

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Applications of Tribune Media Company and)	MB Docket No. 17-179
Sinclair Broadcast Group)	
For Consent to Transfer Control of Licenses)	BALCDT - 20180427ABM
and Authorizations)	BALCDT - 20180427ABL and
)	BALCDT - 20180227ABD
)	

NEWSMAX MEDIA, INC.'S REPLY IN SUPPORT OF ITS PETITION TO DENY

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Newsmax Media, Inc. (“Newsmax”) submits this reply in support of its petition to the Federal Communications Commission (the “Commission” or the “FCC”) to deny the applications filed by Sinclair Broadcast Group, Inc. (“Sinclair”) and Tribune Media Company (“Tribune”) (collectively, “Applicants”) seeking consent to transfer to Sinclair control of subsidiaries of Tribune that hold the licenses of full-power broadcast television stations, low-power television stations, and TV translator stations as well as consent to combine two top-four rated stations. As explained in Newsmax’s petition and further below, the purported third-party divestitures that Sinclair asserts will allow it to comply with Commission rules are insufficient. As a result, this transaction is antithetical to the public interest and the applications should be denied outright or, at a minimum, designated for a hearing.

I. Introduction

The proposed divestitures, which are necessary to bring the Sinclair/Tribune transaction into compliance with the Commission’s rules, are sham transactions that enable Sinclair to retain control over the divested assets albeit under the guise of control by a third party. This is most evident regarding the divestiture to Cunningham Broadcasting Group (“Cunningham”) and WGN-TV LLC, both of which have close connections to the controlling shareholders of Sinclair and both of which are receiving very favorable prices for the assets they hope to acquire.

Applicants do not directly engage with these arguments, largely relegating their response to a series of footnotes. But to the extent they do engage, their responses either are unavailing or simply underscore the need for a hearing on the serious questions presented by Newsmax’s opening submission.

While designating a hearing is the minimum step the Commission should take with respect to the proposed transaction, at this point it should not even issue a decision at all. Rather, the Commission should stay this proceeding until the D.C. Circuit decides whether the UHF

discount should continue to be applied. As explained in the motion filed by Public Knowledge and Common Cause,¹ which Newsmax supports, maintaining the status quo for now will keep the two merging parties apart until final resolution of that case. And, importantly, it will avoid the confusion and complications that will arise should the DC Circuit's ruling render any divestiture plan the Commission approves non-compliant, including the potential need to unwind significant portions of the transaction. Holding off on final disposition of the Sinclair/Tribune applications is particularly advisable here given how soon the D.C. Circuit is expected to issue its UHF discount decision.

II. Reply Comments

Applicants spend little time rebutting the evidence showing that Sinclair will retain control over the assets being divested to Cunningham and WGN-TV LLC. Moreover, even taking into account what they do dispute, they do not disagree that if the Commission found that the divestitures to these entities are ineffective—*i.e.*, that Sinclair would retain control of the divested stations—then Sinclair would be in violation of the national audience reach limit.²

Applicants also make no mention of the Commission's prior decision *In the Matter of Edwin L. Edwards and Carolyn Smith et. al*, in which the Commission held that Glencairn, a predecessor to Cunningham, was *de facto* controlled by Sinclair in part because of undervalued sales prices for the divested assets and other evidence showing that the transaction was not at

¹ See Motion Requesting to Hold Proceeding in Abeyance, MB Docket No. 17-179 (filed June 28, 2018) ("Abeyance Motion").

² Applicants are wrong in claiming that Newsmax is "ignoring proposed divestitures" to argue the transaction would result in violation of the national audience reach limitation. Applicant Opp. at 19 & n.54. Indeed, the very next paragraph of Newsmax's petition explains that the divestitures are intended to bring the Applicants into compliance with the rule. Newsmax Pet. at 7. Newsmax's point is the transaction violates the rule because two of the divestitures—to Cunningham and to WGN-TV LLC—are invalid.

arm's length.³ Accordingly, as Newsmax explained in its petition, the Applicants' submission requires denial or, at a minimum, further investigation because there is substantial evidence that the divestitures to Cunningham and WGN-TV LLC are not arm's-length transactions. In brief, the owner of WGN-TV LLC is paying tens of millions of dollars less than the market rate for WGN-TV, has no experience as a broadcast television licensee, and is a close business partner to a controlling shareholder of Sinclair, David Smith. And, with respect to Cunningham, the company is owned in significant part by the Smith brothers and is seeking to buy the assets from Sinclair at a deeply discounted price.

