In the Matter of
Applications of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee)
For Transfer of Control of Tribune Media Company and Certain Subsidiaries, WDCW(TV) et al.
and
For Assignment of Certain Licenses from Tribune Media Company and Certain Subsidiaries

HEARING DESIGNATION ORDER

Adopted: July 18, 2018  Released: July 19, 2018

By the Commission: Commissioner O’Rielly issuing a statement.

I. INTRODUCTION

1. On June 28, 2017, Sinclair Broadcast Group, Inc. (Sinclair) and Tribune Media Company (Tribune) filed applications seeking to transfer control of Tribune subsidiaries to Sinclair.1 Sinclair and Tribune have amended their applications several times thereafter, in an attempt to bring the transaction into compliance with the Commission’s national television multiple ownership rule, as well as the public-interest requirements of the Communications Act.

2. Among these applications were three that, rather than transfer broadcast television licenses in Chicago, Dallas, and Houston directly to Sinclair, proposed to transfer these licenses to other entities.2 The record raises significant questions as to whether those proposed divestitures were in fact “sham” transactions. By way of example, one application proposed to transfer WGN-TV in Chicago to an individual (Steven Fader) with no prior experience in broadcasting who currently serves as CEO of a

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1 The applications filed to effectuate the transfer of control of Tribune Media Company to Sinclair are listed in Attachment 1.

2 See File No. BALCDT-20180227ABD. Specifically, WGN Continental Broadcasting Company, LLC, a wholly owned subsidiary of Tribune, has filed an application to assign the license of station WGN-TV, Chicago, IL, to WGN Licensee, LLC, a subsidiary of WGN TV, LLC, owned by Steven Fader (Fader). See File No. BALCDT-20180227ABD. For ease of reference, we will refer to the licensee as WGN TV, LLC. In addition, different subsidiaries of Tribune have filed applications to assign stations KDAF(TV), Dallas, TX, and KIAH(TV), Houston, TX, to Dallas (KDAF-TV) Licensee, Inc. (Dallas (KDAF)), and Houston (KIAH-TV) Licensee, Inc. (Houston (KIAH)), entities controlled by Cunningham Broadcast Corporation (Cunningham). See File Nos. BALCDT-20180427ABL and ABM. For ease of reference, we will refer to Dallas (KDAF), Houston (KIAH), and Cunningham interchangeably.
company in which Sinclair’s executive chairman has a controlling interest. Moreover, Sinclair would have owned most of WGN-TV’s assets, and pursuant to a number of agreements, would have been responsible for many aspects of the station’s operation. Finally, Fader would have purchased WGN-TV at a price that appeared to be significantly below market value, and Sinclair would have had an option to buy back the station in the future. Such facts raise questions about whether Sinclair was the real party in interest under Commission rules and precedents and attempted to skirt the Commission’s broadcast ownership rules. Although these three applications were withdrawn today, 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.

3. Given these issues and others described below, we are unable to find, based upon the record before us, that grant of the applications would be consistent with the public interest, as required by Sections 309(a) and 310(d) of the Communications Act of 1934, as amended (the Act).4 Specifically, substantial and material questions of fact exist regarding whether: (1) Sinclair was the real party in interest to the sale of WGN-TV, KDAF (a Dallas station), and KIAH (a Houston station); (2) if so, whether Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission; and (3) whether consummation of the overall transaction would be in the public interest, including whether it would comply with Section 73.3555 of the Commission’s rules, the broadcast ownership rules. Accordingly, in this Hearing Designation Order, we commence a hearing before the Administrative Law Judge to determine whether the above-captioned applications should be granted or denied.6 Given the seriousness of the issues presented, we direct the Media Bureau to hold in abeyance all other pending applications and amendments thereto related to the overall proposed Sinclair-Tribune transaction until the issues that are the subject of this Hearing Designation Order have been resolved with finality.

II. BACKGROUND

4. On May 8, 2017, Sinclair and Tribune agreed to a transaction in which Sinclair would acquire Tribune through a merger of a newly formed subsidiary of Sinclair with and into Tribune, immediately followed by Tribune merging with and into Sinclair’s wholly owned subsidiary, Sinclair Television Group, Inc. (STG), with STG as the surviving company. As a result, Tribune’s licensee subsidiaries would become indirect subsidiaries of Sinclair. The Commission accepted for filing those

3 Letter from Mace Rosenstein, Esq., and Scott R. Flick, Esq., to Marlene H. Dortch, Secretary, Federal Communications Commission (dated July 18, 2018); Letter from Miles S. Mason, Esq., and Scott R. Flick, Esq., to Marlene H. Dortch, Secretary, Federal Communications Commission (dated July 18, 2018).

4 47 U.S.C. § 309(d)(2) (“If a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent [with the public interest, convenience, and necessity],” it must formally designate the application for a hearing in accordance with Section 309(e) of the Act). See also 47 U.S.C § 310(d) (“No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly . . . except upon application to the Commission.”).

