

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

Applications of

LICENSEE SUBSIDIARIES OF ALLBRITTON
COMMUNICATIONS CO.,

TRANSFERORS AND ASSIGNORS

AND

SINCLAIR TELEVISION GROUP,

TRANSFeree AND ASSIGNOR,

AND

DEERFIELD MEDIA (BIRMINGHAM) LICENSEE,
LLC,

DEERFIELD MEDIA (HARRISBURG) LICENSEE, LLC,

HSH CHARLESTON (WMMP) LICENSEE, LLC,

ASSIGNEES,

FOR ASSIGNMENT AND TRANSFER OF CONTROL

MB Docket No. 13-203

WCFT-TV, Tuscaloosa, AL, Facility ID
21258 (File No. BTCCDT-20130809ABW)
WJSU-TV, Anniston, AL, Facility ID 56642
(File No. BTCCDT-20130809ABX)
WCIV(TV), Charleston, SC, Facility ID
21536 (File No. BTCCDT-20130809ACA)
KATV(TV), Little Rock, AR, Facility ID
33543 (File No. BTCCDT-20130809ACB)
KTUL(TV), Tulsa, OK, Facility ID 35685
(File No. BTCCDT- 20130809ACC)
WJLA-TV, Washington, DC, Facility ID
1051 (File No. BTCCDT-20130809ACD)
WHTM-TV, Harrisburg, PA, Facility ID
72326 (File No. BTCCDT-20130809ACE)
WSET-TV, Lynchburg, VA, Facility ID
73988 (File No. BTCCDT-20130809ACG)
WTTO(TV), Homewood, AL, Facility ID
74138 (File No. BALCDT-20130809ADC)
WABM(TV), Birmingham, AL, Facility ID
16820 (File No. BALCDT- 20130809ADE)
WHP-TV, Harrisburg, PA, Facility ID 72313
(File No. BALCDT-20130809ADF)
WMMP(TV), Charleston, SC, Facility ID
9015 (File No. BALCDT-20130809ADG)

**PETITION TO DENY OR, IN THE ALTERNATIVE,
FOR CONDITIONS**

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SUMMARY

The American Cable Association (“ACA”) hereby petitions the Commission to deny, or in the alternative to place conditions upon, Sinclair Television Group’s (“Sinclair’s”) proposed purchase of television stations from Allbritton Communications Co. (“Allbritton”).

Even before its recent spate of acquisitions, Sinclair owned, controlled, or negotiated retransmission consent for nearly 90 television stations, most of which are affiliated with one of the “Big Four” broadcast networks. It now seeks permission to buy Allbritton’s eight stations, all of which are ABC affiliates. ACA is concerned about the effect of the transaction on two markets, where Sinclair already owns one or more stations.

- In the Harrisburg, Pennsylvania television market, Sinclair owns the CBS affiliate and would obtain the ABC affiliate.
- In Charleston, South Carolina, Sinclair owns the MyNetwork affiliate. Sinclair also ostensibly controls the FOX affiliate through a sharing agreement — a fact it did not disclose in its applications. It would obtain the ABC affiliate.

Sinclair admits that the Commission’s rules would not permit these combinations. It thus proposes to assign its own stations in these markets to third parties, while continuing to provide “support services” to the stations through a variety of “customary” sharing agreements. While the respective “Support Services Assignees” would nominally control these stations, Sinclair would retain many key station functions — including the ability to act as the stations’ “agent” in retransmission consent negotiations.

ACA and others have elsewhere described their concerns with separately owned, same market, broadcasters affiliated with the Big Four Networks colluding in negotiating retransmission consent with multichannel video programming distributors (“MVPDs”). Such collusion is *per se* unlawful because of the obvious competitive harm it causes. Here, however, the proposed transaction would cause competitive harm *specific to this transaction*.

Specifically, ACA and its members are concerned about the potential for collusion in Harrisburg and Charleston. The transaction would allow Sinclair to negotiate retransmission consent for both the CBS and ABC affiliates in Harrisburg and the FOX and ABC affiliates in Charleston. These combinations of two “Big Four” network affiliates will give Sinclair more leverage in these markets than it already has, leading to higher prices for retransmission consent. In both of these markets, the transaction would harm consumers by increasing the cost of pay-TV service, and increasing the threat of blackouts and the harm caused by actual blackouts.

