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Case No. 2018-0593-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

Tribune Media Company, a Delaware corporation, Plaintiff, v. Sinclair Broadcast Group, Inc., a Maryland corporation, Defendant.	C.A. No. 2018- _____-_____

VERIFIED COMPLAINT

Plaintiff, Tribune Media Company ("Tribune"), by and through its undersigned attorneys, files this Verified Complaint against Defendant, Sinclair Broadcast Group, Inc. ("Sinclair"), and alleges as follows:

Introduction

1. Tribune and Sinclair are media companies that own and operate local television stations. In May 2017, the companies entered into an Agreement and Plan of Merger (the "Merger Agreement")[1] pursuant to which Sinclair agreed to acquire Tribune for cash and stock valued at $43.50 per share, for an aggregate purchase price of approximately $3.9 billion (the "Merger").

[1] A true and correct copy of the Merger Agreement is attached as Exhibit A. The Merger Agreement is incorporated herein by reference. Unless defined herein, all capitalized terms in this Verified Complaint have the meanings ascribed to them in the Merger Agreement.

2. Sinclair owns the largest number of local television stations of any media company in the United States, and Tribune and Sinclair were well aware that a combination of the two companies would trigger regulatory scrutiny by both the United States Department of Justice ("DOJ") and the Federal Communications Commission (the "FCC"). Because speed and certainty were critical to Tribune, it conditioned its agreement on obtaining from Sinclair a constrictive set of deal terms obligating Sinclair to use its reasonable best efforts to obtain prompt regulatory clearance of the transaction.

3. Those terms included Sinclair's express agreement that it would divest a number of its and/or Tribune's stations in order to obtain approval of the Merger. The divestitures fell into two categories: (i) those in markets where both companies owned stations and, thus, where the Merger would increase market concentration and raise antitrust concerns for DOJ or would violate the FCC's limit on local station ownership (the "Duopoly Rule"); and (ii) those necessary to bring the combined company into compliance with the FCC's cap on national audience reach (the "National Cap").[2]

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[2] The FCC's Local Television Multiple Ownership Rule, or Duopoly Rule, generally prohibits common ownership of more than two television stations in a local market, subject to the further requirement that common ownership of more than one top-4 rated station in a market be evaluated on an *ad hoc* basis. The National Cap, referred to officially as the National Television Multiple Ownership Rule, limits entities from owning or controlling television stations

4. Because divestitures were so central to prompt regulatory approval, Tribune bargained for Sinclair's agreement to sell stations in ten specified geographic "overlap" markets if required by the regulatory authorities and, further, to make additional divestitures as necessary to satisfy the FCC that the Merger complied with the National Cap.

5. Tribune also insisted, and Sinclair agreed, that Sinclair's reasonable best efforts would include taking "all actions" and doing "all things" necessary for the Merger to close, "prompt use" of its efforts to "avoid or eliminate each and every impediment that may be asserted by any Governmental Authority," and "obtaining … all approvals … required to be obtained from any Governmental Authority" in order to consummate the Merger "as promptly as reasonably practicable."

6. To prevent Sinclair from engaging in protracted negotiations or in any other behavior that would delay the Merger's closing, the Merger Agreement required Sinclair to agree to divestures to avoid *even the threat* of any proceeding or order relating to regulatory review.

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that, together, have an aggregate "national audience reach" that exceeds 39 percent of U.S. television households.

7. However, from virtually the moment the Merger Agreement was signed, Sinclair repeatedly and willfully breached[3] its contractual obligations in spectacular fashion. In an effort to maintain control over stations it was obligated to sell if advisable to obtain regulatory clearance, Sinclair engaged in belligerent and unnecessarily protracted negotiations with DOJ and the FCC over regulatory requirements, refused to sell stations in the ten specified markets required to obtain approval, and proposed aggressive divestment structures and related-party sales that were either rejected outright or posed a high risk of rejection and delay – all in the service of Sinclair's self-interest and in derogation of its contractual obligations.

8. In exercising its authority under the Merger Agreement to lead the regulatory approval process, Sinclair repeatedly favored its own financial interests over its contractual obligations by rejecting clear paths to regulatory approval. Instead, Sinclair fought, threatened, insulted, and misled regulators in a misguided and ultimately unsuccessful attempt to retain control over stations that it was obligated to sell.

[3] "Willful Breach" is defined in Section 1.1 of the Merger Agreement as a "deliberate" act or failure to act taken with "actual knowledge" that the act or failure to act would constitute, or reasonably be expected to constitute, a "material breach" of the Agreement.

9. Sinclair might have been free to take certain of these actions had it not agreed to the constrictive terms of the Merger Agreement, but, having done so, its conduct constituted clear and material breaches of the Merger Agreement. As a direct consequence of these breaches, the Merger failed to obtain regulatory approval from either DOJ or the FCC, and the FCC ordered an administrative hearing that, as a practical matter, would have delayed the closing of the Merger for a very long time, probably years.

10. Regulatory approval should not have been hard to come by. Indeed, the evidence is overwhelming that, had Sinclair simply complied with its obligations under the Merger Agreement, Merger clearance could easily have been obtained by the first quarter of 2018, if not earlier – as Sinclair itself publicly declared in SEC filings in August and November of 2017.

11. Beginning in November 2017, DOJ repeatedly told Sinclair that it would clear the Merger if Sinclair simply agreed to sell stations in the ten markets the parties had identified in the Merger Agreement. DOJ's message to Sinclair could not have been clearer: if Sinclair agreed to sales in those ten markets, "We would be done."

12. DOJ's demand was neither unexpected nor draconian – it overlapped entirely with what Sinclair had already committed to do in the Merger Agreement. Yet Sinclair refused, deciding instead to antagonize DOJ officials, including by

accusing the Assistant Attorney General of the Antitrust Division – the highest ranking official in that division – of "completely misunderstand[ing]" the broadcast industry and being "more regulatory" than any recent predecessor. In meetings with DOJ, Sinclair invited litigation over station divestitures, summarizing its position to DOJ in two words: "sue me." Indeed, Sinclair went so far as to threaten to file its own lawsuit *against* DOJ. This was the polar opposite of what Sinclair had promised under the Merger Agreement when it agreed to proffer the identified station divestitures to avoid even a threat of litigation with regulators.

13. Tribune warned Sinclair repeatedly over many months that its refusal of DOJ's demands constituted a breach of its obligations under the Merger Agreement. Sinclair repeatedly ignored Tribune's admonitions and refused even to respond substantively. When, following what was supposed to have been the parties' final front office meeting with DOJ in late January, Tribune again pressed Sinclair to agree to the divestitures identified in the Merger Agreement and demanded by DOJ, Sinclair told Tribune it would have to sue to get Sinclair to agree to those sales. It was not until mid-February 2018, when Tribune made clear that it was on the eve of filing precisely such a suit, that Sinclair finally told DOJ that it would eventually agree to divest stations in the ten markets if necessary, but that it intended to continue to negotiate over certain of those stations. Not

surprisingly given its conduct up to that point, Sinclair nevertheless kept right on haggling with DOJ over the divestiture of a subset of stations.

14. Sinclair's protracted refusal of DOJ's demands, in turn, caused substantial delay in the FCC's review of the Merger: during the many months Sinclair spent pushing DOJ to demand fewer divestitures, Sinclair refused to propose to the FCC the station sales needed to satisfy the Duopoly Rule and National Cap. In this way, Sinclair's contract-breaching disputation with DOJ was a double whammy: it both delayed and complicated DOJ's review while delaying for months the filing of divestiture applications that Sinclair knew were necessary to obtain FCC approval.

15. In order to avoid designating specific stations for the divestitures it knew it would have to make to satisfy the FCC's rules, Sinclair proposed to use a contingent trust structure that, as Tribune had warned, stood virtually no chance of approval. Under Sinclair's highly unorthodox proposal – first raised with FCC staff more than six months after the Merger approval applications were originally filed at the FCC – Sinclair would transfer dozens of Tribune and Sinclair stations to a trust that would, prior to closing, dispose of stations selected for divestment and then transfer back to Sinclair the stations it ultimately would be authorized to own. By proposing this structure, Sinclair hoped to be able to market more than one station in each divestiture market and then, after receiving bids, choose which

station to actually divest. While that optionality might have been beneficial to Sinclair, it had the inevitable effect of necessitating the attempted use of a Rube Goldberg type divestiture trust, without regard to the resulting delay in the already much-delayed regulatory review process.

16. No contingent trust like this had ever been approved by the FCC division reviewing the Merger, and the FCC staff very clearly told Sinclair they strongly disfavored it. Yet Sinclair self-servingly pursued it anyway in order to delay for as long as possible publicly identifying the stations it ultimately would divest. And, predictably, the FCC staff continued to object to the concept, forcing yet further amendments to Sinclair's applications to identify more precisely which stations were to be divested, rather than simply committing to sell the stations as Sinclair had agreed to do in order to secure regulatory approval.

17. Sinclair created yet more problems, including those that ultimately defeated the transaction, when it purported to identify specific stations to be divested to comply with the National Cap. Sinclair could have readily complied with the rule in a variety of non-controversial ways, including by simply agreeing to sell certain stations to unrelated third parties in truly arm's-length transactions.

18. But, rather than take a more certain and expeditious route to deal approval as contractually required, Sinclair decided in late February 2018 to take another high-risk approach. It decided to propose station sales to parties with

significant ties to Sinclair's Executive Chairman, David Smith, and his family, coupled with joint sales and shared services agreements under which Sinclair would effectively control all aspects of station operations, including advertising sales and the negotiation of retransmission agreements with cable and satellite operators. Under these proposed arrangements, Sinclair would continue to reap the lion's share of the economic benefits of the stations it was purportedly "divesting" and would have an option to repurchase the stations in the future.

