

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Applications of	)	
	)	
Shareholders of Perpetual Corporation	)	MB Docket No. 13-203
	)	BTCCDT-20130809ABW
and	)	BTCCDT-20130809ABX
	)	BTCCDT-20130809ACA
Charleston Television, LLC	)	BTCCDT-20130809ACB
	)	BTCCDT-20130809ACC
and	)	BTCCDT-20130809ACD
	)	BTCCDT-20130809ACE
Sinclair Television Group, Inc.	)	BTCCDT-20130809ACG
	)	BTCCDT-20130809ADC
and	)	BTCCDT-20130809ADE
	)	BTCCDT-20130809ADF
Deerfield Media (Birmingham) Licensee, LLC	)	BTCCDT-20130809ADG
	)	
and	)	
	)	
Deerfield Media (Harrisburg) Licensee, LLC	)	
	)	
and	)	
	)	
HSH Charleston (WMMP) Licensee, LLC	)	
	)	
For Consent to Assignment of Broadcast	)	
Station Licenses	)	

To: The Chief, Media Bureau

**OPPOSITION TO PETITIONS TO DENY**

Shareholders of Perpetual Corporation, Charleston Television, LLC, and Allbritton  
Communications Company (collectively, "Allbritton"),<sup>1</sup> by their attorneys and pursuant to

<sup>1</sup> Allbritton responds on behalf of local operating affiliates TV Alabama, Inc. (FCC File Nos. BTCCDT-20130809ABW and BTCCDT-20130809ABX), Charleston Television, LLC (FCC File No. BTCCDT-20130809ACA), KATV, LLC (FCC File No. BTCCDT-20130809ACB),

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Section 73.3584(b) of the Commission's rules, hereby oppose the petitions to deny filed by Free Press and Put People First! PA (collectively "Free Press"), the American Cable Association ("ACA"), and Rainbow PUSH Coalition ("RPC") in the above-captioned proceeding.<sup>2</sup> Each of the Petitions seeks to litigate (or relitigate) issues that can and should be addressed only in other Commission proceedings and fails entirely to raise any issue that could support delaying, conditioning, or denying grant of the Applications. The Media Bureau should promptly deny the Petitions and grant the Applications.<sup>3</sup>

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KTUL, LLC (FCC File No. BTCCDT-20130809ACC), ACC Licensee, LLC (FCC File No. BTCCDT-20130809ACD), Harrisburg Television, Inc. (FCC File No. BTCCDT-20130809ACE), and WSET, Incorporated (FCC File No. BTCCDT-20130809ACG). The applications being contested in this proceeding are referred to collectively herein as the "Applications."

<sup>2</sup> See Petition to Deny, Free Press, MB Docket No. 13-203, FCC File No. BALCDT-20130809ADC, BALCDT-20130809ADE, BALCDT-20130809ADF, BALCDT-20130809ADG, filed Sept. 13, 2013; Petition to Deny or, in the Alternative, for Conditions, ACA, MB Docket No. 13-203, FCC File No. BTCCDT-20130809ABW, *et al.*, filed Sept. 13, 2013; Petition to Deny, and for Other Relief, RPC, MB Docket No. 13-203, FCC File No. BTCCDT-20130809ACD, filed Sept. 13, 2013 (the "RPC Petition") (collectively, the "Petitions"). Although Free Press, ACA, and RPC are collectively referred to herein as the "Petitioners," and their filings as "Petitions," Allbritton contests whether any of the Petitioners have demonstrated standing sufficient to support a petition to deny. At best the Petitions should be treated as informal objections, and as such, those filings should be dismissed or denied. Allbritton also opposes the filing of Raymie Humbert, which consists of little more than a catalog of Sinclair's broadcast holdings followed by a few paragraphs of unsubstantiated allegations concerning the effect of Sinclair's holdings on local diversity. See Petition to Deny, Raymie Humbert, MB Docket No. 13-203, filed Aug. 14, 2013 (the "Humbert Filing"). Raymie Humbert makes no effort to demonstrate standing to oppose the Applications, and the unfounded allegations included in the filing provide no information useful to the Bureau's consideration of this matter. The Bureau therefore should dismiss the Humbert Filing without further consideration.

