

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Applications to Transfer Control of)	MB Docket No. 19-98
NBI Holdings, LLC, and Cox Enterprises, Inc.,)	
To Terrier Media Buyer, Inc.)	

**PETITION TO OF COMMON CAUSE, COMMON CAUSE OHIO, AND UNITED
CHURCH OF CHRIST, OC INC.**

Yosef Getachew
Common Cause
805 15th St NW, Suite 800
Washington, DC 20005
(202) 833-1200

Catherine Turcer
Common Cause Ohio
394 E Town St, Suite 209
Columbus, OH 43215

Cheryl Leanza
United Church of Christ, OC Inc.
100 Maryland Ave., NE
Suite 330
Washington, DC 20002

May 10, 2019

I. INTRODUCTION AND SUMMARY

Common Cause, Common Cause Ohio, and United Church of Christ, OC Inc. file this Petition to Deny in response to the Federal Communication’s (“FCC” or “Commission”) Public Notice regarding the applications to transfer control of NBI Holdings, LLC, and Cox Enterprises, Inc. (“Cox”) to Terrier Media Buyer, Inc. (“Terrier”) (collectively, “Applicants”).¹ The applications should be denied. Because the Applicants have not demonstrated that the transaction will serve the public interest, they have not met the requisite burden of proof. In fact, the Applicants fail to make a convincing case the transaction will provide any public interest benefits at all. To the contrary, the transaction would bring about significant public interest harms to broadcast localism and viewpoint diversity. Further, Terrier’s parent company Apollo Management (“Apollo”) would likely implement aggressive cost-cutting strategies similar to other private equity firms. This means Apollo would likely layoff reporters, consolidate newsrooms, and homogenize programming in order to maximize its profits. These harms would be magnified in the Dayton Designated Market Area (DMA) where Cox currently owns the Dayton Daily News, WHIO broadcast television station, and four radio stations.² Because the evidence shows that this merger would harm consumers and the public interest, the Commission should dismiss the applications.

¹ *Media Bureau Establishes Pleading Cycle for Applications to transfer Control of NBI Holdings, LLC, and Cox Enterprises, Inc., to Terrier Media Buyer, Inc., and Permit-But-Disclose Ex Parte Status for the Proceeding*, MB Docket No. 19-98, Public Notice, DA 19-275 (rel. April 10, 2019); *Applications to Transfer Control of NBI Holdings, LLC, and Cox Enterprises, Inc., To Terrier Media Buyer, Inc., Amended Comprehensive Exhibit*, at 3-8 (filed March. 6, 2019) (“Amended Comprehensive Exhibit”).

² Amended Comprehensive Exhibit at Attachment 2, Exhibit C.

II. THE APPLICANTS HAVE NOT MET THE BURDEN OF PROOF

The Applicants have the burden of proving the proposed merger serves “the public interest, convenience, and necessity.”³ The Commission’s public interest analysis embodies a “deeply rooted preference for preserving and enhancing competition in relevant markets ... and ensuring a diversity of information sources and services to the public.”⁴ While “[t]he FCC’s actions are informed by competition principles,” its “‘public interest’ standard is not limited to purely economic outcomes.”⁵ Therefore, the Applicants must show that the transaction will not harm the public, frustrate the goals of the Communications Act, harm competition, or otherwise break the law.⁶ In order to find that a merger is in the public interest, the Commission must “be convinced that it will enhance competition.”⁷ In its review, the Commission must also analyze “whether the merger will affirmatively benefit what it deems underserved groups.”⁸ The Applicants must also demonstrate that the transaction will result in positive public interest benefits, not merely attempt to rebut claims of harms to the public interest.

³ 47 U.S.C. § 310(d).

⁴ *Applications of Comcast Corporation, General Electric Company and NBC Universal or Consent to Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion & Order, 26 FCC Rcd 4238 para. 23 (2011) (“*Comcast-NBCU Order*”).

⁵ Jon Sallet, FCC Transaction Review: Competition and the Public Interest, FCC Blog (Aug. 12, 2014), <http://www.fcc.gov/blog/fcc-transaction-review-competition-and-public-interest>.

⁶ See *Comcast-NBCU Order*, 26 FCC Rcd at 4247 para. 22 (explaining that the Commission “must assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission’s Rules.”).

⁷ See *Applications of NYNEX and Bell Atlantic for Consent to Transfer Control*, Memorandum Opinion & Order, 12 FCC Rcd 19985 para. 2 (1997).

⁸ Rachel E. Barkow and Peter W. Huber, *A Tale of Two Agencies: A Comparative Analysis of FCC and DOJ Review of Telecommunications Mergers*, University of Chicago Legal Forum, Iss. 1, Article 4 at 47 (2000).

