

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

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
MB Docket 17-179
File No. BTCCDT-20170626AGW, et al.

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

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,³ 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)⁵; (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, Public Notice, 32 FCC Rcd 5481 (MB 2017) (July 2017 Public Notice).

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, Public Notice, 32 FCC Rcd 7593 (MB 2017).

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 Applications, and Top-Four Showings in Two Markets*, MB Docket 17-179, Public Notice, DA 18-530 (MB rel. May 21, 2018) (May 2018 Public Notice).

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.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 *de facto* control over WGN TV, LLC.¹⁷ Specifically, they question the reasonableness of the terms of the transaction, including a purchase price of only \$60 million,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.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,²⁰ and Atlantic is a Sinclair advertiser and tenant.²¹ 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;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;²³ and Sinclair’s apparent guarantee of \$53.6 million of Cunningham’s debt.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,

¹⁶ All of the filings by parties, comments from the public, and records of *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/>.

¹⁷ *E.g., id.* at 12; Herndon-Reston Indivisible Petition to Deny (June 19, 2018) at 5 (Herndon-Reston Indivisible Petition to Deny).

¹⁸ Newsmax Petition to Deny at 13.

¹⁹ *Id.* at 12-13.

²⁰ *Id.* at 12.

²¹ *Id.*

²² *See, e.g.,* Newsmax Media, Inc., Petition to Deny (dated June 20, 2018) (Newsmax Petition to Deny) at 8-9 (citing *Edwin L. Edwards, Sr.*, Memorandum Opinion and Order and Notice of Apparent Liability, 16 FCC Rcd 22236, 22248-51 (2001) (finding that Sinclair exercised *de facto* control over Glencairn, now called Cunningham, in violation of Section 310(d) of the Communications Act and the Commission’s rules) (*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.

²³ Newsmax Petition to Deny at 9-10.

²⁴ *Id.* at 10-11 (citing Sinclair’s March 2018 SEC Form 10-Q).

rather than in any specific deal terms.”²⁵ 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.²⁶ It states that “[e]ach of the agreements at issue here mirrors those the Commission has approved in multiple transactions over the last decade for a variety of broadcasters.”²⁷

13. On July 18, 2018, the proposed transfer applications to Fader and Cunningham were withdrawn.²⁸

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.²⁹ 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.

³⁰ 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.³¹ The pertinent concern is whether someone other than the named applicant or licensee is or would be in control.³² 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.”³³ 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.”³⁴ 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.³⁵ 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

²⁵ Applicants’ Second Consolidated Opposition to Petitions to Deny (filed Jul. 5, 2018) (Applicants’ Second Opposition) at 11.

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 *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)).

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.

³² *See Arnold L. Chase*, Memorandum Opinion and Order, 5 FCC Rcd 1642, 1648 n.5 (1990).

³³ *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 par. 36 (2011) (citing *Fenwick Island Broadcast Corp. & Leonard P. Berger*, Decision, 7 FCC Rcd 2978, 2979 (Rev. Bd. 1992) (citation omitted)).

³⁴ *High Sierra Broadcasting, Inc.*, Order, 96 FCC 2d 423, 435 (Rev. Bd. 1983).

³⁵ *See WHDH, Inc.*, 17 F.C.C.2d 856, 863 (1969), *aff’d sub nom.*, *Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970).

continues to set the policies governing these three indicia of control.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,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."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.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.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),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)⁴²; (2) if so, whether

³⁶ *WGPR, Inc.*, 10 FCC Rcd 8140, 8142 (1995); *Choctaw Broadcasting Corp.*, 12 FCC Rcd 8534, 8539 (1997); *Southwest Texas Broadcasting Council*, 85 F.C.C.2d 713, 715 (1981).

³⁷ 47 CFR § 73.3555, note 2.

³⁸ *Review of The Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Report and Order, 14 FCC Rcd 12559, 12560 (1999), *subsequent hist. omitted* ("1999 Attribution Order").

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. *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. *Id.* § 73.3555(e)(2)(ii).

⁴⁰ We hold in abeyance the processing of the remaining applications.