5 See In the Matter of Maritime Communications/Land Mobile, LLC, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, 26 FCC Rcd 6520, 6534-6535, para. 36 (2011) (“[A] real party in interest issue, by its very nature, is a basic qualifying issue in which the element of deception is necessarily subsumed.”), citing Fenwick Island Broadcast Corp. & Leonard P. Berger, Decision, 7 FCC Rcd 2978, 2979 (Rev. Bd. 1992) (citation omitted). See also 47 U.S.C. § 308(b) (“All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station”; 47 U.S.C. § 310(d) (“Any such application for [assignment or transfer of control] shall be disposed of as if the proposed transferee or assignee were making application under section 308 for the permit or license in question.”).

6 While the applications designated for hearing will be restricted under our ex parte rules, 47 CFR 1.1208, the remaining applications will remain permit-but-disclose. See July 2017 Public Notice, 32 FCC Rcd 5481 (MB 2017).
applications on June 26, 2017. On July 6, 2017, the Media Bureau released a Public Notice announcing
the filing of applications to transfer control of Tribune, setting a pleading cycle, and establishing permit-
but-disclose ex parte status for the proceeding.7 In response, multiple parties filed petitions to deny,
informal objections, and comments.8

5. On September 13, 2017, the Media Bureau issued a Request for Information (Information
Request) to the Applicants. Sinclair responded to the Information Request on October 5, 2017.
Thereafter, the Bureau announced an additional opportunity for comment on October 18, 2017.9

6. On February 21, 2018, and March 6, 2018, Sinclair and Tribune, respectively, filed
applications to assign the licenses of certain stations to divestiture trusts. On April 24, 2018, those
applications were withdrawn.10

7. On March 3, 2018, an application was filed to divest station WPIX(TV), New York, NY
to Cunningham.11 On April 23, 2018, that application was withdrawn.12

8. On April 25, 2018, an application was filed to divest station KPLR-TV, St. Louis, MO to
Meredith Corporation.13 On May 14, 2018, that application was withdrawn.14

9. On April 24, 2018, and May 14, 2018, Sinclair and Tribune again filed the original set of
applications. Sinclair also filed a set of new applications to divest certain stations to third parties in
connection with the transaction. On May 21, 2018, Commission staff issued a consolidated public notice
accepting the divestiture applications for filing and notifying the public of the latest amendments to the
showings contained in the original applications.15

10. In the most recent iteration of the deal subject to public comment, Sinclair proposed a
series of divestitures that it claimed would bring it into compliance with the Commission’s local and
national television multiple ownership rules. Fader’s newly-created entity, WGN TV LLC, was the
named assignee for WGN-TV, which it would have purchased for approximately $60 million. In Dallas
and Houston, Cunningham was the named assignee for stations KDAF and KIAH, which it would have

7 Media Bureau Establishes Pleading Cycle for Applications to Transfer Control of Tribune Media Company to
Sinclair Broadcast Group, Inc. and Permit-But-Disclose Ex Parte Status for the Proceeding, MB Docket 17-179,

8 Throughout the transaction review process, there has been widespread participation by parties-in-interest,
competitors, non-profit groups, industry associations, and members of the public who have filed comments and
letters in the docket. Multiple parties have also made ex parte presentations to the Commission and the staff. The
complete record of the proceeding, including Commission releases, filings by parties, comments from the public,
and records of ex parte presentations are available in the Commission’s Electronic Comment Filing System (ECFS)
https://www.fcc.gov/ecfs/.

9 Media Bureau Pauses 180-Day Transaction Shot Clock in the Proceeding for Transfer of Control of Tribune
Media Company to Sinclair Broadcast Group, Inc. to Allow for Additional Comment, MB Docket No. 17-179,

10 Letter from Miles Mason to Marlene Dortch, Secretary, Federal Communications Commission (Mar. 6, 2018);
Letter from Miles Mason to Marlene Dortch, Secretary, Federal Communications Commission (Apr. 24, 2018).

11 See File No. BALCDT20180227ABE.

12 Letter from Miles Mason to Marlene Dortch, Secretary, Federal Communications Commission (Apr. 23, 2018).

13 See File No. BTCCDT-20180424ABB.

14 Letter from Miles Mason to Marlene Dortch, Secretary, Federal Communications Commission (May 14, 2018).

15 Media Bureau Establishes Consolidated Pleading Cycle for Amendments to the June 26, 2017, Applications to
Transfer Control of Tribune Media Company to Sinclair Broadcast Group, Inc., Related New Divestiture
purchased for approximately $60 million combined. In addition to these divestiture applications, Howard Stirk Holdings will purchase stations KUNS-TV, Seattle, WA; KAUT-TV, Oklahoma City, OK; and KMYU-TV, St. George, UT. Stations KNDL-TV and KPLR-TV, St. Louis, MO, will both be placed in a divestiture trust pending U.S. Department of Justice approval of divestiture of one of the St. Louis stations. The remaining stations to be divested will either be purchased by Fox Broadcasting Company or Standard Media Group.