19. Sinclair proposed, among other things, selling WGN-TV in Chicago to Steven Fader, a close associate of Smith's in a car dealership business who had no experience in broadcasting. Sinclair also proposed the sale of WPIX, a New York station, to Cunningham Broadcasting Corporation ("Cunningham"), a company that owns numerous television stations that are operated by Sinclair employees under joint sales and shared services agreements, has tens of millions of dollars in debt guaranteed by Sinclair, and had been controlled by the estate of Smith's late mother until January 2018.

20. The FCC staff expressed frustration over what they viewed as the unacceptably aggressive terms of Sinclair's proposed divestitures, making clear their position that Sinclair's relationships with the purchasers and the terms of the sales would enable Sinclair, effectively, to maintain operational control over the

stations. The FCC staff advised Sinclair to instead propose "clean" divestitures, i.e., arm's-length sales to truly independent third parties.

21. Tribune, too, warned Sinclair that proposing these related-party "sales" was incompatible with using best efforts to obtain prompt regulatory approval. Sinclair was, therefore, fully aware that its aggressive proposals would slow the FCC's review process and undermine the prospects for approval by subjecting the divestitures to intense regulatory scrutiny, particularly given that they involved stations in the first and third largest television markets in the United States.

22. In response to the FCC's negative reaction, Sinclair made certain changes to its proposals, including replacing the proposed sale of WPIX in New York with proposed sales of stations in Dallas and Houston and forgoing joint sales and shared services agreements in those two markets. Importantly, however, Sinclair ignored the FCC's and Tribune's warnings about Sinclair's relationships with Fader and Cunningham and retained them as the putative "buyers."

23. As it turned out, the proposed Fader and Cunningham divestitures were even more problematic than they originally appeared to be. When Sinclair's applications were subject to public comment, opponents of the divestitures revealed facts that Sinclair had failed to disclose to the FCC and that underscored Sinclair's capacity to control the stations it was purportedly divesting. For

example, Sinclair had not told the FCC, in its applications, that Smith owned the controlling interest in Fader's car dealership company, and that Cunningham's controlling shares had been sold at a suspiciously low price only months earlier to a Sinclair associate with re-purchase options held by Smith's family members.

24. These facts were not disclosed to Tribune and were not addressed by Sinclair in its reply to the public comments. Together with the other aspects of the proposed Fader and Cunningham divestitures, they raised a serious risk that the FCC would view the proposed divestitures as unacceptable sham sales. By proposing self-serving divestitures that raised significant regulatory questions, Sinclair yet again fell well short of its contractual obligations to take all actions to avoid every governmental impediment to achieving a prompt closing.

25. The public comment period on Sinclair's applications ended on July 12, 2018, less than a month before the Merger Agreement's August 8, 2018 End Date. Four days later, on July 16, FCC Chairman Ajit Pai issued a statement expressing "serious concerns about the Sinclair/Tribune transaction," in particular that "certain station divestitures that have been proposed to the FCC would allow Sinclair to control those stations in practice, even if not in name, in violation of the law."[4]

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[4] A true and correct copy of Chairman Pai's July 16, 2018 statement is attached hereto as Exhibit B.

26. Later on July 16, Bloomberg, Reuters and others in the media reported – and counsel for Tribune and Sinclair independently confirmed with FCC staff – that Chairman Pai had circulated to the other Commissioners a draft order asserting that Sinclair appeared to have engaged in misconduct relating to the Fader and Cunningham divestiture applications and that a majority of the Commissioners had already voted to refer the applications to an administrative law judge for review.

27. On July 17, 2018, the following day, Sinclair's General Counsel spoke *ex parte* to Chairman Pai, who, on information and belief, made clear that if Sinclair did not withdraw the merger applications in their entirety, it would be subjected to a protracted administrative hearing focused on whether Sinclair's representations to the FCC regarding the Fader and Cunningham arrangements had been misleading or lacking in candor.

28. Rather than withdraw the merger applications in their entirety, Sinclair responded on the morning of July 18, 2018, by withdrawing only the Fader and Cunningham applications and by telling the Commission it would keep the Chicago station for itself and find an independent buyer or buyers for the Dallas and Houston stations. But any chance of obtaining regulatory approval before the August 8 End Date was dead. As Sinclair itself acknowledged at the time, its

withdrawal of the three applications was not sufficient to prevent the FCC from moving forward with its administrative review.

29. On July 19, 2018, the FCC released a unanimous decision finding "substantial and material questions of fact" as to whether "Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission."[5] The FCC identified "significant questions" as to whether the proposed Fader and Cunningham divestitures were "'sham' transactions" in which "Sinclair was the real party in interest" and had "attempted to skirt the Commission's broadcast ownership rules." The FCC further stated that Sinclair "did not fully disclose facts such as the pre-existing business relationships between Fader, Smith, and Sinclair nor the full entanglements between Cunningham, Smith, and Sinclair." There thus was "a substantial and material question of fact as to whether Sinclair affirmatively misrepresented or omitted material facts with the intent to consummate this transaction without fully complying" with the FCC's rules.

30. The FCC Order referred the "'sham' transactions" and Sinclair's misconduct to a full administrative hearing. That process can take years and was described by one of the FCC's Commissioners, in a statement released with the order, as "regulatory purgatory" that is "a de facto merger death sentence." Thus,

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[5] A true and correct copy of the FCC's Hearing Designation Order, adopted July 18, 2018 and released on July 19, 2018, is attached as Exhibit C.

Sinclair's insistence on proposing related-party transactions that the FCC staff explicitly had warned against and its failure to disclose material information to the FCC predictably resulted in a hearing order and proceeding of precisely the sort that Sinclair had contractually committed to use its best efforts to avoid.

31. Thereafter, in two separate telephone conversations on July 23 and August 3, 2018, Sinclair's FCC counsel, accompanied by Tribune's counsel, spoke to officials of the FCC's Enforcement Bureau to explore whether there was any basis on which to resolve the issues raised in the Commission's Order. Both times Sinclair was told in substance that no deal was possible. The matter was now in the hands of the administrative law judge.

32. Sinclair's breaches of the Merger Agreement, the evidence of which is overwhelming, were material and willful. Tribune repeatedly reminded Sinclair of its contractual obligations and admonished Sinclair for its refusal to take actions that would secure prompt regulatory approval. Tribune did so through detailed letters as early as December 2017, and it continued thereafter to object to Sinclair's ongoing breaches.

33. DOJ and the FCC likewise communicated clearly and repeatedly that Sinclair's aggressive approach raised a substantial question whether the merger could be approved before the August 8 End Date, if at all. Sinclair utterly ignored

those warnings, despite knowing that its actions constituted, and would reasonably be expected to constitute or result in, material breaches of the Merger Agreement.

34. As a direct result of Sinclair's chronic breaches, the Merger has failed to receive regulatory approval and cannot be completed on its terms. The Merger Agreement's August 8 End Date has now passed, and it is impossible for Tribune to obtain the benefit of its bargain with Sinclair.

35. On August 9, 2018, on the basis of Sinclair's incurable, material, and willful breaches and the passage of the End Date without closing, Tribune terminated the Merger Agreement. Tribune now seeks, through this action, to recover all losses incurred as a result of Sinclair's misconduct, including but not limited to approximately $1 billion of lost premium to Tribune's stockholders and additional damages in an amount to be proven at trial.

Parties

36. Tribune is a Delaware corporation with its principal executive offices located at 515 North State Street, Chicago, Illinois. Tribune is a media company with a diverse portfolio of television and digital properties. It owns or operates 42 local television stations in 33 markets. It also owns national entertainment network WGN America, digital multicast network Antenna TV, Tribune Studios, WGN-Radio, minority stakes in the TV Food Network and CareerBuilder, and a variety of real estate assets.

37. Sinclair is a Maryland corporation with its principal executive offices located at 10706 Beaver Dam Road, Hunt Valley, Maryland. Sinclair owns 192 stations in 89 markets, the largest number of local television stations of any broadcast company in the United States. It also owns and operates Tennis Channel, Tennis Magazine, and Tennis.com, along with digital media products and technical services companies that supply and maintain broadcast transmission systems. It distributes original programming, local news, and programming provided by third-party networks and syndicators. In addition, Sinclair owns various non-media related investments across multiple asset classes, including private equity, mezzanine financing, and real estate investments.

Jurisdiction, Venue, and Governing Law

38. This Court has subject matter jurisdiction over this action pursuant to 8 *Del. C.* § 111.

39. Under Section 10.12(b) of the Merger Agreement, Tribune and Sinclair agreed to submit to the personal jurisdiction of the Court of Chancery of the State of Delaware and not to "attempt to deny or defeat such personal jurisdiction" or "plead or claim any objection to the laying of venue" in this Court.

40. Under Section 10.11(a) of the Merger Agreement, the Merger Agreement is governed by, and must be construed in accordance with, the laws of the State of Delaware.

Relevant Facts

A. The Parties Enter into the Merger Agreement

41. On May 8, 2017, Tribune and Sinclair entered into the Merger Agreement.

42. The Merger Agreement provides for the acquisition by Sinclair of all of the outstanding shares of Tribune's Class A common stock and Class B common stock by means of a merger of Samson Merger Sub Inc., a wholly owned subsidiary of Sinclair, with and into Tribune, with Tribune surviving the Merger as a wholly owned subsidiary of Sinclair.

43. In the Merger, Tribune stockholders were to receive $35 in cash and 0.23 shares of Sinclair Class A common stock for each share of Tribune Class A common stock or Class B common stock. As of the date of the Merger Agreement, this consideration was valued at $43.50 per share of Tribune's common stock, which constituted an aggregate purchase price of approximately $3.9 billion and a premium of approximately 26% over Tribune's unaffected closing share price on February 28, 2017, the day prior to media speculation regarding a possible transaction.

