

OCT 17 2013

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC Mail Room

In re Application of )  
Allbritton Communications Co. ) MB Dcket No. 13-203  
For Transfer of Control of WJLA-TV, Washington, DC ) BTCCDT-20130809ACD  
To Sinclair Television Group, Inc. )

TO THE COMMISSION

**PETITION TO DENY, AND FOR OTHER RELIEF**

The Rainbow PUSH Coalition ("RPC"), pursuant to 47 U.S.C. §§307 and 309 and 47 C.F.R. §§73.3584, respectfully requests the Commission to designate the above-referenced Form 315 application (the "Application") for evidentiary hearing, and, based on the evidence expected to be adduced at the hearing, to deny the Application.

Rainbow PUSH is a non-profit civil rights organization whose mission includes the development of entrepreneurial and employment opportunities for people of color in the media and telecommunications industries, as well as the advancement of accurate, non-stereotypical news and other media content for, by and about people of color. Rainbow PUSH has participated in dozens of proceedings before the FCC over the past three decades, including adjudications and rulemakings focused on media ownership structure and its impact on diversity of viewpoints, content and ownership. Since 1998, Rainbow PUSH has been the principal party objecting to ownership structures developed and implemented by the transferee in this proceeding.

**I. The Transactions**

By this Application, Sinclair Television Group, Inc. (by itself or with affiliated companies, "Sinclair") seeks to acquire control of WJLA-TV, Washington, D.C.'s ABC television affiliate, from Allbritton Communications Co. ("Allbritton").<sup>1</sup>

<sup>1</sup> Having provided exemplary broadcast service, Albritton is a qualified licensee and is qualified to transfer control of its stations.

The Application is bundled together with seven other Form 315 applications under which Sinclair seeks to acquire control of Albritton's other stations. Further and simultaneously, Sinclair has filed four Form 314 applications through which Sinclair proposes to spin off two stations serving Birmingham, AL and one serving Harrisburg, PA to affiliates of Deerfield Media ("Deerfield"),<sup>2</sup> and one station serving Charleston, SC to a licensee subsidiary of Howard Stirk Holdings, LLC ("Stirk").<sup>3</sup> Pursuant to option, the Birmingham, Harrisburg and Charleston stations would be operated under shared services agreements ("SSAs") or joint sales agreements ("JSAs").

## II. Jurisdiction

The Commission has personal jurisdiction over the applicants,<sup>4</sup> and it has subject matter jurisdiction over the allegations in this Petition.<sup>5</sup>

This Petition contains "specific allegations of fact sufficient to show...that a grant of the application would be prima facie inconsistent with [the public interest, convenience and necessity]."<sup>6</sup> The allegations herein, except those of which official notice may be taken, are supported by a declaration under penalty of perjury of Steven Smith, an authorized member of RPC and a regular viewer of WJLA-TV in his home, stating how he would be harmed by a grant of the Application.<sup>7</sup> Thus, Rainbow/PUSH has administrative standing.

<sup>2</sup> RPC has no knowledge regarding Deerfield's qualifications.

<sup>3</sup> Stirk is wholly owned by Armstrong Williams, who for over 30 years has been a media entrepreneur and content provider, based in Washington, DC. Mr. Williams is qualified to be a Commission licensee. A separate set of questions raised by public interest groups concerns whether the JSAs or SSAs under which Sinclair would provide services to the Birmingham, Harrisburg, and Charleston stations would serve the public interest. These questions are serious and are appropriate for Commission consideration, including in hearing.

<sup>4</sup> 47 U.S.C. §§307, 308 and 309.

<sup>5</sup> 47 U.S.C. §303(f) and (g) and 307(a) and (c). See, e.g. Beaumont NAACP v. FCC, 854 F.2d 501 (D.C. Cir. 1988); Bilingual Bicultural Coalition on the Mass Media v. FCC, 595 F.2d 621 (D.C. Cir. 1978) ("Bilingual II"); Sage Broadcasting Corp. (MO&O and NAL), 10 FCC Rcd 4429 (1995).

<sup>6</sup> 47 U.S.C. §309(d)(1). See, e.g., Astroline Communications Co. v. FCC, 857 F.2d 1556 (D.C. Cir. 1988) and Dubuque T.V. Limited Partnership, 4 FCC Rcd 1999 (1989).

<sup>7</sup> 47 U.S.C. §309(d)(1); see 47 C.F.R. §1.16.