Based on their initial application, the Applicants have not met this burden. The proposed merger of the Applicants would undermine the Commission’s goals of promoting localism and viewpoint diversity. Neither the four pages outlining vague putative public interest benefits⁹ nor Apollo’s corporate status as a private equity firm suggest any commitment to localism. Because the Applicants fail to meet their burden of proof by making no effort to address these public interest harms the transaction should be rejected.

III. THE PROPOSED MERGER WOULD HARM BROADCAST LOCALISM AND VIEWPOINT DIVERSITY

In determining whether a transaction is in the public interest, the Commission must take into consideration its Congressional mandate to “promote ... diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity” as defined in Section 257(b) of the Communications Act.¹⁰ The Commission has long-established that broadcasters must serve the needs and interests of the communities to which they are licensed.¹¹ Today, the Commission recognizes that local television ownership rules are “necessary to promote competition and ... promote viewpoint diversity by helping to ensure the presence of independently owned broadcast television stations in local markets and ... incentivizes television stations to select programming responsive to the interests and needs of the local community.”¹² These rules and the Commission’s mandate to

⁹ Comprehensive Exhibit, at 3-8. The Applicants repeatedly list the same four bullet points outlining their public interest benefits.

¹⁰ 47 U.S.C. § 257(b).

¹¹ See FCC, Broadcasting and Localism: FCC Consumer Facts, https://transition.fcc.gov/localism/Localism_Fact_Sheet.pdf.

¹² See 2014 *Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, et al.*, Second Report and Order, MB Docket Nos. 14-50, *et al.* 31 FCC Rcd 9864 para. 17 (2016).

promote broadcast localism and viewpoint diversity exist because programming continues to remain a critical source of news and local information for communities.¹³

The Applicants have not demonstrated the transaction would advance the Commission's goals of localism and viewpoint diversity. In acquiring both NBI and Cox, the Applicants make the same assertions with respect to the actions Terrier would take to advance localism and viewpoint diversity. However, these promises are not only vague but are likely to reduce rather than the enhance amount of local news and diverse viewpoints in the relevant markets. Further, Apollo's corporate structure as a private equity firm suggests it has no commitment to localism or diversity. These harms would be magnified in the Dayton DMA, which is already highly consolidated.

A. The Applicants Have Not Demonstrated the Transaction Would Advance Localism and Viewpoint Diversity.

The Applicants' touted public interest benefits to advancing localism and viewpoint diversity are vague and unlikely to advance the Commission's goals of localism and viewpoint diversity. First, the Applicants claim Terrier plans to "devote additional capital for the creation of local content, including local news, and for infrastructure needed for innovative broadcasting."¹⁴ However, the Applicants do not offer any detail to what investments Terrier will make in each market and how much of its capital it will invest. The news and information needs of communities vary from market to market based on several factors such as demographic data, voter turnout, and broadband adoption rates.¹⁵ Indeed, a recent study by Pew Research Center

¹³ See Comments of The Leadership Conference on Civil and Human Rights, MB Docket NO. 18-349, at 5-8 (filed April 29, 2019).

¹⁴ Amended Comprehensive Exhibit at 5, 6-7.

¹⁵ See *For Local News, Americans Embrace Digital but Still Want Strong Community Connection*, Pew Research Center (March 2019) at 60-63, <https://www.journalism.org/wp->

found communities have distinct attitudes and behaviors on local news based on individual local areas.¹⁶ The Applicants make no acknowledgements of the distinct markets where Cox and NBI operate broadcast stations let alone provide specific information to how they would invest capital in each market. Second, the Applicants assert they will make stations' compelling local content available in multiple markets.¹⁷ However, this defeats the purpose of localism – to provide programming based on the needs and interests of individual communities. The amount of local news produced by a station is irrelevant if it is not locally-originated and catered towards that particular community. Third, the Applicants tout they will make Cox's Washington News Bureau available to all stations as a public interest benefit of the transaction.¹⁸ Again, this does not enhance programming at the local level and the transaction is not necessary to achieve this. In sum, the Applicants public interest benefits do not demonstrate how the transaction would advance localism and viewpoint diversity. Instead, the transaction will likely lead to communities seeing the same stories and voices across multiple markets.

Apollo's corporate status as a private equity firm invites skepticism that its entry local broadcasting would benefit localism and viewpoint diversity. Since 2004, more than a third of the nation's newspapers have changed ownership many of which have been sold to private equity firms.¹⁹ These firms typically implement cost cutting measures such as reporter layoffs, frozen wages, and consolidated newsroom functions.²⁰ Profits generated from cost cutting are not

content/uploads/sites/8/2019/03/PJ_2019.03.26_Local-News_FINAL.pdf (“2019 Pew Local News Study”).