44. From October 2017 to termination, regulatory approval was the only remaining impediment to completing the transaction: on September 6, 2017, Sinclair's registration statement on Form S-4 registering the Sinclair common

stock to be issued in the Merger was declared effective by the Securities and Exchange Commission, and on October 19, 2017, holders of an overwhelming majority of the outstanding shares of Tribune's Class A common stock and Class B common stock, voting as a single class, voted on and approved the Merger Agreement and the transactions contemplated by the Merger Agreement at a duly called special meeting of Tribune stockholders. No vote of Sinclair's stockholders was required to close the Merger.

B. Sinclair Agrees to Promptly Secure Regulatory Approval

45. As is customary for the acquiring party in a merger, Sinclair was responsible for leading the process of obtaining regulatory approval of the Merger. Section 7.1(e) of the Merger Agreement provided that Sinclair was:

> entitled to direct, in consultation with [Tribune], the timing for making, and approve … the content of, any filings with or presentations or submissions to any Governmental Authority … and to take the lead in the scheduling of, and strategic planning for, any meetings with, and the conducting of negotiations with, Governmental Authorities[.]

46. Sinclair's responsibilities concerning the regulatory process were, however, specifically limited by its contractual obligations, including its obligation to facilitate promptly consummating the Merger. In Section 7.1(a) of the Merger Agreement, Sinclair agreed to use:

> ***reasonable best efforts*** to take, or cause to be taken, ***all actions*** and to do, or cause to be done, ***all things*** necessary, proper or ***advisable*** under applicable Law to consummate and make

> effective the Merger and the other transactions contemplated by this Agreement ***as promptly as reasonably practicable***[.]

(Emphasis added).

47. During the negotiation of the Merger Agreement, Tribune understood that the transaction would raise regulatory issues and thus focused on obtaining terms that would substantially mitigate the risk that the transaction would be delayed or fail due to the actions of regulators. Accordingly, Sinclair's commitment under Section 7.1(a) to use best efforts and act expeditiously to consummate the Merger expressly extended to regulatory approvals, including:

> obtaining and maintaining all approvals, consents, registrations, permits, authorizations and other confirmations required to be obtained from any Governmental Authority … that are necessary, proper or advisable to consummate and make effective the Merger[.]

48. Sinclair's obligation to obtain regulatory approvals as promptly as reasonably practicable was further specified in Section 7.1(i) of the Merger Agreement, in which Sinclair agreed to:

> use ***reasonable best efforts*** to take action to avoid or eliminate each and every impediment that may be asserted by any Governmental Authority with respect to the transactions contemplated by this Agreement so as to enable the Closing to occur ***as soon as reasonably practicable***[.]

(Emphasis added).

49. These obligations included the:

> ***prompt*** use of [Sinclair's] ***reasonable best efforts*** to avoid the entry of … any … Order that would delay, restrain, prevent, enjoin or otherwise prohibit consummation of the [Merger].

(Emphasis added).

50. These broad commitments to obtain regulatory approvals as soon as reasonably practicable included Sinclair's express agreement to divest certain of its or Tribune's television stations. In the Merger Agreement, Sinclair not only disclaimed its right to litigate the necessity of those divestitures with regulators, but affirmatively obligated itself to proffer them even if merely "advisable" to avoid the "anticipated or threatened … commencement" of any proceeding that would delay the Merger.

51. In Schedule 7.1(i) of Sinclair's disclosure letter to the Merger Agreement (the "Disclosure Letter"),[6] entitled "Station Divestitures," Sinclair provided that it:

> acknowledges that obtaining regulatory consents required to consummate the transactions contemplated by the Merger Agreement, including, without limitation, the FCC Consent and clearance under the HSR Act [from DOJ], ***will require the divestiture of certain Stations***[.]

(Emphasis added).

[6] A true and correct copy of Schedule 7.1(i) of the Sinclair Disclosure Letter is attached as Exhibit D.

52. To this end, in its Disclosure Letter, Sinclair "agree[d] to divest Stations" in ten specified Designated Market Areas ("DMAs") "as necessary to comply with the FCC's [Duopoly Rule] or to obtain [DOJ] clearance" and "as required by the applicable Governmental Authority in order to obtain approval of and consummate the transactions contemplated by the Merger Agreement." Sinclair also agreed to designate "divestiture DMAs and make such … Station divestitures as may be necessary to comply with the FCC's [National Cap]." In Section 7.1(i) of the Merger Agreement, Sinclair covenanted to proffer, agree to, and effect the station divestitures agreed to in its Disclosure Letter if:

> necessary or advisable to avoid, prevent, eliminate or remove the ***actual, anticipated or threatened*** (x) commencement of any Proceeding in any forum or (y) issuance of any Order that would delay, restrain, prevent, enjoin or otherwise prohibit consummation of the [Merger].

(Emphasis added).

53. The ten listed DMAs (referred to as the "Overlap DMAs" or "overlap markets")[7] are markets in which Tribune and Sinclair both own television stations that are among the top four in that market. It was thus anticipated that divestitures

[7] The DMAs listed in Sinclair's Disclosure Letter are: (i) Seattle-Tacoma, WA; (ii) St. Louis, MO; (iii) Salt Lake City, UT; (iv) Grand Rapids-Kalamazoo-Battle Creek, MI; (v) Oklahoma City, OK; (vi) Wilkes Barre-Scranton, PA; (vii) Richmond-Petersburg, VA; (viii) Des Moines-Ames, IA; (ix) Harrisburg-Lancaster-Lebanon-York, PA; and (x) Greensboro-High Point-Winston Salem, NC.

in these ten Overlap DMAs could be required in order for the transaction to receive regulatory approval under antitrust and FCC rules.

54. In negotiating and entering into the Merger Agreement, speed and certainty of closing were crucial to Tribune. Sinclair's commitment to specific station divestitures and its agreement to use its reasonable best efforts to obtain prompt regulatory approval were fundamental concessions that, for Tribune, were nonnegotiable.[8]

C. Sinclair Breaches Its Obligation to Obtain Prompt Regulatory Approval

55. To consummate the Merger, Sinclair was required to obtain approval from DOJ and the FCC. DOJ assesses whether a merger raises antitrust concerns. The FCC determines whether a merger serves the public interest, and it enforces limitations on the total number of television stations one company can own either locally (the Duopoly Rule) or nationally (the National Cap).

56. Regulatory approval of the Merger required two types of divestitures: (i) divestitures in markets where both companies owned stations and the Merger

[8] Sinclair had not made such concessions in other agreements in which it acquired stations. For example, in agreements to acquire stations owned by Four Points Media Group and Freedom Communications in 2011, Sinclair agreed only to use "commercially reasonable efforts" to take all actions necessary to consummate the transactions – not to use *reasonable best efforts* to take all actions to consummate the transactions as *promptly as reasonably practicable*, as in its agreement with Tribune – and it excluded from such actions "*the sale of any assets*."

would result in either an anticompetitive increase in market concentration or common ownership that would violate the Duopoly Rule limit on local station ownership; and (ii) additional divestitures as necessary to bring the combined company into compliance with the FCC's National Cap on audience reach.

57. The Merger Agreement required Sinclair to propose to regulators terms for clearance of the Merger that were likely to be approved, and approved promptly. It also required Sinclair to consult with Tribune concerning regulatory strategy and to include Tribune in its substantive communications with regulators. Sinclair took exactly the opposite approach, repeatedly making proposals that effectively had no chance to be approved, ignoring Tribune's admonitions and advice, and squandering valuable time.

58. Although staff members at DOJ and the FCC laid out a clear path for clearance of the Merger, Sinclair ignored their repeated statements of what was required for approval. Instead, Sinclair defiantly (and unsuccessfully) attempted to obtain clearance on better terms for itself, regardless of how long that took or whether it risked failing to obtain approval of the Merger. Throughout, Sinclair was warned by staff at DOJ and the FCC that its proposals were unacceptable, and by Tribune that its actions were violations of the Merger Agreement. Sinclair consistently ignored or rejected those warnings and antagonized DOJ and FCC

staff, thereby creating unnecessary and entirely avoidable barriers to good, constructive interactions with the regulators reviewing the Merger.

59. From the moment Tribune and Sinclair negotiated and entered into the Merger Agreement, the path for a straightforward approval of the Merger by DOJ and the FCC was clear, and the Merger Agreement reflected Sinclair's promise to take that path. Had Sinclair offered to DOJ divestitures in the ten Overlap DMAs identified in the Merger Agreement and proposed to the FCC clean station sales sufficient to satisfy the Duopoly Rule and the National Cap, the Merger would have been approved long ago and closing would have occurred in the first quarter of 2018, or earlier. Indeed, Sinclair itself recognized a prompt path to regulatory approval, stating in an SEC filing from August 2017 that it "expect[ed] the transaction will close by year-end 2017." Even as late as November 8, 2017, Sinclair stated in another filing that it "expect[ed] the [Merger] transaction will close during the first quarter of 2018" after receiving "antitrust clearance and approval by the FCC."

60. Notwithstanding its public statements concerning a prompt closing, Sinclair refused for months to meet DOJ's unambiguous demand for divestitures in the ten Overlap DMAs in exchange for clearance and – over warnings from FCC staff – first declined to propose *any* divestitures, later pursued an unorthodox trust mechanism that would only serve to delay the divestiture process, and finally

proposed to the FCC dubious station sales at suspiciously low prices involving parties with significant ties to its executive chairman and his family without fully disclosing those connections. These willful and material breaches, which are detailed below, directly caused a complete failure to promptly obtain the regulatory approvals required to consummate the Merger.

i. Sinclair Willfully and Materially Breaches the Merger Agreement by Failing to Obtain Prompt DOJ Approval

61. From the start of DOJ's review of the Merger, DOJ staff made clear that they had serious concerns about Sinclair retaining both its and Tribune's stations in the ten Overlap DMAs. Despite numerous submissions by Sinclair asking DOJ to remove most of the Overlap DMAs from the scope of its review, in August 2017 DOJ requested information from Tribune and Sinclair on all ten Overlap DMAs, and in early October 2017 DOJ reaffirmed that it was continuing to investigate all ten of them.