ACA therefore asks the Commission to deny the proposed transaction in its entirety. In the alternative, ACA urges the Commission to condition approval of the Applications to ensure that Sinclair (or any other third party) does not use sharing agreements with any of its proposed assignees to coordinate negotiations of retransmission consent agreements on behalf of multiple broadcast stations in a single local market. In particular, the Commission should order Sinclair and the Shared Services Assignees to terminate any agreement, whether written or oral, that would cede authority to one party to negotiate carriage agreements on another’s behalf. Such a condition should also require each of the Shared Services Assignees to negotiate carriage with multichannel video programming distributors (“MVPDs”) entirely independently — rather than jointly or in tandem with Sinclair, including by way of a common negotiator who negotiates each contract separately — and to refrain from sharing any information regarding, or otherwise colluding in, such negotiations.

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PETITION TO DENY OR, IN THE ALTERNATIVE, FOR CONDITIONS

Pursuant to Section 73.3584(a) of the Commission's rules and Sections 309(d) and 310(d) of the Communications Act of 1934, as Amended (the "Act"), the American Cable Association ("ACA") petitions the Commission to deny, or, in the alternative, to impose conditions on its approval of, the above-captioned applications ("Applications"), which relate to the proposed acquisition of the television broadcast stations now owned by Allbritton Communications Co. ("Allbritton") by Sinclair Television Group ("Sinclair"), and the concurrent

assignment of stations now owned by Sinclair to Deerfield Media (Harrisburg) Licensee, LLC (collectively, the “Deerfield” entities) and HSH Charleston (WMMP) Licensee, LLC (“HSH”),¹ each of whom would receive “support services” from Sinclair on an ongoing basis (the stations to be assigned, the “Overlapping Sinclair Stations” and the proposed assignees the “Support Services Assignees”).² In each case, such “support” would include negotiation of retransmission consent agreements at the Support Service Assignee’s request.

If granted, the Applications would permit Sinclair to control retransmission consent negotiations for affiliates of two of the “Big Four networks” (ABC, CBS, NBC, and FOX), creating new virtual duopolies and facilitating coordinated retransmission consent negotiations in the Harrisburg-Lancaster-Lebanon-York, Pennsylvania (“Harrisburg”), and Charleston, South Carolina Designated Market Areas (“DMAs”). As a result, Sinclair would enjoy an increase in negotiating leverage based solely on its aggregation of market power in each DMA. The transaction accordingly threatens to drive up retransmission consent fees (and, in turn, consumer prices) and to increase the risk and incidence of broadcast programming blackouts.

This outcome does not comport with the public interest. There can be no policy justification for permitting multiple Big Four network affiliated broadcast stations in the same market area — *i.e.*, stations that are licensed to operate as direct competitors — to coordinate retransmission consent negotiations. Such collusive behavior results in significant consumer harms and is starkly anticompetitive.

¹ Public Notice: “Media Bureau Announces Filing of Applications Seeking Consent to Transfer Control of Licensee Subsidiaries of Allbritton Communications Co. to Sinclair Television Group, Inc.,” DA 13-1751, MB Docket No. 13-203 (rel. Aug. 14, 2013) (“*Notice*”). This Petition is limited to four of the various applications filed in connection with this proposed acquisition, which are captioned above and relate to the following broadcast stations (“Stations”): WCIV(TV), Charleston, SC; WHTM-TV, Harrisburg, PA; WHP-TV, Harrisburg, PA; and WMMP(TV), Charleston, SC.

² See FCC Form 315 at 3 n.4.

ACA therefore requests that the Commission deny the Applications or, in the alternative, condition approval on a requirement that Sinclair and the Support Services Assignees refrain from coordinating negotiations for carriage on behalf of any of their non-commonly owned stations in any of such stations' markets, whether by engaging in joint carriage negotiations, each appointing the same agent to separately negotiate on behalf of each of the stations, negotiating separate carriage deals but sharing details of each of their carriage negotiations, sharing any details of their carriage negotiations at any time, or in any way colluding in the negotiation of retransmission consent.³ Such action would allow the Commission to address the transaction-specific harms at issue while it continues to consider broader reforms.

