

MULTIPLE OWNERSHIP EXHIBIT

By this application, Sinclair Broadcast Group, Inc. (“Sinclair”) seeks Commission consent to the assignment of license of television broadcast station WRGB-TV, Dayton, Ohio from WRGB Licensee, LLC, a Delaware limited liability company controlled by Cunningham Broadcasting Corporation, to WRGB Licensee, LLC, a new Nevada limited liability company, which is indirectly controlled by Sinclair.¹ To the extent necessary, Sinclair seeks a waiver of Section 73.3555(b) of the Commission’s rules. Pursuant to Section 1.3 of the Commission’s rules, the Commission may waive any of its rules for good cause shown. 47 C.F.R. § 1.3. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972). As discussed below, good cause exists for a waiver of the television duopoly rule because the U.S. Court of Appeals for the D.C. Circuit’s decision in *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. 2002) (“*Sinclair v. FCC*”) has totally undermined the foundations of the rule.

The instant application is being filed at the present time for the following reasons. Sinclair owns Station WKEF(TV), Dayton, Ohio and seeks to acquire WRGB-TV, Dayton, Ohio, which it has been programming pursuant to a Local Marketing Agreement (“LMA”) since July 1, 1998. On August 6, 1999, the Commission released a Report and Order in *Review of the Commission’s Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903 (“*Local Ownership Order*”), *on recon.*, 16 FCC Rcd 1067, *Memorandum Opinion and Second Order on Reconsideration* (2001) (“*Reconsideration Order*”). The *Local Ownership Order* permitted a single entity to directly own, operate or control two television stations in the same DMA under

¹ The ownership structure of WRGB Licensee, LLC is illustrated in Exhibit 11 of the instant application.

two circumstances: (1) where the Grade B contours of the stations do not overlap, or (2) (i) at the time of filing of the application, at least one of the stations is not among the top four ranked stations in the market, based on the most recent all-day (9:00 a.m. – midnight) audience share as measured by Nielsen Media Research or a comparable ratings service, and (ii) at least eight independently owned and operating full-power commercial and non-commercial television stations will remain following the merger, (the “television duopoly rule”).

In the *Local Ownership Order*, the Commission stated that LMAs entered into after November 5, 1996 would have until August 6, 2001 to either come into compliance with the new rules or to terminate. In a companion proceeding issued simultaneously with the *Local Ownership Order*, the Commission stated that television LMAs would constitute attributable interests if they involved more than 15% of a station’s air time.² Thus, the WRGT-TV LMA became an attributable interest and, because it was entered into after November 5, 1996, it was subject to the August 6, 2001 divestiture date. However, Sinclair filed an appeal of the *Local Ownership Order* in the U.S. Court of Appeals for the D.C. Circuit and the Court granted a stay of the divestiture requirement. On April 2, 2002, the Court of Appeals remanded the television duopoly rule, finding that the Commission improperly excluded all media sources except television in defining “voices.”³ *Sinclair v. FCC*, supra.

In view of the fact that the present LMA between Sinclair and WRGT-TV is attributable but is in limbo, Sinclair submits that this is an appropriate time for the Commission to act on the instant application. Moreover, the programming of WRGT-TV pursuant to the LMA has helped

² *Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Report and Order, 14 FCC Rcd 12559 (1999), *on recon.*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 1097 (2001).

³ Sinclair’s Petition for Reconsideration or Rehearing En Banc is presently pending before the Court. That Petition argues that the television duopoly rule should be vacated. The Court imposed stay remains in place.

foster competition in the Dayton market, and this is the ideal time for the Commission to review the market situation and reach a determination concerning Sinclair's proposed acquisition of WRGB-TV. If the LMA terminates, the FCC will have less information on which to base a determination. Thus, Sinclair respectfully submits that this application is timely and should be processed without delay.

In light of the Court's remand of the television duopoly rule, the Commission must look at all media voices available in a market when reviewing a proposed television acquisition. The Court remanded the entire rule to the Commission for reconsideration. In addition to finding that the exclusion of non-broadcast voices from the television duopoly rule ran counter to the evidence before the Commission, the Court also suggested that "the Commission's choice of "eight" as the number of "voices" that must remain after a merger might be subject to independent challenge as arbitrary and capricious.⁴ In this connection, the number "four" in the "no two in the top four" portion of the duopoly rule is just as arbitrary as the number "eight" and also fails to consider non-television voices, such as daily newspapers, cable systems and radio stations which are relevant "voices." The Commission is obligated to forthwith give effect to the Court's decision. *See Cleveland v. Federal Power Comm'n*, 561 F.2d 344, 346 (D.C. Cir. 1977)(footnote omitted); *see also* 47 U.S. C. § 402(h) (providing that "it shall be the duty of the Commission... to forthwith give effect" to any judgment reversing an FCC order).

