

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

In re Applications of)	
)	
WXLV Licensee, LLC)	
)	
For Renewal of License of WXLV-TV)	BRCT-20040730ART
Winston-Salem, NC)	
)	
)	
WUPN Licensee, LLC)	
)	
For Renewal of License of WUPN-TV)	BRCT-20040730ARP
Greensboro, NC)	
)	
)	
Anderson (WFBC-TV) Licensee, Inc.)	
)	
For Renewal of License of WBSC-TV)	BRCT-20040730AHU
Anderson, SC)	
)	
)	
WTAT Licensee, LLC)	
)	
For Renewal of License of WTAT-TV)	BRCT-20040730AIH
Charleston, SC)	
)	
)	
WLFL Licensee, LLC)	
)	
For Renewal of License of WLFL)	BRCT-20040730ARF
Raleigh, NC)	
)	
)	
Raleigh (WRDC-TV) Licensee, Inc.)	
)	
For Renewal of License of WRDC)	BRCT-20040730ARG
Durham, NC)	
)	
)	
WLOS Licensee, LCC)	
)	

For Renewal of License of WLOS
Asheville, NC

) BRCT-20040730AQF

)

)

)

WMMP Licensee L.P.

)

)

For Renewal of License of WMMP
Charleston, SC

) BRCT-20040730APZ

)

PETITION TO DENY AND FOR OTHER RELIEF

SUMMARY

Free Press brings this challenge to the ultimate licensees of the stations, Sinclair Broadcast Group (“Sinclair”) and Cunningham Broadcasting Corporation (“Cunningham”). Sinclair and Cunningham have violated the Communications Act and related FCC rules by unlawfully transferring control of certain stations. An earlier FCC fine of \$80,000 imposed in 2001 for this misconduct has not deterred their continuing illegal behavior.

The Cunningham leadership remains in lockstep with that of Sinclair, making a mockery of the fundamental principle of broadcast law that each licensee ultimately is responsible for the independent operation of each licensed station. As Commissioner Michael Copps declared prophetically three years ago, in urging FCC investigation beyond the \$80,000 fines, the use by Sinclair of Local Marketing Agreements (“LMAs”) that “fall just short of ownership arrangements” has crossed the line into violation of FCC ownership restrictions, including the “one-to-a-market” rule. Sinclair and Cunningham behave identically because they have an identity of interest.

Two years ago, Sinclair established “News Central,” a realignment of its news and public affairs operations. Sinclair touted the change, asserting it was making non-entertainment

programming more affordable. In fact, the move is an attack on the bedrock principle of “localism.” Even worse, it has become a vehicle for slanting the news and for violating the political broadcast rules. If this were not enough, there are unresolved and serious allegations of misconduct brought in 2002 and 2003 by Rainbow/PUSH Coalition. And pending in U.S. District Court for the Northern District of Maryland is a complaint of racial discrimination against a Carroll County trailer park operated by a Sinclair vice president, Frederick Smith.

The public interest commands that these licenses not be granted without clearance through a process of evidentiary hearing. The known behavior of these licensees is egregious. The FCC must look into the full scope and gravity of the behavior. Petitioner Free Press asks for the full hearings on the record provided by law, and further requests that these hearings take place in the various cities of license, with only the pre-hearing conferences to be held at the FCC in Washington.

TABLE OF CONTENTS

SUMMARY	2
I. INTRODUCTION.	2
II. THE LICENSEES HAVE ADMITTED SERIOUS VIOLATIONS.....	4
III. RECENT EVENTS PROVE A CONTINUING PATTERN OF ABUSE.	9
IV. THE PUBLIC INTEREST IN RENEWAL OF THESE LICENSES REQUIRES A HEARING.	19
V. CONCLUSION AND REQUEST FOR RELIEF	23
EXHIBIT A: Declarations of Thomas Coulson, Mary Frances Brown, Robert D. Phillips, Ronald Sigrist, Merrill Chapman	
EXHIBIT B: Letters From WLOS-TV Viewers	
EXHIBIT C: Guest Article, Jon Lieberman	

PETITION TO DENY AND FOR OTHER RELIEF

Section 309(k) of the Communications Act of 1934, as amended, 47 U.S.C. §309(k), states that the Commission shall grant a license renewal application if it finds, with respect to that station, during the preceding license term, that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations by the licensee of the Communications Act or the Commission's Rules; and (3) there have been no other violations of the Act or the Commission's rules which, taken together, would constitute a pattern of abuse.

The Commission cannot lawfully renew the licenses of the captioned licensees. Sinclair is the poster child of television broadcast licensee malfeasance. The licensees have admitted serious violations of law and of the Commission's rules during the preceding license term. Moreover, after Commission findings of serious violations of law and of Commission rules, persons in control of the licensees have continued those same violations in order to enrich the parent corporation at the expense and to the detriment of the communities of license. And the persons controlling the licensees have found new ways to violate additional Commission rules and relevant laws. It is impossible to find that the stations have served their communities of license. There is so much smoke in the behavior of these licensees that the FCC must look into the possibility of a dangerous fire. At this stage of a petition to deny, the agency need not be shown definitively the "existence of a fire."¹ The licensees' behavior cumulatively amounts to a pattern of abuse and a betrayal of the public interest, convenience and necessity. None of the eight licenses may be renewed.

I. INTRODUCTION.

Free Press is a non-profit organization working to involve the public in media policymaking and to craft policies for a more democratic media system.² Free Press brings this petition on its own behalf and on behalf of its members who are Declarants to the facts described herein.

The Commission has many rules that apply to broadcasters. None is more important than the rule that limits the number of television broadcast licenses one company may hold in a single broadcast market.³

Since its inception, the Commission has recognized that a broadcast license is a unique and important public privilege. Therefore every licensee is held personally and directly responsible for the control of its broadcast station.⁴ A licensee has great power to abuse its trust held on behalf of the community of license. And the Commission has always imposed rules to restrain this power. Aside from direct regulation, the Commission also has tried to marshal market forces to discipline licensee behavior where possible.⁵

¹ *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 397 (D.C. Cir. 1985) The court here reversed the Commission's denial of a hearing request.

² For more information, go to <http://www.freepress.net>.

³ 47 C.F.R. § 73.3555(b); *Review of the Commission's Regulations Governing Television Broadcasting*, FCC 99-209, 64 Fed. Reg. 50651-01, 14 FCC Rcd 12903 (1999). at ¶ 22.

⁴ *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994, 1003 (D.C. Cir. 1966).

⁵ See, e.g., 47 C.F.R. § 73.1941 ("Equal opportunities"); *In the Matter of Policies and Rules Concerning Children's Television Programming*, 11 FCC Rcd. 10,660 (1996).

For these reasons, the Commission has always severely limited ownership or control by a single entity in a given market.⁶ The Commission in recent years has energetically pursued competitive discipline for licensees by increasing the number of voices in the marketplace of ideas.⁷ The Commission itself characterizes its most recent changes to the Duopoly rules as furthering these policies. Similarly, the Commission adopted the local marketing agreement (“LMA”) rules to assist the survival of struggling stations in smaller broadcast markets.⁸ The goal was the same --to maintain media diversity in a community by supporting the maximum number of broadcast stations the market will sustain.⁹ And the Commission never varied from its own principles that one entity normally should control only one station in a single market, except in extraordinary circumstances that actually advance the interests of the community by increasing the amount of local broadcast service.

Although the LMA rule was created to advance media diversity and foster the economic survival of as many voices as possible, Sinclair has used the LMA arrangement for the opposite

⁶ The original duopoly rule was adopted in 1964. It was amended in 1999 (note 1, *supra*). The more recent modifications have embodied Commission efforts to adapt the rule to modern circumstances as the number of television broadcast licenses per market has expanded. But the fundamental limit has been and remains one television license in markets with relatively few independent TV voices.

⁷ See, generally, *In the Matter of Broadcast Localism, Notice of Inquiry*, FCC 04-129, released July 1, 2004 (“Localism Inquiry”).

⁸ 47 C.F.R. § 73.3555(j)(2); *In re Revision of Radio Rules and Policies*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd. 6387 (1992), at ¶2. Like newspaper joint operating agreements approved by the Antitrust Division of the Department of Justice, LMAs are intended to allow a financially weak station to share limited operating staff and facilities with a stronger station to avoid unnecessary expenses. LMAs are expressly not devices to allow the weaker licensee to yield control of the station to the stronger partner in the LMA. 47 C.F.R. § 73.3555(j)(3) (licensee must certify it maintains ultimate control over the station’s facilities).

