

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

In the Matter of)	
)	
Sinclair Broadcast Group)	File No.: EB-IHD-16-00021748
)	Acct. No.: 201732080006
)	FRN: 0004331096

ORDER

Adopted: May 6, 2020

Released: May 22, 2020

By the Commission: Commissioners O’Rielly and Carr issuing statements; Commissioners Rosenworcel and Starks dissenting and issuing separate statements.

1. In this Order, we adopt the attached Consent Decree entered into between the Federal Communications Commission (the Commission) and Sinclair Broadcast Group, Inc. (Sinclair). The Consent Decree resolves the Commission’s investigations of (1) real party-in-interest issues originally designated for hearing in Sinclair’s proposed acquisition of stations owned by Tribune Media Company¹; (2) Sinclair’s compliance with section 1.65 of the Commission’s rules (Rules), which requires applicants to ensure the continued accuracy and completeness of information before the Commission in an application proceeding²; (3) Sinclair’s compliance with section 325 of the Communications Act of 1934, as amended (Act), and section 76.65(b) of the Rules, which require commercial television broadcasters to negotiate in good faith for consent to retransmit their signals; and (4) Sinclair’s compliance with the sponsorship identification laws. To settle these matters, Sinclair will pay a \$48,000,000 (forty-eight million dollar) civil penalty and implement a compliance plan.

2. With respect to the real-party-in-interest issue involving the proposed acquisition of Tribune Media Company, the Commission raised concerns that Sinclair did not disclose all the information that could bear on a potential real-party-in-interest determination and that this could have constituted a violation of section 1.65 of the Rules. Following the *HDO*, Sinclair filed additional information with the Commission on July 31, 2018, and also filed on July 11, 2019 a response to a staff letter of inquiry. In the July 2018 post-designation information filing, Sinclair described in detail the transaction agreements and the specific understanding of the parties regarding Fader’s responsibilities for oversight and control of WGN-TV. In so doing, Sinclair provided information not previously disclosed regarding the relationship between Mr. Fader and Sinclair and how the sales price of WGN-TV was determined. Similarly, Sinclair disclosed additional and clarifying information about its relationship with Cunningham. Following review of this subsequent information, we find that Sinclair structured its transaction based upon a good faith interpretation of the Commission’s rules and precedent regarding sharing agreements and the requirements for disclosure on the application form. Sinclair thus believed it was unnecessary to disclose further information regarding the relationships between Sinclair and both Fader and Cunningham. Consequently, regardless of whether Sinclair violated section 1.65 of the Rules, a decision we need not make given the terms set forth in the Consent Decree, we find that there is no substantial and material question of fact as to whether a character qualifying issue arises from the applications designated in the *HDO*. Although Sinclair does not admit to a violation of section 1.65, it

¹ *Applications of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee) for Transfer of Control of Tribune Media Company and Certain Subsidiaries, WDCD(TV) et al.*, Hearing Designation Order, 33 FCC Rcd 6830, 6840, para. 29 (2018) (*HDO*).

² 47 CFR § 1.65.

has agreed to enter into this consent decree, which, among other things, is designed to ensure compliance with section 1.65 of the Rules in future proceedings. Section 1.65 of the Rules requires timely, full, and clear disclosure of all material facts in every application, which is essential to the efficient administration of the Commission's licensing process. Proper analysis of an application is critically dependent on the accuracy and completeness of information and data that only the applicant can provide.

3. We also note that good faith participation in retransmission consent negotiations, by all parties, is a cornerstone of the retransmission consent regime. The statute unambiguously prohibits coordination among non-commonly owned stations in the same market³ as part of a system to ensure that “broadcasters and MVPDs meet to negotiate retransmission consent and that such negotiations are conducted in an atmosphere of honesty, purpose and clarity of process.”⁴

4. The Sponsorship Identification Laws, as set forth in sections 317 and 507 of the Act⁵, and section 73.1212 of the Rules,⁶ require broadcast licensees airing a paid program or providing a paid program to another broadcaster to disclose that the program has been paid to air and identify who paid for it. The disclosures required by the sponsorship identification laws provide listeners and viewers with information concerning the source of the paid material in order to prevent misleading or deceiving those listeners or viewers. Enforcement of the sponsorship identification laws also promotes fair competition among advertisers by preventing sponsors from paying stations to present promotional messages as news or editorial content without disclosure while their competitors comply by disclosing paid content through a sponsorship identification announcement that alerts the audience that the material has been paid for and provides the sponsor's identity. The Commission issued Sinclair a Notice of Apparent Liability proposing a forfeiture in the amount of \$13,376,200 based upon Sinclair's apparent violation of the sponsorship identification laws. The Commission found that Sinclair broadcast certain paid programming, including local news segments, and provided that paid programming to other non-Sinclair stations, without disclosing to its audience or the affected non-Sinclair stations that the programming was paid for and/or the identity of the sponsor of the programming.⁷

5. Sinclair admits that it violated the sponsorship identification laws as described in the NAL and agrees to implement a compliance plan. With regard to the retransmission consent, real party in interest, and accurate filing investigations, Sinclair agrees to implement a compliance plan.

6. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigations referenced herein regarding Sinclair's compliance with the Act and the Commission's rules and policies.

³ *STELA Reauthorization Act of 2014* (STELAR), Pub. L. No. 113-200, § 103(a).

⁴ *Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, First Report and Order, 15 FCC Rcd 5445, 5455, para. 24 (2000).

⁵ 47 U.S.C. §§ 317, 508.

⁶ 47 CFR § 73.1212.

⁷ *Sinclair Broad. Group, Inc.*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 10853 (2017) (NAL). As set forth in the NAL, in total, between January and July 2016, 1,723 broadcasts apparently aired on 64 Sinclair and 13 non-Sinclair stations that failed to provide viewers the required sponsorship announcements; 1,644 contained no disclosures that the programming was paid or who paid for it, and 79 contained disclosures which stated that the programming was paid for but did not clearly identify the payor. *Id.* at 10855-56, paras. 5-8. The NAL includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. Sinclair filed a response to the NAL, in which it sought an unspecified reduction—but not cancellation or withdrawal—of the proposed forfeiture. Response of Sinclair Broadcast Group, Inc. to Notice of Apparent Liability for Forfeiture (Jan. 22, 2018) (on file in EB-IHD-16-00021748) (NAL Response).

7. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 503(b) of the Act,⁸ the Consent Decree attached to this Order **IS ADOPTED** and its terms are incorporated by reference.

8. **IT IS FURTHER ORDERED** that the above-captioned matters **ARE TERMINATED** in accordance with the terms of the attached Consent Decree.

9. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to David Gibber, Sinclair Broadcast Group, Inc., 10706 Beaver Dam Road, Cockeysville, MD 21030, and to Miles S. Mason, Esq., Pillsbury Winthrop Shaw Pittman LLP, 1200 Seventeenth Street, N.W., Washington, DC 20036-3006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁸ 47 U.S.C. §§ 154(i), 503(b).