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 a question when considered together and combined with the other factors discussed herein. See *2014 Quadrennial Regulatory Review et al.*, Order on Reconsideration, 32 FCC Rcd 9802, n.298 (2017) (explaining that television JSAs will no longer be attributable as a result of the amount of advertising time brokered, but "we remind licensees that they must retain ultimate control over their programming and core operations"); *id.* at n.307 ("While we decline to attribute television JSAs for the reasons set forth herein, we note that, under *Ackerley*, the Commission could still find that the terms of an individual television JSA (either alone or in conjunction with other agreements) rise to the level of attribution.") (citing *Shareholders of the Ackerley Group, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 10828 (2002) (finding that a specific television JSA, in conjunction with other agreements, created an attributable interest)).

⁴² 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.

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.⁴³ 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.⁴⁴ 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.⁴⁵ Sinclair would have purchased the station's other assets.⁴⁶

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.⁴⁷ 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"⁴⁸ 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

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§ 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.")

⁴³ See, e.g., *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); *Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 21196, 21205 (2007) (*2007 Clear Channel Order*).

⁴⁴ File No. BALCDT- 20180227ABD, Attachment 5.

⁴⁵ *Id.* at Attachment 5, Asset Purchase Agreement, section 2.01(a)(iii) and attachment thereto (listing transmitter and backup transmitter in addition to license).

⁴⁶ *Id.* at Attachment 5, Asset Purchase Agreement, section 2.02 (noting all other assets not listed in 2.01 to be purchased by Sinclair).

⁴⁷ See, e.g., Joe Flint & John McKinnon, *Sinclair Faces Federal Resistance over Proposed Purchase of Tribune Media*, *The Wall Street Journal* (Apr. 10, 2018), <https://www.wsj.com/articles/sinclair-faces-fcc-resistance-over-tribune-purchase-1523387359>.

⁴⁸ See, e.g., Todd Shields, "Sinclair to Sell and Still Run New York and Chicago Stations," *Bloomberg* (Feb. 21, 2018), available at <https://www.bloomberg.com/news/articles/2018-02-21/sinclair-to-sell-but-still-run-new-york-and-chicago-stations>; Adam Jacobson, "WGN, WPIX APAs Filed . . . And Sinclair's Very Much In Control," *Radio+Television Business Report* (Mar. 21, 2018), available at <https://www.rbr.com/apas-sbgi-wgn-wpix/>.

between Fader and Sinclair,⁴⁹ particularly with respect to Atlantic, at which Fader is the CEO and David Smith is a Board member and has a controlling interest.⁵⁰ 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.⁵¹ 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.).⁵² 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.⁵³ 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.⁵⁴ 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.⁵⁵ 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.”⁵⁶ Finally, the buyer, Glencairn, had entered into

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.

⁵³ *Edwin L. Edwards, Sr.*, Memorandum Opinion and Order and Notice of Apparent Liability, 16 FCC Rcd 22236, 22248-51 (2001) (*2001 Glencairn Decision*), *aff’d sub nom. Rainbow/PUSH Coalition v. FCC*, 330 F.3d 539 (D.C. Cir. 2003).

⁵⁴ *Id.* at 22253.

⁵⁵ *Id.* at 22249.

⁵⁶ *Id.*

a debtor/creditor relationship with Sinclair, which was not permitted at the time.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.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.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.⁶⁰

24. *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.⁶¹ Even when the voting shares were acquired in 2018 by Michael Anderson, Cunningham’s former banker,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.⁶³ Each son (the Smith brothers), multiple commenters point out, holds options to buy the voting shares in the future,⁶⁴ that other commenters have alleged are below market prices.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.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. *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

⁵⁷ *Id.* at 22249-50.

⁵⁸ *Id.*

⁵⁹ *Id.* at 22253.

⁶⁰ NCTA-The Internet & Television Association, Petition to Deny (filed Jun. 20, 2018) (NCTA Petition to Deny) at 14-15.

⁶¹ Newsmax Media, Inc., Petition to Deny (filed Jun. 20, 2018) (Newsmax Petition to Deny) at 9.

⁶² NCTA Petition to Deny at 15.

⁶³ Sinclair Broadcast Group, Inc., 10-K (Mar. 1, 2017); *see also* Newsmax Petition to Deny at 9-10; Cinemoi *et al.*, Petition to Deny (filed Jun. 20, 2018) (Cinemoi *et al.* Petition), at 5; National Hispanic Media Coalition *et al.*, Petition to Deny (filed Jun. 20, 2018) at 6-7.