62. At Sinclair's request, Tribune gave Sinclair latitude to wait to appeal that view to the new Assistant Attorney General ("AAG") of the Antitrust Division who, at the time the Merger was announced, had been nominated but not yet confirmed.

63. Makan Delrahim took office as the incoming AAG of Antitrust in September 2017. Shortly thereafter, he made clear that he, too, was focused on divestitures in the ten identified Overlap DMAs, and that Sinclair's agreement to

divestitures in those DMAs would bring a halt to DOJ's investigation and facilitate the path to approval contemplated by the Merger Agreement. Sinclair nevertheless continued to try, without success, to persuade DOJ that divestitures in most of the ten Overlap DMAs should not be required to approve the Merger. In the process, Sinclair was, without basis, confrontational with and belittling of DOJ staff and, indeed, AAG Delrahim himself. Ultimately, Sinclair failed to persuade DOJ against divestitures in *any* of the ten Overlap DMAs, and its actions resulted in DOJ continuing and expanding its antitrust investigation.

64. On November 17, 2017, DOJ staff sent Sinclair a letter stating that none of Sinclair's arguments had persuaded them as to any of the Overlap DMAs. That same day, Principal Deputy Assistant Attorney General ("DAAG") Andrew Finch called Sinclair's antitrust counsel, William Kolasky, to convey DOJ's official position – and that of AAG Delrahim – that DOJ's concerns with the Merger could be resolved if Sinclair agreed to divest stations in eight to ten of the Overlap DMAs.

65. On November 20, 2017, DAAG Finch rejected a request from Sinclair to pause DOJ's investigatory depositions, which were set to begin that week, unless and until Sinclair put station divestitures on the table.

66. On December 11, 2017, Sinclair sent a written settlement offer to DOJ, proposing to divest stations in six of the Overlap DMAs, but with joint sales

agreements ("JSAs") – under which Sinclair would retain control and interest – in three of them and no sales in the other four Overlap DMAs. The Sinclair proposal noted that it also intended, in separate transactions, to sell stations in other DMAs that were not among those listed in the Sinclair Disclosure Letter. Sinclair should have known that its proposal would be unacceptable to DOJ, not least because DOJ had a policy against divestitures that permitted continued entanglements (such as through JSAs). Indeed, Tribune cautioned Sinclair that this offer would be a nonstarter for DOJ and warned Sinclair against it, but Sinclair persisted.

67. Unsurprisingly, DOJ refused Sinclair's proposal only two days later on December 13. DOJ's response confirmed that Sinclair had a clear path toward securing regulatory approval of the Merger, but that this would require divestitures in at least seven, and perhaps all, of the ten Overlap DMAs. DOJ offered to pause its investigation, including numerous depositions, to focus on negotiations if Sinclair agreed to divest stations in at least seven of the Overlap DMAs – an offer that would have given Sinclair a clear path to quickly obtaining DOJ's clearance of the Merger. Sinclair squandered this golden opportunity. It rejected DOJ's offer out of hand, ensuring that the antitrust investigation, including active preparations by DOJ for the filing of a complaint, would continue unabated and willfully violating its obligation to use its best efforts to avoid every governmental

impediment to clearance and to obtain the government's approval of the Merger as soon as reasonably practicable.

68. On December 14, with express prior approval from Mr. Kolasky, and, indeed, at his suggestion, Tribune's antitrust counsel, Deborah A. Garza, spoke with DAAG Finch to request clarification of DOJ's position, in particular with respect to whether its offer of settlement was conditioned on divestitures other than in the ten Overlap DMAs. DAAG Finch reiterated that *if Sinclair would agree to divest in those ten DMAs, the investigation would terminate and the Merger would be cleared*. He further said that if Sinclair committed to sales in at least seven of the Overlap DMAs, DOJ would be willing to pause its investigation and negotiate with respect to the remaining three Overlap DMAs. DAAG Finch agreed to a call the next day to communicate his view to both parties and answer any questions they might have. Ms. Garza reported this information to Mr. Kolasky.

69. On December 15, Tribune's and Sinclair's general counsels and outside counsel participated in a conference call with DAAG Finch. On that call, DAAG Finch conveyed the same position he had conveyed the previous day to Ms. Garza: namely, that DOJ would pause its investigation if Sinclair agreed to divestitures in at least seven of the Overlap DMAs and that the investigation would end if Sinclair agreed to divestitures in all ten of the Overlap DMAs. DAAG Finch noted that DOJ had made this offer "since before Thanksgiving," and he was clear

that divestiture of stations in the ten Overlap DMAs would yield immediate clearance: in DAAG Finch's words, "***We would be done***." DAAG Finch reiterated that "***the divestitures at issue are the ten***" Overlap DMAs.

70. Rather than accept this unequivocal offer and end, or at least pause, DOJ's investigation, Barry Faber, Executive Vice President and General Counsel of Sinclair, insisted that DOJ agree to begin settlement discussions on the basis of sales in only *three* DMAs, barring which Sinclair was prepared to litigate. Sinclair asserted this position despite its covenant to avoid even threatened litigation with DOJ and to take all actions and to do all things advisable to consummate the Merger, and despite its full knowledge that an offer of three DMAs was unacceptable to DOJ and that DOJ would thus continue its investigation and the taking of depositions designed to support a DOJ complaint.

71. Between the end of November, when DOJ's depositions began, and DOJ's December 13 offer to pause its investigation, DOJ had deposed six Sinclair employees and two Tribune employees. After Sinclair bluntly rejected DOJ's offer to pause its investigation, DOJ took another *seventeen* depositions of current or former Sinclair and Tribune employees through mid-January 2018, all in preparation for the possibility of suing to block the Merger, and all of which could have been avoided had Sinclair accepted DOJ's offer.

72. On December 18, 2017, Edward Lazarus, Tribune's Executive Vice President and General Counsel, wrote to Mr. Faber to state Tribune's "serious concern with Sinclair's approach to obtaining the Department of Justice's clearance."[9] Mr. Lazarus explained that Sinclair was required under Section 7.1(i) of the Merger Agreement to accept DOJ's offer of clearance in exchange for the ten listed divestitures but, in the spirit of compromise, Mr. Lazarus offered to permit Sinclair to accept DOJ's other option: a pause in the investigation upon Sinclair's agreement to divest in seven of the specified DMAs, with the possibility of negotiating a more favorable outcome than divestiture in all ten listed DMAs. Mr. Lazarus was clear, though, that:

> What we are not willing to countenance … is a continuation on your current path of refusing to accept offered divestiture terms that are clearly within the contemplation of the Merger Agreement and, further, expressing your intention to litigate. Continuing with this approach, ***which will almost certainly precipitate the Department's filing of a complaint*** in the near term, would clearly violate your duties under the Merger Agreement, which, as noted, requires Sinclair to take steps "necessary or advisable to avoid, prevent, eliminate or remove the actual, anticipated or threatened ... commencement of any Proceeding ... that would delay, restrain, prevent, enjoin or otherwise prohibit consummation of the transactions ...."
>
> In sum, we urge you in the strongest terms to accept one or the other of the Department's offers: either to obtain clearance immediately by agreeing to divest in the ten specified DMAs or

[9] A true and correct copy of Mr. Lazarus's December 18 letter to Mr. Faber is attached hereto as Exhibit E.

> to obtain a pause by agreeing to the terms of the Department's December 13 letter. We would be happy to discuss the path forward further with you.
>
> We look forward to working with you to complete the regulatory process and bring the transaction to a prompt closing.

(Second, third, and fourth omissions in original) (internal citation and emphasis omitted and further emphasis added) (quoting Exhibit A § 7.1(i)).

73. In a response on December 18, Mr. Faber made no attempt to dispute Sinclair's obligations under Section 7.1(i) of the Merger Agreement, aside from summarily asserting, in a footnote, that Sinclair disagreed "with Tribune's interpretation of the obligations to which Sinclair would be subject under the Merger Agreement."[10] Indeed, Mr. Faber's only substantive defense of Sinclair's actions was to claim that DOJ's offer was contingent on sales in DMAs outside those specified in the Sinclair Disclosure Letter and thus purportedly beyond Sinclair's duties, because Section 7.1(j)(iii) of the Merger Agreement excludes Section 7.1's application to station divestures not listed in the Sinclair Disclosure Letter. Mr. Faber claimed that DOJ's willingness to approve the transaction upon divestitures in the ten Overlap DMAs "assumed that [Sinclair] would also sell additional big-4 stations in four large non-overlap markets."[11]

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[10] A true and correct copy of Mr. Faber's December 18 letter to Mr. Lazarus is attached hereto as Exhibit F.

[11] A "Big-4 station" is one affiliated with NBC, ABC, CBS, or Fox.

