



UNITED STATES GOVERNMENT  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF INSPECTOR GENERAL

# MEMORANDUM

**DATE:** August 24, 2018

**TO:** David L. Hunt, Inspector General

**FROM:** (b) (7)(C)

**THROUGH:** *Jay Keithley* Jay Keithley, Assistant Inspector General for Investigations; (b) (7)(C)

**SUBJECT:** Allegations of improprieties related to the Commission's review of the merger between Sinclair Broadcast Group, Inc. and Tribune Media Company

## Overview

In response to requests from Congress made on November 13 and November 15, 2017, the Federal Communications Commission (FCC or Commission) Office of Inspector General (OIG) conducted an investigation into whether FCC Chairman Ajit Pai (Chairman Pai) "has taken actions to improperly benefit Sinclair Broadcast Group (Sinclair)," and "is executing his leadership of the FCC free from influences that compromise his objectivity and impartiality," especially with regard to the proposed merger of Sinclair and Tribune Media.<sup>1</sup> Our investigation revealed no evidence of impropriety, unscrupulous behavior, favoritism towards Sinclair, or lack

<sup>1</sup> On July 19, 2018, the FCC designated the applications seeking to transfer control of Tribune subsidiaries to Sinclair for hearing (HDO). On August 9, 2018, Tribune terminated its merger agreement with Sinclair.

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of impartiality related to the proposed Sinclair-Tribune Merger.

**Background**

The FCC is an independent federal agency created by Congress to regulate interstate and international communications by radio, television, wire, satellite, and cable in all 50 states, the District of Columbia and U.S. territories.<sup>2</sup> The agency is governed by five presidentially appointed Commissioners subject to confirmation by the Senate.<sup>3</sup> The FCC Commissioners are from both political parties, however only three commissioners may be members of the same political party.<sup>4</sup> This bipartisan structure is intended to ensure that the agency remains free of partisan political pressure, and independent of the policy aims of the Executive Branch. Because the FCC is an independent regulatory agency, it is to remain free from undue influence. The Commission must, from the very nature of its duties, act with entire impartiality. It is charged with the enforcement of no policy except the policy of the law. Its duties are neither political nor executive, but predominantly quasi-judicial and quasi-legislative.<sup>5</sup>

On May 8, 2017, Sinclair issued a press release announcing that it entered into a definitive agreement under which Sinclair will acquire 100% of the issued and outstanding shares of Tribune for an aggregate purchase price of approximately \$3.9 billion plus the assumption of approximately \$2.7 billion in net debt.

On June 26, 2017, the FCC accepted for filing applications seeking consent to the transfer of control of subsidiaries of Tribune holding the licenses of full-power broadcast television stations (and related broadcast auxiliary facilities), low-power television stations, and TV translator stations to Sinclair.

On July 6, 2017, the Commission released a public notice (DA 17-647) announcing that the Commission's Media Bureau was establishing a pleading cycle for applications to transfer control of Tribune to Sinclair (MB Docket No. 17-179). The public notice indicated that interested parties must file petitions to deny no later than August 7, 2017, that oppositions to petitions to deny must be filed no later than August 22, 2017, and that replies must be filed no later than August 29, 2017.

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<sup>2</sup> 47 USC § 151.

<sup>3</sup> 47 CFR § 0.1; 47 USC § 154.

<sup>4</sup> 47 USC § 154(b)(5).

<sup>5</sup> See *Humphrey's Executor v. United States*, 295 U.S. 602 (1935).

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On August 14, 2017, FCC Chairman Pai received a letter from United States Representatives Frank Pallone, Jr., Diana DeGette, and Mike Doyle (Pallone-DeGette-Doyle letter), requesting information about: (1) meetings between Chairman Pai and members of his office and Sinclair representatives, including lobbyists and lawyers representing Sinclair; (2) meetings between Chairman Pai and President Trump or President-elect Trump; (3) the FCC proceeding to allow TV broadcasters to use Next Gen TV; (4) the Sinclair-Tribune proposed merger; (5) the processing guidance on license transfer applications; and (6) other FCC proceedings that may have a bearing on the Sinclair-Tribune proposed merger. A copy of this letter is included as Attachment 1.

On September 15, 2017, Chairman Pai responded to the Pallone-DeGette-Doyle letter. The response includes separate sections addressing Meetings/Correspondence, Next Gen TV, Sinclair-Tribune Proposed Merger, Processing Guidance on License Transfer Applications, and Other Potential Proceedings. A copy of the response is included as Attachment 2.

On September 29, 2017, Chairman Pai received a second letter from United States Representatives Frank Pallone, Jr., Diana DeGette, and Mike Doyle indicating that the Chairman's September 15, 2017, response to the Pallone-DeGette-Doyle letter "failed to respond to several of our specific questions and raised additional question" and requesting additional information. A copy of this letter is included as Attachment 3.

On November 13, 2017, FCC Inspector General David Hunt (Hunt) received a letter from United States Representatives Pallone and Elijah Cummings requesting assistance in "investigating whether ... Chairman Ajit Pai has taken actions to improperly benefit Sinclair Broadcast Group (Sinclair)" and stating that Chairman Pai has "repeatedly refused to adequately respond to Congressional inquiries on this subject." As a result of this request, FCC OIG opened a full investigation into this matter. A copy of this letter is included as Attachment 4.

On November 15, 2017, Inspector General Hunt received a letter from United States Senators Cantwell, Blumenthal, Markey, Warren, Wyden, Duckworth, Masto, Udall, Murray, Franken, Durbin, Sanders, Merkley, Booker, and Leahy requesting that Hunt "commence an investigation into whether the chairman ... is executing his leadership of the FCC free from influences that compromise his objectivity and impartiality." The letter goes on to state that "we have strong concerns that the FCC's ongoing review of the proposed merger of Sinclair Broadcast group (Sinclair) and Tribune Media (Tribune) may be tainted by a series of actions and events that raise questions about the independence and impartiality of the FCC." A copy of this letter is included as Attachment 5.

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On December 21, 2017, Chairman Pai responded to the second Pallone-DeGette-Doyle letter. The response includes separate sections addressing Correspondence, Sinclair-Tribune Proposed Merger, Processing Guidance on License Transfer Applications, and Other Potential Proceedings. A copy of the response is included as Attachment 6.

On December 21, 2017, the FCC issued a Notice of Apparent Liability (NAL) proposing to fine Sinclair in excess of \$13.3 million for alleged sponsorship ID violations. *In the Matter of Sinclair Broadcast Group, Inc., Notice of Apparent Liability*, FCC 17-171, 2017 WL 6554328 (released Dec. 21, 2017).

On July 19, 2018, the FCC designated the applications seeking to transfer control of Tribune subsidiaries to Sinclair for hearing (HDO).<sup>6</sup> On August 9, 2018, Tribune terminated its merger agreement with Sinclair.

**Investigation**

To conduct the investigation, FCC OIG investigators:

1. Obtained and reviewed email correspondence from and to FCC Chairman Pai; Matthew Berry, Chief of Staff in the Office of the Chairman; Nicholas Degani, Senior Counsel in the Office of the Chairman; and Commissioner Brendan Carr<sup>7</sup>, for the period from November 1, 2016 through January 3, 2018. A copy of the Investigative Activity Report (IAR) for obtaining digital evidence (without attachments) is included as Attachment 7. A copy of the IAR for reviewing digital evidence (without attachments) is included as Attachment 8.
2. Obtained and reviewed network shares (private network storage) from FCC Chairman Ajit Pai; Matthew Berry, Chief of Staff in the Office of the Chairman; Nicholas Degani, Senior Counsel in the Office of the Chairman; and Commissioner Carr for period from November 1,

<sup>6</sup> Specifically, the HDO stated that “substantial and material questions of fact exist regarding whether: (1) Sinclair was the real party in interest to the sale of WGN-TV, KDAF (a Dallas station), and KIAH (a Houston station); (2) if so, whether Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission; and (3) whether consummation of the overall transaction would be in the public interest, including whether it would comply with Section 73.3555 of the Commission’s rules, the broadcast ownership rules. Accordingly, in this Hearing Designation Order, we commence a hearing before the Administrative Law Judge to determine whether the above-captioned applications should be granted or denied.” See *In the Matter of Applications of Tribune Media Company and Sinclair Broadcast Group, Hearing Designation Order*, MB Docket 17-179, FCC 18-100 (released July 19, 2018).

<sup>7</sup> Commissioner Carr was sworn into office on August 11, 2017. Prior to assuming his position as a Commissioner, Commissioner Carr served as the FCC General Counsel.

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2016 through January 3, 2018. Copies of the IARs for obtaining and reviewing digital evidence are included as Attachments 7 and 8.

3. Obtained and reviewed desk phone records from FCC Chairman Ajit Pai, Matthew Berry, Chief of Staff in the Office of the Chairman; Nicholas Degani, Senior Counsel in the Office of the Chairman; and Commissioner Carr for the period from November 1, 2016 through December 20, 2017. A copy of the IAR for this review (without attachments) is included as Attachment 9.
4. Obtained and reviewed mobile phone records from FCC Chairman Ajit Pai Matthew Berry, Chief of Staff in the Office of the Chairman; Nicholas Degani, Senior Counsel in the Office of the Chairman; and Commissioner Carr for the period from November 1, 2016 through January 23, 2018. A copy of the IAR for this review (without attachments) is included as Attachment 10.
5. Obtained and reviewed visitor logs for the FCC headquarters facility located at 445 12<sup>th</sup> Street, S.W., Washington, DC 20554 covering the period from November 1, 2016 through December 12, 2017. A copy of the IAR for this review (without attachments) is included as Attachment 11.
6. Obtained and reviewed information, including *ex parte* filings where available, on meetings between Sinclair and Sinclair representatives (lobbyists and lawyers) and FCC officials for the period from November 1, 2016 through July 31, 2018. A copy of the IAR for this review (without attachments) is included as Attachment 12.
7. Interviewed Matthew Berry, Chief of Staff. A copy of the Memorandum of Interview (MOI) is included as Attachment 13.
8. Interviewed Chairman Pai. A copy of the MOI is included as Attachment 14.

**Conclusion**

After a comprehensive investigation including review of the emails, phone records and visitor logs noted above, coupled with interviews of the Chief of Staff and Chairman Pai, we found no evidence, nor even the suggestion, of impropriety, unscrupulous behavior, favoritism towards Sinclair, or lack of impartiality related to the proposed Sinclair-Tribune Merger.

Our investigation provided us with insight into meetings and conversations that occurred

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between Chairman Pai and any executives from Sinclair or the Executive Office of the President, as well as all written communications between Chairman Pai and FCC staff regarding the merger. Our review did not reveal any improper actions. When we followed up with both Chairman Pai and Matthew Berry, asking for further details regarding these meetings and calls, we confirmed that belief.<sup>8</sup> When asked specific questions as to whether any actions that ultimately may have inured to Sinclair's benefit were influenced by any promises or threats either by Sinclair or any other entity, including President Trump or the Executive Office of President, the Chairman unequivocally replied in the negative. (*See* Attachment 14). These responses were confirmed by the Chairman's Chief of Staff. (*See* Attachment 13). We have found no evidence that would lead us to question these responses. To the contrary, actions taken by Chairman Pai in the rulemakings identified in the letters from Congress are, as he stated in his interview, consistent with his long-held, and publicly espoused, policy beliefs.<sup>9</sup> The December 21, 2017, NAL against Sinclair was the largest proposed fine for sponsorship ID violations in the history of the FCC; this is evidence of lack of favoritism toward Sinclair.

Lastly, Chairman Pai's decision to designate for hearing the applications to transfer control of Tribune to Sinclair, after rejecting a request from Barry Faber, Sinclair Executive Vice President and General Counsel that he consider alternative station restructuring to permit the merger to be approved, is significant evidence that Chairman did not engage in any favoritism toward Sinclair. (*See* Attachment 14.)

**Recommendations**

Based on our findings, we would recommend no further investigation into this issue at this time.

**Attachments**

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<sup>8</sup> We note that OIG can only obtain FCC network shares and not personal email records and only FCC phone logs, not personal telephone call detail logs. However, when asked whether the Sinclair matter was ever discussed on personal devices, both Chairman Pai and Matthew Berry said they did not use personal devices for this purpose. *See* Attachments 13 & 14.

<sup>9</sup> *See e.g. In the Matter of Quadrennial Regulatory Review*, 31 FCC Rcd. 9864 (2016), dissent of Commissioner Pai; *In the Matter of Amendment of Section 73.3555(E) of the Commission's Rules*, 31 FCC Rcd. 10213 (2016) dissent of Commissioner Pai; *In the Matter of Amendment of Section 73.3555(E) of the Commission's Rules*, 28 FCC Rcd. 14324 (2013) dissent of Commissioner Pai.

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Attachment 1 – August 14, 2017 letter from United States Representatives Frank Pallone, Jr., Diana DeGette, and Mike Doyle to Chairman Pai requesting information about: (1) meetings between Chairman Pai and members of his office and Sinclair representatives, including lobbyists and lawyers representing Sinclair; (2) meetings between Chairman Pai and President Trump or President-elect Trump; (3) the FCC proceeding to allow TV broadcasters to use Next Gen TV; (4) the Sinclair-Tribune proposed merger; (5) the processing guidance on license transfer applications; and (6) other FCC proceedings that may have a bearing on the Sinclair-Tribune proposed merger.

Attachment 2 – September 15, 2017 letter from Chairman Pai to United States Representatives Frank Pallone, Jr., Diana DeGette, and Mike Doyle responding to their August 14, 2017 letter.

Attachment 3 – September 29, 2017 letter from United States Representatives Frank Pallone, Jr., Diana DeGette, and Mike Doyle to Chairman Pai indicating that the Chairman’s September 15, 2017 response “failed to respond to several of our specific questions and raised additional question” and requesting additional information.

Attachment 4 – November 13, 2017 letter from United States Representatives Pallone and Elijah Cummings to FCC Inspector General Hunt requesting assistance in “investigating whether ... Chairman Ajit Pai has taken actions to improperly benefit Sinclair Broadcast Group (Sinclair)” and stating that Chairman Pai has “repeatedly refused to adequately respond to Congressional inquiries on this subject.”

Attachment 5 – November 15, 2017 letter from United States Senators Cantwell, Blumenthal, Markey, Warren, Wyden, Duckworth, Masto, Udall, Murray, Franken, Durbin, Sanders, Merkley, Booker, and Leahy to Inspector General Hunt requesting that Hunt “commence an investigation into whether the chairman ... is executing his leadership of the FCC free from influences that compromise his objectivity and impartiality.”