⁹ *Review of Commission’s Regulations Governing Television Broadcasting*, Further Notice of Proposed Rulemaking, 10 FCC Rcd. 3524, 3581 (1995), at ¶135.

purpose. The company is abusing the anti-duopoly policy through its LMAs with WBSC-TV and WTAT-TV. And it is abusing structural regulations by flagrantly employing long-term LMAs as *de facto* purchases of stations which the Commission has explicitly refused to transfer to Sinclair.

A hearing will prove that the LMAs are ruses that allow Sinclair to exercise complete and total control over the Cunningham stations¹⁰, given that the Commission rejected Sinclair's multiple efforts to persuade the Commission to waive the anti-duopoly rule in the Asheville and Charleston markets. Sinclair ignored these decisions and is today operating the stations as if it owned them outright. There is not a scintilla of separation of operational or editorial decision-making between the Cunningham and Sinclair stations. All decisions are made at Sinclair headquarters in suburban Baltimore. All actions by the Cunningham stations are made solely for the economic benefit of Sinclair, even when those actions would be profoundly detrimental to Cunningham. And there is no evidence that the titular owner of Cunningham Broadcasting asserts any control, at any level, over any issue affecting the Cunningham stations.

It is time for the Commission to divest this outlaw company of these important public privileges and to place the licenses in the hands of law-abiding citizens and corporations.

II. THE LICENSEES HAVE ADMITTED SERIOUS VIOLATIONS.

Three years ago, the Commission found that Sinclair had exercised "*de facto* control over Glencairn in violation of Section 310(d) of the Communications Act."¹¹ In defending its

¹⁰ The Cunningham Broadcasting Corporation television stations, formerly held by Glencairn, Ltd. ("Glencairn"), are WRGT, Dayton, OH; WVAH, Charleston, WV; WTAT, Charleston, SC; WTTE, Columbus, OH; and WNUV, Baltimore, MD.

¹¹ *In the Matter of Edwin L. Edwards, Sr. (Transferor) and Carolyn C. Smith (Transferee)*, Memorandum Opinion and Order and Notice of Apparent Liability, FCC 01-336, 16 FCC Rcd 22236, 22248 (2001), hereafter "Edwards Order." Glencairn was the predecessor of the current

decision to fine Sinclair and Glencairn \$40,000 each rather than designate the station transfers for hearing, the FCC referred to:

- “[R]eliance on past staff decisions” leading to apparent “miscalculations on the part of Sinclair and Glencairn as to what was permissible.”
- “Mr. Edwards, the party at the center of Glencairn’s temporary abdication of control, is leaving the company, thus mitigating the potential for future lapses.”
- “[T]he parties have cooperated in our investigation” and “manifested no palpable intent to deceive the Commission.”

Accordingly, the Commission fined the licensees for shifting control from Glencairn to Sinclair without Commission permission. And the Commission imposed conditions on the transfers to Glencairn with the expectation of preventing any further improper exercise of control over Glencairn by Sinclair. 16 FCC Rcd at 22255-56.

Not all the Commissioners agreed that fines and conditions were sufficient to protect the public interest against future misconduct by these licensees. In his partial dissent, Commissioner Copps warned that Sinclair’s “multiple ownership strategy” would lead it to persist in crossing over the lines of the Commission’s rules:

With the transactions before the Commission today, Sinclair has crossed the line into behavior that the majority has found to violate the Commission’s rules. In assessing a fine on Sinclair for this violation, the majority purports to stop the expansion of Sinclair’s forays into multiple ownership, but in fact it merely points out that lines have been crossed, while allowing Sinclair to run over these lines and to continue its multiple ownership strategy.

16 FCC Rcd at 22259. As discussed further below, Commissioner Copps’ warning was prophetic. The misconduct of Sinclair continues, with the acquiescence of Glencairn/Cunningham.

licensee, Cunningham. We respectfully request the incorporation of that record into this proceeding.

The Copps partial dissent suggested that more investigation at the time – such as a designated hearing – might help to keep the Sinclair strategy in bounds:

What makes Sinclair’s practices disquieting, however, are its maneuvers to acquire interests in multiple stations in local markets in seeming contravention – if not violation – of Commission rules. While in the past, Sinclair has entered into arrangements with Glencairn to acquire and manage multiple stations in local markets *that the Mass Media Bureau has found to fall just short of ownership arrangements*, the transactions presented here raise questions of fact requiring further investigation.

16 FCC Rcd at 22261, emphasis added.

True to the Copps forecast, Sinclair and Glencairn (now Cunningham) were not to be deterred by mere fines and conditions. After the publication of the Edwards Order, Sinclair actually tightened its operational control of Cunningham by (1) substituting family member Carolyn Smith in place of non-family member Edwin Edwards as the ostensible head of Cunningham, and (2) terminating independent counsel for Glencairn (which represented that company during the Edwards litigation) and returning legal representation of Cunningham to the same law firm that has long represented Sinclair.

Sinclair then brazenly applied to acquire *de jure* control by transfer from Cunningham of five stations (the “2002 Applications”) including one of the license renewals challenged here, WTAT of Charleston, SC. The record in that matter shows that the financial terms of the transaction and operating terms for the Cunningham stations – like those criticized by all of the Commissioners in the Edwards Order – were laughably unfavorable to Cunningham and one-sided in Sinclair’s favor. (Rainbow/PUSH Petition to Deny, August 21, 2002)

The 2002 Applications were dismissed as defective because they did not comply with the

Commission's "anti-duopoly rule" at Section 73.3555(b), 47 C.F.R. §73.3555(b).¹² The Dismissal Order went to some pains to explain to the applicants their legal error in claiming that the rule restricting duopolies was invalid.¹³

The next year, still undeterred, Sinclair and Cunningham tried yet one more time to get the Commission to approve five license transfers from Cunningham to Sinclair. ("2003 Applications") This time, the Media Bureau Chief sounded annoyed:¹⁴

This is the third time these parties have been before the Commission seeking approval of transactions involving the sale of television stations. . . . Sinclair once again acknowledges that its ownership of the Cunningham stations would not comply with the 1999 television duopoly rule. . . .

Sinclair has once again prematurely sought to acquire stations that it may not own under the rules currently in place.

Emphatically, Dismissal Order II refused to overlook the noncompliance of the proposed transfers, nor would it accept the proposals as a request to waive the duopoly rule:

We find that Sinclair's request for waiver is really more an argument to change the 1999 television duopoly rule. That matter is part of the pending court challenge.¹⁵

¹² Letter of W. Kenneth Ferree, Chief, Media Bureau, to Cunningham counsel, Kathryn R. Schmelzer, September 13, 2002. ("Dismissal Order").

¹³ Briefly, in order for two stations in the same TV market to come under common ownership, one of the pair must be outside the top 4 in rated audience share. After the merger, there must remain in the market at least eight independent, full-power commercial and noncommercial TV stations. The rule has since been relaxed somewhat, but the relaxation is under stay. *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3rd Cir. 2004). (subsequent history omitted). Thus, the duopoly restrictions remain as they have stood since 1999.

¹⁴ Letter of W. Kenneth Ferree to counsel for Cunningham and Sinclair, February 26, 2004 ("Dismissal Order II"), at 1-2. (Petition for Reconsideration and Application for Review pending) The letter cited prematurity as a ground for dismissal; it might justifiably have added "repetitive" or "frivolous." See, e.g., Section 1.401(e) of the Rules.

¹⁵ Dismissal Order II, at 3.

Having chosen to dismiss the transfer applications once again, the FCC normally would have dismissed as moot a second Rainbow/PUSH petition to deny them. However, in order to try to resolve the disputed issues of license control raised in both 2002 and 2003 when Rainbow/PUSH challenged the LMAs as *de facto* transfers of the Cunningham stations to Sinclair and for “administrative efficiency,” Dismissal Order II (at 3-4) considered the petitions on the merits of the LMA claims and denied the claims.¹⁶ That consideration, we submit, was cursory to the point of being dismissive, and was no true consideration of the merits.¹⁷

But our purpose here is not to re-argue Dismissal Order II. Rather, we submit that Dismissal Order II, like the Edwards Order, makes too light of a continuing pattern of illegal behavior by Sinclair in exercising control of other licensees in the same market beyond the scope of a normal LMA arrangement, after the Commission had explicitly rejected requests to approve outright purchase and transfer. Sinclair is behaving as if it had purchased those stations. And Dismissal Order II approving the LMAs is not controlling precedent. Dismissal Order II did not investigate all the relevant facts which demonstrate unlawful control by Sinclair. The illegal control should have been investigated in 2001, as Commissioner Copps suggested, but by all means must be closely examined before these licenses are renewed. The context here is appropriate. There is no business demand for quick FCC action on a particular station sale. This

¹⁶ Petitioners here respectfully ask that the full record in both dismissal orders be incorporated into this proceeding by reference.

