Media Policy in the Trump Administration

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POSITION: *Like the AT&T/Time Warner merger, the Sinclair/Tribune merger is 1. a window into the judicial and regulatory incoherence of the Trump administration and 2. evidence that the confusion over how to move forward in regulating the streaming/broadcast space transcends partisan politics*

In April 2017, Sinclair Broadcasting announced that it was proposing to acquire Tribune Media. The addition of Tribune would allow Sinclair, which presently owns or operates 193 stations primarily in small and medium-size markets, to expand its national footprint by owning roughly 230 local stations, including stations in the nation's top seven markets. Media analysts noted that Sinclair intended to take advantage of FCC Chairman Ajit Pai's reinstatement of a recently overturned regulation called the "UHF discount," which had allowed broadcasters to acquire more stations than the national cap allowed. In fact, the FCC itself had begun to investigate the close relationship between Sinclar and Pai.

For much of the spring and early summer, the merger seemed like a grim inevitability, and it prompted sustained media and political discussion about the political effect of Sinclair's potential reach. The conservative orientation of Sinclair's owner David Smith had been made apparent in a series of programming decisions made by Sinclair since 9/11, in which the company compelled its affiliate stations to either run or omit certain programs based on political motivations. Beginning with the 2016 election campaign, these politically motivated programming choices scaled as the company pushed a fair amount of 'must-run' content to their affiliates. In early 2018, a 'must-run' denunciation of 'fake news' reached over 17 million viewers and became the subject of a viral video that implied that Sinclair was attempting a sort of national brainwashing project. Sinclair has also used their DC station WJLA as an unofficial "Washington Bureau," creating pro-Trump content to be run on affiliate networks.

Aside from these very visible political choices, Sinclair has engaged in other shady business practices. They had recently been censured for airing programming segments that were actually unlabeled native advertisements; the FCC had fined Sinclair around $13 million dollars for this practice in late 2017. As well, they had a longstanding strategy of forming shell companies in order to get around ownership caps, creating operating agreements with stations that rendered the concept of 'ownership' a technicality. In the merger agreement with Tribune Media, Sinclair claimed it would sell off certain assets in order to comply with caps, but these 'sales' were in name only, as the assets remained with Smith family members and associates.

It was this last practice - the creation of shell companies to get around ownership caps – that seemed to make the FCC blink. In late July, Pai announced that the Sinclair-Tribune merger was sent out for 'administrative review.' meaning that he had asked a judge to determine whether Sinclair was actually divesting of the companies it planned to sell. The decision surprised observers on both the left and the right -- including President Trump, who tweeted that the ruling was "sad and unfair." Despite the clear merits of the review, it baffled those who imagined that Sinclair's influence at the FCC made the merger a foregone conclusion. Some opponents of the Sinclair merger began calling the deal 'effectively dead' in mid-July, and celebrated the FCC's move as a victory for progressive media activists. At the same time, several financial journalists still rated Sinclair as a 'buy' in the wake of the decision, arguing that the administrative review was likely a smokescreen -- Pai's effort to deflect the ongoing internal investigation at the FCC about his relationship with Sinclair. On it's part, Sinclair declared the merger was still going forward and that the judge would rule in their favor.

Sinclair's confidence was belied on August 8, when the Tribune Media Company pulled out of the Sinclair deal and announced that they were suing Sinclair for breach of contract. Among the claims of the lawsuit were that the FCC itself had warned Tribune that Sinclair's behavior was toxic. This announcement provoked a second wave of celebration from those opposed to the merger, and several pundits predicted the end of mega mergers in the media industry.

So what can we take away from this ongoing saga? I want to put forward a few points for discussion:

First, the exceptional details of Sinclair's grab for glory -- both in terms of its business practices and its attempt to shape content in local markets – may mean that there is no larger significance to the death of the Sinclair merger. Certainly it has been cast by some analysts as a case of hubris.

On the other hand, I think we still have much to learn about why all the players here acted as they did -- including the role possibly played by Fox Broadcasting in lobbying behind the scenes against the Sinclair-Tribune merger. In recent months, it has become clearer that Sinclair was intending to compete with Fox – including in the streaming space. Though Fox defended Sinclair publicly, I think we may find Murdoch's fingerprints on this failed merger.

Third, I am skeptical of the role played by media activism in these events, and think that claims of an activist victory may reflect a sense of empowerment leftover from a prior FCC.

Finally, I think we do need to watch what Sinclair does next: right now, they have been labeled a company in crisis, but it's quite possible they will accelerate their efforts to create an online brand, potentially working with some of the current ‘outliers’ who are being pushed out of the social media space. Sinclair has been damaged by these events, but I don’t think I see a clear victory here either for local media or nonpartisan news.