11. Multiple formal pleadings have been filed opposing this latest divestiture plan.\textsuperscript{16} Most opponents challenge the divestitures as “shams” intended to circumvent the local and national television multiple ownership rules and find most egregious the proposed divestitures to Fader and Cunningham. Some parties question whether Sinclair will hold \textit{de facto} control over WGN TV, LLC.\textsuperscript{17} Specifically, they question the reasonableness of the terms of the transaction, including a purchase price of only $60 million,\textsuperscript{18} and Sinclair’s plans to enter into a Joint Sales Agreement (JSA), Shared Services Agreement (SSA), and Option with WGN TV, LLC at closing.\textsuperscript{19} The parties also question Fader’s independence from Sinclair given that Fader and David Smith, currently a director and controlling shareholder of Sinclair and formerly its CEO, are business partners outside of the broadcast industry. Specifically, Fader is the CEO of Atlantic Automotive Group (Atlantic), while David Smith has a controlling interest in Atlantic and serves as a member of its board of directors,\textsuperscript{20} and Atlantic is a Sinclair advertiser and tenant. Similarly, some parties argue that the sale of stations in Dallas and Houston to Cunningham are in name only and warrant a hearing. According to the objectors, problematic aspects of the proposed divestitures of the Texas stations include: the intertwined relationship between Sinclair and Cunningham, particularly in light of past Commission findings regarding the nature of the relationship;\textsuperscript{22} the recent acquisition of the voting shares of Cunningham by Michael Anderson, a Sinclair associate, for a $400,000 sales price that is far below market value; the fact that the children of Sinclair’s controlling shareholders are beneficiaries of trusts controlling the non-voting shares of Cunningham with the parents holding options to buy the voting shares in the future;\textsuperscript{23} and Sinclair’s apparent guarantee of $53.6 million of Cunningham’s debt.\textsuperscript{24}

12. In response, Sinclair states that “[p]etitioners’ opposition to the proposed divestitures is rooted in their dissatisfaction with the Commission’s current ownership rules and attribution standards,

\textsuperscript{16} All of the filings by parties, comments from the public, and records of \textit{ex parte} presentations in response to the May 2018 Public Notice are available in the Commission’s Electronic Comment Filing System (ECFS) https://www.fcc.gov/ecfs/.

\textsuperscript{17} \textit{E.g.}, \textit{id}. at 12; Herndon-Reston Indivisible Petition to Deny (June 19, 2018) at 5 (Herndon-Reston Indivisible Petition to Deny).

\textsuperscript{18} Newsmax Petition to Deny at 13.

\textsuperscript{19} \textit{Id}. at 12-13.

\textsuperscript{20} \textit{Id}. at 12.

\textsuperscript{21} \textit{Id}.

\textsuperscript{22} \textit{See, e.g.}, Newsmax Media, Inc., Petition to Deny (dated June 20, 2018) (Newsmax Petition to Deny) at 8-9 (citing \textit{Edwin L. Edwards, Sr.}, Memorandum Opinion and Order and Notice of Apparent Liability, 16 FCC Rcd 22236, 22248-51 (2001) (finding that Sinclair exercised \textit{de facto} control over Glencairn, now called Cunningham, in violation of Section 310(d) of the Communications Act and the Commission’s rules) (\textit{2001 Glencairn Decision}), aff’d sub nom. Rainbow/PUSH Coalition v. FCC, 330 F.3d 539 (D.C. Cir. 2003)); Herndon-Reston Indivisible Petition to Deny at 2.

\textsuperscript{23} Newsmax Petition to Deny at 9-10.

\textsuperscript{24} \textit{Id}. at 10-11 (citing Sinclair’s March 2018 SEC Form 10-Q).
rather than in any specific deal terms.”  

It contends that the claims that the divestitures to Cunningham and Fader are not at arms-length are unsubstantiated, and rely on speculation in the trade press, rather than due diligence. It states that “[c]each of the agreements at issue here mirrors those the Commission has approved in multiple transactions over the last decade for a variety of broadcasters.”

13. On July 18, 2018, the proposed transfer applications to Fader and Cunningham were withdrawn.

III. DISCUSSION

14. Under Section 309(d) of the Act, “[i]f a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent [with the public interest, convenience, and necessity],” it must formally designate the application for a hearing in accordance with Section 309(e) of the Act. Courts have stated that, in reviewing the record, the Commission must designate an application for hearing if “the totality of the evidence arouses a sufficient doubt” as to whether grant of the application would serve the public interest. Section 310(d) of the Act prohibits the transfer of control of a license, either de jure or de facto, without prior Commission consent.