<sup>3</sup> This Opposition is timely filed pursuant to Sections 73.3584(b), 1.45, and 1.4 of the Commission's rules and the procedures established in the Public Notice docketing this matter. See 47 C.F.R. §§73.3584, 1.45, 1.4; Media Bureau Announces Filing of Applications Seeking Consent to Transfer Control of Licensee Subsidiaries of Allbritton Communications Company to Sinclair Television Group, Inc., *Public Notice*, MB Docket No. 13-203, DA 13-1751, rel. Aug. 14, 2013.

**I. The Bureau Should Reject Free Press's Attempt To Shoehorn Into This Proceeding Its General Policy Objections to Shared Services Agreements.**

“Should” is not equivalent to “are.” This verb distinction lies at the heart of Free Press’s ill-considered attempt to convert routine transfer of control applications into a platform to express its unhappiness with the Commission’s rules. The Free Press petition fails because it asks the Bureau to deny the Applications based on what Free Press thinks the rules governing shared services agreements (“SSAs”) and joint sale agreements (“JSAs”) *should be* rather than judge the Applications against the rules the Commission has actually written. Neither Free Press nor the Bureau can change the Commission’s rules in this proceeding, and Free Press offers no basis for denying the Applications under the current rules.<sup>4</sup>

The Free Press Petition is comprised primarily of a reprisal of its now-familiar objections to SSAs and JSAs that it and other public interest groups have repeatedly raised in FCC rulemakings and application proceedings over the past several years.<sup>5</sup> Indeed, rather than repeat

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<sup>4</sup> In an effort to find a violation of the act and rules where none exists, Free Press erroneously argues that the Bureau must find both that the Applications comply with the FCC’s rules *and* make an independent finding that the Applications satisfy the public interest. Free Press Petition at 5. In *Committee to Save WEAM v. FCC*, 808 F.2d 113, 118 (D.C. Cir. 1988), the D.C. Circuit confirmed that demonstrating compliance with the rules is sufficient for grant because “[b]y requiring a proposed assignee to address the relevant facets of the public interest, convenience and necessity on FCC Form 314, the Commission has incorporated the consideration of these issues into its application process.” The courts therefore have no basis for reexamining the grant of transfer or assignment applications based on the FCC’s alleged failure to conduct a separate “public interest” inquiry. *See id*; *see also Office of Communication of the United Church of Christ, et al. v. Federal Communications Commission*, NO. 01-1374, 2002 WL 31496407, at \*\*1 (D.C. Cir. Nov. 8, 2002).

<sup>5</sup> *See, e.g.*, Petition to Deny, Free Press, NABET-CWA, TNG-CWA, TNG-CWA, National Hispanic Media Coalition, Common Cause, and the Office of Communications, Inc., United Church of Christ, MB Docket No. 13-189, filed July 24, 2013; Petition to Deny, Free Press and Put People First PA, MB Docket No. 13-190, filed August 19, 2013; Comments of Office of Communication of United Church of Christ, *et al.*, MB Docket Nos. 09-182 and 07-294 (March 5, 2012) (proposing seven-factor test for attribution of shared services agreements under Section 73.3555 of the Rules); Comments of Free Press, MB Docket Nos. 09-182 and 07-294 (March 5, 2012) (endorsing United Church of Christ, *et al.*, attribution proposal).

portions of its argument again, Free Press lazily name-checks (without any citation) its August 2013 petition to deny certain applications for transfer of licenses from Belo Corporation to Gannett Co.<sup>6</sup> But whatever Free Press's argument may gain in repetition and self-reference, it still fails to provide any basis for finding a violation of the Commission's rules or for denying the Applications.