⁶⁴ Newsmax Petition to Deny at 9-10.

⁶⁵ *See, e.g.*, Cinemoi *et al.* Petition to Deny at 5.

⁶⁶ *See, infra*, para. 17.

transaction between the parties.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.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.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 21st largest market.⁷⁰ While Sinclair has challenged the ability of others to evaluate the purchase price, in particular the ability to compare deal values across markets,⁷¹ it has not demonstrated how it reached the price, and the relevant evidence suggests that it is 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

⁶⁷ *Id.* at 2249-50.

⁶⁸ File Nos. BALCDT-20180427ABL and ABM, Attachment 5.

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

⁷⁰ The KPLR-TV application was subsequently withdrawn.

⁷¹ Applicants' Second Opposition at 11, n.33.

statement that is made from being incorrect or misleading.⁷² We note that a misrepresentation is a false statement of fact made with the intent to deceive the Commission.⁷³ Lack of candor is a concealment, evasion, or other failure to be fully informative, accompanied by an intent to deceive the Commission.⁷⁴ 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 nor 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.⁷⁵

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 §

⁷² See 47 CFR § 1.17(a)(1).

⁷³ See *Fox River Broadcasting, Inc.*, Order, 93 FCC 2d 127, 129 (1983); *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7435 (2004).

⁷⁴ See *Fox River*, 93 FCC 2d at 129; *Discussion Radio*, 19 FCC Rcd 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.
c/o Miles Mason, Esq.
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
c/o Mace Rosenstein
Covington & Burling LLP
One CityCenter
850 10th Street, N.W.
Washington, DC 20001

American Cable Association

Matthew M. Polka
President and CEO
American Cable Association
875 Greentree Road
Seven Parkway Center, Suite 755
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Ross J. Lieberman
Senior Vice President of Government
Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007
(202) 494-5661

DISH Network LLC

Pantelis Michalopoulos
Stephanie A. Roy
Christopher Bjornson
Steptoe & Johnson LLP
1330 Connecticut Ave, N.W.
Washington, D.C. 20036
(202) 429-3000

Jeffrey H. Blum, Senior Vice President
& Deputy General Counsel
Alison Minea, Director and Senior Counsel,
Regulatory Affairs
Hadass Kogan, Corporate Counsel
DISH Network L.L.C.
1110 Vermont Avenue, N.W., Suite 750
Washington, D.C. 20005

(202) 293-0981

Free Press

Dana J. Floberg
Matthew F. Wood
Free Press
1025 Connecticut Ave NW
Suite 1110
Washington D.C., 20036
202-265-1490

Competitive Carriers Association

Steven K. Berry
President & CEO
Rebecca Murphy Thompson
EVP & General Counsel
Courtney Neville
Policy Counsel
Competitive Carriers Association
805 15th Street NW, Suite 401
Washington, DC 20005
(202) 449-9866

Newsmax Media, Inc.
Jonathan D. Schiller
Boies Schiller Flexner LLP
575 Lexington Ave, 7th Floor
New York, NY 10022
(212) 446-2300
Robert M. Cooper
Richard A. Feinstein
Boies Schiller Flexner LLP
1401 New York Ave, N.W.
Washington, DC 20005
(202) 237-2727

NTCA- The Rural Broadband Association

Stephen Pastorkovich
Vice President, Technology &
Business Development
Richard J. Schadelbauer
Manager, Economic Research and Analysis
Jill Canfield
Vice President, Legal & Industry
Assistant General Counsel

NTCA- The Rural Broadband Association
121 Wilson Boulevard, Suite 1000
Arlington, VA 22203

Public Knowledge, Common Cause, and United Church of Christ, OC Inc.

