Federal Communications Commission
Washington, D.C. 20554

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Dear Counsel:

This letter is in reference to the December 11, 2013 letter of Sinclair Broadcasting, Inc. We reiterate our conclusion that grandfathering relief for local marketing agreements ("LMA") not in compliance with the standard set forth in the *1999 Television Ownership Order*[1] ceases upon any change to the existing combination of stations in place at the time such relief was granted. We further conclude that the temporary stay granted to Sinclair by the Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit") with respect to the 1999 local television ownership rule does not relate to an LMA's entitlement to grandfathering relief. Therefore, the above-captioned applications, if not amended, would violate the Commission's multiple ownership rules.

Scope of Grandfathering Relief. In its letter, Sinclair states that it is "concerned that the conclusions reached . . . are not consistent with the grandfathering rules adopted in the Local TV Ownership Report and Order . . . and affirmed in the subsequent 2002 Biennial Regulatory Review. . . ."[2] Sinclair contends that grandfathering relief does not depend on the continuation of an existing television station combination under which the LMA was originally formed. Sinclair further contends that LMAs are between parties, not stations, and therefore a change in the station providing the services under a sharing agreement does not eliminate the grandfathering protection for the agreement.[3] Sinclair further questions whether the concepts of a "brokering station" and a "brokered station" are relevant to our analysis as "stations do not enter into agreements, only individuals and companies are able to enter into contracts."[4]

Our interpretation is consistent with the meaning and intent of the attribution rule and with the Commission's approach to grandfathering issues generally. The Commission offered grandfathering relief for LMAs entered into before November 5, 1996 to protect the business relationship between an existing combination of stations. Any change in the stations in that combination eliminates the grandfathering protection, regardless of whether the agreement could remain in effect under contract law.[5] Indeed, our 2002 Biennial Review specifically stated that we

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[1] *Review of the Commission's Regulations Governing Television Broadcasting*, Report and Order, 14 FCC Rcd 12903, 12963 (1993) ("*1999 Television Ownership Order*").

[2] Letter from Sinclair Television Group, Inc. to Barbara A. Kreisman, Chief, Video Division (Dec. 11, 2013) ("December 11 Letter") at 2.

[3] *Id.* at 2-3.

[4] *Id.* at 3.

[5] *2002 Biennial Regulatory Review-Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13692 (2003) ("*2002 Biennial Review*") ("To avoid imposing an unfair hardship on parties that currently own combinations that do not comply with the modified rule, we will *grandfather existing combinations*, as discussed further below.") (emphasis added);

would "grandfather *existing combinations of . . . television stations*."[6] The U.S. Supreme Court has analyzed the Commission's grandfathering practices and concluded that it is "existing . . . combinations" that are entitled to exemption from the Commission's multiple ownership rules.[7]

Moreover, the Commission has analyzed such agreements through the prism of existing combinations of brokering and brokered stations.[8] Indeed, the notes to Section 73.3555 state that "[w]here two television stations are both located in the same market . . . and a party with a cognizable interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, the party shall be treated as if it has an interest in the *brokered station*."[9] The note further explains that the licensee of the "brokered station" must certify ultimate control over the station's facilities and the "brokering station" must certify it complies with the provisions of the local TV ownership rule.[10]

Sinclair itself in its Form 10-K annual report specifically described an LMA as a "programming agreement between *two separately owned television stations* serving the same market, whereby the licensee of one station programs substantial portions of the broadcast day and sells advertising time during such programming segments on the other licensee's station . . . ."[11] Sinclair's report went on to state that grandfathering relief for LMAs "permitted the *applicable stations* to continue operations pursuant to the LMAs until the conclusion of the FCC's 2004 biennial review."[12]

Sinclair also argues that the proposed transactions have no impact on the grandfathered Sinclair agreements because those agreements are not being assigned, transferred, or amended, but instead will remain with the same parties providing the same services under the same terms and conditions.[13] Although the language of the Sinclair agreements may not focus on the stations involved, it is the existing combination of stations that received grandfathering protection from

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Broadcast Television National Ownership Rules, Notice of Proposed Rulemaking, 11 FCC Rcd 19949, 19960 (1997) ("Such agreements enable separately owned stations to function cooperatively via joint advertising, shared technical facilities (including shared production facilities), and joint programming arrangements.").

