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

In the Matter of	)	
	)	
Edwin L. Edwards, Sr.	)	File Nos. BTCCT-19991116BEC
(Transferor)	)	BTCCT-19991116BEE
	)	FIN: 7933 & 74137
and	)	
	)	
Carolyn C. Smith	)	
(Transferee)	)	
	)	
For Consent to the Transfer of Control of	)	
Glencairn, Ltd., parent entity of	)	
	)	
Baltimore (WNUV-TV) Licensee, Inc.	)	
Licensee of Television Station	)	
WNUV-TV, Baltimore, Maryland	)	
	)	
Columbus (WTTE-TV) Licensee, Inc.	)	
Licensee of Television Station	)	
WTTE-TV, Columbus, Ohio	)	
	)	
Shareholders of Sullivan Broadcasting	)	File Nos. BTCCT-19991116BDR - DU
Company III, Inc.	)	FIN: 411, 416 & 417
(Transferors)	)	
	)	
and	)	
	)	
Glencairn, Ltd.	)	
(Transferee)	)	
	)	
For Consent to the Transfer of Control of	)	
Sullivan Broadcasting Company III, Inc.	)	
Licensee of Television Stations	)	
WRGT-TV, Dayton, Ohio	)	
WTAT-TV, Charleston, South Carolina	)	
WVAH-TV, Charleston, West Virginia	)	

ABRY Holdings Co.	)	File No. BTCCT-19991116BEH
(Transferor)	)	FIN: 35388
	)	
and	)	
	)	
KOKH Licensee, LLC	)	
(Transferee)	)	
	)	
For Consent to the Transfer of Control of	)	
Sullivan Broadcasting Company IV, Inc.	)	
Licensee of Television Station	)	
KOKH-TV, Oklahoma City, Oklahoma	)	
	)	
Glencairn, Ltd.	)	File No. BTCCT-19991116BDN
(Transferor)	)	FIN: 51518
	)	
and	)	
	)	
Sinclair Acquisition Group X, Inc.	)	
(Transferee)	)	
	)	
For Consent to the Transfer of Control of	)	
San Antonio (KRRT-TV) Licensee, Inc.	)	
Licensee of Television Station	)	
KRRT-TV, Kerrville, Texas	)	
	)	
Glencairn, Ltd.	)	File No. BTCCT-19991116BDX
(Transferor)	)	FIN: 74174
	)	
and	)	
	)	
Sinclair Acquisition Group VII, Inc.	)	
(Transferee)	)	
	)	
For Consent to the Transfer of Control of	)	
WVTV Licensee, Inc.	)	
Licensee of Television Station	)	
WVTV-TV, Milwaukee, Wisconsin	)	

Glencairn, Ltd.	)	File No. BTCCT-19991116BCS
(Transferor)	)	FIN: 54963
	)	
and	)	
	)	
Sinclair Acquisition Group VIII, Inc.	)	
(Transferee)	)	
	)	
For Consent to the Transfer of Control of	)	
Raleigh (WRDC-TV) Licensee, Inc.	)	
Licensee of Television Station	)	
WRDC-TV, Durham, North Carolina	)	
	)	
Glencairn, Ltd.	)	File No. BTCCT-19991116BDK
(Transferor)	)	FIN: 16820
	)	
and	)	
	)	
Sinclair Acquisition Group IX, Inc.	)	
(Transferee)	)	
	)	
For Consent to the Transfer of Control of	)	
Birmingham (WABM-TV) Licensee, Inc.	)	
Licensee of Television Station	)	
WABM-TV, Birmingham, Alabama	)	
	)	
Glencairn, Ltd.	)	File No. BTCCT-19991116BDP
(Transferor)	)	FIN: 56548
	)	
and	)	
	)	
Sinclair Acquisition Group XI, Inc.	)	
(Transferee)	)	
	)	
For Consent to the Transfer of Control of	)	
Anderson (WFBC-TV) Licensee, Inc.	)	
Licensee of Television Station	)	
WFBC-TV, Anderson, South Carolina	)	

WPTT, Inc.	)	File No. BALCT-19991116AIZ
(Assignor)	)	FIN: 73907
	)	
and	)	
	)	
WCWB Licensee, Inc.	)	
(Assignee)	)	
	)	
For Consent to Assignment of License of	)	
Television Station WCWB-TV,	)	
Pittsburgh, Pennsylvania	)	
	)	
River City License Partnership	)	File No. BALCT-960823IA
(Assignor)	)	FIN: 56537
	)	
and	)	
	)	
WLOS Licensee, Inc.	)	
(Assignee)	)	
	)	
For Consent to Assignment of License of	)	
Television Station	)	
WLOS(TV), Asheville, North Carolina	)	
	)	
River City License Partnership	)	File No. BALCT-960618IG
(Assignor)	)	FIN: 56548
	)	
and	)	
	)	
Anderson (WFBC-TV) Licensee, Inc.	)	
(Assignee)	)	
	)	
For Consent to Assignment of License of	)	
Television Station	)	
WFBC-TV, Anderson, South Carolina	)	

River City License Partnership	)	File No. BALCT-960823IU
(Assignor)	)	FIN: 56528
	)	
and	)	
	)	
KABB Licensee, Inc.	)	
(Assignee)	)	
	)	
For Consent to Assignment of License of	)	
Television Station	)	
KABB-TV, San Antonio, Texas	)	
	)	
River City License Partnership	)	File No. BALCT-960604IA
(Assignor)	)	FIN: 51518
	)	
and	)	
	)	
KRRT Licensee Corp.	)	
(Assignee)	)	
	)	
For Consent to Assignment of License of	)	
Television Station	)	
KRRT(TV), Kerrville, Texas	)	

MEMORANDUM OPINION AND ORDER AND NOTICE OF APPARENT LIABILITY

Adopted: November 15, 2001 **Released: December 10, 2001**

By the Commission: Commissioner Copps approving in part; dissenting in part and issuing a statement.

I. INTRODUCTION

1. Before the Commission are the above-captioned applications dealing with various transactions involving Sullivan Broadcast Holdings, Inc. (SBH), Sinclair Broadcasting Group,

Inc. (Sinclair) and Glencairn Ltd. (Glencairn) and their respective subsidiaries. Petitions to deny were filed by Rainbow/PUSH Coalition (Rainbow) and Kelley International Licensing, LLC (Kelley). Rainbow and Kelley allege, *inter alia*, that Sinclair exercises *de facto* control over Glencairn and that they have misrepresented facts and concealed the true extent of their business relationships to permit Sinclair to own television stations it would otherwise not have been permitted to own under the Commission's broadcast multiple ownership rules. For the reasons set forth below, we grant in part and deny in part the petitions to deny, issue notices of apparent liability to Sinclair and Glencairn for their actions, and conditionally grant the above-referenced applications with the exception of the WFBC-TV application, which we dismiss in accordance with Section 73.3566 of the Commission's Rules.

II. BACKGROUND

A. Applications

2. This proceeding began in 1998 when SBH proposed to sell its television stations to Sinclair and Glencairn. Glencairn was to obtain WRGT-TV, Dayton, Ohio, WTAT-TV, Charleston, South Carolina, WVAH-TV, Charleston, West Virginia, KOKH-TV, Oklahoma City, Oklahoma, and W34BX, Bluefield, West Virginia (Sullivan III Stations) with SBH's remaining stations being sold to Sinclair.[1] Pursuant to an agreement among the parties, Glencairn will be the licensee of the Sullivan III stations and own the stations' license assets, while Sinclair will hold all of the Sullivan III stations' non-license assets. Glencairn will lease those assets from Sinclair. Furthermore, Sinclair has an existing local marketing agreement (LMA) for the Sullivan III stations which will continue in force with Glencairn as the licensee.