¹⁷ For example, Dismissal Order II engages in circular reasoning. As Dismissal Order II said, the Commission will not ordinarily look into “the purchase price in a station sale unless it appears from other facts that the arrangement may not have been an arm’s-length transaction between the parties.” The order found no “new” facts in this regard, and chose to ignore the continuing reality of the old facts— that these same parties who unlawfully transferred control were still engaged in a relationship controlled by Sinclair that used below-market sale prices and other tools to further the relationship.

should be a careful and deliberate examination of Sinclair and Cunningham station histories over the past eight years, to determine their worthiness for licenses running eight years into the future.

The Commission must face its statutory and leadership responsibilities. Sinclair has chosen to make its operation of these licenses a test of the Commission's own integrity and commitment to enforce Commission rules. Sinclair's behavior is common knowledge within the broadcast industry and within the communities of license. The Commission must examine this behavior in detail and decide whether it is behavior the Commission endorses as adequate to sustain the renewal of television broadcast licenses. The Commission must assure itself that its rules are obeyed, that real and serious consequences follow to any television broadcast licensee that does not obey the rules. Otherwise, lawbreakers will prosper, with competitive and economic advantages over law abiders. The Commission must ensure the opposite result. Law abiders should prosper and have the continued right to hold a license vested with the public interest. Law breakers who violate the public trust should lose the economic benefit of their behavior. Faced with a licensee that repeatedly and continuously challenges the validity of the Commission's rules, and then uses the denial of those challenges as an excuse to engage in the same course of action, the Commission must act.

III. RECENT EVENTS PROVE A CONTINUING PATTERN OF ABUSE.

Sinclair is engaged in direct and illegal violations of the Commission's rules requiring the Cunningham ownership to exercise direct and independent control of the Cunningham licenses. Dismissal Order II purported to resolve the merits of Rainbow/PUSH's petitions to deny the Cunningham-to-Sinclair attempted transfers in 2002 and 2003. In fact, the order only touched lightly on (1) under-priced station sales, (2) limits on Cunningham's ability to contract independently, (3) local marketing agreements, or LMAs (note 8, *supra*), and (4) the weight to

be given licensee web site information. A number of Rainbow/PUSH's arguments were never addressed and cannot be assumed resolved. We summarize these below, trusting to the incorporation of the entire record by reference. (notes 11, 16, *supra*)

Cunningham Leadership is not Independent. Sinclair's control over Cunningham and its stations is even tighter than it was previously, since now Cunningham lacks even the fig leaf of an unrelated person (Edwin Edwards) in charge. Cunningham is now headed by Carolyn Smith, the Smith brothers'¹⁸ mother, and run by Robert Simmons.¹⁹ While we do not dispute the Commission's general caveat that family relationships don't necessarily prove unlawful dependency (Edwards Order, 16 FCC Rcd at 22253, note 39), we point out the Review Board's warning to an aggrandizing broadcaster that it was "operating at the outer limits of what is permissible without an evidentiary hearing" and that other parallel proceedings were investigating the ownership concentration issues.²⁰ No such evidentiary hearing was opened after the Edwards Order.

So here, Sinclair and Cunningham have been operating beyond the outer limits of permissible LMA behavior. The stations are in fact a duopoly in each market, and this renewal proceeding offers a parallel opportunity – passed over by the Commission in 2001 – to examine these facts. If the Commission will hold a hearing, and consider the facts, it will conclude that the Sinclair business strategy does not comply with the FCC's station ownership rules.

¹⁸ The Smith brothers are associated with Sinclair Broadcast Group, and their titles, are: David D. Smith, President and Chief Executive Officer; Frederick G. Smith, Vice President; and J. Duncan Smith, Vice President and Secretary.

¹⁹ Simmons controls less than 20% of the votes in Bay Television, licensee of WTTA-TV, St. Petersburg, FL, while the Smith brothers control the balance. Simmons worked for Sinclair from 1969 to 1989, and for three of those years served as its President. A prior FCC order in an unrelated matter found that Simmons followed closely the desires of Sinclair founder Julian Smith. See, *Signal Ministries*, FCC 87-68, released February 27, 1987, and underlying decisions.

Sinclair and Cunningham Have Identity of Interest.

It is relevant, albeit not

determinative,²¹ that when the *mater familias*, Carolyn Smith, took control of Cunningham, she dropped the Cunningham stations' communications legal counsel in favor of the law firm then and now serving Sinclair. The relevance is grounded in more than FCC precedent. Lawyers are precluded from serving two clients with actual conflicting interests--clients cannot waive that prohibition. Only where there are *potential* differences or conflicting interests may clients consent to waive the *potential* conflict. We assert no claims of ethical breach here. In fact, we claim the opposite. No client waiver was required because there is no potential for conflict of interest because Cunningham and Sinclair have identical and inseparable interests. We believe the Commission must examine how Cunningham could retain common legal counsel and still claim independence from Sinclair. Cunningham is so certain of the absence of conflict between Sinclair and Cunningham's general aims or particular actions that it chooses common counsel.

Sinclair Has Purposely Caused the Demise of Localism through "News Central."

Sinclair has found unique ways to set itself apart from responsible colleagues in the television broadcast industry. One of the most striking techniques is to shrink local station news functions and substitute generic "local news" from a centralized studio located at the company's Baltimore headquarters. This certainly enhances the profitability of the licensees and the parent corporation.²² It is also an abandonment of the licensees' responsibility to program to meet the needs of the local community of license and to give coverage to local news and events of

²⁰ *Cannon's Point Broadcasting*, 93 FCC 2d 643, 656 (Review Board, 1983).

²¹ 93 FCC 2d at 655, citing Alan K. Levin, FCC 80-67, 45 Fed.Reg. 85512, December 29, 1980, ¶9, a hearing designation order.

²² Declaration of Robert D. Phillips, Exhibit A, hereto.

importance. In other words, the company wins and the viewers lose. This is Sinclair's view of the "public interest."

Sinclair uses its "News Central" to camouflage its cutbacks in local community coverage. And it then inserts commentary disguised as news reporting, often failing to disclose that the commentary is not from someone in the local community. At hearing, the Commission will see a parade of facts and viewers, from all political points of view, who are confused about the origin of the "news and commentary" information carried on Sinclair stations, angered by the lack of relevance of the "News Central" inserts to the local community of license, and incensed about the lack of local event and news coverage.²³

In the words of its own web site (<http://www.sbgnet.net/>), Sinclair "owns and operates, programs or provides sales services to 62 stations in 39 markets," comprising nearly a quarter of U.S. television households. Thus, the reach of its programming is substantial. Two years ago, Sinclair launched a centralized television news operation that it claims makes local news more affordable, particularly in smaller markets. This is the description from the broadcast group's web site:²⁴

In October 2002, SBG launched a local news network operating in conjunction with a centralized news operation. This revolutionary news model will allow SBG to build its local news franchise and local market share by introducing local news programming in markets that otherwise could not support news. Stations in the following markets currently air news programming on a daily basis.

The North and South Carolina stations up for renewal at this time are, to the best of our knowledge, distributors of this centralized product.

²³ Declarations of Robert Phillips, Thomas Coulson and Merrill Chapman, Exhibit A, hereto. *See also*, excerpts from viewer letters at Exhibit B.