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Sinclair Broadcast Group, Inc.)	File No.: EB-IHD-16-00021748
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CONSENT DECREE

1. The Federal Communications Commission (FCC or Commission) and Sinclair Broadcast Group, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of resolving and terminating the Investigations, as defined and discussed below.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended.¹
 - (b) “Adopting Order” means an order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (d) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Sinclair is subject by virtue of its business activities.
 - (e) “Compliance Plan” means the compliance obligations, programs, and procedures described in this Consent Decree at paragraph 20.
 - (f) “Compliance Requirements” means the obligations and procedures described in this Consent Decree at paragraphs 19-22.
 - (g) “Consideration” means anything of value, including, but not limited to (i) bonuses, cash, checks, commissions, fees, gifts, honoraria, in-kind payments, loans, per diem allowances, payment of third-party invoices, salary, travel expenses (including airfare, hotel, etc.), and other services; (ii) the purchase of, or promise to purchase, advertising time; and/or (iii) any other thing of value, from any source or given by third parties, to another.
 - (h) “Covered Employees” means all employees of Sinclair who perform or directly supervise the performance of duties that relate to Sinclair’s responsibilities under the RPI Rules, Retransmission Consent Rules, or Sponsorship Identification Laws.
 - (i) “Enforcement Bureau” or “EB” means the Enforcement Bureau of the Federal Communications Commission.
 - (j) “Effective Date” means the date by which all of the following have been accomplished: the Commission and Sinclair have executed the Consent Decree and the Commission has released the Adopting Order adopting this Consent Decree.

¹ 47 U.S.C. § 151 *et seq.*

- (k) “Investigations” means, collectively, the Commission’s consideration—including any related actions by the Media or Enforcement Bureaus on delegated authority—of any alleged violations of the Communications Laws by Sinclair with respect to the HDO Investigation as defined in paragraph 7, including the RPI Rules, section 1.65 of the Rules,² and the Retransmission Consent Rules, as well as the Sponsorship Identification Investigation.
- (l) “Media Bureau” or “MB” means the Media Bureau of the Federal Communications Commission.
- (m) “NAL” means the Notice of Apparent Liability for Forfeiture issued to Sinclair on December 21, 2017, proposing a \$13,376,200 forfeiture for apparent willful and repeated violations of the Sponsorship Identification Laws.³
- (n) “NAL Response” means Sinclair’s written response to the NAL, submitted January 22, 2018.⁴
- (o) “Non-Sinclair Stations” are television broadcast stations that are not directly or indirectly under *de jure* control of Sinclair and are licensed to the same market as one or more Sinclair Stations.
- (p) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Sinclair to implement the Compliance Plan.
- (q) “Parties” means Sinclair and the Commission, each of which is a “Party.”
- (r) “Retransmission Consent Rules” means Section 325 of the Act and Part 76, Subpart D, of the Rules.
- (s) “RPI Rules” means the Commission’s rules, policies, and precedent regarding real party-in-interest (RPI), including the required disclosure of and certifications regarding the real party-in-interest in assignment and transfer of control applications.
- (t) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (u) “Sinclair” or “the Company” means Sinclair Broadcast Group, Inc. and its affiliates, subsidiaries, predecessors-in-interest, assigns, transferees, and successors-in-interest.
- (v) “Sinclair Stations” are television broadcast stations or licensees that are under *de jure* control of Sinclair.
- (w) “Sponsored Broadcast” means a matter transmitted by a broadcast station that is aired in exchange for Consideration that is “directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting,” as set forth in section 317 of the

² 47 CFR § 1.65.

³ *Sinclair Broad. Group, Inc.*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 10853 (2017).

⁴ Response of Sinclair Broadcast Group, Inc. to Notice of Apparent Liability for Forfeiture (Jan. 22, 2018) (on file in EB-IHD-16-00021748). Sinclair has requested confidential treatment of certain portions of its NAL Response, pursuant to 47 CFR § 0.459. NAL Response at Exh.1; NAL, 32 FCC Rcd at 10854 n.7. This Consent Decree does not disclose material identified as confidential under Sinclair’s amended request and therefore does not contain any redactions.

Act or in exchange for Consideration that is paid or agreed to be paid to any employee of the station as set forth in section 507 of the Act.⁵

- (x) “Sponsorship Identification Announcement” means the disclosure required by section 73.1212(a) of the Rules at the time of a Sponsored Broadcast which (i) states that the Sponsored Broadcast is paid for, sponsored, or furnished, either in whole or in part, and (ii) by whom or on whose behalf Consideration was paid or provided in exchange for the Sponsored Broadcast.
- (y) “Sponsorship Identification Investigation” means the investigation commenced by the Enforcement Bureau in File No. EB-IHD-16-00021748 regarding whether Sinclair violated the Sponsorship Identification Laws.
- (z) “Sponsorship Identification Laws” means, individually or collectively, sections 317 and 507 of the Act⁶ and section 73.1212 of the Rules,⁷ as they are currently in effect and as they may be amended in the future, and the Commission’s decisions, orders, policy statements, and public notices interpreting these provisions.
- (aa) “Termination Date” means the day 48 months after the Effective Date.

II. BACKGROUND

A. Real-Party-in-Interest and Accurate Filing Investigation

3. The Commission requires all applicants to file accurate and complete information in their FCC transfer of control applications, which the Commission uses to evaluate whether it is appropriate to grant such applications based on the applicants’ basic and other qualifications and technical capabilities. Section 1.65(a) of the Rules states that “[e]ach applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application.”⁸

4. This Consent Decree resolves the Commission’s consideration of Issue (a) designated for hearing in the *Hearing Designation Order (HDO)*, released on July 19, 2018, in MB Docket No. 17-179.⁹ On June 26, 2017, Sinclair and Tribune Media Company (Tribune) filed applications seeking Commission consent to transfer control of Tribune subsidiaries to Sinclair. The applications were amended multiple times, including the filing of certain divestiture applications pursuant to which (1) entities controlled by Cunningham Broadcast Corporation (Cunningham) would acquire Tribune stations KDAF (a Dallas station) and KIAH (a Houston station), and (2) WGN TV, LLC, owned by Steven Fader (Fader), would acquire station WGN-TV (a Chicago station). The Commission, however, based on the record before it, was ultimately unable to find that grant of the applications would be consistent with the

⁵ 47 U.S.C. §§ 317, 508; see 47 C.F.R. § 73.1212.

⁶ 47 U.S.C. §§ 317, 508.

⁷ 47 CFR § 73.1212.

⁸ 47 C.F.R. § 1.65(a).