15. Commission assignment and transfer applications require disclosure of and certifications from the “real party in interest” purchasing the stations at issue. The phrase “real party-in-interest” is used in connection with pending applications, while “de facto control” is used in connection with a licensed station. The pertinent concern is whether someone other than the named applicant or licensee is or would be in control. As the Commission has explained, “a real party in interest issue, by its very nature, is a basic qualifying issue in which the element of deception is necessarily subsumed.” The test for determining whether an entity is a real-party-in-interest in an application is whether that entity “has an ownership interest or is or will be in a position to actually or potentially control the operation of the station and/or applicant.” In the related context of determining de facto control of an applicant or a licensee, we have traditionally looked beyond legal title and financial interests to determine who holds operational control of the station and/or applicant. In particular, the Commission examines the policies governing station programming, personnel, and finances. The Commission has long held that a licensee may delegate day-to-day operations without surrendering de facto control, so long as the licensee

26 Id. at 11-12, n.33.
27 Id. at 8.
28 See supra note 3.
29 47 U.S.C. §§ 309(d) and (e) (emphasis added).
30 Serafin 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)).
31 In re Brasher, Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing, 15 FCC Rcd 16326 (2000). As discussed below, we identify a real party-in-interest issue with respect to the applications filed proposing to transfer WGN TV to Fader and KDAF and KIAH to Cunningham.
continues to set the policies governing these three indicia of control.\textsuperscript{36}

16. The Commission’s rule-based attribution benchmarks, which are set forth in Note 2 to Section 73.3555 of the Commission’s rules,\textsuperscript{37} and related precedent, have a different purpose in that they seek to identify those ownership interests that subject the holders to compliance with the multiple and cross-ownership rules because they confer a degree “of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions.”\textsuperscript{38} The national television multiple ownership rule prohibits a single entity from owning television stations that, in the aggregate, reach more than 39 percent of the total television households in the United States.\textsuperscript{39}

17. Applying these principles to the transaction at issue, we designate for hearing the above-captioned applications because there exists a substantial and material question of fact as to whether Sinclair was the real party-in-interest to the WGN-TV, KDAF, and KIAH applications and if so, whether Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission.\textsuperscript{40} Accordingly, based upon the record before us, we are unable to find that grant of this transaction would be consistent with the public interest. Specifically, in view of the longstanding and intertwined relationships between and among Sinclair, Fader, and Cunningham, along with sales terms that are atypically favorable to the buyers (specifically, purchase price, financing, and contractual agreements),\textsuperscript{41} substantial and material questions of fact exist as to whether: (1) Sinclair was the real party in interest to the sale of WGN-TV, KDAF (a Dallas station), and KIAH (a Houston station)\textsuperscript{42}; (2) if so, whether


\textsuperscript{37}47 CFR § 73.3555, note 2.


\textsuperscript{39}47 CFR § 73.3555(e)(1). Staff analysis reveals that after consummation of the transaction with the UHF discount, and including the Chicago, Dallas, and Houston markets at issue here, Sinclair’s national audience reach would be 41.14\%, violating the national television multiple ownership rule. “Reach” is defined as the number of television households in the television Designated Market Area (DMA) to which each owned station is assigned. \textit{Id.} § 73.3555(e)(2)(i). No market is counted more than once, even if a station owner holds more than one station in the market. \textit{Id.} § 73.3555(e)(2)(ii).

\textsuperscript{40}We hold in abeyance the processing of the remaining applications.

\textsuperscript{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. \textit{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”); \textit{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.”) (\textit{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)).

\textsuperscript{42}\textit{See In the Matter of Maritime Communications/Land Mobile, LLC}, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, 26 FCC Rcd 6520, 6534-6535, para. 36 (2011) (“[A] real party in interest issue, by its very nature, is a basic qualifying issue in which the element of deception is necessarily subsumed.”), \textit{citing Fenwick Island Broadcast Corp. & Leonard P. Berger}, Decision, 7 FCC Rcd 2978, 2979 (Rev. Bd. 1992) (citation omitted). \textit{See also} 47 U.S.C. § 308(b) (“All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station”); 47 U.S.C.
Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission; and (3) whether consummation of the overall transaction would be in the public interest, including whether it would comply with Section 73.3555 of the Commission’s rules, the broadcast ownership rules. These matters are discussed below.

**A. Sinclair/Fader**

18. **Sinclair/Fader Relationship.** A combination of factors raises substantial and material questions as to whether Sinclair was the undisclosed real party-in-interest to the WGN-TV application proposing sale to Fader. These factors include several operational agreements with Sinclair, the business relationships between Fader and Sinclair, the terms of the deal, and Sinclair’s economic incentive to agree to the sale of WGN-TV to a nonaffiliated entity. The sale of WGN-TV to Fader involves many atypical deal terms, as well as several agreements that delegate operation of many aspects of the station to Sinclair. In particular, WGN TV, LLC, would have entered into a JSA, SSA, Option, and lease-back of non-license assets necessary for operation of the station. Sinclair would have sold advertising time, provided back office services, and programmed a significant portion of the station’s weekly broadcast hours. Furthermore, pursuant to the proposed transaction, WGN TV, LLC, would have purchased only the station license and certain other minimal assets, primarily a transmitter. Sinclair would have purchased the station’s other assets.

