

Before the
Federal Communications Commission

Washington, DC 20554

In the Matter of)	
)	
CHESAPEAKE TELEVISION LICENSEE, LLC)	
(Sinclair Broadcast Group, Inc.))	
)	
Licensee of WBFF-DT Baltimore, MD)	File No. 0000115674
)	Facility Id. No. 10758
BALTIMORE (WNUV-TV) LICENSEE, INC.)	
(Cunningham Broadcasting Corporation))	
)	
Licensee of WNUV-DT Baltimore, MD)	File No. 0000115578
)	Facility Id. No. 7933
DEERFIELD MEDIA (BALTIMORE), INC.)	
(Deerfield Media, Inc.))	
)	
Licensee of WUTB-DT Baltimore, MD)	File No. 0000115626
)	Facility Id. No. 60552

To: The Commission

**PETITION TO DENY
THE RENEWAL APPLICATIONS OF CHESAPEAKE TELEVISION
LICENSEE, LLC, LICENSEE OF WBFF-DT BALTIMORE, MD; BALTIMORE
(WNUV-TV) LICENSEE, INC., LICENSEE OF WNUV-DT BALTIMORE, MD;
AND DEERFIELD MEDIA (BALTIMORE), INC., LICENSEE OF WUTB-DT
BALTIMORE, MD**

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September 1, 2020

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SUMMARY

Petitioner, a viewer of three television stations in the Baltimore area, submit this Petition to Deny renewal applications filed by licensees, Sinclair, Cunningham and Deerfield. The Petition documents Sinclair's checkered history in its dealings with the FCC, including violations for which it has been fined, then repeated, and been fined again. Sinclair's conduct in the past raises substantial and material questions as to its fitness to hold FCC licenses that require a hearing to resolve. Despite the numerous consent decrees, fines, and compliance plans imposed on Sinclair, it has not mended its unlawful ways.

The Petition focuses on Sinclair's de facto control of Cunningham and Deerfield and the stations licensed to them in violation of the Commission's multiple ownership rules. Sinclair controls three television stations in Baltimore, while the FCC rules do not permit it to control more than one. The Petition references a litany of documents, mainly agreements between Sinclair and its two front company licensees, giving Sinclair virtually complete dominion over the Baltimore stations' operation and administration. These agreements, some of which the companies wrongfully redacted or withheld when requested, as well as publicly filed reports, show clearly that the principals of Cunningham and Deerfield are cronies of Sinclair and have no stake or risk in the business. They are effectively employees who serve at the whim of Sinclair. Sinclair owns all or almost all of the assets of the stations, but for the licenses; guarantees or assumes all of their indebtedness; approves every transaction, expenditure and policy decision; owns options to purchase the companies/stations/licenses for a fixed price that is a small fraction of market

value; exercises total authority over personnel and programming; and, all three entities use the same law firms for their inter-company agreements and regulatory matters.

The material included in the Petition leaves no doubt that Sinclair legally controls Cunningham and Deerfield and their stations. The evidence overwhelmingly meets the FCC's stated criteria for evaluating de facto control. Sinclair's elaborate structuring of entities it controls to hold FCC licenses is not limited to Baltimore. Its sole purpose is to enable Sinclair to "own" more stations in a market than FCC rules permit. The FCC's fines and sanctions over the years are a cost of doing business for Sinclair. The Commission has glossed over the glaring question whether Sinclair has the requisite character to remain a licensee. It is high time for the Commission to take up this matter squarely in a public hearing on these renewal applications.

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AND DEERFIELD MEDIA (BALTIMORE), INC., LICENSEE OF WUTB-DT
BALTIMORE, MD**

Ihor Gawdiak, (Petitioner) by his attorneys, hereby files this “Petition To Deny the renewal applications of Chesapeake Television Licensee, LLC, licensee of WBFF-DT Baltimore, MD; Baltimore (WNUV-TV) Licensee, Inc., licensee of WNUV-DT Baltimore, MD; and Deerfield Media (Baltimore), Inc., licensee of WUTB-DT Baltimore, MD” (Petition to Deny or Petition).

Sinclair Broadcast Group, Inc. (Sinclair) is the ultimate parent entity of Chesapeake Television Licensee, LLC, which is the licensee of television station WBFF in Baltimore. As demonstrated in this Petition to Deny, Sinclair also de facto controls Cunningham Broadcasting Corporation (Cunningham) and Deerfield Media, Inc. (Deerfield). Cunningham and Deerfield are licensees of television stations WNUV and WUTB in Baltimore. In addition to controlling numerous television stations in violation of the Commission's multiple ownership rules, during its most recent renewal period, Sinclair has 1) made material misrepresentations to the Commission, 2) broadcast commercials disguised as news stories without proper sponsorship identification, 3) repeatedly violated the Commission's rules on retransmission consent negotiations, 4) failed to properly maintain its public inspection file and 5) generally shown a disregard for the communities it serves. Sinclair and its alter egos, Cunningham and Deerfield are not qualified to be Commission licensees. Accordingly, their renewal applications should be denied.

Standing

Petitioner has standing to file this Petition. He is a resident of Columbia, Maryland and a regular viewer of the above captioned television stations. Sinclair's de facto control of three television stations in the Baltimore Designated Market Area (DMA) diminishes the number of voices, the diversity of points of view and the quality of available television programming.¹

¹ See attached Declaration of Ihor Gawdiak.

Background

In 1958, Julian Sinclair Smith started the corporate entity known today as Sinclair. Julian was the father of the four controlling shareholders of Sinclair; David Smith, Executive Chairman and Director; Frederick G. Smith, Vice President and Director; J. Duncan Smith, Vice President and Director; and Robert E. Smith, Director. Sinclair, then known as Chesapeake Television Corporation, launched its first television station, WBFF, in Baltimore on April 11, 1971. Sinclair acquired WPNT in Pittsburgh, Pennsylvania in 1978 and WTTE in Columbus, Ohio, in 1984. In 1990, David Smith and his three brothers purchased their parents' remaining shares in Sinclair.

The first of Sinclair's forays into multiple television station ownership in the same market came in 1991 when Sinclair acquired a station in Pittsburgh and sold its existing Pittsburgh station to Edwin Edwards, a Sinclair employee, on extremely favorable terms. Sinclair operated its new station in Pittsburgh and continued to program its original station through a Local Marketing Agreement (LMA). After that, Sinclair acquired four stations from a group owner. Two of the four stations, however, were in markets in which Sinclair already owned television stations and was thus prohibited from owning additional stations. Sinclair again enlisted Edwards to acquire the stations Sinclair could not own. Carolyn Smith, the mother of the four controlling shareholders of Sinclair, financed the acquisition of the stations for Edwards. Carolyn Smith and Edwards established Glencairn, Ltd. ("Glencairn") the acquiring company; 70% of the equity was owned by Smith and 30% by Edwards.² Sinclair operated the Glencairn stations through LMAs.