⁹ *Applications of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee) for Transfer of Control of Tribune Media Company and Certain Subsidiaries, WDCD(TV) et al.*, MB Docket No. 17-179, Hearing Designation Order, 33 FCC Rcd 6830, 6840, para. 29 (2018).

public interest, as required by sections 309(a) and 310(d) of the Act.¹⁰ Accordingly, the Commission designated the applications for hearing for the consideration of the following questions:¹¹

- (a) 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;
- (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.¹²

5. On August 9, 2018, following termination of the underlying merger agreement with Tribune, Sinclair requested that the associated applications be dismissed, with prejudice, and that the hearing proceeding be terminated; the Commission's Enforcement Bureau did not oppose these requests.¹³

6. On March 5, 2019, the Administrative Law Judge (ALJ) granted Sinclair's request, dismissing the applications with prejudice and terminating the hearing proceeding. While Issues (b)-(d) of the *HDO* were dismissed as moot, the ALJ determined that Issue (a) did "not rely on the continued pendency of the proposed transaction and related applications."¹⁴ The ALJ stated, however, that "dissolution of the Sinclair/Tribune consolidation is a circumstance that would render a hearing at this time in the context of this proceeding an academic exercise" and that such allegations "would be more appropriately considered in the context of a future proceeding."¹⁵ Accordingly, the Commission continued its consideration of this issue in a Letter of Inquiry (LOI), issued by the Media Bureau on delegated authority, dated June 25, 2019.

7. On July 12, 2019, Sinclair provided its response to the LOI, which supplemented a confidential filing submitted by Sinclair to the Enforcement Bureau—on its own accord—on July 31, 2018, and which was updated and sent to the Media Bureau on May 2, 2019.¹⁶ Through these documents, Sinclair provided additional information regarding the issues raised in the *HDO* and the specific questions and requests for documents detailed in the LOI. Collectively, this matter is referred to as the *HDO* Investigation.

¹⁰ 47 U.S.C. §§ 309(a), 310(d).

¹¹ 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.).

¹² *HDO*, 33 FCC Rcd at 6840, para. 29.

¹³ *Applications of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee) for Transfer of Control of Tribune Media Company and Certain Subsidiaries, WDCD(TV) et al.*, Order, FCC 19M-01, at 2 (ALJ 2019) (*ALJ Order*).

¹⁴ *ALJ Order* at 3.

¹⁵ *Id.* at 3-4 (stating that "it may be determined that an examination of the misrepresentation and/or lack of candor allegations raised . . . is warranted as part of a more general assessment of Sinclair's basic character qualifications to be a Commission licensee").

¹⁶ Sinclair supplemented its response to the LOI on August 6, 2019.

B. Good Faith Negotiation Investigation

8. Section 325 of the Act prohibits broadcast television stations and multichannel video programming distributors (MVPDs) from “failing to negotiate in good faith” for consent to retransmit commercial television broadcast signals.¹⁷ In 2014, Congress amended section 325 to establish that it would be a *per se* breach of a broadcaster’s good faith negotiation obligation to negotiate jointly for retransmission consent, or coordinate retransmission consent negotiations, in certain circumstances. Specifically, Congress directed the Commission to adopt rules that would “prohibit a television broadcast station from coordinating negotiations or negotiating on a joint basis with another television broadcast station in the same local market . . . to grant retransmission consent . . . unless such stations are directly or indirectly under common *de jure* control permitted under the regulations of the Commission.”¹⁸ The Commission adopted a rule provision codifying the statutory language prohibiting joint negotiations in February 2015.¹⁹

9. This Consent Decree resolves the Media Bureau’s investigation into whether Sinclair has violated the Retransmission Consent Rules. Sinclair is currently operating under a compliance plan, arising from a previous investigation into possible violations of the requirement to negotiate in good faith, specifically the prohibition on joint or coordinated negotiation.²⁰ As part of its obligations under that plan, Sinclair is required to submit periodic compliance reports and to report instances of noncompliance.²¹ Through the compliance reporting and follow up by the Media Bureau, Sinclair informed the Media Bureau that it had access to certain retransmission consent agreements executed by certain Non-Sinclair Stations.

C. Sponsorship Identification Investigation

10. The Sponsorship Identification Laws require licensees to disclose when matter is broadcast in exchange for valuable Consideration and to make such disclosures at the time the material is

¹⁷ 47 U.S.C. §325(b)(2)(C).

¹⁸ STELAR, Pub. L. No. 113-200, § 103(a); 47 U.S.C. § 325(b)(3)(C)(iv). In Commission regulations and precedent, the phrase “de jure control” refers to ownership of more than 50 percent of the voting interests in a licensee. *2000 Biennial Regulatory Review, Amendment of Parts 43 and 63 of the Commission's Rules*, Notice of Proposed Rulemaking, 15 FCC Rcd 24624, para. 14 (2000) (“De jure control is present where equity-holders voting together own or control fifty percent or more of the licensee’s voting shares”); *Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers and Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance For Broadband Personal Communications Services*, Memorandum Opinion and Order, 13 FCC Rcd 6293, para. 7 (1998) (*De jure* control “is present where a shareholder or shareholders voting together own or control fifty percent or more of the licensee’s voting shares”); *Application of Fox Television Stations, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8452, 8513 (1995) (holding that a corporate licensee was under the *de jure* control of the shareholder who owned more than 50 percent of the shares); *Metromedia, Inc.*, Memorandum Opinion and Order, 98 FCC 2d 300, 305-306 (1984) (stating that *de jure* control of a closely held licensee would constitute “ownership of over 50 percent of the corporation’s stock”). In the case of a partnership, “de jure control” refers to ownership of a general partnership interest. 47 CFR § 1.2110(c)(2).

¹⁹ *Implementation of Sections 101, 103 and 105 of the STELA Reauthorization Act of 2014*, Order, 30 FCC Rcd 2380 at para. 4 (2015) (“STELAR Order”) (adopting 47 CFR § 76.65(b)(1)(viii), among other changes to the Rules). See also *Implementation of Section 103 of the STELA Reauthorization Act of 2014: Totality of the Circumstances Test*, MB Docket No. 15-216, Notice of Proposed Rulemaking, 30 FCC Rcd 10327, 10338, note 65 (2015) (reminding parties that “stations operating under . . . ‘sidecar’ arrangements, even if attributable, cannot jointly negotiate retransmission consent with a station in the same market owned by the broker because they are not ‘under common de jure control’”).

²⁰ *Sinclair Broadcast Group*, Order, 31 FCC Rcd 8576 (MB 2016).

²¹ *Id.* at 8581-8582, para.15-16.

aired.²² In addition, the Sponsorship Identification Laws establish a reporting scheme requiring disclosure to the licensee whenever valuable Consideration for the inclusion of material in a broadcast is given to or received by an entity other than the licensee.²³ The Commission has explained that the Sponsorship Identification Laws are “grounded in the principle that listeners and viewers are entitled to know who seeks to persuade them”²⁴ The disclosures required under these provisions help to ensure consumers are not deceived about the source of programming.²⁵ “Enforcement of the [S]ponsorship [I]dentification [L]aws also protects fair competition among advertisers [by] prevent[ing] sponsors from gaining unfair advantage by paying stations to present promotional messages as station news or editorial content without appropriate disclosures, while their competitors observe the rules and present their content as acknowledged commercial announcements.”²⁶

11. On April 11, 2016, the Commission received a complaint, which alleged that Sinclair had aired programs about Huntsman Cancer Institute (HCI) on behalf of the Huntsman Cancer Foundation (Huntsman Foundation or HCF) but failed to disclose that HCF paid Sinclair to broadcast the programming.

