Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application for Assignment of Licenses	)	
	)	
From:	)	
	)	
KHQA-TV, Hannibal, MO	)	Facility Id. 4690
KHQA Licensee, LLC	)	LMS File No. 0000267760
	)	
KTVO, Kirksville, MO	)	Facility Id. 21251
KTVO Licensee, LLC	)	LMS File No. 0000267758
	)	
WICS Springfield, IL	)	Facility Id. 25686
WICS Licensee, LLC	)	LMS File No.
	)	
WICD-TV, Champlain, IL	)	Facility Id. 25684
WICD Licensee, LLC	)	LMS File No.
WVTV Milwaukee, WI	)	Facility Id. 74174
WVTV Licensee, Inc.	)	LMS File No.
	)	
To: Rincon Broadcasting Group LLC	)	

To: Marlene H. Dortch, Secretary
Attn., Erin Boon, Acting Chief Media Bureau

PETITION TO DENY

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Summary

Frequency Forward, a public interest watchdog and advocacy group and one of its members (collectively "Petitioner") petitions the FCC to deny the applications to transfer broadcast licenses currently owned and controlled by Sinclair Broadcast Group, Inc. Petitioner alleges that Sinclair lacks the requisite character to hold FCC licenses. It supports its claims with documentation of numerous violations of the Communications Act committed by Sinclair over the last several decades, as well as Sinclair's misrepresentations to the Commission, past and

present. These violations and misrepresentations generally involve "sidecar" entities set up by Sinclair to evade FCC ownership limitations in certain markets. Sinclair's control of these sidecar license holders is abundantly clear under the Commission's longstanding standards for evaluating control and attribution of ownership. The Communications Act obliges the FCC to conduct a hearing on the substantial and material questions of fact Petitioners raise regarding Sinclair's character, prior to acting on the license transfer applications.

Introduction

Frequency Forward, by its attorneys, hereby files this Petition to Deny the above captioned assignment applications ("Petition"). Sinclair, Inc. ("Sinclair") is the ultimate parent entity of the above listed licensees. As demonstrated herein, Sinclair lacks the basic character qualifications to remain a licensee of the Federal Communications Commission. ("FCC or Commission"). Sinclair is in de facto control of Cunningham Broadcasting Corporation ("Cunningham"), Deerfield Media, Inc. ("Deerfield") and other sidecar television stations. In addition to controlling television stations in violation of the Commission's multiple ownership rules, Sinclair has made material misrepresentations to conceal the extent of its control over these sidecar stations. Neither Sinclair, nor Cunningham and Deerfield, Sinclair's alter egos, are qualified to be Commission licensees. It is well established that "assignment of broadcast authorization will not be considered until the Commission has determined that the assignor has not forfeited the authorization."[1] Accordingly, on the basis of the substantial and material

[1] See *Jefferson Radio Co. v. FCC*, 119 U.S. App. D.C. 256, 340 F.2d 781, 783 (D.C. Cir. 1964). The Jefferson Radio policy precludes consideration of license assignment applications where character issues have been raised and remain unresolved. This is because, as the Commission explained, "there is no authorization to assign" if the seller ultimately is found unqualified.

questions of fact Petitioner raises, the Commission must designate Sinclair for hearing to determine whether or not it has the necessary character qualification to remain a Commission licensee.

Standing

Frequency Forward has standing to file this Petition. Frequency Forward is a public-interest organization and consumer advocacy watchdog dedicated to promoting greater transparency and accountability at the FCC. Its mission is to ensure the agency serves all Americans and is not beholden to entrenched corporate power. One of its members, Randall Bryce is a resident of Caledonia, Wisconsin and a regular viewer of WVTV Milwaukee, Wisconsin.[2]

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. As of as of December 31, 2024, the Smith brothers together held approximately 81.9% of the common voting rights of Sinclair.[3]

Sinclair, then known as Chesapeake Television Corporation, launched its first television station, WBFF, in Baltimore on April 11, 1971. 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

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[2] See attached Declaration of Randall Bryce.

[3] Sinclair 10-K as of December 31, 2024, p.17.

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 under Commission rules. Sinclair again enlisted Edwards to acquire the stations Sinclair could not own. Carolyn Smith, the mother of the four controlling shareholders of Sinclair, and Edwards established Glencairn, Ltd. ("Glencairn"), the acquiring company; 70% of the equity was owned by Smith and 30% by Edwards. Sinclair operated the Glencairn stations through LMAs.

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 that control Sinclair.