¹⁶ *See id.* at 50-59.

¹⁷ Amended Comprehensive Exhibit at 5, 7.

¹⁸ *Id.* at 7.

¹⁹ *See The Rise of A New Media Baron and the Emerging Threat of News Deserts*, UNC School of Media and Journalism (2016), <http://newspaperownership.com/executive-summary/>.

²⁰ *See id.*

returned into improving the newspaper but rather to pay off loans, manage fees and shareholder dividends.²¹ As a result, the quality of news and information newspapers produce significantly diminishes under the ownership of a private equity firm. The Denver Post's recent rebellion against its private equity owner, which it described as 'vulture capitalists' is a prime example of how this business model does not meet the news and information needs of communities.²² Similarly, Gannet just rejected a bid by Digital First.²³ Further, this business model is harmful for the broadcast market where the private equity firms can implement cost cutting practices that gut newsrooms in an effort to generate high profits and sell stations back a few years later.²⁴ The unregulated private equity market also means these firms do not have to explain their methods for making profits or report to shareholders on regular conference calls.²⁵ These practices undermine the Commission's goals of localism and viewpoint diversity.

Apollo has also made its intentions clear that it seeks to become a national player in the broadcast market.²⁶ If this transaction is approved Apollo will become the seventh-largest owner of local television stations in the nation.²⁷ If Apollo is able to acquire more stations to rival broadcast conglomerates such as Sinclair and Nexstar, it would further reduce localism and

²¹ *See id.*

²² *See Editorial: As vultures circle, The Denver Post must be saved*, Denver Post (April 6, 2018), <https://www.denverpost.com/2018/04/06/as-vultures-circle-the-denver-post-must-be-saved/>.

²³ Nathan Bomey, "MNG/Digital First Media launches proxy fight for seats on USA TODAY owner Gannett's board," USA Today, Feb. 7, 2019, <https://www.usatoday.com/story/money/2019/02/07/gannett-mng-enterprises-digital-first-media-proxy-fight/2805259002/>.

²⁴ Robert Marich, *Private Equity: Buying in to Cash Out*, Broadcasting and Cable (March 16, 2018), <https://www.broadcastingcable.com/news/private-equity-buying-cash-out-85060>.

²⁵ *See id.*

²⁶ William D. Cohan, "Television is What Gets Senators Elected": Private-Equity Mogul Leon Black is Building a Local TV Empire to Rival Sinclair and Fox, Vanity Fair (April 15, 2019), <https://www.vanityfair.com/news/2019/04/leon-black-is-building-a-local-tv-empire-to-rival-sinclair-and-fox?verso=true>.

²⁷ *See id.*

viewpoint diversity in the broadcast market. Apollo would also gain leverage to raise retransmission fees, which would be passed on to consumers, and advertising fees, which would force local businesses and other advertisers to pay higher prices.

B. The Transaction Would Harm Localism and Viewpoint Diversity in the Dayton Market.

The transaction would specifically harm localism and viewpoint diversity in the Dayton DMA. Cox currently owns the Dayton Daily News, WHIO-TV, and four radio stations in the Dayton DMA. Throughout the course of its ownership, Cox has brought the newspaper, television station, and radio stations under one roof. This consolidation has led to reporter layoffs and less robust coverage of local news.²⁸ People in the Dayton community say they know more about what is going on in Akron and Toledo than they do in Dayton.²⁹ If the transaction is approved, the harms to localism and viewpoint diversity would be magnified in Dayton given the already high level of consolidation. Even worse, Apollo as a replacement for a company with over a century of news-making in the Dayton market does not bode well for the people in that market.

²⁸ See Daley Declaration.

²⁹ See *id.*

IV. CONCLUSION

For the foregoing reasons, Common Cause, Common Cause Ohio, and United Church of Christ, OC Inc., respectfully request that the Commission deny the Applicants' proposed transaction.

Respectfully submitted,

/s Yosef Getachew
Common Cause
805 15th St NW
Washington DC 20005

May 10, 2019

DECLARATION

Common Cause, Common Cause Ohio, and United Church of Christ OC, Inc., Petition to Deny was prepared using facts of which I have personal knowledge or upon information provided to me. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my information, knowledge, and belief.

Executed May 10, 2019

/s Yosef Getachew

Yosef Getachew
Common Cause

CERTIFICATE OF SERVICE

I, Yosef Getachew, hereby certify that on the 10th day of May, 2019, I caused a true and correct copy of the foregoing Petition to Deny via email to the following:

Michael D. Basile
Cooley LLP
1299 Pennsylvania Ave., NW
Suite 700
Washington, D.C. 20004
mdbasile@cooley.com
Counsel for Terrier Media Buyer Inc.