Beneath a healthy dose of rhetoric and hyperbole, Free Press's main argument is that the Applications proposing transfer of several Sinclair stations to Deerfield Media LLC ("Deerfield") and Howard Stirk Holdings ("HSH") *should* violate the FCC local TV ownership – or "duopoly" – rules.<sup>7</sup> Free Press's mistaken theory is that the SSAs and JSAs between Sinclair and the Stations it is selling to Deerfield and HSH result in a Sinclair maintaining *de facto* control over each of the Stations and obtaining impermissible duopolies in the Birmingham, Harrisburg, and Charleston DMAs. But there is no discernable difference between the JSAs and SSAs involved in this proceeding and those approved by the Bureau as consistent with the duopoly rules in numerous previous cases.<sup>8</sup> What Free Press is really arguing is that SSAs and JSAs *should* violate the rules because they are contrary to the "public interest."<sup>9</sup> The Bureau's

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<sup>6</sup> See Free Press Petition at 11-12; Media Bureau Announces Permit-but-Disclose *Ex Parte* Status For Applications Seeking To Transfer Control of Licenses from Shareholders of Belo Corp. to Gannett Co., Inc. and for Applications Seeking To Assign Licenses from Subsidiaries of Belo Corp. to Subsidiaries of Sander Media, LLC And to Tucker Operating Co., LLC, *Public Notice*, MB Docket No. 13-189, DA 13-1666 (rel. July 31, 2013).

<sup>7</sup> See Free Press Petition at 5-11. The stations subject to the Applications contested by Free Press are WABM(TV) and WTTO(TV) in the Birmingham DMA; WHP-TV in the Harrisburg DMA; and WMMP(TV) in the Charleston DMA. The stations are collectively referred to as the "Stations."

<sup>8</sup> See, e.g., *SagamoreHill of Corpus Christi Licenses, LLC*, 25 FCC Rcd 2809, 2813 (Med. Bur. 2010); *Nexstar Broadcasting, Inc., Letter Ruling*, 23 FCC Rcd 3528, 3533, 3535 (Vid. Div. 2008); *Chelsey Broadcasting Company of Youngstown, LLC*, Memorandum Opinion and Order, 22 FCC Rcd 13905 (2007); *Malara Broadcast Group of Duluth Licensee LLC*, 19 FCC Rcd 24070 (2004).

<sup>9</sup> See Free Press Petition at 2, 4-5.

role in this case, however, is to enforce the Commission's rules, not make new ones. And the reality is that the SSAs and JSAs Free Press challenges comply with the clear rules and tests that the FCC and the Media Bureau have painstakingly established over many years – rules and tests that Free Press doesn't even bother to cite.<sup>10</sup>

The FCC's rules for attributing ownership of television stations focus on whether the licensee maintains control over programming, personnel, and finances.<sup>11</sup> The JSAs and SSAs in question here ensure that Deerfield and HSH will maintain control over all three. Free Press objects to Sinclair providing programming to the stations,<sup>12</sup> but the FCC's rules permit a party to program up to 15% of a station's programming schedule without gaining an attributable interest.<sup>13</sup> Free Press does not even claim that Sinclair will have the authority to program greater than 15% of the programming on any of the Stations, so the programming JSAs and SSAs satisfy the rules. While Free Press does claim that Sinclair will "control" the stations, it acknowledges that the service agreements require Deerfield and HSH to maintain their own separate management structure for the day-to-day operations of the Stations.<sup>14</sup> Thus, the JSAs and SSAs ensure that Sinclair will not have sufficient management responsibility for the Stations to gain an attributable interest in them. Finally, Free Press claims that the Stations agreement to pay

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<sup>10</sup> See 47 C.F.R. §73.3555, nn.1-3; Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, *Report and Order*, 14 FCC Rcd 12559 (1999); Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, *Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 1097, 1112-13 (2001).

<sup>11</sup> See, e.g., *Siete Grande Television, Inc.*, 11 FCC Rcd 21154, 21156 (1996) (citing *WHDH, Inc.*, 17 FCC 2d 856 (1969); *Stereo Broadcasters, Inc.*, 87 FCC 2d 87 (1981)).

<sup>12</sup> See Free Press Petition at 9.

<sup>13</sup> See 47 C.F.R. §73.3555, nn.2(i)(B)(ii), 2(j).