In 1998, when Sinclair and Glencairn sought to acquire certain television stations from Sullivan Broadcasting Company ("Sullivan"), The Rainbow/PUSH Coalition petitioned to deny the applications.[4] In *Edwin L. Edwards*, the Commission granted in part and denied in part that 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

[4] *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).

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 as to whether Glencairn would operate independently in the future. In finding that Sinclair exercised de facto control over Glencairn with respect to the station sale, the Commission concluded that Glencairn's principal'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."[5] 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

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[5] Id. at p. 22249.

management—which turned out to be Sinclair's former president and CEO Robert Simmons.[6] 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. The nonvoting shares continue to be held by trusts for the benefit of Carolyn Smith's grandchildren. Each of Carolyn Smith's four sons holds an option to acquire the voting shares of Cunningham.

In 2012 Sinclair increased its presence in Columbus, Ohio to three television stations when Manhan Media, Inc., another Sinclair front company, 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 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 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. Sinclair proposed to transfer WGN-TV in Chicago to Steven Fader ("Fader"), who is the CEO of a company in which David Smith,

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[6] http://sbgi.net/history/1980s/

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."[7] 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."[8]

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. 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

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[7] *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*).

[8] *HDO* at para. 2.

station's weekly broadcast hours.[9] 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. After the merger applications were dismissed and Sinclair entered a Consent Decree with the Media Bureau, a FOIA request, discussed below, produced documents revealing that Sinclair's valuation of WGN-TV did not employ generally accepted accounting principles ("GAAP"), but rather calculated the value based on something it called broadcast cash flow, an amorphous accounting standard whose conclusions cannot be independently verified. Broadcast cash flow is a non-GAAP financial measure. Generally, broadcast cash flow is pre-tax income before depreciation, amortization, interest, income taxes, extraordinary expenses and add backs of certain expenses. There are no accounting rules as to what expenses can or cannot be added back.[10] For example, there are several different ways to

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[9] *Compare, In re Mission Broad., Inc.,* 39 FCC Rcd 3676 (2024). (A licensee, relying on similar financial and business arrangements as Sinclair, had taken *de facto* control of the sidecar's television station).

[10] For a discussion of broadcast cash flow, See, *Broadcast Station Acquisitions: The Myth That Broadcast Cash Flow is Easy to Calculate*, by Erwin G. Krasnow, Doug Ferber and Bishop Chen (2015 RBR-TVBR) https://www.rbr.com/broadcast-station-acquisitions-the-myth-that-broadcast-cash-flow-is-easy-to-calculate/

amortize syndicated programming. Whether programming amortization is accelerated, which front-loads the amortization, or amortization is extended over the life of the programming contract, can substantially affect broadcast cash flow. When it comes to calculating broadcast cash flow there are buyer multiples and seller multiples. Simply stated, broadcast cash flow can be whatever the buyer or seller wants it to be. In responding to the Bureau's Letter of Inquiry, Sinclair did not submit the GAAP financial documents Tribune provided. Rather it constructed a strained broadcast cash flow justification for the WGN-TV purchase price.

The *HDO* also questioned the intertwined relationship between Sinclair and Cunningham. As discussed, the Commission had previously examined that relationship in the *Edwin L. Edwards* case. The *HDO* further found 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 in those applications.

The Commission also was troubled by Sinclair's guarantee of $53.6 millions of Cunningham's debt, as found in Securities and Exchange Commission ("SEC") filings, as well as the fact that 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.

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."[11]

Sinclair and Tribune then 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.[12]

Prior to the commencement of a hearing on its qualifications, Sinclair entered in a consent decree with the Commission. Section 1.93 bars consent orders with respect to matters which involve a party's basic statutory qualifications to hold a license. [13] Nonetheless, 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

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[11] *HDO,* at para. 26, *Compare, In re Mission Broad., Inc.,* 39 FCC Rcd 3676 (2024).

[12] Order, released March 5, 2019, p. 4 (footnotes omitted)

[13] "Consent orders may not be negotiated with respect to matters which involve a party's basic statutory qualifications to hold a license." Section 1.93(b).