19. In addition, Fader not only lacked any prior broadcasting experience, but also has extensive business relationships with David Smith, currently a director and controlling shareholder of Sinclair. This called into question Fader’s independence from Sinclair. Specifically, we question 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. Indeed, one could argue that Sinclair’s proposal to divest what has been described as one of the “crown jewels” of Tribune makes no sense from a business perspective unless that divestiture permitted Sinclair to maintain effective control over the station. We therefore agree with petitioners who assert that a full record must be developed regarding the relationship (Continued from previous page)
between Fader and Sinclair, particularly with respect to Atlantic, at which Fader is the CEO and David Smith is a Board member and has a controlling interest. These factors, considered in conjunction with the financial terms discussed below, may indicate control or influence by Sinclair.

20. **Deal Terms.** The $60 million sales price for WGN-TV appears to be far below market value. For instance, the 2002 sale of WPWR-TV, Chicago, IL, to Fox Television Stations, Inc., was executed at $425,000,000—over seven times the sales price for WGN-TV. WGN-TV’s programming, and in particular, its widespread cable carriage, make the station uniquely valuable to the overall deal. As a result, a substantial and material question of fact is presented by Fader’s purchase of this station at what appears to be a highly discounted price.

21. In light of the relationship between Sinclair and Fader, in addition to sale terms that are atypically favorable to the buyer, substantial and material questions of fact have been raised as to whether Sinclair was the real party-in-interest to the application to assign the license for WGN-TV to WGN TV LLC. Accordingly, we designate the above captioned applications for hearing before an Administrative Law Judge so that, through discovery and hearing, the extent of formal and informal relationships between Fader and Sinclair can be determined. A better understanding of these relationships is needed to determine whether Sinclair was the real party-in-interest to the WGN-TV application.

**B. Sinclair/Cunningham**

22. **Sinclair/Cunningham Relationship.** The Commission has previously examined the relationship between Sinclair and Cunningham (previously named Glencairn, Ltd.). In 1998, when Sinclair and Glencairn sought to acquire certain television stations from Sullivan Broadcasting Company, Rainbow/Push opposed the applications. In the 2001 Glencairn Decision, the Commission granted in part and denied in part Rainbow/Push’s petition and issued forfeitures to both Sinclair and Glencairn. The Commission found that, with respect to the sale of the stations at issue, the record indicated that Sinclair had exercised de facto control over Glencairn in violation of Section 310(d) of the Act and the Commission’s rules. The Commission did not designate the matter for hearing, however, because it found that there was not a substantial and material question of fact 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 the purchaser’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 all of the purchase price of the stations, allowing Glencairn “to obtain the stations at a small fraction of their value.” Finally, the buyer, Glencairn, had entered into

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49 Newsmax Petition to Deny at 12; Free Press Petition to Deny (filed Jun. 20, 2018) (Free Press Petition to Deny) at 16.

50 Newsmax Petition to Deny at 12; Free Press Petition to Deny at 16.

51 File No. BALCT – 20020628AAF, Attachment 5 Asset Purchase Agreement section 2.03(a).

52 At or about 2002, Glencairn, Ltd. (Glencairn), changed its name to Cunningham. There was no change in ownership associated with the name change.


54 Id. at 22253.

55 Id. at 22249.

56 Id.
a debtor/creditor relationship with Sinclair, which was not permitted at the time.\textsuperscript{57} 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 and providing grounds for a notice of apparent liability.\textsuperscript{58} The Commission noted that it would give “appropriate consideration” to any further evidence of control by Sinclair should it be provided in future proceedings.\textsuperscript{59}

23. The terms of the deal for the purchase of the Texas stations KDAF and KIAH present new questions regarding whether Sinclair was the undisclosed real party-in-interest to the KDAF and KIAH applications. In particular, we question the close relationship between Sinclair and Cunningham, an existing loan guarantee between Sinclair and Cunningham, and the proposed purchase price. As NCTA-The Internet & Television Association asserts, sale of stations to buyers closely associated with Sinclair raises the prospect that Sinclair would be able to control the stations after consummation.\textsuperscript{60}

24. \textit{Ties Between Sinclair and Cunningham.} Sinclair and Cunningham have had an ongoing relationship that goes back at least 20 years, as noted above. Newsmax states that until January 2018, the estate of Carolyn Smith, the mother of the controlling shareholders of Sinclair, owned the voting shares of Cunningham.\textsuperscript{61} Even when the voting shares were acquired in 2018 by Michael Anderson, Cunningham’s former banker,\textsuperscript{62} the sales price for the shares—$400,000—was far below market value, according to Newsmax, and the non-voting shares continue to be held by trusts for the benefit of Carolyn Smith’s grandchildren.\textsuperscript{63} Each son (the Smith brothers), multiple commenters point out, holds options to buy the voting shares in the future,\textsuperscript{64} that other commenters have alleged are below market prices.\textsuperscript{65} The close relationship between Sinclair and Cunningham could explain how Cunningham was able to execute an agreement to purchase stations KDAF and KIAH at what appear to be below-market prices.\textsuperscript{66} Thus, discovery and a hearing are necessary to determine the relationship between Cunningham and the Smith brothers, including any informal contractual relationships that may indicate control by Sinclair, such as influence over voting decisions, and whether Sinclair had the incentive and means to exert influence over the core operations of Cunningham.

