

May of 2004, the alleged decision to air “Stolen Honor: Wounds that Never Heal,” and the broadcast of “A POW Story: Politics, Pressure and the Media.”

As an initial matter, there are serious questions regarding the legitimacy of these apparent criticisms. Many appear to be form letters generated on web sites created by organizations with specific agendas and, thus, are not letters from viewers who have any real knowledge as to the programs or subjects on which they opine. For example, the letter by Renate S. Rose criticizing various programming by Sinclair merely repeats verbatim the suggested letter that an organization calling itself “Free Press” posted on its web site with a direct link for submission into this proceeding.² In fact, that individual attests to living in Honolulu, Hawaii, where Sinclair has no stations and provides no programming. Thus, there is no real basis for the commenter’s criticisms regarding Sinclair’s programming, and that letter and others of its ilk should be given no weight.

Moreover, the alleged viewer letters are factually inaccurate. For example, contrary to the accusations in many of those letters, Sinclair never publicly announced that it intended to air “Stolen Honor: Wounds that Never Heal,” a documentary regarding former Presidential candidate John Kerry’s view of the Vietnam War, and in fact, Sinclair did not broadcast that program.³ The program that Sinclair did air, “A POW Story: Politics, Pressure and the Media,” fairly presented all sides of the issues raised in the program and included supporters or

² See Brief Comment, Renate S. Rose (October 27, 2004); <http://www.freepress.net/Sinclair/dn.php> (last visited December 3, 2004); see also <http://www.stopsinclair.org/> (last visited December 3, 2004). Free Press is a radical political organization advocating drastic changes to the present media system.

³ See Sinclair Broadcast Group, Inc., News Release (October 19, 2004), available at www.sbg.net/press/press.shtml (last visited November 16, 2004).

representatives from the relevant political parties.⁴ Tellingly, no person filed a formal complaint with the FCC that any of the stations airing the program violated the Commission's Political Broadcast Rules.⁵

At bottom, the complaining individuals simply dislike Sinclair's programming decisions and desire to see programming that confirms their own viewpoints. Viewpoints, however, can be highly subjective, even among organizations focused on the same goal. For example, in the recent controversy over the ABC network broadcast of "Saving Private Ryan," the American Family Association, a conservative watchdog organization, urged its members and others to file thousands of formal indecency complaints with the FCC.⁶ In contrast, the Parents Television Council ("PTC"), a similar conservative organization, supported the network airing of the movie, downplaying the movie's repeated use of expletives and arguing that "[t]he content is not meant to shock, nor is it gratuitous."⁷ Given such subjectivity, it is no wonder that the FCC does not involve itself in the particular programming preferences of viewers, absent a specific violation of its rules.

As the Commission has stated, "licensees are accorded a great deal of discretion in the scheduling, selection and presentation of programs and announcements to be aired by their

⁴ See, e.g., Howard Kurtz, *Softened Strike: Sinclair Program Critical of Kerry, But More Balanced*, Washington Post, October 23, 2004, at C1 (quoting Consumers Union as stating "[i]n general, it appears Sinclair listened to the American people. Sinclair certainly was acting like a broadcaster should tonight.").

⁵ Of the forty stations airing the program, Sinclair is aware of only one viewer complaint involving station WLOS(TV). The Veterans Institute for Security and Democracy initially filed an informal complaint prior to the airing of the show but subsequently withdrew it after the program was broadcast.

⁶ See Lisa de Moraes, *Where aired, 'Private Ryan' Draws a Crowd*, Washington Post, November 13, 2004, at C1.

⁷ See *id.* (quoting Brent Bozell, president of PTC). PTC was one of the organizations that deluged the FCC with indecency complaints when U2 lead singer Bono used a single expletive while accepting a Golden Globe Award.

stations,”⁸ and “[t]he Commission’s role in overseeing program content is very limited.”⁹ Thus, any FCC action dictating a licensee’s programming content would be contrary to Commission policy.¹⁰ Moreover, the Courts have long held that “broadcasters are entitled under the First Amendment to exercise the widest journalistic freedom consistent with their public duties.”¹¹ The complaining group of individuals appear to have forgotten that the First Amendment protects all speech, not just that which supports their own agenda.

