (2016), [http://assets.pewresearch.org/wp-content/uploads/sites/13/2016/07/08140120/PJ\\_2016.07.07\\_Modern-News-Consumer\\_FINAL.pdf](http://assets.pewresearch.org/wp-content/uploads/sites/13/2016/07/08140120/PJ_2016.07.07_Modern-News-Consumer_FINAL.pdf) (last visited Aug 23, 2017) at p. 4.

<sup>16</sup> JC Lupis, THE STATE OF TRADITIONAL TV: UPDATED WITH Q1 2017 DATA MARKETINGCHARTS.COM (2017), <http://www.marketingcharts.com/featured-24817> (last visited Aug 24, 2017). Marketingcharts.com echoed the importance of television by discovering that adults 65 and older watched, on average, 51 hours of traditional television a week in Q1 of 2017. The time spent has increased almost 8% in the last five years. The only other cohort to increase viewing time is "adults 50-65," which has had a 0.6% increase in the same period.

die-hard Green Bay Packers fan, nothing on ESPN comes close to “The McCarthy Show,” produced by local Green Bay, Wisconsin ABC affiliate, WXOW, hosted by Larry McCarren and Packers Head Coach Mike McCarthy. They review games, talk about upcoming challenges, and other topics important to the fan community. Similarly, NBC10 in Philadelphia is the official television partner for the Philadelphia Eagles. In the 2016-2017 season, NBC10 aired four half-hour programs per week about the local NFL franchise: *Inside the Eagles*, *Eagles Gameday Kickoff*, *Eagles Game Plan*, and *Eagles Gameday Final*.<sup>17</sup> This type of locally oriented, locally produced sports programming serves sports fans’ desire to get in-depth coverage and analysis of the teams they care about most.

High school sports programming. Sinclair and Sports Fans Coalition agree “that sports are deeply embedded in American culture. . . .”<sup>18</sup> Sinclair’s Chairman, David Smith, has gone a step farther to claim that his company is good for coverage of local high school games, at one point telling investors that a high school football game on the CW affiliate in San Antonio produced higher ratings than an MLB postseason game, adding that “when a high school football game beats a national sports franchise, it says something about what the importance of local

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<sup>17</sup> Diana Torraivo & NBC10, NEWS > NBC10/ WCAU RETURNS AS OFFICIAL TELEVISION STATION FOR THE PHILADELPHIA EAGLES’ 2016-2017 FOOTBALL SEASON NBCUMV.COM (2016), <https://www.nbcumv.com/news/nbc10-wcau-returns-official-television-station-philadelphia-eagles-2016-2017-football-season?network=5266621> (last visited Aug 24, 2017).

<sup>18</sup> Sinclair Broadcasting Group, Re: Tribune Media Company and Sinclair Broadcast Group, Inc., Consolidated Applications for Consent to Transfer Control, MB Docket No. 17-179; Applicants’ Consolidated Opposition To Petitions To Deny (2017), (“Sinclair Opposition To Petitions To Deny”) [https://ecfsapi.fcc.gov/file/10823297056087/REDACTED%20\(Erratum\)%20-%20MB%20Docket%2017-179%20Applicants%20Consolidated%20Opposition%20to%20Petitions%20to%20Deny.pdf](https://ecfsapi.fcc.gov/file/10823297056087/REDACTED%20(Erratum)%20-%20MB%20Docket%2017-179%20Applicants%20Consolidated%20Opposition%20to%20Petitions%20to%20Deny.pdf) (last visited Aug 23, 2017) at p. 9.

television is.”<sup>19</sup> Although SFC believes, as explained further below, that Sinclair likely will cut local sports programming resources at Tribune stations, the words --if not the deeds-- of Sinclair ring true: fans love local high school sports and rely on local broadcasting for such content.

The Commission historically has acknowledged the key role played by local broadcasters in covering local sports. When referencing the importance of localism, the Commission generally refers to local “news, weather, *and sports*” (emphasis added).<sup>20</sup> Moreover, when it voted unanimously to eliminate the Sports Blackout Rule, the Commission reasoned that maintaining sports on free over-the-air broadcasting was in the public interest, and that eliminating the blackout rule would serve the public interest by making more games available.<sup>21</sup>

### **C. The proposed transaction will harm local sports coverage in Tribune markets.**

Given sports fans’ allegiance to local teams and reliance on local broadcasters for the best coverage, the proposed transaction bodes ill for fans in Tribune markets. By eliminating local

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<sup>19</sup> Sinclair Broadcasting Group, SINCLAIR BROADCAST GROUP MANAGEMENT DISCUSSES Q3 2013 RESULTS - EARNINGS CALL TRANSCRIPT (2013), <https://seekingalpha.com/article/1812722-sinclair-broadcast-group-management-discusses-q3-2013-results-earnings-call-transcript?part=single> (last visited Aug 24, 2017) at p. 11.

<sup>20</sup> For example, the Commission often refers to “news, weather, and sports” as key elements of localism. See, e.g., Review of the Commission’s Program Access Rules and Examination of Programming Tying Arrangements, First Report and Order, 25 FCC Rcd 746, 792-93, paras. 69-70 (2010), affirmed in part and vacated in part sub. Nom. Cablevision Systems Corp. et al. v. FCC, \_\_\_ F.3d \_\_\_ (D.C. Cir. June 10, 2011), 2011 WL 2277217 (C.A.D.C.) (eliminating the so-called terrestrial loophole).

<sup>21</sup> See Federal Communications Commission, In the Matter of Sports Blackout Rules (MB Docket No. 12-3); Report and Order (2014), (“Sports Blackout Rules”) [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-14-141A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-141A1.pdf) (last visited Aug 17, 2017) at p. 33 para. 1 (“In addition, elimination of the sports blackout rules is unlikely to accelerate the migration of NFL games from over-the-air to pay TV in the near future or in the longer term. We also note that the record demonstrates that the NFL will be able to achieve exclusivity following the repeal of the sports blackout rules, if it chooses to do so, thus maintaining the attractiveness of NFL games to advertisers. Further, we note that it may benefit localism if the NFL ended its blackout policy because local stations in markets prone to blackouts may carry more games and earn more advertising revenues. Therefore, we conclude that retention of the sports blackout rules is not necessary to preserve or promote localism.”) See *also* Sports Blackout Rules, MB No. 12-3 at p. 47 para. 8 (“In addition, elimination of the sports blackout rules will not harm consumers by forcing the NFL to migrate its games to pay TV or by causing the NFL to raise its ticket prices.”).