12. The Enforcement Bureau subsequently commenced the Sponsorship Identification Investigation concerning the violations alleged in the complaint and issued an LOI and supplements thereto. According to Sinclair’s LOI Response and supplemental responses, Sinclair and HCF entered into an agreement (Huntsman Agreement) to promote HCF and HCI through programming broadcast on Sinclair stations and 13 non-Sinclair stations (Agreement Stations), to which Sinclair provided programming.²⁷ However, according to Sinclair, due to alleged miscommunications and inadvertent errors in its process for inserting sponsorship identification announcements, and despite instructions from Sinclair senior staff to include such announcements and language in the Huntsman Agreement requiring inclusion of such announcements, in certain instances, some stations did not make the on-air disclosures.²⁸

²² Section 317(a)(1) of the Act provides in part:

All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person.

47 U.S.C. § 317(a)(1).

²³ Section 507(c) provides:

[A]ny person who supplies to any other person any program or program matter which is intended for broadcasting over any radio station shall, in advance of such broadcast, disclose to such other person any information of which he has knowledge, or which has been disclosed to him, as to any money, service or other valuable consideration which any person has paid or accepted, or has agreed to pay or accept, for the inclusion of any matter as a part of such program or program matter.

47 U.S.C. § 508(c).

²⁴ *Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment on the Use of Video News Releases by Broadcast Licensees and Cable Operators*, Public Notice, 20 FCC Rcd 8593, 8593-94 (2005).

²⁵ See *Radio License Holding XI, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 930 (2012), *aff’d*, Forfeiture Order, 29 FCC Rcd 1623, 1627, paras 9-10 (2014) (forfeiture paid); *Sonshine Family Television, Inc.; Sinclair Broadcast Group, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18686 (2007), *aff’d with reduced forfeiture*, Forfeiture Order, 24 FCC Rcd 14830, 14833-34, para. 12 (2009) (forfeiture reduced and paid).

²⁶ *Journal Broadcast Corporation*, Order and Consent Decree, 29 FCC Rcd 14300, 14300, para. 1 (EB 2014).

²⁷ *NAL*, 32 FCC Rcd at 10854-55, para. 4.

²⁸ *Id.* at 10855, para. 4 & n. 13, quoting LOI Response.

After the Enforcement Bureau notified Sinclair of the Sponsorship Identification Investigation, Sinclair broadcast announcements stating that the HCF programming had not been consistently identified as sponsored programming and apologized for the omission.²⁹

13. On December 21, 2017, the Commission issued the *NAL* proposing a \$13,376,200 forfeiture against Sinclair for 1,723 apparent violations of the Sponsorship Identification Laws, including apparent violations of section 317(a)(1) of the Act by 64 of its stations in (a) 1,366 on-air stories in the form of news segments that aired during the local news and long-form programs about HCI without an announcement disclosing that the programming was sponsored, and (b) 71 long-form programs with deficient announcements that identified the programming as paid for, but that failed to clearly identify the program's sponsor.³⁰ In addition, the Commission found Sinclair apparently violated section 507 of the Act by failing to notify the Agreement Stations that HCF paid Sinclair to air the HCI programming, in connection with 278 broadcasts that had no sponsorship identification announcements and eight broadcasts that had incomplete sponsorship identification announcements.³¹

14. Sinclair and the Commission have engaged in settlement negotiations regarding all facets of the Investigations. The Commission and Sinclair agree to the following conditions of settlement, and hereby enter into this Consent Decree as provided herein.

III. TERMS OF AGREEMENT

15. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Commission in an Adopting Order.

16. **Jurisdiction.** Sinclair agrees that the Commission has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

17. **Effective Date.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

18. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Commission agrees to terminate the Investigations relating to the matters covered by the Consent Decree that are pending before the Commission as of the effective date of this Consent Decree, and terminate the *NAL* proceeding. The Commission acknowledges that, apart from the Investigations, there are no investigative actions pending before the Enforcement Bureau or the Media Bureau as of the Effective Date concerning any alleged violations of the Communications Laws by Sinclair. In consideration for the termination of the Investigations, Sinclair agrees to the terms, conditions, and procedures contained herein. The Commission further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigations through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Sinclair concerning the matters that were the subject of the Investigations. From and after the Effective Date, the Commission further shall not, in response to any petition to deny, complaint or other third-party objection, initiate any inquiries, investigations, forfeiture proceedings, hearings, or other sanctions or actions based on the matters that were the subject of the Investigations. The Commission also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigations through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or to set for hearing the question of basic qualifications

²⁹ *Id.* at 10858-59, para. 13.

³⁰ *Id.* at 10856, para. 8.

³¹ *Id.*

of Sinclair, including its character qualifications, to be a Commission licensee or hold or obtain any Commission licenses or authorizations.³²

19. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Sinclair shall appoint its Chief Accounting Officer to serve as Compliance Officer and to discharge the duties set forth below in paragraphs 20 through 22 for the duration of the Compliance Plan. The Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Sinclair complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer, prior to assuming his/her duties, shall have specific knowledge of the RPI Rules, the Rules governing updates to applications pending before the Commission, including section 1.65 of the Rules, the Retransmission Consent Rules, and the Sponsorship Identification Laws, as they are currently in effect and as they may be amended in the future. Sinclair must notify: the Chief, Video Division, Media Bureau; the Chief, Policy Division, Media Bureau; and the Chief, Investigations and Hearings Division, Enforcement Bureau, within ten (10) business days of any changes to the Compliance Officer or the Compliance Officer's contact information.

20. **Compliance Plan.** Sinclair agrees that it shall, within ninety (90) calendar days after the Effective Date, develop, implement, and maintain a Compliance Plan that is designed to ensure future compliance with the RPI Rules, the Rules governing updates to applications pending before the Commission, including section 1.65 of the Rules, the Retransmission Consent Rules, and the Sponsorship Identification Laws, as they are currently in effect and as they may be amended in the future, and the terms and conditions of this Consent Decree, including the following:

- a) **Operating Procedures.** Within ninety (90) calendar days after the Effective Date, Sinclair shall establish Operating Procedures that all Covered Employees must follow to help ensure Sinclair's compliance with the RPI Rules, section 1.65 of the Rules, the Retransmission Consent Rules, and the Sponsorship Identification Laws. Sinclair's Operating Procedures shall include, at a minimum, the following provisions:
 - i) no application for assignment or transfer of control of a full-power television or AM or FM radio station license, amendment thereto, or related representation in a proceeding in which Sinclair is a party to such an application shall be submitted to or filed with the Commission by any Covered Employee unless it is (a) first reviewed and approved by Sinclair's internal legal counsel and such approval is duly noted and (b) accompanied by a certification from the Compliance Officer that it is accurate and complete and otherwise in compliance with Communications Laws—such certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein;³³
 - ii) Sinclair's Operating Procedures shall also include internal procedures and policies that apply to all Covered Employees and are specifically designed to ensure that Sinclair discloses the sponsorship status and the sponsor of broadcasts that are aired in exchange for valuable Consideration or that otherwise require sponsorship identification, consistent with the Sponsorship Identification Laws. Sinclair shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Sponsorship Identification Laws. At a minimum, the Compliance Checklist shall require a review of Sponsored Broadcasts by a Covered Employee; provided, however, that such review shall not be required of Sponsored Broadcasts

³² See 47 CFR § 1.93(b).