Attachment 6 – December 21, 2017 from Chairman Pai to United States Representatives Frank Pallone, Jr., Diana DeGette, and Mike Doyle responding to their September 29, 2017 letter.

Attachment 7 – Investigative Activity Report (without attachments) documenting the process followed to obtain digital evidence (email correspondence and network shares).

Attachment 8 – Investigative Activity Report (without attachments) documenting the process followed to review digital evidence (email correspondence and network shares).

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Attachment 9 – Investigative Activity Report (without attachments) documenting the process followed to review desk phone records.

Attachment 10 – Investigative Activity Report (without attachments) documenting the process followed to review mobile phone records

Attachment 11 – Investigative Activity Report (without attachments) documenting the process followed to review visitor logs.

Attachment 12 – Investigative Activity Report (without attachments) documenting the process followed to review meetings.

Attachment 13 – Memorandum of Interview (MOI) for interview with Matthew Berry, Chief of Staff, dated August 3, 2018.

Attachment 14 – MOI for interview with Chairman Pai dated August 8, 2018.

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ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
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August 14, 2017

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

Dear Chairman Pai:

We write to express our concern regarding reports that suggest favorable treatment of Sinclair Broadcast Group, Inc. (Sinclair) since you became Chairman of the Federal Communications Commission (FCC). These reports raise two overarching questions:

- Whether actions taken by the FCC under your leadership show a pattern of preferential treatment for Sinclair, and
- Whether a series of interactions between your office, the Trump Campaign and Trump Administration, and Sinclair demonstrate inappropriate coordination.

The FCC is an independent agency, and we are sending you this letter amid recent criticism of your commitment to independence as the Chairman of the FCC.<sup>1</sup> Given the press reports on this matter, we wanted to provide you the opportunity to address these reports and ask that you provide answers to our questions at the end of this letter so that we can better assess your actions regarding Sinclair, and recent related actions taken by the FCC.

**I. Since the beginning of the Trump Administration, the FCC has taken a series of swift actions that have benefitted Sinclair.**

The United States has maintained for decades a policy that restricts the number of viewers a single broadcast entity can reach nationwide so that the American public has access

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<sup>1</sup> See, e.g., Brian Fung, *The FCC's independent chair is getting too cozy with the White House, critics say*, Washington Post (June 23, 2017).

to a diversity of local voices over the air. As the largest owner of television broadcast stations in the country, Sinclair had expanded to the limits of these FCC ownership rules. Since taking office, however, you have implemented a series of actions that ease these restrictions and allow Sinclair to expand its reach quickly. You have simultaneously proposed to allow the industry to adopt a new broadcast technology that will likely benefit Sinclair more than any other company.

**a. The FCC eased ownership caps by reinstating the outdated “UHF Discount,” allowing Sinclair to quickly acquire more broadcast stations.**

To ensure the American people have access to multiple voices over the air, Congress capped the number of viewers that any one broadcast entity can reach nationwide.<sup>2</sup> When implementing this cap under older analog technologies, however, the FCC recognized that stations using Ultra High Frequency, or UHF, channels faced technical limitations that prevented them from reaching as many viewers. As such, the FCC did not count these UHF stations as heavily against the nationwide cap.<sup>3</sup> But the switch to digital television technology eliminated this technical difference, and the FCC, under the leadership of the prior FCC Chairman, removed this “UHF Discount” rule in 2016.<sup>4</sup>

Although analysts believed that Sinclair would not be permitted to make a major acquisition without the UHF discount in place, Sinclair nonetheless began exploring purchasing the second largest owner of broadcast stations, Tribune Media Company (Tribune).<sup>5</sup>

A few weeks after reports of this possible transaction, the FCC, under your leadership, took a party-line vote to reinstate the UHF Discount rule,<sup>6</sup> despite your having acknowledged that “our nation’s transition from analog to digital television has eroded the basis for the UHF discount.”<sup>7</sup> Sinclair noted in its recent 10-K filing that your reinstatement of this discount

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<sup>2</sup> 47 CFR § 73.3555(e)(1); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004).

<sup>3</sup> 47 CFR § 73.3555(e)(2)(i).

<sup>4</sup> Federal Communications Commission, *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, Report and Order, MB Docket No. 13-236, at ¶ 28 (rel. Sept. 7, 2016) ([apps.fcc.gov/edocs\\_public/attachmatch/FCC-16-116A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-116A1.pdf)).

<sup>5</sup> Leon Lazaroff, *Tribune Media Rising on Deal Speculation Despite Obstacles to Sale*, TheStreet, Inc. (Mar. 6, 2017).

<sup>6</sup> Federal Communications Commission, *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, Order on Reconsideration, MB Docket No. 13-236 (rel. Apr. 21, 2017) ([https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-40A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-40A1.pdf)).

<sup>7</sup> Dissenting Statement of Commissioner Pai, *Re: Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, Report and Order,

“would reduce our reach (for FCC purposes) to approximately 24% of U.S. households, which would expand our ability to make televisions [*sic*] station acquisitions in the future.”<sup>8</sup> In May 2017 Sinclair announced, just two weeks after the FCC’s action, that it intended to purchase Tribune<sup>9</sup> – a transaction that would result in a combined company reaching approximately 70 percent of American households.<sup>10</sup>

**b. The FCC established an expedited timeline for its review of the proposed Sinclair-Tribune transaction, allowing Sinclair to grow as quickly as possible.**

Sinclair officially filed its application to merge with Tribune at the end of June.<sup>11</sup> Days later, the FCC established a pleading cycle for the proceeding of just 30 days.<sup>12</sup> Even though the proposed transaction is between the two largest owners of broadcast stations, the FCC set a timeline for public comment that was shorter than the pleading cycles set for previous transactions.<sup>13</sup>

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MB Docket No. 13-236 (rel. Sept. 7, 2016)  
([https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-13-123A4.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-13-123A4.pdf)).

<sup>8</sup> Sinclair Broadcast Group, Inc., Form 10-K, Annual Report, at 15 (Feb. 28, 2017) ([sec.gov/Archives/edgar/data/912752/000091275217000006/sbgi-20161231x10k.htm](http://sec.gov/Archives/edgar/data/912752/000091275217000006/sbgi-20161231x10k.htm)).

<sup>9</sup> Alex Sherman, *Sinclair Buys Tribune in \$3.9 Billion Deal, Creating TV Goliath*, Bloomberg (May 7, 2017).

<sup>10</sup> Sydney Ember and Michael J. de la Merced, *Sinclair Unveils Tribune Deal, Raising Worries It Will Be Too Powerful*, New York Times, (May 8, 2017).

<sup>11</sup> *Application of Tribune Media Company and Sinclair Broadcast Group for Consent to Transfer Control of Licenses and Authorizations* (June 26, 2017) ([https://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.hts?context=25&appn=101759797&formid=315&fac\\_num=22201](https://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.hts?context=25&appn=101759797&formid=315&fac_num=22201)).

<sup>12</sup> Federal Communications Commission, *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*, Public Notice, MB Docket No. 17-179 (July 6, 2017) ([ecfsapi.fcc.gov/file/07060101701359/DA-17-647A1.pdf](http://ecfsapi.fcc.gov/file/07060101701359/DA-17-647A1.pdf)).

<sup>13</sup> *See, e.g.*, Federal Communications Commission, *Commission Seeks Comment on Application of AT&T and DirectTV to Transfer Control of FCC Licenses and Other Authorizations*, Public Notice, MB Docket No. 14-90 (Aug. 7, 2017) ([apps.fcc.gov/edocs\\_public/attachmatch/DA-14-1129A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-14-1129A1.pdf)); Federal Communications Commission, *Commission Seeks Comment on Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. to Assign and Transfer Control of FCC Licenses*, Public Notice, MB Docket No. 10-56 (Mar. 18, 2010) ([https://apps.fcc.gov/edocs\\_public/attachmatch/DA-10-457A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-10-457A1.pdf)).

Critics assert that the public has received inadequate time to assess and respond to a deal of this magnitude. Within a week of the FCC's action, the agency received a Motion for Extension of Time – along with a request for additional information and documents – from parties with an interest in the proceeding.<sup>14</sup> These parties contend that Sinclair's applications provide “insufficient information for the Commission to validate, let alone quantify, the claimed public interest benefits.”<sup>15</sup>

**c. The FCC approved Sinclair's multimillion dollar deal to purchase stations owned by Bonten Media Group (Bonten), shortly after the FCC revoked a processing guidance that would have required close scrutiny of the transaction.**

The FCC granted the transfer of seven TV licenses from Bonten to Sinclair in various markets across the country,<sup>16</sup> including in markets where Sinclair now holds sharing agreements.<sup>17</sup> Sharing agreements allow a company like Sinclair to manage operational aspects of other stations that it does not own.

The FCC's approval of the Bonten deal came after you directed the Media Bureau to rescind – without explanation – its 2014 guidance on how the FCC scrutinizes license transfer applications that involve sharing agreements between broadcast stations.<sup>18</sup> The 2014 guidance expressed the Media Bureau's concern that entities may essentially control more stations than the FCC's local ownership rules permitted, and outlined how the FCC should scrutinize transactions that include these agreements to ensure they would not risk “impair[ing] the

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<sup>14</sup> Motion of Dish Network, American Cable Association, and Public Knowledge for Additional Information and Documents and Extension of Time, *In the Matter of Application of Tribune Media Company and Sinclair Broadcast Group for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179 (Jul. 12, 2017) ([ecfsapi.fcc.gov/file/10712432427229/Motion%20for%20Additional%20Information%20and%20Extention%20of%20Time.pdf](https://ecfsapi.fcc.gov/file/10712432427229/Motion%20for%20Additional%20Information%20and%20Extention%20of%20Time.pdf)).

<sup>15</sup> *Id.* at 1.

<sup>16</sup> Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to Bonten Media Group LLC and Sinclair Television Group, Inc., Re: Application for Consent to Transfer Control of License and Request for Continued Satellite Authority, Application File No. BTCCDT-20170505ABL, DA 17-638 (Jun. 30, 2017).

<sup>17</sup> KBVU JSA, KBVU SSA, and KBVU Option Agreement, Attachment 15, Application for Consent to Transfer License from Bonten Media Group, LLC to Sinclair Television Group, Application File No. BTCCDT-20170505ABL (May 5, 2017).

<sup>18</sup> Federal Communications Commission, Media Bureau, *Rescission of March 12, 2014, Broadcast Processing Guidance Relating to Sharing Arrangements and Contingent Interests*, Public Notice, DA 17-130 (rel. Feb. 3, 2017).

existing licensee’s control over station operations and programming” or be “otherwise contrary to the public interest.”<sup>19</sup>

The FCC’s approval of the Bonten transaction raises important questions, including whether the Commission’s staff, without the previous guidance, was able to adequately scrutinize the impact of sharing agreements when reviewing the application. For example, after the Bonten approval, Sinclair now owns one of the five full-power TV stations in the Eureka, CA market,<sup>20</sup> KAEF-TV,<sup>21</sup> but it controls another full-power station, through a Joint Sales Agreement and a Shared Services Agreement, as well as having a purchase option agreement for that station.<sup>22</sup>

As shown by the effect in Eureka, one of the country’s smallest TV markets, the FCC’s approval of this deal raises questions about whether Sinclair has effectively circumvented the FCC’s local TV ownership rules.<sup>23</sup> Other timing questions are also raised given that the FCC made its decision in less than two months after the filing of this \$240 million dollar deal.<sup>24</sup>

**d. The FCC has started a proceeding to allow TV broadcasters to begin using Next Gen TV – a technology whose primary patent-holder is Sinclair.**

In addition to taking steps that allowed Sinclair to quickly expand its reach, the FCC also commenced a proceeding that would allow TV broadcasters – including Sinclair – to use a transmission standard, Next Gen TV, with very few consumer protections in place.<sup>25</sup> Some have raised questions about how consumers will be affected by this proposal,<sup>26</sup> such as

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<sup>19</sup> Federal Communications Commission, Public Notice, *Processing of Broadcast Television Applications Proposing Sharing Arrangements and Contingent Interests*, DA 14-330 (Mar. 12, 2014) ([apps.fcc.gov/edocs\\_public/attachmatch/DA-14-330A1.pdf](http://apps.fcc.gov/edocs_public/attachmatch/DA-14-330A1.pdf)).

<sup>20</sup> TV News Check, TV Station Directory for Eureka, CA (accessed July 24, 2017) (<http://www.tvnewscheck.com/tv-station-directory/dma/192>).

<sup>21</sup> See note 16.

<sup>22</sup> See note 17.

<sup>23</sup> Federal Communications Commission, *FCC’s Review of the Broadcast Ownership Rules* (accessed July 13, 2017) ([transition.fcc.gov/cgb/consumerfacts/reviewrules.pdf](http://transition.fcc.gov/cgb/consumerfacts/reviewrules.pdf)).

<sup>24</sup> Sinclair Broadcast Group, Inc., *Sinclair Broadcast Group Announces Agreement to Purchase Bonten Media Group TV Stations*, PR Newswire (April 21, 2017).

<sup>25</sup> Federal Communications Commission, Notice of Proposed Rulemaking, *In the Matter of Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard* (GN Docket No. 16-142) at ¶ 2 (Feb. 23, 2017). [Hereinafter *Next Gen TV NPRM*]

<sup>26</sup> Statement of Commissioner Mignon Clyburn, *Re: Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, GN Docket No. 16-142 (Feb. 23, 2017).

whether consumers will lose their signal,<sup>27</sup> or whether their viewer data will be monitored without government oversight.<sup>28</sup>

Although the proposal for Next Gen TV came from various broadcast groups, Sinclair is the lead proponent of the technology.<sup>29</sup> For example, ONE Media 3.0, a wholly owned subsidiary of Sinclair,<sup>30</sup> has disclosed that it has at least six patents that are necessary to the Next Gen TV transmission standard.<sup>31</sup> ONE Media 3.0 will provide licenses to those that will need to use the patents to implement the new standard.<sup>32</sup> Reports suggest that the royalties from the licenses for these patents could be worth billions of dollars.<sup>33</sup>

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<sup>27</sup> The FCC is seeking comment on a simulcasting requirement for TV stations that decide to transition to Next Gen TV. The proponents of Next Gen TV have sought the ability to simulcast their existing signal on another broadcast station “serving a substantially similar community of license.” See *Next Gen TV NPRM*, supra n. 25, at ¶ 23. If the Commission adopts the proposal from proponents, some over-the-air consumers may not be able to receive the simulcast signal because they live outside of the other station’s service area. Further, the Commission has sought comment on whether to allow stations to lower the signal quality of simulcast signals (e.g. provide formerly HD signals in standard definition).

