

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

Sinclair Broadcast Group, Inc.

Cunningham Broadcasting Corporation

Deerfield, Media (Baltimore), Inc.

Licensees of Digital Television Stations

WBFF-DT Baltimore, MD

WNUV-DT Baltimore, MD

WUTB-DT Baltimore, MD

To: The Commission

**PETITION TO TERMINATE MEDIA BUREAU INVESTIGATION AND
REQUIRE EARLY FILING OF RENEWAL APPLICATIONS**

Ihor Gawdiak, by his attorneys, hereby files this Petition to Terminate Media Bureau Investigation and Require Early Filing of Renewal Applications. Mr. Gawdiak has standing to file this Petition. He is a resident of Columbia, Maryland and a regular viewer of the above captioned television stations. As part of the license renewal process, it is his intention to file petitions to deny the licenses of WBFF-DT, WNUV-DT and WUTB-DT.¹

On June 25, 2018, the Chief, Video Division, Media Bureau, issued a Letter of Inquiry (Media Bureau Letter) to Sinclair Broadcast Group, Inc. (Sinclair) for the purpose of

¹ See attached Declaration of Ihor Gawdiak.

*He has video standing, but
for that part says "substantial
and material question" plus
serious & compelling - where is
that here?*

Accepted/Filed

JUL 22 2019

Federal Communications Commission
Office of the Secretary

investigating issues raised in the *Hearing Designation Order*.² In the *HDO* the Commission stated: “we designate for hearing the above-captioned applications because there exists a substantial and material question of fact as to 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.” *HDO* para.

17. As discussed herein, these are issues that should be addressed as part of Sinclair’s license renewal application process and not in a closed-door proceeding that bars participation by parties in interest and conceals information from the public. Such a procedure violates Petitioner’s right to participate in a full hearing on the matters raised in the *HDO*. Accordingly, the Commission must order the Media Bureau to discontinue its investigation of Sinclair. At the same time requiring Sinclair and its affiliated entities to file early renewal applications will enable the filing of petitions to deny and the timely resolution of the character issues raised in the *HDO* and deferred when Sinclair and Tribune withdrew its applications.

Background

Sinclair has a history of operating stations it cannot legally own. It does so by entering into agreements with entities with close business or family ties to the Sinclair family. These agreements permit Sinclair to control all aspects of the day-to-day operations of the stations, effectively giving Sinclair *de facto* control over the licensees, including the power to control daily operations; make policy decisions; hire, fire and control personnel; pay financial obligations, including operating expenses; and receive

² *Applications of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee) for Transfer of Control of Tribune Media Company and Certain Subsidiaries, WDCD(TV) et al., Hearing Designation Order, 33 FCC Rcd 6830, 6840, para. 29 (2018) (HDO).*

the profits from the operations of the stations.³ Deerfield Media (Baltimore), Inc. (Deerfield) and Cunningham Broadcasting Corporation ("Cunningham") are two such "sidecar" entities. Sinclair's failed attempt to acquire Tribune's television assets is instructive as to the methods it uses to controls and operates its sidecar entities. As part of the merger, Sinclair proposed to sell two stations to Cunningham. As set forth in the *HDO*, at paras. 22-26, Sinclair and Cunningham have an ongoing relationship that goes back at least 20 years. In 1998, Sinclair and Cunningham (then known as Glencairn) sought to acquire certain television stations. In 2001, the Commission found that, with respect to the sale of the stations at issue, the record indicated that Sinclair had exercised *de facto* control over Glencairn in violation of Section 310(d) of the Communications Act and the Commission's rules.⁴ The Commission found that Glencairn had permitted Sinclair to dictate the terms and conditions of the deal, thus ceding control. The Commission did not set the matter for hearing, believing it had taken sufficient remedial steps to prevent further rule violations. The Commission noted that it would give "appropriate consideration" to any further evidence of control by Sinclair should it be provided in future proceedings.

Until 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 Michael Anderson, Cunningham's former banker, the sales price for the shares - \$ 400,000 - was far below market value, and the non-voting

³ See, *Ronald Brasher*, Decision, 19 FCC Rcd 18462, at 16331, para. 8 (citing *Intermountain Microwave*, 24 RR 983 (1963)).

⁴ 47 USC §310(d)

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.

In the Sinclair/Tribune transaction, Cunningham would have purchased the assets of two major market television stations, while at the same time entering into an option and Transition Services Agreement with Sinclair. Concerning this transaction the Commission in the *HDO* found: "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." Inter alia, the Commission designated issues to determine whether Sinclair is the real-party-in-interest behind the Cunningham applications and, if so, whether Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission. Sinclair is engaging in similar conduct in the Baltimore, Designated Market Area. It controls and operates three television stations licensed to the Baltimore DMA, WBFF, which it owns in its own name, and WNUV licensed to Cunningham, and WUTB licensed to Deerfield. The three stations share common counsel and as set forth in their ownership reports Cunningham and Deerfield have received financing from the same source, i.e. J.P. Morgan Chase Bank.⁵

⁵ See, Deerfield Ownership Report FCC Form 323, BOA-20151202AYK; Cunningham Owners Report Form 323, BOA-20151202BCV.