Sinclair's conduct as part of the last year's FCC's review of its proposed merger with Tribune." The letter was written 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."[14]

Rather than set the matter for hearing, the Bureau and Sinclair conducted closed door negotiations not open to public participation or review. On May 6, 2020, the FCC issued a Public Notice announcing that Sinclair and the Bureau 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." Sinclair agreed to pay $48 million. In return, the FCC found that "Sinclair structured its transaction based upon a good faith interpretation of the Commission's rules…"[15] The Consent Decree provided no further explanation for brushing aside basic licensee qualifying issues the FCC previously had designated for hearing. The only indication that the Bureau conduct any investigation was its reference in the Consent Decree to four sets of documents provided by Sinclair. In Paragraph 7 of the Consent Decree, the Bureau states:

> On July 12, 2019, Sinclair provided its response to the LOI, which supplemented a confidential filing submitted by Sinclair to the Enforcement Bureau--on its own accord--on July 31, 2018, and which was updated and sent to the Media Bureau on May 2, 2019. Through these documents, Sinclair provided additional information regarding the issues raised in the *HDO* and the specific questions and requests for documents detailed in the LOI. Collectively, this matter is referred to as the HDO Investigation. (Footnote omitted).

On October 28, 2020, Sue Wilson, a journalist, filed a FOIA request seeking the four HDO Investigation documents the Bureau relied on when it determined that Sinclair had acted

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[14] https://www.reuters.com/article/us-sinclair-ma-probe/fcc-probes-whether-sinclair-misled-agency-during-failed-tribune-deal-idUSKCN1TS300

[15] *In re Sinclair Broad. Grp.*, 2020 FCC LEXIS 1914 (FCC, May 22, 2020) ("Consent Decree").

based on a good faith interpretation of the Commission rules. Initially, the Commission and Sinclair resisted disclosing these documents. Eventually the parties settled, and the documents were produced with no relevant portions redacted. Categorically, the HDO Investigation documents do not support the Bureau's claim that Sinclair acted in good faith. On the contrary, they support the Commission's initial conclusion that Sinclair is in de facto control of Cunningham and other Sinclair operated front companies. In fact, they provide further evidence that Sinclair was willing to dissemble to maintain it control over the front companies. For example, Sinclair did not provide actual financials prepared in accordance with GAAP, despite having received such documents from Tribune as part of Sinclair's due diligence review. Instead it concocted phony financials using the fluid and manipulable broadcast cash flow analysis. Further, as discussed below, Sinclair dissembled when it failed to disclose that Cunningham, Deerfield and its other front companies were consolidated as Variable Interest Entities ("VIE"), meaning that Sinclair is considered to have a controlling interest in Cunningham, et al. A review of the FOIA documents makes it clear that Sinclair was neither honest nor forthcoming with the Bureau's investigation of the designated misrepresentation and real party in interest issues. Sinclair's responses to the LOI add another layer of deceit to its growing list of false statements, concealments and misrepresentations.

Argument

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

Sinclair has a history of operating stations it cannot legally own. 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. Sinclair's control over these entities is so pervasive that under the rules of the SEC they have been subsumed into Sinclair as VIEs[16]. There is no aspect of station operations that Sinclair does not control. Should a nominal owner dissent or vary from Sinclair's wishes, Sinclair has the power to immediately remove him and replace him with a compliant nominal licensee.

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 consent.[17] 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.[18]

Because the Commission has long recognized that a licensee may delegate day-to-day operations without surrendering de facto control, it examines other indicia of de facto control including whether the licensee determines the policies governing, for example, the station's

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[16] See also, GAAP Fin 46(R).

[17] 47 U.S.C. § 309(d). See also 47 U.S.C. § 309(e).

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

programming, personnel, and finances.[19] 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.[20]

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

> 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)).

Substantial and material questions exists as to whether Sinclair controls the Cunningham, Deerfield and other sidecar stations. Through the LMAs Sinclair provides programming, sales, operational, and administrative services, and through the JSAs and SSAs, Sinclair provides non-

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

[20] *See WQRZ, Inc*., 22 FCC 1254, 1332, para. 51 (1957).

programming, sales, operational, and administrative services.[21] Sinclair holds options to purchase its sidecar 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.[22] In January 2018, Anderson acquired all of the voting shares of Cunningham, for $405,640.[23] All of the nonvoting shares continue to be held by trusts for the benefit of the Smith brothers' children.[24] 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.[25] 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.[26]

Cunningham's Treasurer and Chief Financial Officer, Lisa Asher, prior to joining Cunningham worked as Sinclair's Assistant Controller.[27] Cunningham's director, Mark

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[21] Sinclair 10-K as of December 31, 2024, at p. 7.

[22] http://cunninghambroadcasting.com/about-us/

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

[24] Sinclair 10-K, as of December 31, 2024, p. F-41.

[25] 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.

[26] Option Agreement dated January 4, 2018, Sections 16 – 17.