² At or about 2002, Glencairn changed its name to Cunningham. There was no change in ownership associated with the name change. At this time, Cunningham, owns nearly twenty "sidecar" stations that are operated by companion Sinclair stations in the same markets.

In 1997, Sinclair and Glencairn again acquired a station group in tandem. This transaction involved the acquisition by Sinclair of stations in Asheville and San Antonio and the acquisition by Glencairn of an additional station in each of those markets. These new Glencairn stations also would be operated through LMAs. At the same time, Carolyn Smith transferred her ownership interest, now 90% of the equity in Glencairn, to trusts for her grandchildren - the children of the four brothers who control Sinclair.

In 1998, when Sinclair and Glencairn sought to acquire certain television stations from Sullivan Broadcasting Company (Sullivan), Rainbow/Push opposed the applications.³ In *Edwin L. Edwards*, the Commission granted in part and denied in part Rainbow/Push's petition and issued forfeitures to both Sinclair and Glencairn. The deal as structured between Sinclair and Glencairn provided that Glencairn would be the licensee of the Sullivan stations, while Sinclair would hold all of the stations' non-license assets. Glencairn then would lease those assets from Sinclair. Furthermore, Sinclair had an existing LMA for the Sullivan stations, which would continue in force with Glencairn as the licensee. The Commission found that Sinclair had exercised de facto control over Glencairn in violation of Section 310(d) of the Act and the Commission's rules and ordered certain remedial changes to the transaction. The Commission did not designate the matter for hearing, however, because it found that there was not a substantial and material question of fact whether Glencairn would operate independently in the future. In finding that Sinclair exercised de facto control over Glencairn with respect to the

³ *Edwin L. Edwards, Sr.*, Memorandum Opinion and Order and Notice of Apparent Liability, 16 FCC Rcd 22236, (2001) *aff'd sub nom. Rainbow/PUSH Coalition v. FCC*, 330 F.3d 539 (D.C. Cir. 2003).

station sale, the Commission concluded that the purchaser's ignorance of the most important terms of the deal demonstrated his lack of involvement in corporate management of Glencairn with respect to the transactions. Moreover, the Commission pointed to the structure of the transaction itself, pursuant to which Sinclair paid almost the entire purchase price of the stations, allowing Glencairn "to obtain the stations at a small fraction of their value."⁴ Finally, the buyer, Glencairn, had entered into a debtor/creditor relationship with Sinclair. Based on this combination of facts, the Commission found that Glencairn had permitted Sinclair to dictate the terms and conditions of the deal, thus ceding control.

On November 16, 1999, Glencairn requested Commission approval for a transfer of control whereby its president and 100% voting shareholder, Edwin L. Edwards, Sr., would exit the company to be replaced by Carolyn Smith as the new 100% voting shareholder. Thus, the mother of the controlling shareholders of Sinclair became the controlling shareholder of Glencairn, while her grandchildren were the beneficial owners of most of Glencairn's equity. Glencairn changed its name to Cunningham and promised that it would be under new management—which, it turned out, meant Sinclair's former president and CEO Robert Simmons.⁵

In 2012 Sinclair increased its presence in Columbus, Ohio to three television stations when Manhan Media, Inc. purchased WWHO and entered into a shared services agreement with Sinclair and gave Sinclair an option to purchase the station. Stephen Mumblow, who is also the

⁴ Id. at p. 22249.

⁵ <http://sbgi.net/history/1980s/>

sole shareholder of Deerfield, owns Manhan. In addition to WWHO, Sinclair owns ABC affiliate WSYX and operates Cunningham's Fox affiliate WTTE, in the Columbus market.

On May 15, 2012, Sinclair renewed its affiliation agreement for its Fox affiliates. The agreement included an option allowing Sinclair to purchase Baltimore MyNetworkTV affiliate WUTB from Fox. Sinclair exercised its option on WUTB through its recently formed sidecar entity Deerfield. This gave Sinclair control of three television stations in the Baltimore DMA, Sinclair's WBFF, Cunningham's WNUV, and Deerfield's WUTB.

On May 8, 2017, Sinclair and Tribune Media Company (Tribune) filed applications seeking to transfer control of Tribune to Sinclair for \$3.9 billion. Sinclair proposed to transfer WGN-TV in Chicago to Steven Fader (Fader), who is the CEO of a company in which David Smith, Sinclair's executive chairman holds a controlling interest. Sinclair also proposed to sell two television stations KDAF(TV), Dallas, Texas, and KIAH(TV), Houston, Texas to subsidiaries of Cunningham.

In reviewing the proposed transfers, the Commission concluded: "The record raises significant questions as to whether those proposed divestitures were in fact "sham" transactions."⁶ Before the *HDO* was issued Sinclair withdrew the Cunningham and Fader applications. Nonetheless, the Commission concluded: "that material questions remain because the real party in interest issue in this case includes a potential element of misrepresentation or lack of candor that may suggest granting other, related applications by the same party would not be in the public interest."⁷

⁶ *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, para. 2 (2018) (*HDO*).

⁷ *HDO* at para. 2.

Sinclair proposed to transfer WGN-TV to Fader, an individual who not only lacked any prior broadcasting experience, but who also has extensive business relationships with David Smith. The Commission found that the sale of WGN-TV to Fader involved many atypical deal terms, as well as several agreements that delegated operation of many aspects of the station to Sinclair. In particular, Fader's newly created entity, WGN TV, LLC would have entered into a Joint Sales Agreement (JSA), Shared Services Agreement (SSA), Option, and lease-back of non-license assets necessary for operation of the station. Under this arrangement, Sinclair would have sold advertising time, provided back office services, and programmed a significant portion of the station's weekly broadcast hours. The sale of WGN also came with an option agreement, giving Sinclair the opportunity to buy the station back at the same price anytime within the next 48 years. Furthermore, pursuant to the proposed transaction, WGN TV, LLC would have purchased only the station license and certain other minimal assets. Sinclair would have purchased the station's other assets. The Commission was troubled by the \$60 million sales price for WGN-TV, which appeared to be far below market value. It questioned the legitimacy of the proposed sale of a such a highly-rated and profitable station in the nation's third-largest market to an individual with no broadcast experience, with close business ties to Smith, and with plans to own only the license and minimal station assets.

Similarly, the Commission questioned the intertwined relationship between Sinclair and Cunningham. As discussed, the Commission had previously examined the relationship in the *Edwin L. Edwards* case. In the *HDO*, the Commission concluded that the terms of the deal for the purchase of stations KDAF and KIAH presented new questions regarding whether Sinclair was the undisclosed real party in interest to the KDAF and KIAH applications. Sinclair and Cunningham have a long-term relationship dating back to 1991. Carolyn Smith passed away in

2012. Pursuant to the terms of the Trust Agreement, Michael Anderson, (Anderson) Cunningham's former banker, became the successor trustee to Carolyn Smith upon her death. In January 2018, Anderson acquired all the voting shares of Cunningham, for \$400,000 – far below market value and the nonvoting shares continue to be held by trusts for the benefit of Carolyn Smith's grandchildren. Each of Carolyn Smith's sons holds an option to acquire the voting shares of Cunningham.

