

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Sinclair Broadcast Group, Inc.)
and Subsidiary Licensees of)
)
WJLA-TV, Washington, DC)
WBFF(TV), Baltimore, MD)
WSET-TV, Lynchburg, VA)
WTVZ-TV, Norfolk, VA)

**SINCLAIR BROADCAST GROUP, INC.’S OPPOSITION TO
ACA PETITION TO REQUIRE FILING OF EARLY RENEWAL APPLICATIONS**

Sinclair Broadcast Group, Inc. (“Sinclair”), through counsel, hereby opposes the American Cable Association’s (“ACA”) Petition to Require Filing of Early Renewal Applications filed with the Commission on November 26, 2018 (the “Petition”) with respect to the four above-referenced television stations (the “Stations”).¹ ACA lacks standing to seek such an extraordinary measure and, in any event, fails to allege any substantial and material question of fact that would constitute a “serious” or “compelling” reason to require Sinclair’s D.C., Maryland, and Virginia licensee subsidiaries to file renewal applications for the Stations before they would otherwise be due on June 1, 2020. The Petition should accordingly be dismissed or denied.

¹ As ACA acknowledges, the Commission has historically treated petitions seeking to require early renewal application filing as “informal requests for Commission action” under Section 1.41 of the Commission’s Rules, to which the filing deadlines set forth in Section 1.45 of the Rules for formal petitions to deny do not apply. See Petition at 1 n.1 (citing *Leflore Broadcasting Company, Inc.*, 36 FCC 2d 101, ¶ 1 n.2 (1972) (“*Leflore Broadcasting*”). For administrative convenience and to mitigate any confusion that may otherwise accompany such an open-ended response timeframe, Sinclair hereby submits its response consistent with the deadlines set forth in Section 1.45, as computed by Section 1.4(h).

I. STANDARD OF REVIEW

Section 73.3539(c) of the Commission’s Rules permits the Commission to require an early renewal application filing only where the renewal application is “essential to the proper conduct of a hearing or investigation[.]”² Third parties do not have a right under either the Commission’s Rules or the Communications Act to invoke the “extraordinary, discretionary action of calling for the early filing of a renewal application.”³ The Commission may, however, accept such filings as informal requests for Commission action under Section 1.41.

Although such filings are treated as “informal requests,” the Commission rightly imposes on filers the same “high burden of pleading” required of formal petitions to deny a license renewal application.⁴ The requester must allege a “substantial and material question of fact” regarding whether the station has served the “public interest, convenience, and necessity” and must support its allegations with “affidavits from persons with personal knowledge.”⁵ The Commission will grant a request calling for early renewal application filing “only for ‘serious’ or ‘compelling reasons’” and appropriately has done so on strikingly few occasions.⁶ Indeed, ACA has identified only three occasions over the past 67 years (and none within the past 45 years) where the Commission has initiated early renewal proceedings, only one of which was at the

² 47 C.F.R. § 73.3539(c).

³ See, e.g., *Greater Portland Broadcasting Corporation*, 3 FCC Rcd 1953, 1954 (1988) (“*Greater Portland*”) (rejecting request to require early renewal application filing).

⁴ *Id.* at 1954.

⁵ See *id.* (incorporating 47 USC § 309(d) standard for formal petitions to deny applications filed pursuant to 47 USC § 308); see also *Heritage-Wisconsin Broadcasting Corp.* 8 FCC Rcd 5607, 5613 (1993) (denying request to require early renewals where petitioners “failed to show compelling reasons and to raise a substantial and material question of fact.”).

⁶ *Greater Portland* at 1954; see also *Sioux Empire Broadcasting Co.*, 9 FCC2d 683, 684 (1967).

behest of a third party, and each of which is easily distinguishable from the present circumstances.⁷

II. THE PETITION SHOULD BE DISMISSED BECAUSE ACA LACKS STANDING

A petitioner calling for early license renewal application filings must have standing as a party in interest to object to such renewals in the ordinary course.⁸ To establish party-in-interest standing to challenge a license renewal application, “a petitioner must allege facts sufficient to demonstrate that grant of the application would cause it to suffer a direct injury” that is both “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.”⁹ The petitioner must also demonstrate that the alleged injury can be traced to the challenged action and that such injury would be redressed by the relief sought.¹⁰ Such factual allegations must be supported by an affidavit of a person with personal knowledge of the facts.¹¹ For an organization to establish standing, it must satisfy these requirements in its own right or demonstrate that one of more of its members meets these standards.¹² ACA fails to satisfy any of these requirements and therefore lacks standing.

ACA does not allege any facts that demonstrate grant of the Stations’ renewal applications would cause it or its members to suffer direct injury. The Petition claims that there

⁷ Petition at 4 n.9 (citing *Narragansett Broadcasting*, 15 F.C.C. 887 (1951), *Herbert Michaels*, 44 F.C.C. 1346 (1958), and *Leflore Broadcasting* (1972)).