This petition is timely and ripe for review,<sup>8</sup> and it complies fully with the Commission's rules governing pleadings,<sup>9</sup> petitions to deny,<sup>10</sup> and service of process.<sup>11</sup>

Consequently, RPC has met all jurisdictional requirements, and its allegations must be fully considered on the merits.<sup>12</sup>

### **III. The Commission Should Examine, In Hearing, Whether Sinclair Possesses The Basic Qualifications To Be A Commission Licensee**

Serious and thoughtful questions have been raised by public interest groups about whether the SSAs and JSAs contemplated by Sinclair for the Birmingham, Harrisburg and Charleston stations are lawful or, even if lawful, would serve the public interest. Before reaching those questions, the Commission must first determine whether Sinclair possesses the basic qualifications to be a licensee. Since 2002, RPC and others have repeatedly asked the Commission to answer this question. Sitting before the Commission is a record hundreds of pages long upon which the agency still has not ruled.<sup>13</sup> RPC is entitled to a ruling – better late than never. Indeed if there is any question the viewing public can fairly expect the FCC to address, it is whether the nation's largest television broadcaster is - or is not - basically qualified to be a licensee.

<sup>8</sup> 47 U.S.C. §309(d)(1) and 47 C.F.R. §73.3584(a). Timeliness is established by the Public Notice, DA 13-1751 (rel. August 14, 2013).

<sup>9</sup> 47 C.F.R. §1.48, 1.49, 1.51 and 1.52.

<sup>10</sup> 47 C.F.R. §73.3584.

<sup>11</sup> 47 C.F.R. §1.47.

<sup>12</sup> See Mass Media Bureau Backlog Reduction Plan, Public Notice No. 54882 (MMB, released June 15, 1995), at 2.

<sup>13</sup> For decades, the Commission has been extraordinarily slow in processing petitions to deny broadcast applications. The Commission has been equally slow in processing rulemaking issues impacting the underserved – e.g. multilingual emergency information (8 years), prison payphones (10 years), broadcast EEO enforcement (11 years), and media incubators (23 years). Public confidence in the agency would be enhanced considerably if the Commission would turn promptly to RPC's and others' long pending and thoroughly documented allegations to the effect that the nation's largest television station owner is not qualified to be a licensee.

- ejected Edwin Edwards, its former employee who was the supposed principal of Glencairn;
- replaced Edwards with Carolyn Smith, the very elderly and broadcast-inexperienced mother of the four brothers who control Sinclair, who evidently made no decisions;
- installed, to operate Cunningham, a former President of Sinclair, who happened to be the only person on earth found by a Judge to be controlled by Sinclair; and
- imposed on Cunningham the same stringent control protocols involving financing, staffing and programming as those that had characterized the Sinclair/Glencairn relationship; all of these protocols worked to the disadvantage of Glencairn and to the advantage of Sinclair for no apparent legitimate business reason.<sup>18</sup>

On February 27, 2004, the Media Bureau denied RPC's 2003 Petition to Deny.<sup>19</sup> Although the Bureau confirmed that "Sinclair's ownership of Cunningham's stations would not comply with the [FCC's] 1999 television duopoly rule",<sup>20</sup> the Bureau failed even to mention or address many of the claims raised by RPC.<sup>21</sup> Simultaneously, the Media Bureau also dismissed an Application for Review that RPC had filed in response to the Media Bureau's 2002 dismissal of Sinclair's virtually identical license acquisition applications.<sup>22</sup> RPC's challenge to the 2002 applications raised several additional yet-unresolved character issues, including that Sinclair had failed its duties as a broadcaster by misrepresenting or withholding critical facts before the

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<sup>18</sup> See RPC 2003 Petition to Deny, pp. 4-14.

<sup>19</sup> Letter from W. Kenneth Ferree, Chief, Media Bureau, FCC to Kathryn R. Schmeltzer, Shaw Pitman, LLP, 19 FCC Rcd 3897 (2004) ("2004 Order").

<sup>20</sup> Id. at 3899. At the time, the 1999 media ownership rules were in effect pending the Third Circuit's review of the Commission's then-pending media ownership rules.

<sup>21</sup> Id. at 3900.

<sup>22</sup> Id. RPC argued in 2002 that the Bureau should have considered the character evidence that RPC raised in the proceeding. See Application for Review, BALCT-20020718ABH (filed Oct. 10, 2002). RPC further supplemented that Application for Review with evidence that Sinclair made secret and illegal contributions to the Maryland gubernatorial race and it had mislead viewers by not disclosing its interest in the Maryland gubernatorial race. Supplement to Application for Review, or, in the Alternative, Request to Recall the Record in the Edwards Case and Consolidate Review of all Outstanding Allegations, BALCT-20020718ABH et al. (filed Dec. 16, 2002).