The *HDO* found that according to filings made with the Securities and Exchange Commission (SEC) Sinclair had guaranteed \$53.6 million of Cunningham's debt. Moreover, the Commission concluded that 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." *HDO*, at para. 25 Further, the "sales" of both Texas television stations were accompanied by an option agreement giving Sinclair the right to buy back the stations at the same price within eight years, renewable five times over. Despite these facts, Sinclair reassured its stockholders that these were not improper deals, saying "Cunningham is operated completely separately from Sinclair...Sinclair will have no involvement in the operations of the Dallas and Houston stations being sold to Cunningham."

The *HDO* designated real party in interest and misrepresentation issues against Sinclair so that through discovery and hearing, the extent of formal and informal relationships between Sinclair and Fader as well as Sinclair and Cunningham could be determined. The Commission unequivocally stated that these issues "cannot be otherwise resolved." *HDO*, at para. 27. It further stated: "Even if control would have rested with Cunningham, substantial and material questions of fact exist as to whether the panoply of relationships and agreements between Sinclair and Cunningham would provide Sinclair with the incentive and means to exert influence

over the core operations of Cunningham, which, under Commission precedent, could be the basis for a finding that its stations should be attributed to Sinclair for purposes of determining compliance with our ownership rules.” *HDO*, at para. 26

Soon after the *HDO* was released, Sinclair and Tribune moved to dismiss their applications to transfer control of Tribune licensees to Sinclair. The presiding Judge in terminating the hearing 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 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

On June 25, 2019, the Chief, Video Division, Media Bureau, issued a Letter of Inquiry to Sinclair for the purpose of investigating issues raised in the *HDO*. The real purpose of the letter was to settle the outstanding issues: “Media Bureau is in the process of resolving an outstanding issue regarding Sinclair’s conduct as part of the last year’s FCC’s review of its proposed merger with Tribune.” The letter came at Sinclair’s request; Sinclair said, “this is part of an ongoing discussion initiated by Sinclair to work with the FCC to respond to certain allegations raised.”⁹

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

⁹ <https://www.reuters.com/article/us-sinclair-ma-probe/fcc-probes-whether-sinclair-misled-agency-during-failed-tribune-deal-idUSKCN1TS300>

On July 22, 2019, Gawdiak filed a “Petition To Terminate Media Bureau Investigation And Require Early Filing Of Renewal Applications.” Rather than set the matter for hearing, as the Communications Act and the rules require, the Bureau and Sinclair conducted closed door negotiations not open to public participation or review. On April 29, 2020, the Media Bureau dismissed Gawdiak’s petition. On May 6, 2020, the FCC issued a Public Notice announcing that Sinclair and the Commission had reached a settlement and entered into a Consent Decree. In the Public Notice Chairman Ajit Pai is quoted as saying, “Sinclair’s conduct during its attempt to merge with Tribune was completely unacceptable.” Nonetheless, the Commission Order accompanying the Consent Decree stated: “we find that Sinclair structured its transaction based upon a good faith interpretation of the Commission’s rules.”¹⁰ The Commission’s Order provides no detailed findings nor offers further explanation as to how the real party in interest and misrepresentation issues first raised in the *HDO* were transmuted into a good faith interpretation of the rules. As to the other issues, the Order similarly offered only conclusory findings without explanation. To settle these matters, Sinclair agreed to pay a \$48,000,000 civil penalty. The Consent Decree was executed just days before Sinclair was due to file its first group of renewal applications. Gawdiak has filed a Petition for Reconsideration of Consent Decree.

Argument

The basic duty of broadcast licensees is reflected in the license renewal provisions of the Communications Act.¹¹ 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,

¹⁰ *In re Sinclair Broad. Grp.*, 2020 FCC LEXIS 1914 (F.C.C. May 22, 2020).

¹¹ 47 U.S.C. § 309(k).

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 under section 309(e) of the Act, 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.

Sinclair lacks the character qualifications to be a Commission licensee.¹² As discussed herein, Sinclair has de facto control of Cunningham, Deerfield and other sidecar entities. Over the course of almost 30 years, Sinclair has made numerous material misrepresentations to the FCC concerning its ability to control these entities. This fraud on the Commission and the communities it is licensed to serve, coupled with its dismal broadcast record makes Sinclair unqualified to hold Commission licenses. In this last renewal cycle, Sinclair has been twice fined for violating Section 325 of the Communications Act, which requires television broadcasters to negotiate retransmission consent in good faith. As discussed herein, because Sinclair has complete control over its sidecar stations, it will continue to violate Section 325 of the Communications Act. Other than Sinclair, there is no other viable entity to conduct retransmission negotiations.

¹² 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.

Sinclair's violation of the sponsorship identification rules resulted in its broadcasting commercials during the local news disguised to look like bona fide news segments. The Commission's rules require licensees to place certain contracts in their public files. Sinclair and the sidecar stations it controls are willing to violate this rule in order to conceal Sinclair's complete control over entities such as Cunningham and Deerfield. Sinclair has repeatedly and unequivocally demonstrated that it has failed to meet the requirements of Section 309(k) of the Communications Act. Accordingly, its licenses along with the licenses of its front companies should be revoked.

Sinclair is in De Facto Control of Cunningham, Deerfield and Other Front Entities

Sinclair has a history of operating stations it cannot legally own.¹³ It controls its various front entities by entering into agreements with individuals who have close business ties to Sinclair or its controlling shareholders. These agreements give Sinclair control over the individual shareholder/managing member, as well as de facto control of the corporate entity and its stations' licenses. These contractual arrangements give Sinclair inter alia the power to control daily operations; make policy decisions; hire, fire and control personnel; pay financial obligations, including operating expenses; and receive the profits from the operations of the stations. There is no aspect of station operations that Sinclair does not control. Should a nominal owner dissent or vary from Sinclair's wishes, he is subject to immediate removal and can be replaced with a licensee compliant to Sinclair's wishes.

Pursuant to section 310(d) of the Act, the Commission prohibits de facto, as well as de jure, transfers of control of a station license, or any rights thereunder, without prior Commission

¹³ 47 CFR §73.3555(b).

consent.¹⁴ In considering whether an individual is exercising de facto control over a station, the Commission has traditionally considered indicia such as:

- Who controls daily operations;
- Who carries out policy decisions;
- Who is in charge of employment, supervision, and dismissal of personnel;
- Who is in charge of paying financial obligations, including operating expenses; and
- Who receives monies and/or profits from the operation of the station.¹⁵

Because the Commission has long recognized that a licensee may delegate day-to-day operations without surrendering de facto control, it examines other indicia including whether the licensee determines the policies governing, for example, the station's programming, personnel, and finances.¹⁶ In addition, the Commission will consider such factors as whether someone other than the licensee holds themselves out to station staff and/or the public as one who controls station affairs.¹⁷

Sinclair controls its sidecar stations through a series of JSAs, LMAs, SSAs, options, loan guarantees and other legal contrivances that make it appear that the sidecar entity is in control. As the Commission stated in the *HDO* at footnote 41:

¹⁴ 47 U.S.C. § 309(d). See also 47 U.S.C. § 309(e).