Dennis P. Corbett
Telecommunications Law Professionals PLLC
1025 Connecticut Ave., NW
Suite 1011
Washington, D.C. 20036
GMasters@wileyrein.com
Counsel for Northwest Broadcasting, Inc.

Jennifer A. Johnson
Covington & Burling LLP
One City Center
850 Tenth Street, NW
Washington, D.C. 20001
Jjohnson@cov.com
Counsel for Cox Enterprises Inc.

David Brown
Video Division
Media Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554
David.Brown@fcc.gov

Jeremy Miller
Video Division
Media Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554
Jeremy.Miller@fcc.gov

Chris Robbins
Video Division
Media Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554
Chris.Robbins@fcc.gov

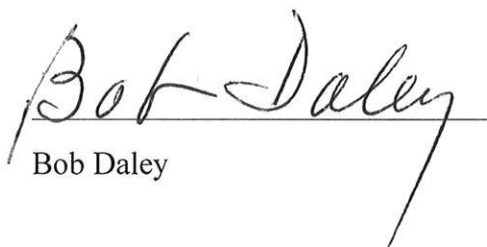
Jim Bird
Transaction Team
Office of General Counsel
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554
Jim.Bird@fcc.gov

/s Yosef Getachew
Yosef Getachew

DECLARATION OF BOB DALEY

1. I, Bob Daley, am a member of Common Cause Ohio.
2. I reside at 8433 Moundview Circle Dayton OH 45458. My residence is located within the Dayton Designated Market Area (DMA).
3. I worked as a political reporter for the Journal Herald from 1957 – 1963 and again from 1965 – 1968. In 1969, I worked at the competing newspaper, the Dayton Daily News, as a public affairs reporter.
4. When I joined the Journal Herald in the fall of 1957, I began covering suburban governments, reported stories on Dayton city hall and spent several years covering the county courthouse. During this period, there were two daily newspapers (both with their own buildings and printing presses), three TV stations, and several radio stations. Between 1955-1957, Cox bought the Journal Herald and brought both newspapers under one roof and with a single press. The Dayton Daily News was on the third floor, the Journal Herald was on the fifth floor and the composing room was on the fourth floor. There was considerable competition between the two newspapers and the three TV stations. The Cox-owned TV station, WHIO-TV, the largest of the three, was housed in a separate facility.
5. About 20 years ago, Cox closed the Journal Herald. The Dayton Daily News became the only local newspaper in the community. Around that time, the Cox Ohio Media Group was formed. The company subsequently renovated a former NCR manufacturing building and brought the Dayton Daily News, WHIO-TV and the radio stations under one roof. With a newspaper, TV station and radio outlets, the Cox Ohio Media Group claims it is a unique platform.
6. The media consolidation in Dayton has led to a decline in the diversity of news coverage. There has been a reduction in coverage of local news and a reliance on wire stories from other Ohio cities. People in the Dayton community say they know more about what is going on in Akron and Toledo than they do in Dayton. There has been a significant reduction in staff through buyouts and layoffs. There is little institutional memory at the newspaper.
7. I read the Dayton Daily News and watch local news on television to learn about local city business and the political decisions being made in our city halls and our Statehouse; investigative stories on what is going on within our civic institutions and the potential corruption that is afflicting them; election coverage; and local emergencies which citizens should be aware of.

8. I and viewers and readers like me, will be harmed by Apollo's acquisition of Cox-owned WHIO-TV and the Dayton Daily News because it will reduce the broadcaster's attention to the local needs of the Dayton area. Hedge funds across the country have bought newspapers, reduced the staff and, in some cases, sold the real estate. As a private equity firm, Apollo will find ways to maximize its profits by implementing similar tactics. The Dayton Daily News has already been reduced considerably over the years, and further reduction of public affairs coverage would be harmful. For example, within the last 10 days federal officials indicted a former city commissioner now a senior officer at a downtown bank, a former state representative, a city of Dayton employee and a businessman for bribes in the handling of contracts for demolition. There has been a lack of investigative reporting on this story, which significantly affects the Dayton community.
9. I believe Apollo's presence in Dayton would make local news coverage less responsive to my community's needs. I believe this would significantly reduce the quality and quantity of local news in my area.
10. This Declaration has been prepared in support of the foregoing Petition to Deny.
11. This statement is true to my personal knowledge and is made under penalty of perjury of the laws of the United States of America.


Bob Daley

May 10, 2019