3. On August 5, 1999, the Commission adopted its revised broadcast multiple ownership rules.[2] Following that action, several changes were made to the proposed transactions between SBH, Sinclair and Glencairn. First, SBH requested that the application to transfer control of KOKH-TV to Glencairn be dismissed. Therefore, KOKH-TV is no longer one of the Sullivan III stations to be transferred to Glencairn.[3] Instead, the above-captioned application was filed

[1] Those stations were: WUTV(TV), Buffalo, New York; WMSN-TV, Madison, Wisconsin; WRLH-TV, Richmond, Virginia; WXLV-TV, Winston-Salem, North Carolina; and WZTV(TV), Nashville, Tennessee (Sullivan II Stations). The applications for transfer of control of the Sullivan II stations to Sinclair were unopposed and are concurrently being granted by separate staff action. *See* File Nos. BTCCT-980519IA-IB and BTCCT-980519ID-IF.

[2] *See* Review of the Commission's Regulations Governing Television Broadcasting, MM Docket No. 91-221 and 87-8, *Report and Order*, 14 FCC Rcd 12903 (1999) (*Ownership Report and Order*), *recon. granted in part*, 16 FCC Rcd 1067 (2000).

[3] SBH subsequently let expire the license for television translator station W34BX, Bluefield, West Virginia, and it is no longer part of this transaction.

seeking consent to the transfer of KOKH-TV to Sinclair. In addition, 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, the mother of the principals of Sinclair, as the new 100% voting shareholder. Specifically, Glencairn filed the above-captioned applications to transfer control of two of its existing television stations, WNUV-TV, Baltimore, Maryland, and WTTE-TV, Columbus, Ohio. Major amendments to the pending applications to transfer control of WRGT-TV, WTAT-TV, WVAH-TV, and W34BX from Sullivan III to Glencairn were also filed to report the proposed change in control of Glencairn.

4. Also on November 16, 1999, the above-captioned applications were filed seeking Commission consent to the transfer of control of Glencairn's five other existing television stations (WVTV-TV, Milwaukee, Wisconsin; WRDC-TV, Raleigh, North Carolina; KRRT-TV, San Antonio, Texas; WABM-TV, Birmingham, Alabama; and WFBC-TV, Anderson, South Carolina) from Glencairn to Sinclair pursuant to existing options agreements. Glencairn will continue to own television stations in Baltimore, Maryland, and Columbus, Ohio, and Sinclair will continue its existing LMA with these stations.

5. In response to the 1998 Sullivan III applications, Rainbow and Kelley filed separate petitions to deny[4] and subsequently Rainbow filed a petition to deny and/or revoke Sinclair and Glencairn licenses following the November 16, 1999 applications.[5] Notwithstanding the procedural deficiencies of certain of the parties' pleadings filed subsequent to these petitions, we believe that the public interest would be better served by our consideration of all of the submissions on their merits and we have done so.

B. Petitioners' Allegations

[4] The following additional pleadings were filed in response to these petitions: Glencairn's Opposition to Kelley's Petition to Deny filed August 5, 1998; Glencairn's Supplement to Application for Transfer of Control filed July 30, 1998; Glencairn's Opposition to Rainbow's Petition to Deny filed August 13, 1998; Kelley's Reply filed August 18, 1998; Rainbow's Reply filed August 25, 1998; Glencairn's Supplement to Opposition to Petition to Deny filed September 3, 1998; Rainbow's Comments filed September 16, 1998; Kelley's Motion to Strike filed September 17, 1998; Glencairn's letter providing additional information filed October 1, 1998; Glencairn's Opposition to Motion to Strike filed October 1, 1998; Glencairn's amendment filed October 9, 1998; Kelley's Reply to Opposition to Motion to Strike filed October 13, 1998; Rainbow's Comments filed October 23, 1998; Kelley's Comments filed October 23, 1998; Glencairn's Consolidated Reply Comments filed December 3, 1998; Rainbow's Comments filed December 16, 1998; Kelley's Motion for Leave to File Response filed December 18, 1998; Kelley's Response filed December 18, 1998; Kelley's Reply filed April 27, 1999; Rainbow's Comments filed April 27, 1999; Glencairn's Comments filed July 14, 1999.

[5] The following additional pleadings were filed in response to Rainbow's pleading: Glencairn's Oppositions filed February 15, 2000, Sinclair's Oppositions filed February 16, 2000; Rainbow's Reply filed March 14, 2000; and Rainbow's Supplemental to Reply filed April 28, 2000.

6. *Prior Decisions.* In its initial petition to deny, Rainbow points to another proceeding wherein questions concerning the relationship between Glencairn and Sinclair were initially raised.[6] While the staff rejected those allegations in its *River City Decision*, and approved the underlying transaction, Rainbow notes that applications for review of the staff's decision were filed by two different parties.[7] Here, Rainbow urges that the allegations raised in that proceeding be revisited in light of the additional allegations it has raised.[8] Rainbow and Kelley argue that, whatever the prior validity of the Sinclair/Glencairn relationship, the instant transaction goes too far and takes the relationship well outside the boundaries of the Commission's rules and policies.

7. In its opposition, Glencairn argues that the Rainbow and Kelley allegations are based principally on facts regarding the ownership structure of Glencairn and the relationship between Glencairn and Sinclair of which the Commission is fully aware and has previously deemed insufficient to raise an issue under its rules. Glencairn notes that the staff has approved Glencairn's acquisitions of television stations on other occasions in contested proceedings concerning Glencairn's ownership structure and the company's relationship to Sinclair.[9] Glencairn maintains that the facts of this case are no different. Glencairn also contends that this arrangement is essentially identical to one approved by the staff when it permitted the assignment of licenses of KHGI(TV), Kearney, Nebraska, and KWNB(TV), Hayes Center, Nebraska, from Fant Broadcasting (Fant) to Pappas Telecasting of Central Nebraska (Pappas) and the assignment of license of KSNB(TV), Superior, Nebraska, from Fant to Colins Broadcasting Company (Colins).[10]

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[6] *See Letter of the Chief, Video Services Division to River City License Partnership*, dated June 27, 1997 (*River City Decision*).

[7] That decision involved the sale of the following television stations: WLOS(TV), Asheville, North Carolina, and KABB-TV, San Antonio, Texas, being sold to Sinclair; and WFBC-TV, Anderson, South Carolina, and KRRT-TV, Kerrville, Texas, being sold to Glencairn. The parties filing Applications for Review were Pulitzer Broadcasting Company (Pulitzer) and Post-Newsweek Stations, San Antonio, Inc. (Post). As noted *infra*, given the similarity of the issues raised in that proceeding, we have consolidated our review of the Applications for Review in the River City proceeding into this case.

[8] Rainbow maintains that it has standing to challenge the KOKH-TV and KRRT-TV transfer applications because two of its members are residents in the stations' communities of license. *See United Church of Christ v. FCC*, 359 F. 2d 994 (D.C. Cir. 1966)(*United Church of Christ*). Kelley maintains that it has standing to challenge the KOKH-TV transfer application because it is the licensee of KWTV(TV), Oklahoma City which competes with KOKH-TV in the Oklahoma City Designated Market Area. *See FCC v. Sanders Brothers Radio Station*, 309 U.S. 470, 476 (1940) (*Sanders Brothers*).

[9] *See Letter from the Chief, Video Services Division to Sinclair Broadcast Group, Inc.*, Ref: 1800E1-PRG, dated May 20, 1994 (*1994 Letter*) and *River City Decision, supra*.

[10] *See Letter from Chief, Video Services Division to David D. Burns, Esq. et al.*, dated February 17, 1999, *app. for review pending* (*Burns Decision*).

8. *Sullivan III Stations Debt.* To answer Rainbow's allegations concerning the *bona fides* of the Sullivan III stations transaction, Glencairn's President, Mr. Edwards, reported in a Declaration that Glencairn would be assuming $80 million in debt as the consideration for its acquisition of the Sullivan III stations. However, little more than a month later, Glencairn reported that the debt figure was incorrect. In a new Declaration, Mr. Edwards explains that he was initially informed by Glencairn's corporate lawyers and accountants involved in the transaction that Sullivan III had more than $80 million in debt on the books. Upon attempting to obtain written confirmation of this fact from his accountants in order to respond to the Kelley and Rainbow petitions, Mr. Edwards states that he was subsequently informed that Sullivan III in fact has approximately $40.5 million in debt on its books.[11] Mr. Edwards explains that he relied on an employee to handle the task of determining the exact amount of Sullivan III station debt because he was busy with other Glencairn matters, such as the production of a local television program, management of Glencairn stations, and coordination of a golf and awards dinner. Mr. Edwards claims that the employee learned of the correct figure for the assumed debt on or about August 17, 1998, but because he was on vacation at the time, there was a lapse of communication between them. At the time he signed his original Declaration, Mr. Edwards claims he was having a hectic week and did not focus on the accuracy of the $80 million debt figure. Upon looking into the matter, Mr. Edwards states that he later discovered the error and voluntarily brought it to the attention of the Commission. Regardless, Mr. Edwards states that Glencairn is refinancing Sullivan III's debt independently of Sinclair, through a major financial institution, Chase Manhattan Bank (Chase Manhattan).