sports reporters and production staff at the Tribune stations it will acquire, and centralizing news operations in a distant market, Sinclair will gut local sports coverage in the markets it proposes to serve. Sinclair's notorious practice of shifting investment away from local sports reporters through eliminating local staff in favor of "centralized news operations" naturally spells fewer hours and lower quality of local sports reporting. As DISH Network put it, "[l]ess investment at the local level naturally means fewer reporters, producers, camera operators, and other news team professionals, which in turn inevitably impacts the amount and quality of original reporting about a local community. Sinclair's solution is to supply national programming straight from its Baltimore headquarters."<sup>22</sup> Newsmax, itself no stranger to video reporting and production, underscored this point by stating unequivocally that the proposed transaction would undermine local coverage.<sup>23</sup>

Nowhere will this be more damaging than in Chicago, where sports fans have lived, breathed, eaten, and slept sports coverage on WGN-TV for generations. To Chicago sports fans, eliminating local sports personnel and coverage from WGN would be sacrilege. The late Harry Caray famously got his start on WGN and went on to be the most famous singer of "Take Me Out to the Ballgame" in the history of Major League Baseball. Chicagoland sports fans have watched local games on WGN since the dawn of the television age. The WGN sports reporters

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<sup>22</sup> Petition to Dismiss or Deny of DISH Network, at p. 47.

<sup>23</sup> Newsmax Media, Inc., In the Matter of the Applications of Tribune Media Company and Sinclair Broadcast Group For Consent to Transfer Control of Licenses and Authorizations (MB Docket No. 17-179); Petition To Dismiss Or Deny Of Newsmax Media (2017), ("Petition To Dismiss Or Deny Of Newsmax Media"), [https://ecfsapi.fcc.gov/file/10808306362995/Newsmax Petition to Dismiss or Deny.pdf](https://ecfsapi.fcc.gov/file/10808306362995/Newsmax%20Petition%20to%20Dismiss%20or%20Deny.pdf) (last visited Aug 18, 2017) at p. 2 ("[...] the level of media concentration proposed by this transaction will homogenize the content available to US consumers, eliminate unique viewpoints and reduce press diversity, especially in the delivery of local news.").

are, in the opinion of Sports Fans Coalition, among the best in the business and any “central casting” out of Sinclair’s corporate headquarters is unlikely to match the local sports coverage of this legendary team. History is likely to repeat itself.

Sports Fans Coalition believes that Chicago sports fans should be worried about the loss of these legendary sportscasters:

- Lauren Magiera, WGN’s first female sports anchor, whose experience on the field and in the studio has taken her all across the country reporting on sports. She even co-hosted pre-game shows with Packers Hall of Famer Larry Mccarren.<sup>24</sup>
- Pat Tomasulo, WGN’s Morning News Sports Anchor, who has been a mainstay at the station for 12 years.<sup>25</sup> By his own admission, “Pat Tomasulo is the funniest morning sportscaster in America, mainly because he is the only morning sportscaster in America.”<sup>26</sup> His wit and insight are unparalleled in the field of sports journalism.
- Dan Roan, who first joined the sports staff in 1984 and has since won “multiple Emmy Awards for his work as host, producer, reporter and play-by-play announcer.” He won three Emmy Awards in 1994 alone for sports-related programming. Without him and his work on WGN Evening News at Five and Six, WGN News at Nine, and Instant Replay (a sports-specific newscast), WGN would not have earned as much success in sports journalism.

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<sup>24</sup> WGNTV, LAUREN MAGIERA: WGN SPORTS REPORTER AND WEEKEND ANCHOR CHICAGO’S VERY OWN WGN9 (Copyright 2017), <http://wgntv.com/author/lauren-magiera/> (last visited Aug 19, 2017).

<sup>25</sup> WGNTV, PAT TOMASULO CHICAGO’S VERY OWN WGN9 (Copyright 2017), <http://wgntv.com/author/pat-tomasulo/> (last visited Aug 18, 2017).

<sup>26</sup> Pat Tomasulo, PAT TOMASULO > ABOUT PATTOMASULO.COM (Copyright 2017), <http://pattomasulo.com> (last visited Aug 19, 2017).

If Sinclair, in keeping with its past post-acquisition behavior, cuts local personnel at WGN and eliminates these and other sports anchors, the Sox, Cubs, Bears, Bulls, and Blackhawks fans will be the big losers. The same story would be repeated at every Tribune station, from New York to L.A., Philadelphia to St. Louis, where true sports fans who rely on local broadcasters will find their local sports coverage decimated.

**1. Sinclair touts its increases in local sports programming yet fails to adequately support its own assertions.**

Sinclair attempts to paper over the real and credible threat to local sports coverage posed by this merger by making broad, sweeping promises of better sports coverage post-merger and pointing to what it claims are exemplary increases in sports programming under its leadership. A little digging, however, reveals the emptiness of these platitudes.

Sinclair claims that it devotes significant resources to local sports programming but fails to compare its record to that of the Tribune stations it seeks to acquire. Sinclair claims that it “commits significant resources to local sports programming, which it intends to bring to the Tribune stations after consummation of the Transaction.”<sup>27</sup> It cites growth of local sports programming in its overall operation but omits the necessary details to understand whether this growth occurred on a per-station basis or was merely the result of adding more stations to Sinclair’s holdings. For example, Sinclair claims to have added 6,148 hours of local sports programming between the years 2012-2016<sup>28</sup> but fails to say whether this increase was due to

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<sup>27</sup> Sinclair Opposition To Petitions To Deny at p. 9.

<sup>28</sup> See Sinclair Opposition To Petitions To Deny at pp. 9-10. Sinclair also claims that its growth has allowed it to increase production efficiencies across markets, and establish new programs such as High School Hoops and

acquisitions or an actual increase per station. It flagrantly omits parallel data for the Tribune stations it seeks to acquire, or even an industry average against which to measure its claim of superior local sports programming. Without comparable sports programming data from Tribune, there is no way to meaningfully conclude that Sinclair's pending acquisition of Tribune stations will actually increase local sports broadcasts. It could be just as likely that Sinclair's boasts of increased sports broadcasts are equal to—or might even pale in comparison to—investments from the stations it aims to acquire. Without the necessary data the record will remain unworkable for sufficient analysis. Sinclair should produce a side-by-side comparison on a per-station basis of its own sports programming resource allocation and that of Tribune. Only then can the Commission and the public discern whether Sinclair acquiring Tribune stations will improve local sports programming.

It is possible that Sinclair's professed increase in local sports programming merely follows industry norms. For example, according to one source, local sports, weather and traffic on local newscasts rose from 32% of total programming in 2005 to 40% in 2012, with the biggest increase coming from sports (from 7% to 12% in the same period).<sup>29</sup> How much of Sinclair's self-professed increases in sports programming actually comports with such industry norms cannot be determined from Sinclair's generalized figures. Sinclair should provide a comparison

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Thursday Night Lights/Friday Night Rivals.” Sinclair Opposition To Petitions To Deny at pp. 9-10). Again, without a basis for comparison, there is no way to determine if sports fans in Tribune's existing markets will fare better or worse.