Yosef Getachew
Phillip Berenbroick
Public Knowledge
1818 N St. NW, Suite 410
Washington, D.C. 20005
(202) 861-0020

Todd O'Boyle
Common Cause
805 15th Street NW
Suite 800
Washington, DC 20007
(202) 833-1200

Cheryl A. Leanza
United Church of Christ, OC Inc.
100 Maryland Ave, NE
Suite 330
Washington DC 20002

Steinman Communications

Repp Law Firm
1629 K Street, NW, Suite 300
Washington, DC 20006-1631
(202) 656-1619

Attorneys General of the States of Illinois, California, Iowa, Oregon, Rhode Island, and the
District of Columbia

Susan L. Satter,
Public Utilities Policy Counsel,
Public Utilities Bureau
Anna P. Crane,
Counsel, Public Interest Division
Matthew J. Martin,
Counsel, Public Interest Division
Office of the Illinois Attorney General
100 West Randolph Street
Chicago, Illinois 60601
Telephone: (312) 814-3000

Cinemoi, Herndon-Reston Indivisible, International Cinematographers Guild, Latino Victory Project, National Association of Broadcast Employees and Technicians – CWA, NTCA, Public Knowledge, Ride Television Network, and Sports Fan Coalition

Michael Fletcher
Chief Executive Officer
RIDE Television Network
1025 S. Jennings Ave.
Fort Worth, TX 76104

Charlie Braico
President
National Association of Broadcast Employees and Technicians – CWA
501 3rd Street NW
Washington, DC 20001

Dave Twedell
Business Representative
International Cinematographers Guild
7755 Sunset Blvd.
Los Angeles, CA 90046

Jill Canfield
Vice President, Legal & Industry Assistant General Counsel
NTCA – The Rural Broadband Association
4121 Wilson Boulevard, Suite 1000 Arlington, VA 22203

Phillip Berenbroick
Senior Policy Counsel
Public Knowledge
1818 N Street NW
Suite 410
Washington, DC 20036

David Goodfriend
Chairman
Sports Fans Coalition
1300 19th Street NW, Suite 500
Washington, DC 20036

Daphna Edwards Ziman
President
Cinemoi
6380 Wilshire Blvd. Suite 910
Los Angeles, CA 90048
Howard M. Weiss
Member

Herndon-Reston Indivisible
3061 Mt. Vernon Ave., #N405
Alexandria, VA 22305

Jason Rieger
Director
Indivisible Chicago Alliance
Chicago, IL

Communications Workers of America, National Association of Broadcast Employees and
Technicians – CWA, the NewsGuild – CWA

Brian Thorn
Debbie Goldman
501 Third Street NW Washington, DC 20001
(202) 434-1131 (phone)
(202) 434-1201 (fax)

National Hispanic Media Coalition, Common Cause, and United Church of Christ, OC Inc.

Carmen Scurato, Esq.
Francella Ochillo, Esq.
National Hispanic Media Coalition
65 South Grand Avenue
Suite 200
Pasadena, CA 91105
(626) 792-6462

Yosef Getachew
Common Cause
805 15th Street NW
Washington, D.C. 20005
(202) 833-1200

Cheryl A. Leanza
United Church of Christ, OC Inc.
100 Maryland Ave., NE
Suite 330
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
9. Attorneys General of the States of Illinois, California, Iowa, Oregon, Rhode Island, and the District of Columbia
10. Cinemoi, Herndon-Reston Indivisible, International Cinematographers Guild, Latino Victory Project, National Association of Broadcast Employees and Technicians – CWA, NTCA, Public Knowledge, Ride Television Network, and Sports Fan Coalition
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

