

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In re Applications of	)	
	)	
Allbritton Communications Co.	)	MB Docket No. 13-203
	)	BTCCDT-20130809ACD
For Consent to Transfer of Control of WJLA-TV, Washington, DC, to Sinclair Television Group, Inc.	)	
	)	
WRGT Licensee, LLC, for Assignment of License of WRGT-TV, Dayton, Ohio, to WRGB Licensee, LLC (New Nevada LLC)	)	BALCT-20031107AAU
	)	
	)	
<i>et al.</i>	)	BALCT-20031107ABB
	)	BALCT-20031107ABM
	)	BTCCT-20031107AAF
	)	BTCCT-20031107AAP
TO THE COMMISSION		

**SUPPLEMENT TO APPLICATION FOR REVIEW**

The Rainbow PUSH Coalition (“Rainbow PUSH”) respectfully supplements its August 25, 2014 Application for Review by calling to the Commission’s attention new evidence that Sinclair Television Group, Inc. (“Sinclair”) controls Cunningham Broadcasting Corp. (“Cunningham”), and that Sinclair is in violation of the rules governing duopolies and unauthorized transfers of control, has abused the retransmission consent process, and has coercively attempted to dissuade a party from exercising its right to petition the Commission for redress of grievances.

**Summary**

Thirty days ago, new information came to light that bears directly on Sinclair’s basic qualifications to be a broadcast licensee. Attendant to a hotly contested retransmission consent dispute, Dish Network L.L.C. (“Dish”) filed and then amended a formal complaint that asserts – with witness testimony under penalty of perjury and e-mail records – that Sinclair took the position that it has *de jure* control of Cunningham and thus, under the STELA Reauthorization Act of 2014 (“STELAR”), can represent Cunningham and other companies in retransmission consent negotiations. Since 2002, Sinclair has been telling the FCC that it does not even have *de facto*

control of Cunningham, however. Further, Sinclair allegedly told Dish that it has the right to “be in ‘control’” of Cunningham (and other broadcasters) by virtue of “grandfathering rights provided by a combination of statutory provisions and FCC regulations,” an obviously frivolous assertion, but that if Dish nonetheless refused to allow Sinclair to bargain on behalf of Cunningham (and other companies), or if Dish complained to the FCC, Sinclair would cease negotiations and keep its stations off Dish for a year. All of this raises profound questions of basic qualifications based on Sinclair’s now-admitted control of Cunningham, as well as Sinclair’s misrepresentations to the Commission, violations of the rules governing duopolies, abuse of the retransmission consent process, and the use of coercion to attempt to prevent a party from petitioning the FCC for redress of grievances.

### **I. The Record Thus Far**

The record below establishes these critical facts:

- In 1991, Sinclair established a sham company, Glencairn Ltd. (“Glencairn”) to hold licenses Sinclair was not permitted to hold under the duopoly rule. Ruling in 2001 on a 1999 petition to deny filed by Rainbow PUSH, the Commission concluded that Sinclair controlled Glencairn; the Commission fined each company \$40,000. Commissioner Capps would have designated the matter for hearing.<sup>1</sup>
- When faced with such an unequivocal finding of ownership fraud, every law abiding licensee would have immediately expressed remorse and come into compliance. Sinclair did the opposite and created, in Glencairn’s place, a new and even more brazen sham entity known as Cunningham Broadcasting Corp. (“Cunningham”), almost every aspect of which was controlled by Sinclair.<sup>2</sup> In the order on review, the Bureau

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<sup>1</sup> *Glencairn Ltd.*, 16 FCC Rcd 22236, 22258 (2001), *aff’d without reaching the merits* in *Rainbow/PUSH Coalition v. FCC*, 330 F.3d 539 (D.C. Cir. 2003), *rehearing denied*, 2003 U.S. Lexis 18829 (September 10, 2003).