<sup>29</sup> Mark Jurkowitz et al., *The Changing TV News Landscape* (2013), <http://www.stateofthemediamedia.org/2013/special-reports-landing-page/the-changing-tv-news-landscape/> (last visited Aug 23, 2017).

between its own local sports resources on a per-station basis and the overall industry average. Before the fans start cheering, they deserve to get better facts.

As recently as a few hours before reply comments were due in this docket, Sinclair showered itself with praise in announcing a partnership with the North Carolina High School Athletic Association to air several state championship basketball and football games on WLOS and WMYA.<sup>30</sup> While Sports Fans Coalition applauds local coverage of high school sports, once again Sinclair fails to place its own actions in the larger context of industry norms and Tribune's existing practices. Charter Communications has Spectrum OC16 in Hawaii which televises, among other things, local high school sports. They even one-up Sinclair by prominently advertising girls' volleyball on their front page, rather than just defaulting to the standard basketball and football.<sup>31</sup> CSN, DirectTV, and DISH Network all carry the Iowa High School Sports Network.<sup>32</sup> Within in the broadcast industry, Nexstar owns news8highschoolsports.com, which, through its CBS affiliate, RochesterFirst, high lights the community's athleticism.<sup>33</sup> Sinclair should compare its most recent high school sports announcement with the actions of these industry leaders and, perhaps more important, the track record of the Tribune stations it seeks to acquire.

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<sup>30</sup> HSXTra Staff, NCHSAA ANNOUNCES TV DEAL FOR FOOTBALL, BASKETBALL CHAMPIONSHIPS GREENSBORO.COM (2017), [http://www.greensboro.com/sports/hsxtra/basketball/nchsaa-announces-tv-deal-for-football-basketball-championships/article\\_1c2054d2-8cea-11e7-8cf7-5fbb83929795.html](http://www.greensboro.com/sports/hsxtra/basketball/nchsaa-announces-tv-deal-for-football-basketball-championships/article_1c2054d2-8cea-11e7-8cf7-5fbb83929795.html) (last visited Aug 29, 2017).

<sup>31</sup> Charter Communications, SPECTRUM OC16; HAWAIIAN CABLE CHANNEL HIGHLIGHTING LOCAL SPORTS PRODUCT SPLASH PAGE (2017), <https://sports.oc16.tv> (last visited Aug 29, 2017).

<sup>32</sup> IHHSN, IOWA HS SPORTS NETWORK; CSN HIGHLIGHTING LOCAL SPORTS COVERAGE IHSSN.COM (2017), <http://www.ihssn.com/tv-coverage.html> (last visited Aug 29, 2017).

<sup>33</sup> CBS, ROCHESTER, NY HIGHLIGHTING LOCAL HS SPORTS NEWS8HIGHSCHOOLSPORTS.COM (2017), <http://www.news8highschoolsports.com> (last visited Aug 29, 2017).

In a further effort to paper over its questionable claims of sports investment, Sinclair flags the four million dollars each year it dedicates to promotion and production costs of local high school sports games through its Thursday/Friday Night Rivals program,<sup>34</sup> but fails to offer any modicum of evidence of how \$4 million stacks up to industry standards. Sinclair should provide a comparison of its spending to that of other media companies.

In addition, when discussing its supposed emphasis on local sports, Sinclair cites its scholar athlete program.<sup>35</sup> SFC appreciates programs dedicated to aid and assist student athletes on and off the field but Sinclair's investment in the future of student athletes is not evidence of local sports programming resources. A scholarship program for student athletes is a good method of promoting local sports stars, but is not equivalent to an investment in the local broadcasts that *cover* hometown heroes.

Sinclair's program for student athletes appears to be neither novel nor substantial. Compared to the student athlete programs of Enterprise Holdings, for example, Sinclair's efforts lack credibility. Enterprise, a long-time supporter of Sports Fans Coalition and a company with a long track record of hiring and promoting former college athletes, recently celebrated its fifth year teaming up with Athlete Network to hire recent student athlete college graduates around the country in meaningful positions with opportunities for growth.<sup>36</sup> By its own description,

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<sup>34</sup> Sinclair Opposition To Petitions To Deny, at p. 9, fn 22 and in Exhibition I, Declaration of Steve Marks.

<sup>35</sup> *Id.* at p. 10.

<sup>36</sup> Enterprise Holdings, (Press Release) Enterprise Teaming Up With Athlete Network for Fifth Straight Year EnterpriseHoldings.Com(2017),<https://www.enterpriseholdings.com/en/press-archive/2017/07/enterprise-teaming-up-with-athlete-network-for-fifth-straight-year.html> (last visited Aug 20, 2017). (“Enterprise Holdings Inc., the largest car rental company in the world, is celebrating the fifth anniversary of its national partnership with Athlete

Sinclair's program does not come close to this standard. Moreover, Sinclair's scholarship program should not be mistaken for a company-wide dedication to locally produced sports programming.

## **2. Sinclair mistakenly claims that local sports fans can rely on Internet coverage.**

Sinclair argues that the Internet provides abundant options for local sports coverage and that this should ease any concerns about broadcast media consolidation. Specifically, Sinclair argues that petitioners yearn for a "pre-cable, pre-Internet, pre-smartphone world, untethered from the economic realities of the current media market."<sup>37</sup> They go even further and cast themselves as victims of a relentless assault from "a challenging media landscape in which broadcasters face growing competitive pressures from online streaming services that produce their own compelling content, massive national or near-national MVPDs (such as DISH Network), consolidated cable programming networks, and other sources. . . ."<sup>38</sup>

What Sinclair tells the Federal Communications Commission, however, differs greatly from what it has told Wall Street investors and the Securities Exchange Commission.

To its investors, Sinclair argues that local broadcasting remains a critical platform for consumers and will remain so. In a mid-2009 earnings call, Executive Vice President and CFO David Amy suggested that even pitted against the Internet and YouTube, "television dominates." He disputed the idea that the Internet could be a viable substitute for local broadcast. He told

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Network (formerly Career Athletes). Athlete Network gives the company access to more than 500 university athletic departments and enables it to network with current and former student athletes throughout the country.").

<sup>37</sup> Sinclair Opposition To Petitions To Deny at p. iii.

<sup>38</sup> *Id.* at p. i.

investors that he did not “put a whole lot of stock in the background noise about people going to the Internet to watch news on a local basis in any grand way that's going to have an effect on [Sinclair] because frankly [Sinclair] can do exactly what they're doing in a much more professional, legitimate way.”<sup>39</sup> Sinclair seems to have stayed with this narrative to the present day, except when trying to secure Commission approval of its proposed Tribune acquisition.