³³ 47 CFR § 1.16.

embedded in network or syndicated programming or other third-party programming; and provided further, that Sinclair shall conduct at least one audit during the term of this Consent Decree (as specified in paragraph 23 herein) of each Sinclair station to ensure that such station is complying with the Operating Procedures, with the understanding that (i) the annual report required by paragraph 20(f) of this Consent Decree shall describe the process used to conduct any such audit completed in the preceding twelve (12) month period, including the particular Sinclair stations audited, the number of Sponsored Broadcasts reviewed for each station, the time period from which the Sponsored Broadcasts were drawn, the method by which Sponsored Broadcasts were selected for review, and the conclusions of such audits, and (ii) the Compliance Checklist required by this paragraph shall place Covered Employees on notice that the Sinclair stations will be subject to such audits. Notwithstanding the foregoing, no such audit information shall be required to be included in the first annual report to be presented within one-hundred eighty (180) days of the Effective Date (because no such audit will be required during such initial 180-day period).

- iii) no Sinclair employee or agent who is involved in any way in retransmission consent negotiations on behalf of Sinclair may possess, receive, access, accept, or review any retransmission consent agreement to which a Non-Sinclair Station is a party, or non-public information related to such an agreement;
- iv) no Sinclair employee or agent may provide a copy of any retransmission consent agreement to which a Non-Sinclair Station is a party, or non-public information related to such an agreement, to any Sinclair employee or agent who is involved in any way in retransmission consent negotiations on behalf of Sinclair;
- v) no Sinclair employee or agent may provide any retransmission consent agreement, or non-public information related to such an agreement, to any third party unless the third party is a signatory of the agreement in question; and
- vi) information controls shall be established that (1) prevent any Sinclair employee or agent from, intentionally or unintentionally, sharing physical or electronic copies of any retransmission consent agreement to which a Non-Sinclair Station is a party, or any document containing non-public information related to such an agreement, with any Sinclair employee or agent who is involved in any way in retransmission consent negotiations on behalf of Sinclair, (2) prevent any Sinclair employee or agent who is involved in any way in retransmission consent negotiations on behalf of Sinclair from, intentionally or unintentionally, accessing physical or electronic copies of any retransmission consent agreement to which a Non-Sinclair Station is a party, or any document containing non-public information related to such an agreement, and (3) prevent any Sinclair employee or agent from, intentionally or unintentionally, sharing physical or electronic copies of any retransmission consent agreement, or any document containing non-public information related to such an agreement, with any third party unless the third party is a signatory of the agreement in question.

For purposes of clarity, (i) the foregoing provisions limiting access to Non-Sinclair Station retransmission consent agreements or non-public information shall not preclude access by Sinclair employees or agents who are not in any way involved in retransmission consent negotiations on behalf of Sinclair (who may include accounting personnel and auditors), and (ii) the foregoing provisions limiting the provision of retransmission agreements or non-public information to third parties shall not preclude provision of retransmission consent agreements to which Sinclair is a signatory, or non-public information related to such agreements, to prospective third-party buyers or other third parties conducting audits arising from a Sinclair retransmission consent agreement who affirm in writing that the information

will be used solely in connection with due diligence or such audit purposes, or to other parties as may be specifically approved by the Commission.

- b) **Compliance Manual.** Within ninety (90) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall set forth a comprehensive overview of the RPI Rules, section 1.65 of the Rules, the Retransmission Consent Rules, and the Sponsorship Identification Laws, together with the Operating Procedures that Covered Employees shall follow to help ensure Sinclair's compliance with those Rules, the requirements of this Consent Decree, and the Sponsorship Identification Laws. Sinclair shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Sinclair shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
 - c) **Compliance Training Program.** Sinclair shall establish and implement a Compliance Training Program to ensure compliance with the RPI Rules, section 1.65 of the Rules, the Retransmission Consent Rules, the Sponsorship Identification Laws, and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Sinclair's obligation to report any noncompliance under paragraph 21 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program (as applicable to their job duties) within ninety (90) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Sinclair shall repeat compliance training on an annual basis, and it shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.
 - d) **Hotline.** The Compliance Officer shall maintain a hotline for Covered Employees to call the Compliance Officer to obtain advice on compliance with the Compliance Plan and report violations of the Compliance Plan.
 - e) **Contractual Agreements.** Sinclair shall ensure that all new or renewed written employment agreements or its employee handbook with respect to Covered Employees include a clause requiring compliance with the Sponsorship Identification Laws. Sinclair's employee handbook shall be provided to all Covered Employees within thirty (30) calendar days after the date such person becomes a Covered Employee which handbook provides that violation of the terms of the employee handbook, including violations of the Sponsorship Identification Laws, may subject the employee to disciplinary action, up to and including discharge.
 - f) **Annual Report.** The Compliance Officer shall submit reports to Sinclair's Board of Directors concerning Sinclair's compliance with this Consent Decree and Compliance Plan. At a minimum, the report shall state how Sinclair is complying with each subsection of the Compliance Plan. The first such report shall be submitted within one-hundred eighty (180) days of the Effective Date and additional reports shall be submitted at least annually thereafter.
21. **Reporting Noncompliance.**
- a) **Media Bureau Reporting.** Beginning on the Effective Date, Sinclair shall report any noncompliance with the RPI Rules, section 1.65 of the Rules, the Retransmission Consent Rules, or the terms of this Consent Decree within thirty (30) calendar days after discovery of such noncompliance. Such reports shall be titled "Report of Noncompliance," and shall include a detailed explanation of: (i) each instance of noncompliance and the circumstances under which it occurred; (ii) a detailed description of the time and manner in which the noncompliance was discovered, the name(s) and title(s) of the person(s) by whom it was

discovered, and the names and titles of all Sinclair employees or agents who were aware of the activity prior to the discovery that it was noncompliant; (iii) the steps that Sinclair has taken or will take to remedy such noncompliance; (iv) the schedule on which such remedial actions will be taken; (v) the steps that Sinclair has taken or will take to prevent the recurrence of any such noncompliance; and (vi) the schedule on which such preventive actions will be taken. For each instance of noncompliance, the report shall identify the specific statutory requirement, rule, or Consent Decree term with which Sinclair believes it failed to comply. Each Report of Noncompliance shall include a certification by the Compliance Officer stating that the Compliance Officer has personal knowledge that the report is complete and accurate. This certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.³⁴ All reports of noncompliance submitted under this paragraph 21(a) shall be submitted to Michelle Carey, Chief, Media Bureau, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554 or an address that the Commission may in the future designate for receipt of United States mail, and submitted electronically to Barbara Kreisman at Barbara.Kreisman@fcc.gov, David Brown at David.Brown@fcc.gov, Maria Mullarkey at Maria.Mullarkey@fcc.gov, and Lyle Elder at Lyle.Elder@fcc.gov. Notwithstanding the Termination Date, this requirement shall remain in effect until one year after the Termination Date with respect to any noncompliance that occurs between the Effective Date and the Termination Date.

