



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

September 15, 2017

The Honorable Frank Pallone  
Ranking Member  
Committee on Energy and Commerce  
U.S. House of Representatives  
2322A Rayburn House Office Building  
Washington, D.C. 20515

Dear Ranking Member Pallone:

Thank you for your letter dated August 14, 2017. Since joining the Commission in May 2012, I have been a strong advocate for maintaining a vibrant and free over-the-air broadcast service in this country. Whether I have been pushing for the revitalization of AM radio or fighting to ensure that broadcast television stations were treated fairly in the incentive auction proceeding, my actions have been motivated by my belief that a strong over-the-air broadcast service advances the public interest. They have not been fueled by a desire to help any particular company.

Since I became Chairman in January 2017, it is certainly true that the FCC's general approach to issues impacting the broadcasting industry has changed. Under its prior leadership, the Commission was generally perceived as being hostile to broadcasters. I make no apologies for the fact that I have charted a different course. And I am pleased that the initiatives we have begun this year, from launching a proceeding to authorize use of the next-generation broadcast television standard to beginning a comprehensive effort to modernize the Commission's media regulations, have drawn support from a wide range of broadcasters associated with a wide variety of ideological perspectives.

I am also proud of the fact that under my leadership, the agency's independence has been restored. Under the prior Administration, for example, the Commission changed its proposed course in a major regulatory proceeding following the President's personal intervention. In this Administration, however, the Commission's decisions are being guided by the facts and the law, not by political pressure applied by the White House.

Below, I address more specifically the topics raised in your letter.

**Meetings/Correspondence**

Since November 8, 2016, I have met two times with President Trump. Each of these meetings has been publicly reported. On January 16, 2017, I met with then-President-Elect Trump at Trump Tower. This meeting was similar to a job interview, and the then-President-

Elect did not express a view on any pending FCC proceedings. On March 6, 2017, I met with President Trump at the White House. During this meeting, too, we did not discuss any pending FCC proceedings.

We did not discuss any issue pending at the FCC involving the Sinclair Broadcast Group at either meeting, and I do not recall the Sinclair Broadcast Group even being mentioned at either meeting. In terms of other White House officials in the current Administration, I do not recall having any discussions with any of them pertaining to the Sinclair Broadcast Group, and I am not aware of anyone in my office having such discussions.

Since November 8, 2016, I believe that I have met with representatives of the Sinclair Broadcast Group three times. On November 16, 2016, I spoke at a gathering of Sinclair station general managers that took place in Baltimore. This event was scheduled well before November 8. At this meeting, I gave a brief presentation regarding some of the issues confronting the FCC and then took questions on a wide variety of topics. I also had a brief lunch with some Sinclair executives. My Chief of Staff, Matthew Berry, accompanied me to this meeting. On January 6, 2017, I met with representatives of Sinclair during my visit to the Consumer Electronics Show. My Wireline Advisor, Nick Degani, accompanied me to this meeting. This was a social meeting, and I do not recall any FCC matters being discussed. And on January 19, 2017, I met with Sinclair representatives in Arlington, Virginia. Pending FCC proceedings were discussed during this meeting, and a summary of that meeting was filed with the Commission on January 23, 2017, and is publicly available through the FCC's website. My Chief of Staff accompanied me to this meeting.

Since November 8, 2016, I believe that two other members of my office have met with representatives of the Sinclair Broadcast Group. On January 31, 2017, FCC Chief of Staff Matthew Berry met with Jerry Fritz, who is a former FCC Chief of Staff. I have been told that no pending FCC matters were discussed. Rather, it is my understanding that Mr. Fritz often meets with new FCC Chiefs of Staff to share advice on performing that challenging job. On July 7, 2017, my Media Advisor, Alison Nemeth, met with a representative of the Sinclair Broadcast Group. An ex parte letter summarizing this meeting was filed with the Commission on July 10, 2017 and is publicly available through the FCC's website. I also cannot rule out the possibility that a representative of Sinclair Broadcast Group could have participated in a widely-attended meeting with a member of my office (for example, a large group of broadcasters from various companies), but I can't find any records of any such meetings.

Correspondence between me or members of my office and representatives of Sinclair have been the subject of multiple FOIA requests. Along with this letter, I am sending such correspondence that has been produced to date in response to those FOIA requests.

### **Next Gen TV**

The Commission has received broad support for its proposal to authorize Next Gen TV on a voluntary, market-driven basis from broadcasters, including public television broadcasters, as well as public safety groups. Next Gen TV holds the potential to allow broadcasters to provide consumers greatly improved over-the-air signal reception, particularly on mobile devices and television receivers without outdoor antennas. It will also enable broadcasters to offer enhanced and innovative new features to consumers, including Ultra High Definition picture and immersive audio, advanced emergency alerting that has the capability to wake up receivers that are turned off to warn consumers of sudden disasters (such as tornadoes and earthquakes), better accessibility options for individuals with disabilities, more localized programming content, and interactive services. The Commission has proposed to require that Next Gen TV broadcast stations simulcast their primary Next Gen TV programming stream in the current DTV format to ensure that viewers can continue to watch programming on their local stations without buying new equipment. Under this proposal, each television station choosing to broadcast its signal in both the existing DTV format and Next Gen TV would arrange for another station in its local market to act as a “host” station and “simulcast” one of the two signals. The Commission is also considering whether to impose service area coverage requirements on Next Gen TV broadcasters’ existing DTV service to minimize any loss of service to viewers that may occur if a broadcast station relocates its DTV signal to a “host” station. In addition, consumers may be able to upgrade their existing television receivers to receive Next Gen TV signals simply and inexpensively by attaching a dongle or other external device equipped with an ATSC 3.0 tuner to the HDMI port on their television receivers.