¹⁵ See *Ronald Brasher*, 15 FCC Rcd 18462, para. 8 (2004) (citing *Intermountain Microwave*, 24 RR 983 (1963)).

¹⁶ See, e.g., *WGPR, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8140, 8142, para. 11 (1995).

¹⁷ See *WQRZ, Inc.*, 22 FCC 1254, 1332, para. 51 (1957).

While each of the individual agreements discussed herein (e.g., JSAs, SSAs, options, and loan guarantees) would not, standing alone, give rise to a substantial and material question as to the issues of real party in interest, they do give rise to such a question when considered together and combined with the other factors discussed herein. *See 2014 Quadrennial Regulatory Review et al.*, Order on Reconsideration, 32 FCC Rcd 9802, n.298 (2017) (explaining that television JSAs will no longer be attributable as a result of the amount of advertising time brokered, but “we remind licensees that they must retain ultimate control over their programming and core operations”); *id.* at n.307 (“While we decline to attribute television JSAs for the reasons set forth herein, we note that, under *Ackerley*, the Commission could still find that the terms of an individual television JSA (either alone or in conjunction with other agreements) rise to the level of attribution.”) (*citing Shareholders of the Ackerley Group, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 10828 (2002) (finding that a specific television JSA, in conjunction with other agreements, created an attributable interest)).

A substantial and material question exists as to who controls the Cunningham and Deerfield stations in the renewal applications. The same factors that caused the Commission to issue an *HDO* are present here. Sinclair operates these stations pursuant to a series of LMA, JSA and SSA agreements. Through the LMAs Sinclair provides programming, sales, operational, and administrative services, and through the JSAs and SSAs, Sinclair provides non-programming, sales, operational, and administrative services.¹⁸ Sinclair holds options to purchase these stations at prices significantly below market value.

Michael Anderson ostensibly owns Cunningham’s voting shares. Anderson, Cunningham’s former banker, has no previous broadcast experience.¹⁹ In January 2018,

¹⁸ See Sinclair 10-Q as of March 31, 2020 at p. 25.

¹⁹ <http://cunninghambroadcasting.com/about-us/>

Anderson acquired all the voting shares of Cunningham, for \$405,640, far below market value.²⁰ All of the nonvoting shares continue to be held by trusts for the benefit of the Smith Brothers' children.²¹ Each of Carolyn Smith's sons, the controlling shareholders of Sinclair, holds an option to repurchase the voting shares of Cunningham for \$101,410, plus an additional one percent (1%) per annum.²² The option term is for 8 years but can be extended for 3 additional 8-year periods for a total of 32 years. The Smith Brothers can freely assign their options, but Michael Anderson cannot "transfer or encumber or otherwise assign his rights under this Agreement." Option Agreement, Section 10. Should he attempt to do so, Sinclair has the right to sue for specific performance and to collect attorneys' fees.²³

Cunningham's Treasurer and Chief Financial Officer, Lisa Asher, prior to joining Cunningham worked as Sinclair's Assistant Controller.²⁴ Cunningham's director, Mark Knobloch, a banker with no broadcast experience, also has ties to Sinclair.²⁵ Mr. Knobloch was the president of RSML LLC., a commercial real estate company started by Sinclair principal

²⁰ Stock Purchase Agreement among David D. Smith, J. Duncan Smith, Robert E. Smith and Frederick Smith and Michael Anderson.

²¹ Sinclair 10-Q, March 31, 2020.

²² Option Agreements between David D. Smith and Michael Anderson; J. Duncan Smith and Michael Anderson; Robert E. Smith and Michael Anderson; and Frederick Smith and Michael Anderson.

²³ Option Agreement dated January 4, 2018, Sections 16 – 17.

²⁴ <http://cunninghambroadcasting.com/about-us/>

²⁵ <https://www.sec.gov/Archives/edgar/data/912752/000104746910000315/a2196178zscto-i.htm> "Common Non-Voting Capital Stock Option between Sinclair Broadcast Group, Inc. and Mark Knobloch, as trustee."

Robert E. Smith.²⁶ Paul Wallace, Cunningham’s remaining director, is a partner at the accounting and wealth management firm of Gross Mendelsohn.²⁷ Sinclair Director and Chair of the Audit Committee, Lawrence E. McCanna was a shareholder of the accounting firm and wealth management firm of Gross, Mendelsohn from 1972 and served as its managing director through June 30, 2009, when he retired from the firm. Mr. Wallace on his LinkedIn page lists among his interests, “Sinclair Broadcast Group.”²⁸ Deerfield, principal, Stephen Mumbrow, likewise has close ties to Sinclair;²⁹ he was Sinclair CEO David Smith’s personal banker.³⁰

Cunningham’s Anderson, Asher, Knobloch and Wallace, as well Deerfield’s Mumbrow all have close, multiyear connections to Sinclair or one of its controlling shareholders. Through a series of agreements, they have signed away their companies’ rights to any vestige of control they may have over the FCC licenses they hold. Sinclair provides services to Cunningham and Deerfield pursuant to LMAs or JSAs and SSAs. In addition, WNUV and other Cunningham stations have executed a Master Agreement (MA) with Sinclair.³¹ The Master Agreement has a current term that expires on July 1, 2023 and there are two additional 5-year renewals. The Master Agreement provides that Sinclair will pay for all expenses incurred by Cunningham in

²⁶ <http://sbgi.net/people/robert-e-smith/>

²⁷ <https://www.gma-cpa.com/people/paul-wallace>

²⁸ <https://www.linkedin.com/in/paulwallacecpa/detail/interests/companies/>

²⁹ See Amendment No. 3 to Credit Agreement dated as of December 18, 1996, between Sinclair and Stephen Mumbrow as agent.

³⁰ *Wall Street Journal*, July 6, 2019.

³¹ Master Agreement dated October 28, 2009, First Amendment to the Master Agreement dated July 20, 2010 and Second Amendment to the Master Agreement dated April 1, 2016 together referred to herein as “Master Agreement.”

the operation of the stations, including corporate overhead and interest on bank debt. MA, Section 2. Sinclair has veto power over Cunningham's budgets and all budgets must be "mutually approved" by Sinclair and Cunningham. MA, Section 2. Sinclair also reimburses all extraordinary non-budgeted expenses. For example, in 2009, Sinclair agreed to reimburse Cunningham for all expenses associated with the negotiating and drafting of the Master Agreement and all legal expenses of the law firm of Thomas & Libowitz, P.A., which represents both Sinclair and Cunningham.³² The Master Agreement makes clear that Michael Anderson is a salaried employee. Sinclair sets his salary and reimburses Cunningham for the cost of his services. MA, Section 2.