I. BACKGROUND

The Applications at issue in this Petition concern Sinclair's proposed acquisition of Allbritton's television stations. If all of its pending transactions were approved and consummated, Sinclair would own, control, or negotiate retransmission consent on behalf of 149 stations, including 33 FOX affiliates, 27 ABC affiliates, 25 CBS affiliates, 14 NBC affiliates, 23 CW affiliates, 20 MyTV affiliates, 5 Univision affiliates, 1 Azteca affiliate, and 1 independent

³ Specifically, the Commission should prohibit Sinclair and the Support Services Assignees from engaging in any of the following four practices: (i) delegating the responsibility to negotiate or approve retransmission consent agreements to another separately owned broadcaster in the same DMA; (ii) delegating the responsibility to negotiate or approve retransmission consent agreements for multiple stations in the same DMA to a common third party; (iii) entering into or enforcing any informal or formal agreement pursuant to which one party would enter into a retransmission consent agreement with MVPD contingent upon another separately owned broadcast station in the same DMA negotiating a satisfactory retransmission consent agreement with the same MVPD; or (iv) engaging in any discussions or exchanges of information with separately owned broadcast stations in the same DMA or their representatives regarding the terms of existing retransmission consent agreements, or the status of negotiations over future retransmission consent agreements.

station, reaching approximately 38% of all U.S. television households.⁴ Allbritton owns eight television stations,⁵ all of which are ABC affiliates.

Because Sinclair could not otherwise acquire Allbritton's broadcast stations in the Harrisburg and Charleston DMAs under the Commission's local television ownership rule,⁶ Sinclair is following the playbook of an increasing number of station owners. Rather than limiting the transaction to Allbritton's stations in DMAs where the Commission's ownership rules would not be implicated (or seeking a waiver of the Commission's ownership rules), Sinclair instead intends to rely on a series of alleged "assignments" of *its own* stations to "sidecar" companies that appear to have been established for the primary purpose of holding Sinclair's broadcast licenses in DMAs where the two companies' broadcast stations overlap.⁷

Specifically, Sinclair seeks to assign the Overlapping Sinclair Stations to the Support Services Assignees, while effectively retaining rights in those stations pursuant to a variety of arrangements. Thus, Sinclair has entered into Asset Purchase Agreements, to be consummated simultaneously with Sinclair's purchase of the Allbritton Stations, pursuant to which:

- WHP-TV (the CBS affiliate in the Harrisburg DMA) would be assigned to Deerfield Media (Harrisburg) Licensee, LLC. Sinclair would retain WHTM-TV, the ABC affiliate in Harrisburg, which it proposes to purchase from Allbritton.⁸
- WMMP-TV (the MyNetwork affiliate in Charleston) would be assigned to HSH Charleston (WMMP) Licensee, LLC. Sinclair would retain WCIV-TV, the ABC affiliate

⁴ See Sinclair Broadcast Group: Television Stations, available at <http://www.sbg.net/business/television.shtml> ("Sinclair Website").

⁵ Notice at 1.

⁶ See 47 C.F.R. § 73.3555(b); see also FCC Form 315 at 2 (stating that "[u]nder the Commission's multiple ownership rules, STG may not, without certain assignments, acquire additional interests in those markets").

⁷ Each of these companies is represented in this transaction by the same law firm that represents Sinclair.

⁸ See Form 315 at 2. Sinclair carries a MyNetwork feed on WHTM, and negotiates retransmission consent on behalf of WLYH, the Harrisburg CW affiliate. See Sinclair Website (listing WLYH as part of the Sinclair Broadcast Group).

in Charleston, which it proposes to purchase from Allbritton.⁹ Sinclair would *also* retain its arrangement with WTAT-TV, the Charleston FOX affiliate, which it operates under a sharing agreement.¹⁰ (Sinclair failed to disclose this arrangement in its application.)