<sup>28</sup> Ben Munson, *Sinclair, One Media Will Use ATSC 3.0 to Collect User Data*, Fierce Cable (Nov. 1, 2016) ([fiercecable.com/broadcasting/sinclair-one-media-will-use-atsc-3-0-to-collect-user-data](http://fiercecable.com/broadcasting/sinclair-one-media-will-use-atsc-3-0-to-collect-user-data)); Sinclair Broadcast Group, Inc., *Sinclair and One Media 3.0 Profile Receiver Specifications and User Data*, PR Newswire (Oct. 31, 2016) ([prnewswire.com/news-releases/sinclair-and-one-media-30-profile-receiver-specifications-and-user-data-300354162.html](http://prnewswire.com/news-releases/sinclair-and-one-media-30-profile-receiver-specifications-and-user-data-300354162.html)).

<sup>29</sup> Mike Dano, *With ATSC 3.0, TV Broadcasters Might Try to Steal Some Wireless Business After FCC’s Incentive Auction*, Fierce Wireless (Nov. 9, 2015) ([fiercewireless.com/wireless/atsc-3-0-tv-broadcasters-might-try-to-steal-some-wireless-business-after-fcc-s-incentive](http://fiercewireless.com/wireless/atsc-3-0-tv-broadcasters-might-try-to-steal-some-wireless-business-after-fcc-s-incentive)); John Eggerton, *ONE Media Strikes Deal to Advance ATSC 3.0 Chipsets*, Broadcasting and Cable (Mar. 28, 2017) ([broadcastingcable.com/news/washington/one-media-strikes-deal-advance-atsc-30-chipsets/164463](http://broadcastingcable.com/news/washington/one-media-strikes-deal-advance-atsc-30-chipsets/164463)).

<sup>30</sup> Sinclair Broadcast Group, Inc., *ONE Media 3.0, LLC to Launch Next Generation Broadcast Products and Services*, PR Newswire (Apr. 14, 2016) ([prnewswire.com/news-releases/one-media-30-llc-to-launch-next-generation-broadcast-products-and-services-300251684.html](http://prnewswire.com/news-releases/one-media-30-llc-to-launch-next-generation-broadcast-products-and-services-300251684.html)).

<sup>31</sup> ONE Media LLC ATSC Disclosure Statement and Licensing Declaration (Dec. 10, 2015) ([atsc.org/wp-content/uploads/2015/12/One\\_Media\\_ATSC\\_Patent\\_Disclosure\\_121415.pdf](http://atsc.org/wp-content/uploads/2015/12/One_Media_ATSC_Patent_Disclosure_121415.pdf)).

<sup>32</sup> *Id.*

<sup>33</sup> See, e.g., Doug Halonen, *Billions of \$ At Stake in ATSC Next Gen Effort*, TV News Check (Feb. 18, 2017) ([tvnewscheck.com/article/83062/billions-of--at-stake-in-atsc-nextgen-effort](http://tvnewscheck.com/article/83062/billions-of--at-stake-in-atsc-nextgen-effort)).

**II. Your interactions and the Trump Administration's interactions with Sinclair raise questions about the multiple FCC actions that have directly benefited the company.**

Multiple press reports have suggested a favorable relationship existed between Sinclair and the Trump campaign, and now exists with the Trump Administration. This includes a report involving a meeting with President Trump and Sinclair's Executive Chairman, during which "potential FCC rules changes were discussed."<sup>34</sup>

Reports further indicate that you, as Chairman of the FCC, have personally had a number of interactions both with the Administration and with Sinclair, as discussed below. Taken together, the volume of these interactions raise questions about the objectivity of recent FCC actions befitting Sinclair. Some of these reported interactions include the following:

- **After the election, President Trump reportedly met with the Executive Chairman and former CEO of Sinclair and discussed changing FCC rules to benefit Sinclair.** A news account stated that after the election, President Trump met with David Smith, Sinclair's Executive Chairman and former CEO. According to this report, "potential FCC rule changes were discussed" after President Trump asked Mr. Smith, "What do you need to happen in your business?"<sup>35</sup>
- **Before you became Chairman of the FCC, you reportedly met with then President-elect Trump in New York.** Reports indicate that on January 16 of this year, you met with then-President-elect Trump in New York in a meeting that did not appear on your official calendar.<sup>36</sup>
- **After you became Chairman of the FCC, you reportedly met with President Trump in the Oval Office.** In March, shortly after you became Chairman of the FCC, you met with President Trump in the Oval Office. An FCC spokesperson confirmed that the meeting occurred, but did not indicate what was discussed during the meeting.<sup>37</sup> When asked directly about your meetings with President Trump, you declined to disclose what you discussed with President Trump, saying "I am not at liberty to say."<sup>38</sup>
- **The week after the election, you reportedly attended a company conference for Sinclair's general managers, during which you met with Sinclair's CEO.** A report

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<sup>34</sup> Claire Atkinson and Josh Kosman, *Sinclair is close to buying all of Tribune's TV stations*, New York Post (Mar. 14, 2017).

<sup>35</sup> *Id.*

<sup>36</sup> Margaret Harding McGill, *A peek at Pai's calendar shows post-election agenda*, Politico Pro, Mar. 10, 2017; John Eggerton, *Trump Meets with FCC's Pai*, Broadcasting & Cable (Jan. 17, 2017).

<sup>37</sup> John Eggerton, *Updated: Trump Meets With FCC's Pai in Oval Office*, Broadcasting & Cable (Mar. 6, 2017).

<sup>38</sup> *Pai Declines to Discuss Trump Meetings*, TVNewsCheck (Mar. 8, 2017).

indicates that you attended on November 16, 2016 a Sinclair company summit for general managers at the Four Seasons Hotel in Baltimore.<sup>39</sup> During that event, you reportedly met with Sinclair's then-CEO David Smith.<sup>40</sup>

- **You again met with both the current and former CEO of Sinclair in January.** According to a Politico report, in January of this year, you met with Sinclair's former-CEO, David Smith, as well as the newly-named Sinclair CEO, Chris Ripley.<sup>41</sup>
- **The President's campaign reportedly "struck a deal" with Sinclair to "secure better media coverage."**<sup>42</sup> This arrangement came to light after the election, when Jared Kushner reportedly revealed that in exchange for access to then-candidate Trump and his campaign, "Sinclair would broadcast Trump interviews across the country without commentary."<sup>43</sup> Sinclair representatives have defended this arrangement by claiming that the Clinton campaign was offered the option for extended interviews with local anchors as well, but did not accept.<sup>44</sup>
- **Sinclair hired former Trump Administration official Boris Epshteyn as a commentator and political analyst.** In April, Boris Epshteyn, who was "most recently Special Assistant to The President and Assistant Communications Director for Surrogate Operations for the Executive Office of President Trump," and formerly a "senior advisor to the Trump campaign," joined Sinclair to provide on-air political commentary.<sup>45</sup> Epshteyn's segments are "must-run" programming for Sinclair stations, with nine segments airing per week.<sup>46</sup> One report has criticized the segments

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<sup>39</sup> Todd Shields, *Possible Tribune Suitor Sinclair Woos FCC's Pai on Regulations*, Bloomberg (Mar. 27, 2017).

<sup>40</sup> Margaret Harding McGill, *A peek at Pai's calendar shows post-election agenda*, Politico (Mar. 10, 2017).

<sup>41</sup> *Id.*

<sup>42</sup> Josh Dawsey and Hadas Gold, *Kushner: We struck deal with Sinclair for straighter coverage*, Politico (Dec. 16, 2016).

<sup>43</sup> *Id.* See also, Paul Farhi, *How the nation's largest owner of TV stations helped Donald Trump's campaign*, Washington Post (Dec. 22, 2017) (reporting that Sinclair-owned stations devoted broadcast time to 15 exclusive interviews with then-candidate Trump and also required stations to air "must-run" segments during the stations' morning or evening newscasts that were favorable to then-candidate Trump or that were critical of his opponent).

<sup>44</sup> See note 42.

<sup>45</sup> Cynthia Littleton, *Trump Spokesman Boris Epshteyn Joins Sinclair Broadcast Group as Political Analyst*, Variety (Apr. 17, 2017).

<sup>46</sup> *Id.*



as “propaganda,”<sup>47</sup> and reporting on Sinclair’s selection of “must-run” programming has raised “suggestions that Sinclair pushed right-leaning views.”<sup>48</sup>

We hope this letter will serve as an opportunity to respond to reports suggesting that you have failed to exercise adequate independence as FCC Chairman and that may have resulted in the agency giving unusual and possibly preferential treatment to Sinclair.

In order to provide you an opportunity to respond to these assertions, we ask that you provide answers to the attached list of questions. Your assistance in this matter is greatly appreciated, and we look forward to receiving a response by August 28.

Sincerely,



Frank Pallone, Jr.  
Ranking Member



Mike Doyle  
Ranking Member  
Subcommittee on Communications  
and Technology



Diana DeGette  
Ranking Member  
Subcommittee on Oversight  
and Investigations

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<sup>47</sup> David Zurawik, *Sinclair taking perilous political path with Boris Epshteyn*, Baltimore Sun (July 14, 2017).

<sup>48</sup> Sydney Ember, *Sinclair Requires TV Stations to Air Segments That Tilt to the Right*, New York Times (May 12, 2017).

## ATTACHMENT

### Meetings/Correspondence:

1. In a July 25, 2017 hearing before the Energy and Commerce Committee's Subcommittee on Communications and Technology,<sup>49</sup> you had the following exchange with Ranking Member Pallone:

Q: My question to the Chairman is numerous press accounts have detailed how your policies have benefited Sinclair Broadcast Group. There has also been speculation that the Trump Administration has been in touch with your office about a number of these policies, so I wanted to give you a chance to respond to those allegations, and specifically, can you tell us what the Administration has said – either to you or anyone in your office – about Sinclair or the UHF discount?

A: Thank you for the question Congressman. No one in the White House or the Administration generally has made any representations to me about any FCC proceeding relating to that company. They've not asked me to take any particular action or expressed views on the merits, and certainly not with respect to the UHF discount.

Beyond making "any representations to [you] about any proceeding relating to that company," more specifically, has any White House official in the current Administration discussed Sinclair at all with you? If so, what was discussed?

Has any White House official in the current Administration discussed Sinclair at all with anyone in your office? If so, what was discussed?

2. Please provide a list of all the meetings either you or members of your office have had with representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016. Did the Sinclair representatives discuss issues within the FCC's jurisdiction with you? If so, please provide a summary of the issues discussed.
3. Please provide all correspondence between you or members of your office and representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016.
4. Have you or members of your office corresponded with representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016, using a non-government email account? If so, please provide this correspondence.

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<sup>49</sup> *Oversight and Reauthorization of the Federal Communications Commission: Hearing Before the House Committee on Energy and Commerce, Subcommittee on Communications and Technology*, 115th Congress (July 25, 2017).

5. Please provide a list of any meetings you had with President Trump, or President-elect Trump, since November 8, 2016. Did Mr. Trump discuss issues within the FCC's jurisdiction with you? If these meetings did occur, please provide a summary of the issues discussed. If these meetings did occur, did Mr. Trump discuss Sinclair Broadcast Group with you? If so, please provide a summary of the discussion.

**Next Gen TV:**

6. As discussed above, the FCC has started a proceeding to allow TV broadcasters to begin using Next Gen TV – a technology whose primary patent-holder is Sinclair – amid concerns about how consumers would be affected by the transition. How do you intend to protect consumers so that they do not lose broadcast TV signals as stations transition to Next Gen TV?
7. How do you intend to establish privacy protections for consumer data that will be collected using the Next Gen TV standard?

**Sinclair-Tribune Proposed Merger:**

8. As discussed above, several parties have expressed concerns that the FCC has established a pleading cycle that is too short for the FCC to determine whether the proposed Sinclair/Tribune transaction is in the public interest. How do you intend to ensure that the comment/pleading cycle for the proposed Sinclair/Tribune merger will allow for all interested parties to have adequate time to review, analyze, and comment on issues raised by the proposal?
9. Will you extend the comment/pleading cycle to mirror the time frames provided for in the AT&T-DirecTV merger? If so, please describe your plan. If you will not commit to this measure, please explain the basis for your decision.
10. Did representatives of Sinclair inform you or your office of a possible transaction with Tribune before the FCC voted to reinstate the UHF Discount? If so, please provide a copy of the written request, or a description of the oral request and the date of the relevant meeting or phone call.
11. You established a short timeframe within which the public could comment on Sinclair's proposed transaction with Tribune. Did representatives of Sinclair ever request an expedited FCC review of the proposed transaction, or request that the FCC review the proposed transaction within a particular timeframe? If so, please provide a copy of the written request, or a description of the oral request and the date of the relevant meeting or phone call.

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

12. Will you start a proceeding for the full Commission's consideration on how the Media Bureau should review license transfer applications with sharing agreements or financial agreements? Specifically, what is your plan to ensure that the Media Bureau has specific procedures to fully evaluate the impact of such transactions on the local markets and consumers? If you do not plan to put these specific procedures in place, please explain your reasons for not doing so.
13. Did the Media Bureau staff evaluate any sharing agreements or financial agreements for stations in the same markets as the stations that Sinclair recently acquired from Bonten?
14. Please provide a list of all pending TV license transfer applications, including data on transferor, transferee, acceptance date, days pending, whether sharing and/or financial agreements are involved, and primary application file numbers.
15. Please provide a list of all TV license transfer applications that have been granted since March 2014, including data on transferor, transferee, acceptance date, granted date, whether sharing and/or financial agreements were involved, and primary application file numbers.

### **Other Potential Proceedings:**

16. In January, you met with Sinclair representatives and Armstrong Williams to discuss Joint Sales Agreement attribution rules.<sup>50</sup> Do you plan to start a proceeding – or include in any Broadcast Ownership Quadrennial Review – a proposal to reverse the current Joint Sales Agreement attribution rule for TV and/or radio stations?
17. Sinclair's CEO recently said to investors, “[w]e do expect this new FCC to tackle the ownership rules,” and “[w]e're very optimistic about this new FCC and the leadership of Ajit Pai....we definitely anticipate that more consolidation will happen.”<sup>51</sup> Do you plan to start a proceeding – or include in any Broadcast Ownership Quadrennial Review – a proposal to relax the local TV ownership (“duopoly”) rule? Do you plan to start a proceeding regarding the national TV ownership cap? If so, when?