Other than the FCC licenses, neither Deerfield nor Cunningham own their station assets. For the stations with which Sinclair has LMA, JSA and SSA agreements, it admits that "We typically own the majority of the non-license assets of the stations..."³³ Per the terms of the Master Agreement, Sinclair owns all capital equipment used or to be used by Cunningham. MA, Section 2(b). This equipment is then leased back to the licensee. To the extent Cunningham does own any assets, it is not permitted to acquire, sell or encumber any asset however insignificant without Sinclair's prior consent written consent.

On October 28, 2009, Sinclair entered into amendments and /or restatements of the following agreements with Cunningham: (i) the LMAs, (ii) option agreements to acquire Cunningham stock and (iii) certain acquisition or merger agreements relating to television stations owned by Cunningham (Cunningham stations). Among these agreements is an Asset

³² See also, Memorandum of Understanding (MOU) dated September 8, 2009, Section 2(f).

³³ See generally, Sinclair 10-Q as of March 31, 2020, p.25.

Purchase Agreement (APA) between Sinclair and Cunningham dated October 28, 2009. Sinclair and Cunningham have not filed an application for assignment of licenses because Sinclair is barred by the Commission's rules from owning Cunningham's stations. See Section 73.3555(b). Nonetheless, the APA, which is over 10 years old, limits Cunningham's ability to acquire, dispose of or modify its assets. Section 7 of the APA provides that without the prior consent of Sinclair, Cunningham will not "renew, extend, amend or terminate, or waive any material right under any Contract, or enter into any contract... except for Contracts that are for repairs and/or maintenance...provided that [Cunningham] shall notify [Sinclair] of the scope and cost of such repairs..." APA, Section 7.1. If Cunningham wishes to purchase or repair any equipment, it must first ask for and receive Sinclair's permission. Nor can Cunningham increase the compensation of any employee, or dispose of any asset. APA, Sections 7.2, 7.4. Further, at Sinclair's request, Cunningham must make available for inspection all of its "assets, all books, records and documents..." APA, Section 7.5.

Sinclair does not just own all the tangible assets, but it also owns all the intangible assets. For example, Cunningham's website for WNUV, cwbalTIMORE.com, clearly identifies Sinclair as the owner of the web page.³⁴ Further, an Internet search of registered domain names identifies Sinclair as the "Registrant Organization" for cwbalTIMORE.com.³⁵ Likewise, Deerfield's website for WUTB, mytvbalTIMORE.com, also identifies Sinclair as the owner of the web page.³⁶ An

³⁴ <http://cwbalTIMORE.com>

³⁵ https://www.godaddy.com/whois/results.aspx?domain=cwbalTIMORE.com&recaptchaResponse=03AGdBq26rAVw8Etq2z1lEAqcpwQFLKTZL0nxlli0yRUEf8oOmHZnoPsKfFDt9j8Kq6LNOIqrui-TnXVoFa48r5J4inl1rQg1lA6Vmy2W7U97JvkOC3wRZ_t87q0pzEAd3S900AsFdyl2Zbnv8Dfg

³⁶ <http://mytvbalTIMORE.com>

Internet search of registered domain names identifies Sinclair as the “Registrant Organization, for the site.”³⁷

Schedule 4 of the Credit Agreement between JPMorgan and Deerfield dated November 30, 2012, required Deerfield to list the “Locations of Inventory and Equipment” for its Baltimore station. In response, Deerfield wrote “N/A.” It appears that Deerfield’s Baltimore television station does not own a single piece of broadcast equipment or at least not a single piece of equipment worth listing in the Credit Agreement. Neither does Deerfield own any intellectual property. Schedule 5 of the Credit Agreement requires Deerfield to list copyrights and trademarks. Deerfield has none to list. The WUTB website shows that the copyright for My TV Baltimore is held by Sinclair.³⁸ Deerfield does not own the trademark to its station’s call letters, WUTB. A search of the U.S. Patent and Trademark Office database shows that the owner of the mark “WUTB” is “Sinclair Communications, LLC Limited Liability Company.”³⁹

The LMA payments Sinclair makes to Cunningham, “shall be used to pay off [Cunningham’s] outstanding principal indebtedness and which amount shall be credited toward the purchase price for any Station that is acquired by [Sinclair] (or any permitted assignee).”

³⁷https://www.godaddy.com/whois/results.aspx?domain=mytvbaltimore.com&recaptchaResponse=03AGdBq25wA-4B_gEAVAmyqMHeBHIXa9uKj27WUK00Ig6i1ONkMoT4KkkEXH7sqYC1VyAXKV3ju4vx-5YLhCD6iVVA31leu_Xck8tObQNPRYFw1tvV8aPtuTo8q-UVvVPjqyTS3DjiuIW8dOQAJKQ15VsomP41zq0Q5Tn9HrwOR1WbYK0rD2y5GzVknmECxxqOuEhwULOqg2DxXfOxBeoc757tHj12FH_m9fkoux2s03wZNy521D46pT_TaryNk78AwooGiyh29_QYbLbBa2Ozr1A-yx7ITsKvYAaRHaXGAa1drYy66EKIPXslWQ-ibp5Kdw4Njvcil85EMRUySiGJafPZJwDcowHQ1uu63pi-Fm9tlnn5qw--klkiPAJJ9iy4E-lmlbG6gLmD&isc=gofd1001aj

³⁸ <http://mytvbaltimore.com/>

³⁹ <http://tmsearch.uspto.gov/bin/showfield?f=doc&state=4807:6o0l80.12.1>

pursuant to the Acquisition Agreements.⁴⁰ MOU, Section 2(d) and MA, Section 3(b), such that the purchase price of each Cunningham and Deerfield station is reduced with each LMA payment. The Sixth Amended And Restated Credit Agreement, dated July 31, 2014, between Sinclair and JPMorgan includes a table titled “Committed and Unfunded Investments.” That table lists all the options to purchase stations Sinclair holds, but has not yet exercised. Thus, for example, the table lists a “Purchase Option between Deerfield Media (Baltimore) Inc., and Sinclair Communications, LLC (Baltimore).”⁴¹ The option price is listed as \$330,000. Thus, in 2014 Sinclair, or Sinclair’s designated assignee could have purchased Deerfield’s full power Baltimore television station for about what it would have cost to buy a small AM radio station in rural South Carolina.