<sup>2</sup> In particular, to create Cunningham, Glencairn President Edwin Edwards was ejected from Glencairn and, in his place, Sinclair installed Mrs. Carolyn Smith (deceased in 2012), the mother of the four brothers who control Sinclair. To manage Cunningham, Mrs. Smith hired the only person on the planet who a judge had found to be controlled by Sinclair; and during her tenure she made no decisions in Cunningham’s interest and only made decisions in Sinclair’s interest. Sinclair imposed on Cunningham the same stringent control protocols involving financing, staffing and programming as those that had characterized the Sinclair/Glencairn relationship; all of these protocols worked to the disadvantage of Glencairn and to the advantage of Sinclair for no apparent legitimate business reason. *See* Petition to Deny, And For Other Relief, BALCT-20031107AAU, *et al.*, at 4-7 (filed Dec. 19, 2003) (“Rainbow PUSH 2003 Petition to Deny”) at 4-

appeared to maintain that since the Commission only issued a forfeiture and did not designate for hearing in *Glencairn Ltd.*, Sinclair had free rein to exercise *de facto* control of Cunningham.<sup>3</sup>

Based just on the record to date, three straightforward questions ought to be designated for hearing:

(1) In the wake of *Glencairn Ltd.*, did Sinclair exercise *de facto* control of Cunningham?

(2) Does it continue to do so?

And (3), has Sinclair at all times been candid and forthcoming with the Commission regarding its relationship with Cunningham?

## **II. Sinclair's Abuse of STELAR And Attempt to Coerce An MVPD Not To File A Complaint With The FCC Render Sinclair Unqualified To Be A Licensee**

As a result of new information summarized below, three additional issues should be designated for hearing:<sup>4</sup>

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14. Sinclair controlled every material element of Cunningham's operation, operating as though *Glencairn Ltd.* had never been decided.

<sup>3</sup> In a startling rewriting of history, the Bureau held that Sinclair's behavior "had been favorably reviewed by the Commission in *Glencairn Ltd.*" *Allbritton Communications Co.*, MB Docket No. 13-203, DA 14-1055 (Media Bureau, released July 24, 2014 ("*Allbritton*"). It is rather unusual for an agency to interpret its own forfeiture order as a green light that should allow a licensee to continue and expand the misconduct that drew the forfeiture. In *Glencairn Ltd.*, the Commission's justification for imposing forfeiture rather than designating a hearing was Sinclair's (purported) "reliance on past staff decisions" leading to "miscalculations on the part of Sinclair and *Glencairn* as to what was permissible." *Id.*, 16 FCC Rcd at 11148. Thus, after *Glencairn Ltd.*, Sinclair was on notice of its "miscalculations" and thus should have known that the Commission expected it to put a stop to its misconduct. The imposition of conditions upon the transfers to *Glencairn* at issue in the case should also have made it clear to Sinclair that the Commission expected it to stop controlling *Glencairn*.

<sup>4</sup> The imminent resolution of the carriage dispute does not moot the questions presented below. First, Sinclair's behavior has already caused damage to consumers because, on August 26, 2015, a record 129 stations went dark on an MVPD's platform. Further, Sinclair has not promised to stop its misconduct and, thus, the scenario that led to the 129 stations going dark on Dish is "capable of repetition, yet evading review" with other MVPDs in the months ahead. *See, e.g., Burlington Northern Railroad Company v. Surface Transportation Board*, 75 F.3d 685, 690 (D.C. Cir. 1996) (orders of less than two years' duration generally evade review). Finally, as shown below, Sinclair's misconduct speaks volumes about Sinclair's basic qualifications to be a licensee.

(4) Did Sinclair violate STELAR by attempting to require an MVPD, Dish, to accept Sinclair as the bargaining agent for 32 stations Sinclair knew it was barred by STELAR from representing?

(5) Did Sinclair abuse the retransmission consent process by negotiating in bad faith?

(6) Did Sinclair attempt to coerce Dish by threatening it with non-carriage of 151 stations for a year if Dish complained to the FCC about Sinclair's frivolous claim of having *de jure* control of stations it does not own?