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<sup>50</sup> Letter from Colby M. May, Attorney, Howard Stirk Holdings, LLC and Howard Stirk Holdings II, LLC, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, Re: Notice of Ex Parte Communication and Support of Expansion of Minority Ownership (Jan. 23, 2017) ([ecfsapi.fcc.gov/file/10123518122404/20170123%20--%20HSH%20Ex%20Parte%20Notice.pdf](https://ecfsapi.fcc.gov/file/10123518122404/20170123%20--%20HSH%20Ex%20Parte%20Notice.pdf)).

<sup>51</sup> See note 39.

OFFICE OF  
THE CHAIRMANFEDERAL 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-denial 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

ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

September 29, 2017

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

Dear Chairman Pai:

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

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

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

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

<sup>2</sup> See 5 U.S.C. §552(d).

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

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

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

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

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

The Honorable Ajit V. Pai  
September 29, 2017  
Page 3

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

Sincerely,



Frank Pallone, Jr.  
Ranking Member



Mike Doyle  
Ranking Member  
Subcommittee on Communications  
and Technology



Diana DeGette  
Ranking Member  
Subcommittee on Oversight  
and Investigations

Enclosure

## ATTACHMENT

### Correspondence:

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

### Sinclair-Tribune Proposed Merger:

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

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

**Processing Guidance on License Transfer Applications:**

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

**Other Potential Proceedings:**

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

ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

November 13, 2017

The Honorable David L. Hunt  
Inspector General  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dear Mr. Hunt:

We write to seek your assistance in investigating whether Federal Communications Commission (FCC) Chairman Ajit Pai has taken actions to improperly benefit Sinclair Broadcast Group (Sinclair). The Chairman has repeatedly refused to adequately respond to Congressional inquiries on this subject. His refusals – contrary to his stated commitment to be responsive to all Congressional members – only increase our concerns.

A number of press reports have also indicated that Chairman Pai may have timed FCC action to assist Sinclair. To clear up this issue, the Ranking Member of the Committee on Energy and Commerce repeatedly asked for all correspondence between Chairman Pai, his office and Sinclair. Because of the number of incidences where members of this administration have used personal communications services for government business, we also inquired whether the Chairman or his staff have used personal e-mail or social media messaging applications to communicate with Sinclair.

The Chairman has repeatedly refused to answer these inquiries, raising questions about whether he is appropriately following Commission rules. The Chairman's actions include:

- *Sinclair-Bonten License Transfer Application*: Chairman Pai rescinded a guidance in February, effectively loosening the scrutiny the staff applied to deals that could skirt local TV ownership restrictions by using a sharing agreement.<sup>1</sup> The FCC approved a deal three months later where Sinclair used several of these sharing agreements, potentially to circumvent the rules.

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<sup>1</sup> Federal Communications Commission, Media Bureau, *Rescission of March 12, 2014, Broadcast Processing Guidance Relating to Sharing Arrangements and Contingent Interests*, Public Notice, DA 17-130 (rel. Feb. 3, 2017).

- Reinstatement of the UHF Discount Rule: Press reports indicated in March of this year that Sinclair was in talks with Tribune Media Company (Tribune) about a potential merger, but analysts remarked that the deal would likely require the FCC to reinstate an outdated rule called the UHF discount. Chairman Pai announced his plan to reinstate the FCC's outdated UHF discount rule the same month as the initial Sinclair reports.<sup>2</sup>
- Sinclair-Tribune Merger: Sinclair announced its proposed acquisition of Tribune just two weeks after the FCC reinstated the UHF discount.<sup>3</sup> If approved, the transaction would solidify Sinclair as the country's largest TV group owner with a potential reach to nearly 70 percent of the nation.<sup>4</sup>
- Next Gen TV (ATSC 3.0): Sinclair has been one of the main proponents of the ATSC 3.0 (or Next Gen TV) transition,<sup>5</sup> and its subsidiary holds patents that reports indicate could provide billions of dollars in licensing fees to the patent owner.<sup>6</sup> Chairman Pai announced during his first full month in office a proposal to allow the TV industry to transition to the new standard.<sup>7</sup> Chairman Pai plans to take up an item approving ATSC

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<sup>2</sup> Federal Communications Commission, *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, Order on Reconsideration, MB Docket No. 13-236 (rel. Apr. 20, 2017) ([apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-40A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-40A1.pdf)).

<sup>3</sup> Alex Sherman, *Sinclair Buys Tribune in \$3.9 Billion Deal, Creating TV Goliath*, Bloomberg (May 7, 2017).

<sup>4</sup> Sydney Ember and Michael J. de la Merced, *Sinclair Unveils Tribune Deal, Raising Worries It Will Be Too Powerful*, New York Times, (May 8, 2017).

<sup>5</sup> Mike Dano, *With ATSC 3.0, TV Broadcasters Might Try to Steal Some Wireless Business After FCC's Incentive Auction*, Fierce Wireless (Nov. 9, 2015) ([fiercewireless.com/wireless/atsc-3-0-tv-broadcasters-might-try-to-steal-some-wireless-business-after-fcc-s-incentive](http://fiercewireless.com/wireless/atsc-3-0-tv-broadcasters-might-try-to-steal-some-wireless-business-after-fcc-s-incentive)); John Eggerton, *ONE Media Strikes Deal to Advance ATSC 3.0 Chipsets*, Broadcasting and Cable (Mar. 28, 2017) ([broadcastingcable.com/news/washington/one-media-strikes-deal-advance-atsc-30-chipsets/164463](http://broadcastingcable.com/news/washington/one-media-strikes-deal-advance-atsc-30-chipsets/164463)).

<sup>6</sup> Sinclair Broadcast Group, Inc., *ONE Media 3.0, LLC to Launch Next Generation Broadcast Products and Services*, PR Newswire (Apr. 14, 2016) ([prnewswire.com/news-releases/one-media-30-llc-to-launch-next-generation-broadcast-products-and-services-300251684.html](http://prnewswire.com/news-releases/one-media-30-llc-to-launch-next-generation-broadcast-products-and-services-300251684.html)); Doug Halonen, *Billions of \$ At Stake in ATSC Next Gen Effort*, TV News Check (Feb. 18, 2017) ([tvnewscheck.com/article/83062/billions-of--at-stake-in-atsc-nextgen-effort](http://tvnewscheck.com/article/83062/billions-of--at-stake-in-atsc-nextgen-effort)).

<sup>7</sup> Federal Communications Commission, Notice of Proposed Rulemaking, *In the Matter of Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard* (GN Docket No. 16-142) at ¶ 2 (Feb. 23, 2017).



3.0 at the Commission's November open meeting,<sup>8</sup> even though questions remain about how such a transition will impact consumers.<sup>9</sup>

- Main Studio Rule: The FCC voted in October to eliminate rules that would require local broadcast stations to maintain a physical presence in the market in which it operates. This move would make Sinclair's potential merger more profitable by eliminating many of the costs of maintaining local stations.
- Broadcast Ownership Rules: The Chairman plans to vote at the November meeting to significantly change the existing broadcast media ownership limits.<sup>10</sup> If adopted, this action will clear away virtually all remaining obstacles to Sinclair increasing its reach beyond the Tribune merger proposal.

All of these actions – when taken in context with reported meetings between the Trump Administration, Sinclair, and Chairman Pai's office – have raised serious concerns about whether Chairman Pai's actions comply with the FCC's mandate to be independent. Reports indicate that Sinclair's Executive Chairman and President Trump have met where “potential FCC rule changes were discussed.”<sup>11</sup> This reported meeting occurred after the Trump campaign indicated it had “struck a deal” with Sinclair to “secure better media coverage”<sup>12</sup> during the election. Chairman Pai has met with the President at least two times – one before being named Chairman and once in March.<sup>13</sup> The Chairman or his staff also have met with Sinclair representatives on numerous occasions.<sup>14</sup>

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<sup>8</sup> Federal Communications Commission, *FCC announces Tentative Agenda for November Agenda Meeting*, News Release, at 2 (October 26, 2017).

<sup>9</sup> Statement of Commissioner Mignon Clyburn, *Re: Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, GN Docket No. 16-142 (Feb. 23, 2017).

<sup>10</sup> News Release, *supra* n. 8, at 2.

<sup>11</sup> Claire Atkinson and Josh Kosman, *Sinclair is close to buying all of Tribune's TV stations*, New York Post (Mar. 14, 2017).

<sup>12</sup> Josh Dawsey and Hadas Gold, *Kushner: We struck deal with Sinclair for straighter coverage*, Politico (Dec. 16, 2016). *See also*, Paul Farhi, *How the nation's largest owner of TV stations helped Donald Trump's campaign*, Washington Post (Dec. 22, 2017) (reporting that Sinclair-owned stations devoted broadcast time to 15 exclusive interviews with then-candidate Trump and also required stations to air “must-run” segments during the stations' morning or evening newscasts that were favorable to then-candidate Trump or that were critical of his opponent).

<sup>13</sup> Letter from Ajit V. Pai, Chairman, FCC, to Rep. Frank Pallone, Ranking Member, House Committee on Energy and Commerce (Sept. 15, 2017).

<sup>14</sup> *Id.*

Ranking Member Pallone sent a letter to Chairman Pai in August to provide him with the opportunity to respond to these allegations. In his initial response, Chairman Pai failed to provide all of the requested answers and correspondence to complete our Congressional oversight. Ranking Member Pallone also followed up with a second letter at the end of September allowing the Chairman to correct his initial answer, but he has yet to receive a response. A copy of both letters and Chairman Pai's initial response are enclosed for your convenience.

We request that you examine how the FCC has conducted its business with regard to Sinclair. Specifically, we request that you find answers to the following questions:

- Whether actions taken by the FCC under Chairman Pai's leadership show a pattern and practice of preferential treatment for Sinclair, and
- Whether a series of interactions between Chairman Pai's office, the Trump Campaign and Trump Administration, and Sinclair demonstrate inappropriate coordination, including whether use of nongovernmental email and/or social media messaging tools complied with the Federal Records Act and the Freedom of Information Act.

Thank you for your attention to this matter. We request that you inform our Committees regarding any other issues of concern that you may uncover during your review. If you have any questions please contact the minority committee staff of the Energy and Commerce Committee at (202) 225-3641 or the minority committee staff of the Oversight and Government Reform Committee at (202) 225-5051.

Sincerely,



Frank Pallone, Jr.  
Ranking Member  
Committee on Energy and Commerce



Elijah E. Cummings  
Ranking Member  
Committee on Oversight and  
Government Reform

# United States Senate

WASHINGTON, DC 20510

Attachment 5

November 15, 2017

The Honorable David L. Hunt  
Inspector General  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Dear Inspector General Hunt:

We write to request that you commence an investigation into whether the chairman of the Federal Communications Commission (FCC), Ajit Pai, is executing his leadership of the FCC free from influences that compromise his objectivity and impartiality.

In particular, we have strong concerns that the FCC's ongoing review of the proposed merger of Sinclair Broadcasting (Sinclair) and Tribune Media (Tribune) may be tainted by a series of actions and events that raise questions about the independence and impartiality of the FCC.

As you may be aware, the FCC is currently reviewing the proposed acquisition of Tribune by Sinclair. A Sinclair-Tribune merger, if approved, would create a broadcasting giant with 223 TV stations serving 108 markets (including 39 of the top 50), covering 72% of U.S. households.

This merger would never have been possible without a series of actions (detailed below) to overturn decades-long, settled legal precedent undertaken by Chairman Pai since he assumed the helm of the FCC in January.

Through these actions, Chairman Pai has signaled his clear receptiveness to approving the Sinclair-Tribune transaction and in fact paved the way for its consummation.

Given the seriousness of our concerns, as part of this investigation, we ask that you direct the Chairman to immediately recuse himself from all actions related to the merger on an interim basis until your investigation determines whether a permanent recusal is warranted.

We further ask that you direct the FCC's staff to immediately cease all actions related to the agency's consideration of the merger until your investigation is concluded. [Under separate cover, we are requesting the same from Chairman Pai; we are asking him to recuse himself on a temporary basis from further actions related to the merger until your investigation concludes whether he should be permanently disqualified from the matter because of an incurable conflict of interest.]

The timeline below informs our sense of alarm that the FCC has failed to act independently and impartially in this matter:

- After the November 2016 presidential election, President-Elect Trump met individually with David Smith, the executive chairman and former CEO of Sinclair, and discussed changing

FCC rules to benefit Sinclair. According to reports, "potential FCC rule changes were discussed" after President-Elect Trump asked Mr. Smith, "What do you need to happen in your business?"<sup>1</sup>

- On November 16, 2016, then-Commissioner Pai traveled to Baltimore, Maryland to have an off-the-record meeting with Sinclair employees and lunch with key company executives.<sup>2</sup> This meeting was not disclosed publicly at the time.
- In December 2016, Jared Kushner, President Trump's son-in law and current Senior White House Advisor, reported that the President's campaign had "struck a deal" with Sinclair for better media coverage during the election.<sup>3</sup>
- On January 6, 2017, Commissioner Pai met privately with Sinclair representatives at the Consumer Electronics Show in Las Vegas.<sup>4</sup> This meeting was also not initially publicly disclosed.
- On January 16, 2017, Commissioner Pai traveled to New York City to meet privately with President-Elect Trump.<sup>5</sup>
- On January 19, 2017, Commissioner Pai traveled to Arlington, Virginia, to meet again with executives from Sinclair.<sup>6</sup> A summary of the meeting, filed in the FCC's public docket, shows that the agency's restrictions on joint or shared-service agreements were discussed in detail.<sup>7</sup>
- On January 22, 2017, President Trump elevated Commissioner Pai to be permanent Chairman of the FCC.
- On February 3, 2017, pursuant to unilateral direction from the now Chairman Pai, the FCC's Media Bureau announced that it would no longer review joint sales agreements and shared-services agreements in broadcast mergers.<sup>8</sup>
- On February 23, 2017, the FCC started a proceeding to allow TV broadcasters to begin using Next Gen TV (also known as ATSC 3.0)—a technology for which Sinclair holds the key patents.<sup>9</sup>

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<sup>1</sup> Claire Atkinson and Josh Kosman, *Sinclair is close to buying all of Tribune's TV stations*, New York Post (Mar. 14, 2017)

<sup>2</sup> [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-346883A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-346883A1.pdf)

<sup>3</sup> <https://www.politico.com/story/2016/12/trump-campaign-sinclair-broadcasting-jared-kushner-232764>

<sup>4</sup> [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-346883A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-346883A1.pdf)

<sup>5</sup> <http://www.broadcastingcable.com/news/washington/trump-meets-fccs-pai/162522>

<sup>6</sup> [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-346883A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-346883A1.pdf)

<sup>7</sup> <http://www.tvnewscheck.com/article/101272/fcc-revokes-jas-midnight-regulation>. Sinclair attendees, based on press reports, would have known that Commissioner Pai had just met with the President-Elect.