With respect to the privacy of consumer data collected by Next Gen TV broadcasters, broadcasters have stated that viewer data collected will be anonymized to avoid privacy concerns. If Next Gen TV broadcasters fail to ensure that consumers’ personal information is protected, the Federal Trade Commission (FTC) has broad authority to enforce consumers’ privacy rights. Section 5 of the FTC Act, which prohibits unfair or deceptive practices in the marketplace, gives the FTC the authority to take enforcement action against companies that fail to adhere to their stated privacy and data security policies. Additionally, the FCC intends to closely monitor the transition to Next Gen TV and may take further action, consistent with our statutory authority, if it appears that Next Gen TV broadcasters are not adequately protecting the privacy of viewer data.

### **Sinclair-Tribune Proposed Merger**

The FCC’s Media Bureau has followed the same comment period for the Sinclair/Tribune applications that it has applied in other significant broadcast television station mergers, including the recent merger of Nexstar Broadcasting Group, Inc. and Media General, Inc.—a complex transaction valued at approximately \$4.6 billion (larger than the instant transaction) that was reviewed and approved during the prior Administration. In light of the issues presented and the

scope and nature of the Sinclair transaction, the Nexstar/Media General transaction is a more appropriate comparison than the AT&T/DIRECTV merger proceeding, which was a non-broadcast transaction that was subject to different rules, involved the acquisition of a satellite television provider by a telecommunications company, and presented numerous issues not present in the Sinclair/Tribune transaction. Thus, the pleading cycle for this transaction is consistent with precedent and is not expedited. We note in this regard that Sinclair did not request an expedited pleading cycle or request that the Commission complete its review in a particular timeframe. Furthermore, neither Sinclair nor Tribune nor anyone acting on behalf of either company informed me or my office of a possible transaction involving these companies before the Commission voted to reinstate the UHF discount.

The record demonstrates that the pleading cycle, which closed on August 29, 2017, has allowed for robust public participation, providing interested parties an appropriate opportunity to review and comment on the proposed transaction. Eight petitions to deny were filed by the deadline of August 7, 2017. The record also contains many submissions from interested parties and a significant number of comments from members of the public. In addition, the petitioners, other interested parties, and the public are free to file comments on the merits of the transaction following the end of the formal petition-to-deny period. This proceeding is classified as “permit-but-disclose” for ex parte purposes, meaning that even after the formal pleading cycle ends, ex parte presentations to the Commission are permissible. Also, on September 14, 2017, the Media Bureau issued a request to the merging parties, seeking further information regarding the proposed transaction, with responses due by October 5, 2017. Interested parties will have an opportunity to submit comments based on the information provided in response to this request.

### **Processing Guidance on License Transfer Applications**

The Commission’s review of all broadcast transactions is governed by both statute and the Commission’s structural ownership rules. Section 310(d) of the Act prohibits the assignment or transfer of control of a license without prior Commission authorization. Thus, all transactions, including all agreements related to the sale of the station, must be evaluated to determine whether control will rest in the proposed buyer and whether the transaction will serve the public interest, convenience, and necessity.

All transactions involving broadcast entities are also governed by specific structural rules that were created to promote competition, localism, and viewpoint diversity for the benefit of consumers in local markets. When applying these rules, the Commission relies on the attribution rules found in Note 2 to Section 73.3555 of the Commission’s rules, 47 C.F.R. § 73.3555, Note 2. The attribution rules identify specific financial and other corporate interests that confer a level of influence over programming decisions and other core operating functions such that the interest should be considered “ownership” for purposes of compliance with the structural rules. Where an interest is not specifically listed in the attribution rules, the staff looks to precedent in determining whether such relationships should nonetheless be deemed attributable.



In the recent acquisition of Bonten by Sinclair, the staff reviewed the sharing agreements and financial agreements presented in the application, consistent with longstanding Commission practice. Based on this thorough review, the Media Bureau concluded that these agreements did not result in either an unauthorized transfer of control prohibited by Section 310(d) or “attribution” for determining compliance with the numerical ownership restrictions of the local television ownership rule. Accordingly, contrary to demonstrating control over KBVU in circumvention of the local television ownership rule, as stated in your letter, Sinclair’s agreements with KBVU do not rise to the level of attribution or control and are entirely consistent with the Commission’s rules and precedent.

In addition, we note that Sinclair’s acquisition of the Bonten stations was unopposed at the Commission. Moreover, the time it took the Media Bureau to process the transaction was consistent with similar transactions in which there were no opposition filings or complex waiver requests. In fact, as you will see in the information we have provided in the lists of pending and completed television license transfer applications that you requested in your letter and that I am including with this response, assignment/transfer of control applications are frequently granted in similar or less time.

#### **Other Potential Proceedings**

On August 10, 2016, the Commission issued an order resolving the 2010 and 2014 broadcast ownership quadrennial review proceedings. Subsequently, several parties filed petitions for reconsideration of various aspects of this order, including the National Association of Broadcasters (NAB), Nexstar Broadcasting, Inc., and Connoisseur Media, LLC. Both the television Joint Sales Agreement (JSA) attribution rule and the local television ownership rule—among others—have been raised in one or more of the petitions for reconsideration before the Commission, and the Commission is obligated to rule on those petitions at some point. With respect to altering the current radio JSA attribution rule, which has been in place since 2003, I have no plans to start a proceeding, nor has any party made such a request. With regard to issues involving the national television ownership cap, including whether the UHF discount should be eliminated, I have publicly stated that I intend to commence consideration of those issues through a Notice of Proposed Rulemaking by the end of the year.

Please let me know if I can be of further assistance.

Sincerely,



Ajit V. Pai