²⁴ <http://sbgweb2.sbgnet.com/business/news.shtml>

In its gradual deregulation of broadcasting and its increasing reliance on “market forces” to spur stations to serve the public interest, the Commission has eliminated previous requirements that licensees “ascertain” the needs and interests of their communities to be addressed by programming and has removed guidelines applicable to news and public affairs coverage, sometimes called “non-entertainment programming.”²⁵ Spurred in part by renewed viewer and Congressional interest in the extent of concentration in broadcast and other media, the Commission has begun to rethink the limits of deregulation and market influence:

We seek additional comment on the issue of how broadcasters currently are serving the needs of their communities and whether the Commission could or should take action to better ensure that broadcasters air programming to serve their communities’ needs and interests. Does “local” programming best serve this goal? If so, what would qualify as “local” programming? Locally originated or locally produced programming? Or should locally oriented programming, meaning programming of particular interest to the local community, count regardless of its source?²⁶

As the Commission itself has said, even as it ponders its role in relation to the broadcast licensee as a First Amendment speaker, the FCC must continue to rely on the ultimate regulatory persuasion of license renewal – including the petition to deny -- to evaluate broadcaster performance. (Localism Inquiry, ¶9)²⁷

For viewers and other critics of Sinclair station operations, the economies of centralized news – which ultimately enrich the shareholders -- have created parallel harms to the

²⁵ *In the Matter of Broadcast Localism, Notice of Inquiry*, FCC 04-129, released July 1, 2004, ¶12 (“Localism Inquiry”). Comment and reply dates were extended to November and December 1, 2004, respectively. Over 70,000 individuals have filed comment in this open NOI. An estimated 50,000 of those comments relate directly to the issue of Sinclair and its deficient attention to localism. This is a highly unusual response to a Commission proceeding and certainly adds to the need for an evidentiary hearing on the NC and SC licenses at issue.

²⁶ Localism Inquiry, ¶14.

communities of license by reducing the amount, quality, and relevance of the broadcast information to viewers in each local market.²⁸ Citizens and viewers both care and are outraged. Multitudes of WLOS-TV viewers on both sides of the political equator were angered by Sinclair's centralized decisions regarding the film "Stolen Honor." The number that chose to write the Asheville (NC) *Citizen-Times* in October of 2004, were so numerous that the newspaper used its internet web site to print letters from readers that it did not have space to reproduce in the paper.²⁹ While the immediate occasion for the posting was the outpouring of interest in the Sinclair-sponsored film, "Stolen Honor," which WLOS-TV of Asheville and WBSC-TV of Anderson SC and other Sinclair stations in North and South Carolina were ordered to broadcast, the readers did not confine their views to that controversy alone.³⁰

For many of the letter-writers, the Sinclair plan to air the documentary was simply part of an abusive pattern of biased commentary often presented as news. There was frequent reference to a nightly commentary, "To the Point," by a Sinclair corporate relations vice president, Mark Hyman, who appears -- from Sinclair headquarters in Baltimore -- in the middle of scheduled newscasts. A husband and wife, Steven and Melissa Savino of Brevard, NC, self-styled "registered independent voters," wrote that "our local access to ABC programming is limited to

²⁷ In *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969), the Supreme Court identified free speech rights of viewers and listeners as well as free speech protections for TV and radio broadcasters.

²⁸ Phillips and Coulson Declarations, Exhibit A.

²⁹ We have attached a few letters at Exhibit B, designed to show a range of views. Although the Asheville paper says it takes down such postings in seven days, they were still available on the web site as of the morning of November 1, 2004, <http://www.citizen-times.com/cache/article/letters/63639.shtml>

³⁰ "Stolen Honor" attacks Presidential candidate John Kerry for his Vietnam War views of the early 1970s. After a firestorm of criticism, Sinclair stood down on the showing of the film in its entirety and reportedly asked Kerry to appear on a special program. The issue is discussed in more detail, *infra*.

WLOS-Asheville” and that watching ABC locally “would be supporting Sinclair and its political agenda.” Thus, the Savinos said they intended to notify WLOS advertisers to try another network if they wanted to reach their home in Brevard.

Other *Citizen-Times* readers were more concerned with programming Sinclair headquarters decided to delete from WLOS-TV than with the addition of “Stolen Honor.” They thought the decision reflected the lack of responsiveness to the local community. Many criticized the Sinclair refusal to run an ABC Nightline program from April 2004 featuring the reading of the names of servicemen and women killed in Iraq. The appended Declarations reinforce these criticisms.

Matt Mulhern of Clyde, NC, a professed Republican who criticized Sinclair’s decision not to run “Stolen Honor,” perhaps unwittingly makes an essential point the Commission must consider as it reviews Sinclair’s renewal applications. WLOS is the only big-network television signal in Asheville, so the Baltimore headquarters can ignore the interests of Asheville viewers and advertisers with impunity: “The boycotts [of Sinclair advertisers] are empty, too. What else are they going to watch locally? Where else are the advertisers going to place ads? It’s not like we have hundreds of other outlets here in [western North Carolina].” A Weaverville, NC resident, Paul Janiczek, criticized the decision to pull the film and suggested that critics of the Hyman commentary could always turn him off and flip to Bill Moyers on public television. He also noted Sinclair even acknowledged that it received “weekly, mostly negative reactions, with many from WLOS viewers,” to the Hyman commentaries. It is one thing, of course, to acknowledge negative viewer opinion, but quite another to respond to it by actually providing balanced or responsive programming.

Sinclair Compels the Licensees to Engage in News Bias and Violations of the Political Broadcast Rules. The criticism from journalist-observers of WLOS-TV and its Sinclair siblings is sharper and more specific. (Exhibit C hereto) Among the critics is a former insider, Jon Lieberman, who was fired as Washington bureau chief for Sinclair. The Associated Press reported October 19, 2004 that Lieberman was let go for publicly criticizing the plan to air “Stolen Honor.” The same wire service report quoted Lieberman as saying he was “escorted out of the building” by Sinclair’s vice president for news, Joseph DeFeo, and has been denied relief from a non-compete agreement that prevents his working for another licensee in any Sinclair market.³¹

Separately, Lieberman said he was prepared to accept the airing of “Stolen Honor” if it were labeled as commentary, but that Sinclair “went too far” in planning to categorize the film as “news” in order to escape political “equal-time” obligations.³² Lieberman added:

At Sinclair headquarters, nobody was happy with the project, as far as I could tell. But there was no room for dissension. Everyone was afraid for their jobs.

If Lieberman were the only witness to an atmosphere of intimidation and fear in the newsroom, his testimony could be discounted as that of a disgruntled employee who chose an unwise method of complaint. But other journalists have written to similar effect.

In its coverage of the “Stolen Honor” controversy, the *Washington Post* mentioned the ABC Nightline blackout and added: “Sinclair also yanked ABC’s ‘Politically Incorrect’ after

³¹ Essentially the same story appeared on the front page of the *Baltimore Sun* for October 18, 2004, written by a *Sun* reporter.

³² “Why I stood up to Sinclair,” Guest Commentary, *Broadcasting & Cable*, October 25, 2004, Exhibit C hereto.

host Bill Maher made controversial remarks about the U.S. war on terror.”³³ As did the Asheville letter-writers, the *Chicago Tribune* couched one story on the anti-Kerry film in terms of Sinclair news patterns and practices:

Sinclair’s practices as a television operator have also been criticized for removing local control. The company increasingly utilizes “distance-casting” whereby local news, sports and weather is uniformly broadcast to its many stations from Sinclair’s headquarters in suburban Baltimore.

Television viewers receive on-camera reports from “News Central” that appear to be coming from local stations. Sinclair spokesman Mark Hyman delivers conservative commentary that must be carried on local news reports.³⁴

The Tribune story also quoted Andrew Schwartzman of the Media Access Project as saying of Sinclair: “They fake the localism by presenting the hometown station feel but without any of the presence and journalism that local communities deserve.”

The on-line magazine, Salon.com, reported that in pursuit of news centralization Sinclair had fired “the entire 47-person news team at KDNL in St. Louis, making it among the first major-market television stations to broadcast without local news.”³⁵ A similar mass discharge was reported at the group’s Rochester, NY station.³⁶ The Salon article continued by describing the public affairs consolidation:

Dubbed “News Central,” the maneuver is first and foremost a money-saving enterprise. But an indirect consequence of beaming uniform newscasts across the country is that it has given Sinclair

³³ “Family’s TV Clout in Bush’s Corner,” by Howard Kurtz and Frank Ahrens, Tuesday, October 12, 2004, page 1.

³⁴ “Media Firm Accused of Dodging FCC Rules,” by Leon Lazaroff, October 16, 2004, page 1.

³⁵ “Sinclair’s Disgrace,” by Eric Boehlert, October 14, 2004.

³⁶ Sinclair counters that it “has hired 350 news employees and launched 13 newscasts on stations that didn’t previously carry news.” “Controversy Over Kerry Film Only the Latest for Sinclair,” by Elizabeth Jensen and Walter F. Roche, Jr., October 24, 2004, page 1.

some political clout. “I don’t think they anticipated the power they would generate with News Central,” says one news industry source. “They created a political animal.”

