

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 WRGTV Licensee, LLC (New Nevada LLC)	)	BALCT-20031107AAU
	)	
	)	
<i>et al.</i>	)	BALCT-20031107ABB
	)	BALCT-20031107ABM
	)	BTCCT-20031107AAF
	)	BTCCT-20031107AAP

TO THE COMMISSION

**REPLY TO OPPOSITION TO SUPPLEMENT TO APPLICATION FOR REVIEW**

The Rainbow PUSH Coalition (“Rainbow PUSH”) respectfully replies to the September 29, 2015 “Opposition to Supplement to Application for Review” (“Opposition”) filed by Sinclair Broadcast Group, Inc. (“Sinclair”). The record shows that Sinclair acted in bad faith to abuse the retransmission consent process, and coercively attempted to dissuade a party from exercising its right to petition the Commission for redress of grievances. These are disqualifying offenses and require examination in hearing.

**I. SINCLAIR WILLFULLY VIOLATED THE FCC’S GOOD FAITH  
RETRANSMISSION NEGOTIATION RULES**

Sinclair’s suggestion that it was permissible to require an MVPD to recognize Sinclair as the retransmission bargaining representative is based on an absurd reading of the STELA Reauthorization Act of 2014 (“STELAR”). STELAR prohibits a broadcast station from negotiating on a joint basis with another television broadcast station in the same local market to grant retransmission consent to an MVPD, unless such stations are directly or indirectly under common *de*

*jure* control.<sup>1</sup> As Sinclair well knows, however, in the world of communications law, “*de jure*” control requires holding greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, general partnership interests.<sup>2</sup> Yet Sinclair asserts that Rainbow PUSH’s Supplement “revolve[s] entirely around one, non-exhaustive example of what constitutes ‘*de jure*’ control, a term never clearly defined by the FCC.” Opposition at 8.

By claiming to rely on “[o]ther common definitions,” Sinclair ignored commonly understood FCC policy, despite the fact that Sinclair is a well-established FCC regulatee. Sinclair even admits that “past FCC decisions refer to ‘majority stock ownership’ as . . . an example of *de jure* control.” *Id.*

Congress would not have used the term “*de jure*” in STELAR without understanding its meaning in FCC regulatory parlance. As Sinclair had to know, prior to Congress acting, the Commission had adopted a prohibition on joint retransmission consent negotiations with an exception for stations commonly owned, operated or controlled – the well-known “attributable interest” standard. By replacing that exception with one that applied only where the stations met the *de jure* ownership standard, Congress clearly intended to narrow the exception. Sinclair cannot be allowed to willfully and knowingly turn a blind eye to the obvious intent of Congress. If Sinclair’s reading were credited, STELAR would have no impact.

Sinclair’s brazen refusal (at least for some period of time) to stop negotiating on behalf of stations over which it did not have *de jure* control is based on a disingenuous and frivolous interpretation of the statutory ban on joint negotiations. This misbehavior constitutes a particularly egregious violation of Section 325 of the Communications Act, as amended by STELAR. Further, Sinclair’s insistence that it had *de jure* control of stations is irreconcilable with its telling the

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<sup>1</sup> 47 U.S.C. §325(b)(3)(C)(iv).

<sup>2</sup> 47 C.F.R. §1.2110(c)(2); *see also Corporate Ownership Reporting and Disclosure by Broadcast Licensees, Report and Order*, 97 FCC2d 997, 1018 n.47 (1984) (explaining that exceeding a 50 percent ownership interest “reflects the line of *de jure* control”).

Commission – since 1991 – that it has not even had *de facto* control of a host of stations it has operated for other licensees.

## II. SINCLAIR IS UNQUALIFIED TO BE A LICENSEE

Commission licensees must serve “the public interest, convenience, and necessity.”<sup>3</sup> Holding a Commission authorization to operate a broadcast station is a privilege – not a right – and licensees must therefore be qualified for the Commission to afford them this privilege.

Violating the Communications Act or FCC rules or policies may affect a licensee’s character qualifications. Such violations are “possibly predictive of future conduct and . . . rais[e] concerns over the licensee’s future truthfulness and reliability.”<sup>4</sup>

Sinclair’s violation of the good faith negotiation obligation demonstrates its lack of fitness as a licensee. During the DISH retransmission consent dispute, Sinclair defied both long-standing Commission policy and the Communications Act. If the past is prologue, Sinclair will do so again.<sup>5</sup>

Sinclair suggests that because DISH and Sinclair successfully concluded their negotiations, and review of the DISH Complaint had been stayed, Sinclair must have been negotiating in good faith. Opposition at 11 n. 29. However, the fact that an agreement was eventually reached does not show that a party was not negotiating in bad faith. An MVPD, faced with an adversary that is negotiating in bad faith, may have little choice but to continue to bargain if its only other remedy is to

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<sup>3</sup> 47 U.S.C. §307(a).

<sup>4</sup> *Character Qualifications in Broadcast Licensing, Report, Order and Policy Statement*, 102 FCC2d 1179, 1209-10 (1986).

