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Dear Counsel:

This concerns matters related to the above-captioned applications. The applicants seek approval of the transfer of control of licensee subsidiaries of Allbritton Communications Co. ("Allbritton") to Sinclair Television Group, Inc. ("Sinclair"). Sinclair has also filed applications for the voluntary assignment of license of four broadcast television stations to either Deerfield Media entities ("Deerfield") or Howard Stirk Holdings, LLC ("HSH").¹ We write to inform the parties that certain applications must be amended or withdrawn in order to bring the proposed transactions into compliance with our local TV ownership rules.

The Commission's local TV ownership rule allows an entity to hold an attributable interest in two television stations in the same designated market area ("DMA"), provided: (1) the Grade B contours of the stations do not overlap; or (2) (a) at least one of the stations is not ranked among the four highest-ranked stations in the DMA, and (b) at least eight independently owned and operating commercial or non-commercial full-power broadcast television stations would remain in the DMA after the proposed combination ("top four-ranked/eight voices test").²

In 1999, the Commission determined that any time brokerage agreement or local marketing agreement ("LMA") between two television stations in the same market for more than fifteen percent of the brokered station's broadcast hours per week is attributable and counts toward the ownership limits of the licensee of the brokering station.³ The Commission concluded

¹ Deerfield and HSH will be referred to collectively herein where appropriate as the "Assignee Parties."

² 47 C.F.R. § 73.3555(b); *Review of the Commission's Regulations Governing Television Broadcasting*, MM Docket No. 91-221, Report and Order, 14 FCC Rcd 12903, 12909 (1999) ("*Local TV Ownership Report and Order*").

³ *Local TV Ownership Report and Order*, 14 FCC Rcd at 12958. A television local marketing agreement or time brokerage agreement is a type of contract that generally involves the sale by a licensee station of

that LMAs involving existing combinations of stations entered into prior to November 5, 1996 would be grandfathered until the conclusion of the 2004 biennial review, which remains pending.⁴ LMAs entered into on or after that date would have two years to come into compliance with the rule or be terminated.⁵ The grandfathering protection was intended to “avoid undue disruption of existing LMA arrangements while, at the same time, promote our competition and diversity goals.”⁶ LMAs governing existing station combinations were also transferrable through the conclusion of the 2004 biennial review.⁷

In three of the markets—Charleston, Birmingham, and Harrisburg—the proposed transactions would result in the elimination of the grandfathered status of certain local marketing agreements and thus cause the transactions to violate our local TV ownership rules.

I. Local Marketing Agreements

Charleston, South Carolina DMA

Sinclair currently owns WMMP(TV), Charleston, South Carolina. Sinclair, through Station WMMP(TV), currently programs WTAT-TV, licensed to a subsidiary of Cunningham Broadcasting Corporation (“Cunningham”), pursuant to a local marketing agreement.⁸ Sinclair proposes to acquire WCIV-DT, Charleston, South Carolina⁹ and assign WMMP(TV) to HSH.¹⁰ The application states that Sinclair would continue to provide services to WMMP(TV) through proposed joint sales and shared services agreements between Sinclair and HSH.¹¹ Other than listing it among Sinclair’s other authorizations, the application does not address the local marketing agreement between WMMP(TV) and WTAT-TV.

The local marketing agreement between WMMP(TV) and WTAT-TV is not entitled to grandfathering protection. First, the agreement is dated July 1, 1998, well after the November 5, 1996 deadline for grandfathering protection for local marketing agreements. Second, the agreement is between broker station WMMP(TV) and licensee station WTAT-TV, and the proposed transaction assigning WMMP(TV) to HSH would mean that WMMP(TV) could no longer serve as the broker station if Sinclair intends to continue serving as broker. That change

discrete blocks of time on its station to a broker station that then supplies the programming to fill that time and sells the commercial spot announcements to support the programming. *Id.*

⁴ *Id.* at 12961. 2002 Biennial Regulatory Review- Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13812 (2003) (“In our Local TV Ownership Report and Order, we grandfathered LMA combinations that were entered into prior to November 5, 1996, through the end of our 2004 biennial review.”)