[27] http://cunninghambroadcasting.com/about-us/

Knobloch, a banker with no broadcast experience, also has ties to Sinclair.[28] Mr. Knobloch was the president of RSML LLC., a commercial real estate company started by Sinclair principal Robert E. Smith.[29] Paul Wallace, Cunningham's remaining director, is one of Sinclair's largest shareholders holding a little more than 3 million shares of Sinclair stock.[30] Most of these shares are held by Wallace as sole trustee of the "Series I Irrevocable Trust." It appears that Wallace is just another trusted Smith family retainer. This relationship has never been disclosed to the FCC. Deerfield principal, Stephen Mumblow, likewise has close ties to Sinclair;[31] he was David Smith's personal banker.[32] Cunningham's Anderson, Asher, Knobloch and Wallace, as well Deerfield's Mumblow 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 control the FCC licenses they hold.

Certain Cunningham stations have executed a Master Agreement (MA) with Sinclair.[33] Sinclair agreed to reimburse Cunningham for all expenses associated with the negotiating and

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[28] 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."

[29] http://sbgi.net/people/robert-e-smith/

[30] Sinclair Schedule 14 A, April 5 2023, p. 6.

[31] See Amendment No. 3 to Credit Agreement dated as of December 18, 1996, between Sinclair and Stephen Mumblow as agent.

[32] *Wall Street Journal*, July 6, 2019.

[33] 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." See Sinclair 2024 10-K p. F-42, "The services provided to WNUV-TV, WMYA-TV, WTTE-TV, WRGT-TV and WVAH-TV are governed by a master agreement which has a current term that expires on July 1, 2028 and there is one additional five-year renewal terms remaining with final expiration on July 1, 2033."

drafting of the Master Agreement and all legal expenses of the law firm of Thomas & Libowitz, P.A., which represents both Sinclair and Cunningham.[34]

The Master Agreement stands as an example of just how little control Sinclair's front companies such as Cunningham have. The Master Agreement provides that Sinclair will pay for all expenses incurred by Cunningham in the operation of the stations, including corporate overhead and interest on bank debt. MA, Section 2. Sinclair has veto power over Cunningham's budgets; all budgets must be "mutually approved" by Sinclair and Cunningham. MA, Section 2. Sinclair also reimburses all extraordinary non-budgeted expenses. 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 largely 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, 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."[35] 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 assets, it is not permitted to acquire, sell or encumber any asset however insignificant without Sinclair's prior written consent.

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

[35] Sinclair 10-K as of December 31, 2024, p. F-39.

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. Among these agreements is an Asset 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, limits Cunningham's ability to acquire, dispose of or modify its assets until such time as the transaction is closed. 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 its "assets, all books, records and documents…" APA, Section 7.5.

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)…" pursuant to the Acquisition Agreements.[36] MOU, Section 2(d) and MA, Section 3(b), such that

[36] The Acquisition Agreements are not part of Sinclair or Cunningham's public files.

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)."[37] 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.[38]

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

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[37] 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.

[38] The Seventh Amended And Restated Credit Agreement dated as of August 23, 2019, makes no mention of Cunningham or Sinclair's "Committed and Unfunded Investments." As the station has not been sold, Petitioner assumes that this is because Deerfield is now a fully subsumed VIE.

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. 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.

A lawyer cannot represent multiple clients in the same matter if there is or likely to be a conflict of interest.[39] 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, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. This begs the question of how Sinclair and it front companies can share the same corporate and communications counsel while negotiating at arm's length sophisticated and complex legal documents such as the Master Agreement, LMAs, SSAs, JSAs, Asset Purchase Agreements and Options. The only way the Thomas & Libowitz and Pillsbury firms can ethically represent both Sinclair and its sidecar companies is if the sidecar entities are the functional equivalent of wholly owned subsidiaries of Sinclair. The District of Columbia Rules of Professional Conduct, Section 1.7 (a) states: "A lawyer shall not advance two or more adverse positions in the same matter." Section 1.1 defines matter as: "any litigation, administrative proceeding, lobbying activity, application, claim, investigation, arrest, charge or accusation, the

[39] See generally, ABA Rule 1.7 Current Clients Conflict of Interest.

drafting of a contract, a negotiation, estate or family relations practice issue, or any other representation, except as expressly limited in a particular rule." (Emphasis added) Comment 3 to Section 1.7 states: "The same lawyer (or law firm, *see* Rule 1.10) should not espouse adverse positions in the same matter during the course of any type of representation, whether such adverse positions are taken on behalf of clients or on behalf of the lawyer or an association of which the lawyer is a member." Comment 32 to Rule 1.7 makes it clear that the requirements of Section 1.7(a) cannot be waived. However, Comment 6 provides that "The prohibition of paragraph (a) relates only to actual conflicts of positions, not to mere formalities."