There is no way for a sidecar entity to terminate its relationship with Sinclair and keep its stations. If Cunningham should seek “to terminate the LMAs and/or the Acquisition Agreements (or any one of them) for any reason whatsoever...” then Sinclair has the right to assign the LMA and/or the Agreements to a third party. MA, Section 3(b)(i) “If Sinclair requires additional time to locate a third party transferee...” then Cunningham shall grant Sinclair an “extension of the termination date for a commercially reasonable period of time.” MOU, Section 2(d) Thus, for example, were Sinclair intentionally to breach its agreement with Cunningham, Anderson’s only options would be to live with the breach or patiently wait until he is replaced by another Sinclair

⁴⁰ The Acquisition Agreements are not part of Sinclair or Cunningham’s public files.

⁴¹ WUTB’s Public Inspection File contained a heavily redacted document titled “Option Agreement,” dated June 3, 2013, which appears to be the same document reference in The Sixth Amended And Restated Credit Agreement. While reference is made to an Asset Purchase Agreement, WUTB’s public file does not contain an APA.

banker or Smith family retainer. If he chooses to sell, Anderson would receive little or nothing for his interest in Cunningham or its 20 television stations.

Sinclair, Cunningham and Deerfield have produced numerous corporate documents that not only organize their internal corporate affairs but also define the relationships between Sinclair, Cunningham and Deerfield. The same attorneys represent all three companies. Thomas & Libowitz, P.A. is Sinclair's corporate law firm and represents the three companies on many of their corporate filings. For example, Thomas & Libowitz prepared and filed the Articles of Incorporation for Deerfield Media (Baltimore), Inc. Thomas & Libowitz is also acted as Deerfield's attorneys in negotiating the Option Agreement dated June 3, 2013, which gives Sinclair the right to acquire the assets and license for Deerfield's Baltimore station, WUTB. Thomas & Libowitz prepared and filed the organizational paperwork for Glencairn, LTD and has consistently represented Cunningham. The firm also represented Cunningham in drafting the Asset Purchase Agreement dated October 28, 2009, which gives Sinclair the right to acquire Cunningham's licenses for WNUV. Pillsbury, Winthrop, Shaw, Pittman, LLP represents Sinclair, Cunningham and Deerfield, as FCC counsel. Pillsbury's name appears on numerous FCC filings on behalf of these companies. How is possible, within the bounds of legal ethics, that Thomas & Libowitz and Pillsbury can represent all three companies simultaneously? A lawyer cannot represent multiple clients in the same matter if there is or likely to be a conflict of interest.⁴² For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients,

⁴² See generally, ABA Rule 1.7 Current Clients Conflict of Interest.

representation of multiple clients is improper when it is unlikely that impartiality can be maintained. As neither Thomas & Libowitz nor Pillsbury has withdrawn from common representation, it is self-evident that in all the contracts, options, APAs, LMA, JSAs, SSAs and negotiations to purchase and sell television stations, there have never been any contentious negotiations. Such close and harmonious relationships as exist between Sinclair and its sidecar entities suggests that they are nothing more than fronts. Neither Cunningham nor Deerfield nor Anderson nor Mumblow have personal stakes in the outcome of the negotiations. They are mere employees doing Sinclair's bidding. Because all three entities are under the direct control of the Smith brothers, Thomas & Libowitz and Pillsbury can represent all parties to all agreements without committing an ethical breach. There is no conflict; no worry that one law firm will favor one client over another, because these entities are just Sinclair's alter egos. Thomas & Libowitz and Pillsbury have only one client in this proceeding, Sinclair.

That Sinclair, Cunningham and Deerfield are, in essence, the same company is further revealed by an examination of their collective corporate borrowing. Here again, there is only one lender and one borrower, Sinclair. Sinclair in its 10-Q as of March 31, 2020 states, "We jointly, severally, unconditionally, and irrevocably guarantee, \$55 million... of debt of certain parties... of which \$19 million... net of deferred financing costs, related to consolidated VIEs that are included in our consolidated balance sheets..."⁴³ As of March 31, 2020, Sinclair has guaranteed \$45 million of Cunningham's debt.⁴⁴ However, as discussed below, it appears that the \$45 million is just Cunningham's unconsolidated debt.

⁴³ Sinclair 10-Q as of March 31, 2020.

⁴⁴ Id.

Sinclair has consolidated many of the sidecar entities as variable interest entities (VIEs). As Sinclair states in its March 31, 2020 10-Q “the amounts we earn or pay under the arrangements are eliminated in consolidation and the gross revenues of the stations are reported in our consolidated statements of operations. Our consolidated revenues include \$39 million... for the three months ended March 31, 2020... related to the Cunningham Stations.” Deerfield and another sidecar company, Howard Stirk Holdings, have been fully consolidated into Sinclair.

The term “variable interest entity” as used by the United States Financial Accounting Standards Board generally refers to an entity in which a public company has a variable interest that is not based on having the majority of voting rights. VIEs are primarily entities that lack sufficient equity to finance their activities without financial support from others and/or whose equity holders, as a group, lack one or more of the following characteristics: ability to make decisions, obligation to absorb expected losses and right to receive expected residual returns. A public company is generally deemed to have a controlling financial interest in a VIE when it (i) has the power to direct the VIE’s activities that most significantly impact the VIE’s economic performance, and (ii) has the obligation to absorb losses of the VIE or the right to receive benefits from the VIE that could potentially be significant to the VIE. As the VIE’s primary beneficiary, the public company is required to consolidate the VIE and include the VIE’s assets, liabilities and results of operations in its consolidated financial statements.

In describing its VIE relationship with companies such as Deerfield and Cunningham, Sinclair states:

Certain of our stations provide services to other station owners within the same respective market through agreements, such as LMAs, where we provide programming, sales, operational, and administrative services, and JSAs and SSAs, where we provide non-programming, sales, operational, and administrative services. In certain cases, we have also entered into purchase agreements or

options to purchase the license related assets of the licensee. We typically own the majority of the non-license assets of the stations, and in some cases where the licensee acquired the license assets concurrent with our acquisition of the non-license assets of the station, we have provided guarantees to the bank for the licensee's acquisition financing. The terms of the agreements vary, but generally have initial terms of over five years with several optional renewal terms. Based on the terms of the agreements and the significance of our investment in the stations, we are the primary beneficiary when, subject to the ultimate control of the licensees, we have the power to direct the activities which significantly impact the economic performance of the VIE through the services we provide and we absorb losses and returns that would be considered significant to the VIEs. The fees paid between us and the licensees pursuant to these arrangements are eliminated in consolidation.⁴⁵

The carrying amounts and classifications of the assets and liabilities of the VIEs included in Sinclair's balance sheet were \$212,000,000 in assets and \$47,000,000 in liabilities. Cunningham, which is the biggest part of Sinclair's VIEs, is not fully consolidated on Sinclair's books. But it is clear that Cunningham is worth considerably more than the approximately \$400,000 Anderson paid for the voting stock. Only a front would agree to sell his voting shares in in Cunningham for approximately \$400,000, when Cunningham, just for its consolidated stations, generated \$39 million in revenues in the first quarter of 2020.