Sinclair Owners Engage in Other Unlawful Behavior.

On December 16, 2002 Rainbow/PUSH submitted a “Supplement to Application for Review” raising serious issues of misconduct that we believe have not received a proper analysis. These included (Supplement, at ii) “misrepresenting or withholding critical facts; soliciting illegal ex parte communications; corrupting an election; and concealing a private interest in a monumentally critical news story.” We have asked for incorporation here by reference the record in the Rainbow/PUSH challenges of 2002 and 2003, and we believe these allegations deserve to be included in any order designating hearing on the license renewals at issue. These and additional charges are elaborated upon at pages 7-9 of the Rainbow/PUSH Petition to Deny of December 19, 2003.

Moreover, at least one of Sinclair’s principal owners is accused of engaging in explicit racial discrimination in an unrelated, but co-owned business.³⁷ Mr. Fred Smith operates a trailer park at Todd Village in Carroll County, Maryland, out of Sinclair’s headquarters office building near Baltimore. A federal district court lawsuit complaint asserts that the trailer park affirmatively discriminates against African Americans by discouraging them from renting space in the trailer park.

In an earlier day allegations that a principal of a broadcast company was involved in intentional racial discrimination in an unrelated business would not always give rise to hearing.³⁸

³⁷ *Hyacinth Walker, et al v. Todd Village, LLC*, Civil Action No. AMD 04-CV-3169, U.S. District Court for the District of Maryland (Northern Division), October 19, 2004.

³⁸ See, *Chapman Radio and Television Company*, 24 FCC2d 282, 284-85 (1970) (holding that “[t]he refusal by the principal of an applicant for a broadcast facility to permit the burial of an

Those days are over. A hearing should be designated if there is evidence of racial discrimination by a principal of the licensee. *See, e.g. Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, 17 FCC Rcd 24018, 24078 (2003) (reconsideration in part pending) (Separate Statement of Chairman Michael K. Powell) (“[i]f the public interest benefit means anything at all it cannot possibly tolerate the use of a government license to discriminate against the citizens from whom the license ultimately is derived.”)

IV. THE PUBLIC INTEREST IN RENEWAL OF THESE LICENSES REQUIRES A HEARING.

The criticisms recounted above are voluminous but unsworn. On information and belief, they are reinforced by letters other Sinclair and Cunningham station viewers have sent to the FCC directly. Taken together with the questions remaining unanswered from the Edwards Order and its aftermath of repeated station transfer attempts, the letters and print media reports raise substantial and material issues of fact about the licensees' service to their communities through the important measure of news and public affairs programming.

As in *Monroe Communications, Inc. v. FCC*, 900 F.2d 351, 357 (D.C. Cir. 1990), there is significant “record evidence of a strong downward trend in [Sinclair and Cunningham’s] responsiveness to community needs in the form of news and non-entertainment programming.”³⁹ Just as the court there remanded the Commission’s grant of renewal to the incumbent TV licensee, so here the FCC should designate a hearing to “focus on the downward trend in [the present applicants’] non-entertainment programming through the latter stages of the license

individual solely because of the color of that individual’s skin raises a serious question as to the applicant’s qualifications to be a Commission licensee”; finding that factors including legal advice concerning restrictive covenants mitigated against designation of a hearing issue on the discrimination itself, but designating for hearing the misrepresentation of the applicant concerning its principal’s involvement in the segregated cemetery.

period.” 900 F.2d at 359. The court elaborated on the importance of performance in these “latter stages”:

Where a licensee has instituted a dramatic and permanent format change, its programming following that change is more probative of its future performance than its programming prior to that change.

Judging by Sinclair’s own description of “News Central” and by the reports of mass firings of local news staffs in St. Louis and Rochester, the change in news operations of two years ago surely qualifies as “dramatic.” The shift also has proven disturbing for many viewers in the Asheville market and elsewhere, and has been severely criticized by professional journalists.

Whether Sinclair’s claims of countervailing economic benefit outweigh these drawbacks is seriously controverted and should be resolved in an evidentiary hearing. One way to approach this examination would be to look at the quantity and quality of non-entertainment programming before the advent of News Central in comparison to the product afterward. Station profitability might also be an index by which to measure the competing claims of Sinclair that News Central makes non-entertainment programming more affordable to more stations versus the critics’ and viewers’ assertions that centralization is a cost-cutting, command-and-control endeavor.

The continuing intra-family and control issues here – mother Carolyn Smith presiding over Cunningham licenses, her sons heading up Sinclair – are very like the scenario in *Astroline Communications v. FCC*, 857 F.2d 1556 (DC Cir. 1988), where the court remanded to the agency for closer study the question whether – if the TV station were not independent – the combination of TV and AM-FM radio in Hartford, CT would be contrary to the public interest. The *Astroline* panel quoted approvingly from *Citizens for Jazz*, 775 F.2d 392 (D.C. Cir. 1985), at 397:

³⁹ See, especially, Phillips Declaration, Exhibit A.

The statute in effect says that the Commission must look into the possible existence of a fire only when it is shown a good deal of smoke; the Commission has said that it will look into the possible existence of a fire only when it is shown the existence of a fire.

In this respect, we submit, the finding of Glencairn independence in the Edwards Order of 2001 must be reexamined in light of subsequent behavior strongly suggesting the Cunningham licensees' lockstep reliance on Sinclair's lead. For surely it is true, as the Commission has had to remind Sinclair repeatedly, that two Sinclair-controlled stations in the same market would be contrary to the public interest in the still-valid 1999 duopoly rule.

Like the Sinclair stations, the Cunningham outlets partake of News Central. With regard to the unfortunate matter of "Stolen Honor," Cunningham stations were the only licensees in the entire nation not owned and operated by Sinclair to agree to run the documentary. More peculiar still for so contentious a subject, Cunningham stations were quick to accede to the Sinclair decision not to air the film in its entirety.⁴⁰

We are mindful, of course, that the Commission, supported by the First Amendment rights of broadcasters as speakers, is reluctant to "interfere with the broadcaster's judgment without a showing that the broadcaster was unreasonable in its selection of issues."⁴¹ We consider it established at this point that Sinclair (with the eager acquiescence of Cunningham) deprives its local stations of independent editorial control that can be responsive to the needs and interests of the local community. There are three recent examples:

⁴⁰ The SBG press release of 10/19/04 stated: "Sinclair Broadcast Group announced today that on Friday, October 22, 2004 at 8:00 p.m. (7:00 p.m. central time) certain television stations owned by Sinclair Broadcast Group, Inc. will air a special one-hour news program, entitled A POW Story: Politics, Pressure and the Media. In order to minimize the interruption of normally scheduled programming in those markets where Sinclair owns and/or programs more than one television station, the news special will be broadcast on only one of those stations."

⁴¹ *Silver King Broadcasting*, 68 RR 2d 991, 994 (1990), citing, *inter alia*, *United Church of Christ v. FCC*, 707 F.2d 1414 (DC Cir. 1983).

- Sinclair expected at least one of its stations in each market to show “Stolen Honor”, then expected the stations to not to run the show, and then expected the stations to substitute the program commenting on the dispute itself.
- Sinclair denied its ABC affiliate stations the right to air the ABC Nightline program reciting Iraq dead, despite the consequence that this would black out the program in the entire coverage area of WLOS-TV;
- Sinclair denied its ABC affiliate stations the right to air a particular version of the ABC program, “Politically Incorrect.”

Whatever else might be said about the anti-Kerry film, we submit it was arbitrary and capricious to order its showing by Sinclair stations in every Sinclair market, regardless of the needs and interests of the community of license. It was equally arbitrary to then deny the stations the right to show the film if they so chose. And then there is Cunningham--it followed lockstep with the other Sinclair owned and operated stations, first planning to show, then deciding not to show, and then substituting the Sinclair headquarters-produced substitute show. Cunningham--the only broadcast group owner other than Sinclair--took these actions apparently solely to further the interests of Sinclair. Not even the national broadcast networks expect such blind allegiance. Moreover, affiliated stations are free to change their affiliations if they grow to dislike a network's proclivities or performance. Sinclair and Cunningham stations, by contrast, are not free to dis-affiliate.