- b) **Enforcement Bureau Reporting.** Sinclair shall report any noncompliance with the Sponsorship Identification Laws or with the terms and conditions of this Consent Decree occurring after the Effective Date within thirty (30) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that Sinclair has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; (iv) the steps that Sinclair has taken or will take to prevent the recurrence of any such noncompliance; and (v) the schedule on which such preventive actions will be taken. All reports of noncompliance under this paragraph 21(b) shall be submitted to Jeffrey J. Gee, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554 or an address that the Commission may in the future designate for receipt of United States mail, and submitted electronically to Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, Frederick W. Giroux at Frederick.Giroux@fcc.gov, and Melanie A. Godschall at Melanie.Godschall@fcc.gov.

22. **Compliance Reports.** Sinclair shall file confidential Compliance Reports with the Commission six (6) calendar months after the Effective Date and every six (6) months thereafter, with the final report to be submitted one week after the Termination Date. Notwithstanding the Termination Date, this requirement shall remain in effect until the final report is submitted.

- a) Each Compliance Report shall include, for the relevant period:
- i) a detailed description of efforts made by Sinclair to comply with the terms and conditions of this Consent Decree, the RPI Rules, section 1.65 of the Rules, the Retransmission Consent Rules, and the Sponsorship Identification Laws.

³⁴ 47 CFR § 1.16.

- ii) a chart listing all Non-Sinclair Stations with which Sinclair has an LMA, JSA, SSA, TBA,³⁵ or other similar agreement (with any necessary explanation regarding the purpose of the agreement), the licensee of each station, the station's Designated Market Area (DMA), and whether Sinclair has an attributable interest in the station's licensee;
 - iii) a list of MVPDs with which Sinclair negotiated retransmission consent, identifying the status of the negotiation or the date on which the negotiation ended, as well as the date on which any then-current carriage agreement was or is scheduled to expire. For each MVPD, Sinclair shall provide a list of all stations represented by Sinclair in those negotiations, the licensee of each station, the station's DMA, and whether Sinclair has an attributable interest in the station's licensee;
- b) In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent and on behalf of Sinclair, stating that the Compliance Officer has personal knowledge that Sinclair: (i) has established and implemented the Compliance Plan, including each of the Operating Procedures identified in paragraph 20(a); (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree.
 - c) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.³⁶
 - d) If the Compliance Officer cannot provide the certification described in paragraph 22(b), the Compliance Officer, as an agent of and on behalf of Sinclair, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that Sinclair has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Sinclair has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
 - e) All Compliance Reports shall be submitted to Michelle Carey, Chief, Media Bureau, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554 or an address that the Commission may in the future designate for receipt of United States mail and Jeffrey J. Gee, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554 or an address that the Commission may in the future designate for receipt of United States mail, and submitted electronically to Barbara Kreisman at Barbara.Kreisman@fcc.gov, Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Maria Mullarkey at Maria.Mullarkey@fcc.gov, David Brown at David.Brown@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, Frederick W. Giroux at Frederick.Giroux@fcc.gov, Lyle Elder at Lyle.Elder@fcc.gov, and Melanie A. Godschall at Melanie.Godschall@fcc.gov.

³⁵ An LMA is a local marketing agreement under which a broadcast licensee sells blocks of time to a broker, who supplies the programming and sells the advertising for those blocks of time. A JSA is a joint sales agreement under which a broadcast licensee authorizes a broker to sell advertising time for the brokered station. An SSA is a shared services agreement between broadcasters to share services, such as (but not limited to) technical support, back-office support, or production of newscasts. A TBA is a time brokerage agreement, which, as with an LMA, refers to "the sale by a licensee of discrete blocks of time to a 'broker' that supplies the programming to fill that time and sells the commercial spot announcements in it." See 47 CFR § 73.3555, Note 2(j).

³⁶ 47 CFR § 1.16.

23. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 19 through 22 of this Consent Decree shall expire forty-eight (48) months after the Effective Date.

24. **Civil Penalty.** Sinclair will pay a civil penalty to the United States Treasury in the amount of \$48,000,000 (forty-eight million dollars) within ninety (90) calendar days of the Effective Date. Sinclair shall send electronic notification of payment to Barbara Kreisman at Barbara.Kreisman@fcc.gov, David Brown at David.Brown@fcc.gov, Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, Maria Mullarkey at Maria.Mullarkey@fcc.gov, and Lyle Elder at Lyle.Elder@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),³⁷ or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:³⁸

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).³⁹ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option. Please note that there is a dollar limitation on credit card transactions, which cannot exceed \$24,999.99.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

25. **Waivers.** As of the Effective Date, each Party hereto waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. Sinclair shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If any Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the

³⁷ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

³⁸ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e mail at ARINQUIRIES@fcc.gov.

³⁹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Consent Decree or the Adopting Order, neither Sinclair nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Sinclair shall waive any statutory right to a trial *de novo*. Sinclair hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act⁴⁰ relating to the matters addressed in this Consent Decree.

26. **Severability**. The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

27. **Invalidity**. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

28. **Subsequent Rule or Order**. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Sinclair does not expressly consent) that provision will be superseded by such Rule or Order.

29. **Successors and Assigns**. Sinclair agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees. Notwithstanding anything herein to the contrary, this Consent Decree shall not apply to the assignment of Sinclair Stations or the transfer of control of Sinclair owned licensees, provided that the assignee or transferee is not controlled by or in common control with Sinclair, and so long as the stations assigned or transferred do not, combined, constitute greater than fifteen percent of all Sinclair Stations at the time of such assignment or transfer.

30. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. Sinclair admits solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in the express reliance on the provisions of paragraph 18 herein, that its actions with respect to the broadcasts referenced in paragraphs 10 through 13 herein and in the *NAL* violated the Sponsorship Identification Laws.⁴¹ The Parties agree that, except as otherwise provided here, this Consent Decree does not constitute an admission of liability by the Company.

31. **Modifications**. This Consent Decree cannot be modified without the advance written consent of all Parties.

32. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

33. **Authorized Representative**. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person executing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

⁴⁰ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

⁴¹ *NAL*, 32 FCC Rcd at 10855-56, paras. 5-7, 10868, para. 36.