Although the Asset Purchase Agreements call for Sinclair to divest the Overlapping Sinclair Stations, Sinclair will retain effective control of these stations, and the ability to negotiate retransmission consent for these stations, through a variety of sharing agreements.¹¹

Of particular concern are a series of agreements — an Option Agreement, an Option Asset Purchase Agreement, a Joint Sales Agreement (“JSA”), and a Shared Services Agreement (“SSA”) — that will result in collusive negotiations of retransmission consent for two Big Four stations in the Harrisburg and Charleston DMAs. In each case, the relevant JSA provides that the putative assignee must “consult and cooperate” with Sinclair in the negotiation of retransmission consent agreements, and may even direct Sinclair to act as its agent in such negotiations.¹² Sinclair proposes similar arrangements for Birmingham that involve one Big

⁹ Form 315 at 2.

¹⁰ See Sinclair Website (listing WTAT as part of the Sinclair Broadcast Group).

¹¹ The term “sharing agreements” is used in this Petition to refer to local marketing agreements, joint sales agreements, shared services agreements, transition services agreements, and any other contract, whether written or oral, in which a broadcast station delegates its authority to negotiate retransmission consent agreements with MVPDs to a third party, such that the third party is empowered to conduct such negotiations on behalf of two or more broadcast stations in the same DMA.

¹² See WHP-TV Joint Sales Agreement, ¶ 5.1(g) (providing that Deerfield “shall consult and cooperate with [Sinclair] in the negotiation, maintenance and enforcement of retransmission consent agreements with cable, satellite and other multichannel video providers. Upon [Deerfield’s] request and subject to [Deerfield’s] ultimate approval, execution and delivery of each retransmission consent agreement in the sole discretion of [Deerfield], [Sinclair] shall also act as [Deerfield’s] agent with respect to the negotiation of any such retransmission consent agreements); *but see* Shared Services Agreement, ¶ 4.1, *attached to* Application (providing that Deerfield “shall retain the authority (a) to make elections for must carry or retransmission consent status, as permitted under the FCC Rules, and (b) to negotiate, execute, and deliver retransmission consent agreements with cable, satellite, and other multichannel video providers (“MVPDs”) for which Station Licensee has provided timely notice of its election of retransmission consent). Thus, while the SSA purports to place authority for retransmission consent with the assignee, the JSA places *actual* control of such negotiations in the hands of Sinclair, as the Assignee’s “agent.” Because Sinclair did not disclose its pre-existing arrangement with WTAT, Petitioners have not reviewed it but assume it contains similar language.

Four affiliate and one or more lower-rated stations.¹³ As the Commission is aware, such coordination is increasingly common among broadcasters.¹⁴ Indeed, Applicants refer to the agreements they've entered into that will result in such practices as "customary."¹⁵

II. STANDING

ACA has standing to prosecute this Petition because its members would face threats of substantial harm if the proposed assignments were approved.¹⁶ To establish standing, a party must show an "actual or imminent" injury that is both "fairly trace[able]" to the proposed agency action and "likely" to be "redressed by a favorable decision."¹⁷ The D.C. Circuit has made clear that "parties suffer constitutional injury in fact when agencies lift regulatory restrictions on their competitors" — such as by approving a transaction that enables two separately owned broadcast stations in a single DMA to coordinate carriage negotiations with one another, rather than in competition, and thereby permitting those stations to raise the price of retransmission consent to ACA's members.¹⁸

Six ACA member companies have been confirmed to provide MVPD services in the Harrisburg DMA and have confirmed that they have retransmission consent agreements with the broadcast television stations in that DMA.¹⁹ Two ACA member companies have been confirmed

¹³ *Id.*

¹⁴ See Letter from Barbara Esbin, Counsel to American Cable Association to Marlene H. Dortch, FCC, MB Docket Nos. 10-71, 09-182, at 2 (filed June 24, 2013) ("ACA Ex Parte Response to NAB") ("ACA has identified 48 pairs of Big 4 broadcasters in 43 DMAs coordinating their retransmission consent negotiations in 2011" alone.).