When broadcasters control more stations than the law allows, one consequence is the distortion of the retransmission consent process. This distortion happens when a television broadcaster like Sinclair insists on bargaining on behalf of its own stations *and* other stations, in the same markets, that the broadcaster openly or secretly controls. In this way, a broadcaster can exercise enormous and oligopolistic leverage to extract, from the MVPD, compensation well beyond that which an undistorted competitive marketplace would produce.<sup>5</sup> Consumers are harmed by this behavior because these unnaturally-imposed costs placed on the MVPD must be passed on to the consumer. A consumer wishing to enjoy a wide variety of MVPD channel offerings, or who wishes to obtain the clearer-than-over-the-air signals offered by MVPDs, cannot avoid these costs, since local TV stations are always offered on the basic tier, which all MVPD customers must take.

To avoid this scenario, Congress passed STELAR, which directed the Commission to prohibit broadcast stations from “coordinating negotiations or negotiating on a joint basis with another television broadcast station in the same local market...to grant retransmission consent under which section to a multichannel video programming distributor, unless such stations are

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<sup>5</sup> See Rainbow PUSH Letter, WRGT Licensee, LLC *et al.*, BALCT-20031107AAU *et al.*, and MediaComm Communications Corporation v. Sinclair Broadcast Group, Inc., CSR-8233-C and CSR-8234-M (filed December 11, 2009) at 5-6 (“Sinclair has used its bottleneck control over multiple stations in a market as a bargaining chip” which “harms consumers by limiting diverse viewpoints in news content as well as general programming.”)

directly or indirectly under common *de jure* control permitted under the regulations of the Commission[.]”<sup>6</sup> STELAR has been obeyed by nearly all television licensees – but not by Sinclair.

On August 26, 2015, Sinclair pulled from Dish Network 129 stations, causing by far the largest retransmission consent catastrophe in history.<sup>7</sup> This debacle was so devastating that, for the first time, the Chairman of the FCC needed to become personally involved in brokering a settlement.<sup>8</sup>

During the negotiations leading up to the August 26 debacle, Dish filed a complaint with the FCC, which it subsequently amended;<sup>9</sup> these documents are appended hereto. Attached to the Dish Initial Complaint and the Dish Amended Complaint were a series of e-mails flowing between Dish and Sinclair during their negotiations. The pertinent events are set out in the August 15, 2015 Declaration of Melisa Ordonez, which follows the signature pages of the Dish Initial Complaint and the Dish Amended Complaint. For ease of reference, Ms. Ordonez’ Declaration is attached to this Supplement.

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<sup>6</sup> 47 U.S.C. §325(b)(3)(C)(iv). The Commission has complied with the statute. *See Implementation of Sections 101, 103, and 105 of the STELA Reauthorization act of 2014, Order*, 30 FCC Rcd 2380, 2381 ¶ 4 (February 18, 2015).

<sup>7</sup> Laura Wagner, FCC Hopes to Resolve Largest TV Blackout in U.S. History,” npr.org, August 26, 2015.

<sup>8</sup> *Id.*; *see* Statement of Chairman Tom Wheeler on Retransmission Dispute Between Dish Networks and Sinclair Broadcasting, August 26, 2015 (“We will not stand idly by while millions of consumers in 79 markets across the country are being denied access to local programming.”)

<sup>9</sup> *Dish Network L.L.C. v. Sinclair Broadcast Group, Inc.*, Verified Retransmission Complaint and Request for Preliminary Injunctive Relief of Dish Network L.L.C., MB Docket No. 12-1 (August 15, 2015) (“Dish Initial Complaint”); *Dish Network L.L.C. v. Sinclair Broadcast Group, Inc.*, Verified Amended and Restated Retransmission Complaint and Request for Preliminary Injunctive Relief of Dish Network L.L.C., MB Docket No. 12-1 (August 26, 2015) (“Dish Amended Complaint”). While Rainbow PUSH is concerned about Sinclair’s ownership structure abuse as it infected the retransmission consent negotiations with Dish, Rainbow PUSH takes no position the underlying retransmission consent dispute.