⁵ *Id.*

⁶ *Id.* at 12962 (emphasis added).

⁷ *Id.* at 12965.

⁸ File No. BTCCDT-20130809ACA, Exhibit 18. In the “Description of Transaction” included as an exhibit to the application, Sinclair does not mention the local marketing agreement between WMMP(TV) and WTAT-TV. Sinclair does list the agreement in Exhibit 18 under “Other Authorizations.”

⁹ *Id.*

¹⁰ File Nos. BALCDT-20130809ADG.

¹¹ File No. BTCCDT-20130809ACA, Description of Transaction.

would break the existing combination of stations under the brokerage agreement and result in a new combination that would not be entitled to grandfathering protection. Sinclair would have an attributable interest in WTAT-TV if it continued to serve as broker and that interest, combined with Sinclair's other ownership interest in the market, would then violate our local TV ownership rule.

Birmingham, Alabama DMA

Sinclair currently owns two stations in the Birmingham, Alabama DMA: WABM(TV), Birmingham, Alabama, and WTTO(TV), Homewood, Alabama. Sinclair, through broker station WTTO(TV), also programs WDBB-TV, licensed to Cunningham Broadcasting Corporation ("Cunningham"), pursuant to a grandfathered local marketing agreement.¹² Sinclair seeks to assign WABM(TV) and WTTO(TV) to Deerfield¹³ and to acquire the licenses of WCFT-TV and WJSU-TV.¹⁴ The transfer of control application states that Sinclair "provides administrative and programming services to WDBB(TV) . . . through a grandfathered time brokerage agreement," and that "[f]ollowing consummation . . . [Sinclair] will continue to provide such services to WDBB(TV)."¹⁵ The application further states that Sinclair would continue to provide services to WABM(TV) and WTTO(TV) through proposed joint sales and shared services agreements between Sinclair and Deerfield.¹⁶

The grandfathered agreement is between broker station WTTO(TV) and licensee station WDBB-TV, and the proposed transaction assigning WTTO(TV) to Deerfield would mean that WTTO(TV) could no longer serve as broker station if Sinclair intends to continue serving as broker. That change would break the existing combination of stations under the brokerage agreement and result in a new combination that would not be entitled to grandfathering protection. Sinclair would have an attributable interest in WDBB-TV if it continued to serve as broker and that interest, combined with Sinclair's other ownership interest in the market, would violate our local TV ownership rule.

Harrisburg, Pennsylvania DMA

Sinclair currently owns WHP-TV, Harrisburg, Pennsylvania. Sinclair through broker station WHP-TV currently programs WLYH-TV, Lancaster, Pennsylvania, licensed to Nexstar Broadcasting Group, Inc., pursuant to a grandfathered local marketing agreement.¹⁷ The transfer of control application states that Sinclair "provides administrative and programming services to WLYH-TV . . . through a grandfathered time brokerage agreement," and that "[f]ollowing consummation . . . [Sinclair] will continue to provide such services to WLYH-TV."¹⁸ Sinclair

¹² File No. BTCCDT-20130809ABW, Exhibit 18. According to our rules, and contrary to the representation in the Television Voices Chart provided by the parties in the application, WDBB-TV does not qualify as an independent voice for purposes of duopoly analysis. *Review of the Commission's Regulations Governing Television Broadcasting*, Report and Order, 14 FCC Rcd 12903,12934 n. 117 (1999).

¹³ File Nos. BALCDT-20130809ADC & BALCDT-20130809ADE.

¹⁴ File No. BTCCDT-20130809ABW.

¹⁵ See, e.g., File No. BTCCDT-20130809ACE, Description of Transaction at 2, note 3.

¹⁶ File Nos. BALCDT-20130809ADE and BALCDT-20130809ADC.

¹⁷ File No. BTCCDT-20130809ACE, Exhibit 18.