Moreover, Chris Ruddy, the CEO of NewsMax Media, which has filed comments in opposition to the proposed transaction, stated recently that the Commission’s ownership caps are still needed despite the advent of over-the-top Internet video. Ruddy stated that “there is no real competition for local television news on the Internet and in local markets” and that “**local TV news is still the main way most Americans get their news.**”<sup>40</sup>

Independent studies suggest that Mr. Ruddy -- and the Sinclair executives who talk to Wall St. -- are right. Local broadcast TV still dominates. One such study found that “17% of US TV households now rely on broadcast-only reception,” almost three times more than the those who “say they only use Internet services.” Moreover, broadcast-only reception is far more

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<sup>39</sup> SeekingAlpha, Sinclair Broadcast Group Inc. Q2 2009 Earnings Call Transcript (2009), <https://seekingalpha.com/article/154039-sinclair-broadcast-group-inc-q2-2009-earnings-call-transcript?part=single> (last visited Aug 1, 2017). (“David Amy, Sinclair Executive Vice President, Chief Financial Officer - “So I don't see anybody out there, at least I don't hear of anybody saying television isn't going to be watched. It's just frankly not true in spite of what YouTube or other folks might say, the fact of the matter is that this – when we look at our 10:00 news as an example, it still dominates the marketplace. All of our news is dominating the marketplaces where we're in. Television dominates the marketplaces that we're in. So I don't put a whole lot of stock in the background noise about people going to the Internet to watch news on a local basis in any grand way that's going to have an effect on us because frankly we can do exactly what they're doing in a much more professional, legitimate way if we decide to and we think there's a business model there, we'll do exactly the same thing.”).

<sup>40</sup>NEWSMAX’S RUDDY: SINCLAIR/TRIBUNE COMBO IS DANGEROUS PROPOSITION BROADCASTINGCABLE.COM, <http://www.broadcastingcable.com/news/washington/newsmax-s-ruddy-sinclairtribune-combo-dangerous-proposition/168079> (last visited Aug 24, 2017) (emphasis added).

common in homes earning less than \$30,000 per year (26%) and Hispanic homes (24%).<sup>41</sup> While it is true that the Internet is gaining market share for video consumption, live TV still outweighs Internet/Mobile.<sup>42</sup> Thus, Sinclair's argument that the Internet is making it difficult to capture an audience and compete, particularly in the sports format, is false.<sup>43</sup> After all, "sports programming now accounts for almost all live TV viewing."<sup>44</sup>

Even the localized content of leading online sports outlets like SB Nation and Deadspin.com do not cover local sports at the highest levels of professionalism the way, say, WGN's local sports team does. Local, on-air personalities, like WGN's Lauren Magiera and Pat Tomasulo, can gain access to local teams far easier than can national blogs. Their proximity makes them more readily available to interview players and coaches. Likewise, teams rely on local broadcast to get their messages to their local audience. The Internet and social media have granted fans access like never before, but they also create a lot of noise and substandard reporting. Nothing cuts through that noise better than local, broadcast television. As Pew found in 2015, "routine traffic, weather and sports segments accounted for about a third of airtime."<sup>45</sup>

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<sup>41</sup> GfK, (Press Release) One-Quarter of US Households Live Without Cable, Satellite TV Reception – New GfK Study GfK.Com (2016), <http://www.gfk.com/en-us/insights/press-release/one-quarter-of-us-households-live-without-cable-satellite-tv-reception-new-gfk-study/> (last visited Aug 23, 2017).

<sup>42</sup> Stephen Master, Year in Sports Media Report 2016 1–36 (2015), <http://www.nielsen.com/content/dam/corporate/us/en/reports-downloads/2017-reports/nielsen-year-in-sports-media-2016.pdf> (last visited Aug 24, 2017) at p. 6.

<sup>43</sup> Sports Blackout Rules at p. 60

<sup>44</sup> Nielsen, Catch It Live: Sports Viewing Scores a Programming Goal Nielsen.Com (2016), <http://www.nielsen.com/us/en/insights/news/2016/catch-it-live-sports-viewing-scores-a-programming-goal.html> (last visited Aug 25, 2017).

<sup>45</sup> Amy Mitchell & Jesse Holcomb, Local News in a Digital Age 1–160 (2015), [http://assets.pewresearch.org/wp-content/uploads/sites/13/2015/03/PJ\\_MediaEcology\\_completereport.pdf](http://assets.pewresearch.org/wp-content/uploads/sites/13/2015/03/PJ_MediaEcology_completereport.pdf) (last visited Aug 17, 2017) at p. 7.

In the same study, Pew found that in Denver, 44% of the population turned to local broadcast affiliates as their primary source of local sports news.<sup>46</sup>

If Sinclair's past behavior after acquiring broadcast TV stations is any indicator, sports fans in every Tribune market should expect less local sports coverage. Fans rely on local broadcast stations for the best coverage of local high school, college, and professional teams. Sinclair's strategy of gutting local sports personnel and replacing them with generic feeds from corporate headquarters does not portend well for sports fans across the country. Sinclair's fig leaf of professed sports programming increases and sports scholarships falls away with a little scrutiny, and its claims that the Internet addresses fans' needs flies in the face of its own statements to Wall Street. Sports Fans Coalition concludes that this transaction will harm, not help, fans.

**III. Sinclair's increased incentive and ability, combined with its past propensity, to take down programming during retransmission-consent disputes will harm fans' access to games.**

Sinclair already has proven its willingness and ability to harm millions of sports fans by taking down local broadcast signals from pay-TV platforms, particularly around the time of major sporting events, in order to extract higher retransmission consent fee payments. The proposed transaction will only make matters worse. Sports fans historically have been collateral damage in negotiations between big broadcasters and pay-TV companies, with broadcasters typically using the popularity of sporting events as leverage in their retransmission consent

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<sup>46</sup> *Id.* at p. 41.

negotiations with big cable and satellite companies. The ultimate victim is the fan, who pays her bills, pays her taxes, supports her local team, and just wants to watch the game.

**A. Broadcasters historically have taken down their signals around the time of major sporting events in order to maximize their leverage with pay-TV distributors and win higher retransmission consent fees.**

Over the last decade, broadcasters like Sinclair have used the threat or reality of blackouts as leverage in securing higher retransmission consent fees. This year alone, broadcasters have blacked out major television sporting events, such as the Super Bowl, NFL and College Football playoff games, and other non-sports events like the Grammys and network television premiers. This is part of a growing trend of broadcasters using sports fans as pawns in a multi-billion dollar retransmission consent smack-down.