9. Kelley argues that the fact that Mr. Edwards had no knowledge of the most basic fact in this transaction – the purchase price payable by Glencairn - is evidence that he is not truly the controlling party of Glencairn and that Sinclair is the real party in interest behind Glencairn. Rainbow and Kelley also allege that a substantial and material question of fact exists as to whether Mr. Edwards submitted false declarations and misrepresented facts or lacked candor in his original Declaration. The mistake made by Glencairn on the amount of the debt to be assumed ($80 million versus $40.5 million) was not trivial, Rainbow argues, and tended to favor Glencairn's interests. Rainbow argues that Glencairn had to show that it was at risk for more than a token amount relative to the value of the stations. By putting in evidence an amount twice the true number, Rainbow argues, Glencairn was trying to mislead the parties and the Commission into believing that its exposure was twice what it really was.

10. *Glencairn's Finances.* Kelley also argues that several facts concerning Glencairn's finances evidence that it is controlled by Sinclair. First, Kelley notes that the sale of the Sullivan III stations to Glencairn was originally structured so that the promissory note that Glencairn would be assuming as consideration for its acquisition of stations would be held by Sinclair. This

[11] Mr. Edwards also reported that there was an error in the preparation of the promissory notes and that the Sullivan II debt figure ($61 million) and the Sullivan III debt figure ($40.5 million) were inadvertently transposed on the promissory notes.

fact, Kelley argues, and the fact that the note has provisions favorable to Glencairn (such as an interest below market rates and no provisions for how they are to be secured) demonstrates that Glencairn's debt obligation is not an arms-length commercial transaction and that Sinclair is the controlling party behind this transaction.

11. While Glencairn claims that it will be re-financing the note with its existing line of credit from Chase Manhattan, Kelley points out that the 1995 Chase Manhattan Credit Agreement supplied by Glencairn does not provide any funds for the current transaction and specifically prohibits Glencairn from assuming debt from third parties as it is proposing in this transaction. Glencairn replies that the 1995 Chase Manhattan Credit Agreement will be amended and restated once all the necessary governmental approvals have been obtained and the parties are ready to consummate the Sullivan III/Glencairn merger. This will allow it to obtain additional debt despite the language of the agreement. Glencairn states that this is customary business practice.

12. *Value of the Stations.* Rainbow notes that Sinclair is seeking to purchase five television stations comprising most of Glencairn's prime broadcast real estate for the sum of $8 million in Sinclair stock. Rainbow alleges that this sum does not reflect the true value of these stations. Rainbow estimates that these stations are worth at least $218.8 million and that the $8 million purchase price indicates that Sinclair, and not Glencairn, established the purchase price. If Glencairn were truly an independent company, Rainbow alleges, it would never have accepted a price 1/27 of the licenses' value. It would have considered more than one buyer, hoping to secure fair market value and maximize the return for its stations, Rainbow concludes. Furthermore, Rainbow contends that the fact that Glencairn is receiving Sinclair stock and not cash assures that Glencairn's financial fortunes will be closely tied to Sinclair's stock price. Rainbow maintains that Glencairn will have a strong incentive to always act in Sinclair's financial interest. Rainbow further alleges that, by requiring Glencairn to take its stock, Sinclair has disabled Glencairn's new President from growing the company through acquisitions of its own. Rainbow contends that no company would approach Glencairn about selling them a station since sellers expect to be paid in cash and not third-party stock.

13. Glencairn responds that that the Commission has always recognized marketable securities as valuable liquid assets and such securities comprise good collateral for loans to acquire stations. Sinclair argues that the business judgment as to whether its stock will increase or decrease in value is one for Glencairn and not Sinclair to make. Sinclair states that it did not require Glencairn to take stock for its stations and that the purchase price for the stations was negotiated between the parties with each being represented by independent counsel. As for the $8 million purchase price, Sinclair contends that Rainbow has no basis by which to value the stations which are encumbered with bank debt and LMAs, both of which reduce their value. Sinclair states that Mr. Edwards, as the voting shareholder, and Mrs. Smith, as a non-voting shareholder with the right to vote on certain extraordinary matters, including the merger acquisitions, determined that the sale to Sinclair delivered fair value to the company.

14. Rainbow also points to the fact that Glencairn had an agreement with SBH to purchase KOKH-TV, but that agreement was terminated and replaced with a new agreement to permit Sinclair to purchase the station instead. Rainbow questions what would motivate a rational company in Glencairn's position to back away from such a purchase and cede it to another company. Rainbow notes that it does not appear that Glencairn received any compensation in exchange for agreeing to walk away from its acquisition of KOKH-TV. Glencairn maintains that Mr. Edwards was not the only businessman who saw the Commission's revision of the television duopoly rules as an opportunity to terminate its proposed purchase of KOKH-TV. When the rules changed, Glencairn contends, relationships and deals changed, and that signifies nothing improper thereby. By withdrawing from the KOKH-TV purchase, Glencairn states that it will reduce the amount of debt it will assume, a perfectly legitimate course to take.

15. *Edwards Buy-Out.* Finally, Rainbow questions the facts surrounding Glencairn's buy-out of Edwards for $1.5 million. First, Rainbow alleges, the $1.5 million price is considerably less than the value of the assets and power that Edwards would be giving up. Rainbow argues that Edwards' interest in Glencairn is worth far more than the $1.5 million irrespective of whether the buy-out was calculated on the value of Glencairn's pre- or post-transfer stations. Rainbow calculates that Edwards 3% equity share should be worth either $3.68 million or $1.98 million. Rainbow contends that Edwards is being underpaid either $2.2 million or $500,000. Rainbow also alleges that the equity value figures do not even take into account the fact that Edwards' equity consists of all of the voting stock which should have earned him a huge premium. Rainbow concludes that Edwards could not have negotiated the terms of his buy-out because he would never have decided to have his company buy himself out for much less than the actual value of his interest. Rainbow also questions the fact that Glencairn is borrowing the $1.5 million from Sinclair to fund the buy-out. Rainbow contends that this fact proves that Glencairn does not have the ability to finance its purchase of the Sullivan III stations since it cannot even finance the buy-out of its own President.

16. Glencairn responds that the "temporary loan" from Sinclair to Glencairn, that would be used to purchase Mr. Edwards' interest, would only be a "bridge" loan from Sinclair in the event that the Commission granted the Glencairn transfer applications prior to granting the Sullivan III transfer applications. Glencairn and Sinclair argue that Rainbow has no basis to value Mr. Edwards' stake in Glencairn.[12]

III. DISCUSSION

[12] Rainbow also produced copies of advertisements and trade publications that erroneously refer to Sinclair as the licensee of Glencairn's stations. *See* Rainbow's August 29, 2001, letter to the Commission and Glencairn's September 5, 2001, response. However, we do not believe that such information, erroneously reported by third party sources/publishers, evidences Glencairn having abdicated control of its stations to Sinclair.