In 2014 Sinclair had guaranteed \$42,900,000 of Deerfield's debt. However, Deerfield's current ownership report does not disclose a loan or credit facility with any bank or lending institution. This needs to be examined in greater detail, but it appears that Deerfield has been completely consolidated into Sinclair. All it holds are bare licenses to give the FCC the false impression that it is an independent and viable licensee.

⁴⁵ Sinclair 10-Q as of March 31, 2020, p.25.

In the March 31, 2020 10-Q, Sinclair states it is the primary beneficiary and has the power to direct Cunningham's and Deerfield's activities, though, "subject to the ultimate control of the licensees." This is just pandering to federal regulators. Neither Deerfield, nor Cunningham has any authority to control daily operations of the stations they own, nor do they have the authority to make policy decisions, hire or fire employees, pay financial obligations or receive monies or profits from operation. Michael Anderson is a paid employee. The economic benefits and risks of operating the Cunningham stations accrue to Sinclair, not to Anderson. Without Sinclair's prior consent, neither Anderson nor Mumblow can take any action, even of the smallest nature. Sinclair sets the budget that regulates how much and on what Cunningham can expend funds. Without Sinclair's prior consent, Anderson cannot purchase any equipment. Perhaps this is a moot point, as it does not appear that Cunningham owns any broadcast equipment. Neither Cunningham nor Deerfield has any say in the day-to-day operations of the station. As discussed in the next section, when Sinclair broadcast commercials disguised as news stories, it sent those stories to Sinclair front companies, including Cunningham without advising the licensee that the news stories were sponsored programming. Apparently, this was not something Sinclair felt it needed to discuss with Cunningham or that it was in the purview of Cunningham's "ultimate control of the licensees."

Neither Cunningham nor Deerfield has any power to control the stations whose licenses they nominally hold. Let us assume, by way of example, that Mr. Anderson for any reason should disagree with the manner in which Sinclair operates Cunningham's stations. What are his options? Should Anderson take any action that Sinclair does not approve, Sinclair has the right to force him to sell his shares in Cunningham to any person Sinclair designates. Sinclair's lawyers, who are also their lawyers, draft various agreements, which they are expected to sign without

negotiating the terms. Sinclair chooses the programming and has complete control of the content including news programming. Sinclair sets a budget and Cunningham must abide by that budget. The APAs Sinclair has with each station further limit Cunningham and Deerfield's ability to act independently. Cunningham and Deerfield have been set up and are controlled by Sinclair. They lack the resources to operate independently. They are Potemkin licensees structured to mimic the appearance of independent broadcasters. They serve no purpose other than to allow Sinclair to own, control and operate many more television stations than the FCC's rules permit.

Sinclair Has Repeatedly Violated the Commission's Sponsorship Identification Rules

In *In re Sinclair Broad. Grp., Inc.*, Notice Of Apparent Liability For Forfeiture, 32 FCC Rcd 10853 (2017) the FCC proposed a forfeiture against Sinclair of \$13,376,200, for repeated violations of the Communications Act and the Commission's rules regarding sponsorship identification.⁴⁶ After receiving an anonymous complaint the Enforcement Bureau gathered evidence revealing that Sinclair was paid to broadcast sponsored programming, including programming in the form of news segments that aired during the local news. Sinclair broadcast such programming on 64 of its stations--collectively more than 1,400 times--without airing the required sponsorship identification announcements. The Bureau's investigation also showed Sinclair apparently provided the paid programming to 13 non-Sinclair stations more than 280 times without advising those licensees that the programming was sponsored or who sponsored it. The Sinclair sidecar stations, broadcast such programming without informing viewers that the programming was paid for by a third party. This matter was settled as part of the Consent Decree, but Sinclair's numerous violations are a part of its overall broadcast record.

⁴⁶ 47 U.S.C. §317(a)(1); 47 C.F.R. §73.1212(a).

Sinclair Has Repeatedly Failed to Negotiate with MVPD in Good Faith

On July 29, 2016, the Media Bureau and Sinclair entered into a Consent Decree.⁴⁷ In return for a payment of \$9,400,000, the Consent Decree terminated an investigation into whether Sinclair violated its good faith negotiation obligation by engaging in prohibited joint negotiations on behalf of its JSA and LMA affiliates, including Cunningham and Deerfield.⁴⁸ The Bureau found that Sinclair represented 36 sidecar stations in retransmission consent negotiations with multichannel video programming distributors (“MVPDs”). Sinclair’s conduct demonstrated a lack of good faith and a total disregard for federal regulations.

In the May 22, 2020 Consent Decree, the Bureau found that Sinclair had yet again violated the retransmission consent rules. Sinclair informed the Media Bureau that it had access to certain retransmission consent agreements executed by certain Non-Sinclair Stations. This should come as no surprise, as Sinclair controls every aspect of these stations’ operations. Since Sinclair collects and keeps all the revenues, even if it has not seen a particular agreement, it is a matter of simple arithmetic for Sinclair to determine how much per subscriber it is being paid i.e., the amount received from a particular MVPD divided by the number of subscribers the MVPD has in a particular market. There is no doubt that if Sinclair is granted a license renewal, it will continue to manipulate the Commission’s retransmission consent rules.

⁴⁷ *Sinclair Broadcast Group, Inc.*, 31 FCC Rcd. 8576 (Media Bureau 2016) (Consent Decree).

⁴⁸ 47 U.S.C. §325(b)(2)(C).

Sinclair Has Repeatedly Failed to Properly Maintain its Public Inspection Files

Section 73.3613 requires that licensees place in their public inspection files certain contracts. Sinclair, Deerfield and Cunningham have listed these documents in their ownership reports and their public files state that the documents will be provided upon request. On June 11, 2020, undersigned counsel requested from Pillsbury the agreements listed in the ownership reports. On June 18, 2020, Pillsbury produced documents for Sinclair, Cunningham and Deerfield. Many of the documents were heavily redacted.

In permitting redacted documents, the FCC has stated:

We clarify that, for purposes of the redaction allowance, confidential or proprietary information is information that would be accorded confidential treatment pursuant to our general rules for seeking non-disclosure of information submitted to the Commission. However, we emphasize that the redaction allowance applies to Section 73.3613 documents only to the extent they contain confidential or proprietary information. Thus, we expect that licensees and permittees will redact only such information that is actually confidential or proprietary, if any, and leave all other information unredacted in the copy of the Section 73.3613 document they make available to the Commission and the public. Moreover, we require that each copy of a Section 73.3613 document containing confidential or proprietary information have the same material redacted and that licensees and permittees must not provide different redacted versions of the same document to requesting parties.⁴⁹

Cunningham provided heavily redacted copies of the Option Agreements between the four Smith brothers and Michael Anderson. These agreements redacted the purchase price and such key provisions as the sections giving each brother the right to sue for specific performance on the shares and making Anderson responsible for attorneys' fees should he lose a lawsuit with

⁴⁹ *In the Matter of Amendment of Section 73.3613 of the Commission's Rules Regarding Filing of Contracts; Modernization of Media Regulation Initiative*, 33 FCC Rcd 10381, at 10388 (2018).

the brothers over the disposition of the shares. Cunningham had no right to so heavily redact these agreements. This is especially true as the option agreements were filed publicly without redaction when Anderson acquired his shares from Carolyn C. Smith Cunningham Trust.⁵⁰ Cunningham also heavily redacted the APA, removing definitional and whole sections of text. These redactions go far beyond what the Commission allows.