In 2013, CBS took down its signals from Time Warner Cable during the NFL pre-season, impacting fans' access to games because Time Warner Cable was unwilling to pay increased retransmission fees. The blackout went on for weeks and only ended after a series of last resort advertisements were run, encouraging customers to switch providers. One such ad highlighted a football game between Peyton and Eli Manning, a game on CBS that Time Warner Cable customers would not be able to see. With the regular season kick-off less than a week away, CBS and Time Warner Cable came to an agreement that CBS Chief Executive Les Moonves celebrated.<sup>47</sup>

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<sup>47</sup> Reuters, CBS, Time Warner Cable reach content carriage agreement CNBC.Com (2013), <https://www.cnbc.com/id/100988764> (last visited Aug 24, 2017) ("[w]e are receiving fair compensation for CBS content and we also have the ability to monetize our content going forward on all the new, developing platforms that are right now transforming the way people watch television").

In 2010, Fox took down its signal from Cablevision households during the World Series, denying three million New York fans the ability to watch games one and two of the Series. The blackout ended just in time for Game 3 but not without depriving Major League Baseball fans the chance to see the most important games of the year. The deal was also struck just in time for the NFL's Jets/Packers game. Additionally, Fox demanded that Cablevision carry Fox cable channels as a part of the agreement. Cablevision stated that in the "absence of any meaningful action from the FCC, Cablevision has agreed to pay Fox an unfair price for multiple channels of its programming including many in which our customers have little or no interest [and] our customers will pay more than they should for Fox programming."<sup>48</sup>

According to one press report about the blackout:

The impasse amounted to more than corporate wrangling for Bronx resident Clifford Taylor. "We live for sports," Taylor said. "Die-hard New Yorker fans, we love to see the Yankees and Giants play." . . . Theresa McCluskey, 42, of Hicksville was at a bar in Penn Station with three friends as they waited for a train and watched All-Star pitchers Roy Halladay and Tim Lincecum in the first game of the NLCS. "We pay enough money for every station that we get now," she said. "Why subject us to not having our stations that we paid for originally? We'll have to come out to the bar, spend more money," she added. . . ."<sup>49</sup>

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<sup>48</sup> Nellie Andreeva, War Is Over: Fox & Cablevision Reach Deal Deadline.Com (2010), <http://deadline.com/2010/10/war-is-over-fox-cablevision-reach-deal-80236/> (last visited Aug 22, 2017).

<sup>49</sup> CBS News, Fox, Cablevision Suspend Dispute Negotiations CBSNews.Com (2010), <https://www.cbsnews.com/news/fox-cablevision-suspend-dispute-negotiations/> (last visited Aug 24, 2017).

**B. The merger will increase the risk of Sinclair taking down its broadcast signals during retransmission consent negotiations.**

Several commenters agree that Sinclair’s history of heavy-handed and sometimes illegal tactics during retransmission consent negotiations create a substantial risk for future blackouts, which ultimately harm consumers and especially sports fans. One of the most harmful blackouts in recent memory occurred in August of 2015, just as the football season was beginning, when Sinclair blacked out all local signals from DISH Network, which included 129 stations in 79 markets.<sup>50</sup> Commenters note that Sinclair has been behind three blackouts since 2010.<sup>51</sup> One of those, which occurred in 2013, involved a staggering 212 day station blackout.<sup>52</sup>

In addition to Sinclair’s history of blacking out fans’ access to games, Sinclair is infamous for charging some of the highest retransmission consent fees in the industry, which jumped an alarming 43.8% in the last year alone.<sup>53</sup> The Commission is aware of Sinclair’s harmful retransmission dealings, as illustrated by the 2016 \$9.5 million consent decree stemming from accusations that Sinclair violated the Commission’s good faith negotiation requirement.<sup>54</sup>

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<sup>50</sup> Petition to Dismiss or Deny of DISH Network, at p. 29.

<sup>51</sup> Cinemoui et al., In the Matter of Applications of Tribune Media Company and Sinclair Broadcast Group For Consent to Transfer Control of Licenses and Authorizations (MB Docket No. 17-179); Comments Of Cinemoui, Ride Television Network, Awe – A Wealth Of Entertainment, Mavtv Motor Sports Network, One America News Network, Theblaze And Eleven Sports Network (2017), (“Cinemoui Comments”) [https://ecfsapi.fcc.gov/file/1080813301014/Independent Programmer Comments on Sinclair-Tribune Merger.pdf](https://ecfsapi.fcc.gov/file/1080813301014/Independent%20Programmer%20Comments%20on%20Sinclair-Tribune%20Merger.pdf) (last visited Aug 15, 2017) at p. 8.

<sup>52</sup> Cinemoui Comments at p. 8.

<sup>53</sup> Cinemoui Comments at p. 4.

<sup>54</sup> Petition to Deny of Competitive Carriers Association at p. 23 citing to Steven Salop et al., Economic Analysis of Broadcasters’ Brinkmanship and Bargaining Advantages in Retransmission Consent Negotiations (2010), <https://ecfsapi.fcc.gov/file/7020499521.pdf>.

The proposed merger will exacerbate the problem. Sinclair has bragged to investors that increased retransmission fees will be a *benefit* of the proposed merger.<sup>55</sup> Through acquiring Tribune, Sinclair will hold “must have” sports programming in key markets, such as Cubs games in Chicago and Mets games in New York,<sup>56</sup> which Sinclair is likely to black out from any pay-TV provider unwilling to pay the ransom. Evidence suggests that Sinclair’s history of abusive retransmission fees will only increase with approval of the proposed merger to potentially eleven-fold of those negotiated as recently as 2010.<sup>57</sup> As Public Knowledge notes, Sinclair’s increased broadcast holdings post-merger would result in even more leverage in negotiating retransmission fees, which will result in inevitable blackouts.<sup>58</sup> Further harms will be inflicted on consumers because the less favorable retransmission fees will ultimately fall on the local broadcast audience, pushing viewership outside the realm of affordability for many sports fans.<sup>59</sup>

**C. Even if Sinclair does not take down programming, the increased retransmission consent fees passed onto consumers will make pay TV more expensive for fans, some of whom will no longer be able to afford a subscription.**

When fans through no fault of their own lose the ability to watch their home team play, despite having paid taxes that went into building a stadium and having paid their bills to the pay-TV provider, that is one way this merger will have taken away sports. When fans simply can no

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<sup>55</sup> See Cinemoui Comments at p. 9. (“Indeed, a Sinclair investor presentation cited increased retransmission consent fees as a benefit of the transaction, touting “immediate contracted step-ups” to Sinclair’s net retransmission revenue. And, as noted, these and other increases will translate into higher prices for consumers.”).

<sup>56</sup> See *infra* Section IV.

<sup>57</sup> Cinemoui Comments at p. 7.

<sup>58</sup> Public Knowledge Petition to Deny at pp. 8-9.

<sup>59</sup> *Id.* at pp. 8-9.

longer afford to pay for TV at all, that is another way this mega-merger will have taken away their games.