A. Sinclair's Control Over Cunningham Is Illustrated By The Details Of Cunningham's Ownership And The One-Sided Nature Of The Divestiture Agreement.

For Cunningham, Applicants' response raises more questions than answers. Applicants state that the "Sinclair brothers" do not "own any stock, voting or non-voting, in Cunningham"⁴ but the application to which Applicants cite makes no mention of transferring the non-voting stock. In fact, the stock purchase agreement mentions that the Smith brothers each will obtain all of the non-voting shares (specifically, each brother will receive 15.75 shares) but says nothing about transferring those shares.⁵ And while one document in the application suggests that these non-voting shares would be diminished through Cunningham's redeeming of those shares, the most recent public filings discussing the shares make clear this has not happened. Instead, the Smith brothers transferred them to their children: "All of the non-voting stock is owned by trusts

³ See *In the Matter of Edwin L. Edwards Sr. (Transferor) and Carolyn C. Smith (Transferee) for Consent to the Transfer of Control of Glencairn, Ltd., parent entity of Baltimore (WNUV-TV) Licensee, Inc. Licensee of Television Station WNUV-TV, Baltimore, Md., et al.*, file No. BTCCT-19991116BEC, Memorandum Opinion and Order and Notice of Apparent Liability, 16 FCC Rcd 22236 Par. 26 (2001) ("*In the Matter of Edwards*").

⁴ Applicants' Opp. at 6 n.20.

⁵ See Stock Purchase Agreement at 1, filed with FCC File No. BTCCDT-20130226AFW.

for the benefit of the children of our controlling shareholders”—*i.e.*, the Smith brothers.⁶ This retained interest in Cunningham, in addition to the Smith brothers’ retention of the option to repurchase the voting shares at substantially the same price for the next 32 years,⁷ shows that the Sinclair-Cunningham transaction has not been carried out at arm’s length.

The absence of an arm’s-length transaction is further illustrated by the below-market sales price Sinclair has agreed to for the assets it is transferring to Cunningham. Applicants first respond by arguing that Newsmax (and commentators or petitioners making a similar point) lack sufficient “real world due diligence” about the transactions to offer an assessment of the price.⁸ Second, they assert that the trade press has not consistently valued the assets in question.⁹ Both of these arguments, however, only reinforce that there are substantial factual questions as to the value of the assets being sold and whether they are being transferred at fair-market value. These are precisely the type of issues for which the hearing process was designed.

The dispute about valuation is only reinforced by Applicants’ argument that the sale price of KPLR-TV in St. Louis provides a reasonable benchmark to the two stations Sinclair is selling to Cunningham in Texas.¹⁰ Applicants assert the markets are not comparable but identify no actual differences that would meaningfully affect valuation.¹¹ They also argue that the KPLR-TV transaction presented unique synergies that allowed for a particular sales price but the Department of Justice did not find these synergies persuasive enough to permit the transaction, which casts doubt on their actual existence and magnitude. The Commission likewise should not

⁶ Sinclair May 5, 2018 10-Q at 22.

⁷ See Option Agreement at Sec. 2.1 & 2.4, filed with FCC File No. BTCCDT-20130226AFW.

⁸ Applicants’ Opp. at 11-12 n.33.

⁹ *Id.*

¹⁰ Newsmax Petition at 10.

¹¹ See Applicants’ Opp. at 11-12 n.33.

be persuaded by these alleged synergies and, to the extent that is the sole basis for believing that the price difference is justified, a hearing is warranted to evaluate and assess the evidence that the Department of Justice has already found inadequate.

B. The Close Relationship Between Sinclair And WGN-TV LLC Is Undisputed And Appellants' Defense Of The Transaction Price Only Further Demonstrates The Need For A Hearing.