Argument

The basic duty of broadcast licensees is reflected in the license renewal provisions of the Communications Act.⁶ Section 309(k)(1) of the Act provides that the Commission shall grant a license renewal application if it finds, with respect to the applying station, that during the preceding license term: (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Act or the Rules; and (c) there have been no other violations by the licensee of the Act or the Rules which, taken together, would constitute a pattern of abuse. Section 309(k)(3) of the Act provides that if the Commission determines, after notice and opportunity for hearing, that the licensee has failed to meet the standard of Section 309(k)(1) and that no mitigating factors justify the imposition of lesser sanctions, the Commission shall issue an order denying the license renewal application for the station. In the *HDO* the Commission determined that there are “substantial and material” questions concerning Sinclair’s qualifications to remain a Commission licensee.⁷ The presiding Judge in terminating the hearing proceeding stated:

That is not to say that Sinclair’s alleged misconduct is nullified or excused by the cancellation of its proposed deal with Tribune. Certainly, the behavior of a multiple-station owner before the Commission “may be so fundamental to a licensee’s operation that it is relevant to its qualifications to hold any station license.” That broad inquiry, however, would be more appropriately considered in the context of a future proceeding in which Sinclair is seeking Commission approval, for example, involving an application for a license

⁶ 47 U.S.C. § 309(k).

⁷ See, *Policy Regarding Character Qualifications in Broad. Licensing Amendment of Rules of Broad. Practice & Procedure Relating to Written Responses to Comm’n Inquiries & the Making of Misrepresentations to the Comm’n by Permittees & Licensees*, 102 F.C.C.2d 1179, ¶¶ 60-61(1986). “[T]he trait of “truthfulness” is one of the two key elements of character necessary to operate a broadcast station in the public interest. The Commission is authorized to treat even the most insignificant misrepresentation as disqualifying.

assignment, transfer, or renewal. At that time, it may be determined that an examination of the misrepresentation and/or lack of candor allegations raised in this proceeding is warranted as part of a more general assessment of Sinclair's basic character qualifications to be a Commission licensee.⁸

Under Section 309(d) of the Act, "[i]f a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent [with the public interest, convenience, and necessity]," it must formally designate the application for a hearing in accordance with Section 309(e) of the Act,, which requires a "fully hearing" on the issues designated.

Rather than wait for each license term to expire or call for early applications for renewals of the licenses,⁹ which would allow parties in interest to file petitions to deny, and, if successful, participate in an auction for the licenses, the Media Bureau has initiated its own investigation. This investigation is a closed-door proceeding on Sinclair's qualifications to remain a licensee. Such a procedure, which bars public input and participation, is contrary to the letter and spirit of the Communications Act. See e.g. *New South Media Corp. v. FCC.*, 685 F.2d 708 (D.C. Cir. 1982). In *New South Media*, the Commission decided to hold a hearing that excluded competing parties. The court found that such a procedure was contrary to the full hearing requirement of Section 309(e). As demonstrated herein, Petitioner is a party-in-interest and has standing to file petitions to deny the renewal applications of Sinclair and its affiliated stations. This includes standing to participate in a hearing to adjudicate Sinclair's qualifications to remain a licensee. Any action taken by the Bureau in the course of its closed-door proceeding will prejudice Petitioner's rights to file petitions to deny, and to participate in the hearing. Such an outcome

⁸ Order, released March 5, 2019, p. 4 (footnotes omitted)

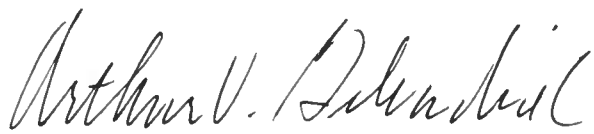
⁹ On November 26, 2018 the American Cable Association filed a Petition to Require the Filing of Early Renewal Applications. The Commission has not acted on this Petition.

would violate Petitioner's *Ashbacker* rights. *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327, 90 L. Ed. 108, 66 S. Ct. 148 (1945). For the Media Bureau to hold a closed-door proceeding and then reach a decision either through a Notice of Apparent Liability or through a Consent Decree would make Petitioner's right to participate in the renewal process "an empty thing." *Ashbacker*, 326 U.S. at 330.

Finally, whereas Petitioner is a party-in-interest, has filed this petition placing the Commission on notice, and is seeking to file petitions to deny the Sinclair, Cunningham and Deerfield's renewal applications, Petitioner is a party within the meaning of the Ex Parte rules. See, Section 1.1202(d) of the Rules. As such, any communications between Sinclair, Cunningham or Deerfield with the Media Bureau or the Commission concerning the designated issues, may transpire only with the knowledge of and participation by the Petitioner.

Accordingly, the Commission must order the Media Bureau to terminate its investigation and require Sinclair and its sidecar affiliated entities to file early renewal applications. This will preserve the rights of all parties-in-interest.

Respectfully Submitted,

By: 
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July 22, 2019

Declaration of Ihor Gawdiak

I, Ihor Gawdiak,, declare under penalty of perjury, that the following information is true and correct:

I live in Columbia, Maryland and I am a regular viewer of Baltimore area television stations including WBFF-DT, licensed to Sinclair Broadcast Group, Inc., WNUV-DT, licensed to Cunningham Broadcasting Corporation and WUTB-DT licensed to Deerfield Media (Baltimore), Inc. It is my intention to file petitions to deny the license renewals of these stations.

Executed this 19th day of July, 2019.



Ihor Gawdiak

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2019, a true and correct copy of the forgoing was caused to be served on the following via electronic mail, as indicated:

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