

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Sinclair Broadcast Group, Inc.)
)
Licensee of Digital Television Stations)
)
WJLA-DT (Washington DC))
WBFF-DT (Baltimore, MD))
WSET-DT (Lynchburg, VA))
WTVZ-TV (Norfolk, VA))

PETITION TO REQUIRE FILING OF EARLY RENEWAL APPLICATIONS



The American Cable Association hereby files this Petition¹ requesting that the Commission require Sinclair Broadcast Group, Inc. to file early renewal applications for its WJLA, WBFF, WSET, and WTVZ stations.² Early renewal will permit the Commission to resolve the serious charges it leveled against Sinclair as soon as

¹ The Commission has treated similar such petitions as informal requests for Commission action pursuant to Section 1.41 of its rules. *Leflore Broadcasting Company, Inc.* 36 FCC 2d 101, ¶ 1 n.2 (1972) (“*Leflore Broadcasting*”).

² The licensee for WLJA is ACC Licensee, LLC. The licensee for WBFF is Chesapeake Television Licensee, LLC. The licensee for WSET is WSET Licensee, LLC. The licensee for WTVZ is WTVZ Licensee, LLC. Each are wholly owned by Sinclair.

possible—charges that, if true, would speak to the company’s eligibility to retain any of its FCC licenses or acquire new licenses.

Earlier this year, the Commission designated an administrative law judge to determine whether Sinclair engaged in misrepresentation or a lack of candor when it attempted to acquire stations from Tribune.³ More specifically, the Commission found “substantial and material questions of fact” regarding whether Sinclair had lied about being the “real party in interest” in three stations that it proposed to divest.⁴

Misrepresentation and lack of candor rank among the most serious violations a licensee can commit. A party that engages in such conduct can be found to lack the basic character qualifications to hold *any* FCC licenses. Yet the charges levied against Sinclair have never been resolved because Sinclair itself withdrew its application, and the administrative law judge has yet to take up the designation.

Sinclair’s next license renewals occur in 2020. Thus, in the ordinary course, the Commission would have no opportunity to address the concerns it raised in the *Sinclair-Tribune* proceeding for nearly two years. The delay would harm *the public* should the Commission ultimately conclude that Sinclair was unsuitable to hold licenses all along by allowing an unqualified licensee to operate for several additional years. And it would harm *Sinclair* should the Commission ultimately conclude otherwise by leaving a cloud of uncertainty over the company.

³ *Tribune Media Co. and Sinclair Broad. Grp., Inc.*, FCC No. 18-100, MB Docket No. 17-179, ¶ 17 (rel. July 19, 2018) (“*Sinclair HDO*”).

⁴ *Id.* ¶ 3.

Fortunately, the Commission’s rules permit the Commission to “direct” a broadcast licensee to file its renewal early.⁵ The Commission has done so before, moreover, including once in circumstances remarkably like this one. In *Leflore Broadcasting*, the Commission found that accelerating the renewal process would serve administrative convenience in light of credible evidence that a broadcaster may have lied to the Commission.

Here, of course, the charges are every bit as serious. And administrative convenience also favors early renewal. The Commission will ultimately have to resolve questions about Sinclair’s behavior one way or the other before Sinclair should be permitted to renew its existing licenses or obtain new ones. All parties—Sinclair not least among them—will benefit from resolution of these issues sooner rather than later.

I. LEGAL BACKGROUND

Broadcast licensees must file renewal applications “not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed.”⁶ Sinclair’s next four broadcast licenses expire on October 1, 2020, so renewal applications would ordinarily be due on June 1, 2020 under this rule.

Yet the Commission’s rules also provide that the Commission may “direct” licensees to submit a renewal application “whenever [it] regards an application for a renewal of license as essential to the proper conduct of a hearing or investigation,”⁷ such as “[w]here serious charges are made against a multiple station owner some of

⁵ 47 C.F.R. § 73.3539(c).

⁶ See 47 C.F.R. § 73.3539(a).

⁷ 47 C.F.R. § 73.3539(c).

whose license terms have not expired.”⁸ We are aware of at least three instances in which the Commission exercised this authority.⁹

The most often-cited case requiring early renewal application is *Leflore Broadcasting*. In *Leflore*, a radio station had indicated in a renewal application that it would air a certain format of programming and then changed that format soon after receiving its renewal.¹⁰ A third party then filed a petition seeking to accelerate the *subsequent* renewal process (licenses at that time required renewal every three years). The Commission granted the petition and required the licensee to file for early renewal for two reasons. First, it found “substantial and material questions of fact” as to whether the station had engaged in misrepresentation or a lack of candor in its prior renewal.¹¹ Second, it concluded that, because the station had only a year left in its three-year term, requiring an early renewal would be more administratively convenient than other options for resolving these concerns.¹²

Since then, the Commission has declined to require early renewal on multiple occasions, noting that it will only require early renewal where “compelling” reasons exist for it to do so.¹³ In such cases, the Commission sometimes has found that, unlike in

⁸ *Commission Announces Modification of Grayson Enterprises Policy on Transferability of Broadcast Licenses*, 53 R.R. 2d 116 (1983) (“Where serious charges are made against a multiple station owner some of whose license terms have not expired, the Commission retains the option, under Sec. 73.3539(c) of its rules, to direct the broadcaster to submit renewal applications in advance of their scheduled due date.”).