<sup>8</sup> *Id.*

<sup>9</sup> Federal Communications Commission, Notice of Proposed Rulemaking, *In the Matter of Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard* (GN Docket No. 16-142) at ~ 2 (Feb. 23, 2017). Although the proposal for Next Gen TV came from various broadcast groups, Sinclair is the lead proponent of the technology. Mike Dano, *With ATSC 3.0, TV Broadcasters Might Try to Steal Some Wireless Business After FCC's Incentive Auction*, Fierce Wireless (Nov. 9, 2015) ([fiercewireless.com/wireless/atsc-3-0-tv-broadcasters-might-try-to-steal-some-wirelessbusiness-after-fcc-s-incentive](http://fiercewireless.com/wireless/atsc-3-0-tv-broadcasters-might-try-to-steal-some-wirelessbusiness-after-fcc-s-incentive)); John Eggerton, *ONE Media Strikes Deal to Advance ATSC 3.0 Chipsets*, Broadcasting and Cable (Mar. 28, 2017) ([broadcastingcable.com/news/washington/one-media-strikes-deal-advance-atsc-3-0-chipsets/164463](http://www.broadcastingcable.com/news/washington/one-media-strikes-deal-advance-atsc-3-0-chipsets/164463)). <http://www.fiercecable.com/broadcasting/nexstar-sinclair-atsc-3-0-spectrum-consortium-searching-for-ceo>

- On March 6, 2017, Chairman Pai again met with President Trump. Chairman Pai, stated that he and the President did not discuss “any pending proceedings” at the FCC.<sup>10</sup>
- On April 12, 2017, Chairman Pai led the FCC in a party line vote to ease ownership caps by reinstating the technologically-outdated UHF discount.<sup>11</sup> Without this reversal, Sinclair would have been legally barred from merging with Tribune.
- On April 21, 2017, Sinclair announced its intention to purchase Bonten Media Group (Bonten), owner of 14 television stations in eight markets.<sup>12</sup> Bonten also provided services to four other stations through joint sales agreements.
- On May 8, 2017 Sinclair announced its intention to acquire Tribune for \$3.9 billion.<sup>13</sup>
- On June 30, 2017, the FCC approved the purchase of seven Bonten stations by Sinclair (Sinclair divested the other seven stations). The transaction was later consummated by the parties on September 5, 2017, at which time Sinclair assumed the joint sales agreements held by Bonten.<sup>14</sup> If the FCC had not relaxed its review of joint sales agreements consistent with Sinclair’s request, it is unlikely this transaction would have been approved expeditiously without the termination of at least some of the joint sales agreements.
- On October 24, 2017, Chairman Pai led the FCC (on a party-line vote) in eliminating the broadcast main studio rule. Doing away with the rule, which was established in 1940, benefits the largest broadcasters, especially Sinclair who has made a pattern of reducing local investments in station studios and consolidating studio and newsgathering operations at its headquarters in Maryland.<sup>15</sup>
- At the upcoming November 16, 2017 FCC Open Meeting, Chairman Pai is expected to lead FCC (on a partisan basis) to take two actions that will directly benefit Sinclair.
  - Chairman Pai is expected to lead the FCC’s party-line vote to eliminate decades-long rules that prevent TV stations in the same market from merging if the outcome leads to fewer than eight independent stations operating in that market, or if the merger is between two of the top four stations in a market.<sup>16</sup> This rule change directly benefits the monopoly aspirations of Sinclair by eliminating the need for it to divest any of the stations it is purchasing from Tribune.<sup>17</sup>
  - At the same meeting, Chairman Pai also is expected to lead the FCC (on a party-line vote) to approve broadcaster’s use of Next Gen TV. The item that Chairman Pai has put forth for vote would directly benefit Sinclair. First, the draft order would establish a licensing framework for broadcasters that would allow Sinclair to establish and

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<sup>10</sup> [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-346883A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-346883A1.pdf)

<sup>11</sup> <https://www.fcc.gov/document/reinstatement-uhf-discount>. Without this reversal, Sinclair would have been legally barred from merging with Tribune.

<sup>12</sup> <https://www.prnewswire.com/news-releases/sinclair-broadcast-group-announces-agreement-to-purchase-bonten-media-group-tv-stations-300443390.html>

<sup>13</sup> <http://www.tribunemedia.com/sinclair-broadcast-group-to-acquire-tribune-media-company-for-approximately-3-9-billion/>

<sup>14</sup> <http://www.baltimoresun.com/business/bs-bz-sinclair-finalizes-bonten-deal-20170905-story.html>

<sup>15</sup> <http://deadline.com/2017/10/fcc-set-to-vote-on-ending-main-studio-rule-in-boost-to-sinclair-1202193716/>

<sup>16</sup> [https://www.washingtonpost.com/news/the-switch/wp/2017/10/25/the-fcc-plans-to-roll-back-some-of-its-biggest-rules-against-media-consolidation/?utm\\_term=.a1454bda1897](https://www.washingtonpost.com/news/the-switch/wp/2017/10/25/the-fcc-plans-to-roll-back-some-of-its-biggest-rules-against-media-consolidation/?utm_term=.a1454bda1897)

<sup>17</sup> This action is being taken upon a Motion for Reconsideration and without the normal notice and comment process traditionally used in media ownership rulemakings.

maintain a monopoly over its patented technology.<sup>18</sup> Secondly, the proposed licensing scheme will facilitate Sinclair's ability to extract licensing fees to transmit and receive Next Gen TV signals.

Put simply, this timeline suggests a disturbing pattern of a three way quid-pro-quo involving Sinclair, the Trump Administration, and Ajit Pai. Because of these facts, we are gravely concerned that Chairman Pai may have engaged in a pattern and practice of activity related to the Sinclair-Tribune transaction in a way that imperils the independence and public interest mission of the FCC.

In order to address these concerns, we request that you investigate the matter. This investigation should be conducted in a thorough and impartial manner, consistent with other investigations undertaken by your office. We expect your office to determine whether improper actions have taken place that call into question the independence of the agency, and request that you provide regular updates to our offices on the course of your investigation.

Your investigation should, at a minimum, examine the following questions:

1. Whether the totality of the Chairman's actions with regard to media ownership policies, media concentration policies, or the Sinclair- Tribune transaction, demonstrate *actual* impropriety, unscrupulous behavior, favoritism towards Sinclair, or a lack of impartiality?
2. Whether the totality of the Chairman' actions with regard to media ownership policies, media concentration policies, or the Sinclair-Tribune transaction demonstrate *the appearance* of impropriety, unscrupulous behavior, favoritism towards Sinclair, or a lack of impartiality?
3. Whether the Chairman's actions create the appearance or demonstrate the actual lack of independence of the FCC?
4. Whether Chairman Pai's *actual* impropriety, unscrupulous behavior, favoritism towards Sinclair, or a lack of impartiality requires that he recuse himself from all matters that would materially impact Sinclair or media ownership and media concentration matters?
5. Whether *the appearance* of Chairman Pai's impropriety, unscrupulous behavior, favoritism towards Sinclair, or a lack of impartiality requires that he recuse himself from all matters that would materially impact Sinclair or any media ownership and media concentration matters?
6. Whether the FCC's consideration of the Next Generation TV matters has been unduly influenced by the Chairman's desire to boost the business interests of Sinclair? Please include in your answer whether the FCC's examination of this matter has appropriately taken into account the competition and anti-trust issues raised by Sinclair's role as the sole patent holder of key components of the Advanced Television Systems Committee 3.0 (ATSC 3.0) technology.

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<sup>18</sup> The draft order under consideration will not require Sinclair to offer, to other broadcasters, access to its patented ATSC 3.0 technology on a reasonable and nondiscriminatory basis. <https://www.fcc.gov/document/next-generation-broadcast-television-standard>.

Sincerely,



Maria Cantwell  
United States Senator



Tom Udall  
United States Senator



Richard Blumenthal  
United States Senator



Patty Murray  
United States Senator



Edward J. Markey  
United States Senator



Al Franken  
United States Senator



Elizabeth Warren  
United States Senator



Richard J. Durbin  
United States Senator



Ron Wyden  
United States Senator



Bernard Sanders  
United States Senator



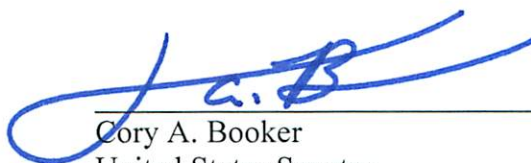
Tammy Duckworth  
United States Senator



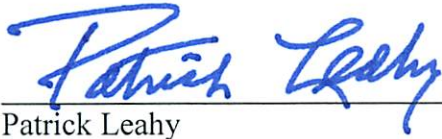
Jeffrey A. Merkley  
United States Senator



Catherine Cortez Masto  
United States Senator



Cory A. Booker  
United States Senator



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Patrick Leahy  
United States Senator

cc: Chairman Ajit Pai



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTONOFFICE OF  
THE CHAIRMAN

December 21, 2017

The Honorable Frank Pallone  
Ranking Member  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Pallone:

Thank you for your letter dated September 29, 2017. As I explained in my September 8 response to your previous letter, since joining the Federal Communications Commission in 2012, my actions to promote a vibrant and free over-the-air broadcast service have been motivated by my belief that a strong over-the-air broadcast service advances the public interest, not by a desire to help any particular company.

I provide below specific responses to your additional questions. Particularly, with respect to the UHF discount, the responses below make clear that the Commission's decision this year to reverse the prior Commission's party-line decision and reinstate the UHF discount pending a holistic review of the national ownership cap was consistent with my prior actions and statements on this issue dating back four years and was made well before I was aware of the pending transaction between Sinclair and Tribune.

**Correspondence:**

1. Please provide all correspondence between you or members of your office and representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016.

*Response:* In addition to the correspondence that I provided in response to your previous letter, I am providing today additional correspondence from between November 8, 2016 and September 29, 2017, the date of your letter, that has been processed in connection with pending FOIA requests. With this response, the only correspondence of which I am aware between my office and representatives of Sinclair between November 8, 2016, and the date of your letter that you have not received are e-mails concerning a pending enforcement matter, which would not be appropriate for me to release at this time.

2. Have you or members of your office corresponded with representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016, using a non-government email account? If so, please provide this correspondence.

*Response:* I have surveyed my staff, and we have only located one such e-mail, which was from Jerry Fritz on March 28, 2017. That email, regarding ATSC 3.0 chip development in India, was

sent to my personal e-mail account and my Chief of Staff's official e-mail account. Consistent with FCC policy, my Chief of Staff forwarded this e-mail message to my official e-mail account one minute after it was received so that it would be made part of the Commission's records. I am providing this e-mail and the forwarded e-mail along with this letter.

3. Have you or members of your office corresponded with representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016, using social media messaging services or other messaging applications, such as, but not limited to, Facebook messenger? If so, please provide this correspondence.

*Response:* I have surveyed my staff, and we have not located any such correspondence.

4. Please provide a copy of every FOIA request, both completed and pending, that relate specifically to Sinclair.

Attached is a chart that lists each FOIA request related specifically to Sinclair filed between June 2016 and the date of your letter, the person or entity that requested it, the submitted date and status.

**Sinclair-Tribune Proposed Merger:**

1. When did you or your staff become aware of a possible transaction between Sinclair and Tribune?

*Response:* Although rumors of a potential transaction between Sinclair and Tribune surfaced in the press as early as March 2017, the Media Bureau staff, my staff, and I became aware of the specific pending transaction in May 2017, first from news outlets and then from the parties. *The New York Times* reported a possible deal on May 7, 2017, and on May 8, 2017, counsel for Sinclair called my office with the standard courtesy heads-up and sent the Media Bureau staff a press announcement. The applications were filed on June 26, 2017.

2. When did you direct the Media Bureau to begin drafting an order to reinstate the UHF discount?

*Response:* My office directed the Media Bureau to begin drafting an Order on Reconsideration to reinstate the UHF discount pending a holistic review of the national ownership cap in late January 2017, shortly after I was named Chairman of the Commission. This direction was consistent with my September 2016 dissent from the Report and Order that eliminated the discount without also analyzing the national ownership cap—a decision that was arbitrary and capricious. That direction was also consistent with the position that I took in 2013 when the Commission considered a Notice of Proposed Rulemaking regarding the UHF discount. And that direction was reflected in the Commission's adoption on December 14 of a Notice of

Proposed Rulemaking seeking public input on the scope of the Commission's authority both to adjust the cap and eliminate the UHF discount.

3. When did the Media Bureau begin to draft the September 14 Information Request letter to the applicants?

*Response:* The staff began considering issuing an information request within a couple of days after the applications were filed in late June. As part of the review process for any assignment of license or transfer of control application, the Media Bureau staff reviews the application and begins to determine what, if any, additional information will be needed in order to rule on the application. That review marks the beginning of the process by which the staff determines whether to request additional information from applicants.

4. Will the Media Bureau seek the additional information requested by interested parties in the July 12, 2017 Motion for Additional Information and Documents and Extension of Time?

*Response:* The Media Bureau issued an extensive Information Request on September 14, 2017. Some of the information requested was also the same as information sought by interested parties in their July 12, 2017 Motion. In response to the Bureau's September 14 Information Request, Sinclair provided more than 400 pages of documents on October 5, 2017. Staff is reviewing this response and will determine whether additional information is needed. In addition, the Media Bureau issued a Public Notice on October 18, 2017 inviting additional comments on this response. Such comments were due on or before November 2, 2017. Staff is reviewing the additional comments as well to determine whether additional information is needed from the applicants.

5. Will the Media Bureau pause the informal 180-day clock, as it has done in previous merger reviews, [footnote omitted] once the applicants respond to the information request in order for interested parties to have time to review and respond to the new information?

*Response:* On October 18, 2017, the Media Bureau released a Public Notice that stopped the clock for 15 days, until November 2, and stated that interested parties could submit additional comments in the proceeding to respond to the applicants' October 5 filing. *See Media Bureau Seeks Comment on Additional Submission in the Proceeding for Transfer of Control of Tribune Media Company to Sinclair Broadcast Group, Inc. and Pauses Informal 180-Day Transaction Shot Clock*, Public Notice, DA 17-1026 (MB Oct. 18, 2017).