<sup>5</sup> Sinclair maintains that before the filing of the DISH Complaint, Sinclair’s General Counsel, Barry Faber, asked Media Bureau Chief William Lake whether the joint negotiation prohibition applied to “grandfathered LMA’s.” Opposition at 9-10 and Exhibit B. This conversation, the date of which was not provided (and a contemporaneous filing of which was neither made nor served on Rainbow PUSH) is evidence of nothing. Like his predecessors dating at least to Ken Cox, Mr. Lake does not issue oral declaratory rulings. Further, it does not appear that Mr. Faber asked Mr. Lake whether Sinclair could be the retransmission consent representative for stations that Rainbow PUSH has asserted that Sinclair controls *de facto* and that Sinclair had told DISH that it controls *de jure*.

walk away from the table and suffer an enormous economic loss.<sup>6</sup> Indeed, Sinclair's attempts to coerce DISH into not seeking recourse at the Commission raise a question of fact that warrants further investigation by the Commission.<sup>7</sup> Sinclair's violation of the good faith negotiation obligation, and its coercive tactics (if proven after investigation) must be explored in hearing.

Finally, there is no merit to Sinclair's objections going to the allegations' timeliness,<sup>8</sup> their suitability for adjudication,<sup>9</sup> their impact on viewers,<sup>10</sup> or their continuing pendency.<sup>11</sup> Nor is there

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<sup>6</sup> That apparently happened here inasmuch as the Commission never announced that it was opening an investigation of DISH's Complaint. Instead, the Commission simply encouraged the parties to work out their differences. *See* Statement of Chairman Tom Wheeler on Retransmission Dispute Between DISH Networks and Sinclair Broadcasting, August 26, 2015.

<sup>7</sup> Even if the Commission is not ready to designate a hearing, it must investigate further when the evidence discloses potentially disqualifying information and only the agency has the ability to obtain the facts. *See Bilingual Bicultural Coalition on the Mass Media v. FCC*, 595 F2d 621, 628-30 (D.C. Cir. 1978).

<sup>8</sup> The Supplement was timely. It was filed on the 30<sup>th</sup> day after DISH filed its Complaint and Rainbow PUSH first learned, or could have learned, of the underlying allegations. The Commission recognizes that parties may seek reconsideration of the denial of an application for review if it "relies on facts which related to events which have occurred or circumstances which have changed since the last opportunity to present such matters[.]" 47 C.F.R. §1.115(g)(1). Thus, Rainbow PUSH could have waited to file its newly-discovered, decisionally significant information until after the Commission rules on its Application for Review (if it is denied). Instead, Rainbow PUSH appropriately avoided triggering yet another potential round of this 17-year litigation by filing its Supplement promptly after learning of the new information the Supplement contained.

<sup>9</sup> The DISH Complaint was not "hearsay" (Opposition at 2) as it was supported by witness declarations and by Sinclair representatives' own e-mails.

<sup>10</sup> Whether a hearing is required does not depend on whether there is "any harm resulting" from the misconduct (*see* Opposition at 2 for Sinclair's suggestion to the contrary). Rather, a hearing is required based on whether the Communications Act or Commission rules have been violated. In any event, the public *is* harmed by Sinclair's behavior, which results in higher MVPD rates, in reduced program choices, and in diminished public confidence in the local broadcasters that are the primary sources for information citizens need in order to be civically engaged in a democracy. *See* Declaration of Rev. Steven Smith, appended to Rainbow PUSH Petition to Deny (WJLA-TV), MB Docket No. 13-203 and BTCCDT-20130809ACD (filed September 13, 2013) ("Sinclair has engaged in a host of practices that call into question its credibility and trustworthiness as a source of information. Sinclair's ownership or potential ownership of WJLA-TV would diminish my ability to rely with confidence on the accuracy and reliability of WJLA-TV's local programming, particularly including the station's news, which I have watched for decades and which I trust in great measure because its owner, Allbritton, has an unimpeachable reputation for transparency and lawful dealing.")

<sup>11</sup> The Commission's various routine license renewals and other authorizations to Sinclair did not purport to resolve the issues pending in this litigation (*see* Opposition at 3 for Sinclair's unsupported

any merit in Sinclair's suggestion that a potential resolution of the DISH Complaint would render the Rainbow PUSH allegations nonjusticiable.<sup>12</sup> Rainbow PUSH is not asking the Commission to rule on the DISH Complaint. Rather, Rainbow PUSH is asking the Commission to rule on whether certain facts presented in the DISH Complaint demonstrate that Sinclair:

1. controls stations it had told the FCC it did not control;
2. violated STELAR by attempting to require DISH to allow Sinclair to negotiate for 32 stations that Sinclair knew it was not allowed to represent;
3. abused the transmission consent process by repeatedly negotiating in bad faith; and
4. attempted to coerce DISH by threatening it with non-carriage of 151 stations for a year if DISH complained to the FCC.

Respectfully submitted,

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October 14, 2015

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contention to the contrary). Those issues remain pending, and they were reportable on Forms 303, 314 and 315 as unresolved character issues.

<sup>12</sup> Even if a party withdraws a complaint, the Commission must still consider whether the facts presented in the complaint require a hearing on the applicant's basic qualifications; otherwise, parties could "settle" their way out of disqualifying issues. See *Jefferson Radio, Inc. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964); *Evansville Skywave, Inc.*, 8 FCC Rcd 7009 (Rev. Bd. 1993) (finding unqualified the sole remaining applicant in a comparative hearing notwithstanding that the applicant had settled with its competitors.)

**CERTIFICATE OF SERVICE**

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

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

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David Honig