⁸ Petition at 9 (citing *Greater Portland* at 3).

⁹ See, e.g., *Applications of AT&T Mobility Spectrum LLC*, Memorandum Opinion and Order, 27 FCC Rcd 16459, 16465 ¶ 16 (2012); *Wireless Co., L.P.*, Order, 10 FCC Rcd 13233, 13235 ¶ 7 (WTB 1995), citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972); see also *New World Radio, Inc. v. FCC*, 294 F.3d 164 (D.C. Cir. 2002).

¹⁰ *Id.*

¹¹ 47 U.S.C. § 309(d)(1), 47 C.F.R. § 1.939(d).

¹² See, e.g., *Friends of the Earth, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 23622, 23622-23623 ¶¶ 2-3 (2003).

are ACA members located in the Stations' markets, and (separately) that Sinclair "charges many ACA members the highest retransmission consent fees they pay to any broadcaster," but does not claim that ACA members in the Stations' markets are among those affected. Nor does the Petition identify a cognizable injury: the mere fact that one station may negotiate a higher fee than another does not mean a cable operator has suffered a concrete and particularized harm, let alone one that is traceable to the licensee's ownership of the station or that can be redressed by the Commission in a license proceeding.¹³ The Commission has repeatedly declined to intervene in private contractual negotiations to police retransmission consent fee rates, and instead has adopted rules requiring good faith negotiation.¹⁴ ACA has not set forth any facts to allege a violation of these rules; and even if it had, a license renewal proceeding would not be the appropriate forum to resolve such a dispute.¹⁵ Moreover, even if ACA had identified a relevant

¹³ 47 C.F.R. § 7.65 (stating that "it shall not be a failure to negotiate in good faith" for a broadcaster or MVPD to enter into retransmission consent agreements containing different price terms with different stations or MVPDs provided that such terms are based on competitive market considerations.). Mr. Lieberman claims that some ACA members "believe" Sinclair's ability to "charge higher fees [is] in part because of arrangements it has with putatively independent stations." Lieberman Decl. ¶ 3. This "belief" is not only unsubstantiated, it also ignores that the Commission's rules against joint negotiation among non-commonly owned stations within a market that would prohibit any such alleged advantage.

¹⁴ See, e.g., 47 C.F.R. § 7.65; *Implementation of the Satellite Home Viewer Improvement Act of 1999: Retransmission Consent Issues*, First Report and Order, 15 FCC Rcd 5445 (2000), *recon. granted in part*, 16 FCC Rcd 15599 (2001); *Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004: Reciprocal Bargaining Obligation*, Report and Order, 20 FCC Rcd 10339 (2005); *Implementation of Sections 101, 103 and 105 of the STELA Reauthorization Act of 2014*, Order, 30 FCC Rcd 2380 (2015); see also *Media General/Nexstar*, 32 FCC Rcd at 197 ¶ 35 (rejecting MVPDs' retransmission consent related claims because petitioners failed "to raise substantial and material questions of fact as to why the public interest would not be served by grant of the applications because petitions failed to provide any basis for the assertion that the merged entity would have 'market power' vis-à-vis MVPDs with national or at least broad coverage of their own.").

¹⁵ A broadcaster or MVPD that believes itself to be aggrieved under the good faith rules may file a complaint in accordance with Section 76.7 of the Commission's rules. See 47 CFR §§ 76.65(c), 76.7.

and cognizable harm (which it has not), the claim that *some* ACA members *might* pay lower retransmission consent fees if Sinclair's stations were owned by someone else is entirely speculative.

Critically, the declaration attached to the Petition purporting to support ACA's standing is not, and does not claim to be, based on the personal knowledge of the declarant. Rather, Mr. Lieberman declares only that some ACA members have told him that Sinclair charges higher retransmission consent fees than some similarly situated stations. Mr. Lieberman's declaration that it is "true and correct" that some unidentified ACA members made these statements says nothing about whether the statements themselves are "true and correct." The second-hand statements proffered in Mr. Lieberman's declaration therefore fail to satisfy the Commission's most basic pleading standards.

In sum, because ACA has not demonstrated that it would have standing to object to the Stations' renewal applications in the ordinary course, it does not have standing to request early license renewal filings. The Petition can—and should be—dismissed on this basis alone.