**Processing Guidance on License Transfer Applications:**

1. Will you start a process for the full Commission's consideration on how the Media Bureau should review license transfer applications with sharing agreements or financial agreements? Specifically, what is your plan to ensure that the Media Bureau has specific procedures to fully

evaluate the impact of such transactions on the local markets and consumers? If you do not plan to put these specific procedures in place, please explain your reasons for not doing so.

*Response:* The Commission has rules and processes in place to ensure that proposed transactions, including those involving sharing or financial agreements, are thoroughly analyzed. I do not intend at this time to create a new process for review of such transactions. The Media Bureau has extensive experience in analyzing transactions involving sharing agreements and financial agreements.

**Other Potential Proceedings:**

1. Please provide a specific time frame for the Commission's consideration of revisions to the current TV Joint Sales Agreement attribution rule.

*Response:* The Commission voted on that issue at our November 16 meeting.

2. Please provide a specific time frame for the Commission's consideration of revisions to the current local TV ownership ("duopoly") rule.

*Response:* The Commission voted on that issue at our November 16 meeting.

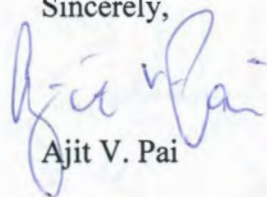
3. Please provide a specific time frame for the Commission's consideration of revisions to the current national TV ownership cap.

*Response:* As mentioned above, the Commission adopted a Notice of Proposed Rulemaking at our December 14 meeting to launch an examination of the current national television ownership cap, including the UHF discount.

4. Please provide a specific time frame for the Commission to start the next Quadrennial Review of Broadcast Ownership rules.

*Response:* Pursuant to Section 202(h) of the Telecommunications Act of 1996, as amended, the Commission must initiate a review of its broadcast ownership rules every four years. The last review was initiated in 2014 and consolidated into the ongoing 2010 review by my predecessor. Accordingly, the Commission will initiate the next review in 2018, consistent with its statutory obligation.

Sincerely,



Ajit V. Pai



Federal Communications Commission  
Office of Inspector General

## Investigative Activity Report

<b>Type of Activity:</b> <input type="checkbox"/> Personal Interview <input type="checkbox"/> Telephone Interview <input type="checkbox"/> Records Review <input checked="" type="checkbox"/> Other	<b>Location of Activity:</b>  OIG Computer Forensics Lab, FCC Headquarters, 445 12 <sup>th</sup> Street, S.W., Room 2- C423, Washington, DC 20554
<b>Activity Date and Time:</b>  November 27, 2017 at 1055 hrs. KGLT	<b>Activity Description:</b>  Obtained digital evidence related to OIG investigation of allegations of impropriety related to the Commission's review of the proposed Sinclair-Tribune merger
<b>Report Date:</b>  July 30, 2018	<b>Conducted By:</b>  (b) (7)(C)

### Subject Matter/Remarks

The Federal Communications Commission (FCC) Office of Inspector General (OIG) is investigating allegations of improprieties related to the Commission's review of the proposed merger between Sinclair Broadcast Group (Sinclair) and Tribune Media (Tribune). Specifically, FCC OIG is investigating allegations that the actions taken by FCC Chairman PAI related to the proposed Sinclair-Tribune merger demonstrates actual impropriety, unscrupulous behavior, favoritism towards Sinclair, or lack of impartiality or create the appearance of impropriety, unscrupulous behavior, favoritism towards Sinclair, or lack of impartiality. This investigation was requested by members of the Energy and Commerce Committee of the United States House of Representatives in a letter to the Inspector General dated November 13, 2017 and by members of the United States Senate in a letter to the Inspector General dated November 15, 2017.

On November 27, 2017, the computer forensics investigator sent an email message to (b) (6), FCC Information Technology Center (ITC), requesting current copies of Outlook mailboxes and Office 365 archived email for PAI and Matthew BERRY (Chief of Staff to PAI). On December 6, 2017, the computer forensics investigator received an email message from (b) (6) indicating that the requested Outlook mailboxes and Office 365 archived email had been restored. On December 12, 2017, the computer forensics investigator sent an email

Case Number: OIG-I-18-0006	Case Title: Sinclair Broadcast Group
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INVESTIGATIVE ACTIVITY REPORT (continuation sheet)

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message to (b) (6) requesting Outlook mailboxes for Nicholas DEGANI (Senior Counsel to PAI) and Brendan CARR (FCC Commissioner) and network shares (N:\ drives) for PAI, BERRY, DEGANI, and CARR. On January 3, 2018, received an email message from (b) (6) indicating that the requested Outlook mailboxes and Office 365 archived email had been restored. On January 3, 2018, (b) (6), ITC, hand delivered fifteen (15) TDK DVD'Rs containing the network shares (N:\ drives) for PAI, BERRY, DEGANI, and CARR. A complete copy of the notes and supporting documentation obtained during the evidence acquisition process is included as an attachment to this Investigative Activity Report (IAR).

Case Number: OIG-I-18-0006	Case Title: Sinclair Broadcast Group
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Federal Communications Commission  
Office of Inspector General

## Investigative Activity Report

<b>Type of Activity:</b> <input type="checkbox"/> Personal Interview <input type="checkbox"/> Telephone Interview <input type="checkbox"/> Records Review <input checked="" type="checkbox"/> Other	<b>Location of Activity:</b>  OIG Computer Forensics Lab, FCC Headquarters, 445 12 <sup>th</sup> Street, S.W., Room 2-C423, Washington, DC 20554
<b>Activity Date and Time:</b>  January 9, 2018 at 1426 hrs. KGLT	<b>Activity Description:</b>  Examined digital evidence related to OIG investigation of allegations of impropriety related to the Commission's review of the proposed Sinclair-Tribune merger
<b>Report Date:</b>  July 31, 2018	<b>Conducted By:</b>  <div style="background-color: black; color: red; padding: 2px;">(b) (7)(C)</div>

Subject Matter/Remarks

The Federal Communications Commission (FCC) Office of Inspector General (OIG) is investigating allegations of improprieties related to the Commission's review of the proposed merger between Sinclair Broadcast Group (Sinclair) and Tribune Media (Tribune). Specifically, FCC OIG is investigating allegations that the actions taken by FCC Chairman PAI related to the proposed Sinclair-Tribune merger demonstrates actual impropriety, unscrupulous behavior, favoritism towards Sinclair, or lack of impartiality or create the appearance of impropriety, unscrupulous behavior, favoritism towards Sinclair, or lack of impartiality. This investigation was requested by members of the Energy and Commerce Committee of the United States House of Representatives in a letter to the Inspector General dated November 13, 2017 and by members of the United States Senate in a letter to the Inspector General dated November 15, 2017.

On November 27, 2017, the computer forensics investigator sent an email message to (b) (6), FCC Information Technology Center (ITC), requesting current copies of Outlook mailboxes and Office 365 archived email for PAI and Matthew BERRY (Chief of Staff to PAI). On December 6, 2017, the computer forensics investigator received an email message from (b) (6) indicating that the requested Outlook mailboxes and Office 365 archived email had been restored. On December 12, 2017, the computer forensics investigator sent an email

Case Number: OIG-I-18-0006	Case Title: Sinclair Broadcast Group
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**INVESTIGATIVE ACTIVITY REPORT (continuation sheet)**

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message to (b) (6) requesting Outlook mailboxes for Nicholas DEGANI (Senior Counsel to PAI) and Brendan CARR (FCC Commissioner) and network shares (N:\ drives) for PAI, BERRY, DEGANI, and CARR. On January 3, 2018, received an email message from (b) (6) indicating that the requested Outlook mailboxes and Office 365 archived email had been restored. On January 3, 2018, (b) (6), ITC, hand delivered fifteen (15) TDK DVD'Rs containing the network shares (N:\ drives) for PAI, BERRY, DEGANI, and CARR.

On January 9, 2018, the computer forensics investigator created a case in FTK entitled "OIG-I-18-0006 Sinclair Broadcast Group" on the Forensic6 forensic analysis workstation in the OIG computer forensics laboratory located at 445 12<sup>th</sup> Street, S.W., Room 2-C423, Washington, DC 20554 and added the previously described digital evidence. The computer forensics investigator began the forensic examination of the digital evidence on March 19, 2018 and the examination was completed on July 31, 2018. A complete copy of the notes and supporting documentation obtained during the examination process is included as an attachment to this Investigative Activity Report (IAR).

Case Number: OIG-I-18-0006	Case Title: Sinclair Broadcast Group
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# Federal Communications Commission Office of Inspector General

## Investigative Activity Report

<b>Type of Activity:</b> <input type="checkbox"/> Personal Interview <input type="checkbox"/> Telephone Interview <input checked="" type="checkbox"/> Records Review <input type="checkbox"/> Other	<b>Location of Activity:</b>  OIG Computer Forensics Lab, FCC Headquarters, 445 12 <sup>th</sup> Street, S.W., Room 2- C423, Washington, DC 20554
<b>Activity Date and Time:</b>  December 12, 2017 at 0814 hrs. KGLT	<b>Activity Description:</b>  Obtained and reviewed desk phone records for Ajit Pai, Matthew Berry, Brendan Carr, and Nicholas Degani
<b>Report Date:</b>  March 9, 2018	<b>Conducted By:</b>  (b) (7)(C)

### Subject Matter/Remarks

The Federal Communications Commission (FCC) Office of Inspector General (OIG) is investigating allegations of improprieties related to the Commission’s review of the proposed merger between Sinclair Broadcast Group (Sinclair) and Tribune Media (Tribune). Specifically, FCC OIG is investigating allegations that the actions taken by FCC Chairman PAI related to the proposed Sinclair-Tribune merger demonstrates actual impropriety, unscrupulous behavior, favoritism towards Sinclair, or lack of impartiality or create the appearance of impropriety, unscrupulous behavior, favoritism towards Sinclair, or lack of impartiality. This investigation was requested by members of the Energy and Commerce Committee of the United States House of Representatives in a letter to the Inspector General dated November 13, 2017 and by members of the United States Senate in a letter to the Inspector General dated November 15, 2017.

On December 12, 2017, the computer forensics investigator sent an email message to (b) (6), FCC Information Technology Center (ITC), requesting desk phone and mobile phone records for PAI, Matthew BERRY (Chief of Staff to PAI), Nicholas DEGANI (Senior Counsel to PAI), and Brendan CARR (FCC Commissioner) for the period from November 1, 2016 to the present. On January 16, 2018, the computer forensics investigator received an email message from (b) (6), Contractor with ITC, with Microsoft Excel spreadsheets containing the desk phone records for PAI, BERRY, DEGANI, and CARR included as attachments.

Case Number: OIG-I-18-0006	Case Title: Sinclair Broadcast Group
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**INVESTIGATIVE ACTIVITY REPORT (continuation sheet)**

The computer forensics investigator developed a Microsoft Office document entitled “Sinclair Broadcast Group Executives” that contains contact information (i.e., phone numbers and email addresses) for Sinclair executives, outside legal counsel, and known outside advisors. This document was developed by reviewing the Sinclair website, reviewing Sinclair filings with the FCC, reviewing previously obtained email correspondence to and from the Sinclair email domain (sbgvtv.com), and by running LexisNexis Law Enforcement Portal reports for these individuals. A copy of the document is included as **Attachment 1** to this IAR.

The computer forensics investigator used the native search functionality of Microsoft Excel to search each of the four (4) Microsoft Excel spreadsheets containing desk phone records for PAI, BERRY, DEGANI, and CARR for contact with any of the phone numbers identified on the “Sinclair Broadcast Group Executives” document. The computer forensics investigator created a Microsoft Excel spreadsheet and added the detailed call information for each contact identified. A copy of the Microsoft Excel spreadsheet containing detailed call information is included as **Attachment 2** to this IAR.

The following contacts were identified:

<b>Date and Time</b>	<b>Caller</b>	<b>Recipient</b>	<b>Duration (seconds)</b>
11/16/16 12:10:39 PM	Rebecca Hanson Mobile Phone (b) (6)	BERRY Desk Phone	8
1/18/17 10:00:07 AM	Rebecca Hanson Desk Phone (b) (6)	BERRY Desk Phone	61
1/18/17 10:31:41 AM	BERRY Desk Phone	Rebecca Hanson Mobile Phone (b) (6)	165
3/3/17 8:15:18 AM	Rebecca Hanson Desk Phone (b) (6)	BERRY Desk Phone	85
3/9/17 1:52:16 PM	Rebecca Hanson Desk Phone (b) (6)	BERRY Desk Phone	36
3/9/17 2:03:20 PM	BERRY Desk Phone	Rebecca Hanson Desk Phone (b) (6)	161
3/29/17 12:33:52 PM	BERRY Desk Phone	Rebecca Hanson Desk Phone (b) (6)	19
3/29/17 2:35:29 PM	Rebecca Hanson Mobile Phone (b) (6)	BERRY Desk Phone	28
3/29/17 3:11:59 PM	BERRY Desk Phone	Rebecca Hanson Mobile Phone (b) (6)	213
5/3/17 8:31:28 AM	BERRY Desk Phone	Rebecca Hanson Desk Phone (b) (6)	996

Case Number: OIG-I-18-0006	Case Title: Sinclair Broadcast Group
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INVESTIGATIVE ACTIVITY REPORT (continuation sheet)

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6/2/17 7:23:42 AM	Rebecca Hanson Desk Phone (b) (6)	BERRY Desk Phone	42
6/2/17 9:51:36 AM	BERRY Desk Phone	Rebecca Hanson Desk Phone (b) (6)	19
6/2/17 10:33:25 AM	Rebecca Hanson Desk Phone (b) (6)	BERRY Desk Phone	50
6/2/17 10:56:49 AM	BERRY Desk Phone	Rebecca Hanson Desk Phone (b) (6)	423

Case Number: OIG-I-18-0006	Case Title: Sinclair Broadcast Group
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Federal Communications Commission
Office of Inspector General

Investigative Activity Report

Form with fields: Type of Activity (checkboxes for Personal Interview, Telephone Interview, Records Review, Other), Location of Activity (OIG Computer Forensics Lab, FCC Headquarters...), Activity Date and Time (December 12, 2017 at 0814 hrs. KGLT), Activity Description (Obtained and reviewed mobile phone records...), Report Date (March 20, 2018), Conducted By ((b) (7)(C)).