A. The Evidentiary Burden

17. Under the Communications Act, parties challenging an application to transfer control by means of a petition to deny under Section 309(d) of the Communications Act must satisfy a two-step test.[13] First, the petition to deny must set forth "specific allegations of fact sufficient to show that . . . a grant of the application would be *prima facie* inconsistent with [the public interest]."[14] Second, the petition must present a "substantial and material question of fact" concerning whether the grant of the application would serve the public interest.[15] If the Commission concludes that the protesting party has met both prongs of the test, or if it cannot, for any reason, find that grant of the application would be consistent with the public interest, the Commission must formally designate the application for a hearing in accordance with Section 309(e) of the Communications Act.[16]

18. To satisfy the first prong of the test, a petitioning party must set forth allegations, supported by affidavit, that constitute "specific evidentiary facts, not ultimate conclusionary facts or mere general allegations …."[17] The Commission determines whether a petitioner has met this threshold inquiry in a manner similar to a trial judge's consideration of a motion for directed verdict: "if all the supporting facts alleged in the affidavits were true, could a reasonable fact finder conclude that the ultimate fact in dispute had been established."[18]

19. If the Commission determines that a petitioner has satisfied the threshold standard of alleging a *prima facie* inconsistency with the public interest, it must then proceed to the second phase of the inquiry and determine whether, "on the basis of the application, the pleadings filed, or other matters which [the Commission] may officially notice," the petitioner has presented a "substantial and material question of fact."[19] If the Commission concludes that the "totality of the evidence arouses a

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[13] 47 U.S.C. § 309(d).

[14] 47 U.S.C. § 309(d)(1); *Gencom Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987)(*Gencom*); and *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1562 (D.C. Cir. 1988)(*Astroline*).

[15] 47 U.S.C. § 309(d)(2); *Gencom*, 832 F.2d at 181; and *Astroline*, 857 F.2d at 1562.

[16] 47 U.S.C. § 309(e).

[17] *United States v. FCC*, 652 F.2d 72, 89 (D.C. Cir.1980) (*en banc*) (*quoting Columbus Broadcasting Coalition v. FCC*, 505 F.2d 320, 323-24 (D.C. Circuit 1974)).

[18] *Gencom*, 832 F.2d at 181.

[19] 47 U.S.C. § 309(d)(2); *see also Gencom*, 832 F.2d at 181.

sufficient doubt" as to whether grant of the application would serve the public interest, the Commission must designate the application for hearing pursuant to section 309(e).[20]

20. For the reasons set forth below in paragraphs 21-27, we find that Kelley and Rainbow have set forth specific allegations of fact sufficient to show that certain of the current transactions in this proceeding have resulted in Sinclair exercising *de facto* control over Glencairn in violation of Section 310(d) of the Communications Act. With respect to the second prong of the test, we do not find that a substantial and material question of fact exists that warrants designating these applications for hearing. We find this record sufficient to demonstrate that a violation of Section 310(d) of the Communications Act occurred. This does not mean, however, that we must designate the applications for hearing.[21] As explained below, we conclude that the appropriate remedy for this violation is a forfeiture. Thus, we see no need for an evidentiary hearing on this issue.

21. Our review of the facts and circumstances in this case leads us to conclude that a hearing is not appropriate here. While certain of the transactions involved a violation of Section 310(d), we find that such actions appear to reflect reliance on past staff decisions involving similar facts,[22] and thus appear to be miscalculations on the part of Sinclair and Glencairn as to what was permissible.[23] Also, we note that Mr. Edwards, the party at the center of Glencairn's temporary abdication of control, is leaving the company, thus mitigating the potential for future lapses. Furthermore, we find that the parties have cooperated in our investigation of this case and manifested no palpable intent to deceive the Commission about these matters. Therefore, we do not believe the violation here to be of a nature that it raises questions about the character qualification of these parties to be licensees. Despite the

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[20] *Serafyn v. FCC*, 149 F.3d 1213, 1216 (D.C. Cir. 1998) (*quoting Citizens for Jazz on WRVR Inc. v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985)).

[21] *See Roy M. Speer*, 11 FCC Rcd 18393 (1996) (unauthorized transfer of control did not necessitate designation of applications for hearing where there was no substantial and material question of fact as to whether parties intended to deceive the Commission); FM *Broadcasters of Douglas County*, 10 FCC Rcd 10429 (1995) (no qualification issues raised by license assignment applications notwithstanding unauthorized transfer of control by assignor and issuance of NAL); *see also Mountain Signals, Inc.*, 6 FCC Rcd 2874 (MMB 1991).

[22] *See 1994 Letter*, *supra* and *River City Decision*, *supra.*

[23] *See Roy M. Speer*, supra; Arlie *L. Davison and Associates, Inc.*, *supra* (no hearing where unauthorized transfer of control was the result of mistaken belief by parties that applications had been filed); *Notice of Apparent Liability for Forfeiture of KGNT, Inc.*, 16 FCC Rcd 1656 (Enforcement Bureau 2001) and *Notice of Apparent Liability for Forfeiture of KEOT, Inc.*, 16 FCC Rcd 863 (Enforcement Bureau 2001) (no hearing where 310(d) violations were the result of licensee's mistaken understanding concerning what constituted a transfer of control). *Cf. C. Devine Media*, 8 FCC Rcd 2493 (1993) and *Seraphin Corporation*, 2 FCC Rcd 7177 (1987).

improper actions of Sinclair and Glencairn, we conclude that designation for hearing of the various above-captioned applications is not warranted. Rather, we conclude that the above-captioned applications can be granted conditioned upon certain changes in the agreements between the parties.

22. Having concluded that the violation issued here would not warrant denial of these applications, we must determine the appropriate remedy for the unauthorized transfer of control in which the parties engaged. Section 503(b)(1)(B) of the Act provides for the imposition of a forfeiture penalty against any person who "willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act or under any treaty, convention, or other agreement to which the United States is a party and which is binding upon the United States". There is ample precedent for imposing forfeitures for unauthorized transfers of control.[24] While, as discussed above, Glencairn and Sinclair appear to have miscalculated what was permissible under past staff decisions, we find that the *de facto* transfers were willful within the meaning of Section 503. For purposes of Section 503, willful means the conscious and deliberate commission of an act irrespective of an intent to violate the Communications Act or the Commission's Rules.[25] Accordingly, we conclude that a forfeiture is warranted.

B. Sinclair's *De Facto Control* of Glencairn

23. With respect to the sale of the Sullivan III stations to Glencairn, we find that the record demonstrates that Sinclair exercised *de facto* control over Glencairn in violation of Section 310(d) of the Communications Act and the Commission's rules. A combination of facts leads us to this conclusion. Most prominent is Mr. Edwards' lack of knowledge of the amount of Sullivan III debt that Glencairn was to assume (the key term of Sullivan III transaction). He was responsible for signing the merger agreement between his company and SBH. The fact that Edwards was ignorant of the most important term of the Sullivan III deal indicates that he was not actively involved in the corporate management of Glencairn with respect to these transactions. Edwards pleads that his subordinates were in charge of negotiating the Sullivan III deal and establishing the exact amount of debt to be assumed. However, it was Edwards who signed the agreements, and his ignorance of the substantial liability to which he was committing his company strongly indicates his lack of control of Glencairn during the Sullivan III transaction.

24. Further, the structuring of the Sullivan III transaction to allow Sinclair to pay almost all of the purchase price of the Sullivan III stations and Glencairn to obtain these stations at a small fraction of their value underscores the fact that it was Sinclair, and not Edwards, that made the decision as to

[24] *See, e.g., Galesburg Broadcasting Company,* 6 FCC Rcd 2210 (1991).

[25] *See, e.g., SBC Communications,* FCC 01-308 (Oct. 16, 2001) n. 67; *Southern California Broadcasting,* 6 FCC Rcd 4387 (1991).

what stations Glencairn should acquire and at what price. Furthermore, the Sullivan III deal was structured so that Sinclair would be the holder of the Sullivan III promissory note, creating a debtor-creditor relationship between Glencairn and Sinclair. This debtor-creditor relationship was not permitted under the Commission's then-existing policy on television LMAs, which permitted a time broker and licensee to have an LMA and one additional relationship linking the broker and licensee, such as a loan or an option to purchase the station.[26] Since Sinclair held an option to acquire Glencairn's stations in addition to an LMA of those stations, it was not permitted to have a third financial arrangement with Glencairn.