25. \textit{Deal Terms.} In addition to the close relationship between Sinclair and Cunningham noted above, other factors raise substantial and material questions of fact as to whether Sinclair is the real party-in-interest to the applications to assign the licenses. These other factors include the apparent below-market purchase price for the two stations and the loan guarantee. As we noted in the 2001 Glencairn Decision, “while we traditionally do not examine the purchase price in a station sale, we will . . . consider such matters where it appears from other facts that the arrangement may not have been an arms-length

\begin{itemize}
\item \textsuperscript{57} Id. at 22249-50.
\item \textsuperscript{58} Id.
\item \textsuperscript{59} Id. at 22253.
\item \textsuperscript{60} NCTA-The Internet & Television Association, Petition to Deny (filed Jun. 20, 2018) (NCTA Petition to Deny) at 14-15.
\item \textsuperscript{61} Newsmax Media, Inc., Petition to Deny (filed Jun. 20, 2018) (Newsmax Petition to Deny) at 9.
\item \textsuperscript{62} NCTA Petition to Deny at 15.
\item \textsuperscript{63} Sinclair Broadcast Group, Inc., 10-K (Mar. 1, 2017); see also Newsmax Petition to Deny at 9-10; Cinemoi \textit{et al.}, Petition to Deny (filed Jun. 20, 2018) (Cinemoi \textit{et al.} Petition), at 5; National Hispanic Media Coalition \textit{et al.}, Petition to Deny (filed Jun. 20, 2018) at 6-7.
\item \textsuperscript{64} Newsmax Petition to Deny at 9-10.
\item \textsuperscript{65} See, \textit{e.g.}, Cinemoi \textit{et al.} Petition to Deny at 5.
\item \textsuperscript{66} See, \textit{infra}, para. 17.
\end{itemize}
transaction between the parties.\textsuperscript{67} The Cunningham subsidiaries would have purchased the assets for both stations KDAF and KIAH for $60 million, subject to slight adjustment, while at the same time entering into an option and temporary Transition Services Agreement.\textsuperscript{68} In addition to the existing relationship between Sinclair and Cunningham, there exists a $53.6 million intercompany guarantee listed in Sinclair’s SEC Form 10Q.\textsuperscript{69} The guarantee suggests a layer of financial entanglement heretofore unexamined. Moreover, the combined executed sales price was far below the expected market price for stations in markets this size, suggesting that the transaction was not arms-length. KDAF and KIAH are located in the fifth and seventh largest markets in the nation, respectively, yet the combined sales price was below the $65 million price that was agreed to by Meredith Corporation for station KPLR-TV, St. Louis, Missouri, which is located in the 21\textsuperscript{st} largest market.\textsuperscript{70} While Sinclair has challenged the ability of others to evaluate the purchase price, in particular the ability to compare deal values across markets,\textsuperscript{71} it has not demonstrated how it reached the price, and the relevant evidence suggests that is it substantially below market value.

26. In light of the relationship between Sinclair and Cunningham, in addition to sales terms that are atypically favorable to the buyers, substantial and material questions of fact exist as to whether Sinclair was the real party-in-interest to the applications to assign the licenses of then-prospective assignee of KDAF and KIAH (Cunningham). 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. Accordingly, we designate the above-captioned applications for hearing before an Administrative Law Judge so that, through discovery and hearing, the extent of formal and informal relationships between Cunningham and Sinclair can be determined. A better understanding of these relationships is needed to determine whether Sinclair was a real party-in-interest to the KDAF and KIAH applications.

C. Further Issues

27. Based on our review of the record regarding the WGN-TV, KDAF, and KIAH applications, substantial and material questions of fact have been raised regarding whether Sinclair was the real party-in-interest to the WGN-TV, KDAF, and KIAH application and, if so, whether Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission. Since those questions cannot be otherwise resolved, and inasmuch as this precludes a determination pursuant to Section 309(a) of the Act that the public interest, convenience, and necessity would be served by a grant of the above-captioned applications, those applications must be designated for hearing pursuant to Section 309(e) of the Act.

28. The real party-in-interest issues presented here include a potential element of misrepresentation or lack of candor. Section 1.17(a)(1) of the Commission’s rules states that no person shall, in any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual

\textsuperscript{67} Id. at 2249-50.

\textsuperscript{68} File Nos. BALCDT-20180427ABL and ABM, Attachment 5.

\textsuperscript{69} Sinclair Broadcast Group, Inc., 10-Q, at 22 (Mar. 31, 2018). See also Newsmax Petition to Deny at 11 (raising similar questions).

\textsuperscript{70} The KPLR-TV application was subsequently withdrawn.

