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November 15, 2010

William T. Lake
Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent, MB Docket No. 10-71; 2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 09-182*

Dear Mr. Lake:

I am writing in response to the e-mail message Barry Faber of Sinclair Broadcast Group ("Sinclair") sent you on Friday, November 12, concerning Sinclair's retransmission consent negotiations with Time Warner Cable ("TWC"). Although TWC has no desire to engage in a public debate with Sinclair regarding these ongoing negotiations, Mr. Faber's message contains several inaccuracies and other troubling statements that warrant a response.

Purporting to be looking out for the interests of consumers, Mr. Faber asserted that "despite the clear evidence that Time Warner will not be carrying the involved stations after the end of the year, Time Warner has indicated to me that they do not intend to comply with their legally required obligation under 47 CFR 76.1601 to provide their subscribers with 30 day advance notice that they will be deleting carriage of a large number of broadcast television stations." That claim is baseless and misleading.

As an initial matter, you should be aware that Mr. Faber first stated to us in September that he believed negotiations with TWC were "at an end" and that Sinclair accordingly would tell our subscribers to make other arrangements to retain access to Sinclair stations in 2011. He further claimed that TWC likewise was obligated to provide public notice of the impasse at that time. Only after we protested that calling off negotiations more than three months before the expiration of our agreement would surely constitute bad faith on Sinclair's part did he back down from his plan to launch a preemptive publicity campaign. But Mr. Faber's history of artificially declaring an impasse casts doubt on the sincerity of his latest assertions. In fact, Sinclair, like many broadcasters, frequently uses threats to "go public" with disputes as a way to increase pressure on MVPDs to give in to its aggressive demands, rather than out of concern for consumers. Indeed, providing such "notice" so far in advance of the possibility of any service interruption disserves the public interest by causing wholly unnecessary confusion and alarm.

We are also extremely disappointed in Mr. Faber's assertion to you that our negotiations are doomed to fail, since it is still seven weeks from our current agreement's expiration. As we have repeatedly explained to Mr. Faber, TWC remains eager to negotiate a new retransmission consent agreement with Sinclair to preserve our subscribers' access to the programming on Sinclair's stations in 2011 and beyond. Just as we told Mr. Faber in September, his avowed certainty at this point that no deal can be reached—despite the many weeks that remain before the existing agreement's expiration, and in the face of TWC's consistently expressed intention to negotiate a renewal—cannot be squared with the Commission's good faith rules, which require broadcasters to act in accordance with a "sincere desire to reach an agreement that is acceptable to both parties."¹ Indeed, his closed-minded insistence that TWC "will not be carrying" any Sinclair stations "goes to the very heart of Congress' purpose in enacting the good faith negotiation requirement."² Given Sinclair's recent publicity campaign advising TWC subscribers to switch to a competing MVPD, we can only conclude that Mr. Faber's supposed certainty that no agreement can be reached remains a pretext intended to bully TWC into paying excessive compensation.

In any event, Mr. Faber's claim that TWC has "indicated" that it will not provide notice to its subscribers regarding the potential withdrawal of Sinclair's broadcast signals is patently false. TWC's negotiator told Mr. Faber quite the opposite, and the allegation is nonsensical given that TWC routinely provides public notice to customers that our agreements with broadcasters such as Sinclair are due to expire and that, although we remain hopeful that we can obtain renewals without service disruption, it is possible that TWC would no longer be able to provide the particular stations as of the expiration date. TWC is now in process of providing such notice in connection with the Sinclair stations. In addition, as in past retransmission disputes, TWC intends to provide additional public notice to customers regarding the Sinclair negotiations and to keep our customers fully in the loop as our talks progress. Indeed, several hours before Mr. Faber made his inaccurate claim, the *Daily News Online* ran a story describing some of TWC's recent and planned efforts to inform subscribers that the upcoming expiration of TWC's retransmission consent agreement with Sinclair could result in the withdrawal of programming by the stations involved.³

We are also quite concerned about Mr. Faber's acknowledgement that Sinclair has begun to urge TWC's subscribers to make alternative arrangements not only to view stations owned by Sinclair, but also to view "certain channels to which [Sinclair] provide[s] services." Those "channels" include ostensibly independent stations owned by Cunningham Broadcasting, which

¹ *Implementation of the Satellite Home Viewer Improvement Act of 1999; Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, First Report and Order, 15 FCC Rcd 5445 ¶ 32 (2000) ("*Good Faith Order*").

² *Id.* ¶ 40.