<sup>14</sup> See Free Press Petition at 9.

service fees to Sinclair amounts to surrendering control over the Stations' finances.<sup>15</sup> But Free Press offers no evidence that these payments are out of proportion to the services that Sinclair will provide or that it has any expertise to make that judgment. The Stations will be owned and managed by experienced broadcasters who are in a position to make that business judgment and who have made the decision that those fees are reasonable. The FCC has approved numerous agreements involving service fees paid by a station to a JSA or SSA partner,<sup>16</sup> and Free Press provides the FCC with nothing but speculation and insinuations as a basis for finding that the agreements at issue in this case violate the rules. In short, none of the indicia the FCC uses to determine whether a party has an attributable interest in a television station remotely suggests that Sinclair will have an attributable interest any of the Stations. Free Press's objections to the Applications must therefore be denied.

Of course, Free Press isn't concerned with the FCC's current rules because it wants to change those rules, and it thinks this application proceeding (and others) is the best way to accomplish its policy goals.<sup>17</sup> Accordingly, it asks the Media Bureau to refer this case to the full Commission based on policy questions Free Press has raised in other proceedings.<sup>18</sup> In fact, the Applications present no novel issues, so there is no predicate for referring this matter to the full Commission. The Commission already is considering its attribution rules relating to service agreements in pending rulemaking proceedings.<sup>19</sup> The Bureau's role is to enforce the existing

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<sup>15</sup> *See id.* at 7-10.

<sup>16</sup> *See* n.8, *supra*.

<sup>17</sup> *See* Free Press Petition at 11-12.

<sup>18</sup> *See id.*

<sup>19</sup> *See* 2010 Quadrennial Regulatory Review- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996; Promoting Diversification of Ownership in the Broadcasting Services, *Notice of Proposed Rulemaking*, 26 FCC Red 17489 (2011); Amendment of the Commission's Rules Related to Retransmission Consent, *Notice of Proposed Rulemaking*, 26 FCC Red 2718 (2011).

rules, not to make new ones, and definitely not to prejudge issues currently pending before the full Commission. The Bureau accordingly must deny the Free Press Petition.

**II. The Bureau Has Rejected ACA's Policy-Based Retransmission Consent Arguments in Several Past Application Proceedings and Should Do So Again Here.**

Again, "should" does not equal "are." The ACA Petition is little more than a rehash of policy arguments that ACA has advocated in the Commission's media ownership and retransmission consent rulemaking proceedings and more recently, in opposing other television station sales.<sup>20</sup> ACA asks the Bureau to deny the Applications or add conditions to approval that would prohibit Sinclair from acting as an agent for retransmission consent negotiations for other stations in its markets. Although ACA recites jargon about "transaction specific harms," the reality is that the ACA Petition is just another lobbying vehicle ACA is using to advocate against cooperative negotiation of retransmission consent agreements by multiple stations in a single market.<sup>21</sup>

As the Bureau has recognized in at least four past cases, individual application proceedings like this one are not appropriate vehicles for ACA to press its policy agenda.<sup>22</sup> ACA does not even acknowledge, let alone distinguish these directly-on-point cases, which is surprising given that the Bureau already has explained to ACA in exacting detail why its

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<sup>20</sup> See, e.g., Petition to Deny, or in the Alternative, for Conditions, Time Warner Cable Inc., DirecTV LLC, and the American Cable Association, MB Docket No. 13-189, filed July 24, 2011; Comments of the American Cable Association, MB Docket No. 09-182, MB Docket No. 07-294 (Mar. 5, 2012); Comments of the American Cable Association, MB Docket No. 10-71 (May 27, 2011).

<sup>21</sup> See ACA Petition at ii, 3, 6 & n.14, 10 & nn.31-32, 11 & n.33.

