

## BEFORE THE

In the Matter of

ENTERCOM COMMUNICATIONS AND

CBS RADIO SEEK APPROVAL TO

## TRANSFER CONTROL OF AND ASSIGN

## FCC AUTHORIZATIONS AND LICENSES

TO: Office of the Secretary

ATTN: The Commission

## PETITION FOR RECONSIDERATION

Edward R. Stolz II d/b/a Royce International Broadcasting Company (Stolz), Golden State Broadcasting, LLC (Golden), Silver State Broadcasting, LLC (Silver) and Major Market Radio, LLC (Major), and Deborah J. Naiman (Naiman) (collectively "Petitioners"), by their attorney, and pursuant to 47 CFR §1.1.106(b), hereby respectfully submit this Petition for Reconsideration of the FCC's Memorandum Opinion and Order, FCC 18-84, 33 FCC Rcd --, released June 26, 2018, denying Petitioners' December 11, 2017 joint "Application for Review". In so doing whereof, the following is shown:

**Preliminary Statement**

1. Section 1.106 of the Commission's rules permits thirty days for the filing of a Petition for Reconsideration. Today, July 26, 2018, is the thirtieth day subsequent to the release of FCC 18-84. Therefore, this Petition for Reconsideration is timely filed.

2. With respect to this particular type of Petition for Reconsideration, the applicable procedural rule is 47 C.F.R. §1.106(b)(2). It states:

(2) Where the [Commission](#) has denied an [application](#) for review, a petition for reconsideration will be entertained only if one or more of the following circumstances are present:

(i) The petition relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the [Commission](#); or

(ii) The petition relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the [Commission](#), and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity.

3. There are two sets of circumstances which have occurred since Petitioners filed their Application for Review. The first is the decision by the Commission to investigate Sinclair Broadcast Group, Inc. and its proposed acquisition of Tribune Media Company. ***Tribune Media Company (WDCW et al)***, FCC 18-100, 33 FCC Rcd - (Hearing Designation Order in MB Docket No. 17-179, released July 19, 2018). This raises questions of fundamental fairness, where the FCC is investigating Sinclair, a right of center media organization, while giving a free pass to CBS Corporation, a well-

known leftist media organization. The second involve serial instances of intentional news distortion committed by CBS Corporation over the past few months uncovered by watchdog group Media Research Center.

**Fundamental Legal Principles Ignored by the FCC**

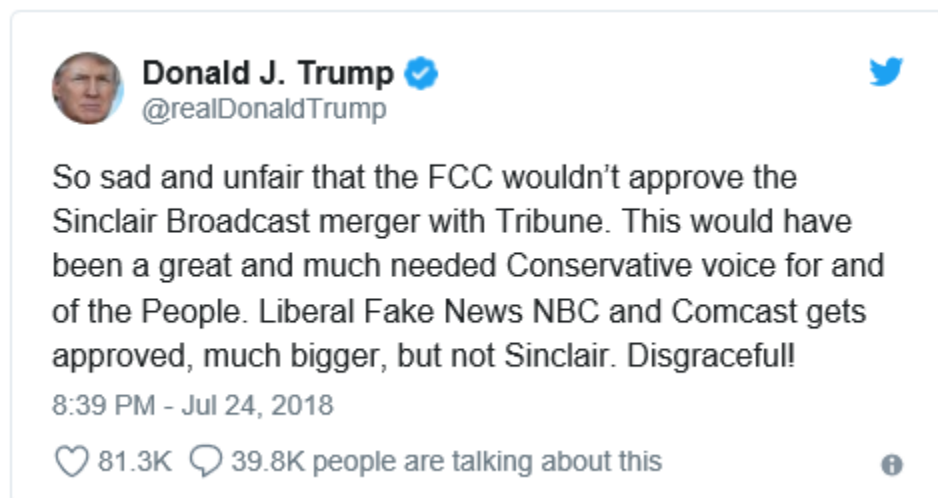
4. There are a number of fundamental legal principles which govern this case. The venerable appellate precedent of ***Melody Music, Inc. v. FCC***, 345 F.2d 730 (D. C. Cir. 1965) requires the Commission to accord similar treatment to similarly situated parties. Next, the assignor or transferor of a broadcast license which lacks character qualifications cannot transfer a broadcast license as it has nothing to sell. ***Jefferson Radio Co., Inc. v. FCC***, 340 F.2d 781 (1964). Intentional news distortion goes directly to whether a company possesses the basic character qualifications to be a Commission licensee. ***Serafyn v. FCC***, 149 F.3d 1213 (D. C. Cir. 1998). There is no First Amendment right inherent in a broadcast license; rather, "[i]t is the right of the public to receive suitable access to social, political, esthetic, moral and other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by Congress or by the FCC". ***Red Lion Broadcasting Co., Inc. v. FCC***, 395 U.S. 379, 389-90 (1969).