⁹ See *Narragansett Broadcasting*, 15 F.C.C. 887 (1951); *Herbert Michaels*, 44 F.C.C. 1346 (1958); *Leflore Broadcasting*, *supra* note 1.

¹⁰ *Leflore Broadcasting*, ¶¶ 3-6.

¹¹ *Id.* ¶¶ 10-11.

¹² *Id.* ¶ 10.

¹³ *Greater Portland Broad. Corp.* 3 FCC Rcd. 1953, 3 (1988) (“*Greater Portland*”).

Leflore Broadcasting, the substance of the accusations was either insufficiently supported or was insufficiently serious to call the licensee's character qualifications into question.¹⁴ On other occasions, it has found that granting early renewal would not serve its administrative convenience.¹⁵

II. "COMPELLING" REASONS EXIST TO GRANT THIS PETITION

In determining whether "compelling" reasons exist to require applicants to file early renewals,¹⁶ the Commission considers the two issues found to be compelling in *Leflore Broadcasting*. In *Leflore*, the Commission required an applicant to file renewal applications early because it found that (1) the accusations against it went to the basic character qualifications of the licensee *and* were well supported in the record; and (2) administrative convenience favored early renewal.¹⁷ When the Commission has not required applications to be filed early, it has found one or both of these factors not to be present. The case for early renewal here is stronger than it was in *Leflore Broadcasting* on both counts.

A. Nature of the accusations. The accusations against Sinclair are the same as they were in *Leflore Broadcasting*: lying to the Commission. Misrepresentation and lack of candor go directly to Sinclair's basic character qualifications under Section

¹⁴ *KNOK Broad., Inc.*, 29 F.C.C.2d 47 (1971) (finding that the bare fact that a station has changed its entertainment programming format insufficient to support claim of a *de facto* license transfer, where station was not required to transmit in particular format).

¹⁵ *Charles County Broad.*, 1963 WL 123285 ¶¶ 12-13 (1963) (finding credible issues related to the impact of a new broadcast service in an area served by an existing station, but declining to order early renewal where ordinary-course renewal would occur within several months).

¹⁶ *Greater Portland*, 3.

¹⁷ *Leflore Broadcasting*, ¶ 10-11.

308(b) of the Communications Act to hold *any* broadcast licenses.¹⁸ While a broadcaster’s misconduct with respect to one license does not necessarily impact its renewal of other licenses, this is *not* the case when allegations under consideration “involve conduct likely to impact the future operations of other stations”—such as, for example, “where the Commission’s inquiry ultimately reveal[s] that the applicant does not possess the requisite basic qualifications to remain a licensee.”¹⁹ Thus, were the Commission to determine that Sinclair indeed engaged in misrepresentation and lack of candor with respect to stations *not* subject to this Petition,²⁰ it could determine that Sinclair lacks the requisite character to hold FCC licenses.

Here, moreover, the Commission has already determined that the accusations in this case meet the standard it applied in *Leflore*. In *Leflore*, the Commission ordered early renewal after determining that the petitioners had “raised substantial and material

¹⁸ *Policy Regarding Character Qualifications in Broad. Licensing Amendment of Rules of Broad. Practice & Procedure Relating to Written Responses to Comm’n Inquiries & the Making of Misrepresentations to the Comm’n by Permittees & Licensees*, 102 F.C.C.2d 1179, ¶¶ 60-61(1986) (“*Character Qualifications Policy*”) (“[T]he trait of “truthfulness” is one of the two key elements of character necessary to operate a broadcast station in the public interest. The Commission is authorized to treat even the most insignificant misrepresentation as disqualifying. While the Commission has considered mitigating factors, if any, in drawing conclusions regarding the treatment of misrepresentation in a case, the choice of remedies and sanctions is an area in which we have broad discretion. We believe it necessary and appropriate to continue to view misrepresentation and lack of candor in an applicant’s dealings with the Commission as serious breaches of trust. The integrity of the Commission’s processes cannot be maintained without honest dealing with the Commission by licensees.”) *Pass Word, Inc.*, 76 F.C.C.2d 465, ¶¶ 125, 127 (1980) (finding deliberate misrepresentations “demonstrated [a] lack of character qualifications to be a Commission licensee,” requiring the revocation of all licenses) (“*Pass Word*”); *Happy Broad. Co., Inc.*, 88 F.C.C.2d 1580, ¶ 54 (1978) (“To declare that the Commission cannot afford to tolerate anything less than complete candor by its licensees and applicants if it is to be successful in carrying out its mandated responsibilities without an army of enforcers at its beck and call is but to state the obvious.”).

