

April 14, 2014

Ms. Marlene S. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: MB Docket 13-203, *Applications Seeking Consent to Transfer Control of License Subsidiaries of Allbritton Communications Company to Sinclair Television Group, Inc. and Applications Seeking Consent to Assignment of Broadcast Station Licenses from Sinclair Television Group, Inc. to Deerfield Media (Birmingham) Licensee, LLC, Deerfield Media (Harrisburg) Licensee, LLC, and HSH Charleston (WMMP) Licensee*

We write to express our concern with a letter recently filed on behalf of Howard Stirk Holdings, LLC (“HSH”).¹ HSH’s letter sought confirmation that it would be able to obtain waivers of the Commission’s rule requiring attribution of certain Joint Sales Agreements (“JSAs”). HSH would seek the waivers pursuant to a proposal to acquire three television stations in connection with Sinclair Broadcast Group, Inc.’s (“Sinclair”) plans to acquire the Allbritton Communications Company (“Allbritton”). According to its letter, HSH believes the Commission should grant waivers of its rules “based on its established record as a broadcaster, as well as the long and distinguished record of its sole owner, Armstrong Williams.” We urge the Commission to exercise caution as it considers HSH’s request.

As a baseline matter, it is important to appreciate that HSH’s letter seeks more than an assurance that the Commission will waive its JSA attribution rule. In reality, facilitating Sinclair’s transfer of license assets and rights in programming to HSH will likely result in an effective waiver of the local television ownership rule as well. If HSH is participating in a JSA and a Shared Services Agreement (“SSA”), with Sinclair, or any other party, which involves a substantial portion of the revenues going to the operating party and not the licensee, as well as the operating party producing a substantial portion of the station’s original content, and ownership of the non-license assets, then we would raise a strenuous objection to such waiver applications.

The context in which HSH (and by proxy, Sinclair) seeks waivers illuminates its true intent to evade the Commission’s rules. In July of 2013, Sinclair announced plans to acquire Allbritton. The transaction would have bestowed upon Sinclair unlawful common control of stations in three markets. In an attempt to sidestep the Commission’s local television ownership rule, Sinclair proposed to assign three stations to Deerfield Media (“Deerfield”): WTTO(TV) and WABM(TV) in Alabama, and WHP-TV in Harrisburg; and also proposed to assign WMMP(TV) in Charleston to HSH. Sinclair would have remained in control of these stations through JSAs and SSAs. Free Press petitioned to deny the deal, pointing out that the arrangements were

¹ Letter from Colby M. May, Esq., P.C. to Marlene H. Dortch, Secretary, Federal Communications Commission (April 6, 2014).

orchestrated to mask the true intent and effect of the proposed transactions: to allow Sinclair to simultaneously control multiple stations in the same markets in a manner that defied the public interest and is prohibited by the Commission’s rules.²

In the months following Sinclair’s announcement, increased scrutiny of illegal sharing arrangements emerged. The Department of Justice sent a letter to warn of sharing agreements’ anticompetitive effects and to urge the Commission to carefully review deals to look for *de facto* transfers of control.³ Then, the Media Bureau (“the Bureau”) issued a protective order in this docket and demanded documents that would demonstrate the extent of Sinclair’s financial relationship with HSH and Deerfield. The Bureau then issued a Public Notice advising broadcasters that it would closely scrutinize applications that involve outsourcing agreements and reveal contingent interests.⁴ Finally, the Commission circulated an Order that would require attribution of certain JSAs.⁵

Since it became clear that the Commission would no longer rubber stamp Sinclair’s blatant rule evasions, the company proposed to restructure its deal with Allbritton. Under the restructuring plan, Sinclair would forgo assigning stations to it shell corporations and instead sell them to third parties without sharing arrangements.⁶ However, since the Commission announced that it would incorporate a waiver standard into its new JSA rule, Sinclair would like to renege on its proposal. By merely substituting HSH for Deerfield and using similar sharing agreements as those put forth in the original applications, Sinclair again seeks to subvert the purpose of the Commission’s ownership limits in order to expand Sinclair’s reach. The Commission should reject this and any other attempts exploit its diversity goals.

A shell corporation, no matter the race, gender or stated intentions of its owner, is still a shell corporation. Thus, without a thorough review of HSH and Sinclair’s financial relationship, it would be impossible for the Bureau to respond to HSH’s request. Indeed, we believe a thorough investigation by the Bureau into HSH’s existing licenses would reveal ongoing violations of Section 310(d) of the Communications Act.⁷

The Commission already has access to financial data related to WMMP in Charleston.

² See Petition to Deny of Free Press and Put People First! PA, MB Docket No. 13-203 (filed Sep. 16, 2013).

³ *Ex Parte* Submission of the United States Department of Justice, MB Docket Nos. 09-182, 07-294, 04-256 (filed Feb. 20, 2014)

⁴ Public Notice, *Processing of Broadcast Television Applications Proposing Sharing Arrangements and Contingent Interests*, DA 14-330 (March 12, 2014)

⁵ Chairman Tom Wheeler, “Protecting Television Consumers By Protecting Competition” (March 6, 2014).

⁶ See Letter from Clifford M. Harrington, Counsel to Sinclair Broadcast Group, Inc. and its subsidiaries, to Marlene H. Dortch, Secretary, Federal Communications Commission (March 20, 2014).

⁷ Under Section 310(d) of the Act, 47 U.S.C. § 310(d), the Commission must determine whether a proposed license transfer will serve the public interest, convenience, and necessity. In making its determination, the Commission must evaluate whether the transaction complies with the Act and the Commission’s rules. Even if a transaction would not violate a statute or rule, the Commission must evaluate whether it would result in public interest harms by frustrating or impeding the goals or the implementation of the Act.

Based on a 30% JSA fee, the base SSA amount and rent, payments from HSH to Sinclair for WMMP total **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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To inform for which expenses Sinclair’s shell licensees are responsible, we looked to actual data from the Sinclair stations held by another of its shell corporations, Deerfield. According to Deerfield disclosures, licensees are responsible for **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] Based on these costs and as demonstrated below, it would appear Sinclair would keep **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
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Thus, the bottom line income for HSH’s WMMP (*before* paying a performance bonus) is likely **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** of the net sales revenues. One may assume the performance bonus would chip away at this total. The lowest bonus at a Sinclair/Deerfield station was **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** of revenues and the highest bonus was **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**. It is difficult to imagine how reaping such miniscule profits might create a