25. While Glencairn and Sinclair argue that this type of transaction was allowed in the *Burns Decision*, that decision was taken by the staff and is not yet final because an Application for Review of that decision was filed and remains pending. Therefore, we have not yet decided whether the staff's ruling was correct and it is not binding precedent upon the Commission. Second, assuming it is correct, the *Burns Decision* is distinguishable, because in that case the second part of the transaction, which involved the sale of certain stations to Colins, was negotiated several months after Pappas entered into its original agreement to purchase other stations in the same market. In addition, the staff found that Colins had the ability to reject the terms of the agreement and, if needed, could self-finance the acquisition of its station. Conversely, the instant transaction was one large package structured by Sinclair in such a way as to indicate that Sinclair was the party controlling the transaction.

26. In addition, we must consider Edwards' agreement to sell all but two of Glencairn's television stations to Sinclair immediately following adoption of the new multiple ownership rules. While we traditionally do not examine the purchase price in a station sale, we will, as here, consider such matters where it appears from other facts that the arrangement may not have been an arms-length transaction between the parties. Even assuming Rainbow's conservative approach to determining value, there is no question that Edwards agreed to sell Glencairn's stations for a small fraction of their value. In a similar vein, Edwards allowed Glencairn's proposed acquisition of KOKH-TV, Oklahoma City, Oklahoma, to be terminated thereby permitting Sinclair to acquire it consistent with the new television duopoly rule. While Glencairn maintains that this was done to reduce the amount of Sullivan III debt that it was assuming, we do not believe that, absent immediate and pressing financial distress, a reasonable businessman would allow his company to walk away, uncompensated, from the bargain such a deal represented and allow another company to take its place. Glencairn has made no such claim of financial distress.

27. We find that the combination of facts we have noted here demonstrates that, with respect to the instant transaction between Glencairn and Sinclair, Edwards was not in control of Glencairn and passively permitted Sinclair to dictate the terms and conditions of the deal. As a result, Edwards ceded control to Sinclair in violation of 310(d) of the Communications Act.

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[26] *See Public Notice*, "Processing of Applications Proposing Local Marketing Agreements," Report No. 54161, released June 1, 1995 (*LMA Public Notice*).

28. As for Mr. Edwards' misstatement of the amount of the Sullivan III stations debt, we find that the allegation that such misstatement rises to the level of misrepresentation is not supported by the record in this case. There is no evidence of any attempt by Mr. Edwards to intentionally mislead the Commission or to conceal the mistake. Given Glencairn's disclosure of its mistake, Mr. Edwards' misstatement as to the extent of the Sullivan III debt does not, as argued by Kelley and Rainbow, raise a substantial and material question of fact as to whether Glencairn intended to deceive the Commission by its misstatement. The intent to deceive is a necessary element for us to find that a question of misrepresentation has been raised.[27] Thus, we do not believe that such a misstatement rises to a question of misrepresentation separately warranting either a forfeiture or designation for hearing of the above-captioned applications. We remind Glencairn, however, that accuracy in filings made to the Commission is an extremely important matter that demands strict care and attention by all applicants and it should take care to ensure that Commission filings made in the future are accurate and complete.

C. Forfeiture

29. With respect to this violation, pursuant to Section 503(b) of the Communications Act, we hereby advise Sinclair and Glencairn of their apparent liability for a forfeiture each of Forty Thousand Dollars ($40,000). This amount was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act, taking into account the nature, circumstances, extent and gravity of the violations. The base forfeiture amount for unauthorized transfer of control as set forth in the Commission's *Forfeiture Policy Statement*[28] and Section 1.80(b)(4) of the Commission's Rules[29] is $8,000 which may be adjusted upward in the case of repeated or continuous violations.[30] We find that the violations in this case were repeated in that they occurred with respect to the five Sullivan III stations that initially Glencairn was seeking to acquire. In addition, each day of an unauthorized transfer constitutes a separate offense.[31] Therefore, we find that an increase in the base amount to $40,000 is appropriate.

30. With respect to this forfeiture proceeding, Sinclair and Glencairn are each afforded a period of thirty (30) days from the release date of this order "to show, in writing, why a forfeiture

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[27] *See Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983).

[28] 12 FCC Rcd 17087 (1997), *recon denied*, 15 FCC Rcd 303 (1999).

[29] 47 C.F.R. § 1.80(b)(4).

[30] With respect to an unauthorized transfer of control involving multiple stations, each station for which control was transferred is a separate violation. *See, e.g., International Business Machines,* 14 FCC Rcd 11667, 11670 (WTB 1999), *Courtesy Communications*, 14 FCC Rcd 4198, 4200 (1999).

[31] *See, e.g., Ensearch Corp.*, FCC 99-190, para. 5 (1999).

penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent."[32]

D. River City Applications for Review

31. In their Applications for Review from the River City proceeding, Post and Pulitzer object to the Sinclair-Glencairn relationship for reasons similar to those raised by Rainbow and Kelley in this proceeding. Essentially, Post and Pulitzer argue that three past relationships demonstrate that Sinclair has controlled Glencairn in past transactions – Sinclair's LMA of Glencairn's stations, Carolyn Smith's interest in Glencairn and the establishment of the Glencairn Trusts.[33] Because the issues before us in the River City Applications for Review are similar to the issues raised by Rainbow and Kelley with respect to the more recent Sinclair/Glencairn transaction, we have considered them in this proceeding. However, we only find evidence that Sinclair exercised *de facto* control over Glencairn with respect to the instant transaction. There is not the same type or aggregation of evidence from the River City proceeding as we find here to support a finding that an unauthorized transfer of control occurred. Nor have Rainbow and Kelley demonstrated that it is likely that such violations may continue in the future, particularly in light of Edwards' departure and the assumption of control of Glencairn by Carolyn Smith.

32. We agree with the staff's ruling that the existence of the past relationships decried by Post and Pulitzer does not separately support the allegations they advanced. Post and Pulitzer once again maintain that the LMAs between Sinclair and Glencairn's stations provided Sinclair with a "meaningful interest" in two television stations that serve the same market in violation of the then existing cross interest policy.[34] However, as the staff found, at that time, LMAs were not considered under the cross-interest policy.[35] Furthermore, we agree with the staff's finding that Glencairn's decision to enter into LMAs with Sinclair-owned stations did not by itself constitute unauthorized transfers of control.[36] Morever, there was no other evidence in the *River City* proceeding to suggest that the LMA, either in form or practice, violated the Commission's rules or resulted in Sinclair exercising *de facto* control over Glencairn.

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[32] 47 C.F.R. § 1.80(f)(3). A courtesy copy of such showing, if any, should be mailed to the Chief, Video Services Division, Mass Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554.

[33] Glencairn and Sinclair filed oppositions to the Applications for Review.

[34] *See* Reexamination of the Commission's Cross-Interest Policy, *Report and Order*, 4 FCC Rcd 2208 (1988).

[35] *River City Decision* at 4.

[36] *See WGPR, Inc.*, 10 FCC Rcd 8140, 8141 (1995).

33. Post further argues that the overlapping family ownership structure plainly demonstrates that both Sinclair and Glencairn are "Smith-family enterprises." Rainbow also argues that this point is further strengthened by the fact that, following the proposed Glencairn re-structuring, Carolyn Smith will be its 100% voting shareholder. We find that the staff correctly determined based upon the record then before it that Mr. Edwards was shown to be in control of Glencairn at the time this issue was first raised in 1994.[37] At that time, the staff also found that Carolyn Smith's prior active involvement in television station ownership and her financial independence from the Smith brothers belied a suggestion that she would be under the control of Sinclair.[38]

34. Furthermore, after a complete review of the record of this case, we find that Rainbow has failed to raise a substantial and material question of fact that a Carolyn Smith-controlled Glencairn will not operate independently in the future. The Commission has previously stated that, where family members are involved, a petitioner attempting to demonstrate a lack of independence between broadcast entities, has a heavy burden, because even independent family relationships may have financial or business ties which would ordinarily be persuasive indicia of common control or real-party status in non-family situations.[39] Rainbow has not met this heavy burden. The only evidence that Rainbow raises to support this allegation is the fact that Glencairn's stations will continue to be operated by Sinclair pursuant to LMAs. However, we have previously found that the Sinclair/Glencairn LMAs complied with the Commission's rules.[40] There is no evidence to suggest a different conclusion in this case other than Rainbow's conjecture. In prior cases raising the issue of independence of family-owned broadcast stations, the Commission rejected such arguments where the record contained similar connections among related licensees.[41] Should evidence be produced in subsequent proceedings to demonstrate otherwise, we will give it appropriate consideration.