**Sinclair-Tribune HDO**

5. FCC Chairman Pai issued the following written statement on July 16, 2018 about the proposed Sinclair-Tribune merger (see Exhibit A):

“Based on a thorough review of the record, I have serious concerns about the Sinclair/Tribune transaction. The evidence we’ve received suggests that certain station divestitures that have been proposed to the FCC would allow Sinclair to control those stations in practice, even if not in name, in violation of the law. When the FCC confronts disputed issues like these, the Communications Act does not allow it to approve a transaction. Instead, the law requires the FCC to designate the transaction for a hearing in order to get to the bottom of those disputed issues. For these reasons, I have shared with my colleagues a draft order that would designate issues involving certain proposed divestitures for a hearing in front of an administrative law judge.”

6. Why weren’t Chairman Pai or the other Commissioners similarly concerned about CBS Corporation, which serially engages in intentional news distortion. No less than President Trump, who appointed Mr. Pai as Chairman, expressed his disgust at the Sinclair-Tribune HDO, in a “tweet” issued on July 24, 2018<sup>1</sup>:



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<sup>1</sup><https://twitter.com/realdonaldtrump>

7. CBS Corporation's serial engagement in intentional news distortion raised questions about CBS Corporation's basic character qualifications that had to have been resolved in a hearing before an Administrative Law Judge. The FCC's designation of the Sinclair-Tribune merger for hearing, while at the same time refusing to hold a hearing on CBS Corporation's basic character qualifications in the above-captioned proceeding, squarely raises the issue of whether the FCC treated similarly situated parties, e.g., parties to proposed mergers of licensees holding multiple broadcast station licenses, in a similar manner. **Melody Music**, supra. The refusal of the FCC to designate the above-captioned case for hearing is "so sad and unfair".

#### **Recent CBS Intentional News Distortion**

8. Since Petitioners' last opportunity to raise matters such as this at the FCC, media watchdog group Media Research Center (MRC) has documented instance after instance of intentional news distortion on the part of CBS and the other "legacy" network news departments.

9. On July 24, 2018, MRC published a study entitled "TV's War Against Trump's Immigration Enforcement Agency", found online at <https://www.newsbusters.org/blogs/nb/rich-oyes/2018/07/24/study-tvs-war-against-trumps-immigration-enforcement-agenda>.

This study found that legacy network coverage "has been relentlessly hostile to the administration (92% negative, just 8%

positive). This is because network newscasts "have virtually ignored law enforcement or anyone harmed by illegal immigration".

10. On June 19, 2018, MRC's Geoffrey Dickens published a study demonstrating the intentional news distortion by CBS and the other two "legacy" networks that took place June 13-18, 2018 involving the children of illegal immigrants who were separated from the adults when they were arrested by United States authorities, found online at <https://www.newsbusters.org/blogs/nb/geoffrey-dickens/2018/06/19/six-days-june-nets-flood-broadcasts-176-minutes-separated-kids>. While the networks broadcast 176 minutes during their morning and newscasts on June 13-18 on the story (CBS accounted for 73 of those minutes), the networks "devoted just 6 minutes and 29 seconds (barely 3 percent of the coverage) to discussion of Obama's detaining of children, 1 minute and 37 seconds of which was spent denying the Obama or other past administrations had engaged in policies matching those of the current administration".