Call Sign	Community of License	FAC ID	Licensee	File No.
KDAF	Dallas, TX	22201	KDAF, LLLC	BTCCDT-20170626AGH
KIAH	Houston, TX	23394	KIAH, LLC	BTCCDT-20170626AGL
KPLR-TV	St. Louis, MO	35417	KPLR, Inc.	BTCCDT-20170626AGO
KRCW-TV	Salem, OR	10192	KRCW, LLC	BTCCDT-20170626AFZ
KRCW-LP	Portland, OR	35151	KRCW, LLC	BTCCDT-20170626AGA
K20ES	Pendleton, Etc., OR	12671	KRCW, LLC	BTCCDT-20170626AGB
K24DX	Pendleton, Etc., OR	12678	KRCW, LLC	BTCCDT-20170626AGC
KSTU	Salt Lake City, UT	22215	KSTU, LLC ¹	BTCCDT-20170626AFH
KKRP-LD	St. George, UT	70979	KSTU, LLC	BTCCDT-20170626AFI
K14PA-D	Rural Juab County, UT	22202	KSTU, LLC	BTCCDT-20170626AFP
K15FQ-D	Milford, Etc. UT	22214	KSTU, LLC	BTCCDT-20170626AFO
K17HM-D	Wendover, UT	22217	KSTU, LLC	BTCCDT-20170626AFN
K22DE	Tooele, UT	69280	KSTU, LLC	BTCCDT-20170626AFM
K25HF-D	Heber City, UT	22212	KSTU, LLC	BTCCDT-20170626AFL
K35OP-D	Park City, UT	22213	KSTU, LLC	BTCCDT-20170626AFK
K43CC-D	Santa Clara, UT	22205	KSTU, LLC	BTCCDT-20170626AFJ
KSWB-TV	San Diego, CA	58827	KSWB, LLC	BTCCDT-20170626AFT
KTLA	Los Angeles, CA	35670	KTLA, LLC	BTCCDT-20170626AFY
KTVI	St Louis, MO	35693	KTVI, LLC ²	BTCCDT-20170626AGF
KTXL	Sacramento, CA	10205	KTXL, LLC	BTCCDT-20170626AGP
KWGN-TV	Denver, CO	35883	KWGN, LLC	BTCCDT-20170626AGI
KDVR	Denver, CO	126	Denver, LLC ³	BTCCDT-20170626AGN
KFCT	Fort Collins, CO	125	Denver, LLC	BTCCDT-20170626AGM
KFSM-TV	Fort Smith, AR	66469	Ft. Smith, LLC ⁴	BTCCDT-20170626ADY
KXNW	Eureka Springs, AR	81593	Ft. Smith, LLC	BTCCDT-20170626ADZ
WCCT-TV	Waterbury, CT	14050	Hartford, LLC ⁵	BTCCDT-20170626AFR
WTIC-TV	Hartford, CT	147	Hartford, LLC	BTCCDT-20170626AFR
WTTK	Kokomo, IN	56526	Ind., LLC ⁶	BTCCDT-20170626AFU
WTTV	Bloomington, IN	56523	Ind., LLC	BTCCDT-20170626AFV
WXIN	Indianapolis, IN	146	Ind., LLC	BTCCDT-20170626AFW
KAUT-TV	OKC, OK	50182	OKC, LLC ⁷	BTCCDT-20170626AEM
K15HL-D	Cherokee etc., OK	167263	OKC, LLC	BTCCDT-20170626AFF
K16DX-D	Gage, OK	59851	OKC, LLC	BTCCDT-20170626AFE

¹ KTSU License, LLC (KTSU, LLC)² KTVI License, LLC (KTVI, LLC)³ Tribune Broadcasting Denver License, LLC (Denver, LLC)⁴ Tribune Broadcasting Fort Smith License, LLC (Ft. Smith, LLC)⁵ Tribune Broadcasting Hartford, LLC (Hartford, LLC)⁶ Tribune Broadcasting Indianapolis, LLC (Ind., LLC)⁷ Tribune Broadcasting Oklahoma City License, LLC (OKC, LLC)