Sinclair's refusals to air the ABC programs are a different order of unreasonableness. Yes, they necessarily affect all Sinclair owned and affiliated stations having access to the preempted material. But the refusals are particularly unfortunate where Sinclair is the only source of the deleted program in a wide area, causing the “blackout” of a unique point of view. A viewer need not watch “Stolen Honor,” if it ever airs. A viewer can change channels. Many Sinclair viewers, however, were unable to turn to Nightline or the Bill Maher show on other channels carrying ABC.

V. CONCLUSION AND REQUEST FOR RELIEF

For the reasons discussed above, the Commission should find that this Petition to Deny, and prior records incorporated here by reference, raise substantial and material questions of fact commanding a full evidentiary hearing on the captioned Sinclair and Cunningham licenses. Pursuant to Section 1.253 of the Rules, 47 C.F.R. §1.253, we ask that the Commission order hearings in each city of license, following pre-hearing conferences at the FCC.

Respectfully submitted,

FREE PRESS

By 

Nicholas P. Miller
James R. Hobson

Miller & Van Eaton, P.L.L.C.
Suite 1000
1155 Connecticut Avenue, N.W.
Washington, D.C. 20036-4320
(202) 785-0600

November 1, 2004

ITS COUNSEL

CERTIFICATE OF SERVICE

I, James Hobson, hereby certify that I have this 1st day of November, 2004 caused a copy of the foregoing "Petition to Deny, and for Other Relief" to be delivered by U.S. First Class Mail, postage prepaid, to the following:

Hon. Michael Powell*
Chairman
Federal Communications Commission
445 12th St. S.W.
Washington, D.C. 20554

Hon. Michael Copps*
Commissioner
Federal Communications Commission
445^h 12th St. S.W.
Washington, D.C. 20554

Hon. Jonathan Adelstein*
Commissioner
Federal Communications Commission
445^h 12th St. S.W.
Washington, D.C. 20554

Kathleen Schmeltzer, Esq.
Shaw Pittman LLP
2300 N. St. N.W.
Washington, D.C. 20037
Counsel for Sinclair Licensees

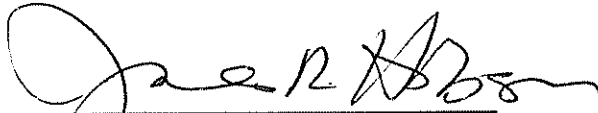
David Honig
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Council
3636 16th Street, N.W.
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Counsel for Rainbow/PUSH Coalition

Hon. Kathleen Abernathy*
Commissioner
Federal Communications Commission
445^h 12th St. S.W.
Washington, D.C. 20554

Hon. Kevin Martin*
Commissioner
Federal Communications Commission
445^h 12th St. S.W.
Washington, D.C. 20554

W. Kenneth Ferree, Esq.*
Chief, Media Bureau
Federal Communications Commission
445 12th St. S.W.
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Clifford Harrington, Esq.
Shaw Pittman LLP
2300 N St. N.W.
Washington, D.C. 20037
Counsel for Cunningham Licensees


James R. Hobson

* Also delivered by hand.

EXHIBIT A

DECLARATION

RE: WLOS-TV, Asheville, NC

My name is Thomas Coulson. I am a Board member of Common Cause/NC as well as a member of Free Press ("Petitioner Association"), and I am authorized to participate in this matter on behalf of Petitioner Association. I live at 1001 Reemes Cove Road, Marshall, NC 28753. I have been a resident of the Asheville area for 27 years. I am a regular viewer of WLOS-TV, Asheville.

I have reviewed and I support Petitioner Association's Petition to Deny Renewal ("Petition") directed at the currently pending application of WLOS-TV ("the Station") to renew its broadcast license ("Renewal Application"). The facts stated in these documents are true to my personal knowledge except where identified as having been based upon industry publications and material on file with the Federal Communications Commission ("FCC").

I would be seriously aggrieved if the Petition to Deny is not granted, because I, and other members of Petitioner Association, would continue to experience WLOS-TV programming which does not address the needs and interests of the Asheville community and which is not in the public interest for the following reasons:

1. Sinclair's News Programming

To me, the station promotes a particular ideological view and does not address the broader interests of the entire community. Frequently, propaganda is inserted in the middle of a newscast, without any transition or warning that reportage is shifting to opinion. I remember a "softball" interview of Vice President Cheney. I also remember a review of Senator Kerry's campaign statements and character that amounted to a partisan attack, but it was presented as part of the newscast. The local news people provide lead-ins to this propaganda material, which is delivered by someone else whose location is not identified. I believe the person is speaking from Sinclair headquarters in Maryland. Often there are references to "News Central." In my recollection, these News Central inserts began within the past two years. I have not seen other local stations in Asheville engaging in unfair commentary presented as news.

I am personally and deeply concerned that the WLOS-TV's biased programming is aggravating the growing tension and conflict within the Asheville community. I have noticed tension and lack of understanding between persons native to our region of western North Carolina -- who tend on the whole to be more conservative -- and newcomers who often are more liberal. As a member of Common Cause and Free Press, I want WLOS-TV to provide community programming that will help bring our community together, and broaden the understanding among citizens from different backgrounds, not drive the wedge deeper.

An example of the need for better understanding was sadly illustrated by a Common Cause public debate on the pros and cons of a new public access channel on the local cable system. I was moderator. It was difficult to keep attendees within bounds of civil discourse, as

the anger grew between proponents of public access and opponents fearing public access would be a vehicle for pornography. WLOS-TV failed our community by not covering the issue.

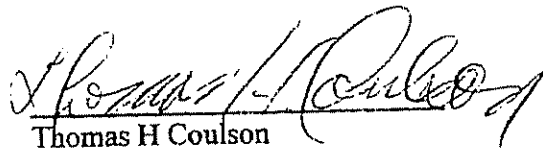
Earlier this year, I was among a group of citizens who spoke to the then-new General Manager of WLOS-TV, Jack Connors, asking for increased coverage of local political activities and races. I began to see taped statements from local candidates, which appeared to be a good start. Unfortunately, although I have seen no announcement by the station, I am told that Mr. Connors resigned about two months after he arrived. Since this occurred immediately after the uproar occasioned by Sinclair's decision to preempt network programs to run a partisan film, I infer that the events are connected, but have no personal knowledge of this.

2. Loss of Local Media Diversity

The Station is the only ABC network affiliate available to the community. And it is one of only three channels available "off the air" in my neighborhood. This means that the station owner's decision to preempt network programs such as Nightline cannot be replaced by shifting to another channel. This scarcity of local and national programming over the air is exacerbated by the Station's affiliation with WBSC-TV of Anderson, SC, because the number of independent stations is one less.

This statement is true to my personal knowledge and is made under penalty of perjury under the laws of the United States of America.

Executed October 31, 2004.


Thomas H Coulson

DECLARATION

RE: WLOS-TV, Asheville, NC, and WBSC-TV, Anderson, SC

My name is Mary Frances Brown. I live at 217 Mountain View Road, Asheville, NC, 28805. I am a member of Petitioner Association Free Press and a viewer of both the Sinclair and Cunningham stations referenced above, via the local Charter cable television system. I have lived in the area for some 22 years.

I don't watch a lot of television for entertainment. I depend on the local stations for school closings, flood warnings, that kind of thing. I occasionally watch ABC World News with Peter Jennings.

I was very upset when I heard that Sinclair was blacking out the ABC Nightline show last April that featured Ted Koppel reading the names of service men and women who died in Iraq. I thought that a memorial reading of this nature was a good idea. I wanted to see it. I did not see how it could be construed as anything but a tribute to the dead. We are basic cable subscribers and WLOS was our only choice for ABC.

This blackout incident led me to think something was wrong at WLOS even before I heard the report that Sinclair had ordered its stations to show this anti-Kerry documentary. If that documentary had been shown, I could have turned it off. But I don't like somebody else making my decisions to watch or not watch.

When Sinclair orders blackouts, this infringes my rights as a viewer. It is cheating. The use of the public airwaves is a privilege. Sinclair's blackout orders were unfair and an abuse of power.

I have reviewed and I support Petitioner Association's Petition to Deny Renewal ("Petition") directed at the currently pending applications of WLOS-TV and WBSC-TV ("the Stations") to renew their broadcast licenses ("Renewal Applications"). The facts stated in these documents are true to my personal knowledge except where identified as having been based upon industry publications and material on file with the Federal Communications Commission ("FCC").