III. ACA'S PETITION FALLS SHORT OF THE COMMISSION'S "HIGH BURDEN OF PLEADING"

Even if ACA had established standing, which it did not, ACA's request should be denied because the Petition fails to allege any substantial or material question of fact regarding whether the Stations have served the public interest, fails to identify any serious or compelling reason to require early renewal application filings, and (as discussed above), is not supported by an affidavit made with personal knowledge. ACA's Petition does not allege any facts with respect to the Stations, but instead attempts to use the Commission's decision to designate for administrative hearing certain unrelated applications filed in connection with Sinclair's proposal

to acquire Tribune Media Company as a basis to initiate early renewal proceedings.¹⁶ Rather than raise any new allegations, ACA contends only that the Commission has already determined in the HDO that there are substantial and material questions of fact as to whether Sinclair engaged in misrepresentation and/or lack of candor in its merger applications.¹⁷

But ACA ignores that the Commission has not determined that the allegations underlying the HDO raise substantial and material questions of fact concerning Sinclair’s fitness to hold its current licenses or to acquire licenses in the future.¹⁸ The Commission chose to designate for hearing only Sinclair’s pending applications to acquire Tribune’s licenses (and not any of Sinclair’s current licenses). The Commission noted in the HDO that its policy is to “limit assignments, transfers, and new acquisitions *only where there has been a determination at the time of designation that allegations warranting the designation of the original facility also bear on the operation of other facilities*”¹⁹ and, importantly, limited this determination to hold in abeyance only applications related to the proposed Sinclair-Tribune transaction.²⁰

¹⁶ See *Applications of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee) for Transfer of Control of Tribune Media Company and Certain Subsidiaries, WDCW(TV) et al. and for Assignment of Certain Licenses from Tribune Media Company and Certain Subsidiaries*, MB Docket No. 17-179, FCC 18-100 (rel. July 19, 2018) (“HDO”).

¹⁷ Petition at 6. The Benton Foundation, which filed a letter in support of ACA’s Petition, similarly makes this and other inaccurate assertions. See Benton Foundation Letter to the Commission dated November 27, 2018 (falsely claiming that the Commission “has already ruled that there are substantial and material questions as to whether [Sinclair] is qualified to be a Commission broadcast licensee” despite the fact that the Commission made no such ruling regarding Sinclair’s qualifications to be a licensee.).

¹⁸ HDO at 11 n.75.

¹⁹ *Id.* (emphasis added).

²⁰ *Id.* at 2. While ACA is correct that the Commission *can* find, in some cases, that misrepresentation and lack of candor have bearing on a licensee’s basic character qualifications, the same can be said of “any violation of any provision of the [Communications] Act, or of [the FCC’s] Rules or policies, as possibly predictive of future conduct, and thus, possibly raising concerns over the licensee’s future truthfulness and reliability, without further differentiation.”

Thus, contrary to ACA's repeated mischaracterization of the HDO, the Commission did not ask the administrative law judge to opine on "Sinclair's basic character qualifications under Section 308(b) of the Communications Act to hold *any* broadcast licenses."²¹ Because Sinclair's fitness to hold its current licenses, including the licenses of the Stations, is not at issue in the pending hearing and because ACA presents no new facts in its Petition to support any such allegations, no harm results from reviewing the Station's license renewals in the ordinary course. Further, ACA is wrong to suggest that a license renewal proceeding is the only or earliest opportunity for the Commission to review Sinclair's qualifications to acquire new licenses. Because the Commission can, for example, review any licensee's qualifications in applications to sell or acquire licenses in the ordinary course, there is no reason to grant the Petition's unusual request to manufacture an earlier proceeding.

The cases cited by ACA do not support its request for early renewal. The *Leflore Broadcasting* decision that ACA relies on is easily distinguishable from the case here. When the FCC issued that decision in 1972, renewal applications required an applicant to pledge that its station would broadcast specific amounts and categories of non-entertainment programming and to maintain a specific format.²² Leflore claimed in its renewal application that its AM radio station, unlike any of the community's three other radio stations (including another FM station under common ownership with Leflore), would air programming designed to serve Greenwood,

Character Policy Statement, 102 FCC2d 1179 at 1209-10 (1986). Of course, not every allegation of misrepresentation or violation of the Act or rules constitutes a "compelling reason" to require early renewal application filings.

²¹ Petition at 5.

²² See *WQED Pittsburgh (Assignor) and Cornerstone Television Inc. (Assignee)*, 15 FCC Rcd 202, 207 n.14 (1999) (distinguishing *Leflore Broadcasting* and rejecting petitioner's request to institute early renewal proceeding), *partially vacated on reconsideration on other grounds*, *In re WQED Pittsburgh*, 15 FCC Rcd 2534 (2000).

Mississippi's Black majority.²³ Shortly after the FCC granted the renewal application, Leflore changed the station's format from what had been promised and subsequently began duplicating on the station the programming of its commonly-owned FM station.²⁴ Rather than initiate a license revocation proceeding and order other relief that petitioners requested, the Commission directed Leflore to file its AM station's license renewal application in November 1972 rather than June 1973 so that the Commission could determine whether Leflore carried out its programming representations in good faith and whether Leflore made any misrepresentations to the Commission in its renewal application or subsequent written statements regarding the station's programming.²⁵

Notably, unlike the request at issue in ACA's Petition, the FCC's direction to file an early renewal application was limited to the station that was the subject of the allegations. Despite the allegations of misrepresentation concerning Leflore's AM station, the Commission did not initiate an early renewal proceeding for the commonly-owned FM station. Here, no substantial and material questions of fact have been raised (in either the HDO or ACA's Petition) concerning the operation of the Stations and, as such, there is no reason to require them to file renewal applications early.