<sup>22</sup> See *High Maintenance Broadcasting, LLC*, FCC File No. BALCDT-20120315ADD, rel. Aug. 28, 2012; *ACME Television Licenses of Ohio, LLC*, 26 FCC Rcd 5198 (2011); *Free State Communications, LLC*, 26 FCC Rcd 10310 (2011); *ACME Television, Inc.*, 26 FCC Rcd 5189 (2011).

arguments are inappropriate in this proceeding and should be rejected. In *Free State*

*Communications, LLC*, the Bureau explained:

The gravamen of ACA's petition is that the joint negotiation of retransmission consent agreements by broadcast television licensees in the same market harms cable operators by reducing their bargaining power and that the Commission should act to prohibit it. That is one of the issues squarely under consideration in the Retransmission Consent Proceeding. Indeed, despite ACA's protest that it is concerned solely with the likelihood of market- and transaction-specific harms, the evidence it marshals in support of its position consists of reports and comments filed therein. We will not address here the substance of the Retransmission Consent Proceeding, and we decline to reach a decision that would effectively pre-judge the outcome of a pending rulemaking in favor of one of the parties that petitioned to commence it. Furthermore, aside from the issue of joint negotiation of retransmission consent agreements, ACA fails to demonstrate that the proposed assignment and related cooperative agreements violate our rules and precedent.<sup>23</sup>

Precisely the same analysis applies in this case and ACA offers no reason for the Bureau to reach a contrary conclusion.

Given that the ACA Petition raises only issues that the Bureau has repeatedly considered and rejected and that the relief ACA seeks is well beyond the Bureau's authority to grant, the Bureau should dismiss the ACA Petition as repetitious or deny it on the merits.

**III. The Bureau Should Reject RPC's Efforts To Relitigate Long-Resolved Issues That in Any Case Have Nothing To Do With Sinclair's Basic Qualifications as a Commission Licensee.**

The Bureau also should deny RPC's baseless request that it embark on a fishing expedition to determine whether Sinclair is basically qualified to acquire Allbritton's license to broadcast on WJLA-TV.<sup>24</sup> The RPC Petition is remarkably devoid of any new factual allegation that would support its extraordinary and unorthodox request. Essentially, RPC relies on an 11-year old forfeiture that Sinclair long ago paid and 9-year old allegations that RPC raised against

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<sup>23</sup> *Free State Communications, LLC*, 26 FCC Rcd at 10312.

<sup>24</sup> RPC opposes only Sinclair's application to acquire WJLA-TV. See RPC Petition at 1; see also FCC File No. BTCCDT-20130809ACD (the "WJLA Application").



several Sinclair station acquisitions from 2003 through 2005.<sup>25</sup> RPC presents no new evidence that Sinclair is unqualified to be a TV station licensee. Astonishingly, it provides nearly a full page of text lauding Sinclair for its positive contributions to broadcasting and the public interest and explaining why the service agreements others have objected to in this and other proceedings may, in fact, serve the public interest.<sup>26</sup> Ordering a hearing based on this kind of showing would be both unprecedented and remarkably counter-intuitive given RPC's praise of Sinclair!

Congress directed the FCC to hold hearings concerning broadcast applications only when a party raises a "substantial and material issue" regarding a proposed licensee's qualifications.<sup>27</sup> The RPC Petition clearly fails that test. As RPC recognizes, all of the issues it seeks to raise in relation to the WJLA Application are already pending before the Commission in other proceedings or have been resolved by Commission action.<sup>28</sup> RPC offers no reason why these other matters should be subject to the procedures it requests here rather than routine processing. And that failure, coupled with RPC's failure to substantiate any specific factual allegations relevant to Sinclair's acquisition of WJLA-TV, leaves RPC's request for a hearing lacking in any support. The Bureau should deny or dismiss the RPC Petition and grant the WJLA Application.

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<sup>25</sup> See RPC Petition at 4-7.

<sup>26</sup> See *Id.* at 8-9.

<sup>27</sup> See 47 U.S.C. §309(e).

<sup>28</sup> See RPC Petition at 6-7.

**V. CONCLUSION**

For the foregoing reasons, Allbritton requests that the Commission dismiss or deny the Petitions and promptly grant the Applications.

Respectfully submitted,

**SHAREHOLDERS OF PERPETUAL  
CORPORATION**

**CHARLESTON TELEVISION, LLC**

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