74. As recounted above, Mr. Faber's excuse was patently false. Mr. Lazarus similarly detailed this history in his reply to Mr. Faber, sent on December 21, and explained that:

> Given repeated opportunities to start final settlement negotiations with the Department on terms consistent with its obligations under the merger agreement, Sinclair's strategy has led only to backward movement by the Department and a continuation of an investigation that the Department has offered to halt. With respect, there is no "misunderstanding" about this. The Department's offers to halt its investigation upon the divestiture in seven DMAs while continuing discussions with respect to the other three makes it crystal clear that the Department is prepared, at least as of now, to abandon whatever theories of harm it may be developing with respect to any other DMAs. Moreover, the entire discussion of those other DMAs arose only due to Sinclair's decision not to engage with the Department on terms contemplated by the merger agreement and, instead, to use station sales it will independently make to Fox (or others, as in the case of WGN9) as a bargaining chip to reduce the number of DOJ-required divestitures.
>
> In sum, Sinclair's obligations under the merger agreement, as summarized in my December 17 letter to you, are clear, and we expect you to comply with them.
>
> We stand by our offer in my letter of December 17 to permit you to pursue settlement discussions consistent with the framework delineated by the Department in its December 13 letter.

75. Mr. Faber sent a cursory response less than twenty minutes after receipt of Mr. Lazarus's December 21 letter, stating merely that Sinclair "disagree[d] with the vast majority of the statements in [Mr. Lazarus's] letter" and

providing neither justification for Sinclair's actions nor any indication that it would remedy its breach by accepting DOJ's settlement offer.[12]

76. Sinclair's and DOJ's subsequent communications, following Mr. Faber's December letters to Mr. Lazarus, confirmed, without any ambiguity, that DOJ was and had been willing to approve the Merger and conclude its investigation solely on the basis of divestitures within the ten Overlap DMAs.

77. On December 31, 2017, Mr. Kolasky sent a letter to AAG Delrahim and DAAG Finch, comparing DOJ's leadership unfavorably with that of the FCC – an approach that was as unhelpful as it is now ironic, given the FCC's referral of the Merger to an administrative hearing.[13] In pertinent part, Mr. Kolasky wrote:

> We all know that old habits die hard. That is true not just for people, but also for institutions. And that is why it was so refreshing to see the FCC, under Ajit Pai's leadership, undertake a fundamental reform of its media ownership rules to relax regulations …. Like the industry experts at the FCC, nearly everyone in the television industry understands the massive changes that have taken place over the last two decades with the shift of viewers and advertisers away from broadcast to cable and now to online video. We expected that the Division, under your leadership, would likewise see the need to re-evaluate how it reviews TV station mergers …. We have been surprised, therefore, by the extent to which the Division has thus far appeared unwilling to recognize how completely the world has changed.

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[12] A true and correct copy of Mr. Faber's December 21 email to Mr. Lazarus is attached hereto as Exhibit G.

[13] A true and correct copy of Mr. Kolasky's December 31 letter to AAG Delrahim and DAAG Finch is attached hereto as Exhibit H.

Mr. Kolasky concluded his letter by making the inflammatory assertion, without any basis, that DOJ "may be letting its judgment as to what relief to seek to be influenced, perhaps unconsciously, by the knowledge that Sinclair has certain obligations under its merger agreement with Tribune to divest stations in all ten Overlap DMAs if necessary to get regulatory clearance."

78. On January 5, 2018, at a meeting with AAG Delrahim, DAAG Finch, Section Chief Owen Kendler, and Ms. Garza, Mr. Faber and Mr. Kolasky urged DOJ to accept divestitures *in just three* of the Overlap DMAs, while noting that Sinclair had already signaled its intention to sell stations for other reasons in four DMAs not listed in the Sinclair Disclosure Letter. Mr. Faber described the ten Overlap DMAs, plus the four in which Sinclair had already-planned sales, as the only DMAs "in play." Although DOJ did not provide a formal response to Sinclair's offer at the January 5 meeting, DAAG Finch corrected Mr. Faber's statement that the four additional sales were "in play" with DOJ, indicating that divestitures in those four non-listed DMAs were irrelevant to DOJ's concerns. AAG Delrahim underscored DOJ's desire to reach a settlement that met DOJ's actual concerns. Following the meeting, Mr. Kolasky sent an email to AAG Delrahim with market share information for the Sinclair and Tribune stations "in the six overlap markets which we propose to retain." The market share data that

Mr. Kolasky sent excluded certain non-Big-4 stations, a manipulation that DOJ had already rejected as disingenuous.

79. In mid-January, DOJ staff, on a call with Mr. Kolasky, again communicated that DOJ was considering divestitures only in the Overlap DMAs and not in any other markets. On January 24, in an email to AAG Delrahim and other DOJ staff, Mr. Kolasky admitted that DOJ had told Sinclair that it was "focused *just on the ten overlap markets* and that a sale of stations in non-overlap markets to Fox is not a condition to any settlement."[14] (Emphasis added.)

80. Tribune once again urged Sinclair to comply with its obligations under the Merger Agreement in an email sent by Tribune's CEO, Peter Kern, to Sinclair's CEO, Christopher Ripley, on January 24, the day before what was intended to be Sinclair's final front office meeting with DOJ, which is typically the last official meeting with DOJ before it concludes its investigation and decides whether to sue. Mr. Kern wrote, in relevant part:

> While I know you are well aware of our position and your contractual obligations, and at the risk of belaboring the point – in the event DOJ offers to end its investigation if Sinclair agrees to divest stations within the ten overlap DMAs spelled out in the merger agreement, you are contractually bound to accept.

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[14] A true and correct copy of Mr. Kolasky's January 24 email to DOJ (with attachment omitted) is attached as Exhibit I.

81. Mr. Ripley responded the same day, writing only that: "Although I do not think it is productive to engage in a legal debate with you, for the record I am writing to advise you that we disagree with the legal conclusion stated in your email as to Sinclair's contractual obligations."

82. Sure enough, *DOJ offered at the January 25 meeting to end its investigation upon Sinclair's agreement to divest stations within the ten Overlap DMAs*. AAG Delrahim stated that DOJ needed divestitures of "Big-4 stations" in all ten of the Overlap DMAs and that it would approve the Merger on that basis. DOJ's offer was not conditioned on sales within any other markets. As in December, however, Sinclair refused to agree to divestitures in all ten of the Overlap DMAs. It offered sales in ***just four*** DMAs and ***declared that it intended, and indeed welcomed the opportunity, to litigate with DOJ***. Underscoring Sinclair's willful breach, Mr. Faber in fact told AAG Delrahim: "***sue me***." Before leaving DOJ's office after the meeting, Mr. Faber told Mr. Lazarus that Tribune would have to sue Sinclair to get it to divest stations in all ten Overlap DMAs.

83. Following the January 25 meeting, and through the following weeks, Mr. Faber, in a continuation of Sinclair's breach, persisted in trying to persuade DOJ to reverse its position and accept divestitures in only three or four of the Overlap DMAs. Many of these communications were *ex parte*, without notice to Tribune or an opportunity for Tribune to participate, in further breach of the

Merger Agreement. In certain communications for which Tribune representatives were present, Sinclair was bullying and insulting in tone and offered no new or materially different information from what it had already presented to DOJ.

84. On February 8, DOJ organized a phone call with Sinclair and Tribune, in which DOJ staff repeated that DOJ was demanding divestitures in no fewer than all ten of the Overlap DMAs in order to clear the Merger.

85. On February 9, Tribune advised Sinclair that it would sue Sinclair if it had not, by February 12, complied with its contractual obligations by offering to divest stations in all ten Overlap DMAs or otherwise reaching agreement with DOJ for clearance of the Merger.

86. Later that same day, and following this clear warning, Sinclair doubled its offer to DOJ, from divestitures in four Overlap DMAs to divestitures in eight, but continued to refuse to agree to sell stations in all ten DMAs. In an email sent to AAG Delrahim and DAAG Finch on February 9, Mr. Faber disclosed that Tribune had expressly threatened to sue Sinclair were it to not offer sales of all ten Overlap DMAs or otherwise reach agreement with DOJ, but stated that sales in all ten Overlap DMAs "is not something that I am prepared to do at this point" and instead offered sales of Big-4 stations in seven Overlap DMAs and a sale of a non-Big-4 station in an eighth Overlap DMA. The two overlap markets where Mr. Faber refused to agree to divest were Harrisburg and Greensboro.

87. On February 12, at Sinclair's request, Tribune agreed to briefly delay filing suit in order to hear DOJ's views on a call scheduled for the following day.

88. On February 13, DOJ (including AAG Delrahim and DAAG Finch) met with Mr. Faber and Ms. Garza to discuss Sinclair's February 9 proposal. DOJ reiterated its position that divestitures should be made in all ten Overlap DMAs and that it was not focused on any additional stations beyond those DMAs. Without presenting any new facts or arguments, Mr. Faber continued to press DOJ to accept fewer divestitures, accusing DOJ and the AAG himself of "completely misunderstand[ing] the industry," calling the AAG "more regulatory than anyone before you, under any other president for 21 years."

89. At the February 13 meeting, in response to Mr. Faber's inflammatory criticism, DOJ reminded Sinclair that DOJ had offered to pause its investigation in November to discuss whether more than seven divestitures would be required and Sinclair had rejected the offer. Nonetheless, in the apparent interest of reaching a resolution, AAG Delrahim indicated that, subject to further review, DOJ was open to letting Sinclair keep all the stations in Greensboro and, again, tentatively, allowing Sinclair to divest the CW station in St. Louis rather than a Big-4 station. As AAG Delrahim left the meeting for another appointment, and in response to Mr. Faber's continued insistence, he said Sinclair was free to make additional submissions if it wanted to do so. He also made clear, however, that there was no

reasonable basis on which to believe that DOJ was likely to change its position in Sinclair's favor.

90. Not to be deterred, that evening, in an email to AAG Delrahim and Mr. Finch, Mr. Faber continued to resist DOJ's demand of a divestiture in Harrisburg.

91. The next day, February 14, Tribune warned Sinclair that if Sinclair did not contact DOJ and agree to the Overlap DMA divestitures demanded by DOJ by the end of the day, Tribune would sue Sinclair the following morning. Just hours before midnight, Sinclair agreed. In an email to AAG Delrahim, Mr. Faber agreed to sell a station in Harrisburg if DOJ demanded it.

