

United States Senate

WASHINGTON, DC 20510

June 24, 2019

The Honorable Ajit V. Pai
Chair
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Makan Delrahim
Assistant Attorney General
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 205301-0001

Dear Mr. Delrahim and Mr. Pai:

We write today to raise concerns about Sinclair Broadcast Group, Inc.'s (Sinclair) acquisition of 21 Regional Sports Networks and Fox College Sports (RSNs) from the Walt Disney Company (Disney).¹ Given Sinclair's market power in the local television broadcasting industry and its continued push "to inject conservative-tinged coverage into local markets,"² this acquisition raises serious questions about the effects such a deal would have on competition in the industry, prices for consumers, and the diversity of perspectives in local media and sports content. We are particularly concerned that adding ownership of these RSNs to its existing local television stations could allow Sinclair to increase fees on consumers and be used by the company as leverage to allow it to force its partisan political messaging on a larger swath of the American population.

In June 2018, the Department of Justice (DOJ) forced Disney to divest 22 RSNs it acquired as part of a \$71.3 billion deal to purchase certain 21st Century Fox, Inc. assets, since the proposed acquisition "likely would substantially lessen competition" and "result in higher subscription fees for customers."³ One year later, it appears Disney has agreed to sell these RSNs to a subsidiary of Sinclair in a deal valued at \$10.6 billion – allowing a different media behemoth, intent on "spread[ing] a conservative message enforced by mandates on local news

¹ Securities and Exchange Commission, "Sinclair Broadcast Group, Inc. Form 10-Q For the Quarter Ended March 31, 2019," May 10, 2019, <https://www.sec.gov/ix?doc=/Archives/edgar/data/912752/000091275219000025/a2019q110-q.htm>.

² Washington Post, "Trump said Sinclair 'is far superior to CNN.' What we know about the conservative media giant.," Eli Rosenberg, April 3, 2018, <https://www.washingtonpost.com/news/style/wp/2018/04/02/get-to-know-sinclair-broadcast-group-the-conservative-local-news-giant-with-a-growing-reach/>.

³ Department of Justice, "United States of America, *Plaintiff* v. The Walt Disney Company, and Twenty-First Century Fox, Inc., *Defendants*," June 27, 2018, <https://www.justice.gov/opa/press-release/file/1075081/download>.

anchors, including requirements that they air partisan commentaries,⁴ to capture audiences in an already shrinking local media market.

Sinclair currently owns and/or provides services to 191 television stations that broadcast 605 channels in 89 markets⁵ – making it one of the largest local television station operators in the country.⁶ Its local stations reach 39 percent of American Television households, the maximum allowed by Federal Communications Commission (FCC) broadcast ownership rules.⁷ This cap – established by the FCC to preserve decentralized media markets and discourage anticompetitive behavior – did not deter Sinclair from attempting to double its current reach. In May 2017, Sinclair arranged a \$3.9 billion deal to acquire Tribune Media Company (Tribune), a rival media and entertainment business with 42 local stations in 19 media markets, which would have allowed it to reach 72 percent of U.S. households.⁸ However, in order to obtain FCC approval and to “skirt the Commission’s broadcast ownership rules,” Sinclair purported to sell off certain local stations by arranging “‘sham’ transactions.” The DOJ identified one transaction in which Sinclair attempted to transfer a station to an individual who “serves as CEO of a company in which Sinclair’s executive chairman has a controlling interest . . . at a price that appeared to be significantly below market value.” Moreover, the deal allowed Sinclair to keep many of its operational responsibilities for the station, and provided it with “an option to buy back the station in the future.”⁹ As a result, the FCC unanimously decided not to approve the merger.¹⁰

While Sinclair currently has a firm grip on the local television industry, this recent acquisition is only the latest move in its separate and similarly rapid bid to become a major sports network provider. The RSNs Sinclair purchased from Disney – collectively “the largest group of commonly controlled RSNs” – reach approximately 74 million subscribers across the country¹¹ and have the rights to telecast the games of almost half of all the professional sports teams in three of the four major American sports leagues.¹² In addition to the 21 RSNs, Sinclair “acquired The Tennis Channel, with national distribution (61 million homes) for \$350 million” in 2016, has a stake in a streaming network that offers live college sports coverage, and has an

⁴ Vox, “Sinclair, the pro-Trump, conservative company taking over local news, explained,” Dylan Matthews, April 3, 2018, <https://www.vox.com/2018/4/3/17180020/sinclair-broadcast-group-conservative-trump-david-smith-local-news-tv-affiliate>.