¹⁵ Form 315 at 3 n.5.

¹⁶ 47 C.F.R. § 73.3584(a) ("[A]ny party in interest may file with the Commission a Petition to Deny any application..."); *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470 (1940) (establishing economic injury as a sufficient basis to confer party-in-interest standing).

¹⁷ See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

¹⁸ *New England Pub. Commc'ns Council, Inc. v. FCC*, 334 F.3d 69, 74 (D.C. Cir. 2003) (quoting *Louisiana Energy & Power Auth. v. FERC*, 141 F.3d 364 (D.C. Cir. 1998)).

¹⁹ See Lieberman Declaration, ¶ 5.

to provide MVPD services in the Charleston DMA and have confirmed that they have retransmission consent agreements with the broadcast television stations in that DMA.²⁰ ACA's interest in this proceeding (and that of its members) thus stems primarily from the clear threat of economic harm that would result from the coordinated handling of retransmission consent negotiations on behalf of multiple stations in the Harrisburg and Charleston markets following consummation of the assignments.²¹ Moreover, there can be no doubt that a Commission decision to block or condition the proposed assignment would redress such threatened harms.²² Separately, because ACA's members would have standing in their own right to challenge the proposed assignments in the Harrisburg and Charleston DMAs, but are not required to participate in bringing this Petition, ACA has standing to prosecute the Petition on their behalf.²³ Indeed, ACA's interest in preventing the ability of Sinclair to collude with its ostensible competitors in negotiating for retransmission consent with MVPDs is at the core of ACA's mission: to ensure that its members are treated fairly in the marketplace through active participation in the legislative and regulatory process.²⁴

²⁰ *See id.*

²¹ More generally, even apart from the harms associated with retransmission consent negotiations, Petitioners also have standing based on their broader interests (or, in the case of ACA, the interests of its members) as distributors of programming that compete for television viewers with Sinclair and the Shared Services Assignees as broadcasters. *See, e.g., Applications of Board of County Commissioners Monroe County, Florida For Construction Permits for 25 New Translator Stations at Key West, Marathon, Matecumbe, Big Pine, and Rock Harbor, Florida*, Memorandum Opinion and Order, 72 F.C.C. 2d 683, 684, ¶ 2 (1979) (finding that cable operator petitioners had standing to challenge applications to construct new television translator stations based on their status as competitors to broadcast stations in the distribution of programming to consumers).

²² *See Lujan*, 504 U.S. at 560-62.

²³ *See Theodore Roosevelt Conservation P'ship v. Salazar*, 616 F.3d 497, 507 (D.C. Cir. 2010).

²⁴ *See id.*

III. ARGUMENT

THE COMMISSION SHOULD DENY THE ASSIGNMENT APPLICATIONS OR, IN THE ALTERNATIVE, CONDITION APPROVAL ON REQUIREMENTS THAT PREVENT COLLUSIVE RETRANSMISSION CONSENT NEGOTIATIONS

Sinclair’s intention to negotiate retransmission consent for multiple ostensibly separately owned competing stations in a single DMA violates fundamental principles of competition and thus warrants denial of the Applications. Indeed, it is a core tenet of antitrust law that collusion by competitors in selling goods or services is *per se* unlawful, because there are effectively no circumstances in which such conduct could promote competition or benefit consumers.²⁵

Accordingly, the Department of Justice (“DOJ”) brought an action against competing broadcasters operating in Corpus Christi, Texas under the antitrust laws for engaging in coordinated retransmission consent negotiations — precisely the conduct in which Sinclair and the Shared Services Entities intend to engage should the Commission approve the Applications.²⁶ The Competitive Impact Statement submitted by DOJ in the Corpus Christi case explained that, “[a]lthough the 1992 Cable Act gave broadcasters the right to seek compensation for retransmission of their television signals, the antitrust laws require that such rights be exercised *individually* and *independently* by broadcasters.”²⁷ The Competitive Impact Statement further stated, in no uncertain terms, that “[w]hen competitors in a market coordinate their negotiations so as to strengthen their negotiating positions against third parties and so obtain

²⁵ See, e.g., *Northern Pac. Ry. Co. v. United States*, 356 U.S. 1, 5 (1958) (holding that certain practices are *per se* unlawful “because of their pernicious effect on competition and lack of any redeeming value”); *Catalano, Inc. v. Target Sales, Inc.*, 446 U.S. 643, 647 (1980) (“A horizontal agreement to fix prices is the archetypal example of such a [*per se* unlawful] practice.”)