11. On April 6, 2018, MRC published a study that showed that, as of April 6, 2018 the CBS Morning News, which frequently includes segments on newly released movies, totally ignored the release of the movie "Chappaquiddick", which dealt with the 1969 death of Mary Jo Kopechne caused by Senator Edward M. Kennedy (D-MA), found online at <https://www.newsbusters.org/blogs/nb/bill->

[dagostino/2018/04/06/network-media-usually-love-political-dramas---not-chappaquiddick](https://www.dagostino.com/2018/04/06/network-media-usually-love-political-dramas---not-chappaquiddick).

12. On March 26, 2018, MRC published a study entitled "Liberal Media's Brazen Double-Standard on Sex Scandals", found online at <https://www.newsbusters.org/blogs/nb/rich-noyes/2018/03/26/liberal-medias-brazen-double-standard-sex-scandals>. This study shows that between March 7-25, 2018, the CBS evening news broadcast 8 minutes 45 seconds of "news" relative to alleged sex scandals involving President Trump. By contrast, the CBS Evening News "totally ignored" a February 11, 1994 appearance by Paula Jones where she accused President Clinton of sexual harassment. Likewise, CBS News ignored Juanita Broaddrick, who accused President Clinton of rape.

13. On March 22, 2018, MRC published a study by its Geoffrey Dickens of the intentional news distortion of the aftermath of the mass murder incident at Marjory Stoneman Douglas High School in Parkland, Florida, found online at <https://www.newsbusters.org/blogs/nb/geoffrey-dickens/2018/03/22/nets-parkland-anti-gun-activists-overwhelm-gun-rights-advocates>. The study found that the three legacy networks, including CBS, aired "69 stories plus an additional nine interviews, talking about the students' anti-gun efforts. During that same time, these networks failed to run even a single story mentioning any of the students from the same

high school (like Kyle Kashuv) who have openly championed the Second Amendment".

### **Discussion**

14. At paragraph 5 of FCC 18-84, the Commission wrote:

Stolz notably does not allege that the purported improper actions occurred at a CBSR radio station subject to the transaction. Rather, he asserts that his unadjudicated, unsubstantiated, and conclusory news distortion claim against CBS's *television* stations presents sufficient circumstances to investigate CBSR's qualifications to be a Commission licensee. We disagree. Under established Commission policy, there is "no presumption that misconduct at one station is necessarily predictive of the operation of the other stations.

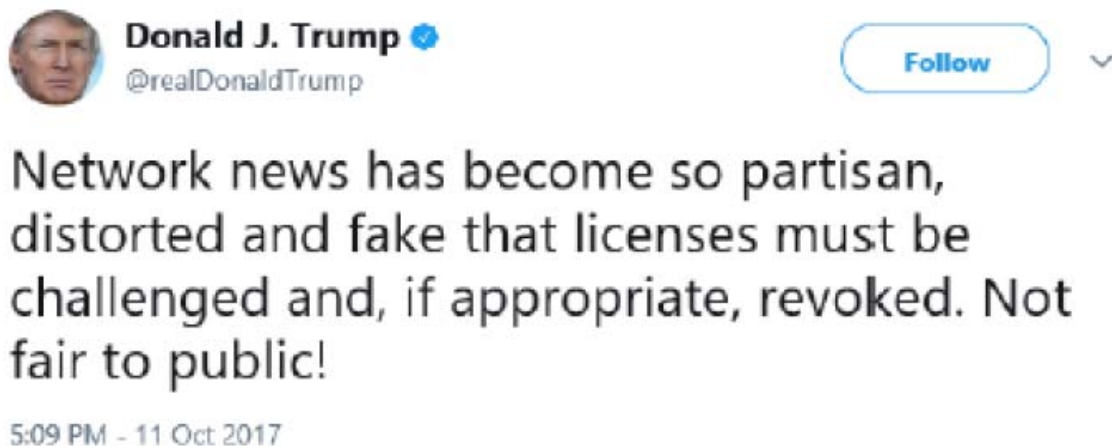
And yet, the non-broadcast misconduct of an individual who was the principal of a broadcast licensee led the FCC to revoke all of his broadcast licenses. ***Contemporary Media, Inc.***, 12 FCC 14254 (ALJ, 1997), *affirmed*, 13 FCC Rcd 14437 (FCC en banc, 1998), *recon. den.*, 14 FCC Rcd 8790 (1999), *affirmed sub nom. Contemporary Media, Inc. v FCC*, 214 F.3d 187 (D. C. Cir. 2000), *cert. den.*, 532 U.S. 920 (2001). The point is, that by engaging in intentional news distortion, CBS Corporation has placed its basic character qualifications to be the licensee of any type of broadcast station in issue. Under ***Jefferson Radio***, it was illegal for the FCC to grant the applications in the above-referenced docket until the FCC conducted a full and fair hearing to determine whether CBS Corporation possessed the basic character qualifications required of broadcast licensees. Such a hearing was held in the 1970s with respect to the alleged "slanting, distortion or suppression of news" by WJIM(AM), WJIM-FM and WJIM-TV, Lansing, Michigan. ***Gross Telecasting, Inc.***, FCC 74-374, 43 FCC 2d 543, 550 (HDO, 1974).