Commission, making undisclosed campaign contributions and failing to disclose its material interest with respect to a news story.<sup>23</sup>

In its still-pending Petition for Reconsideration of the 2004 Order,<sup>24</sup> RPC set out and described at length eight reversible errors in the 2004 Order. Specifically, the Bureau:

- failed to conduct any investigation;
- failed to mention five of the most significant allegations of unlawful conduct;
- failed to mention ten of the eleven indicia of de facto control, and then held that the one fact it did mention could not be considered without evidence of other similar facts;
- relied on an unsworn pleading (that was required by statute to have been sworn) as though it were evidence;
- made material assertions that are the direct opposite of the evidence of record (e.g., the Bureau maintained that station websites mentioned the station owner, when none of the websites did that);
- provided only cursory and conclusionary analysis of those facts it did consider;
- failed to cite any pertinent authorities; and
- failed to apply the applicable law.

Two sets of pleadings filed since 2004 amplify upon and further develop the record developed between 2002 and 2004:

1. The Nashville Tripoly Controversy of 2005, in which RPC and others alleged that Sinclair had essentially created the nation's first medium market full power television tripoly through the use of an unlawful arrangement with a captive third party;<sup>25</sup> and
2. The Retransmission Consent Controversy of 2009, in which RPC filed, inter alia, a letter demonstrating that Sinclair was using its control of Cunningham to exercise

<sup>23</sup> RPC 2003 Petition to Deny at 8.

<sup>24</sup> Petition for Reconsideration and for Other Relief, BALCT-20031107AAU (filed March 29, 2004), at 2 ("2004 RPC Petition for Reconsideration").

<sup>25</sup> Application of Nashville License Holdings, LLC For Assignment of License of WNAB-TV, Nashville, TN, File No. BALCT-20050721ABW (the "WNAB-TV Application"). CDBS reports that this application is still pending (visited September 9, 2013).

unprecedented market power to artificially skew retransmission consent negotiations, to the detriment of consumers.<sup>26</sup>

In both proceedings, RPC urged the Commission to rule on the 2004 RPC Petition for Reconsideration. The time has come for the Commission to grant that request, and specifically to grant the relief RPC sought in its 2003 Petition to Deny.<sup>27</sup> RPC requests that the records associated with the 2002 Applications and the 2003 Applications, the WNAB-TV Application and Nashville Triopoly Controversy of 2005, and the 2009 Retransmission Consent Controversy, including all letters and pleadings, be associated with and incorporated by reference as a part of this docket.

#### **IV. Conclusion and Request for Relief**

The Commission should designate the Application for hearing and, in so doing, issue a Grayson determination<sup>28</sup> that contemplates a consolidating hearing on all qualifications issues involving Sinclair and a freeze on further Sinclair transactions until its basic qualifications are established. The HDO should organize the issues to be tried in this order:

1. Whether, in light of all of the unresolved allegations described above, Sinclair is basically qualified to be a broadcast licensee; and
2. If and only if Sinclair is basically qualified, whether its relationship to Cunningham, as documented by RPC and others, is predictive of whether it will impose, on Deerfield or Stirk, operating conditions that would violate the duopoly rule or not serve the public interest;<sup>29</sup> and

<sup>26</sup> Letter of Rainbow PUSH Coalition, Mediacomm Communications Corporation v. Sinclair Broadcast Group, Inc. CSR-8233-C and CSR-8234-M (December 11, 2009).

<sup>27</sup> 2003 RPC Petition to Deny at 8-9 (identifying 12 specific issues to be set for trial).

<sup>28</sup> See Grayson Enterprises, Inc., 79 F.C.C.2d 936, 940 (1980) ("Grayson"), modified in Transferability of Licenses, 53 R.R.2d 126 (1983) (establishing test under which applications of co-owned stations by an entity designated for hearing will also be designated for hearing or held abeyance pending the outcome of the hearing).

<sup>29</sup> This issue should be considered in connection with allegations being raised by Free Press going to whether Sinclair is qualified in light of the Deerfield and Stirk applications. If a hearing is specified on those questions, the issues should be crafted so that they focus on the structure of the LMAs, JSAs and SSAs, and not on Stirk's qualifications. As noted at n. 3 supra, Stirk is a qualified applicant, and thus the only issue regarding Stirk should be whether the SSA

3. If and only if Sinclair is basically qualified, whether its relationships to Cunningham and other third parties in local marketing agreements (“LMAs”), JSAs and SSAs should be reformed to conform to the letter and spirit of the duopoly rule and to serve the public interest.