¹⁹ *Character Qualifications Policy* ¶ 94; *Sinclair HDO* ¶ 28 n.75.

²⁰ *Sinclair HDO* ¶ 3.

questions of fact” about Leflore’s fitness to hold a license.²¹ Here, the Commission *has already determined* that there are “substantial and material questions of fact” as to whether Sinclair engaged in misrepresentation and/or lack of candor in its applications to the Commission.²² In both cases, there could be no doubt that the allegations against the applicant are sufficiently supported—the Commission itself has determined as much.

B. Administrative considerations. In *Leflore Broadcasting*, the Commission found that administrative considerations favored early renewal. There, petitioners had filed their objection during the last year of the station’s three-year renewal term. The Commission found that revocation proceedings—another option available to deal with accusations of misrepresentation—could not have been completed before the next renewal would be due, and therefore chose early renewal instead.²³ Here, a variety of administrative considerations support early renewal. To begin with, here, as in *Leflore Broadcasting*, revocation proceedings would be another way to resolve the issues raised against Sinclair. As in *Leflore*, however, revocation proceedings are unlikely to be completed before the renewal process would ordinarily begin—which means the Commission would have to manage two sets of proceedings.²⁴

More importantly, and as was the case in *Leflore*, the Commission has every interest in starting now rather than waiting until renewal applications are due. A speedy resolution *itself* serves powerful administrative interests for the following reasons:

²¹ *Leflore Broadcasting*, ¶ 10.

²² *Sinclair HDO* ¶ 17.

²³ *Leflore Broadcasting* ¶ 10.

²⁴ See, e.g., *Pass Word* (revoking licenses four years after entry of show cause order).

- **Certainty for the public.** Parties that must deal with Sinclair deserve to resolve these questions as quickly as possible. ACA members, for example, deserve to know more about the reliability of claims made by a party with whom they (or their buying agent) will have to negotiate for retransmission consent. They also deserve to know whether Sinclair can be relied upon to abide by regulations adopted to protect them and their subscribers, such as the requirement to negotiate for retransmission consent “in an atmosphere of honesty, clarity of process and good faith.”²⁵ More specifically, the public deserves to know about the legality of the “sidecar” arrangements Sinclair used in the Tribune proceeding, and which it uses around the country. Sinclair’s defense to misrepresentation charges in the Tribune proceeding appears to be not only that it did not lie about its sidecars, but that the sidecars themselves were perfectly lawful.²⁶ ACA members and their subscribers, who would be harmed by Sinclair’s failure to follow the Commission’s ownership rules, deserve to know whether Sinclair can be trusted to refrain from unlawful arrangements with other stations. In light of Sinclair’s widespread use of sidecar arrangements (including with respect to stations up for renewal) and the impact these arrangements can have (including driving up retransmission consent prices), resolution of these issues now is especially important.²⁷

²⁵ *Implementation of the Satellite Home Viewer Improvement Act of 1999; Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, 15 FCC Rcd. 5445, ¶ 2 (2000).

²⁶ John Eggerton, “Sinclair Fires Back,” *Broadcasting and Cable* (Jul. 16, 2018) (suggesting that Sinclair’s sidecars “are consistent with structures that Sinclair and many other broadcasters have utilized for many years with the full approval of the FCC.”).

²⁷ See Declaration of Ross J. Lieberman ¶ 3 (attached hereto as Exhibit A) (“Lieberman Decl.”).

- **Certainty for Sinclair.** Sinclair, for its part, claims vigorously that the accusations against it are untrue. If so, Sinclair deserves an opportunity to clear its name and move on with its business, such as by (for example) seeking to purchase additional stations. The last thing Sinclair should want is unresolved character claims hanging over its head until a process to resolve such issues begins in 2020 and likely extends into the following year. Yet, by withdrawing its applications, Sinclair has inadvertently helped ensure that this will be the case. Instituting an early renewal proceeding will enable the Commission to resolve these issues once and for all, and sooner than existing mechanisms would allow.
- **Accuracy of information.** At least some of the accusations against Sinclair involve questions of Sinclair’s state of mind. That is, did Sinclair *willfully* mislead the Commission? These questions will become only harder to resolve as time passes and recollections fade.