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[37] *1994 Letter* at 4.

[38] *Id.*

[39] *See Cannon's Point Broadcasting Co.*, 93 FCC 2d 643, 654-55 (Rev. Bd. 1983)(no real-party-in-interest issue based merely on financial and business ties among family members); *Clarification of Commission Policies Regarding Spousal Attribution*, 7 FCC Rcd 1920, 1922-23 (1992).

[40] Under the Commission's new attribution policy, new LMAs are now attributable and entities seeking to enter into new LMA's must comply with the Commission's new attribution and multiple ownership rules. *See* Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket No. 94-150, *Report and Order*, 14 FCC Rcd 12559 (1999), *recon. granted in part*, 16 FCC Rcd 1097 (2000), *appeal pending* (*Attribution Order*). Entities such as Sinclair and Glencairn, with existing LMAs, were afforded certain grandfathering rights that allowed them to continue their existing LMAs for certain limited periods of time depending on when the LMA was executed.

[41] *Kern Broadcasting* Corporation, 10 FCC Rcd 6584, 6587 (1995) (facts alleged by petitioner similar to other cases where Commission found that family relationship did not raise real-party-in-interest issues); *Cannon's*

35. Finally, Post and Pulitzer focus on certain trusts established for the benefit of the minor children of the Smith brothers. In 1995, Carolyn Smith established four separate irrevocable trusts (Trusts) for her grandchildren – the minor children of the Smith brothers. These Trusts hold 90% of the non-voting equity of Glencairn. Rainbow argues that, on a going forward basis, the Trust relationship diminishes all incentive for Sinclair to pit one station in competition against the other. We agree with the staff's finding in the *River City* proceeding that the establishment of the Trusts should not have resulted in Glencairn's stations being attributed to Sinclair. The staff agreed with Glencairn that the Trusts, which involved non-voting Glencairn stock, were established by Carolyn Smith, not for the purpose of insulation from the Commission's attribution rules, but rather for estate planning purposes.[42] This conclusion was based on the fact that Carolyn Smith could have held the non-voting stock herself, and therefore was not trying to avoid attribution by placing this stock into trusts for her grandchildren. With respect to the additional question of whether the trustees were independent from the grantor or beneficiaries of the Trusts, the staff correctly found that Carolyn Smith did not appoint any of the Smith brothers as trustees of the Trusts and that none of the trustees had a familial relationship with Mrs. Smith or any of her children or grandchildren.[43] Thus, the creation of the trusts does not give Sinclair or any of its principals control of the Glencairn stations. Nor do the trusts diminish Glencairn's incentives to compete with Sinclair stations. Morever, the staff found that the Trust instruments did not provide that any of the Smith brothers could directly accede to the Glencairn non-voting stock interest contained in the corpus of the Trusts. If the Trusts retained the Glencairn non-voting stock as part of their corpus for the intended duration, the staff found that the Smith brothers' children will be well past the age of majority before they have the right to request withdrawal of the Trust assets. Therefore, the staff correctly concluded that the existence of the Glencairn Trusts did not support the allegations advanced by Post and Pulitzer.

E. Transfer of Control of WFBC-TV, Anderson, South Carolina

36. We must dismiss the transfer of control application for WFBC-TV, Anderson, South Carolina. Sinclair submitted a showing with the transfer of control application for WFBC-TV

Point Broadcasting Co., supra; *KTRB Broadcasting Co., Inc.*, 46 FCC 2d 605 (1974) (no real-party-in-interest issue where transferee included sons of broadcasters in same market who received financing from their fathers).

[42] *River City Decision* at 5.

[43] *Id. See* 47. C.F.R. § 73.3555 Note 2(e). While the staff did find that at certain times in the past certain trustees had performed various legal and financial consulting work for the Smith brothers, Sinclair declared that the Smith brothers would not utilize these persons in the future. *Id.* at 6. The staff concluded that these past, occasional business relationships did not place in doubt the future independence of the trustees. *Id.* Sinclair submitted a certification to that effect and there is no evidence of any subsequent dealings between the trustees and the Sinclair brothers.

attempting to demonstrate that its ownership of more than one television station in the Greenville-Spartanburg market would comply with the new multiple ownership rules. Sinclair is already the licensee of one station in the Greenville-Spartanburg market - WLOS(TV), Asheville, North Carolina. Sinclair submitted an exhibit in which it found nine independently owned full power television stations would remain in the Greenville-Spartanburg market following its acquisition of WFBC-TV. However, one of those stations, WNEG(TV), Toccoa, Georgia, which Sinclair listed as independently owned, is commonly owned by Spartan Communications, Inc. (SCI), the licensee of WSPA-TV, Spartanburg, South Carolina, another television station in the market, and WNEG(TV) is operated as a satellite of WSPA-TV. Another one of the television stations, WASV-TV, Asheville, North Carolina, which Sinclair listed as independently owned, is currently being operated by SCI pursuant to a LMA through which SCI broadcasts more than 15% of the station's weekly broadcast hours. Therefore, under the Commission's multiple ownership rules, SCI is considered to have an attributable interest in both WASV-TV and WSPA-TV and these stations cannot be considered independently owned. Given these facts, we find that there would only be seven independently owned full power television stations in the Greenville-Spartanburg market following Sinclair's acquisition of WFBC-TV. Because its acquisition of a second television station in the Greenville-Spartanburg market would not comply with the Commission's new multiple ownership rules, we dismiss as patently defective the transfer of control application for WFBC-TV pursuant to Section 73.3566 of the Rules.[44]

F. Conditional Grant

37. While we grant the above-captioned applications, we believe it appropriate to condition the grants upon certain changes being made to the agreements to ensure that violations of our rules do not occur in the future. First, there is the LMA for the Sullivan III stations for which Glencairn will be the licensee. This LMA was entered into between Sinclair and Sullivan III and Glencairn will be assuming the LMA upon the closing on the sale of the Sullivan III stations. On March 15, 1999, the staff sent Glencairn a letter requesting additional information concerning the LMA.[45] The *Inquiry Letter* noted two provisions in the LMA that the staff found to raise questions concerning Glencairn's future control over programming. The first provision permitted Sinclair to obtain specific performance of the LMA in the event of a material breach by the licensee. The staff found that compelling a licensee to utilize a particular programmer – even if it is the programmer with which it entered into an LMA – violates the licensee's fundamental right and obligation to determine the type of programming to be aired on its station. While damages may be an appropriate remedy for a licensee's breach of an LMA, the staff stated that a licensee must remain free to choose who will program its station. The second provision allowed Sinclair to assign its rights and interests under the LMA without prior written consent of the

[44] 47 C.F.R. § 73.3566.

[45] *See Letter from Chief, Television Branch to Glencairn Ltd.*, ref: 1800E1-LS, dated March 15, 1999 (*Inquiry Letter*).

licensee, so long as Sinclair simply gave notice of any such assignment and the assignment did not violate any laws or policies. The staff found this clause objectionable because it allowed Sinclair to assign the LMA to any qualified entity, regardless of whether the licensee approved of the new programmer. Once again, the staff concluded that such a provision appeared to deprive the licensee of control over programming by granting Sinclair the ultimate power to decide who will program the stations. The staff requested those provisions be removed or suitably amended. Therefore, to ensure that such action is taken, we condition our grant of the transfer of the Sullivan III stations to Glencairn upon Glencairn submitting, within five days of the consummation of that transaction, an affidavit attesting to the fact that the LMA provisions set forth in the March 15, 1999 letter have been removed or suitably amended.