This case has great importance, involving, as it does, the basic qualifications of America’s largest television broadcaster, and the uses and potential abuses of ownership structures – LMAs, JSAs and SSAs – that have long vexed the Commission and its staff. As NABOB recently pointed out, “the ongoing consolidation of ownership ... undermines the Commission’s ability to promote any improvement in minority ownership” in part because instruments like SSAs “often result in sham transactions in which the titular owner exercises no actual control.”<sup>30</sup> In light of these extraordinary circumstances, this case should be heard by the full Commission upon oral argument.

In closing, and to be fair, two things must be said. First, this Petition is not intended as an indictment of Sinclair Broadcasting Co. Sinclair’s employment practices, once a cesspool of racial prejudice, have improved in recent years. Its development of mobile video technology has considerable potential for consumers, and its initiative in creating the six-channel model for DTV subchannels has delivered considerable diversity to the public. These achievements, while not relevant to whether the case should be designated for hearing, are equitable factors that the Commission is permitted to weigh in determining the appropriate remedy when it reviews the record compiled in a hearing.

And second, this Petition is not intended as an indictment of all LMAs, JSAs or SSAs. A case can be made that, in some instances and with full transparency, such devices can preserve service that might otherwise disappear, or can be structured to empower a new entrant, secure its independence from larger broadcasters, and thus promote diversity. Unfortunately, many JSAs and most SSAs afford the public few if any benefits. NABET, the National Hispanic Media

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relationship between Stirk and Sinclair complies with the duopoly rule and is in the public interest.

<sup>30</sup> Letter of James Winston, Executive Director and General Counsel, NABOB, to Hon. Mignon Clyburn, MB Dockets 09-182 and 07-294 (filed September 9, 2013), pp. 1 and 2 n. 1.

Coalition, the Office of Communication of the United Church of Christ, Inc., Free Press and others have made a powerful case that these devices generally reduce diversity. Are Sinclair's JSAs or SSAs net-beneficial or net-harmful? Certainly a lesson that can be drawn from Sinclair's domination of Cunningham is that the Commission should examine Sinclair's newly created JSAs and SSAs with heightened skepticism.

Historically, the agency has had difficulty designating Section 309 hearings even when the evidence overwhelmingly warranted such a hearing. And that is understandable: an HDO is a big step, not to be taken lightly. If the Commission is unprepared to issue an HDO at this time, it should consider either of two interim steps authorized by Congress: (1) conduct pre-designation discovery along the lines of the Fox Television foreign ownership case;<sup>31</sup> or (2) hold a fact-finding hearing under Section 403 of the Act, which authorizes the Commission "to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act."<sup>32</sup> While RPC does not believe either step is necessary, RPC would not object if the Commission initially proceeds along those lines while it contemplates whether to issue an HDO and what issues the HDO should specify.

Respectfully submitted,



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Counsel for the Rainbow PUSH Coalition

September 13, 2013

<sup>31</sup> See Fox Television Stations, Inc., 10 FCC Rcd 8452, 8460-65 (1995), on reconsideration, 11 FCC Rcd 5714 (1995); see also Bilingual II, 595 F2d at 628-30.

<sup>32</sup> 47 U.S.C. §403.



## DECLARATION

RE: WJLA-TV, Washington, DC

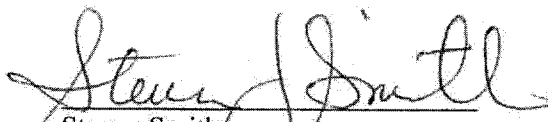
My name is Steven Smith. I am a member of the Rainbow PUSH Coalition ("RPC"), and I am authorized to participate in this matter on behalf of RPC. I have been a resident of the Washington, D.C. area since 1992. I am a regular viewer of WJLA-TV, which is owned by Allbritton Communications Co. ("Allbritton").

I have reviewed and I support RPC's "Petition to Deny and for Other Relief" ("Petition to Deny") directed at the pending application to transfer control of Allbritton Communications Corp., including WJLA-TV, to Sinclair Television Group, Inc. ("Sinclair"). The facts stated in these documents are true to my personal knowledge except where identified as having been based upon industry publications or material on file with the Federal Communications Commission ("FCC").