III. STANDING

The Commission has in the past permitted third parties to request that a broadcaster file its license renewal. It has adopted a policy that if such parties should have standing as “parties in interest” to object to such renewals in the ordinary course.²⁸ Generally speaking, one may become a party in interest with standing to object to a broadcast license renewal by alleging “a threatened or actual injury to [one]self, whether economic, aesthetic or otherwise, that is likely to be prevented or redressed by a

²⁸ *Greater Portland* at 3 (“We conclude, therefore, that persons seeking the extraordinary, discretionary action of calling for the early filing of a renewal application because of alleged ‘compelling reasons’ should, at a minimum, support their requests with factual allegations meeting the requirements of Section 309(d).”).

favorable decision.”²⁹ In addition, an organization may obtain representational standing on behalf of its members by providing an affidavit describing how members themselves meet these requirements.³⁰

We note that Sinclair never objected to ACA’s standing to dispute its attempted purchase of Tribune and presume that it would raise no such objections now. Nonetheless, as explained in the attached declaration, ACA has organizational standing to object to license renewals—and thus to seek early renewal—on behalf of its members. As stated in the declaration of ACA Senior Vice President Ross Lieberman, ACA cable operator members are located within the designated market area of each of the four Sinclair stations to be renewed, and they retransmit such a station’s signal to subscribers pursuant to retransmission consent agreements.

Sinclair, to begin with, charges many ACA members the highest retransmission consent fees they pay to any broadcaster.³¹ These members and their subscribers would almost certainly pay less to retransmit these stations were they owned by anyone

²⁹ *Petition for Rulemaking to Establish Standards for Determining the Standing of A Party to Petition to Deny a Broad. Application*, 82 F.C.C.2d 89, ¶ 19 (1980).

³⁰ See *Hispanic Broad. Corp.*, 18 FCC Rcd. 18834, 18835 n.4 (2003) (affidavit of organization’s president stating that his residency within the service area of one of 65 radio station licenses that sought to be transferred was sufficient to demonstrate standing to challenge the entire transaction); *AMFM, Inc.*, 15 FCC Rcd 16,062, 16,077 (2000) (same individual’s declaration established organization’s standing to challenge AMFM/Clear Channel merger); see also *Adelphia Comm’n. Corp.*, 21 FCC Rcd 8302 (2006) (declarations of Free Press Policy Director and National Hispanic Media Coalition President that, inter alia, their members resided in areas served by Comcast, Time Warner Cable, and Adelphia established organizations’ standing to challenge proposed acquisition of Adelphia by Comcast and Time Warner).

³¹ Lieberman Decl. ¶ 2.

other than Sinclair.³² Renewal of these licenses would thus cause these members economic harm sufficient to permit them to file an objection.

Moreover, just as the Commission should not be required to engage an “army of enforcers” in order to carry out its responsibilities, small cable system operators should not be required to engage an army of lawyers in order to verify the statements made by a broadcaster whose claims cannot be trusted. If the allegations against Sinclair are true—as ACA suspects they are—permitting Sinclair to retain these licenses would thus cause ACA members ongoing economic harm. This harm would be particularly acute in markets (such as Baltimore and Charleston) where Sinclair has “sidecar” arrangements similar to those at issue in the Tribune proceeding.

* * *

Sinclair will, one way or the other, have to answer for its alleged conduct. We believe that all parties, including Sinclair itself, should want to begin that process as soon as possible.

³² *Id.*

Respectfully submitted,

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November 26, 2018

EXHIBIT A

Declaration of Ross J. Lieberman Regarding Standing

I, Ross J. Lieberman, hereby declare the following:

1. My name is Ross J. Lieberman and I am Senior Vice President of Government Affairs at the American Cable Association. I am responsible for, among other things, conferring with ACA members in order to help formulate ACA's policy positions. I have conferred with numerous ACA members in the drafting of this Petition to Require Filing of Early Renewal Applications, including ACA members that carry Sinclair's television stations in the four markets at issue in this Petition and ACA members that carry Sinclair's television stations in other markets, in each case pursuant to retransmission consent agreements.
2. ACA members have stated to me that Sinclair charges higher retransmission consent fees than some or all similarly situated stations. ACA members, therefore state that they are harmed economically by renewal of Sinclair's licenses simply due to the fact that they will continue to pay higher fees for the retransmission of the stations in question than they would if the stations were controlled by another firm.
3. Moreover, several ACA members indicated to me that they believe Sinclair is able to charge higher fees in part because of arrangements it has with putatively independent stations that are similar to those which Sinclair proposed in the *Tribune* proceeding.

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

Executed on this 26th day of November, 2018

A handwritten signature in black ink, appearing to read "Ross J. Lieberman". The signature is written in a cursive style with a large initial "R" and "L".

Ross J. Lieberman

Certificate of Service

I, Michael Nilsson, hereby certify that on this 26th day of November, 2018, true and correct copies of the foregoing Petition were sent by electronic and first-class mail to the following:

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