DISH notes that in 48 out of 59 DMAs which contain at least one larger broadcaster (equal to or greater than 1 million DISH subscribers) and at least one smaller broadcaster (fewer than 1 million DISH subscribers), the rate charged by the larger broadcaster is the highest in the market.<sup>60</sup> In 52 out of the 59 DMA's the largest broadcaster's rate is higher than the smallest.<sup>61</sup> Additionally, DISH's regression analysis indicates that there is a strong correlation between the size of the broadcaster and the retransmission fees paid by DISH.<sup>62</sup>

Similarly, the Department of Justice has expressed concerns that greater retransmission consent fee leverage will grant large entities, like post-merger Sinclair, the ability to force MVPDs to pay higher fees, which will result in anti-competitive effects harming the industry and subscribers.<sup>63</sup> Public Knowledge correctly argues that while cable dominates the pay-TV market,

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<sup>60</sup> See Petition to Dismiss or Deny of DISH Network at p. 25. ("A look at most local markets tells the same story – in 48 of the 57 DMAs where there is both at least one large broadcaster (reaching a million DISH subscribers or more) and at least one small one (reaching fewer than a million DISH subscribers), the rate charged by the largest broadcaster is the highest in the market; in 52 of these 57 DMAs, it is higher than the rate charged by the smallest broadcaster.").

<sup>61</sup> *Id* at p. 25

<sup>62</sup> Petition to Dismiss or Deny of DISH Network at p. 45 and in Exhibit B, Declaration of Melissa Ordonez at para. 3.

<sup>63</sup> Free Press, In the Matter of Application of Sinclair Broadcast Group and Tribune Media Company For Consent to Assign or Transfer Control of Licenses and Authorizations (MB Docket No. 17-179); Petition to Deny of Free Press (2017), [https://ecfsapi.fcc.gov/file/1080886409552/Sinclair-Tribune Petition to Deny.pdf](https://ecfsapi.fcc.gov/file/1080886409552/Sinclair-Tribune%20Petition%20to%20Deny.pdf) (last visited Aug 22, 2017) at p. 36. ("Moreover, the DOJ has identified concern for the competitive harms that would result from the greater bargaining leverage in retransmission consent negotiations with MVPDs.148 This broad national reach would certainly have anticompetitive effects that would be damaging to local communities and force providers to pay higher retransmission fees.").

broadcast industry consolidation has led to higher retransmission consent fees.<sup>64</sup> This opens the door for broadcasters to freely charge cable and satellite companies increasingly exorbitant fees. When cable operators refuse to pay the high fees, blackouts will result, which ultimately will harm the consumer most of all.<sup>65</sup> Given the propensity of broadcasters to target blackouts around popular sporting events, this logically would mean more blackouts during sporting events.

Among all sports fans, perhaps middle- and low-income fans will be impacted the most by rate increases resulting from higher retransmission consent fees.<sup>66</sup> According to a recent report published by TiVO, nearly 22% of people without a pay-TV service cut the cord in the last year -- an increase of more than 4% year-over-year—and almost 80% of cord-cutters cite price as the main reason for unsubscribing from a pay-TV service.<sup>67</sup> The cost-driven cord-cutting trend will disproportionately impact lower-income sports fans. Households that have less than \$40,000 in income are 20% more likely to cut cord due to cost, while households with \$75,000 in

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<sup>64</sup> See Public Knowledge Petition to Deny at p. 7 (“While cable operators are still dominant, consolidation among programmers and broadcasters, along with increasing video programming competition, has turned carriage negotiations from routine business to high-stakes negotiations. Consequently, retransmission consent fees have increased over the years, with SNL Kagan projecting those fees will reach \$11.6 billion in 2022.<sup>27</sup> As a result, large broadcasters are able to extract enormous sums of money from cable operators, turning the retransmission consent process into an additional revenue stream.”).

<sup>65</sup> Public Knowledge Petition to Deny at p. 7 citing Mike Farrell, Kagan: Retrans Fees to Reach \$11.6b by 2022, Multichannel News (June 29, 2016), available at <http://www.multichannel.com/news/networks/kagan-retrans-fees-reach-116b-2022/406026> (“When retransmission consent negotiations come to a standstill, large broadcasters are able to blackout their programming.”).

<sup>66</sup> See Petition to Dismiss or Deny of DISH Network at pp. 44-45 (“But a forced bundle of broadcast and non-broadcast content could easily force a significantly increased price, making Sling TV much less attractive for consumers who are looking for a lower-cost alternative to traditional pay-TV.”).

<sup>67</sup> TiVO, Q1 2017 Video Trends Report: Consumer Behavior Across Pay-TV, PVOD, OTT, TVE, Streaming Devices and Content Discovery 1–42 (2017), <http://dm4.tivo.com/l/43592/2017-06-06/9snl7n> (last visited Aug 24, 2017) at p. 2.

annual income are 8% more likely to do so.<sup>68</sup> Thus, higher retransmission fees resulting from the proposed transaction are likely to drive pay-TV rates above affordability for many sports fans.

The proposed acquisition of Tribune by Sinclair will curtail sports fans' access to the games they love and have paid for in multiple ways, from their taxes that went to help build the stadium to their cable or satellite subscription that ultimately helps to fund the leagues. The transaction will exacerbate an already untenable situation: broadcasters pull their programming down in order to gain leverage in retransmission consent negotiations and tend to do so right around the time of a big game in order to maximize the effect. Fans who paid to watch a game cannot get what they bargained for-- either they miss the game or pay more for their pay-TV service. The proposed transaction makes matters worse by giving Sinclair, already prone to massive programming takedowns and questionable negotiation tactics, even greater incentive and ability to take away sports programming from fans who do not deserve to be treated like a bargaining chip. Whether by physically removing games from pay-TV platforms or simply contributing to cost increases that render pay-TV unaffordable, the net result is the same: sports fans are shut out from the games they should be able to see. This cannot be in the public interest.

**IV. Sinclair's acquisition of Tribune's key sports rights, combined with Sinclair's current ownership of pay-TV sports networks, could reduce fans' access to Cubs, Mets, and Yankees games.**

Through its acquisition of Tribune, Sinclair will gain control over key sports television rights in two major markets, Chicago (3rd most valuable) and New York (most valuable).<sup>69</sup> Notably,

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<sup>68</sup> Mike Rich, WHAT BEHAVIORAL DATA TELLS US ABOUT THE OTT VIEWING HABITS OF CORD-CUTTERS COMSCORE (2017), <http://www.comscore.com/Insights/Blog/What-Behavioral-Data-Tells-Us-About-the-OTT-Viewing-Habits-of-Cord-Cutters> (last visited Aug 24, 2017).