Sinclair submits that when alternative media sources are appropriately considered, as mandated by the *Sinclair v. FCC* decision, there is no plausible diversity rationale that can

⁴ The Court stated that "even if we were to reject Sinclair's assertion that the number eight was 'plucked out of the air,' in view of the rulemaking record, our resolution of Sinclair's challenge to the Commission's definition of 'voices' requires that the rule be remanded to the Commission. On remand, the Commission conceivably may determine to adjust not only the definition of 'voices' but also the numerical limit." *Sinclair v. FCC*, 284 F.3d at 162.

support the retention of the rule in its present form. Accordingly, Sinclair hereby presents a more rational and comprehensive analysis of the number of “voices” in the Dayton, Ohio market which takes into account additional broadcast and non-broadcast voices.

The data demonstrates that the Dayton market represents a vibrant marketplace of ideas that exhibits vigorous competition. The “Voices Study,” attached hereto as Exhibit A, shows that at least 33 independent media voices would continue to exist in the Dayton market after the consummation of the proposed assignment of WRG-TV.⁵ Specifically, those independent media voices account for six independently owned and operated full-power television stations, 43 radio stations, one daily newspaper, cable channels, various cable television and direct broadcast satellite systems, and the Internet. The proposed assignment will not change that number because Sinclair’s existing LMA is attributable. Moreover, the LMA has been in effect since July 1998.

Both individually and collectively, these various voices form a highly competitive and challenging market. For example, the CBS affiliate in Dayton, WHIO-TV, is owned by Cox Broadcasting, which also owns local cable channel MVC-UPN (“Miami Valley Channel”), which produces and broadcasts a 30 minute newscast every weeknight. As noted in a recent article by Broadcasting & Cable magazine, cable television networks are now garnering a significantly higher share of primetime viewership than all of the broadcast networks combined.⁶

⁵ The number 33 treats all cable channels as a single voice, which is a conservative approach inasmuch as there are numerous different owners of cable channels, and cable channels are important sources of news, information, and entertainment.

⁶ Allison Romano, “Cable KOs broadcast Nets in Viewership,” Broadcasting & Cable (July 3, 2002). In addition, according to the article, cable’s share of primetime viewership increased 12% from the same time last year, and broadcast’s share decreased by 11%.

As discussed above, the Sinclair decision calls into question the continued rationality of the top-four provision, as well as the eight voices test. The prohibition against such a top four station combination becomes even more unreasonable and indefensible in light of the fact that Sinclair's primary television competitors in the market are able to combine a television station and other media, such as a local cable station. Thus, despite the fact that WRGB-TV and WKEF are among the top four rated stations in the market, the combination of these stations will enable Sinclair to compete more effectively against the more powerful television stations in the market, thereby increasing competition in the market. Indeed, as demonstrated by the most recent all-day (9:00 a.m.– midnight) audience share, as measured by Nielsen Media Research, WRGB-TV and WKEF combined achieve a market share that is less than WHIO-TV, the CBS affiliate in the market.⁷ Furthermore, as mentioned above, WHIO-TV is owned by Cox Broadcasting, which also owns local cable channel MVC-UPN.

Pursuant to its existing LMA with WRGB-TV, Sinclair already holds an attributable ownership interest in two stations in the Dayton market. Thus, grant of the instant application would not lead to a further decrease in the number of independent voices in the Dayton market. In connection with the creation of this LMA, the parties thereto submitted the appropriate filings under the Hart Scott Rodino Antitrust Improvement Act of 1976, as amended, with the Department of Justice, and all applicable waiting periods under that Act have expired or terminated. In the four years that Sinclair has owned WKEF and programmed WRGB-TV, it has worked to improve the facilities and programming provided by the stations in order to better serve the public interest. Importantly, the stations carry different programming, thereby increasing the programming diversity available to the market. WKEF is an affiliate of the NBC

⁷ Nielsen Media Research, all-day (9:00 a.m.– midnight) Mon-Fri. audience share, May 2002.

WRGT-TV, Dayton, Ohio
FCC Form 314, Section III, Question 6

Network and WRGB-TV is an affiliate of the Fox Network. Following the consummation of the proposed transaction, the stations will continue to carry different programming and will continue to compete with one another for viewers and advertising revenue, just as they have for the past four years.

The policy underlying the Commission's multiple ownership rules seeks to ensure diversity and competition within any given market. As shown in Exhibit A hereto, Dayton is a vibrant, competitive and diverse market, with some 33 independent media voices remaining following the consummation of the proposed transaction. Therefore, under this more complete method of counting media voices and assessing competition, it is clear that grant of the instant application is in the public interest.