Subject Matter/Remarks

The Federal Communications Commission (FCC) Office of Inspector General (OIG) is investigating allegations of improprieties related to the Commission’s review of the proposed merger between Sinclair Broadcast Group (Sinclair) and Tribune Media (Tribune). Specifically, FCC OIG is investigating allegations that the actions taken by FCC Chairman PAI related to the proposed Sinclair-Tribune merger demonstrates actual impropriety, unscrupulous behavior, favoritism towards Sinclair, or lack of impartiality or create the appearance of impropriety, unscrupulous behavior, favoritism towards Sinclair, or lack of impartiality. This investigation was requested by members of the Energy and Commerce Committee of the United States House of Representatives in a letter to the Inspector General dated November 13, 2017 and by members of the United States Senate in a letter to the Inspector General dated November 15, 2017.

On December 12, 2017, the computer forensics investigator sent an email message to (b) (6), FCC Information Technology Center (ITC), requesting desk phone and mobile phone records for PAI, Matthew BERRY (Chief of Staff to PAI), Nicholas DEGANI (Senior Counsel to PAI), and Brendan CARR (FCC Commissioner) for the period from November 1, 2016 to the present. On February 14, 2018, the computer forensics investigator received an email message from (b) (6) with ITC, with a Microsoft Excel

Table with 2 columns: Case Number (OIG-I-18-0006) and Case Title (Sinclair Broadcast Group)

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**INVESTIGATIVE ACTIVITY REPORT (continuation sheet)**

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spreadsheet containing the mobile phone records for PAI, BERRY, DEGANI, and CARR included as an attachment.

The computer forensics investigator developed a Microsoft Office document entitled “Sinclair Broadcast Group Executives” that contains contact information (i.e., phone numbers and email addresses) for Sinclair executives, outside legal counsel, and known outside advisors. This document was developed by reviewing the Sinclair website, reviewing Sinclair filings with the FCC, reviewing previously obtained email correspondence to and from the Sinclair email domain (sbgvtv.com), and by running LexisNexis Law Enforcement Portal reports for these individuals. A copy of the document is included as **Attachment 1** to this IAR.

The computer forensics investigator used the native search functionality of Microsoft Excel to search the Microsoft Excel spreadsheet containing mobile phone records for PAI, BERRY, DEGANI, and CARR for contact with any of the phone numbers identified on the “Sinclair Broadcast Group Executives” document. The computer forensics investigator created a Microsoft Excel spreadsheet and added the detailed call information for each contact identified. A copy of the Microsoft Excel spreadsheet containing detailed call information is included as **Attachment 2** to this IAR.

The following contacts were identified:

<b>Date</b>	<b>Caller</b>	<b>Recipient</b>	<b>Duration (minutes)</b>
03/23/2017	BERRY Mobile Phone (b) (6)	Rebecca Hanson Desk Phone (b) (6)	3
04/23/2017	BERRY Mobile Phone (b) (6)	Rebecca Hanson Mobile Phone (b) (6)	4

Case Number: OIG-I-18-0006	Case Title: Sinclair Broadcast Group
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Federal Communications Commission
Office of Inspector General

Investigative Activity Report

Form with fields: Type of Activity (Personal Interview, Telephone Interview, Records Review, Other), Location of Activity (OIG Computer Forensics Lab, FCC Headquarters), Activity Date and Time (December 12, 2017 at 0816 hrs. KGLT), Activity Description (Obtained and reviewed visitor logs for the FCC Headquarters facility), Report Date (March 28, 2018), Conducted By ((b) (7)(C)).

Subject Matter/Remarks

The Federal Communications Commission (FCC) Office of Inspector General (OIG) is investigating allegations of improprieties related to the Commission’s review of the proposed merger between Sinclair Broadcast Group (Sinclair) and Tribune Media (Tribune). Specifically, FCC OIG is investigating allegations that the actions taken by FCC Chairman PAI related to the proposed Sinclair-Tribune merger demonstrates actual impropriety, unscrupulous behavior, favoritism towards Sinclair, or lack of impartiality or create the appearance of impropriety, unscrupulous behavior, favoritism towards Sinclair, or lack of impartiality. This investigation was requested by members of the Energy and Commerce Committee of the United States House of Representatives in a letter to the Inspector General dated November 13, 2017 and by members of the United States Senate in a letter to the Inspector General dated November 15, 2017.

On December 12, 2017, the computer forensics investigator sent an email message to Mary HARMON, FCC Security Officer, requesting visitor logs for the period from November 1, 2016 through December 12, 2017 for the FCC Headquarters facility located at 445 12th Street, S.W., Washington, DC 20554. On December 13, 2017, the computer forensics investigator received an email message from HARMON that included an Adobe PDF copy of the requested visitor logs as an attachment.

Table with 2 columns: Case Number (OIG-I-18-0006) and Case Title (Sinclair Broadcast Group)

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**INVESTIGATIVE ACTIVITY REPORT (continuation sheet)**

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The computer forensics investigator developed a Microsoft Office document entitled “Sinclair Broadcast Group Executives” that contains contact information (i.e., phone numbers and email addresses) for Sinclair executives, outside legal counsel, and known outside advisors. This document was developed by reviewing the Sinclair website, reviewing Sinclair filings with the FCC, reviewing previously obtained email correspondence to and from the Sinclair email domain (sbgvtv.com), and by running LexisNexis Law Enforcement Portal reports for these individuals. A copy of the document is included as **Attachment 1** to this IAR.

The computer forensics investigator used the native search functionality of Adobe Acrobat to search the visitor logs for each of the individuals identified on the “Sinclair Broadcast Group Executives” document. The computer forensics investigator created a Microsoft Excel spreadsheet and added visitor log information for each contact identified. A copy of the Microsoft Excel spreadsheet containing detailed visitor log information is included as **Attachment 2** to this IAR.

Case Number: OIG-I-18-0006	Case Title: Sinclair Broadcast Group
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Federal Communications Commission  
Office of Inspector General

## Investigative Activity Report

<b>Type of Activity:</b> <input type="checkbox"/> Personal Interview <input type="checkbox"/> Telephone Interview <input checked="" type="checkbox"/> Records Review <input type="checkbox"/> Other	<b>Location of Activity:</b>  OIG Computer Forensics Lab, FCC Headquarters, 445 12 <sup>th</sup> Street, S.W., Room 2-C423, Washington, DC 20554
<b>Activity Date and Time:</b>  July 20, 2018 at 0806 hrs. KGLT	<b>Activity Description:</b>  Reviewed meetings between Sinclair executives and/or representatives and FCC staff
<b>Report Date:</b>  August 1, 2018	<b>Conducted By:</b>  <div style="background-color: black; color: red; padding: 2px;">(b) (7)(C)</div>

### Subject Matter/Remarks

The Federal Communications Commission (FCC) Office of Inspector General (OIG) is investigating allegations of improprieties related to the Commission's review of the proposed merger between Sinclair Broadcast Group (Sinclair) and Tribune Media (Tribune). Specifically, FCC OIG is investigating allegations that the actions taken by FCC Chairman PAI related to the proposed Sinclair-Tribune merger demonstrates actual impropriety, unscrupulous behavior, favoritism towards Sinclair, or lack of impartiality or create the appearance of impropriety, unscrupulous behavior, favoritism towards Sinclair, or lack of impartiality. This investigation was requested by members of the Energy and Commerce Committee of the United States House of Representatives in a letter to the Inspector General dated November 13, 2017 and by members of the United States Senate in a letter to the Inspector General dated November 15, 2017.

To identify meetings at the FCC involving Sinclair staff and representatives, the computer forensics investigator (1) obtained and reviewed the Chairman's September 15, 2017 letter to United States Representatives Pallone, Doyle, and DeGette, (2) obtained and reviewed visitor logs for the FCC headquarters facility located at 445 12<sup>th</sup> Street, S.W., Washington, DC (a separate IAR dated March 28, 2018 was prepared for the review of visitor logs), and (3) searched the Electronic Comment Filing System (ECFS) using law firms "pillsbury" and "lerman" and filer "Sinclair" to identify Ex Parte filings. Using these sources, the computer forensics investigator prepared the attached schedule of meetings involving Sinclair executives and/or

Case Number: OIG-I-18-0006	Case Title: Sinclair Broadcast Group
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**INVESTIGATIVE ACTIVITY REPORT (continuation sheet)**

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representatives (legal representatives and lobbyists). Where information was available, the computer forensics attempted to determine the attendees (FCC and Sinclair) and purpose for each of these meetings.

On July 17, 2018, (b) (7)(C) [REDACTED], sent an email message to Matthew Berry, Chief of Staff, requesting information about these visits. On August 16, 2018, Matthew Berry provided additional information about meetings identified during the OIG analysis. The meeting schedule and information about each known meeting was updated and is attached to this IAR.

The computer forensics investigator was unable to obtain information for the following visits:

<b>Date</b>	<b>FCC</b>	<b>Other Party</b>
October 13, 2017	Unknown Host is unknown	Jerald Fritz (SBG)
November 20, 2017	Unknown Host is unknown	Barry Faber (SBG)

Case Number: OIG-I-18-0006	Case Title: Sinclair Broadcast Group
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Federal Communications Commission
Office of Inspector General

Memorandum of Interview

Form with fields: Type of Activity (Personal Interview checked), Interview Date and Time (August 3, 2018, 10:30am), Interview of (Matthew Berry), Location of Interview (FCC Headquarters), Report Date (August 3, 2018), Conducted By (redacted).

Subject Matter/Remarks

On August 3, 2018, Federal Communications Commission (FCC) Office of Inspector General (OIG) Agent (b) (7)(C) and (b) (7)(C) interviewed Matthew BERRY.

In November, 2017, the Office of Inspector General (OIG) received letters from members of the U.S. House of Representatives and the U.S. Senate requesting an investigation into whether FCC Chairman Pai "has taken actions to improperly benefit Sinclair Broadcast Group (Sinclair)," and whether the Chairman "is executing his leadership of the FCC free from influences that compromise his objectivity and impartiality," especially with regard to the proposed merger of Sinclair and Tribune Media. This interview is in furtherance of that investigation.

(b) (7)(C) is the author of this report.

BACKGROUND OF MATTHEW BERRY

Matthew Berry's personal and contact information is:

Full Name: Matthew Berry

Table with 2 columns: Case Number (OIG-I-18-0006), Case Title (Sinclair Broadcast Group)

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**MEMORANDUM OF INTERVIEW (continuation sheet)**

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Work Telephone: (202) 418-2005  
Work Address: 445 12th Street S.W., Room 8-B201E, Washington, DC 20554  
Work Email: matthew.berry@fcc.gov

BERRY's title is Chief of Staff (COS). BERRY has been COS since Ajit Pai became the FCC Chairman in January 2017.

**INFORMATION PROVIDED BY MATTHEW BERRY**

(b) (7)(C) presented credentials to BERRY at the beginning of the interview and explained that pursuant to 18 U.S.C. 1001, he is obligated to tell the truth and it was a crime for him not to do so. In response to questioning, BERRY voluntarily provided the following information:

**STATEMENT OF MATTHEW BERRY**

(b) (7)(C) relayed to BERRY that, as part of the investigation, OIG has

- Reviewed responses to congressional inquiries;
- Obtained and reviewed email correspondence;
- Obtained and reviewed network shares;
- Obtained and reviewed phone records;
- Obtained and reviewed facility access records; and
- Reviewed regulatory actions
- Reviewed ex parte filings

(b) (7)(C) explained that he intended to review with BERRY the specifics of several meetings and ask about other correspondence and contacts he may have had with regard to Sinclair as follow-up to the responses the Chairman provided to Congress in a letter dated September 15, 2017. Prior to answering questions, BERRY asked to make a statement regarding his opinion on the propriety of the investigation. He maintained that all actions with regard to media ownership generally, and Sinclair specifically, were consistent with both his, and the Chairman's long-held policy positions. He stated it was unfortunate that members of Congress could make accusations of wrongdoing without any evidence, and in so doing, disparage their reputations.

Meetings with SINCLAIR Executives and Representatives

BERRY was asked to recollect a luncheon held on November 16, 2016, attended by BERRY and Chairman Pai following a meeting with Sinclair general managers. BERRY recalled that the luncheon actually took place before the presentation to Sinclair General managers. It was a social lunch. Some Sinclair executives complained about then-Chairman Wheeler and stated their belief that the FCC was biased against them. They expressed their satisfaction with the results of the election. There were no substantive discussions regarding regulatory issues. The

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meeting was scheduled long before the election. (b) (7)(C) provided a document recovered from BERRY's network share entitled "Sinclair Talking Points" (copy is attached to this MOI). BERRY reviewed the document and confirmed that these were the talking point used by the Chairman during his presentation to Sinclair general managers.

On January 19, 2017 Chairman Pai and Matthew BERRY met with Sinclair representatives to discuss pending proceedings. (b) (7)(C) noted that, pursuant to the ex parte filings, matters discussed included Diversification of Ownership, Attribution of Joint Sales Agreements in Local Television Markets, need for reestablishment of JSAs and Shared Services Agreements. BERRY had nothing to add to the ex parte filing except to note that the Sinclair representatives voiced generalized complaints that the FCC favored big telecommunications companies over broadcasters. BERRY thought their positions "were a bit odd."

BERRY does not recall any substantive meeting with Sinclair executives or representatives held subsequent to the date of the Congressional response (September 15, 2017) except one meeting held on January 4, 2018 with Barry Faber, Miles Mason and perhaps Rebecca Hanson. This meeting was held at the request of Sinclair for the purpose of discussing the proposed merger. Various concerns were raised by Sinclair and BERRY offered some constructive guidance relative to the merger and a pending Notice of Apparent Liability filed against Sinclair by the Commission. Positions taken by Sinclair were indicative of the actions taken by the company that ultimately led to the FCC's determination to designate the license transfer applications for hearing (HDO). Sinclair was unwilling to do what was necessary for the merger to have a chance for success. Sinclair waited too long to file for divestitures and ignored concerns raised by FCC staff regarding those divestitures. "Sinclair wanted 100% of what it wanted, or nothing." The company would have had a better chance if it were more cooperative.

BERRY was asked to respond to the following list of questions:

1. Do you have anything to add to the descriptions of the meetings that were provided in Chairman Pai's letter to House member on September 15, 2017 or in the meetings subsequent thereto regarding Sinclair?
2. Did Sinclair executives or representatives pressure you or Chairman Pai to take actions favorable to Sinclair during any of these meetings?
3. Did Sinclair executives or representatives suggest that taking actions favorable to Sinclair would be politically beneficial (i.e., supported by President Trump and/or administration officials) during any of these meetings?
4. Did Sinclair executives or representatives suggest the possibility of adverse consequences if actions favorable to Sinclair were not taken by the Commission during any of these meetings?

BERRY responded in the negative to all of these questions.