Based on Ms. Ordonez' Declaration and the accompanying e-mails, it appears that Sinclair attempted to require Dish to allow Sinclair to bargain on behalf of 32 stations (including Cunningham's stations) that Sinclair *does not own*. Further, if Dish refused to allow Sinclair to represent the non-owned stations in the negotiations, and if Dish were to complain to the FCC, Sinclair threatened to terminate the negotiations and not negotiate further for a year.<sup>10</sup> Ordonez Declaration, ¶9.<sup>11</sup>

How – in light of STELAR - did Sinclair justify its demand to bargain on behalf of stations it does not own? The answer is that Sinclair asserted that it had “*de jure* control” of these stations and, therefore, was permitted under STELAR to bargain on their behalf. To support its claim of having *de jure* control of the 32 non-owned stations, Sinclair wrote to Dish that, because of the existence of certain Local Marketing Agreements (“LMAs”) and Joint Sales Agreements (“JSAs”),

Through grandfathering rights provided by a combination of statutory provisions and FCC regulations ... Sinclair has the legitimate and lawful right to be in ‘control’ of each of the stations referenced in your e-mail.

*See* Ordonez Declaration, ¶7. Really, what “grandfathering rights?” What “statutory provisions and FCC regulations?” And how do LMAs and JSAs give Sinclair “the legitimate and lawful right” to be in *de jure* “control” of stations *it does not own*?

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<sup>10</sup> On August 15, Sinclair and Dish reached a temporary cease-fire; however, on August 26 the negotiations again fell apart and 129 stations in 79 markets were taken dark on Dish – including 121 stations Sinclair owns and eight stations it does not own. Thereupon Chairman Wheeler ordered the Bureau to convene an emergency meeting with Sinclair and Dish; shortly after that order was given, Sinclair and Dish came to terms subject to a two-week period for documentation of their deal. *See* Lynn Stanton, FCC Staff to Work with Dish, Sinclair Retrans Negotiators, TR Daily, August 26, 2015; Sinclair and Dish Reach Retrans Deal, TVNewsCheck, August 26, 2015.

<sup>11</sup> In the second round of negotiations (August 15-26, 2015) that culminated in the 129-station blackout, Sinclair insisted on negotiating on behalf of eight stations it does not own, including Cunningham's Baltimore, Charleston WV, Columbus OH, and Dayton stations captioned above. *See* Dish Amended Complaint, p. 10. Those eight stations were among the 129 stations that went dark on Dish on August 26, 2015.

Sinclair, which practically invented LMAs and JSAs, knows very well that its “explanation” was frivolous and articulated in bad faith.

By definition, *de jure* control is *tighter* than *de facto* control.<sup>12</sup> Thus, at the same time that Sinclair was telling the FCC that it did not even have *de facto* control of Cunningham, Sinclair was telling Dish that it actually has *de jure* control of Cunningham.<sup>13</sup> These assertions cannot both be correct. Either Sinclair has not been candid with the FCC, or it was not being candid with Dish, or both. Which is it?

It is not Rainbow PUSH’s responsibility to guess the answer to this question. It is up to Sinclair to harmonize – if it can – its apparently irreconcilable assertions.

Finally, the Commission should take note of how Sinclair attempted to coerce Dish to negotiate only on condition of allowing Sinclair to represent stations that Sinclair knew very well

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<sup>12</sup> There is no mystery or ambiguity regarding what the FCC regards as *de jure* control: it is evidenced by holdings of greater than 50 percent of the voting stock of a corporation or, in the case of a partnership, general partnership interests. *See* 47 C.F.R. §1.2110(c)(2); *Corporate Ownership Reporting and Disclosure by Broadcast Licensees (R&O)*, 97 FCC2d 997, 1018 and n. 47 (1984) (an ownership interest “exceeding 50%” “reflects the line of *de jure* control”). Further, there is no ambiguity regarding whether a licensee can abdicate *de jure* control to another entity on occasion. *See, e.g., Salem Broadcasting, Inc.*, 6 FCC Rcd 4172, 4172 (MMB 1991) (“ultimate responsibility over essential station matters, such as personnel, programming and finances, is nondelegable”). Two weeks ago, the Commission reaffirmed its clear interpretation of what constitutes *de jure* control. *See Implementation of Section 103 of the STELA Reauthorization Act of 2014, Notice of Proposed Rulemaking*, Docket 15-216, FCC 15-109 (released September 2, 2015) at 12 n. 65:

We note that Congress’s inclusion of the term “*de jure* control” in Section 103 of STELAR was intended to ensure that only those stations that come within the scope of this term as defined by the Commission (*e.g.*, same market stations owned by an entity that holds over 50 percent of the stations’ voting stock) would be permitted to negotiate jointly for retransmission consent [citing cases]. **Thus, stations operating under joint sales agreements (“JSAs”), local marketing agreements (“LMAs”), or similar “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”** (emphasis supplied).

<sup>13</sup> While definitions of legal terms sometimes differ depending on their statutory context (*e.g.*, control is determined by the SEC and IRS under slightly different sets of rules than the rules used by the FCC), in this instance the relevant definitions are both found in the realm of the Communications Act and the Commission’s rules.

that it was prohibited by STELAR from representing in such a negotiation. On a July 21 call with Ms. Ordonez and Warren Schlichting, Dish's SVP/Media Sales and Programming,

Sinclair's negotiating representative indicated that he recognized that the Federal Communications Commission ("FCC") might agree with DISH's view that Sinclair does not have the right to negotiate for the Non-Sinclair Controlled Stations. Sinclair's negotiating representative, nevertheless, stated that the current DISH-Sinclair retransmission consent agreement **would expire before the FCC would rule on a retransmission consent complaint, if DISH were to file one.** Sinclair's negotiating representative suggested that DISH should focus on signing a renewal with Sinclair **rather than pursuing relief before the FCC.** When I reiterated DISH's objection to including the Non-Sinclair Controlled Stations in any new agreement, Sinclair's negotiating representative stated that **if that was DISH's position, DISH and Sinclair should issue a press release announcing that the two companies will not be doing business with one another and that the two parties would not negotiate again for a year.**

Ordonez Declaration, ¶9 (emphasis supplied). The only way to read this is that Sinclair was telling Dish that the FCC is entitled to no respect because it moves too slowly to help you, but if you press your case at the FCC that we are violating STELAR, we will withdraw our programming from your satellite platform and will not negotiate further with you for a year.

While Sinclair was unsuccessful in coercing Dish to eschew an FCC filing, its lack of success does not preclude relief. A mugger still goes to jail even if the muggee fights back.<sup>14</sup>

An attempt to coerce a party from filing a complaint with the FCC is perhaps the ultimate abuse of process: it is akin to infringing upon a party's First Amendment right to petition for redress of grievances. The Commission has made it clear that it will not tolerate a licensee or applicant attempting to coerce another party from participating in Commission proceedings,<sup>15</sup>

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<sup>14</sup> Sinclair has also attempted repeatedly, although without success, to bully Rainbow PUSH in an attempt to discourage it from participating in this proceeding. In 2010, Sinclair went so far as to seek sanctions against Rainbow PUSH for its routine filing of a letter that brought new evidence to the Commission and asked for an end to the agency's (then seven-year) delay in issuing a ruling. See Letter of David Honig to Marlene H. Dortch, Re: WRGT Licensee, LLC *et al.*, BALCT-20031107AAU *et al.* (January 6, 2015) at 3.

<sup>15</sup> Threats aimed at discouraging participation in an FCC proceeding go to a licensee's character and will give rise to an abuse of process issue. In *Patrick Henry*, 69 FCC2d 1305 (1978), the Commission designated a character issue into the motivations of a licensee whose counsel had threatened a petitioner to deny in an effort to force dismissal of the underlying petition. *Patrick Henry* cited *Fort Collins Broadcasting Co., Inc.*, 38 FCC2d 707 (1972), a prior case of "first

particularly where the underlying allegations “are specious, with little or no factual or legal basis”, which “would tend to raise the question [of whether the party] was acting in good faith.”<sup>16</sup>

This level of disrespect for the rule of law ought to disqualify Sinclair from holding any broadcast licenses. The FCC’s ability to regulate without constantly looking over its licensees’ shoulders depends on the willingness of its licensees to obey the rules even when the agency is not looking. Clearly – as we have seen again and again and again since Sinclair first cooked up its ownership scam in 1991, this company cannot be trusted either to obey or respect the law.