¹⁸ See, e.g., File No. BTCCDT-20130809ACE, Description of Transaction at 2, note 3.

proposes to acquire WHTM-TV, Harrisburg, Pennsylvania¹⁹ and to assign its interest in WHP-TV to Deerfield.²⁰

The grandfathered agreement is between WHP-TV and WLYH-TV, and the proposed transaction assigning WHP-TV to Deerfield would mean that WHP-TV could no longer serve as broker station if Sinclair intends to continue serving as broker. That change would break the existing combination of stations under the brokerage agreement and result in a new combination that would not be entitled to grandfathering protection. Sinclair would have an attributable interest in WLYH-TV if it continued to serve as broker, and that interest, combined with Sinclair's other ownership interest in the market, would violate our local TV ownership rule.

II. Financial Terms

Petitioners have raised questions about whether the Assignee Parties will in fact exercise control over the stations in question. Petitioner Free Press and Put People First! PA ("Free Press") states that the Shared Services Agreement governing WHP-TV in the Harrisburg market requires Deerfield to pay Sinclair \$11.6 million over the course of the first year, plus an undefined performance bonus for a station that, by SNL Kagan estimates, earned \$12.6 million in advertising revenues in 2012.²¹ This \$11.6 million figure is in addition to the 30 percent of net sales revenue due to Sinclair under the Joint Sales Agreement and the monthly lease payment due to Sinclair under the agreements. Free Press raises similar questions regarding the financial control for Deerfield in the Birmingham market and for HSH in the Charleston market. Sinclair does not respond directly to these figures or dispute their accuracy but instead describes them as "a speculative estimate of a third party without access to the facts" and contends that the "Commission should not interject itself into the financial terms openly negotiated and freely entered into by independent parties in a free market transaction."²²

III. Failure To Report Relevant Information

Section 73.3514(a) of the Rules provides that "[e]ach application shall include all information called for by the particular form on which the application is required to be filed...." Section III, Question 6 of the Form 314 assignment application requires the assignee to report any "attributable . . . television time brokerage agreement with the station(s) subject to this application" and to certify "that the proposed assignment complies with the Commission's multiple ownership rules. . . ."

As described above, the existing local marketing agreements in the Birmingham, Charleston, and Harrisburg markets would become attributable if the proposed transactions are consummated. Sinclair, neither as assignee of the Allbritton stations nor assignor of the stations to Deerfield and HSH, attached copies of the relevant local marketing agreements to the relevant applications.²³ Indeed, Sinclair's only references to the agreements are found in footnotes to the description of the transaction.

¹⁹ *Id.*

²⁰ File No. BALCDT-20130809ADF.

²¹ Free Press, Petition to Deny, at 8.

²² Sinclair Opposition to Petition to Deny at 7 n.16.

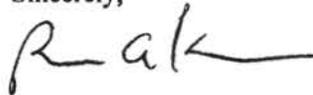
²³ We have reviewed the relevant paper and electronic files to obtain copies of the agreements.

In order to evaluate the applications properly, the Applicants shall collectively make the following amendments to the applications and/or provide (and the Petitioners are invited to provide) the following information:

- 1) Explain whether and to what extent Sinclair intends to have one of its stations serve as broker in the local marketing agreement with Station WTAT-TV following Sinclair's acquisition of WCIV-DT;
- 2) Assuming Sinclair intends for the arrangement with WTAT-TV to continue, please amend or withdraw the relevant applications covering the Charleston market to comply with our local television ownership rules;
- 3) Amend or withdraw the relevant applications covering the Birmingham and Harrisburg markets to comply with our local television ownership rules;
- 4) Please provide a detailed explanation, citing to specific Commission precedent and addressing the financial figures raised by Petitioners, as to how the agreements between Sinclair and the Assignee Parties are consistent with Licensee financial control. In doing so, provide financial figures to rebut those provided by Petitioners. Demonstrate how, given the figures provided, the Assignee would retain a financial incentive to control programming; and
- 5) Please provide a detailed explanation as to how Applicants' actions described above are consistent with Section 73.3514(a) of the Commission's Rules, namely the Applicants' responsibility to provide all information necessary to allow for meaningful review of the application in question.

Your submission must be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Peter Saharko, Attorney Adviser, Video Division, Media Bureau, within 15 days of the date of this letter. An electronic copy should also be sent to peter.saharko@fcc.gov.

Sincerely,



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