Deerfield produced a heavily redacted Option Agreement, dated June 3, 2013. Deerfield's public file does not include the APA, although such a document exists and should be part of the public file. The Option Agreement is in the same form as the Cunningham Option agreement and the sections track the Cunningham agreement. The purchase price is redacted as inter alia are the sections covering specific performance and attorneys' fees, despite the fact that this information is publicly available. The purchase price of \$330,000 was disclosed in public documents filed with the SEC. On April 9, 2012, Pillsbury submitted a Section 73.3613 filing on behalf of Mahan Media, Inc. Mahan is another Sinclair front company nominally owned by Mumblow. It was the same form of the Option Agreement Sinclair used with Cunningham and Deerfield. While the Mahan filing had some minor redactions, it did not redact the section on Term and Exercise as Cunningham and Deerfield did in their June 18, 2020 response to undersigned counsel's request. Nor are the sections on specific performance and attorneys' fees redacted.

Sinclair was aware that undersigned counsel was planning to file petitions to deny the license renewal applications of Sinclair, Cunningham and Deerfield. Not only did it redact information that is otherwise publicly available, it did so with the intent of undermining counsel's efforts to research the contractual agreements between Sinclair and its front entities. As

⁵⁰ BTCCDT - 20130226AFZ

Sinclair seems to be unwilling to follow even the simplest of FCC rules, the Commission needs to order Sinclair and its fronts to produce all of its public inspection file documents in unredacted form. Clearly, everything Sinclair does requires careful FCC supervision, as it cannot be trusted to follow the rules. Further, the Commission should designate an appropriate issue for hearing to determine if Sinclair's, Cunningham's and Deerfield's June 18, 2020 responses were taken in bad faith for the purpose of concealing relevant information from the public.

Conclusion

A broadcast licensee's authorization to use radio spectrum in the public interest carries with it the obligation that the station serve its community. The basic duty of broadcast licensees to serve their communities is reflected in the license renewal provisions of the Communications Act.⁵¹ 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)(2) of the Act provides that if a station fails to meet the foregoing standard, the Commission may deny the renewal application pursuant to Section 309(k)(3). 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) the Commission shall issue an order denying the license renewal application for the station.

⁵¹ 47 U.S.C. §309(k).

Sinclair and its front companies have failed to meet the standard set forth in Section 309 (k). As discussed herein, Sinclair has repeatedly, openly and notoriously violated the Communications Act. For almost 20 years, the FCC has repeatedly warned, admonished and fined Sinclair for its use of front companies, starting with the *Edwin L. Edwards* case and continuing through its recent designation of hearing on real party in interest and misrepresentation charges. By agreeing to pay \$48,000,000 Sinclair avoided a hearing on whether it was the real party in interest behind assignment applications for stations in Chicago and Texas. Yet it has learned nothing. Sinclair still refuses to come into compliance with the FCC's rules. It continues to control every aspect of Cunningham and Deerfield's corporate existence. Both entities lack the ability to take any independent action. They do not control personnel, have no say in programming nor do they have the power to set station policies. Anderson and Mumblow are empty suits. Should Sinclair become unhappy with either Anderson or Mumblow, one or both can be replaced with a more pliable front man.

In addition, Sinclair has repeatedly violated numerous FCC rules. In this last renewal cycle, Sinclair has been fined and admonished on two separate occasions for failing to negotiate in good faith with MVPDs. As demonstrated herein, Sinclair's total control of companies such as Cunningham and Deerfield make it certain that it will continue to control the retransmission negotiations of Cunningham and Deerfield. Anderson and Cunningham have no stake in the outcome of the negotiations. The retransmission fees go to Sinclair.

Sinclair's violation of the sponsorship identifications rules is telling. Not only did it broadcast commercials disguised as news stories on its stations' local news programs. It did so without notifying its front companies of the actions it was taking.

Sinclair has repeatedly violated the FCC's rules. Even when it comes to something as relatively simple as maintaining its public inspection files, Sinclair just can't follow the FCC rules. Sinclair's production of heavily redacted documents when much of the information was publicly available, in filings with the FCC and the SEC, demonstrates how far Sinclair will go to maintain and protect its Potemkin licensees.

Sinclair has demonstrated a pattern of rule violations and a pattern of abuse unprecedented in the history of the FCC. Better companies have lost their licenses for far less than what Sinclair has done. Despite repeated warnings, Sinclair continues its de facto control of television stations it is forbidden to own. The FCC should set Sinclair's, Cunningham's and Deerfield's licenses for hearing to determine if they have made material misrepresentations to the FCC and if they have the basic qualifications to remain FCC licensees.

Respectfully Submitted,

By: 

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September 1, 2020

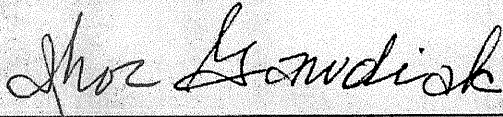
Declaration of Ihor Gawdiak

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.

I declare that I have personal knowledge of the factual allegations I make in my Petition to Deny the license renewal applications of these three stations and that these allegations are true and correct. These allegations are the direct cause of the injury I suffer as a regular viewer of these stations.

Sinclair's de facto control of these three television stations in the Baltimore Designated Market Area (DMA) diminishes the number of voices, the diversity of points of view and the quality and amount of television programming available to me as a regular viewer. I, therefore, am injured by Sinclair's unlawful control of the three stations and respectfully ask the Commission to deny their license renewal applications.



Ihor Gawdiak

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2020, a true and correct copy of the forgoing was caused to be served on the following, as indicated:

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Deerfield Media, Inc.
Deerfield Media (Baltimore), Inc.

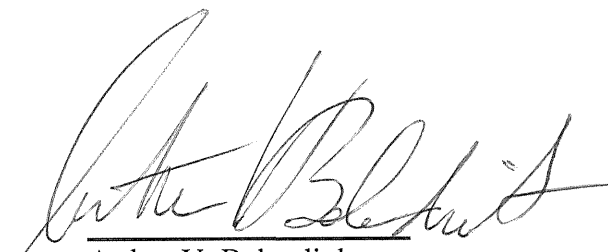
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