⁵ Securities and Exchange Commission, “Sinclair Broadcast Group, Inc. Form 10-Q For the Quarter Ended March 31, 2019,” May 10, 2019, <https://www.sec.gov/ix?doc=/Archives/edgar/data/912752/000091275219000025/a2019q110-q.htm>

⁶ New York Times, “As Momentum for Sinclair Deal Stalls, Tribune Considers Options,” Edmund Lee, July 19, 2018, <https://www.nytimes.com/2018/07/19/business/media/sinclair-tribune-fcc.html>.

⁷ U.S. Federal Communications Commission, “FCC Broadcast Ownership Rules,” <https://www.fcc.gov/consumers/guides/fccs-review-broadcast-ownership-rules>.

⁸ Vox, “Sinclair’s takeover of local news, in one striking map,” Alvin Chang, April 6, 2018, <https://www.vox.com/2018/4/6/17202824/sinclair-tribune-map>.

⁹ U.S. Federal Communications Commission, “MB Docket 17-179,” July 19, 2018, <https://docs.fcc.gov/public/attachments/FCC-18-100A1.pdf>.

¹⁰ *Id.*

¹¹ Securities and Exchange Commission, “Sinclair Broadcast Group, Inc. Form 10-Q For the Quarter Ended March 31, 2019,” May 10, 2019, <https://www.sec.gov/ix?doc=/Archives/edgar/data/912752/000091275219000025/a2019q110-q.htm>

¹² Department of Justice, “United States of America, *Plaintiff v. The Walt Disney Company, and Twenty-First Century Fox, Inc., Defendants*,” June 27, 2018, <https://www.justice.gov/opa/press-release/file/1075081/download>.

exclusive partnership with the Chicago Cubs to “televise Cubs games locally beginning in 2020.”¹³

By delivering millions of additional customers to and broadening Sinclair’s footprint, the acquisition of these sports networks is likely to result in increased prices for consumers. In an attempt to offset payments RSNs are obligated to make to sports teams – many of which are “already-locked-in [for] annual increases,”¹⁴ Sinclair and other station owners pass those fees onto cable distributors, which then impose multi-channel packages – or bundles – onto consumers, where high and low demand channels are packaged together, forcing consumers to pay for channels they don’t want.¹⁵ Allowing Sinclair to increase its market power will enhance their ability to force channels onto cable distributors, resulting in even higher prices for consumers. According to the FCC, “cable subscribers are paying for more than 85 channels that they do not want to watch in order to obtain the approximately 16 channels that they do,”¹⁶ because of bundling.

Additionally, local broadcast stations – like those owned by Sinclair – can enter into one of two agreements with distributors. They can demand cable distributors broadcast their station under the “must carry” provision,¹⁷ through which they cannot receive compensation or they can enter into a “retransmission consent”¹⁸ through which they can negotiate to receive a retransmission fee or request the distributor carry other channels in addition to the local station. Sinclair, which now owns nearly two dozen RSNs, could market to distributors combinations of sports and local television channels that they have to offer to consumers as a bundle package. Distributors understand the value of live sports and the limited number of un-bundled live sport streaming options available to consumers leave “sports fans...tethered to their cable bundle.”¹⁹ Therefore, the agreement with Disney offers Sinclair an opportunity to charge consumers more by packaging their cable and broadcast programs.