²⁶ See *United States v. Texas Television, Inc., Gulf Coast Broadcasting Company, and K-Six Television, Inc.*, Competitive Impact Statement (S.D. Tex. Feb. 2, 1996), available at <http://www.justice.gov/atr/cases/texast0.htm>.

²⁷ *Id.* at 8 (emphasis added).

better deals ... their conduct violates the Sherman Act.”²⁸ And, of course, any conduct that violates the Sherman Act could not be found consistent with the Commission’s public interest standard,²⁹ especially as the Commission has identified the promotion of competition as central to that standard.³⁰

In the alternative, should the Commission determine that outright denial of the Applications is not necessary, the Commission at a minimum should impose conditions to prevent Sinclair from abusing its market power following consummation of the transaction. Absent such conditions, post-transaction, the negotiating authority for competing stations in both DMAs effectively would be consolidated into the hands of a single entity — Sinclair. Such consolidation effectively would eliminate competition between Sinclair and the Shared Services Entities in the retransmission consent context. This would provide Sinclair with additional bargaining leverage that it may exploit to harm MVPDs and their subscribers in the two markets, most notably by threatening to disrupt or actually disrupting service for the purpose of extracting significant increases in retransmission consent fees.

Sinclair’s aggregation of market power in the Harrisburg and Charleston DMAs poses particular concerns because Sinclair proposes to control two of the top-four rated stations in each DMA. In Harrisburg, Sinclair would control both the ABC affiliate (to be transferred from

²⁸ *Id.*

²⁹ See 47 U.S.C. § 310(d) (requiring that license assignments serve the “public interest, convenience, and necessity”).

³⁰ See, e.g., *2006 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*, Report and Order and Order on Reconsideration, 23 FCC Rcd. 2010, ¶ 97 (2008) (noting that “[t]he local community benefits from competition among broadcast television stations in the form of higher quality programming provided to viewers”); *id.*, ¶ 102 (reaffirming that “combinations of top four stations should be prohibited because mergers of those stations would be the most deleterious to competition”); *Review of the Commission’s Regulations Governing Television Broadcasting*, Report and Order, 14 FCC Rcd. 12903 ¶ 25 (1999) (explaining that the local television ownership rules are “aimed at precluding broadcasters from obtaining and exercising market power” in carriage negotiations with MVPDs by fostering competition among local stations).

Allbritton) and the CBS affiliate (to be “assigned” to Deerfield, but for which Sinclair would provide shared services). In Charleston, Sinclair would control both the ABC affiliate (to be transferred from Allbritton) and the FOX affiliate (for which Sinclair already negotiates retransmission consent). As ACA and others have documented extensively in the ongoing media ownership and retransmission consent reform proceedings, basic economic principles and the Commission’s own empirical analysis demonstrate that such aggregation of market power, when used to coordinate carriage negotiations of multiple stations in a single DMA, drives up the price for retransmission consent.³¹

Relatedly, any blackout threats made by Sinclair in Harrisburg or Charleston presumably would pack a double punch by implicating both Big Four stations in these markets, thereby exacerbating the already harmful effects on consumers who subscribe to any affected MVPD’s services.³² This is so because the proposed assignments and related sharing agreements would enable Sinclair and the Shared Services Assignees to work in tandem to pull the signals of multiple stations in a single DMA. Moreover, the mere prospect of a programming blackout likely would induce many subscribers to switch MVPDs — even if a threat to go dark were not