34. **Counterparts.** This Consent Decree may be executed in counterparts (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Marlene H. Dortch
Secretary
Federal Communications Commission

Date

Christopher S. Ripley
President and Chief Executive Officer
Sinclair Broadcast Group, Inc.

Date

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *In the Matter of Sinclair Broadcast Group*, File No. EB-IHD-16-00021748.

The entire saga involving Sinclair Broadcast Group could have been avoided, and there are many lessons to be learned here. Thankfully, we have the chance to conclude this mess today and move forward.

First and foremost, my concerns over how the Sinclair process has played out are well-documented, so I will not belabor those points here, except to say that I fully intend to keep pressing for reforms to the administrative law judge (ALJ) and HDO processes. For all intents and purposes, the use of an HDO—or the mere threat thereof—combined with the snail-like pace of the ALJ serve as a de facto death sentence for any proposed transaction that meets this fate. No transaction, irrespective of its underlying merits, should be subjected to such a broken process.

Regarding the specifics of this item, I thank the Chairman and staff for working with my office to bring this matter to conclusion and avoid any further unnecessary liability for the company, now that both parties have agreed to settle this matter. To be clear, the text is precise that Sinclair acted in good faith in its interpretation of Commission rules and precedent and that there is no character qualification issue arising from the underlying applications. Agreeing to a record financial settlement and extensive compliance requirements—far from the slap on the wrist that critics bemoan—will allow Sinclair to focus on broadcasting and serving the many Americans who rely on its stations for up to date health and safety information and local news, especially during this time.

It has taken nearly two years to write the final chapter in this proceeding, and some have tried to prolong the saga even further. In addition to the inertia of the already-lengthy process, some D.C. pundits have tried to frame the Commission's approach towards Sinclair in terms of partisan politics. While I can only speak for myself, I find this accusation to be completely wrong and inappropriate. Our duty as regulators is to treat entities under our purview fairly and impartially, and in cases where our processes have broken down, we owe it to those subject to our jurisdiction to make the needed fixes. It's time to close the book on this matter and move on.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *In the Matter of Sinclair Broadcast Group*, File No. EB-IHD-16-00021748.

Today's Consent Decree resolves a number of important and outstanding issues. While our decision recognizes that there has been no finding of liability or wrongdoing stemming from Sinclair's attempt to acquire Tribune Media Company, I want to commend the FCC team and Sinclair for working together to bring closure to these issues. After the Commission designated some of these issues for hearing, further evidentiary review showed that Sinclair structured its transaction based on a good-faith interpretation of FCC rules and precedent. So I support our decision today, which promotes the public interest by terminating the FCC investigations.

To be sure, there are some political actors, including in Congress, that have long and repeatedly called for the FCC to go after Sinclair based on those politicians' disagreement with the viewpoints expressed in Sinclair's broadcasts.¹ We don't do that at the FCC—or at least a majority of us do not do that. We reach our decisions based on the facts and the law. So I appreciate the opportunity to vote on this decision.

¹ See, e.g., Letter from Hon. Elizabeth Warren, U.S. Senator; Hon. Bernie Sanders, U.S. Senator; & Hon. Cory A. Booker, U.S. Senator, to Hon. Ajit V. Pai, Chairman, FCC, & Hon. Makan Delrahim, Assistant Attorney General, U.S. Department of Justice, Antitrust Division (June 24, 2019) (seeking review of Sinclair's acquisition of certain sports networks based, in part, on Sinclair's alleged 'conservative-tinged coverage [in] local markets'); Letter from Hon. Maria Cantwell, U.S. Senator; Hon. Tom Udall, U.S. Senator; Hon. Patty Murray, U.S. Senator; Hon. Elizabeth Warren, U.S. Senator; Hon. Ron Wyden, U.S. Senator; Hon. Edward J. Markey, U.S. Senator; Hon. Richard Blumenthal, U.S. Senator; Hon. Tina Smith, U.S. Senator; Hon. Bernie Sanders, U.S. Senator; Hon. Jeffery A. Merkley, U.S. Senator; Hon. Tammy Baldwin, U.S. Senator; & Hon. Cory A. Booker, U.S. Senator; to Hon. Ajit V. Pai, Chairman, FCC (Apr. 11, 2018) (seeking an investigation into Sinclair's fitness to be a broadcast licensee based on objections to Sinclair's "news activities"); see also Katie Benner, *Sinclair under fire for Kerry film*, CNN.com, Oct. 12, 2004 (detailing a letter from 20 Senate Democrats requesting an FCC investigation of Sinclair based on reports it planned to air programming critical of Sen. John Kerry).

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL,
DISSENTING**

Re: *In the Matter of Sinclair Broadcast Group*, File No. EB-IHD-16-00021748.

In this consent decree the Federal Communications Commission ignores its rules and bends the facts in order to assist Sinclair Broadcast Group with sweeping its past digressions under the rug. For this reason, I dissent.

This consent decree represents the culmination of three different investigations into the practices of Sinclair Broadcast Group by the FCC.

The first of these investigations arises from the company's effort to acquire Tribune Media Company. This transaction, now abandoned, would have created the nation's largest broadcaster, with as many as 233 stations across the country. During the FCC's review of this merger, Sinclair Broadcast Group appeared to make a series of material misrepresentations to the agency, namely that it was not the real party-in-interest in entities associated with the transfer of television stations KDAF, KIAH, and WGN TV. Misrepresentations like these would allow the company to evade national limits on television ownership. Accordingly, the FCC sent a letter of inquiry to Sinclair Broadcasting seeking further information about the ownership of these stations and the company's lack of candor with the agency.

As the FCC has long acknowledged, honesty with the agency is a foundational requirement for a license. Full and clear disclosure of all material facts is essential to the efficient administration of the agency's licensing process. Moreover, an inquiry into misrepresentation and lack of candor is inherently an assessment of whether a licensee possesses the requisite character qualification to continue to hold a license under Sections 308 and 309 the Communications Act.

That is why under Section 1.93(b) of the FCC's rules, consent orders "may not be negotiated with respect to matters which involve a party's basic statutory qualifications to hold a license." Yet here the agency addresses material misrepresentations behind closed doors and then summarily dismisses them in a consent decree. Doing so is a clear end run around this rule. Why are we violating our own rules to assist this company with the termination of an investigation? This consent decree offers no explanation.

The second investigation involves the duty to negotiate in good faith for consent to retransmit commercial television broadcast signals pursuant to Section 325 of the Communications Act. In 2014 Congress amended this law to restrict joint negotiation for retransmission consent by television stations without common ownership. An earlier investigation by the FCC following this change in the law found that Sinclair Broadcast Group had violated this provision with 36 different stations. This resulted in a compliance plan that required the company to periodically report to the agency on retransmission consent. Through this reporting process Sinclair Broadcast Group acknowledged that by providing accounting services to a number of stations it did not own it continued to have access to their retransmission consent agreements but insists this information was not used by the company. I question how speedily this agency offers the company the benefit of the doubt after 36 prior violations of the law. Moreover, by lumping the penalty for this together with other investigations, it is impossible to know what fine is even associated with this repeated failure to comply with the Communications Act.