[6] *2002 Biennial Review*, 18 FCC Rcd at 13808 (emphasis added).

[7] *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 781 n.3 (1978) ("No divestiture of existing television-radio combinations was required") & 809 ("[W]e cannot agree with the Court of Appeals that it was arbitrary and capricious for the Commission to 'grandfather' most existing combinations. . . .").

[8] *Broadcast Television National Ownership Rules*, Notice of Proposed Rulemaking, 11 FCC Rcd at 19960. ("We . . . tentatively conclude[d] that an LMA of another television station in the same market for more than 15% of the *brokered station's* weekly broadcast hours should generally be attributed for purposes of our ownership rules.")(emphasis added); *1999 Television Ownership Order,* 14 FCC Rcd at 12966("In considering the appropriateness of grandfathering beyond the initial five-year period, the FCC will take into account the capital investments the broadcasters involved have already made to improve the quality of the technical facilities of *the stations involved*, and weigh those equities against the competition and diversity issues involved.") (emphasis added).

[9] 47 C.F.R. § 73.3555(j)(2) (emphasis added).

[10] 47 C.F.R. § 73.3555(j)(3).

[11] Sinclair Broadcast Group, Inc., Annual Report (Form 10-K), at 17 (2012) (emphasis added).

[12] *Id.* (emphasis added).

[13] December 11 Letter at 4.

our attribution standards, and a disruption to the stations involved represents the type of change that the Commission has found would eliminate grandfathering protection.[14]

For all the reasons above, our interpretation is consistent with the specific grandfathering policy set forth in the *1999 Ownership Order* and the Commission's approach to grandfathering issues generally. Moreover, the D.C. Circuit has consistently deferred to the Commission's interpretation of the limits of its own grandfathering protection.[15]

Continuing Effect of the Temporary Stay. Sinclair also argues that the LMA in the Charleston, South Carolina, market is not attributable, despite being entered into after the November 5, 1996, grandfathering deadline, because a temporary stay of the 1999 local television ownership rule granted to Sinclair remains in effect.[16] The D.C. Circuit granted Sinclair's emergency motion for stay of the Commission's *1999 Television Ownership Order* and stayed the time for Sinclair to come into compliance pending further order of the court. In 2002, the Court "reject[ed] Sinclair's . . . challenge to the local ownership rule provision on television LMAs."[17] Sinclair has no basis to conclude that the temporary stay remains in effect as it relates to the attribution of the LMA in the Charleston market, and the staff has made this clear to Sinclair.[18] Consequently, the above-captioned applications, if granted, would result in Sinclair holding attributable interests in two stations in all of the relevant markets, in violation of the local television ownership rule.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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[14] *See UTV of San Francisco, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 14975, 14987-88 (2001) ("By adding a new television station to the existing combination of WNYW (TV) and the Post, the proposed transaction clearly would create a new television/newspaper combination not contemplated at the time the original waiver was granted.").

[15] *Committee for Open Media v. F.C.C.*, 533 F.2d 1, 3 (D.C. Cir. 1976); *see also City of Arlington Heights, Tex. v. F.C.C.*, 133 S. Ct. 1863, 1868 (U.S. 2013).

[16] December 11 Letter at 4.

[17] *Sinclair Broadcast Group, Inc. v. F.C.C.*, 284 F.3d 148, 169 (D.C. Cir. 2002).

[18] *See* Letter from W. Kenneth Ferree, Chief, Media Bureau, to Kathryn R. Schmeltzer, Esq. (Sept. 13, 2002) at 2 ("Sinclair has, however, mischaracterized the Court's decision. The Court did not vacate the television duopoly rule, but rather remanded it to the Commission solely to determine which media should be included in the definition of 'voices.' The television duopoly rule remains in effect in the interim.").

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