³¹ See, e.g., ACA Ex Parte Response to NAB at 3 (explaining that “increases of retransmission consent fees due to joint negotiations rang[e] from 21.6% to 161%”); Comments of American Cable Association, MB Docket No. 10-71, at 11-12 (filed May 27, 2011) (“ACA Retrans NPRM Comments”) (explaining that “the logic and findings in th[e] [Comcast-NBCU] order support the conclusion that joint ownership or control of multiple Big Four broadcasters in the same market will result in higher retransmission consent fees and harm consumers” (quoting William P. Rogerson, *Coordinated Negotiation of Retransmission Consent Agreements by Separately Owned Broadcasters in the Same Market*, at 10 (May 27, 2011), filed as an attachment to the ACA Retrans NPRM Comments)); Michael L. Katz et al. *An Economic Analysis of Consumer Harm from the Current Retransmission Consent Regime*, at 27 (Nov. 12, 2009), filed as an attachment to the Comments of the National Cable & Telecommunications Association, MB Docket No. 07-269, at 3 (filed Dec. 16, 2009) (concluding that “joint negotiations [facilitated by sharing agreements] eliminate competition ... [and] result in higher fees and consumer harm”).

³² See Steven C. Salop et al., *Economic Analysis of Broadcasters’ Brinkmanship and Bargaining Advantages in Retransmission Consent Negotiations*, at 53 (June 3, 2010), filed as an attachment to the Reply Comments of Time Warner Cable Inc., MB Docket No. 10-71 (filed June 3, 2010) (explaining that broadcaster brinkmanship tactics are more successful in DMAs where stations have executed sharing agreements with one another, because “LMAs and ... sharing agreements strengthen the broadcasters’ bargaining position” vis-a-vis MVPDs).

carried out — and incur the costs associated with such switching. Consumers should select an MVPD based on service quality, value, and similar attributes, rather than broadcasters’ threats to hold MVPD subscribers hostage in a retransmission consent dispute.

To be sure, the competitive concerns raised by this Application highlight the need for industry-wide reforms that address the broken retransmission consent regime, a need that is well-documented in two rulemaking proceedings currently pending before the Commission.³³ But the potential for such reforms plainly does not obviate the need to address the *transaction-specific* harms that would flow from Sinclair’s anticompetitive efforts to gain additional leverage in retransmission consent negotiations with MVPDs. To the contrary, the Commission has an obligation to ensure that the proposed license transfers will serve the public interest.³⁴

ACA therefore urges the Commission to deny the Applications outright. In the alternative, the Commission should condition approval of the Applications to ensure that Sinclair (or any other third party) does not use sharing agreements with any of its proposed assignees to coordinate negotiations of retransmission consent agreements on behalf of multiple Big Four broadcast stations in a single DMA. In particular, the Commission should order Sinclair and the Shared Services Assignees to terminate any agreement, whether written or oral, which would cede authority to one party to negotiate carriage agreements on another’s behalf. Such a condition should also require each of the Shared Services Assignees to negotiate carriage with MVPDs entirely independently — rather than jointly or in tandem with Sinclair, including

³³ See *Amendment of the Commission’s Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, 26 FCC Rcd 2718 23 (2011) (noting concerns regarding broadcasters’ delegation of retransmission consent authority to third parties and proposing to prohibit such delegations as a *per se* violation of the obligation to negotiate in good faith); *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 et al.*, Notice of Proposed Rulemaking, 26 FCC Rcd. 17489, ¶ 200 (2011) (proposing reforms to address concerns that “broadcasters may be using [sharing agreements] to circumvent the Commission’s multiple ownership rules”).

³⁴ 47 U.S.C. § 310(d).

through use of a common negotiator who negotiates each contract separately — and to refrain from sharing any information regarding, or otherwise colluding in, such negotiations.

IV. CONCLUSION

The Applications fail to demonstrate that the proposed assignments would promote the public interest, convenience, and necessity as required under the Act. To the contrary, the anticompetitive sharing agreements that Sinclair proposes to execute as part of its proposed acquisition of Allbritton's stations would result in significantly higher retransmission consent fees paid by MVPDs resulting in harm to consumers in the form of higher prices for MVPD services and the increased threat and incidence of broadcast station blackouts.

Accordingly, the Commission should deny the Applications or condition approval on a requirement that Sinclair and the Shared Services Assignees refrain from coordinating in negotiating retransmission consent with MVPDs.