Sinclair would acquire the exclusive rights to hockey, basketball, and baseball games in key metropolitan markets, which economist Philip Napoli notes will be a major bargaining advantage in retransmission consent negotiations with MVPDs.<sup>70</sup>

**A. Sinclair will acquire key sports programming rights.**

Chicago Cubs. Tribune currently holds rights to broadcast certain Cubs games within the Chicago DMA. In particular, those rights include 45 games annually for the next five years on WGN-Ch.9.<sup>71</sup> Television rights to Cubs games are exceptionally valuable in the Chicago market, especially after the Cubs' World Series win last year, the team's first in generations. Ticket prices for Cubs games in the 2017 season skyrocketed to an average price of \$150.63 on the secondary market. Season ticket holders also learned that their price would increase by almost 20%.<sup>72</sup>

New York Mets, Yankees. Tribune also holds key rights to Mets games in the New York City DMA. The plight of Chicago fans is equally shared by New Yorkers, as Sinclair will hold the rights to many Mets games and some Yankees games. Through PIX11 and WCCT, Tribune

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<sup>69</sup> Lyons Public Relations, NIELSEN DMA RANKINGS – 2017 TELEVISION SEASON LYONS PUBLIC RELATIONS (2017), <https://www.lyonspr.com/latest-nielsen-dma-rankings/> (last visited Aug 24, 2017).

<sup>70</sup> Petition to Deny of Competitive Carriers Association at p. 25 ("The proposed acquisition of Tribune will also give Sinclair ownership of highly differentiated programming that MVPDs and mobile operators nationwide will consider "must- have" content. In particular, Sinclair would obtain Tribune's exclusive rights to professional basketball, hockey and baseball games in major metropolitan markets, including those of the Chicago Cubs and New York Yankees. As the economist Philip Napoli has noted, access to this type of differentiated content (especially sports programming) is a key bargaining advantage in nationwide retransmission negotiations with MVPDs.").

<sup>71</sup> Robert Channick, CUBS, WGN-CH. 9 CONFIRM 5-YEAR DEAL CHICAGO TRIBUNE (2015), <http://www.chicagotribune.com/business/ct-cubs-wgn-tv-deal-0109-biz-20150108-story.html> (last visited Aug 24, 2017).

<sup>72</sup> Eric Spitznagel, HERE'S HOW MUCH MORE EXPENSIVE BEING A CUBS FAN IS IN 2017 TIME MONEY (2017), <http://time.com/money/4713938/heres-how-much-more-expensive-being-a-cubs-fan-is-in-2017/> (last visited Aug 24, 2017).

owns the rights to many Mets games.<sup>73</sup> Additionally, PIX11 also holds rights to some Yankees games. Alongside broadcasting these games, PIX11 also creates exclusive pre-game specials, providing news and updates to local fans.<sup>74</sup> Just as the Cubs hold special significance to generations of Midwesterners, the Mets and Yankees are pillars of the sports community in New York. One need only look at the Subway Series -- a series played between the Mets and the Yankees-- to gain an appreciation for what these teams mean to New Yorkers. In April 2015, the Tribune New York flagship station, PIX11, averaged a 4.0 in HH. During Game 2 of the series the station's broadcast was "#1 in the time period across all key demos."<sup>75</sup>

Such highly valuable local sports rights are the definition of "must have" programming for any distributor that hopes to have a competitive product in these major markets. Sinclair will have a powerful option in its playbook with the power to withhold or restrict access to these highly popular televised sporting events.

**B. Sinclair will have the incentive and ability to withhold valuable sports rights from fans in order to maximize profits.**

Sinclair will have every incentive to maximize the economic value of Tribune's already highly valuable broadcast rights to Cubs, Mets, and Yankees games. Post-merger, the new entity will have the ability to do so --and fans are sure to suffer. First, as discussed above, post-merger

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<sup>73</sup> Tribune Media, PIX11 RENEWS MULTI-YEAR CONTRACT FOR METS BASEBALL BROADCASTS TRIBUNE MEDIA (2017), <http://www.tribunemedia.com/pix11-renews-multi-year-contract-for-mets-baseball-broadcasts/> (last visited Aug 24, 2017).

<sup>74</sup> PIX11 News, PIX11 ANNOUNCES 2017 YANKEES BROADCAST SCHEDULE PIX11 (2017), <http://pix11.com/2017/03/27/pix11-announces-2017-yankees-broadcast-schedule/> (last visited Aug 24, 2017).

<sup>75</sup> PIX11 News, PIX11 HITS RATINGS HOMER WITH SUBWAY SERIES PIX11 (2015), <http://pix11.com/2015/04/27/pix11-hits-ratings-homer-with-subway-series/> (last visited Aug 24, 2017).

Sinclair would have the capability to take down its broadcast signals just before or during big games. If News Corp in 2010 was capable of taking down the World Series from millions of Cablevision subscribers in New York, Sinclair --with its already proven takedown track record-- certainly is capable of doing the same thing with its broadcast sports rights.

Second, Sinclair owns cable/satellite sports channels and could conclude that migrating its Major League games to its own pay-TV channel would be more profitable in the long run than keeping the games on broadcast TV. Sinclair acquired the Tennis Channel and has stated its intent to create another sports channel, STADIUM.<sup>76</sup> Sinclair's initial foray into sports included STADIUM's proposed lineup of 160 live games per year alongside Sinclair's existing local high school sports productions and Ring of Honor wrestling.<sup>77</sup> At the time of its launch, Sinclair's executives expressed excitement about the value live sports content would contribute to their stations, to student athletes, colleges and to the local viewers. In 2016, Sinclair added the Tennis Channel to its roster of sports offerings with the stated intent of leveraging MVPDs. Sinclair's CFO described the channel as an established but "under distributed" brand and further discussed Sinclair's plans to "increase their carriage from 30 million homes to 50 million homes" in earnings calls.<sup>78</sup> This is the particular concern of independent programmers like One World Sports, who indicate that "Sinclair Television's recent acquisition of The Tennis Channel was

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<sup>76</sup> Sinclair launched its collegiate sports initiative, the American Sports Network (ASN) in 2014 and has since rebranded it as "STADIUM." The network apparently could be distributed via pay-TV or via OTT.

<sup>77</sup> SeekingAlpha, SINCLAIR BROADCAST GROUP'S (SBGI) CEO, DAVID SMITH ON Q2 2014 RESULTS - EARNINGS CALL TRANSCRIPT (2017), <https://seekingalpha.com/article/2389845-sinclair-broadcast-groups-sbgi-ceo-david-smith-on-q2-2014-results-earnings-call-transcript?part=single> (last visited Aug 1, 2017).