38. Furthermore, the Sullivan III/Glencairn merger agreement appeared to indicate that Glencairn would be assuming the Sullivan III promissory note of which Sinclair is currently the holder. Glencairn has indicated that it intends to satisfy this promissory note at the closing of the Sullivan III/Glencairn merger by securing additional financing from Chase Manhattan. However, the terms of Glencairn's existing Chase Manhattan Credit Agreement do not permit the extension of additional financing. Sinclair's creditor relationship with Glencairn, combined with its ongoing brokerage of Glencairn's stations pursuant to LMAs and its existing option to purchase Glencairn's stations, is of particular concern in this case, where we have already determined that an unauthorized transfer of control has taken place between the parties. Given these unique circumstances, we find that Sinclair's retention of a creditor relationship with Glencairn would not be appropriate. We therefore will require that Glencairn satisfy the Sullivan III/Sinclair promissory note at the closing of this transaction and that any debt it incurs to do so be held by parties separate from and independent of Sinclair. Further, we will require that Glencairn, within five days of such closing, supply the Commission with an affidavit from a Glencairn principal attesting to the required refinancing of Sullivan III/Sinclair promissory note.

IV. CONCLUSION

39. In view of the foregoing, and having determined that the parties are otherwise qualified, we find that a grant of these applications will serve the public interest, convenience and necessity.

40. Accordingly, IT IS ORDERED, That the Petition to Deny filed by Kelley International Licensing, LLC IS GRANTED TO THE EXTENT INDICATED HEREIN AND DENIED IN ALL OTHER RESPECTS.

41. IT IS FURTHER ORDERED, That, the Petition to Deny and Petition to Deny and/or Revoke Sinclair and Glencairn Licenses filed by Rainbow/PUSH Coalition IS GRANTED TO THE EXTENT INDICATED HEREIN AND DENIED IN ALL OTHER RESPECTS.

42. IT IS FURTHER ORDERED, That, the Applications for Review of Pulitzer Broadcasting Company and Post-Newsweek Stations, San Antonio, Inc., ARE DENIED.

43. IT IS FURTHER ORDERED, That, that applications for transfer of control of Glencairn, Ltd., the parent entity of Baltimore (WNUV-TV) Licensee, Inc., licensee of WNUV-TV, Baltimore, Maryland, and Columbus (WTTE-TV) Licensee, Inc., licensee of WTTE-TV, Columbus, Ohio, (File Nos. BTCCT-19991116BEC & BEE) from Edwin Edwards, Sr. to Carolyn C. Smith ARE GRANTED.

44. IT IS FURTHER ORDERED, That, the applications for transfer of control of Sullivan Broadcasting Company III, Inc., licensee of WRGT-TV, Dayton, Ohio; WTAT-TV, Charleston, South Carolina; and WVAH-TV, Charleston, West Virginia; (File Nos. BTCCT-19991116BDR – BDU) from Sullivan Broadcasting Company III, Inc., to Glencairn, Ltd. ARE GRANTED, subject to the condition that, within five (5) days following consummation of this transaction, Glencairn. Ltd. submit affidavits in response to the matters set forth in paragraphs 37 and 38.

45. IT IS FURTHER ORDERED, That, the application for transfer of control of Sullivan Broadcasting Company IV, Inc., licensee of KOKH-TV, Oklahoma City, Oklahoma (File No. BTCCT-19991116BEH) from ABRY Holdings Co. to KOKH Licensee, LLC IS GRANTED.

46. IT IS FURTHER ORDERED, That, the application for transfer of control of Anderson (WFBC-TV), Licensee, Inc. (File No. BTCCT-19991116BDP) from Glencairn, Ltd. to Sinclair Acquisition Group XI, Inc. IS DISMISSED.

47. IT IS FURTHER ORDERED, That, the application for transfer of control of San Antonio (KRRT-TV) Licensee, Inc., licensee of KRRT-TV, Kerrville, Texas (File No. BTCCT-19991116BDN) from Glencairn, Ltd. to Sinclair Acquisition X, Inc. IS GRANTED.

48. IT IS FURTHER ORDERED, That, the application for transfer of control of WVTV Licensee, Inc., licensee of WVTV-TV, Milwaukee, Wisconsin (File No. BTCCT-19991116BDX) from Glencairn, Ltd. to Sinclair Acquisition VII, Inc. IS GRANTED.

49. IT IS FURTHER ORDERED, That, the application for transfer of control of Raleigh (WRDC-TV) Licensee, Inc., licensee of WRDC-TV, Durham, North Carolina (File No. BTCCT-19991116BCS) from Glencairn, Ltd. to Sinclair Acquisition VIII, Inc. IS GRANTED.

50. IT IS FURTHER ORDERED, That, the application for transfer of control of Birmingham (WABM-TV) Licensee, Inc., licensee of WABM-TV, Birmingham, Alabama (File No. BTCCT-19991116BDK) from Glencairn, Ltd. to Sinclair Acquisition IX, Inc. IS GRANTED.

51. IT IS FURTHER ORDERED, That, the application for assignment of license of WCWB-TV, Pittsburgh, Pennsylvania, from WPTT, Inc., to WCWB Licensee, LLC (File No. BALCT-19991116AIZ), IS GRANTED.

52. IT IS FURTHER ORDERED, That, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules, Sinclair Broadcasting Group, Inc., and Glencairn, Ltd. are each hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of forty thousand dollars ($40,000) apiece for violation of Section 310(d) of the Communications Act of 1934 and Section 73.3540 of the Commission's Rules.

53. IT IS FURTHER ORDERED, That, pursuant to Section 1.80 of the Commission's Rules, within thirty (30) days of the release date of this Notice, Sinclair Broadcasting Group, Inc., and Glencairn, Ltd. each SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, and addressed to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL numbers of this proceeding (NAL Nos. 200218420001 (Sinclair) and 200218420002 (Glencairn), respectively). Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, DC 20554.

54. IT IS FURTHER ORDERED, That, a copy of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by Certified Mail – Return Receipt Requested, to Sinclair Broadcasting Group, Inc.'s counsel of record: Martin R. Leader, Esq., Shaw Pittman, 2300 N Street, N.W., Washington, DC 20037-1128; and to Glencairn, Ltd.'s counsel of record: Howard A. Topel, Esq., Leventhal, Senter & Lerman, 2000 K Street, N.W., Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS
DISSENTING IN PART AND APPROVING IN PART

In the Matter of: Various Applications for Assignment of License and Transfer of Control of Certain Television Licenses to Sinclair Broadcast Group, Inc. and Glencairn, Ltd.

Over the last several years, Sinclair Broadcasting Company ("Sinclair") has pursued a strategy of acquiring interests in or management of more than one station in each market in which it has a television station. In so doing, it has continually pushed against the parameters of ownership structures prohibited by the Commission.

With the transactions before the Commission today, Sinclair has crossed the line into behavior that the majority has found to violate the Commission's rules. In assessing a fine on Sinclair for this violation, the majority purports to stop the expansion of Sinclair's forays into multiple ownership, but in fact it merely points out that lines have been crossed, while allowing Sinclair to run over these lines and to continue its multiple ownership strategy.

Background

The first of Sinclair's forays into multiple television station ownership came in 1991 when Sinclair acquired a station in Pittsburgh and sold its existing Pittsburgh station to that station's manager Edwin Edwards, a Sinclair employee, on extremely favorable terms. Sinclair operated its new station in Pittsburgh and continued to program its original station through a Local Marketing Agreement ("LMA").

After that, Sinclair sought to acquire the stations of a company that wanted to sell its four stations as a group. Two of the four stations, however, were in markets in which Sinclair already owned television stations and was thus prohibited from owning additional stations. Sinclair again enlisted Edwards to acquire the stations Sinclair could not own. Because Edwards did not have the financial resources to purchase these stations, the president of Sinclair proposed that his mother finance the acquisition. Carolyn Smith, the mother of the four owners of Sinclair, and Edwards established Glencairn, the acquiring company, 70% of the non-voting stock of which was owned by Smith and 30% by Edwards. The Glencairn stations, like the Pittsburgh station, were operated through LMAs by the Sinclair-owned stations in their markets.