### Conclusion

Overwhelmingly, the time has come for the Commission to do what Congress required it to do in Section 309(e) of the Communications Act.

Respectfully submitted,

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Counsel for the Rainbow PUSH Coalition

Attached:

- Dish Initial Complaint, August 15, 2015
- Dish Amended Complaint, August 26, 2015

September 14, 2015

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impression” that had clearly articulated the Commission’s concern with this type of behavior. *Patrick Henry* remains good law. See *David D. Oxenford, Esq.*, 26 FCC Rcd 392, 396 n.24 and accompanying text (MB Audio Division 2011). See also *Character Qualifications in Broadcast Licensing, Report, Order and Policy Statement*, 102 FCC2d 1179, 1211 (1986) (“such misconduct as the filing of strike applications and harassment of opposing parties, which threatens the integrity of the Commission’s licensing processes, will also continue to be considered as bearing on character”) (subsequent history omitted).

<sup>16</sup> *Radio Carrollton*, 43 RR2d 29, 43 (1978). As shown above, Sinclair’s requirement that Dish act in concurrence with Sinclair’s frivolous theory that “grandfathering rights provided by a combination of statutory provisions and FCC regulations” give Sinclair *de jure* control of stations Sinclair does not own (*see p. 6 supra*) raises the question of whether Sinclair acted in bad faith.

## EXHIBIT

### **DECLARATION OF MELISA ORDONEZ (appended to the Dish Initial Complaint and the Dish Amended Complaint)**

1. I, Melisa Ordonez, being over 18 years of age, swear and affirm as follows:
2. I make this declaration using facts of which I have personal knowledge or based on information provided to me, and in connection with DISH Network L.L.C.'s ("DISH's") attempt to negotiate for a renewal of its retransmission consent agreement for local broadcast stations owned by Sinclair Broadcast Group, Inc. ("Sinclair").
3. I am currently the Programming General Manager for DISH. In that capacity, I am responsible for negotiating retransmission consent contracts for DISH with every local broadcast station in the United States. I am the lead negotiator in DISH's effort to negotiate for a renewal of its retransmission consent agreement for local broadcast stations owned by Sinclair.
4. I first contacted Sinclair on June 9, 2015 to discuss renewal of DISH's retransmission consent agreement for carriage of the 121 local broadcast stations over which Sinclair exercises *de jure* control, or with whom it has a joint negotiating arrangement (the "Sinclair Stations"). Sinclair finally sent a first response on July 9, 2015.
5. Sinclair's July 9, 2015 offer proposed that the new agreement would cover "all station Sinclair owns or has *de jure* control over, as a result of LMAs, JSAs or similar agreements, which are being provided services pursuant to grandfathering of FCC rules (as well as after acquired stations, pursuant to existing provision on this point in existing agreement)." See Exhibit 1. Then, on July 25, 2015, Sinclair sent the list of stations that it demanded to negotiate for. See Exhibit 2. The station list that Sinclair sent included the Sinclair Stations, plus 32 other stations that are not under Sinclair's direct or indirect *de jure* control and which are located in local markets where there is at least one station under direct or indirect common *de jure* control with Sinclair (the "Non-Sinclair Controlled Stations").
6. In an email to Sinclair's negotiating representative dated July 20, 2015, 12:06 AM, I noted that Sinclair was proposing to "negotiate on behalf of stations not directly or indirectly under common *de jure* control of Sinclair in the same DMA," which expressly violates Section 325 of the Communications Act, as amended by STELAR. I explicitly requested that "Sinclair stop coordinating negotiations or negotiating on a joint basis" for the stations in Sinclair's proposal that Sinclair does not own. See Exhibit 2, pp. 4-5.
7. In an email dated July 20, 2015, 8:14 AM, Sinclair's negotiating representative stated that "Sinclair disagrees with your legal conclusion that we have offered to negotiate on behalf of any stations with respect to which we do not have 'de jure' control," claiming that "[t]hrough grandfathering rights provided by a combination of statutory provisions and FCC regulations. . . Sinclair has the legitimate and lawful right to be in 'control' of each of the stations referenced in your email" because of the existence of certain Local Marketing Agreements ("LMAs") and Joint Sales Agreements ("JSAs"). See Exhibit 2, at p. 2.
8. In an email dated July 21, 2015, 12:26 PM, I reiterated DISH's disagreement with Sinclair's view that Sinclair is permitted to negotiate on behalf of the Non Sinclair-Controlled Stations. I noted that under FCC rules, "*de jure* control is evidenced by holdings of greater than 50 percent of