The third investigation concerns pay-for-play programming. Here again, the repeated failure to follow the law matters. Over the course of roughly six months, Sinclair Broadcasting aired sponsored programming on 77 stations 1,723 times. This is the kind of content that gets dressed up like real news but makes no mention of who paid for it to be on the air. Doing so is a violation of Sections 317 and 507 of the Communications Act, as well as Section 73.1212 of the Commission's rules. The sheer volume of

these pay-for-play violations is unprecedented. It deserves an unprecedented response. But the underlying notice of liability for these violations inexplicably offers the company a significant discount from the total penalty permissible under our rules.

Finally, these investigations do not stand alone. Sinclair Broadcast Group has a history of difficulty complying with FCC rules, as demonstrated by multiple forfeiture orders, notices of apparent liability, and admonishment from this agency. I respect the desire of the company to remedy past behavior but find suspect this agency's willingness to contort the law and its rules to allow them to do so.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS,
DISSENTING**

Re: *In the Matter of Sinclair Broadcast Group*, File No. EB-IHD-16-00021748.

Our rules,¹ laws,² and longstanding policies³ require honesty from licensees in their dealings with the Commission. We have previously levied significant penalties for misrepresentations and a lack of candor, and the Commission's views in this area are clear—these are serious breaches of trust, and even the most insignificant misrepresentation can be treated as a character disqualification.⁴ It is essential and integral to our regulatory function that we be able to rely on a licensee to provide accurate and complete information if we are to successfully carry out our statutory obligations to protect the public airwaves.

In dismissing the underlying hearing proceeding, the Administrative Law Judge sent a clear message: a broad inquiry into Sinclair's alleged misconduct would be appropriate "in the context of a future proceeding in which Sinclair is seeking Commission approval, for example, involving an application for a license assignment, transfer, or renewal," adding that "[a]llegations that Sinclair engaged in misrepresentation and/or lacked candor before the Commission are extremely serious charges that reasonably warrant a thorough examination."⁵ Sinclair's broadcast license renewal applications for TV stations in the DC-MD-VA-WV markets are due to be filed with the Commission by June 1—approximately two weeks from now. Instead of a transparent vetting by this Commission and the public as to whether Sinclair's past conduct demonstrates that it has the requisite character qualifications to continue as a broadcast licensee, Sinclair has struck a deal to avoid any further scrutiny. And as part of the deal, the Commission will never be able to consider the underlying conduct at issue ever again. Accordingly, this item creates bad law, bad precedent, and bad policy.

The crux of the misconduct and rule violations at issue turns on the disclosure of potential real-parties-in-interest.⁶ On that account, the Commission previously made a finding that Sinclair "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."⁷ Despite that finding, the majority

¹ See 47 C.F.R. §§ 1.17, 1.65.

² See 47 U.S.C. § 312(a)(1) (permitting license revocation for false statements knowingly made to the Commission).

³ See *Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees*, Report, Order and Policy Statement, 102 F.C.C.2d 1179, 1211, para. 61 (1986) ("The integrity of the Commission's processes cannot be maintained without honest dealing with the Commission by licensees.").

⁴ *Id.* at 1210, para. 60 ("The Commission is authorized to treat even the most insignificant misrepresentation as disqualifying."). See also *Fox Television Stations, Inc.*, Memorandum Opinion and Order, 33 FCC Rcd 7221, 7239, para. 42 ("In considering an applicant's character, one of the Commission's primary purposes is to ensure that licensees will be truthful in their future dealings with the Commission.").

⁵ *Applications of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee) for Transfer of Control of Tribune Media Company and Certain Subsidiaries, WDCD(TV) et al., and For Assignment of Certain Licenses from Tribune Media Company and Certain Subsidiaries*, Order, FCC 19M-01, at 4 (ALJ 2019) (ALJ Order).

⁶ *Sinclair Broadcast Group*, File No.: EB-IHD-16-00021748, Order, para. 2 (adopted May 6, 2020) (*Sinclair Order*).

⁷ *Applications of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee) For Transfer of Control of Tribune Media Company and Certain Subsidiaries, WDCD(TV) et al., and For Assignment of*

(continued....)

here today relies on the assertion that Sinclair “structured its transaction based upon a good faith interpretation of the Commission’s rules and precedent,”⁸ and then concludes that there is no substantial and material question of fact as to Sinclair’s character qualifications. To allow Sinclair to hide behind a claim that its conduct was done in “good faith” belies the fact that Sinclair had motive to omit inconvenient facts while seeking approval for a merger.⁹ Further, a “good faith” standard has not been applied in this body of our law.¹⁰ It is unclear whether the majority seeks to create new law, or merely muddy our existing precedent. What is clear is that by foregoing a real investigation, we run the risk of sending a message to future applicants that they can get away with almost anything if they can write a big enough check, even without admitting to any wrongdoing.

Sunlight is the best disinfectant.¹¹ The majority’s conclusion that there is no substantial and material question of fact as to whether a character qualifying issue arises from the Sinclair conduct is not warranted, and the decision to allow Sinclair to pay a penalty in lieu of fully accounting for its admitted lack of candor¹² in the Sinclair-Tribune transaction is an abdication of our responsibility to enforce our rules and to require that broadcast licensees act in the public interest, not in furtherance of their own interests. It is not clear whether a full examination of Sinclair’s actions would result in a revocation of its broadcast licenses,¹³ an admonition, or something in between. It is clear, however, that this Order ensures we will never know. I dissent.

(Continued from previous page) _____
Certain Licenses from Tribune Media Company and Certain Subsidiaries, Hearing Designation Order, 33 FCC Rcd 6830, 6841, para. 28 (2018).

⁸ *Sinclair Order* at para. 2.

⁹ For example, it’s notable that concerns were raised in the hearing record about previous Commission findings regarding the true nature of the relationship between Sinclair and Cunningham. See *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), *aff’d sub nom. Rainbow/PUSH Coalition v. FCC*, 330 F.3d 539 (D.C. Cir. 2003).

¹⁰ Rather, reasonable basis for belief has been the standard. See 47 C.F.R. § 1.17(a)(2) (no person shall submit a material factual statement that is incorrect or omit material information “without a reasonable basis for believing that any such material factual statement is correct and not misleading.”).

¹¹ Louis Brandeis, appointed Supreme Court Justice in 1916, made his famous statement that “sunlight is said to be the best of disinfectants” in a 1913 Harper’s Weekly article titled “What Publicity Can Do.”

¹² See *Sinclair Order* at para. 2 (explaining that Sinclair “believed it was unnecessary to disclose further information regarding the relationships between Sinclair and both Fader and Cunningham.”).

¹³ See *ALJ Order* at 4 (“providing false statements to the Commission has been a basis for license revocation since the inception of the Communications Act in 1934.”) (citation omitted).