³ See Ben Beagle, *Consumers Held Hostage in Time Warner, Sinclair Fee Dispute*, The Daily News Online (Nov. 12, 2010), available at http://thedailynewsonline.com/content/tncms/live/thedailynewsonline.com/blogs/guywitharemot/article_2132f8e0-ee71-11df-9968-001cc4c03286.html.

Sinclair apparently programs pursuant to local marketing agreements (“LMAs”). After TWC questioned the prospect of broadcasters’ negotiating for multiple competing stations in a given DMA (in apparent violation of the antitrust laws), Mr. Faber recently agreed to allow TWC to negotiate with Cunningham directly, and we accordingly have begun to do so. Yet, before TWC and Cunningham even had an opportunity to engage in discussions, Sinclair launched its website asserting Sinclair’s expectation that various stations would be withdrawn from TWC’s systems on January 1, 2011, *including the four Cunningham-owned stations*. I recently informed Mr. Faber that, assuming he is being truthful that Sinclair is no longer involved in the TWC/Cunningham negotiations, this claim has no basis whatsoever and should be withdrawn immediately, given that Sinclair has no way to predict the likely outcome of TWC’s independent negotiations with Cunningham. Despite stating that Sinclair has no control over (or even knowledge of) those negotiations, Mr. Faber refused to make any changes to Sinclair’s irresponsible claim that, as of January 1, 2011, TWC “would no longer be carrying” the Cunningham stations.⁴

Particularly in light of Mr. Faber’s asserted interest in ensuring that consumers receive accurate information, it is deeply troubling that Sinclair persists in making uninformed and misleading statements about the likely outcome of TWC’s negotiations with Cunningham stations. More fundamentally, Sinclair’s inconsistent representations regarding those stations expose potentially serious problems with Sinclair’s compliance with the Commission’s broadcast ownership rules and the public interest. On the one hand, when TWC objected that Sinclair was making false statements about our negotiations with Cunningham and/or improperly asserting control over those stations in violation of the Commission’s rules, Mr. Faber stated (in an email message to me dated November 12) that “[S]inclair is in no way involved with [C]unningham’s negotiations with [T]ime [W]arner and you will find no evidence whatsoever to the contrary.” On the other hand, in response to our concerns that Sinclair’s involvement in negotiations on behalf of competing stations in a DMA would violate the Sherman Act, Mr. Faber stated in a separate e-mail that, because Sinclair has “been approved by the [J]ustice [D]epartment to own the [C]unningham stations at the same time as we own our stations in those markets, clearly we would not be in violation of law if we were to negotiate retransmission consent agreements on behalf of those stations.”

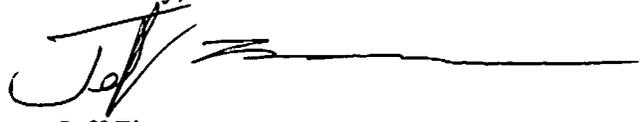
As TWC has argued in other contexts, broadcast station groups cannot have it both ways: They cannot tell the Justice Department not to worry about horizontal price-fixing by competing broadcast stations on the theory that those stations should be treated as commonly owned and controlled, while simultaneously telling this Commission that there is no common control. If Sinclair indeed is refraining from exercising control over the Cunningham stations as Mr. Faber asserts (and as the Commission’s rules require), then Sinclair plainly may not engage in joint retransmission consent negotiations with those competing stations and it has no basis for making any public representations regarding those stations’ separate dealings with TWC.

⁴ See Sinclair website, available at <http://www.sbgi.net/template/time-warner/#1> (last viewed Nov. 12, 2010).

I want to assure you that TWC intends to continue pursuing negotiations in good faith, and we remain hopeful that we can reach agreement with Sinclair as well as Cunningham for carriage beyond the end of 2010. And we hope that those station groups will do the same, notwithstanding Mr. Faber's claims that both station groups' signals are virtually assured of being withdrawn. As set out above, we believe that Mr. Faber's effort to focus attention on customer notice issues is disingenuous at best. More broadly, as TWC explained in its comments in the ongoing media ownership proceeding, we believe the Commission should investigate whether groups like Sinclair are complying with the local ownership restrictions and should take action to prevent abuses of LMAs and similar arrangements.⁵

Please do not hesitate to contact me if I can provide further information regarding these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff", followed by a long horizontal line extending to the right.

Jeff Zimmerman

cc: Marlene H. Dortch
Barry Faber

⁵ See generally Comments of Time Warner Cable Inc., MB Docket 09-182 (filed July 12, 2010); *id.* at 7-8 (describing Sinclair LMAs).