This bundling is especially dangerous because over the last several years, Sinclair has circulated several concerning *must-run* programming directives to its local news stations. For instance, in 2018, Sinclair forced its local stations to run a “two-minute commentary defending the use of tear gas on migrants at the border” in which a former Trump official claims “American authorities ‘had to use tear gas’ on hundreds of migrants at a border crossing near San Diego...

¹³Forbes, “4 Takeaways From Sinclair’s Acquisition Of Fox Regional Sports Networks From Disney,” Brad Adgate, May 3, 2019, <https://www.forbes.com/sites/bradadgate/2019/05/03/some-takeaways-from-sinclairs-acquisition-of-fox-regional-sports-networks/#7c9dca062596>.

¹⁴ Washington Post, “A bet on live sports: Why Sinclair is scooping up regional sports networks,” Ben Strauss, May 6, 2019, https://www.washingtonpost.com/sports/2019/05/06/bet-live-sports-sinclair-ceo-chris-ripley-talks-acquiring-regional-sports-networks/?utm_term=.bd71bc240b38.

¹⁵ See Free Press, “Cord Cutting and the Cable Cabal,” S. Derek Turner, May 23, 2013, <https://www.freepress.net/our-response/expert-analysis/insights-opinions/cord-cutting-and-cable-cabal>.

¹⁶ Federal Communications Commission, “Moving Forward: Driving Investment and Innovation While Protecting Consumers,” January 15, 2009, <https://transition.fcc.gov/fcc-moving-forward-report.pdf>.

¹⁷ 47 U.S.C. § 534.

¹⁸ 47 U.S.C. § 325.

¹⁹ LA Times, “The rise of sports TV costs and why your cable bill keeps going up,” Meg James, December 5, 2016, <https://www.latimes.com/business/hollywood/la-fi-ct-sports-channels-20161128-story.html>.

to guard against an ‘attempted invasion’ of the United States.”²⁰ In addition, in 2016, Donald Trump’s campaign reportedly entered into a secret agreement with Sinclair “to try and secure better media coverage.”²¹ It is clear that Sinclair has an explicit interest in, and commitment to, relaying partisan political messages to its viewers – making its recent anti-competitive expansion attempts into millions of additional households all the more concerning.

Given Sinclair’s history of attempting to skirt FCC rules, its current dominance over local television broadcasting, and its power in sports broadcasting, the recently announced acquisition of the Fox RSNs raise significant questions about the effects the deal is likely to have on consumers. For these reasons, we urge you to review Sinclair’s recent acquisition of 21 RSNs from Disney and the effects it would have on consumers. We also ask that you provide us with written answers to the following questions no later than July 8, 2019.

1. Have Sinclair Broadcast Corp. and/or the Walt Disney Company filed applications seeking your Department’s consent to transfer control of Disney’s 21 Regional Sports Networks and Fox College Sports to Sinclair? If so, when did they file these applications?
2. Does your Department plan to issue a Public Notice that the application has been accepted for filing? Does your Department plan to issue a Public Notice setting a schedule for the public to submit comments on the application?

Thank you for your attention to this matter.

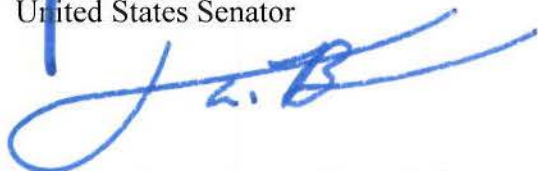
Sincerely,



Elizabeth Warren
United States Senator



Bernard Sanders
United States Senator



Cory A. Booker
United States Senator

²⁰ New York Times, “Sinclair TV Segment Defense Use of Tear Gas on Migrants at Border,” Niraj Chokshi, November 28, 2018, <https://www.nytimes.com/2018/11/28/business/media/sinclair-broadcast-segment-trump-migrants.html?module=inline>.

²¹ Politico, “Kushner: We Struck deal with Sinclair for straighter coverage,” Josh Dawsey and Hadas Gold, December 16, 2016, <https://www.politico.com/story/2016/12/trump-campaign-sinclair-broadcasting-jared-kushner-232764>.