I would be seriously aggrieved if the Petition to Deny is not granted, because I, and other members of Petitioner Association, would continue to experience WLOS-TV and WBSC-TV programming which does not address the needs and interests of the greater Asheville-Greenville community and which is not in the public interest.

This statement is true to my personal knowledge and is made under penalty of perjury under the laws of the United States of America.

Executed October 30, 2004.


Mary Frances Brown

DECLARATION

RE: WLFL-TV, WRDC-TV, both Raleigh-Durham, NC

My name is Robert D. Phillips. I am the Executive Director of Common Cause/North Carolina, and a former news reporter for WPTF-TV in Raleigh. I reside at 2415 Fairview Road, Raleigh, NC, 27608, and have lived in the area for 25 years. I am a viewer of both of the referenced stations. I am a member of Petitioner Free Press.

I have been saddened and disappointed to see the decline in the Sinclair stations' news programming in the past two or three years. I refer particularly to Channel 22 (WLFL). This station once offered a very credible news product, providing local news weather and sports to our community, which in my opinion I believe that was true both during the station's Fox network affiliation and for a time afterward. In the past couple of years, however, there seems to be a gradual pullback in commitment to local news. As far as I can see, there are no longer local sports or weather reporters and very little local news personnel other than the anchor of the newscast. Today, there are fewer local stories, as best I can judge, offered on WLFL's news cast. And the local news that is covered has less depth and content.

The news operation now seems to depend on homogenized programming from headquarters into which local news is inserted. At the present level, I would say the Sinclair stations' news product has zero credibility around here. The stations present an editorial point of view that is strong but not objective, and it would appear to me that headquarters management makes no secret of this.

I think it's all about saving money and increasing the bottom line for Sinclair. It's something like what happened in radio. Lots of radio stations used to do news, but now they're simply out of the news business.

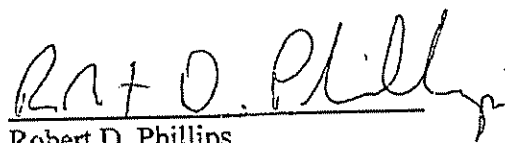
With my background, maybe I feel the loss more than other viewers, but it definitely affects the whole community. We have lost a local voice covering local stories. That's especially sad in this part of North Carolina, where we have the state capital, many universities, lots of scientific and applied engineering research. These are great opportunities for local news and it is a shame for any station to miss those opportunities. Besides, there's a diverse viewership here from all over the country, ready to respond to programming that tries different approaches to news and public affairs. On both counts, the Sinclair news decline is a shame.

I have reviewed and I support Petitioner Association's Petition to Deny Renewal ("Petition") directed at the currently pending applications of WLFL-TV and WRDC-TV ("the Stations") to renew their broadcast licenses ("Renewal Applications"). The facts stated in these documents are true to my personal knowledge except where identified as having been based upon industry publications and material on file with the Federal Communications Commission ("FCC").

I would be seriously aggrieved if the Petition to Deny is not granted, because I, and other members of Petitioner Association, would continue to experience WLFL and WRDC programming which does not address the needs and interests of the Raleigh-Durham community and which is not in the public interest for the foregoing reasons.

This statement is true to my personal knowledge and is made under penalty of perjury under the laws of the United States of America.

Executed October 31, 2004.


Robert D. Phillips

DECLARATION

RE: WXLV-TV, Winston-Salem-Greensboro-High Point
WUPN-TV, Greensboro-High Point

I am Ronald Sigrist and I work for Wachovia Bank in Winston-Salem. I live at 4383 Creekridge Lane in Kernersville, NC, 27284. I have resided in the area for over 19 years. I am a regular viewer of both WXLV (ABC 45) and WUPN (UPN 48), through the local cable system, Time Warner of Winston-Salem. I am also a member of Petitioner Association Free Press.

I was upset by the Sinclair decision not to broadcast the ABC Nightline program in which the names of the service men and women killed in Iraq were read. I believe that all citizens of the United States, including my neighbors and me, should be aware of the personal cost of war. WXLV is the only ABC outlet available to me, so I was denied an important experience of sight and sound.

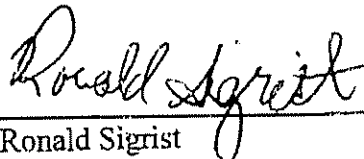
I was also upset when I heard of Sinclair's order for its owned and affiliated stations to broadcast a one-sided view of Senator Kerry's service in Vietnam. This is a strictly partisan misuse of public airwaves. Public airwaves are held in trust temporarily by the broadcaster. I don't think it is good for democracy. I wrote to the FCC myself on these matters regarding Sinclair Broadcasting.

I have reviewed and I support Petitioner Association's Petition to Deny Renewal ("Petition") directed at the currently pending applications of WXLV-TV and WUPN-TV ("the Stations") to renew their broadcast licenses ("Renewal Applications"). The facts stated in these documents are true to my personal knowledge except where identified as having been based upon industry publications and material on file with the Federal Communications Commission ("FCC").

I would be seriously aggrieved if the Petition to Deny is not granted, because I, and other members of Petitioner Association, would continue to experience WXLV and WUPN programming which does not address the needs and interests of the greater Winston-Salem community and which is not in the public interest.

This statement is true to my personal knowledge and is made under penalty of perjury under the laws of the United States of America.

Executed October 31, 2004.



Ronald Sigrist

DECLARATION

RE: WMMP-TV, WTAT-TV, both Charleston, SC

I am Merrill Chapman. I am a volunteer community activist. I was born and raised in Charleston and I have lived in the area as an adult almost 20 years. I reside at 1131 Harborgate Drive, Mount Pleasant, SC, 29464. I am a member of Petitioner Association Free Press. I am a regular viewer of both of the referenced stations.

I think both stations support a political agenda. They are not giving us straight news, but slanted and biased information. The plan to show the anti-Kerry film, "Stolen Honor," is a good example of this. The decision to preempt the ABC Nightline show reading the names of Americans who died in Iraq is another example. It makes us question the station owners' intent or ability to give us factual information we can rely on.

I have seen changes in the stations in recent years. They seem to target their programming toward an audience with certain perceived values. The entertainment shows tend to be family-oriented. The non-entertainment news and public affairs material, in my view, is pro-Bush or pro-Administration. This was illustrated for me by a reporter going over to find the "good news" in Iraq. The message was uniform: Bush is doing well over here; his actions are working as expected.

Lately it has become more difficult to distinguish reporting from opinion. I remember seeing a program about medical malpractice lawsuits. It looked like a giant ad against them, but it was hard to tell. I personally would like to see labels at the bottom the screen that stay there during the entire program - news, opinion, advertisement - just like in the papers. As it is now, if you miss the opening, or maybe the closing, you often don't know which type of information it is.

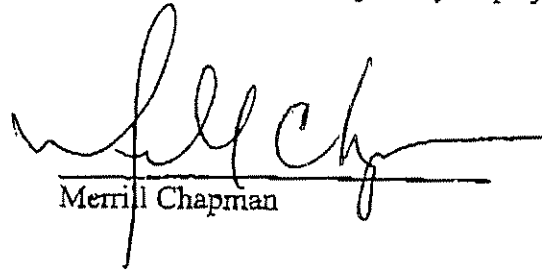
Broadcasters borrow the airwaves to make a profit, and that's fine. But these are our airwaves, the people's airwaves, and using them to promote a partisan agenda is an abuse of power.

I have reviewed and I support Petitioner Association's Petition to Deny Renewal ("Petition") directed at the currently pending applications of WMMP-TV and WTAT-TV ("the Stations") to renew their broadcast licenses ("Renewal Applications"). The facts stated in these documents are true to my personal knowledge except where identified as having been based upon industry publications and material on file with the Federal Communications Commission ("FCC").

I would be seriously aggrieved if the Petition to Deny is not granted, because I, and other members of Petitioner Association, would continue to experience WMMP and WTAT programming which does not address the needs and interests of the greater Charleston community and which is not in the public interest.

This statement is true to my personal knowledge and is made under penalty of perjury
under the laws of the United States of America.

Executed _October 31, 2004.



Merrill Chapman

EXHIBIT B

CITIZEN-TIMES.com

The Sinclair Broadcasting controversy: Our readers speak out: Part 2

By Asheville Citizen-Times¹

Oct. 21, 2004 8:19 p.m.