I would be seriously aggrieved if the Petition to Deny is not granted, since as a consequence of its denial members of Rainbow/PUSH, including myself, would be deprived of program service in the public interest. As documented in the Petition to Deny and in previous RPC filings referenced in the Petition to Deny, Sinclair has engaged in a host of practices that call into question its credibility and trustworthiness as a source of information. Sinclair's ownership or potential ownership of WJLA-TV would diminish my ability to rely with confidence on the accuracy and reliability of WJLA-TV's local programming, particularly including the station's news, which I have watched for decades and which I trust in great measure because its owner, Allbritton, has an unimpeachable reputation for transparency and lawful dealing.

This statement is true to my personal knowledge and is made under penalty of perjury under the laws of the United States of America.

Executed September 10, 2013.



Steven Smith  
3138 Brinkley Station Dr.  
Temple Hills, MD 20748

**CERTIFICATE OF SERVICE**

I, David Honig, hereby certify that I have this 13<sup>th</sup> day of September, 2013 caused a copy of the foregoing "Petition to Deny, and for Other Relief" to be delivered by U.S. First Class Mail, postage prepaid, and by e-mail, to the following:

Hon. Mignon Clyburn  
Acting Chairwoman  
Federal Communications Commission  
445 12th St. S.W.  
Washington, D.C. 20554

Hon. Ajit Pai  
Commissioner  
Federal Communications Commission  
445 12th St. S.W.  
Washington, D.C. 20554

Hon. Jessica Rosenworcel  
Commissioner  
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David Honig

The facts demonstrate, overwhelmingly, that a hearing under Section 309(e) is necessary to produce an answer to this fundamental question. The WJLA-TV Application presents an appropriate place for such a hearing.<sup>14</sup>

This saga begins in 2001 with the Edwards decision,<sup>15</sup> which resolved a case that RPC brought in 1998. The Commission found, over Commissioner Copps' dissent, that a company then known as Glencairn, Ltd. ("Glencairn") and now known as Cunningham Broadcasting Corporation ("Cunningham") had unlawfully ceded control to Sinclair as part of a scheme by Sinclair to control more stations than permitted under the duopoly rule. The Commission fined Sinclair and Glencairn \$40,000 each for this misconduct.<sup>16</sup>

After paying the forfeiture, however, in a scenario of classic recidivism, Sinclair operated as though Edwards had never been issued. In 2002 and again in 2003, Sinclair filed applications seeking approval to acquire five stations licensed to Cunningham, and requesting waivers of the Commission's television duopoly rule in connection with those acquisitions.<sup>17</sup> In its petitions to deny the 2002 and 2003 applications, RPC demonstrated that after Edwards, Sinclair:

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<sup>14</sup> It is irrelevant that the underlying improprieties by Sinclair were presented in petitions to deny applications that may be dormant, dismissed, withdrawn, or not actively being pursued by the applicants. When potentially disqualifying facts are put forward in a petition to deny, the allegations do not disappear into thin air if the underlying application goes away. Rather, the Commission will specify the unresolved issues in connection with another application involving the same applicant. See, e.g., Trinity Broadcasting of Florida, Inc. (HDO), 8 FCC Rcd 2475 (1993) (designating a Miami, FL renewal application for hearing to consider allegations initially raised in a petition to deny an assignment application for a station in Wilmington, DE); see also Jefferson Radio Corp. v. FCC, 340 F.2d 921 (D.C. Cir. 1964) (applicants cannot "dismiss" their way out of accountability for misconduct.)

<sup>15</sup> Edwin L. Edwards, Sr., 16 FCC Rcd 22236 (2001) ("Edwards"), aff'd without reaching the merits in Rainbow/PUSH Coalition v. FCC, 330 F.3d 539 (D.C. Cir. 2003), rehearing denied, 2003 U.S. Lexis 18829 (September 10, 2003).

<sup>16</sup> Id. at 22258.

<sup>17</sup> See Application of WRGT Licensee, LLC, For Assignment of License of WRGT-TV, Dayton, Ohio et al., BALCT-20020718ABH et al. (filed July 18, 2002) (the "2002 Applications"); Application of WRGT Licensee, LLC, For Assignment of License of WRGT-TV, Dayton, Ohio, et al., BALCT-20031107AAU et al. (filed Nov. 7, 2003) (the "2003 Applications"); see Petition to Deny, And For Other Relief, BALCT-20031107AAU, et al., at 4-7 (filed Dec. 19, 2003) ("RPC 2003 Petition to Deny").