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Other contact with Sinclair Executives and Representatives

BERRY has only corresponded with representatives of Sinclair, including any lobbyists and lawyers representing Sinclair using a non-government email account or social media account, on two occasions: (1) Jerald Fritz sent an email message to the Chairman's personal email account and BERRY's FCC email account on March 28, 2017. That email, regarding ATSC 3.0, was forwarded by BERRY to the Chairman's FCC account one minute after it was received to ensure that the message was made part of the Commission's records; (2) He received a one sentence text from Rebecca Hanson on his personal cell phone wherein she noted her approved of a statement made by the Chairman in a Congressional hearing (BERRY did not recall the date of this text message). BERRY does not recall having any substantive phone calls with representatives of Sinclair, including any lobbyists and lawyers representing Sinclair.

Regulatory Issues

(b) (7)(C) referenced a number of regulatory matters impacting Sinclair such as Sinclair-Bonten License Transfer Application, the Reinstatement of the UHF Discount Rule, the Main Studio Rule, Next Gen TV (ATSC 3.0) and the Broadcast Ownership Rules. He posed the following questions to BERRY:

1. Have any of these Commission actions been influenced in any way by the Sinclair-Tribune merger?
2. Have any of these Commission actions been taken as a result of pressure or threats from Sinclair executives or representatives?
3. Have any of these Commission actions been taken as a result of pressure or threats from President Trump or any member of the administration?

BERRY responded in the negative to each of these questions. To his knowledge (and he believes he would have had knowledge) no member of the Trump administration ever expressed a view regarding any regulatory matters pending before the Commission, with the exception of the tweet posted by the President after the HDO was issued. Moreover, all regulatory actions taken by Ajit Pai, either as FCC Commissioner, or Chairman, were consistent with the position, held since at least since 2013, that the Commission should undertake a holistic review of media ownership rules.

(b) (7)(C) noted that in recent days there have been press reports indicating Fox Broadcasting and other conservative media outlets may benefit if the Sinclair/Tribune merger were not to occur. In light of possible questions that may arise in conjunction with these reports, she posed the following questions to BERRY:

1. To your knowledge, did anyone from Fox Broadcasting, or any other conservative media outlets ever suggest that taking any actions adverse to Sinclair would be beneficial to the Chairman?

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2. To your knowledge, did anyone from Fox Broadcasting, or any other conservative media outlets ever suggest that taking any actions beneficial to Sinclair would be detrimental to the Chairman?

BERRY responded in the negative to these questions.

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Federal Communications Commission  
Office of Inspector General

**Memorandum of Interview**

<b>Type of Activity:</b> <input checked="" type="checkbox"/> Personal Interview <input type="checkbox"/> Telephone Interview <input type="checkbox"/> Other	<b>Interview Date and Time:</b> August 8, 2018 1:50 pm
<b>Interview of:</b> Ajit V. Pai, Chairman, FCC	<b>Location of Interview:</b> FCC Headquarters 445 12 <sup>th</sup> Street, S.W. Washington, DC Office of the Chairman
<b>Report Date:</b> August 13, 2018	<b>Conducted By:</b> (b) (7)(C)

Subject Matter/Remarks

On August 8, 2018, Federal Communications Commission (FCC) Office of Inspector General (OIG) Agent (b) (7)(C) and (b) (7)(C) interviewed Ajit Pai (Chairman PAI or CHAIRMAN).

In November, 2017, the Office of Inspector General (OIG) received letters from members of the U.S. House of Representatives and the U.S. Senate requesting an investigation into whether Chairman PAI “has taken actions to improperly benefit Sinclair Broadcast Group (Sinclair),” and whether the CHAIRMAN “is executing his leadership of the FCC free from influences that compromise his objectivity and impartiality,” especially with regard to the proposed merger of Sinclair and Tribune Media. This interview is in furtherance of that investigation.

(b) (7)(C) is the author of this report.

**BACKGROUND OF AJIT PAI**

Ajit Pai’s personal and contact information is:

Full Name: Ajit V.Pai

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Work Telephone: (202) 418-1000  
Work Address: 445 12th Street S.W., Washington, DC 20554  
Work Email: [ajit.pai@fcc.gov](mailto:ajit.pai@fcc.gov)

Ajit V. Pai is Chairman of the Federal Communications Commission. He was first appointed to the FCC as Commissioner in May, 2012 and became Chairman on January 23, 2017.

**INFORMATION PROVIDED BY AJIT PAI**

(b) (7)(C) presented credentials to Chairman PAI at the beginning of the interview and explained that pursuant to 18 U.S.C. 1001, he is obligated to tell the truth and it was a crime for him not to do so. In response to questioning, the Chairman voluntarily provided the following information:

**STATEMENT OF AJIT PAI**

(b) (7)(C) relayed to the CHAIRMAN that, as part of the investigation, OIG has

- Reviewed responses to congressional inquiries;
- Obtained and reviewed email correspondence;
- Obtained and reviewed network shares;
- Obtained and reviewed phone records;
- Obtained and reviewed facility access records; and
- Reviewed regulatory actions
- Reviewed ex parte filings

(b) (7)(C) explained that he intended to review with Chairman PAI the specifics of several meetings and ask about other correspondence and contacts he may have had regarding Sinclair, as follow-up to the responses the CHAIRMAN provided to Congress in a letter dated September 15, 2017 and to Ex Parte filings related to some of the meetings. (b) (7)(C) informed the CHAIRMAN that the overarching intent of the interview was to determine whether there were any secret deals, promises, threats or other attempts to influence FCC decision-making that occurred with respect to any matters that may have impacted the proposed merger between Sinclair and Tribune Media.

**Meetings with SINCLAIR Executives and Representatives**

PAI was asked to recollect a luncheon held on November 16, 2016, attended by FCC Chief of Staff, Matthew Berry (Berry) and Chairman PAI following a meeting with Sinclair general managers. PAI recalled that the luncheon took place before the presentation to Sinclair General managers. During the lunch, no “work matters” were discussed. In his presentation to the

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General Managers the CHAIRMAN discussed numerous media regulatory issues such as the UHF discount and the national media ownership cap.

On January 19, 2017 Chairman PAI and Berry met with Sinclair representatives to discuss pending proceedings. (b) (7)(C) noted that, pursuant to the ex parte filings, matters discussed included Diversification of Ownership, Attribution of Joint Sales Agreements in Local Television Markets, need for reestablishment of JSAs and Shared Services Agreements. The CHAIRMAN did not recall the specifics of the meeting but has no reason to believe the statements in the ex parte are incorrect.

When asked whether there were any other contacts with Sinclair executives subsequent to the September 15, 2017, response to Congress, Chairman PAI noted he called Barry Faber, Sinclair Executive Vice President and General Counsel on July 17, 2018, to provide Faber with an opportunity to withdraw “the merger application,” in advance of the CHAIRMAN’s intended announcement the following day wherein he would recommend the matter be designated for hearing. Chairman PAI did not respond to subsequent emails from Barry Faber because Faber proposed alternatives that the CHAIRMAN did not wish to entertain.

PAI was asked to respond to the following list of questions:

1. Do you have anything to add to the descriptions of the meetings with Sinclair that were provided in your letter to House member on September 15, 2017 or in the meetings subsequent thereto regarding Sinclair?
2. Did Sinclair executives or representatives pressure you to take actions favorable to Sinclair during any of these meetings?
3. Did Sinclair executives or representatives suggest that taking actions favorable to Sinclair would be politically beneficial (i.e., supported by President Trump and/or administration officials) during any of these meetings?
4. Did Sinclair executives or representatives suggest the possibility of adverse consequences if actions favorable to Sinclair were not taken by the Commission during any of these meetings?

Chairman PAI responded in the negative to all these questions.

Chairman PAI was also asked the following questions to which he responded in the negative with the noted exceptions.

1. Have you corresponded with representatives of Sinclair or any lobbyists and lawyers representing Sinclair using a non-government email account?

One email received to personal email account from Jerry Fritz, Sinclair Executive Vice President for Strategic and Legal Affairs on March 28, 2017, pertaining to Next Gen TV (ATSC 3.0). That email was also sent to Matthew Berry. Chairman PAI expressed his belief that Berry

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followed protocol and sent the message to his work email so it could be part of the official record.

2. To your knowledge, have any members of your staff corresponded with representatives of Sinclair or any lobbyists and lawyers representing Sinclair using a non-government email account?
3. Have you corresponded with representatives of Sinclair or any lobbyists and lawyers representing Sinclair using social media accounts (private messaging)?
4. To your knowledge, have any members of your staff corresponded with representatives of Sinclair or any lobbyists and lawyers representing Sinclair using social media accounts (private messaging)?
  - a. Chairman PAI responded “not to my knowledge.”
5. Have you spoken on the phone with representatives of Sinclair or any lobbyists and lawyers representing Sinclair?
6. To your knowledge, have any members of your staff spoken on the phone with representatives of Sinclair or any lobbyists and lawyers representing Sinclair?
  - a. Chairman PAI indicated that he does not have sufficient knowledge to respond accurately. However, it would certainly have been possible for staff to have spoken with individuals at Sinclair at least with respect to scheduling appointments and answering general questions regarding rulemaking timing and process.

Contacts with President Trump and Administration Officials

Chairman PAI was asked to recollect a meeting held on January 16, 2017 in Trump Tower. The Chairman explained that the purpose of the meeting was to discuss his possible appointment to the FCC chairmanship. In attendance were Peter Thiel (founder of PayPal), Jared Kushner and the President-elect. Mr. Trump asked then Commissioner PAI to explain “what I had been doing.” He had his (PAI’s) resume in front of him. PAI detailed his telecommunications’ experience and explained his vision for the future that included broadband infrastructure advancements and his personal dedication to making the internet accessible and affordable throughout rural America. The President-elect did not ask any specific policy-related questions, nor did he question him about his regulatory philosophy, although he was interested in the legal framework of the AT&T/Time Warner merger. There was no discussion about Sinclair or any specific FCC proceeding. At the end of the meeting, that Chairman PAI referred to as a “job interview,” he was asked whether he was interested in being appointed Chairman of the FCC. He answered “yes.”

Chairman PAI was asked to recollect a second meeting with President Trump held on March 6, 2017. This meeting was detailed in the September 15, 2017, letter to Congress. The Chairman

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noted he nothing to add about that meeting that was not contained in the letter and reiterated there were no discussions pertaining to any FCC proceedings at that meeting.

After September 15, 2017, the Chairman met the President on two additional occasions. The first occurred on October 17, 2017, when Chairman PAI was invited to the White House to celebrate, along with other prominent Indian-Americans, Diwali, the Hindu festival of lights. The second meeting occurred when the Chairman was invited to the signing of the Kari's Law Act in the Oval Office on February 16, 2018.<sup>1</sup> Other than engaging in formalities, Chairman PAI did not speak to the President on these occasions.

Chairman PAI was asked to recollect an e-mail and phone call with Jared Kushner. (b) (7)(C) provided an email message from Jared Kushner on May 5, 2017 with the message "Just tried you – had a quick thing to run by you" and indicated that phone records for that date show a call from a blocked number at 10:03 am. Chairman PAI did not recall the conversation with Jared Kushner.

The only other contact Chairman PAI had with administration officials that was not reported in the September 15, 2017, letter was a phone call he received from Don McGahn, Counsel to the President, on July 16, 2018. The call was a status inquiry regarding the Sinclair merger application. Chairman PAI and Don McGahn are long-time acquaintances.

With respect to his interactions with the President and other administration officials, the Chairman was asked the following questions to which he responded in the negative:

1. Have you corresponded with President Trump or other members of the administration regarding Sinclair or any matters involving Sinclair using a non-government email account?
2. To your knowledge, have any members of your staff corresponded with President Trump or other members of the administration regarding Sinclair or any matters involving Sinclair using a non-government email account?
3. Have you corresponded with President Trump or other members of the administration regarding Sinclair or any matters involving Sinclair using social media accounts (private messaging)?
4. To your knowledge, have any members of your staff corresponded with President Trump or other members of the administration regarding Sinclair or any matters involving Sinclair using social media accounts (private messaging)?
5. Have you spoken on the phone with President Trump or other members of the administration regarding Sinclair or any matters involving Sinclair?
6. To your knowledge, have any members of your staff spoken on the phone with President Trump or other members of the administration regarding Sinclair or any matters involving Sinclair?

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<sup>1</sup> Interviewer's note: The Act ensures calls to 911 connect directly without an access code.

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7. Did President Trump or other members of the administration suggest or encourage you to take actions favorable to Sinclair during any meetings?
8. Did President Trump or other members of the administration suggest that taking actions favorable to Sinclair would be politically beneficial (i.e., supported by President Trump and/or administration officials)?
9. Did President Trump or other members of the administration suggest that taking actions favorable to Sinclair would be personally or professionally beneficial to you?
10. Did President Trump or other members of the administration promise or suggest the possibility of adverse consequences if actions favorable to Sinclair were not taken by the Commission?

Regulatory Issues

(b) (7)(C) referenced several regulatory matters impacting Sinclair such as Sinclair-Bonten License Transfer Application, the Reinstatement of the UHF Discount Rule, the Main Studio Rule, Next Gen TV (ATSC 3.0) and the Broadcast Ownership Rules. He posed the followed questions to Chairman PAI to which he responded in the negative:

1. Have any of these Commission actions been influenced in any way by the Sinclair-Tribune merger?
2. Have any of these Commission actions been taken as a result of pressure or threats from Sinclair executives or representatives?
3. Have any of these Commission actions been taken as a result of pressure or threats from President Trump or any member of the administration?
4. Have any of these Commission actions been taken as a result of the promise of personal or professional benefit from Sinclair executives or representatives?
5. Have any of these Commission actions been taken as a result of pressure from President Trump or any member of the administration?
6. Have any of these Commission actions been taken as a result of the promise of personal or professional benefit from President Trump or any member of the administration?

Chairman PAI expounded on these questions by declaring that the positions he has taken regarding these proceedings reflect the beliefs he has held and expressed since he became an FCC commissioner. "If I had been influenced, things in Sinclair would have gone differently!"

(b) (7)(C) noted that in recent days there have been press reports indicating Fox Broadcasting and other conservative media outlets may benefit if the Sinclair/Tribune merger were not to occur. Considering possible questions that may arise in conjunction with these reports, (b) (7)(C) posed the following questions to Chairman PAI to which he responded in the negative:

1. To your knowledge, did anyone from Fox Broadcasting, or any other conservative media outlets ever suggest that taking any actions adverse to Sinclair would be beneficial to you?

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2. To your knowledge, did anyone from Fox Broadcasting, or any other conservative media outlets ever suggest that taking any actions beneficial to Sinclair would be detrimental to you?

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