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December 11, 2013

VIA HAND DELIVERY AND ELECTRONIC MAIL

Barbara A. Kreisman
Chief, Video Division
Media Bureau
Federal Communications Commission
445 Twelfth Street, SW, TW-A325
Washington, DC 20554

Re: File Nos:
BTCCDT-20130809ABW
BTCCDT -20130809ACA
BTCCDT -20130809ACB
BTCCDT -20130809ACC
BTCCDT -20130809ACD
BTCCDT -20130809ACE
BTCCDT -20130809ACG
BALCDT-20130809ADC
BALCDT-20130809ADE
BALCDT-20130809ADF
BALCDT-20130809ADG

Dear Ms. Kreisman:

We are writing this letter on behalf of Sinclair Television Group, Inc., in response to your letter dated December 6, 2013 (the "Letter"). In the Letter you raise several questions with respect to three time brokerage agreements or local marketing agreements ("LMAs") to which Sinclair Television Group, Inc. or its subsidiaries

("Sinclair") is currently a party (the "Sinclair Agreements"), and request, among other things, that Sinclair "amend or withdraw the relevant applications covering the Charleston, Birmingham and Harrisburg markets to comply with our local television rules."[1]

Sinclair is committed to full compliance with the Commission's rules and regulations, and to operation in the public interest and, if required by law, Sinclair is prepared to attempt to restructure the pending Charleston, Birmingham and Harrisburg transactions to conform with the principles set forth in the Letter. We are concerned, however, that the conclusions reached in the Letter are not consistent with the grandfathering rules adopted in the Local TV Ownership Report and Order ("1999 Order")[2], and affirmed in the subsequent 2002 Biennial Regulatory Review ("2002 Order").[3] Accordingly, before our client undertakes the burdensome process of renegotiating and restructuring the transaction that is the subject of the pending applications, we respectfully ask you to consider the discussion contained in this response and to revisit your conclusions regarding the Sinclair Agreements.

The primary basis for the position taken in the Letter appears to be a belief that only LMAs "involving ***existing combinations of stations*** entered into prior to November 5, 1996 would be grandfathered…".[4] We have not, however, been able to find any precedent to support the position that the continued grandfathering of pre-November 5, 1996 LMAs depends on the continued involvement of a television station owned by the provider of services at the time the LMA was entered into and would appreciate you directing us to such support if it does exist. The 1999 Order simply refers to the grandfathering of the LMAs themselves, not the combinations of stations, in that it states that "[w]e consequently will grandfather television LMAs entered into prior to November 5, 1996."[5] The term "combinations" or "existing combinations of stations" is never used in 1999 Order,[6] and, in fact, every reference

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[1] Letter at 5.

[2] *In the Matter of Review of the Commission's Regulations Governing Television Broadcasting*, Report and Order, 14 FCC Rcd. 12903 (1999).

[3] *In the Matter of 2002 Biennial 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 Notice of Proposed Rulemaking, 18 FCC Rcd. 13620 (2003).

[4] Letter at 2 (emphasis added).

[5] 1999 Order at ¶ 146.

[6] The only reference to combinations we have found at all is in the 2002 Order which states only that "In our Local TV Ownership Report and Order we grandfathered LMA combinations that were entered into prior to November 5, 1996, through the end of the 2004 biennial review. ***We do not alter this policy. These LMAs are not affected by the grandfathering policy adopted herein.***"[6] 2002 Order at ¶492 (emphasis added). The reference in the 2002 Order is clearly to the

(… continued)

to grandfathering in the 1999 Order is with respect to the LMAs, the agreements themselves, not the stations or combinations thereof. The 1999 Order defines an LMA as "a type of contract that generally involves the sale by a licensee of discrete blocks of time to a broker that supplies the programming to fill that time...."[7] Again, the reference here, as it is throughout the 1999 Order, is to the "contract" between the parties, not the existing combinations of stations. Further, as the 1999 Order specifically points out, there is no requirement that a "programmer" or a "broker" in a grandfathered LMA even have a station in the market.[8]

Similarly, we would appreciate if you would provide us with the basis for the reliance in the Letter on the concept of a "broker station," since stations do not enter into agreements; only individuals or companies are able to enter into contracts. We believe that is why the attribution rules focus on the party providing the services under an LMA, and not on any station owned by such party. There is no mention of a brokering station in any of the Sinclair Agreements, and no reference to a station at all other than the stations which are being programmed.[9] The obligations under the Sinclair Agreements, as in most LMAs, are with the programmer or broker, not any particular station.[10] The programmer (*i.e.*, the Sinclair legal entity), not any particular station, is providing the services, in our case, either Sinclair or one of its subsidiaries. Moreover, none of the Sinclair Agreements contain a termination provision that is triggered by the sale by Sinclair of a same-market station, or any other station in that regard, so that if such station was sold, Sinclair would continue to be obligated to provide the programming and services under the Sinclair Agreements, or face a potential breach of contract action.

(... continued)

grandfathering of the LMAs themselves, and not to the individual station combinations. The term "existing combinations of stations" is never used. All the 2002 Order is stating is that there is no change in Commission policy from the 1999 Order.

[7] *Id.* at ¶126.

[8] *See id.*("In addition to these "same-market" LMAs, there are at least 35 other time brokerage arrangements where the brokering and the brokered stations are in different DMAs or the programming is supplied by an entity other than a television station"). The 1999 Order specifically refers to Sinclair, stating "Some companies, such as Clear Channel, Sinclair and Paxson, serve as the broker in a number of LMAs, both in markets where the company owns another television station and in markets where the company does not own a station." *Id.* at 12598 n.191.