Further, unlike *Leflore Broadcasting*, the Stations' licenses are not on the cusp of expiration such that an early renewal proceeding would serve administrative efficiency. Nor has administrative convenience ever on its own been deemed a "serious or compelling reason" for the FCC to require early license renewal application filings. ACA does not cite any compelling

²³ *Leflore Broadcasting* at 102.

²⁴ *Id.*

²⁵ *Id.* at 104.

reasons to change course here.²⁶ Rather, the Petition is simply (another) transparent attempt to engage the Commission in aiding its retransmission consent negotiations.

ACA identifies only two other instances where the Commission has directed a licensee to file an early renewal application—and each is even less relevant than *Leflore Broadcasting*.²⁷ Neither case stemmed from a request for revocation or early renewal filings. *Narragansett Broadcasting* shares no factual or procedural similarities with the allegations raised in the Petition, and instead simply explains the FCC’s comparative hearing policy that

where an application is filed for consent to transfer control of a licensee which had secured its permit in a comparative proceeding where the basis for preferring such application related to its qualifications and where an application is filed for the same facilities by one of the parties to the original proceeding, the [transfer of control] applicant . . . should be required to file his application for renewal of license at once, if such application is not already on file, in order that a comparative hearing can be held to determine which applicant is best qualified to own and operate the station in the public interest.²⁸

In the other case, *Herbert Michaels*, the Commission granted an application for a new broadcast license and soon after received a petition for reconsideration of that grant alleging that the economic impact of an additional station in the market on the existing broadcast stations would be detrimental to the public interest.²⁹ There, the Commission directed *the petitioners* to file early renewal applications so that review of their qualifications could be consolidated for hearing with the application subject to reconsideration and, if necessary to do so, the FCC could

²⁶ See Petition at 8-9. ACA purports to have Sinclair’s best interests in mind, asking the Commission to grant its Petition to give “Sinclair an opportunity to clear its name and move on with its business, such as by (for example) seeking to purchase additional stations.” *Id.* at 8. But, as stated in the HDO, Sinclair is free to file applications to sell or acquire stations, and the Commission can—and should—evaluate those applications in the ordinary course. See HDO at 11 n.75.

²⁷ Petition at 4 n.9 (citing *Narragansett Broadcasting*, 15 F.C.C. 887 (1951), *Herbert Michaels*, 44 F.C.C. 1346 (1958)).

²⁸ *Narragansett Broadcasting* at 889.

²⁹ *Herbert Michaels* at 1347.

determine on a comparative basis which applicants were best qualified to operate the limited broadcast services that the market could support.³⁰ Given that these comparative hearing policies have no bearing on Sinclair's licenses, each case is entirely inapposite.

Because the Petition has (i) raised no substantial and material questions of fact bearing on the operation of the four above-referenced Stations and (ii) failed to demonstrate that early renewals are "essential to the proper conduct" of the hearing or any Commission investigation, the ACA has failed to identify any serious or compelling reasons to justify early renewal application filings for the Stations, and the Petition should be denied.

IV. CONCLUSION

For the foregoing reasons, Sinclair opposes the Petition and respectfully requests that it be dismissed or denied in full.

Respectfully submitted,

/s/ Miles S. Mason

Miles S. Mason

Jessica T. Nyman

Pillsbury Winthrop Shaw Pittman LLP

1200 Seventeenth Street, NW

Washington, D.C. 20036

(202) 663-8000

Counsel to Sinclair Broadcast Group, Inc.

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³⁰ *Id.*

CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2018, true and correct copies of the foregoing Opposition were sent via hand-delivery and email to the following:

David Roberts
Federal Communications Commission
Video Division, Media Bureau
445 12th Street, SW
Washington, DC 20554
David.Roberts@fcc.gov

David Brown
Federal Communications Commission
Video Division, Media Bureau
445 12th Street, SW
Washington, DC 20554
David.Brown@fcc.gov

Jeremy Miller
Federal Communications Commission
Video Division, Media Bureau
445 12th Street, SW
Washington, DC 20554
Jeremy.Miller@fcc.gov

Michael D. Nilsson
Mark D. Davis
Harris, Wiltshire & Grannis LLP
1919 M. Street, NW
The Eighth Floor
Washington, DC 20036
MNilsson@hwglaw.com
MDavis@hwglaw.com

/s/ Jessica T. Nyman
Jessica T. Nyman