\textsuperscript{71} Applicants’ Second Opposition at 11, n.33.
statement that is made from being incorrect or misleading. We note that a misrepresentation is a false statement of fact made with the intent to deceive the Commission. Lack of candor is a concealment, evasion, or other failure to be fully informative, accompanied by an intent to deceive the Commission. We note that Sinclair represented to the Commission that it would comply with our broadcast ownership rules by seeking approval of its application—in part based on the proposed divestitures to Cunningham and Fader—and did not fully disclose facts such as the pre-existing business relationships between Fader, Smith, and Sinclair or the full entanglements between Cunningham, Smith, and Sinclair. As such there is a substantial and material question of fact as to whether Sinclair affirmatively misrepresented or omitted material facts with the intent to consummate this transaction without fully complying with our broadcast ownership rules.

IV. ORDERING CLAUSES

29. Accordingly, IT IS ORDERED, That, pursuant to Sections 309(e) of the Act, 47 U.S.C. § 309(e), and section 1.254 of the Commission’s rules, 47 CFR § 1.254, the above-captioned applications ARE DESIGNATED FOR HEARING to be held at a time and location specified in a subsequent Order by the Administrative Law Judge, upon the following questions:

(a) Whether, in light of the issues presented above, Sinclair was the real party-in-interest to the WGN-TV, KDAF, and KIAH applications, and, if so, whether Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission;

(b) Whether consummation of the overall transaction would violate Section 73.3555 of the Commission’s rules, the broadcast ownership rules;

(c) Whether, in light of the evidence adduced on the issues presented, grant of the above-captioned applications would serve the public interest, convenience, and/or necessity, as required by Section 309(a) and 310(d) of the Act; and

(d) Whether, in light of the evidence adduced on the issues presented, the above-captioned applications should be granted or denied.

30. IT IS FURTHER ORDERED, That, pursuant to Section 309(e) of the Act, 47 U.S.C. § 309(e), and section 1.254 of the Commission’s rules, 47 CFR § 1.254, both the BURDEN OF PROCEEDING with the introduction of evidence and the BURDEN OF PROOF with respect to issues specified above shall be upon Sinclair and Tribune. We are assigning the burdens in this manner because Sinclair and Tribune have the particular knowledge of the specific facts at issue in this proceeding.

31. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard, Sinclair and Tribune pursuant to Section 1.221(c) and 1.221(e) of the Commission’s Rules, 47 CFR §

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72 See 47 CFR § 1.17(a)(1).


74 See Fox River, 93 FCC 2d at 129; Discussion Radio, 19 FCC Red at 7435.

75 We note that ordinarily when we designate an application or license for hearing, we do not automatically defer the sale of co-owned facilities or new acquisitions pending the outcome. Rather, under our Character Policy Statement, we limit such assignments, transfers, and new acquisitions only where there has been a determination at the time of designation that allegations warranting the designation of the original facility also bear on the operation of other facilities. See Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1223-25 Par. 92-95 (1986). See Grayson Enterprises, Inc., 79 FCC 2d 936, 940-41 Para. 10 (1980). See also Commission Announces Modification of Grayson Enterprises Policy on Transferability of Broadcast Licenses, 53 RR 2d 126 (1983).
1.221(c) and 1.221(e), in person or by their respective attorneys, SHALL FILE a WRITTEN APPEARANCE, stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in the Order. Such written appearance shall be filed within 20 days of the mailing of this Order pursuant to Paragraph 38 below. Pursuant to Section 1.221(c) of the Commission’s rules, if the applicants fail to file an appearance within the specified time period, or have not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the assignment application will be dismissed with prejudice for failure to prosecute.

32. IT IS FURTHER ORDERED, That Dallas (KDAF-TV) Licensee (Cunningham), Houston (KIAH-TV) Licensee (Cunningham), and WGN TV, LLC (Fader) and the following petitioners to deny in Exhibit 1 are made parties to the proceeding pursuant to Section 1.221(d) of the Commission’s rules, 47 CFR § 1.221(d). To avail themselves of the opportunity to be heard, pursuant to Sections 1.221(e) of the Commission’s rules, each of these parties, in person or by its attorneys, SHALL FILE, a WRITTEN APPEARANCE, stating its intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Such written appearance shall be filed within 20 days of the mailing of this Order pursuant to Paragraph 38 below. If any of these parties fails to file an appearance within the time specified, it shall, unless good cause for such failure is shown, forfeit its hearing rights.

33. IT IS FURTHER ORDERED, That the Chief, Enforcement Bureau, shall be made a party to this proceeding without the need to file a written appearance.

34. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this document SHALL BE SERVED on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations & Hearings Division of the Enforcement Bureau at (202) 418-1420. Such service copy SHALL BE ADDRESSED to the named counsel of record, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554.

35. IT IS FURTHER ORDERED, That Sinclair and Tribune, pursuant to Section 311(a)(2) of the Act, 47 U.S.C. § 311(a)(2), and Section 73.3594 of the Commission’s Rules, 47 CFR § 73.3594, SHALL GIVE NOTICE of the hearing within the time and in the manner prescribed in such Rules, and SHALL ADVISE the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules, 47 CFR § 73.3594(g).