<sup>78</sup> SeekingAlpha, SINCLAIR BROADCAST GROUP (SBGI) Q4 2015 RESULTS - EARNINGS CALL TRANSCRIPT (2016), <https://seekingalpha.com/article/3926596-sinclair-broadcast-group-sbgi-q4-2015-results-earnings-call-transcript?part=single> (last visited Aug 2, 2017).

predicated on its strategy of leveraging the retransmission consent rights of Sinclair's many broadcast stations to coerce MVPDs to agree to greatly expanded carriage of The Tennis Channel."<sup>79</sup>

Just as The Walt Disney Company moved Monday Night Football from broadcast (ABC network) to pay-TV (ESPN), Sinclair would have an incentive to do the same in order to increase the value of its wholly owned sports networks. Moves like this one are bad for fans, especially cord-cutting fans as well as those sports fans who watch sports programming over-the-air. When Disney moved Monday Night Football in 2005, the games averaged 16.3 million viewers per week.<sup>80</sup> Ten years later, Monday Night Football averaged 12.9 million viewers per week, a decrease of roughly 25% fewer fans watching the games.<sup>81</sup> While there are a variety of factors that contribute to this decline, a major factor is that Disney abandoned broadcast fans so that it could charge greater distribution fees for ESPN and increase the value of its flagship non-broadcast sports property.

If Sinclair migrates key sports rights off broadcast and onto its pay-TV or digital subscription channels, sports fans who depend on over-the-air broadcast will lose access to games. The Commission clearly views the distribution of sports via free, over-the-air

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<sup>79</sup> Cinemoi Comments at p. 10, citing to Reply Comments of One World Sports, MB Docket No. 16-41, at p. 4-5 (filed Apr. 19, 2016) and citing to Comments of INSP, LLC, MB Docket No. 16-41, at p.16 & n.16 (filed Jan. 26, 2017).

<sup>80</sup> Joe Browne & Greg Aiello, (PRESS RELEASE) NFL 2005 TV RECAP (2006), <https://www.nfl.info/nflmedia/News/2005news/RATINGS-2005%20Season%20Recap.pdf> (last visited Aug 24, 2017).

<sup>81</sup> Sean Keeley, MONDAY NIGHT FOOTBALL'S RATINGS HAVE BEEN BAD, AND THEY'RE ABOUT TO GET WORSE AWFULANNOUNCING.COM (2016), <http://awfulannouncing.com/2016/monday-night-football-ratings-debate.html> (last visited Aug 24, 2017).

broadcasting as upholding the public interest. In voting to end the Sports Blackout Rule in 2014, Chairman Pai, Commissioner O'Reilly, Commissioner Clyburn, and Commissioner Rosenworcel voted to end the Commission's role in sports blackouts and preserve fans' access to games on free, over-the-air broadcast TV. The Commission expressly reasoned that its actions would not result in the migration of games from broadcast to pay-TV channels,<sup>82</sup> presumably because such a result would not be in the public interest.

Chairman Pai, then Commissioner, shared in his separate statement the story of Dennis Steinmiller of North Tonawanda, New York. Mr. Steinmiller suffers from PTSD and is therefore unable to attend games. He relies on broadcast television to watch local Bills games. Fortunately, the Sports Blackout Rule was overturned and the NFL subsequently suspended its local blackout policy, allowing Mr. Steinmiller to watch his team. In the same statement, Chairman Pai reaffirmed the importance of keeping sports on broadcast television: "professional football is, by far, America's most popular sport in part because it is the only major sport that makes most games available on free, over-the-air television."<sup>83</sup>

In the same proceeding to end the Sports Blackout Rule, many fans wrote to the FCC to explain why game broadcasts are important to them. Bills fan Patricia Rebmann and her husband are senior citizens and rely on television to "reap a few hours of entertainment."<sup>84</sup> Jen Batt,

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<sup>82</sup> See Sports Blackout Rule at pp. 21-22 (reasoning that vacating the Sports Blackout Rule would not result in migration off broadcast because "the broadcast networks will have a strong incentive to take measures to ensure that the NFL does not migrate its games to pay TV after their current contracts expire in 2022").

<sup>83</sup> Sports Blackout Rules, Statement of Commissioner Ajit Pai at p. 60.

<sup>84</sup> Patricia Rebmann, LETTER SUBMITTED IN FCC MB DOCKET 12-3, RE: SPORTS BLACKOUT RULES, FROM PATRICIA REBMANN OF GOWANDA, NY. (2012), <https://ecfsapi.fcc.gov/file/7021858151.pdf> (last visited Aug 27, 2017).

another Bills fan since the 60s, hand wrote a letter that emphasized the importance of local stations airing Bills games so that she could watch them play.<sup>85</sup>

Against this backdrop of sports fans relying on free over-the-air broadcast to enjoy watching their local teams play, and the Commission's express recognition that preserving sports on broadcast serves the public interest, it would be counterproductive at best for the Commission to allow this proposed transaction to take place with the full knowledge that Sinclair would have a strong economic incentive to migrate Tribune's sports programming to the Sinclair sports channels. The increased value of those sports channels might make Sinclair's shareholders even richer, but for the fans who would lose access to their hometown teams' games, the merger would be very costly.

**V. Sinclair's ownership of pay TV sports networks and its increased bargaining leverage posed by this transaction will harm fans' access to games from independent or unaffiliated sports programmers and reduce competition for sports viewers.**

Sinclair's increased bargaining leverage with pay-TV platforms stemming from its expanded broadcast holdings would exacerbate Sinclair's ability to favor its proprietary sports networks over unaffiliated ones. The unprecedented size and scope of Sinclair's post-merger broadcast holdings would give it far greater leverage to make demands during retransmission consent negotiations, not just for higher fees, as discussed above, but for better distribution of its affiliated networks, such as Tennis Channel and STADIUM. For example, Sinclair could

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<sup>85</sup> Jennifer Batt, LETTER SUBMITTED IN FCC DOCKET MB 12-3, RE: SPORTS BLACKOUT RULES, FROM JENNIFER BATT OF BUFFALO, NY. (2012), <https://ecfsapi.fcc.gov/file/7021871688.pdf> (last visited Aug 27, 2017).

demand that any MVPD wishing to carry a Fox affiliate in a key market also carry STADIUM on the basic tier at an above-market rate.

Such favoring of the Sinclair-owned sports networks would harm independent sports networks, such ONE World Sports, and other sports outlets unaffiliated with Sinclair. The net effect of this likely would be restricted distribution for independent sports networks, particularly those that compete head to head with Sinclair's own sports networks. This means reduced competition in the sports programming market and reduced availability of certain niche sports.

Sports Fans Coalition has argued for the better part of a decade that the sports and sports media markets are in need of more, not less, competition. While SFC welcomes the development of new and exciting sports media platforms, the contest for fans' attention should be won or lost based on the quality of the product, not the leverage of the network owner. Anything that hampers competition, whether on the field of sport or in the market for sports fans' viewership, SFC opposes.