The Pillsbury and Thomas & Libowitz firms cannot represent both parties, if Sinclair and its sidecar entities are independent and engaged in actual negotiations, where conflicting positions are put forth and contract provisions are negotiated. Only if the contracts are mere formalities i.e. agreements with front companies under the control of Sinclair, can Pillsbury and Thomas & Libowitz ethically continue their joint representation. Pillsbury, a large international law firm with 20 offices around the world and over 700 attorneys, has concluded that their simultaneous representation of Sinclair, Cunningham and Deerfield is not adverse within the meaning of the D.C. Bar Ethics Rules. The Commission should take Pillsbury at its word. What is now beyond doubt is that the Master Agreement, JSAs, LMAs, Options, APAs and other agreements are sham documents designed to give the appearance to regulators that Sinclair has an arm's length relationship with companies that, in fact, are under Sinclair's complete control. Such close and harmonious relationships as exist between Sinclair and its sidecar entities suggests that they are nothing more than fronts. Neither Cunningham, Deerfield, 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 Sinclair,

Thomas & Libowitz and Pillsbury can represent all parties without committing an ethical breach. There is no conflict; no chance that one law firm will favor one client over another, because these entities are just Sinclair's alter egos.

After Sinclair withdrew the Tribune merger application, the Media Bureau agreed to conduct investigations whose purpose was to reach an accommodation with Sinclair. As part of that investigation, the Media Bureau sent Sinclair a Letter of Inquiry ("LOI").[40] Inquiry 2 of the LOI states: ***Describe with particularity the role, if any, Sinclair had in the creation of WGN-TV, LLC.*** On July 11, 2019, by letter Sinclair responded to the LOI. In response to Inquiry 2, Sinclair wrote:

> Sinclair had no role or input in the creation of WGN-TV, LLC or WGN-TV Licensee, LLC, and neither Sinclair, nor any of its officers, directors or employees had or has any interest in WGN-TV, LLC or WGN-TV Licensee, LLC. The decisions regarding the creation, formation, or choice of entity to make the acquisition were made by Mr. Fader and his advisors.

This is a demonstrably false statement. In fact, Sinclair's attorneys, Thomas & Libowitz and Pillsbury under Sinclair's direction were responsible for the creation, formation, or choice of entity. For example, the proposed WGN Joint Sales Agreement,[41] lists Thomas & Libowitz, as WGN TV, LLC's attorneys, while Sinclair is represented by the Pillsbury firm. Likewise, the Option Agreement lists Thomas & Libowitz as WGN TV, LLC's attorneys and Pillsbury as

[40] Letter from Barbara Kreisman, Chief, Video Division, Media Bureau, to David Gibber, Senior Vice President and General Counsel of Sinclair, dated June 25, 2019.

[41] Exhibit A to Sinclair's July 11, 2019 Response to LOI.

Sinclair's attorneys.[42] Thus, Sinclair's response to Inquiry 2 is not only false, but Sinclair wrote its response knowing that it was making a material misrepresentation to the FCC.

Sinclair has consolidated many of the sidecar entities as variable interest entities (VIEs). As Sinclair states in its December 31, 2024 10-K, p. F-11. "We consolidate VIEs when we are the primary beneficiary. We are the primary beneficiary of a VIE when we have the power to direct the activities of the VIE that most significantly impact the economic performance of the VIE and have the obligation to absorb losses or the right to receive returns that would be significant to the VIE." Sinclair's December 31, 2024, 10-K p. F-39 further 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.

The term "variable interest entity" as used by the United States Financial Accounting Standards Board generally refers to entities that lack sufficient equity to finance their activities

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[42] Exhibit C to Sinclair's July 11, 2019 Response to LOI.

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.