Editor's note: Sinclair Broadcasting's actions surrounding plans to air a program many consider to be unfair to Democratic presidential candidate Sen. John Kerry shortly before the Nov. 2 election brought a large response from our readers. The program, which airs tonight, originally centered around "Stolen Honor," although that may have changed. We were unable to get all of them in print, given the already large volume of election letters we have received, and offer this online package to let everyone be heard.

As registered independent voters, my husband and I depend upon an unbiased media to provide us with balanced information and coverage of all candidates so that we may make our own voting decisions. Apparently, the Sinclair Corporation does not believe we have the right to unbiased media. Instead, they wish to influence our votes by airing political propaganda against one candidate and falsely labeling this "news." The Sinclair Corporation may feel that its power and political connections gives it the right to subvert the democratic process of free elections and use its influence to manipulate public opinion. We are disturbed and insulted that this media owner so blatantly uses its media outlets to attack one candidate and support another. We would be equally offended if another network offered anti- Bush propaganda and tried to pass it off as news. We are so deeply offended by Sinclair's abuse of their position that we are resolved to vote early - with our TV remote.

Our local access to ABC programming is limited to WLOS- Asheville - a Sinclair-owned station. If we watch any ABC programming we would be supporting Sinclair and its political agenda. Therefore, we have decided to change the channel. We are notifying local Sinclair advertisers that if they wish to reach us as consumers they will have to run their ads on another channel, because Sinclair-owned affiliates will no longer be viewed in this household. We will assume that any advertisers that continue to run ads on WLOS-Asheville do so in support of Sinclair's political agenda and we will no longer do business with them. We are urging all of our friends and colleagues to do the same - turn off all Sinclair affiliate stations - not just on the night of the proposed programming attacking Senator Kerry - but immediately and permanently. We are notifying these Networks that we will no longer be viewing their programming and we are encouraging everyone we know to do the same.

If we allow media corporations to tell us who to vote for, we are contributing to the demise of political freedom in this country. We cannot not stand by and let any corporate entity do this. We will stop buying your product. We will turn you off.

Steven and Melissa Savino, Brevard

¹ Having been informed by the Asheville Citizen-Times Online Director that the paper's web links remain live for only 7 days, we have included select letters from the October 21, 2004 compendium in this Exhibit. As of this writing, the full compendium remains available online at: <http://www.citizen-times.com/cache/article/print/63639.shtml>

Maybe some of your readers have answers to these questions: How did Sinclair Broadcasting Co. get the franchise that has given them monopoly control of the public airwaves in Western North Carolina? Does the franchise come up for renewal? And, if so, is there any way to have some public input into the process? However it came about, the Sinclair people have abused their franchise. They have broadcast daily the grossly partisan and graceless editorials of Mark Hyman that many viewers in the area find offensive. Is it too strong to say they (Sinclair) have degraded the quality of life for these viewers? And now we hear that the Sinclair people have prepared a major right-wing blast to be aired between now and election day. Please.

Philip A. Walker, Asheville

The decision to not play the Kerry documentary is just Sinclair letting the left dictate their version of the First Amendment (the version that if the speech does not agree with theirs than it must not be heard).

I did not see the right stop Michael Moore from showing his film, they even still let him call it a documentary.

The boycotts are empty, too. What else are they going to watch locally? Where else are the advertisers going to place ads? It's not like we have hundreds of other outlets here in WNC. It's like me threatening to vote Democrat if they do not show the Kerry film...never going to happen.

Matt Mulhern, Clyde

I was reading a few of the letters over the last few days about WLOS's pre-empting of programming for anti-Kerry ads. While I strongly disagree with the decision, I also ask that the readers and viewers to remember that this is not a local choice, nor was the denying of the reading of names of our fallen troops earlier this year. As a former employee, I can happily say that the employees there are down to earth people that want to make an honest living just like you and me. When Mark Hyman first came on the airwaves, we were shocked and sometimes appalled at some of the things that he said. Unfortunately, we were not able to change the channel like the viewers at home. It angers me to think that a person would use his company to throw his opinions around, especially to a public audience who would rather spend their time watching actual news instead of commentary and mudslinging. Isn't that what the politicians do? Thank God that he isn't the one running for office. I doubt that we would still have a democracy if he did.

Reuben Mayfield, Skyland

Robert Gabordi's column, "Conflicting rights at stake in Sinclair airing of documentary", (AC-T, Oct. 17) is thoughtful and well reasoned concerning "Stolen Honor: Wounds that Never Heal." However, in addressing the letters and emails that urge the paper to do more to expose and destroy Sinclair broadcasting, perhaps Mr. Gabordi might have quoted from the results of his

survey of a few weeks ago. I recall that he found one result disturbing: many people want to see and hear only that which supports the opinions they already hold. More troubling to me is that such people obviously want to deny to others any contrary information or opinion. Could that explain why they accuse AC-T of neglecting "fair and balanced reporting" for not going at Sinclair's throat?

Mr. Gabordi used the word "documentary" in the title, but "commentary" while discussing the Sinclair program. There is a difference, but advance information indicates there will be elements of both. According to Sinclair's web site (<http://sbgi.net>) there could be a third element - Senator Kerry's participation. He has been invited and visitors to the web site are provided the means to urge him to do so. His participation would certainly ``balance" things. Mark Hyman, appearing on cable news programs this past week, insisted that Sinclair was serious about the invitation and, if needed, would expand the program to accommodate Kerry. If Kerry accepts, the program will be memorable.

Speaking of Mark Hyman, in the Forum section of the same AC-T issue, there is yet another letter urging readers to complain to the FCC regarding the WLOS feature "The Point." First, "be careful of what you ask for, you might get it."

Licenses are a bit like franchises. With Washington bureaucracy and lobbyists in the game, there is a chance that pulling WLOS' license will cause the station to go dark altogether. Second, if WLOS staples ABC News and Nightline don't slant news and special reports far enough to the left for personal bias, there are alternatives. While Mark Hyman is talking (for only one minute), get up and grab a snack; or tune to channel 33 where a Bill Moyers special just might be in progress. Or, try grasping the simple fact that Hyman's views are honestly labeled comment, not news. And try giving him credit for airing, weekly, mostly negative reactions, with many from WLOS viewers.

Paul Janiczek, Weaverville

EXHIBIT C

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Why I Stood Up to Sinclair

Guest Commentary

By Jon Lieberman — Broadcasting & Cable, 10/25/2004

People used to describe me as Sinclair Broadcast Group's "golden child." I was hired as a reporter at the company's Baltimore flagship station, WBFF. Later I started the station's investigative unit. When centralized newscasts began, Sinclair promoted me again, to jump-start its Washington bureau.

That's when things got tricky.

Slowly, almost imperceptibly at first, the traditional way of fairly and objectively covering news began to disintegrate at Sinclair.

It started with the politically charged commentaries of Mark Hyman, in nearly every newscast. Then newsroom leaders (at the encouragement of Hyman) started suggesting pro-administration story ideas. They made sure that every political story had a comment from the Bush administration, and went out of their way to get it. But they didn't always balance the stories with the Democratic response.

This built on itself. Once the Sinclair news department started coming across as Republican, it became impossible for me to do my job properly. No Democrats would talk to me. They would schedule interviews and then cancel them—fast—as soon as they did their homework.

Who could blame them?

Weeks ago, when the company began discussing plans to run the documentary *Stolen Honor*, I wasn't happy about it, but my view was to let them run it as commentary, or opinion. I didn't think it was the most appropriate decision to make a week and a half before the presidential election, but I could live with it.

But it went too far when Sinclair officially claimed the documentary as "news" [a classification that would preclude Sinclair from having to offer the Kerry campaign equal time to respond].

Looking back, I shouldn't have been surprised. But at the time, I didn't know how the company could, in good faith, call this documentary "news." It didn't serve the public trust to label it news. After a lot of introspection, I told the news department that I couldn't take part in the project.

At Sinclair headquarters, nobody was happy with the project, as far as I could tell. But there was no room for dissension. Everyone was afraid for their jobs. My former colleagues are excellent journalists, but need to feed their families, and can't afford to take the hit of being fired. And at Sinclair, everyone is expendable. That's why nobody else did what I did and took a stand against Sinclair's decision.

When I told them I couldn't do it, and that it wasn't news, and that it would hurt everyone's reputation, nobody else stood up with me. But though I was the only one in that room speaking up, I looked around me and I didn't feel alone.

Sinclair Broadcast Group fired Washington bureau chief Lieberman last week for talking about company business to the press. He questioned the company's decision to air portions of a documentary critical of John Kerry's role in Vietnam.

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