Some commenters argued that, contrary to the goals of localism, increased media consolidation is leading to the suppression or biased presentation of information.¹² For example, one commenter, the Brennan Center, claimed that Sinclair improperly prevented its ABC-affiliate stations from airing a particular Nightline episode.¹³

However, the Nightline episode in question was an editorial attempt by a broadcast network to influence public opinion about the war in Iraq, and Sinclair was not obligated to air that viewpoint.¹⁴ Stations and networks routinely exercise programming judgments, and as

⁸ *National Broadcasting Co., Inc.*, 14 FCC Rcd 9026, at ¶ 18 (1999); *see also Serafyn v. FCC*, 149 F.3d 1213 (D.C. Cir. 1998) (A mere dispute regarding a broadcaster’s editorial decision is not sufficient to establish that a licensee has engaged in news distortion.).

⁹ *In re Complaints Against Various Television Licensees Concerning Their February 1, 2004, Broadcast of the Super Bowl XXXVIII Halftime Show*, File No. EB-04-IH-0011, Notice of Apparent Liability for Forfeiture, at ¶ 7 (September 22, 2004).

¹⁰ Sinclair supports the conclusions of the NAB that the imposition of new broadcast obligations are unwarranted and unauthorized and that the FCC’s inquiry into the level of broadcasters’ local service is unnecessary. *See* Comments of the National Association of Broadcasters (November 1, 2004).

¹¹ *FCC v. League of Women Voters*, 468 U.S. 364, 378 (1984) (internal citations omitted).

¹² *See* Comments of the Brennan Center for Justice *et al.*, at 26-30 (November 1, 2004); Comments of the Consumer Federation of America and Consumers Union *et al.*, at 10-12, 30-31 (November 1, 2004).

¹³ *See* Comments of the Brennan Center *et al.*, at 28.

¹⁴ *See* “Nightline” to Read Off Iraq War Dead, *The New York Times*, April 28, 2004, at A9 (quoting Leroy Sievers, an executive producer of Nightline as stating that his inspiration for the

stated above, the Commission has correctly determined that it will not interfere in those judgments, absent an express violation of a legitimate Commission rule. While various commenters appear to believe that viewers have an unqualified right to view a network's choice of programming, the Commission repeatedly has affirmed the importance of an affiliate's ability and right to preempt network programming.¹⁵ In fact, in the context of the recent preemption by ABC affiliates of the network airing of "Saving Private Ryan," Chairman Powell acknowledged that local broadcasters "have public interest obligations to exercise [preemption] authority."¹⁶

To the extent that commenters are challenging Sinclair's broadcast interests, which comply fully with the Commission's media ownership rules, or are proposing drastic changes to the Commission's broadcast regulatory regime, such requests far exceed the limited inquiry of this NOI. Moreover, the Commission just recently in its *2002 Biennial Review* considered the impact of media consolidation on localism and explicitly concluded that relaxation of its 1999 television ownership rule would, in fact, promote localism, while retention of the rule would "pose a potential threat to local programming"¹⁷ The U.S. Court of Appeals for the Third Circuit upheld that aspect of the decision. Thus, reevaluating that determination in this proceeding is neither necessary nor appropriate.¹⁸

program was a June 1969 issue of *Life*, which presented photographs of all American soldiers killed during one week in Vietnam, "a crystallizing moment for opposition to the Vietnam War").

¹⁵ See, e.g., *In the Matter of 2002 Biennial Regulator Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620, at ¶ 153 (2003) ("2002 Biennial Review"), remanded in part, *Prometheus Radio Project v. FCC*, 373 F.3d 372 (2004).

¹⁶ *Preemption Always Option*, Communications Daily, November 18, 2004, at 7.

¹⁷ *2002 Biennial Review*, at ¶ 156.

¹⁸ See *Prometheus Radio Project v. FCC*, 373 F.3d 372, 415-16 (2004).

Conclusion

For the reasons stated above and in Sinclair's Comments, the Commission should reject the suspect, inaccurate, and biased criticisms of Sinclair's programming. Additionally, as numerous parties, including Sinclair, have demonstrated in this proceeding, broadcasters are already taking actions that foster localism. Thus, it is unnecessary for the Commission to impose any localism obligations on broadcasters.

Respectfully submitted,

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