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, like the others, would be operated through LMAs by the Sinclair-owned stations in these markets. At the same time, Carolyn Smith transferred her ownership interest, now 90% of the equity in Glencairn, to trusts for her grandchildren – the minor children of the four brothers who own Sinclair.

Applications for Review of these decisions filed by Pulitzer Broadcasting and Post-Newsweek Stations are before the Commission today.

Finally, in the transactions before the Commission today, Sinclair and Glencairn in 1998 filed applications for the stations owned by Sullivan. As the deal was initially structured, Sinclair would acquire five stations – in Buffalo; Madison; Richmond; Winston-Salem and Nashville, while Glencairn acquired five stations – in Dayton; Charleston, South Carolina; Charleston, West Virginia; Oklahoma City and Bluefield, West Virginia. Unlike the last transaction, these were not separate acquisitions of stations by Sinclair and Glencairn. Rather, in these transactions Sinclair would acquire the licenses and assets of five stations, as well as the non-license assets of the five stations to which Glencairn would acquire the license. Glencairn would then lease these stations' assets from Sinclair. All of the Sullivan stations have been operating through LMAs with Sinclair, and once transferred to Glencairn these stations will continue to do so. As to these stations, therefore, Sinclair will own the non-license assets and will control the programming through LMAs. The licenses themselves will be held by a company, 90% of which is owned in trust for the minor children of the owners of Sinclair.

In August 1999, the Commission amended its longstanding television local ownership rules to permit one licensee to own two television stations in markets in which eight independent television voices remain after the consolidation. That decision also rendered LMAs attributable as commonly owned stations – with limited grandfathering of existing LMAs – and thus prohibited LMAs except where and between those stations that could be commonly owned pursuant to the revised duopoly rules.

After the Commission's decision in 1999, Sinclair and Glencairn filed an application to amend the pending application of Glencairn to acquire the station in Oklahoma City, to make Sinclair not Glencairn the acquirer, as under the new rules a duopoly would be permissible in Oklahoma City. Also subsequent to the Commission's 1999 decision, Glencairn filed applications to sell to Sinclair stations in San Antonio, Milwaukee, Durham, and Birmingham, as these markets have sufficient voices in each market to permit duopolies pursuant to our rules. These transactions are also before the Commission today.

Discussion

In its August 1999 modification of the television local ownership rules, the Commission permitted one licensee to own two television stations in certain markets. In modifying these rules, the Commission fully intended licensees to avail themselves of the opportunity presented by the rule change. As the Commission intended, Sinclair has applied to acquire duopolies in those markets in which such common ownership is permissible. As the Commission also could have anticipated, Sinclair has challenged the rules in court, seeking and winning a stay of the requirement that it terminate its LMAs where such arrangements have been rendered violative of the rules.

What makes Sinclair's practices disquieting, however, are its maneuvers to acquire interests in multiple stations in local markets in seeming contravention – if not violation – of Commission rules. While in the past, Sinclair has entered into arrangements with Glencairn to acquire and manage multiple stations in local markets that the Mass Media Bureau has found to fall just short of ownership arrangements, the transactions presented here raise questions of fact requiring further investigation.

As petitioners point out, a number of facts related to the transfer of the Sullivan stations to Sinclair and Glencairn call into question whether Sinclair is the real party in interest behind Glencairn. For example, Edwards did not know the amount of debt that Glencairn was to assume to acquire the Sullivan stations. Whether Edwards intended to deceive the Commission or simply was mistaken in his declaration to the Commission, that he was ignorant of the most important term of the transaction may call into question whether he is actively involved in the corporate management of Glencairn and his purported control of Glencairn.

Further, there is the question of whether the Sullivan-Sinclair-Glencairn transaction was structured to allow Sinclair to pay almost all of the purchase price of the Sullivan stations and Glencairn to obtain the Sullivan stations it acquired at a small fraction of their value. The five stations to be acquired by Glencairn were to be sold for $8 million. These five stations, according to estimates based upon comparable sales, should be worth approximately $90 million. While the Commission traditionally does not examine the purchase price in a station sale, it will consider such matters if there is reason to suspect the parties have attempted a sham transaction in order to avoid compliance with rules.

If these facts regarding the structure and value of the transaction were the case, it would call into question whether Glencairn is a truly independent company or whether Sinclair was making decisions about what stations Glencairn should acquire and at what price. Furthermore, until modified after being questioned by FCC staff, the Sullivan-Sinclair-Glencairn deal was structured so that Sinclair would be the holder of the promissory note on Glencairn's purchase of the Sullivan stations, in violation of the Commission's existing policy on television LMA's.

In addition, Glencairn's proposed sale of all but two of its existing television stations to Sinclair immediately following adoption of the new multiple ownership rules raises questions about its control of these stations prior to those sales. This raises questions of whether these stations were merely owned by Glencairn but controlled by Sinclair until such time as Sinclair could own them under our revised multiple ownership rules. In addition, Glencairn is not to receive cash for the sale of its stations but rather Sinclair stock, which would further tie the two companies together financially. These facts call into question Glencairn's independent decision making ability.

Finally, Glencairn terminated its proposed acquisition of the station in Oklahoma City

when Sinclair was able to acquire it under the new television duopoly rule. While Glencairn maintains that this was done to reduce the amount of debt that it was assuming, it is questionable why an independent company such as Glencairn would walk away from such a deal without compensation company could take its place.

Though the decision of the majority imposes a forfeiture on Sinclair and Glencairn, it nonetheless allows all but one of the transactions at issue to go forward with minor changes. While the majority's finding that an illegal transfer of control occurred is an important step toward curtailing Sinclair's – and any future licensee's – attempts to circumvent the Commission's local ownership rules, it does not go far enough.

The assessment of a fine combined with the approval of the transfers at issue is incongruous. The finding that an illegal transfer of control occurred at least raises questions about the control of Glencairn on an ongoing basis, and about the independence of Glencairn from Sinclair once Glencairn is controlled by the mother of Sinclair's owners and owned in trust for their minor children. These questions require designation for hearing.

With each transaction over the years, Sinclair has stretched the limits of the Commission's local television ownership rules. In each of several transactions that have come before it, the Mass Media Bureau has reviewed the transaction and the Petitions to Deny filed alleging illegal transfers of control, and has permitted the transaction to go through. The transactions before the Commission today raise issues that prompted the majority to find that there has been an illegal transfer of control and to assess a fine. But the Commission nonetheless has allowed the transaction to go through without further review. Each transaction moves the line to which all of our licenses are subject. And this decision moves it further still.

If anyone wonders how Sinclair will next push against the Commission's rules, recent press reports may give us a preview. Reportedly, Sinclair's NBC affiliate in Tallahassee has combined its operations with the ABC affiliate in that market. Because the ABC affiliate retains control of its programming, Sinclair asserts in the press that this relationship is consistent with FCC rules, including the attribution of Local Marketing Agreements as common ownership. I hope that the Commission will investigate this relationship for consistency with our local television ownership rules.

Conclusion

I therefore dissent from the grants of applications for transfers of the licenses to various television stations to Glencairn and Sinclair. Because the relationship between Sinclair and Glencairn and the ownership and control of Glencairn raise a number of questions of fact related to these transactions, I believe that we cannot grant these applications without further review. I therefore dissent from the majority's decision not to designate these applications for a hearing.

In addition, I dissent from the denial of the Applications for Review filed by Pulitzer Broadcasting and Post-Newsweek Stations. Given the finding of illegal transfer of control of Glencairn to Sinclair, and the outstanding questions of fact regarding independence of Glencairn, I believe that these transactions should be reviewed and designated for hearing. In addition, the issues related to Sinclair's control of Glencairn and the subsequent transfer of legal control of Glencairn to Carolyn Smith raise questions regarding the transfer of Carolyn Smith's ownership of Glencairn to trusts for her grandchildren such that these transfers should similarly be reviewed.

I approve the decision of the majority to the extent that it finds that an illegal transfer of control occurred vis-à-vis Sinclair's control of Glencairn. I also approve the assessment of a forfeiture on Sinclair and Glencairn, as well as the decision of the majority to deny the transfer of WFBC in Anderson, South Carolina from Glencairn to Sinclair.