36. IT IS FURTHER ORDERED, That a copy of this document, or a summary thereof, shall be published in the Federal Register.

37. IT IS FURTHER ORDERED, That, within fifteen (15) days of the date that WRITTEN APPEARANCES are due, the Administrative Law Judge shall issue a Scheduling Order that includes a set date for resolution.

38. IT IS FURTHER ORDERED, That the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center SHALL SEND a copy of this Order by certified mail/return receipt requested to:

Dallas (KDAF-TV) Licensee, Inc.
Houston (KIAH-TV) Licensee, Inc.
2000 W. 41st Street
Baltimore, MD 21211

Sinclair Broadcast Group, Inc.
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Pillsbury Winthrop Shaw Pittman LLP
1200 17th Street, N.W.
Washington, DC 20036
WGN TV, LLC
1 Olympic Place, Suite 1200
Towson, MD 21204

Tribune Media Company
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Covington & Burling LLP
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Washington, DC 20001

American Cable Association

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President and CEO
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Boies Schiller Flexner LLP
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Steinman Communications  

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Public Utilities Bureau  
Anna P. Crane,  
Counsel, Public Interest Division  
Matthew J. Martin,  
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Los Angeles, CA 90048  
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Washington DC 20002

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary
EXHIBIT 1

1. American Cable Association
2. DISH Network LLC
3. Free Press
4. Competitive Carriers Association
5. Newsmax Media, Inc.
6. NTCA- The Rural Broadband Association
7. Public Knowledge, Common Cause, and United Church of Christ, OC Inc.
8. Steinman Communications
11. Communications Workers of America, National Association of Broadcast Employees and Technicians – CWA, the NewsGuild – CWA
12. National Hispanic Media Coalition, Common Cause, and United Church of Christ, OC Inc.
### ATTACHMENT 1

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6 Tribune Broadcasting Indianapolis, LLC (Ind., LLC)
7 Tribune Broadcasting Oklahoma City License, LLC (OKC, LLC)
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8 Tribune Broadcasting Seattle, LLC (Seattle, LLC)
9 Tribune Television New Orleans, Inc. (New Orl., Inc.)
10 WDAF License, Inc. (WDAF, Inc.)
11 WGHP License, LLC (WGHP, LLC)
12 WGN Continental Broadcasting Company, LLC (WGC, LLC)
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\(^{13}\) WHNT License, LLC (WHNT, LLC)

\(^{14}\) WHO License, Inc. (WHO, LLC)

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\(^{17}\) WQAD License, LLC (WQAD LLC)

\(^{18}\) WREG License, LLC (WREG, LLC)

\(^{19}\) WTVR License, LLC (WTVR, LLC)
STATEMENT OF
COMMISSIONER MICHAEL O’RIELLY

Re:  Applications of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee) For Transfer of Control of Tribune Media Company and Certain Subsidiaries, WDCW (TV) et. al. and For Assignment of Certain Licenses from Tribune Media Company and Certain Subsidiaries, MB Docket 17-179, File No. BTCCDT-20170626AGW, et al.

As is the frustrating but common practice with transactions before the Commission, neither I, nor my staff, were privy to any discussion or presented any private documents used as a basis for today’s Hearing Designation Order (HDO). Instead, the parties worked with the Media Bureau on their proposal for Sinclair to acquire much of Tribune’s assets, with others to be disposed to other parties.

Despite this, the public material available, including in the record, raises sufficient questions regarding some of the proposed asset dispositions that is worth a deeper examination. If the Commission had a functional Administrative Law Judge (ALJ) process, these questions of fact may be just the type an ALJ could appropriately consider. Unfortunately, the regulatory purgatory that has resulted from the Commission’s abysmal ALJ process has not resulted in closer reviews. Instead, HDO referrals have typically meant a de facto merger death sentence, even if such referral could eventually be proven to be unjustified.

Knowing that my colleagues voted to approve the item in an exceptionally expedited fashion, my vote became non-determinative. Thus, I sought to find the best process improvements to potentially allow a challenged party, in this case Sinclair, at least the opportunity to explain and defend its actions. Indeed, what allows me to support the order are changes made at my request and approved by my colleagues to improve the ALJ process in this item, which will also serve as precedent for future HDOs, to the extent they are allowed to continue. Specifically, the item requires that 15 days after the period by which applicable parties may apply to the ALJ to be heard, a complete schedule will be issued by the ALJ, including a date for completion. This may allow accused parties to challenge an HDO, be able to represent that there is a timeline for conclusion, and eventually contest a negative decision, if necessary. This is what some may refer to as an initiation of a hint of due process. At the same time, I am less than sanguine that this effort will be of extended value, as I realize that many merger applicants will be unable to withstand the market pressures to end transactions long before any such timelines are established or exhausted. While this may be a slightly better ALJ process, it does not remove the dire need to eliminate or conduct major reforms to fix its blatant faults.