92. As it turned out, this did not end the disputation. On further review, DOJ concluded that Sinclair would indeed have to divest a Big-4 station in Greensboro and, later, that it would have to sell a Big-4 station, rather than the CW, in St. Louis. Sinclair twisted and turned every step of the way. For example, on February 20, Mr. Faber informed the FCC that DOJ had tentatively agreed to allow Sinclair to keep its Big-4 stations in St. Louis, even though DAAG Finch that same day had advised Tribune and Sinclair that DOJ had ***not*** agreed to permit the divestiture in St. Louis to be a non-Big-4 station. Similarly, around March 21, AAG Delrahim once again informed Mr. Kolasky that agreement by Sinclair to divest a Big-4 station in all ten Overlap DMAs – including in *both* Greensboro and

St. Louis – would resolve the Merger investigation. Still, Sinclair continued to haggle over St. Louis.

93. In the ensuing weeks, Sinclair's position at DOJ continued to worsen. Although Sinclair and DOJ agreed to a term sheet in April 2018 requiring divestitures in all ten overlap markets – including Big-4 divestitures in all markets except potentially St. Louis – they did not reach a definitive settlement and their discussions on significant provisions remained ongoing as of August 2018. By August, even putative negotiation over St. Louis had been closed off: DOJ rejected Sinclair's proposed buyer for the St. Louis CW station and demanded a Big-4 divestiture instead.

94. As of August 2018, Sinclair still had not obtained DOJ's approval of the Merger. In the end, despite Sinclair's obstinancy, DOJ ultimately did not deviate from its demand for sales of a Big-4 station in all ten of the Overlap DMAs – the same position articulated to Sinclair in November 2017 and exactly what Sinclair had agreed to accept in the Merger Agreement. Sinclair's confrontational approach ultimately proved entirely counterproductive; in return for many months of needless and damaging delay, tremendous expense, and the expansion and continuation of DOJ's investigation, Sinclair gained nothing.

ii. Sinclair Willfully and Materially Breaches the Merger Agreement by Failing to Obtain Prompt FCC Approval

95. Sinclair's substantial delay in agreeing to DOJ's demanded divestitures also caused substantial delay of the FCC's review of the Merger, pushing the timeline for review at both agencies up against the wall of the August 8, 2018 End Date. In its conduct before the FCC, Sinclair compounded that delay, refusing to follow the guidance of FCC staff and initially delaying, and then repeatedly changing its divestiture proposals, making it inevitable that the FCC would not clear the Merger before August 8.

96. Sinclair submitted its initial applications to the FCC for approval of the Merger on June 26, 2017. In those applications, Sinclair could have, as is typically done, sought clearance for both the Merger and any station divestitures Sinclair might need to effectuate to satisfy DOJ and comply with the FCC's rules. Instead, in order to delay for as long as possible publicly identifying the stations it ultimately would relinquish in the agreed divestiture markets – without regard to its negative impact on the regulatory timeline – Sinclair stated in its initial application only that it would submit subsequent applications for approval of any necessary divestitures. Sinclair pointedly chose not to show any of its divestiture cards at the FCC because, as subsequent events demonstrated, it intended to resist DOJ's divestiture requests aggressively and did not want to risk signaling through its FCC filings that it would be willing to make *any* divestitures – in the apparent belief that doing so would reduce its perceived leverage at DOJ.

97. This two-step approach ensured that the FCC's review was delayed while Sinclair refused DOJ's divestiture demands. The FCC's practice is to review transactions within a 180-day period, and it started this informal timeline in early July 2017 when it initiated a public comment period on Sinclair's initial applications. In early January 2018, the FCC announced that it was pausing its 180-day review clock after Sinclair advised the FCC, in an *ex parte* meeting nearly six months after the Merger applications had been filed, that it was still evaluating divestitures and amendments to its application "but that the DOJ review may impact certain divestiture choices."[15] The FCC explained in response that it "has a strong interest in ensuring a full and complete record upon which to base its decision" and that, "[b]ased on Sinclair's statement in its *Ex Parte Notice*, it is appropriate to stop the informal 180-day clock until after the referenced amendments and divestiture applications have been filed and staff has had an opportunity to fully review them." The pause of the 180-day clock was a public statement by the FCC that Sinclair had failed to provide sufficient information to allow approval of the Merger.

98. Only after Sinclair had belatedly and haltingly begun to accept DOJ's demanded divestitures did it even begin to attempt to satisfy the FCC's Duopoly

[15] A true and correct copy of the FCC's letter, dated January 11, 2018, is attached hereto as Exhibit J.

Rule and National Cap. Yet, once again, rather than making any concrete proposals that would enable the FCC to evaluate its compliance with the rules, Sinclair chose to implement a highly contingent trust structure that kicked the divestiture can down the road and caused still further delay. Under Sinclair's original divestiture trust proposal, at least 55 stations owned by either Sinclair or Tribune in nearly three dozen markets – many more than ultimately would have to be divested to comply with either the Duopoly Rule or the National Cap – would be assigned to a trust. The specific stations to be divested would be identified at a later date, possibly only immediately prior to closing the Merger, and would be disposed of by the trustee after the Merger had closed. Although Sinclair purportedly conceived of this divestiture trust proposal as a mechanism for expediting FCC review, its true intent was to preserve Sinclair's optionality in the sales process for potential divestiture of stations. By proposing this structure, Sinclair hoped to be able to market more than one station in each divestiture market and then, after receiving bids, choose which station to actually divest. Sinclair continued to pursue this unorthodox proposal in the face of consistent FCC disapproval and without regard for the delay it inevitably would cause, and did cause.

99. After the FCC staff told Sinclair that they strongly disfavored Sinclair's approach and that it was unlikely to be approved,[16] on February 20, 2018 – now nearly seven months after the Merger applications were originally filed with the FCC – Sinclair purported to respond to the staff's concerns by filing formal applications seeking to place 23 (rather than 55) Tribune and Sinclair stations in a contingent divestiture trust. As before, prior to consummation of the Merger, the trust would dispose of stations selected for divestment and then transfer *back* to Sinclair the non-divested stations.

100. Unsurprisingly, the FCC did not receive the proposal favorably. As a result, just two weeks later, on March 6, Sinclair had to withdraw its proposal. It filed another application the same day proposing to place five fewer stations in the trust, but without changing the basic approach. Over the next month and a half, Sinclair continued to delay to give itself time to determine which station sales in the relevant markets would be in its financial interest.

101. On April 24, Sinclair withdrew the second divestiture trust application. Then, on May 14, it submitted still a third – this time proposing to

[16] Sinclair's proposal relied on a single recent decision by the FCC Media Bureau's Audio Division that approved the use of a contingent divestiture trust for the limited purpose of facilitating the close of a large transaction. This precedent, however, differed significantly from Sinclair's proposal. The staff of the FCC division reviewing the Merger (the Video Division) raised their concerns with Sinclair about its trust proposal, stating that they were inclined not to follow the Audio Division's precedent here.

place two stations in St. Louis, KPLR-TV and KDNL-TV, into the trust with a decision to be made at a later time regarding which of the two stations ultimately would be divested.

102. Although the purpose of a divestiture trust in the regulatory context is to speed clearance by allowing necessary station sales to be finalized after a merger closes, Sinclair's stubborn insistence on proposing its highly contingent trust proposal predictably had the opposite effect, slowing the FCC review process and requiring multiple rounds of repetitive applications, antagonizing the FCC staff, and subjecting the Merger to the higher risk accompanying protracted scrutiny at the Commission.

103. Separate and apart from the station sales involved in the divestiture trust, Sinclair had to propose to the FCC specific station sales in order to satisfy the National Cap. Because the National Cap limits the total number of television stations one company can own by applying a simple numeric restriction on the percentage of television households it can reach, Sinclair could have met the Cap through myriad different combinations of station divestitures. These divestiture combinations could easily have been commercially reasonable, provoked little public opposition, and been quickly approved by the FCC. But Sinclair instead once again pushed the limits of what regulators might accept, in violation of its

obligation to use reasonable best efforts to obtain regulatory approval so as to enable the Merger to occur as soon as reasonably practicable.

104. Sinclair waited until February 27, 2018 to even begin the process of preparing such sales, and when it did so, it included sales both (i) to parties that had significant ties to Sinclair's Executive Chairman, David Smith, and his family and (ii) subject to arrangements in which Sinclair would effectively operate the divested stations.

105. First, Sinclair submitted an application for the sale of a New York station (WPIX) at an apparently below-market price to Cunningham, which long had been owned by the estate of David Smith's late mother. Second, Sinclair submitted an application for the sale of a station in Chicago (WGN) to WGN-TV LLC, an entity established by an individual named Steven Fader, a car dealer with business ties to David Smith. Fader had no broadcast experience, which was precisely why Sinclair chose him to "purchase" WGN: under Sinclair's retransmission consent agreements with various cable and satellite providers, Sinclair would lose tens of millions of dollars annually in WGN revenue if Sinclair ever owned WGN. The most self-serving way of preserving that revenue was to sell WGN to a newcomer who could step into the shoes of Tribune's very favorable distribution agreements while kicking back the preserved profits to Sinclair. Sinclair's proposed operating arrangements with Cunningham and Fader

further suggested Sinclair employees would have responsibility for the "divested" stations' operations, including advertising sales and retransmission consent negotiations; Sinclair would reap most of the economic benefits of the stations it was "divesting," including retransmission revenues; and Sinclair would have an option to repurchase the stations in the future.