Clearly, Sinclair has a controlling financial interest in Cunningham, Deerfield and other sidecar companies.[43] Yet, when the FCC asked Sinclair about its financial arrangements with Cunningham, Sinclair chose to conceal the fact that Cunningham was largely consolidated as a VIE. In a July 31, 2018, letter to the Chief of the Media Bureau, provided in response to a FOIA request, joint counsel to Sinclair and Cunningham wrote: Michael Anderson as President of Cunningham "has assured that Cunningham maintain control over station programming, personnel, and finances—i.e., the core operations of Cunningham's stations." This statement is knowingly and intentionally not true. As discussed above, Anderson does not have the power to make any unbudgeted expenditures without Sinclair's prior approval. More troubling is the fact that Sinclair did not disclose that Cunningham operates as a VIE and is wholly dependent on Sinclair for its financing, and most, if not all the employees, that operate Cunningham's stations. In its July 11, 2019, Response to LOI, Sinclair claims:

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[43] *In re Mission Broad., Inc.,* 39 FCC Rcd 3676, 3679 (2024).

> As Cunningham was buying all the assets of KDAF and KIAH and Sinclair would not be providing any services to these stations (other than pursuant to standard short-term transition services agreements as referenced below), it was always understood by the parties that Michael Anderson and Cunningham would have control over all programming, personnel and finances of the stations. Discussions with Mr. Anderson were focused on due diligence and the terms of the acquisition documents.

This statement also lacks candor. As discussed, Cunningham operates as a VIE. By the very definition of a VIE, it lacks the ability to control programming, personnel or finances without Sinclair's assistance and supervision. As a VIE, it is Sinclair that has the power to direct the VIE's activities that impact Cunningham's economic performance, and it is Sinclair that has the obligation to absorb Cunningham's losses. Cunningham was never an independent company. Its consolidation as a VIE merely acknowledges that fact.

Neither Deerfield, Cunningham or the other front companies have 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 what are nominally their operations. Michael Anderson is not an owner; he is an 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. Neither Cunningham nor Deerfield has any say in the day-to-day operations of the station.

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 Cunningham and Deerfield's lawyers, draft all the 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. Cunningham and Deerfield have been setup 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 more television stations than the FCC's rules permit.

Conclusion

For over 30 years, Sinclair has controlled front companies that have permitted it to have de facto control over more television stations than the Commission's rules permit. Sinclair was admonished in the *Edwin L. Edwards* case, but it learned nothing. It continued to exercise de facto control over its front companies. In the *HDO* the FCC designated real party in interest and misrepresentation issues. Rather than be tested in the crucible of a hearing, Sinclair dismissed its assignment applications. On bended knee and with a checkbook in hand, Sinclair went to the Media Bureau seeking to resolve its outstanding character issues. Despite a clear prohibition in the rules against resolving character issues through a consent decree, the Bureau agreed to settle the case in exchange for a payment of 48 million dollars. To add a patina of credibility to the process the Bureau issued a LOI. Sinclair's answers to the Bureau's questions lacked candor. Instead of providing financial information based on generally accepted accounting principles, Sinclair submitted estimates based on broadcast cash flow. The LOI sought information concerning Sinclair's control over programming, personnel and finances of its sidecar

companies. Despite overwhelming evidence to the contrary, Sinclair claimed that Michael Anderson was in full control of Cunningham. In its response to the Bureau's LOI Sinclair omitted the critical fact that Cunningham had been almost completely absorbed as a VIE. This omission demonstrates on the part of Sinclair a lack of candor and a willingness to deceive the Commission. Sinclair lacks the basic character qualifications required of a Commission licensee. It has demonstrated that it is willing to repeatedly dissemble, to conceal critical information, and to make material misrepresentations before the FCC in order to maintain control over its lucrative sidecar companies. These companies have now been absorbed into Sinclair and have no ability to operate independently.

Since the release of the Consent Decree, Sinclair has further consolidated its front companies as VIEs. The Media Bureau had no authority to issue the Consent Decree. The real party in interest and misrepresentation issues remain unresolved before the FCC. Accordingly, the FCC should designate the referenced applications for hearing to resolve the substantial and material questions of fact whether Sinclair is in de facto control of Cunningham, Deerfield and its other front companies and whether Sinclair has the requisite character qualifications to remain a Commission licensee. Petitioner maintains that the evidence clearly shows that it does not.

Respectfully Submitted,

/s/ Arthur V. Belendiuk

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April 14, 2025

Declaration of Randall Bryce

I, Randall Bryce, declare under penalty of perjury, that the following information is true and correct:

I reside in Caledonia, Wisconsin and I am a regular viewer of WVTV Milwaukee, Wisconsin. I am a member of Frequency Forward. I declare that I have personal knowledge of the factual allegations I make in the Petition to Deny the assignment application of WVTV. These allegations are the direct cause of the injury I suffer as a regular viewer of these stations.

Randall Bryce

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via email and/or first class mail to the following:

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/s/Arthur Belendiuk

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