[9] There is one brief reference to television station WHP in the WLYH LMA, but only in connection with WLYH's public inspection file obligations, not with respect to any obligation to provide any services.

[10] The LMAs in question are with Clear Channel Television Inc. (as assumed by Sinclair), Sinclair Communications, Inc. and WTTO, Inc. (the company and not the station), a subsidiary of Sinclair, as the programmers, not the individual stations. .

In considering the issues raised in this letter we ask that you take into account the position taken in the 1999 Order that "television LMAs entered into prior to the November 5, 1996 adoption date... ***should receive significant grandfathering relief***."[11] We are only asking that Sinclair be given the protection clearly delineated in the 1999 Order, the same given to all pre-1996 LMAs. In the transactions proposed by the applications in question, no action is being taken that has any impact at all on any of the grandfathered Sinclair Agreements. They are not being assigned, transferred, or amended, but instead will remain with the same parties that are currently parties to such LMAs, and the services will be provided by the same parties pursuant to the same terms and conditions as are currently in effect.[12]

Finally, we note that the Letter states that the existing LMA involving WTAT-TV, Charleston, South Carolina, is not entitled to grandfather status because it was entered into after November 5, 1996.[13] This statement, however, overlooks the fact that the United States Court of Appeal for the District of Columbia Circuit granted Sinclair's Emergency Motion for Stay of the Commission's 1999 Order, and stayed the time for Sinclair to come into compliance, "pending further order of the court."[14] As Sinclair pointed out in its Emergency Motion for Stay, the 1999 Order would have required Sinclair to terminate the WTAT-TV LMA (as well as three other LMAs to which it was a party) unless it could show compliance with the Eight Voices Test. In granting Sinclair's Emergency Motion for Stay, the Court gave continuing viability to the WTAT-TV LMA. The court has never lifted the stay, and thus the WTAT-TV LMA remains valid.[15]

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[11] 1999 Order at ¶ 144 (emphasis added).

[12] Indeed, the 1999 Order makes clear that, during the grandfathering period, "LMAs may continue in full force and effect, and may also be transferred and renewed by the parties . . . ." 1999 Order at ¶ 146. It seems illogical and arbitrary that the Commission would permit a party to transfer its rights under a grandfathered LMA, but prohibit that party from continuing to provide such services if it replaces a local station with another station in the same market.

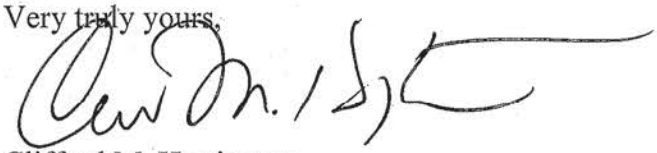
[13] Letter at 2.

[14] *See Sinclair Broadcast Group, Inc. v. FCC*, Stay Order in Case No. 01-1079 (D. C. Cir. Jun. 20, 2001), a copy of which is attached hereto.

[15] Although the stay granted by the D.C. Circuit Court of Appeals was specific to Sinclair, it is Sinclair's understanding that other broadcasters have relied on this stay to continue to provide services to stations under LMAs entered into after November 5, 1996, something the FCC could confirm by reviewing LMAs which are on file with the Commission. Accordingly, we do not believe it would be fair for the FCC to treat Sinclair more onerously than such other stations just because Sinclair has a transaction pending involving the Charleston, South Carolina market, particularly because Sinclair's actions are permitted by virtue of the stay that has never been lifted.

We very much appreciate your considering the points made in this letter and ask that you either provide us more support for the positions taken in the Letter or reconsider the conclusions stated therein. Accordingly, we respectfully request an extension of time to respond to the Letter, pending your response to this letter.

Very truly yours,



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*By electronic mail and First Class U.S. Mail
**By electronic mail only
***By U.S. Mail

encl: Order

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 01-1079 **September Term, 2000**

Filed On: June 20, 2001 [604350]

Sinclair Broadcast Group, Inc.,
Petitioner

v.

Federal Communications Commission and United States of America,
Respondents

United Church of Christ, et al.,
Intervenors

BEFORE: Williams, Sentelle, and Rogers, Circuit Judges

ORDER

Upon consideration of the emergency motion for stay of an order of the Federal Communications Commission filed by Sinclair Broadcasting Group, Inc., the cross-motion to dismiss filed by the Federal Communications Commission, the oppositions thereto, and the reply, it is

ORDERED that consideration of the cross-motion to dismiss be deferred pending oral argument. The parties are directed to include in their briefs the arguments raised in the cross-motion to dismiss rather than incorporate those arguments by reference. It is

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 01-1079 **September Term, 2000**

FURTHER ORDERED that Sinclair's emergency motion for stay of the Federal Communications Commission's August 6, 1999, order be granted; the time for Sinclair to come into compliance with the Commission's "eight voices standard," as elucidated in Report and Order, 14 FCC Rcd 12903, 12926, 12932-33 ¶¶ 47, 64 (Aug. 6, 1999), is hereby stayed pending further order of the court. Movants have met the stringent standards for a stay pending court review. See Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977); D.C. Circuit Handbook of Practice and Internal Procedures 32 (2000).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:
Cheri Carter
Deputy Clerk/LD