106. Sinclair's proposal was so provocative that the FCC staff refused even to put Sinclair's proposed sales of WPIX to Cunningham and WGN to Fader out for public comment. In the staff's view, Sinclair's entanglements with the buyers and the terms of the operating agreements meant that the station sales could readily be viewed as "sham" transactions. The FCC's staff warned Sinclair to avoid related-party arrangements and instead propose clean station sales. At the same time, Tribune again reminded Sinclair of its obligations under the Merger Agreement and cautioned that Sinclair's aggressive divestiture proposals were inconsistent with those requirements.

107. Yet Sinclair ignored these clear warnings – as it had time and again when admonished by DOJ, the FCC, and Tribune. On April 23, 2018, Sinclair withdrew the application to sell WPIX to Cunningham. The next day, Sinclair filed yet another amendment to the merger application, followed, between April 24 and May 14, 2018, by multiple divestiture applications intended to satisfy the Duopoly Rule and the National Cap. Sinclair continued to prosecute the sale of

WGN to Fader; meanwhile, in place of the now-abandoned WPIX transaction, Sinclair proposed the sale of two Texas stations (KDAF in Dallas and KIAH in Houston) to Cunningham.

108. In attempting to explain these divestitures and persuade the FCC to process them, Sinclair told FCC staff that, given the addition of other newly proposed divestitures, a sale of WGN was no longer needed to meet the National Cap. (Of course, as explained above, Sinclair needed to "divest" WGN to Fader in order to preserve the station's highly favorable retransmission consent revenues – which Sinclair would capture under the terms of the arrangement with Fader.) Sinclair told the FCC that the terms of the arrangements with Cunningham with respect to KDAF and KIAH would not afford Sinclair the direct operational control that Sinclair previously had proposed with respect to the sale of WPIX in New York because it would forgo entering into operating agreements with Cunningham in those markets (although it did retain options to repurchase both stations in the future). As soon became clear, however, Sinclair's close association with Cunningham raised the prospect that it would nevertheless be able to control KDAF and KIAH.

109. On May 21, 2018, the FCC solicited public comment on the amended merger application and all of the proposed divestitures. The related-party "sales"

to Fader and Cunningham met broad and intense public opposition during the period for public comment, which lasted until July 12.

110. Certain of the public comments on Sinclair's proposals brought to the FCC's attention that Sinclair had failed to disclose in its applications to the Commission certain material facts, including the full extent of Smith's business relationship with Fader, Sinclair's guarantee of Cunningham's debt, the sale in early 2018 of Cunningham's voting shares to a close Sinclair associate, and the suspiciously cheap option to buy those shares given to members of Smith's family.

111. On July 16, Chairman Pai released a statement announcing the circulation to his fellow FCC commissioners of a draft order that would send review of the Merger to an administrative law judge. Chairman Pai stated that:

> Based on a thorough review of the record, I have serious concerns about the Sinclair/Tribune transaction. The evidence we've received suggests that certain station divestitures that have been proposed to the FCC would ***allow Sinclair to control those stations in practice, even if not in name, in violation of the law***.

(Exhibit B) (emphasis added).

112. Later that day, there were a number of reports in the media – which counsel for Tribune and Sinclair at Sinclair's direction independently confirmed with FCC staff – that Chairman Pai had circulated a draft hearing designation order to the other Commissioners asserting that Sinclair had provided inaccurate and incomplete information to the FCC in the Fader and Cunningham divestiture

applications and that a majority of the Commissioners had voted to refer the applications to an administrative law judge for review.

113. In response to these developments, Mr. Faber had an *ex parte* telephone conversation with the Chairman on July 17 and corresponded *ex parte* by email with the Chairman on July 18 regarding the FCC's draft hearing designation order. On information and belief, during the telephone conversation, Chairman Pai expressed his disapproval of Sinclair's conduct relating to the Merger and indicated that, if Sinclair did not withdraw the merger applications in their entirety, it would be subjected to a protracted administrative hearing to determine whether its representations to the FCC had been misleading or lacking in candor. The die was cast – Sinclair had run out of options for proposing an approvable transaction to the FCC, and any hope of obtaining the FCC's approval of the Merger before the August 8 End Date was dead.

114. Yet, on July 18, in response to (i) press reports suggesting that the draft order focused on Sinclair's proposed divestitures in Dallas (KDAF), Houston (KIAH), and Chicago (WGN) and (ii) discussions that outside counsel for Tribune and Sinclair had had with FCC staff, Sinclair caused its divestiture proposals for those three stations *only* to be withdrawn. At the same time, Sinclair informed the Commission it would keep WGN for itself and work to find an independent buyer or buyers for KDAF and KIAH. This was far too little and far too late to avoid an

administrative hearing – much less secure approval of the Merger – as Sinclair well knew. Mr. Faber conceded as much in his July 18 email to the Chairman, acknowledging that "the withdrawal of these three applications would ***not*** prevent you [the FCC] moving forward with the HDO [Hearing Designation Order]" (emphasis added).[17]

115. Sinclair's defiant pursuit of related-party divestitures, both to preserve an economic windfall and ostensibly to satisfy the National Cap, over the unambiguous warnings of the FCC – combined with Sinclair's absurdly aggressive regulatory proposals, disregard of the FCC's signals, and the lengthy and avoidable delays that flowed from Sinclair's behavior – yielded the final impediment to the Merger's approval.

116. On the evening of July 18, the FCC's commissioners unanimously voted to adopt the draft Hearing Designation Order, and the FCC released the Order on July 19. The Order focused on Sinclair's Fader and Cunningham divestiture proposals, and it determined that:

> The record raises significant questions as to whether those proposed divestitures were in fact ***"sham" transactions*** … Such facts raise questions about ***whether Sinclair was the real party in interest*** under Commission rules and precedents and ***attempted to skirt the Commission's broadcast ownership***

[17] A true and correct copy of Mr. Faber's July 18 email to Chairman Pai, as filed on the FCC's docket by FCC Commissioner Jessica Rosenworcel, is attached hereto as Exhibit K.

> ***rules***. Although these three applications were withdrawn today, material questions remain because the real party-in-interest issue in this case includes a ***potential element of misrepresentation or lack of candor*** that may suggest granting other, related applications by the same party would not be in the public interest …

(Exhibit C ¶ 2) (emphasis added).

117. The FCC detailed the circumstances of the proposed sales in Chicago, Dallas, and Houston to Fader and Cunningham that indicated that Sinclair would control those stations in fact, if not in name.

118. With respect to the sale of WGN in Chicago to Fader, the FCC noted that Fader had "no prior experience in broadcasting" and that he "currently serves as CEO of a company [Atlantic Automotive Group] in which Sinclair's executive chairman has a controlling interest" and "serves as a member of its board of directors." (Exhibit C ¶¶ 2, 11.) Under the proposed sale of WGN to Fader, Sinclair would sell advertising, provide programming and most of the personnel needed to operate the station, and capture nearly all of the station's revenue. Sinclair would also have owned most of the station's assets and had an option to acquire the station's remaining assets, including its FCC licenses.

119. The FCC elaborated that:

> The sale of WGN-TV to Fader involves ***many atypical deal terms***, as well as several agreements that ***delegate operation of many aspects of the station to Sinclair***. In particular, WGN TV, LLC, would have entered into a JSA, SSA [Shared Services Agreement], Option, and lease-back of non-license

> assets necessary for operation of the station. Sinclair would have sold advertising time, provided back office services, and programmed a significant portion of the station's weekly broadcast hours. Furthermore, pursuant to the proposed transaction, WGN TV, LLC, would have purchased only the station license and certain other minimal assets, primarily a transmitter. Sinclair would have purchased the station's other assets.
>
> In addition, Fader not only lacked any prior broadcasting experience, but also has extensive business relationships with David Smith, currently a director and controlling shareholder of Sinclair. This called into question Fader's independence from Sinclair. Specifically, ***we question the legitimacy of the proposed sale*** of … such a highly rated and profitable station in the nation's third-largest market ***to an individual with no broadcast experience, with close business ties to Smith, and with plans to own only the license and minimal station assets*** …
>
> The $60 million sales price for WGN-TV appears to be ***far below market value***. For instance, the 2002 sale of WPWR-TV, Chicago, IL, to Fox Television Stations, Inc., was executed at $425,000,000—over seven times the sales price for WGN-TV …
>
> In light of the relationship between Sinclair and Fader, in addition to sale terms that are atypically favorable to the buyer, ***substantial and material questions of fact have been raised as to whether Sinclair was the real party-in-interest*** to the application to assign the license for WGN-TV to WGN TV LLC.

(Exhibit C ¶¶ 18–21) (emphasis added).