the voting stock of a corporation, or in the case of a partnership, general partnership interests” and asked that Sinclair state “which, if any, of the referenced stations meet this requirement with respect to Sinclair.” See Exhibit 2, at p.1.

9. On July 21, 2015, I spoke by telephone with Sinclair. Warren Schlichting, Senior Vice President, Media Sales and Programming for DISH, was also on the telephone call. During the call, Sinclair’s negotiating representative indicated that he recognized that the Federal Communications Commission (“FCC”) might agree with DISH’s view that Sinclair does not have the right to negotiate for the Non-Sinclair Controlled Stations. Sinclair’s negotiating representative, nevertheless, stated that the current DISH-Sinclair retransmission consent agreement would expire before the FCC would rule on a retransmission consent complaint, if DISH were to file one. Sinclair’s negotiating representative suggested that DISH should focus on signing a renewal with Sinclair rather than pursuing relief before the FCC. When I reiterated DISH’s objection to including the Non-Sinclair Controlled Stations in any new agreement, Sinclair’s negotiating representative stated that if that was DISH’s position, DISH and Sinclair should issue a press release announcing that the two companies will not be doing business with one another and that the two parties would not negotiate again for a year.

10. Unless the FCC grants DISH’s request for preliminary injunctive relief, DISH will be irreparably harmed. Sinclair is violating the Communications Act and the Commission’s rules by demanding to include the Non-Sinclair Controlled Stations in any new agreement as a condition for DISH to receive retransmission consent to carry the Sinclair Stations. Absent relief, both DISH and consumers will be irreparably harmed. If DISH refuses to capitulate to Sinclair’s bad faith tactics, Sinclair may black out all 153 stations, leaving DISH subscribers in 79 markets without access to one or more local broadcast stations. DISH will be irreparably harmed if any customers choose to switch TV providers and never return to DISH. And, if DISH is forced to include the Non-Sinclair Controlled Stations in a contract renewal for the Sinclair Stations, the burden from carriage of potentially unwanted stations will be irreparably inflicted on DISH and its subscribers even if Sinclair is ultimately required to unwind the agreement as a result of the Commission’s decision.

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

Executed on August 15, 2015

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Melisa Ordonez  
Programming General Manager

## CERTIFICATE OF SERVICE

I, David Honig, hereby certify that I have this 14<sup>th</sup> day of September, 2015 caused a copy of the foregoing "Supplement to Application for Review" to be delivered by electronic mail to the following:

Hon. Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12th St. S.W.  
Washington, D.C. 20554

Hon. Mignon Clyburn  
Commissioner  
Federal Communications Commission  
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Hon. Ajit Pai  
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Hon. Jessica Rosenworcel  
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Hon. Michael O'Rielly  
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Federal Communications Commission  
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William Lake, Esq.  
Chief, Media Bureau  
Federal Communications Commission  
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Washington, D.C. 20554

I further certify that on September 14, 2015 I caused the foregoing "Supplement to Application for Review" to be delivered by U.S. First Class Mail, postage prepaid, to the following:

Jerald Fritz, Esq.  
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David Honig