Such a hearing must be held immediately. Petitioners renew their request that they be made parties respondent to such a hearing.

### **Conclusion**

15. Once again, we need to remind the FCC Commissioners of President Trump's tweets of October 11, 2017:




16. In view of the foregoing, Petitioners urge that the Commission vacate FCC 18-84 and all prior rulings in this docket, rescind the grants of all applications therein, and, in addition to the heretofore unresolved issues against Entercom Communications Corporation and its subsidiaries, designate all said applications in MB Docket No. 17-85 for a hearing before an

independent Administrative Law Judge to determine whether CBS Corporation has engaged in "intentional news distortion", and, if so, what effect that would have on its basic character qualifications to be able to assign its 177 radio stations to Entercom Communications Corporation. This relief would be consistent with the FCC's designation for hearing of the applications involved in the Sinclair-Tribune merger.

**WHEREFORE**, it is urged that this Petition for Reconsideration **BE GRANTED** and that relief as requested herein **BE GRANTED**.

Respectfully submitted,

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DATED: July 26, 2018

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**For Immediate Release****STATEMENT OF CHAIRMAN AJIT PAI ON  
SINCLAIR/TRIBUNE TRANSACTION**

WASHINGTON, July 16, 2018—Federal Communications Commission Chairman Ajit Pai issued the following statement today announcing circulation of a draft hearing designation order regarding the Sinclair/Tribune transaction:

“Based on a thorough review of the record, I have serious concerns about the Sinclair/Tribune transaction. The evidence we’ve received suggests that certain station divestitures that have been proposed to the FCC would allow Sinclair to control those stations in practice, even if not in name, in violation of the law. When the FCC confronts disputed issues like these, the Communications Act does not allow it to approve a transaction. Instead, the law requires the FCC to designate the transaction for a hearing in order to get to the bottom of those disputed issues. For these reasons, I have shared with my colleagues a draft order that would designate issues involving certain proposed divestitures for a hearing in front of an administrative law judge.”

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**Office of Chairman Ajit Pai: (202) 418-1000**

**Twitter: @AjitPaiFCC**

**[www.fcc.gov/leadership/ajit-pai](http://www.fcc.gov/leadership/ajit-pai)**

*This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).*

## **CERTIFICATE OF SERVICE**

It is hereby certified that true copies of the foregoing "Petition for Reconsideration" have been served by e-mail and first-class United States mail, postage prepaid, or by e-mail only where shown by "\*", on this 26<sup>th</sup> day of July, 2018 upon the following:

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A handwritten signature in black ink, appearing to read "D. Kelly", written in a cursive style.

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Dennis J. Kelly