**TELEVISION STATIONS SERVING THE DAYTON, OHIO
DESIGNATED MARKET AREA**

No.	Licensee or Other Attributable Party	Call Sign	City, State
1.	Lin Television Corp.	WDTN	Dayton, OH
2.	Cox Broadcasting ¹ (Cox Radio, Inc. is the licensee of WDPT(FM), Piqua, OH, WDTP(FM), Xenia, OH, WHKO(FM), Dayton, OH, and WHIO(AM), Dayton, OH)	WHIO-TV	Dayton, OH
3.	Greater Dayton Public TV	WPTD*	Dayton, OH
4.	Sinclair Broadcast Group Cunningham Broadcasting Corporation (WRGT-TV is programmed by Sinclair pursuant to a LMA)	WKEF WRGT-TV	Dayton, OH Dayton, OH
5.	Acme Television LLC	WBDT	Springfield, OH
6.	Trinity Broadcasting Network	WKOI	Richmond, OH

* Non-commercial station

RADIO STATIONS SERVING THE DAYTON, OHIO DESIGNATED MARKET AREA

No.	Licensee or Other Attributable Party	Call Sign	City, State
7.	Clear Channel Communications	WBKI(FM) WDKF(FM) WLQT(FM) WMMX(FM) WTUE(FM) WXEG(FM) WIZE(AM) WONE(AM)	Greenville, OH Englewood, OH Kettering, OH Dayton, OH Dayton, OH Beavercreek, OH Springfield, OH Dayton, OH

¹ Cox also owns local cable channel MVC-UPN ("Miami Valley Channel").

Exhibit A

No.	Licensee or Other Attributable Party	Call Sign	City, State
8.	Miami Valley Christian	WFCJ(FM)	Eaton, OH
9.	Radio One, Inc.	WGTZ(FM) WING(FM) WKSX(FM) WING(AM)	Eaton, OH Springfield, OH Urbana, OH Dayton, OH
10.	Braden, Ruth & Doug	WPFB-FM WPFB(AM)	Middletown, OH Middletown, OH
11.	Hawes-Saunders Broadcasting	WRNB(FM) WROU(FM)	Troy, OH Carrollton, OH
12.	Ray Broadcasting Corporation	WBLY(AM)	Springfield, OH
13.	Town & Country Broadcasting	WBZI(AM)	Xenia, OH
14.	Western Ohio Broadcasting Services	WCTM(AM)	Eaton, OH
15.	Johnson Communications Inc.	WDAO(AM)	Dayton, OH
16.	L & D Broadcasters	WGNZ(AM)	Fairborn, OH
17.	Frontier Broadcasting LLC	WPTW(AM)	Piqua, OH
18.	Logan Broadcasting Company	WLGN(AM)	Logan, OH
19.	American Family Association	WAUI(FM)*	Shelby, OH
20.	Earlham College	WECI(FM)*	Richmond, IN
21.	Rodgers Broadcasting Corporation	WFMG(FM) WKBV(AM) WFMG(FM)	Richmond, IN Richmond, IN Richmond, IN
22.	Brewer Broadcasting Corporation	WHON(AM) WQLK(FM)	Richmond, IN Richmond, IN
23.	Xavier University	WVXR(FM)*	Richmond, IN
24.	Hayco Broadcasting, Inc.	WCSM(AM) WCSM-FM	Celina, OH Celina, OH
25.	Sonshine Corporation	WKKI(FM)	Celina, OH
26.	Forever of Ohio, LLC	WZOQ(FM)	Wapakoneta, OH

Exhibit A

No.	Licensee or Other Attributable Party	Call Sign	City, State
27.	Dean Miller Broadcasting Corporation	WMVR-FM	Sidney, OH
28.	V-Teck Communications, Inc.	WBLL(AM) WPKO-FM	Bellefontaine, OH Bellefontaine, OH
	Cox Radio, Inc. ²	WDPT(FM) WDTP(FM) WHKO(FM) WHIO(AM)	Piqua, OH Xenia, OH Dayton, OH Dayton, OH

**OTHER COMPETING MEDIA VOICES SERVING THE DAYTON, OHIO
DESIGNATED MARKET AREA**

No.	Licensee or Other Attributable Party	Media	City, State
29.	Dayton Daily News	Daily Newspaper	Market wide
30.	Various Owners	Cable channels	Market wide
31.	Multiple Operators	Cable systems	Market wide
32.	Multiple Operators	DBS	Market wide
33.	Multiple Operators	Internet	Market wide

Sources: BIA Television 2002 Yearbook
BIA Radio Ownership 2001
CDBS Public Access Database
Gale Directory of Publications and Broadcast Media

² This voice is counted above under the entry for co-owned station WHIO-TV.