

United States Senate

WASHINGTON, DC 20510

November 15, 2017

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

Dear Inspector General Hunt:

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

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

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

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

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

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

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

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

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

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

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

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

² https://apps.fcc.gov/edocs_public/attachmatch/DOC-346883A1.pdf

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

⁴ https://apps.fcc.gov/edocs_public/attachmatch/DOC-346883A1.pdf

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

⁶ https://apps.fcc.gov/edocs_public/attachmatch/DOC-346883A1.pdf

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

⁸ *Id.*

⁹ Federal Communications Commission, Notice of Proposed Rulemaking, *In the Matter of Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard* (GN Docket No. 16-142) at ~ 2 (Feb. 23, 2017). Although the proposal for Next Gen TV came from various broadcast groups, Sinclair is the lead proponent of the technology. Mike Dano, *With ATSC 3.0, TV Broadcasters Might Try to Steal Some Wireless Business After FCC's Incentive Auction*, Fierce Wireless (Nov. 9, 2015) (fiercewireless.com/wireless/atsc-3-0-tv-broadcasters-might-try-to-steal-some-wirelessbusiness-after-fcc-s-incentive); John Eggerton, *ONE Media Strikes Deal to Advance ATSC 3.0 Chipsets*, Broadcasting and Cable (Mar. 28, 2017) (broadcastingcable.com/news/washington/one-media-strikes-deal-advance-atsc-30-chipsets/164463). <http://www.fiercecable.com/broadcasting/nexstar-sinclair-atsc-3-0-spectrum-consortium-searching-for-ceo>

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

¹⁰ https://apps.fcc.gov/edocs_public/attachmatch/DOC-346883A1.pdf

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

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

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

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

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

¹⁶ https://www.washingtonpost.com/news/the-switch/wp/2017/10/25/the-fcc-plans-to-roll-back-some-of-its-biggest-rules-against-media-consolidation/?utm_term=.a1454bda1897

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

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

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

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

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

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

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

Sincerely,

Maria Cantwell
United States Senator

Tom Udall
United States Senator

Richard Blumenthal
United States Senator

Patty Murray
United States Senator

Edward J. Markey
United States Senator

Al Franken
United States Senator

Elizabeth Warren
United States Senator

Richard J. Durbin
United States Senator

Ron Wyden
United States Senator

Bernard Sanders
United States Senator

Tammy Duckworth
United States Senator

Jeffrey A. Merkley
United States Senator

Catherine Cortez Masto
United States Senator

Cory A. Booker
United States Senator

cc: Chairman Ajit Pai