Respectfully submitted,

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MB Docket No. 13-203

WCFT-TV, Tuscaloosa, AL, Facility ID
21258 (File No. BTCCDT-20130809ABW)

WJSU-TV, Anniston, AL, Facility ID 56642
(File No. BTCCDT-20130809ABX)

WCIV(TV), Charleston, SC, Facility ID
21536 (File No. BTCCDT-20130809ACA)

KATV(TV), Little Rock, AR, Facility ID
33543 (File No. BTCCDT-20130809ACB)

KTUL(TV), Tulsa, OK, Facility ID 35685
(File No. BTCCDT- 20130809ACC)

WJLA-TV, Washington, DC, Facility ID
1051 (File No. BTCCDT-20130809ACD)

WHTM-TV, Harrisburg, PA, Facility ID
72326 (File No. BTCCDT-20130809ACE)

WSET-TV, Lynchburg, VA, Facility ID
73988 (File No. BTCCDT-20130809ACG)

WTTO(TV), Homewood, AL, Facility ID
74138 (File No. BALCDT-20130809ADC)

WABM(TV), Birmingham, AL, Facility ID
16820 (File No. BALCDT- 20130809ADE)

WHP-TV, Harrisburg, PA, Facility ID
72313 (File No. BALCDT-20130809ADF)

WMMP(TV), Charleston, SC, Facility ID
9015 (File No. BALCDT-20130809ADG)

DECLARATION OF ROSS LIEBERMAN

1. I serve as Vice President of Government Affairs for the American Cable Association (“ACA”). My business address is 2415 39th Place, NW, Washington, DC, 20007.
2. ACA, based in Pittsburgh, Pennsylvania, is a private, non-profit membership corporation (*i.e.*, trade association) whose primary objective and emphasis is to

advocate for the interests of its approximately 850 small and mid-sized cable operators throughout the country before Congress and federal agencies.

3. In my position, I serve as the association's senior advocate on Capitol Hill and at the federal agencies, including the FCC. My responsibilities include assisting in the development and implementation of all legislative and regulatory efforts on matters that impact ACA's membership.
4. I have knowledge of the facts set forth herein, and I make this declaration in support of the above-captioned Petition filed in connection with the above-captioned assignment applications, which relate to the proposed acquisition of Allbritton Stations by Sinclair.
5. A total of six ACA member companies have been confirmed to provide multichannel video programming distributor services ("MVPD") in the Harrisburg DMA, and have retransmission consent agreements with the broadcast television stations in that DMA, including WHP-TV (the CBS affiliate in the Harrisburg DMA), WHTM-TV and the ABC affiliate in Harrisburg, WCIV-TV. Similarly, two ACA member companies have been confirmed to provide MVPD services in the Charleston DMA, and have retransmission consent agreements with the broadcast television stations in that DMA, including the ABC affiliate in Charleston, WCIV(TV) and WTAT-TV, the Charleston FOX affiliate.
6. ACA's members would face serious threats of substantial and imminent harm if the proposed assignments were approved. In particular, ACA's members would be harmed by the coordination of retransmission consent negotiations by multiple stations involved in this transaction in the Harrisburg and Charleston DMAs following consummation of the assignments.

7. ACA's members thus would have standing in their own right to challenge the proposed assignments in the affected DMAs, but are not required to participate in bringing this Petition.
8. ACA's interest in preventing Sinclair from colluding with stations owned by its ostensible competitors in negotiating for retransmission consent with MVPDs is at the core of ACA's mission: to ensure that its members are treated fairly in the marketplace through active participation in the legislative and regulatory process.
9. To the best of my knowledge and belief, all other assertions of fact that are contained in the Petition are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed September 13, 2013.



Ross J. Lieberman
Vice President of Government Affairs
American Cable Association

CERTIFICATE OF SERVICE

I, Alma Hoxha, hereby certify that on this 13th day of September, 2013, a true and correct copy of the foregoing Petition to Deny or, in the Alternative, for Conditions was served, via first-class mail, upon the following:

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Alma Hoxha

* Via electronic mail only