120. With respect to Sinclair's proposed divestitures of stations in Texas to Cunningham, the FCC noted that it had previously examined a proposed station sale between Sinclair and Cunningham and found that Sinclair "had exercised de

facto control over [Cunningham] in violation of [FCC rules]." (Exhibit C ¶ 22.) That particular sale was not designated for a hearing because "there was not a substantial and material question of fact whether [Cunningham] would operate independently in the future." (*Id.*) But the FCC had "noted that it would give 'appropriate consideration' to any further evidence of control by Sinclair should it be provided in future proceedings." (*Id.*)

121. As explained by the FCC's Order, that time had come:

> The terms of the deal for the purchase of the Texas stations KDAF and KIAH present new questions regarding ***whether Sinclair was the undisclosed real party-in-interest*** to the KDAF and KIAH applications. In particular, we question the close relationship between Sinclair and Cunningham, an existing loan guarantee between Sinclair and Cunningham, and the proposed purchase price …
>
> [U]ntil January 2018, the estate of Carolyn Smith, the mother of the controlling shareholders of Sinclair, owned the voting shares of Cunningham. Even when the voting shares were acquired in 2018 by … Cunningham's former banker, the sales price for the shares – $400,000 – was far below market value, … and the non-voting shares continue to be held by trusts for the benefit of Carolyn Smith's grandchildren. Each son (the Smith brothers) … holds options to buy the voting shares in the future, that [are] alleged [to be at] below market prices. The ***close relationship between Sinclair and Cunningham*** could explain how Cunningham was able to execute an agreement to purchase stations KDAF and KIAH at what appear to be below-market prices …
>
> The Cunningham subsidiaries would have purchased the assets for both stations KDAF and KIAH for $60 million, subject to slight adjustment, while at the same time entering into an option and temporary Transition Services Agreement. In addition to

> the existing relationship between Sinclair and Cunningham, there exists a $53.6 million intercompany guarantee listed in Sinclair's SEC Form 10Q. The guarantee suggests a ***layer of financial entanglement heretofore unexamined***. Moreover, the combined executed ***sales price was far below the expected market price*** for stations in markets this size, suggesting that the transaction was not arms-length. KDAF and KIAH are located in the fifth and seventh largest markets in the nation, respectively, yet the combined sales price was below the $65 million price that was agreed to by Meredith Corporation for station KPLR-TV, St. Louis, Missouri, which is located in the 21st largest market …
>
> In light of the relationship between Sinclair and Cunningham, in addition to sales terms that are atypically favorable to the buyers, ***substantial and material questions of fact exist as to whether Sinclair was the real party-in-interest*** to the applications to assign the licenses of then-prospective assignee of KDAF and KIAH (Cunningham).

(Exhibit C ¶¶ 23–26) (emphasis added).

122. Based on the substantial entanglements between Sinclair, Smith, Fader, and Cunningham – which Sinclair had failed to fully disclose in either the merger application or the divestiture applications – the FCC's Order concluded that:

> [S]ubstantial and material questions of fact have been raised regarding whether Sinclair was the real party-in-interest to the WGN-TV, KDAF, and KIAH application and, if so, whether Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission…. We note that ***Sinclair*** … ***did not fully disclose facts such as the pre-existing business relationships between Fader, Smith, and Sinclair nor the full entanglements between Cunningham, Smith, and Sinclair***. As such there is a substantial and material question of fact as to ***whether Sinclair affirmatively misrepresented or omitted***

> ***material facts*** with the intent to consummate this transaction without fully complying with our broadcast ownership rules.

(Exhibit C ¶¶ 27–28) (emphasis added).

123. The FCC then ordered a hearing to be held before an administrative law judge on four questions: (i) whether "Sinclair was the real party-in-interest to the WGN-TV, KDAF, and KIAH applications, and, if so, whether Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission"; (ii) whether "consummation of the overall transaction would violate" the FCC's National Cap; (iii) whether grant of the Merger "would serve the public interest, convenience, and/or necessity"; and (iv) whether approval for the Merger should be granted or denied. (Exhibit C ¶ 29.)

124. Thereafter, in two separate telephone conversations – on July 23 and August 3, 2018 – Sinclair's FCC counsel, accompanied by Tribune's counsel, spoke to officials of the FCC's Enforcement Bureau to explore whether there was any basis on which to resolve the issues raised in the Commission's Order. Both times Sinclair was told in substance that in light of the fact that the matter had been referred to an administrative proceeding, no resolution was possible.

D. Sinclair's Breaches Were Material and Denied Tribune the Benefit of Its Bargain in the Merger Agreement

125. The Merger Agreement's End Date is August 8, 2018. Under Section 9.1(b)(i), if the Effective Time (i.e., the consummation of the Merger) had not

occurred by that date, either Party had the option to terminate the Merger Agreement; provided that this option was not available to a Party if the failure to close by the End Date was primarily due to that Party's breach.

126. The End Date was also the last point at which a party in breach of the Merger Agreement could cure such breach. Under Sections 9.1(c) and 9.1(d), each of Tribune and Sinclair had the right to terminate the Merger Agreement if the other had breached or failed to perform any of its representations, warranties, covenants, or agreements that were conditions to the Merger and were either incapable of being cured within 30 days or had not been cured by the earlier of 30 days or the End Date.

127. On August 9, 2018, Tribune terminated the Merger Agreement.[18] Although permissible on the basis of the End Date, Tribune was equally entitled to terminate the Merger Agreement on the basis of Sinclair's willful and material breach under Section 9.1(d). One of the conditions of the Merger is that Sinclair "shall have performed in all material respects its covenants and obligations under this Agreement required to be performed by them at or prior to the Closing," which includes Sinclair's obligations with respect to regulatory approval under Section 7.1(i).

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[18] A true and correct copy of Tribune's notice of termination to Sinclair, effective August 9, 2018, is attached as Exhibit L.

128. Sinclair's breaches of Section 7.1(i) with respect to both DOJ and the FCC were willful and material and, in all events, could not have been cured within 30 days or otherwise prior to the End Date. In particular and by way of example, there is nothing Sinclair can now do to avoid a protracted and contested administrative process at the FCC.

129. Sinclair's breaches have denied Tribune the benefit of its bargain. Tribune negotiated with Sinclair not just for the purchase price Sinclair would provide upon consummation, but also for Sinclair's commitment to certain obligations in order to ensure prompt regulatory approval and a swift closing. By failing to abide by those commitments, and thus delaying substantially, and ultimately precluding entirely, the closing of the Merger, Sinclair materially breached its covenants under the Merger Agreement.

E. Sinclair's Breaches Were Willful

130. Sinclair knew that its regulatory approach would reasonably be expected to result in and constitute material breaches of the Merger Agreement. Indeed, it is inconceivable that Sinclair lacked that knowledge.

131. When Sinclair agreed to use its reasonable best efforts to promptly obtain regulatory approvals "so as to enable the Closing to occur as soon as reasonably practicable" (Exhibit A § 7.1(i)), it bargained away the ability to, *inter alia*: (i) engage in a ten-month battle with DOJ to avoid the overlap market

divestitures it had explicitly agreed to make in the Merger Agreement; (ii) delay for eight months the filing of proposed divestitures at the FCC; (iii) pursue highly aggressive and predictably unacceptable divestiture structures at the FCC in order to achieve certain purely self-serving business goals, thereby delaying the regulatory process for several additional months; (iv) propose extremely risky and highly controversial divestitures to buyers that were specifically disfavored by the FCC staff; (v) compound these already controversial divestitures by omitting material facts from the accompanying FCC applications and failing to address these omissions during the comment process; and (vi) generally antagonize the regulators at both DOJ and the FCC while seeking their approval.

132. But this is precisely what Sinclair proceeded to do – deliberately, knowingly, and with complete disregard to repeated warnings from both Tribune and the regulators. As described above, DOJ and the FCC repeatedly described reasonable steps that could be taken to obtain regulatory clearance of the Merger. DOJ, for example, made clear as early as November 2017 that sales in the ten Overlap DMAs identified in the Merger Agreement would secure clearance; the FCC warned against proposing provocative, related-party divestitures, and Sinclair knew that it was taking a substantial risk by concealing from the FCC material information about its relationships with certain buyers.

133. Sinclair undertook these actions despite warnings from Tribune that it was putting undue pressure on the regulatory process and putting the Merger at risk. Tribune made clear that Sinclair's decision to push the envelope as to what regulators might permit when those regulators had clearly and repeatedly indicated opposition, was irreconcilable with Sinclair's obligation to use reasonable best efforts to obtain prompt regulatory approval as soon as reasonably practicable.

134. But Sinclair was impervious to appeals to its contractual obligations. It intended to pursue its own narrow self-interest regardless of its obligations until the FCC found its conduct so egregious as to merit administrative review. Tribune is now the victim of that outrageous obduracy.

Count One
(Breach of Contract)

135. Plaintiff Tribune repeats and re-alleges each and every paragraph contained in this Complaint as if fully set forth herein.

136. Tribune and Sinclair entered into a valid and binding contract, the Merger Agreement.

137. Tribune fulfilled its obligations under the Merger Agreement.

138. Sinclair materially breached its obligations under Sections 7.1(a) and 7.1(i) of the Merger Agreement, including by, among other things, failing to: (i) use reasonable best efforts to take action to avoid or eliminate each and every

impediment that may be asserted by any Governmental Authority so as to enable the Merger to close as soon as reasonably practicable; (ii) promptly use its reasonable best efforts to avoid the entry of any Order that would delay, restrain, prevent, enjoin, or otherwise prohibit consummation of the Merger; and (iii) proffer, agree to, and effect the divestiture of stations as agreed to in the Sinclair Disclosure Letter, where such sales are necessary or advisable to avoid, prevent, eliminate, or remove the actual, anticipated, or threatened commencement of any Proceeding or the issuance of any Order that would delay, restrain, prevent, enjoin, or otherwise prohibit consummation of the Merger.

139. Sinclair's material breaches were willful breaches of the Merger Agreement, because they were deliberate acts and deliberate failures to act that were taken with the actual knowledge that they would or would reasonably be expected to result in or constitute a material breach.

140. As a result of Sinclair's breaches, Tribune has sustained financial harm and has lost the expected benefits of the Merger Agreement.

141. Tribune asks the Court to award it money damages, in an amount to be proven at trial, sufficient to compensate it for all forms of loss caused by Sinclair's material breaches of contract, including all reasonable costs and attorneys' fees.

Prayer for Relief

WHEREFORE, Tribune, on behalf of itself and its stockholders, respectfully requests judgment and relief against Sinclair as follows:

A. Finding that Sinclair breached Sections 7.1(a) and 7.1(i) of the Merger Agreement;

B. Awarding Tribune money damages, in an amount to be proven at trial, sufficient to compensate it for all forms of loss incurred by reason of Sinclair's willful and material breaches of the Merger Agreement, including all reasonable costs and attorneys' fees.

C. Granting Tribune such other and further relief as the Court deems just and proper.

<u>/s/ Blake Rohrbacher</u>
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