For WGN-TV LLC, Applicants' respond to only half of the evidence Newsmax pointed to as evidence of Sinclair's *de facto* control and the absence of an arm's length transaction. They do not dispute that WGN-TV LLC was created solely for the purpose of acquiring WGN-TV or that the owner of this new company is a close business partner of David Smith.¹² Nor do they dispute that the CEO of WGN-TV LLC, a long-time operator of car dealerships, has no experience as a broadcast television licensee.¹³ And while they point to the fact that there is some disagreement on the market value of WGN,¹⁴ Applicants do not provide any substantive defense of their sales price.¹⁵ But, as discussed above, this disagreement only highlights the substantial factual uncertainty regarding the transaction and transfers under review, which is why a hearing is necessary if the transfer applications are not denied outright.

C. The Option Agreements Associated With The Divestitures Show That The Transactions And Transfers In Question Are Not Arm's-Length Transactions.

Sinclair's control over the divestitures to Cunningham and WGN-TV LLC is further illustrated by the option agreements associated with the transactions.¹⁶ Appellants argue that these are irrelevant to the Commission's analysis because they are lawful and typically not

¹² See Newsmax Petition at 12.

¹³ See *id.*

¹⁴ *Id.* at 13.

¹⁵ Applicants' Opp. at 11-12 n.33.

¹⁶ Newsmax Petitioner at 13-14.

considered attributable to the ownership of the party owning the options.¹⁷ The point of these agreements, however, is not that they are *per se* illegal or attributable; it is that they show the transactions under review are not arm's-length transactions. Indeed, Newsmax explicitly explained that there is no business rationale for a buyer allowing a seller to repurchase assets at substantially the same price for 48 years.¹⁸ Applicants' opposition provides no such rationale because there is none. This is made only more apparent by the one-sided nature of the option agreements, which allow Sinclair to transfer its option but prohibit Cunningham and WGN-TV from transferring the options without Sinclair's written consent.¹⁹ With these restrictions, it will be virtually impossible to transfer the licenses until the option agreement expires or Sinclair gives its blessing. These serious factual issues warrant, at a minimum, an evidentiary hearing.

III. Conclusion

As explained in Newsmax's petition and here, if the Commission considers the merits of the transfer applications before the D.C. Circuit rules on the UHF discount—which the Commission should not—then the proposed divestitures warrant, at minimum, a searching review through a hearing. This conclusion is reinforced by the fact that Sinclair has a history of seeking to circumvent Commission rules regarding ownership caps and limitations. The Commission's decision in *In re Edwards* illustrates this. So does the Commission's more recent agreement with Sinclair regarding its illegally coordination of retransmissions fees with its sidecar partners, which resulted in the Commission imposing a \$9.5 million fine.²⁰ The Applicants have provided nothing to suggest that this pattern has changed.

¹⁷ Applications' Opp. at 7-9.

¹⁸ Newsmax Petition at 14; Option Agreement, between Sinclair and WGN TV, LLC, at ¶ 2.

¹⁹ Option Agreement, between Sinclair and WGN TV, LLC, at ¶¶ 9-10.

²⁰ *In re Sinclair Broadcasting Group, Inc.*, MB-201641420017 at Par. 18 (July 29, 2016).

Accordingly, Newsmax respectfully urges the Commission to deny the petition to transfer licenses or, at minimum, to designate the above-referenced applications for an evidentiary hearing and, upon any finding inconsistent with 47 CFR 73.3555, deny the application for consent to transfer control of licenses and authorizations in the above captioned proceeding between Sinclair Broadcast Group and Tribune Media Company.

Respectfully submitted,

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DECLARATION

The foregoing has been prepared using facts of which I have personal knowledge or upon information that has been provided to me. I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

Executed July 12, 2018

/s/ Jonathan Schiller

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CERTIFICATE OF SERVICE

I, Jonathan Schiller, hereby certify that on July 12, 2018, a true and correct copy of the foregoing was filed with the Federal Communications Commission and copies were served by e-mail upon the following:

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