

**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

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*).

the full entanglements between Cunningham, Smith, and Sinclair.”⁷ Despite that finding, the majority 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.

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 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).