K17ID-D	Cherokee, etc., OK	167261	OKC, LLC	BTCCDT-20170626AFD
K19GZ-D	Seiling, OK	167252	OKC, LLC	BTCCDT-20170626AFC
K20BR-D	Gage, etc., OK	59840	OKC, LLC	BTCCDT-20170626AFB
K20JD-D	Cherokee, etc. OK	167259	OKC, LLC	BTCCDT-20170626AFA
K22BR-D	May, Etc., OK	59849	OKC, LLC	BTCCDT-20170626AEZ
K22ID-D	Cherokee, Etc, OK	167257	OKC, LLC	BTCCDT-20170626AEY
K25JQ-D	May, Etc., OK	167251	OKC, LLC	BTCCDT-20170626AEX
K26IS-D	Woodward, Etc., OK	167265	OKC, LLC	BTCCDT-20170626AEW
K28JX-D	Alva - Cherokee, OK	167255	OKC, LLC	BTCCDT-20170626AEV
K29HZ-D	Woodward, Etc., OK	167264	OKC, LLC	BTCCDT-20170626AEU
K31JQ-D	Woodward, Etc., OK	167262	OKC, LLC	BTCCDT-20170626AET
K33JM-D	Mooreland, Etc., OK	167260	OKC, LLC	BTCCDT-20170626AES
K38KH-D	Woodward, Etc., OK	167258	OKC, LLC	BTCCDT-20170626AER
K41KS-D	Seiling, OK	167256	OKC, LLC	BTCCDT-20170626AEQ
K43KU-D	Seiling, OK	167254	OKC, LLC	BTCCDT-20170626AEP
K47LB-D	Seiling, OK	167253	OKC, LLC	BTCCDT-20170626AEO
K49DO-D	Seiling, OK	59848	OKC, LLC	BTCCDT-20170626AEN
KFOR-TV	OKC, OK	66222	OKC, LLC	BTCCDT-20170626AEL
KCPQ	Tacoma, WA	33894	Seattle, LLC ⁸	BTCCDT-20170626AGQ
KZJO	Seattle, WA	69571	Seattle, LLC	BTCCDT-20170626AGR
K07ZC-D	Ellensburg, etc., WA	33896	Seattle, LLC	BTCCDT-20170626AGS
K25CG-D	Aberdeen, WA	33898	Seattle, LLC	BTCCDT-20170626AGT
K25CH-D	North Bend, WA	69575	Seattle, LLC	BTCCDT-20170626AGU
K28KJ-D	Chelan, WA	33899	Seattle, LLC	BTCCDT-20170626AGV
K29ED-D	Everett, WA	69574	Seattle, LLC	BTCCDT-20170626AGW
K42CM-D	Centralia, etc., WA	33895	Seattle, LLC	BTCCDT-20170626AGX
WGNO	New Orleans, LA	72119	New Orl., Inc. ⁹	BTCCDT-20170626AEF
WNOL-TV	New Orleans, LA	54280	New Orl., Inc.	BTCCDT-20170626AEE
WDAF-TV	Kansas City, MO	11291	WDAF, Inc. ¹⁰	BTCCDT-20170626AFQ
WDCW	Washington, DC	30576	WDCW, LLC	BTCCDT-20170626AGJ
WGHP	High Point, NC	72106	WGHP, LLC ¹¹	BTCCDT-20170626AEG
WGN(AM)	Chicago, IL	72114	WGN, LLC ¹²	BTCCDT-20170626AGD
WGN-TV	Chicago, IL	72115	WGN, LLC	BTCCDT-20170626AGE
WHNT-TV	Huntsville, AL	48693	WHNT,	BTCCDT-20170626AEA

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)

			LLC ¹³	
WHO-DT	Des Moines, IA	66221	WHO, LLC ¹⁴	BTCCDT-20170626AEB
WITI	Milwaukee, WI	73107	WITI, LLC ¹⁵	BTCCDT-20170626AFG
WJW	Cleveland, OH	73150	WJW, LLC ¹⁶	BTCCDT-20170626AGK
WPHL-TV	Philadelphia, PA	73879	WPHL, LLC	BTCCDT-20170626AGG
WPIX	New York, NY	73881	WPIX, LLC	BTCCDT-20170626AFX
WPMT	York, PA	10213	WPMT, LLC	BTCCDT-20170626AEK
WQAD-TV	Moline, IL	73319	WQAD, LLC ¹⁷	BTCCDT-20170626ADX
WREG-TV	Memphis, TN	66174	WREG, LLC ¹⁸	BTCCDT-20170626AED
WSFL-TV	Miami, FL	10203	WSFL, LLC	BTCCDT-20170626AGY
WTVR-TV	Richmond, VA	57832	WTVR, LLC ¹⁹	BTCCDT-20170626AEC
WXMI	Grand Rapids, MI	68433	WXMI, LLC	BTCCDT-20170626AEH
W17DF-D	Muskegon, MI	64442	WXMI, LLC	BTCCDT-20170626AEJ
W42CB-D	Hesperia, MI	64440	WXMI, LLC	BTCCDT-20170626AEI

¹³ WHNT License, LLC (WHNT, LLC)

¹⁴ WHO License, Inc. (WHO, LLC)

¹⁵ WITI License, LLC (WITI LLC)

¹⁶ WJW License, LLC (WJW, LLC)

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.