

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS
DISSENTING IN PART AND APPROVING IN PART**

*In the Matter of: Various Applications for Assignment of License and Transfer of Control of Certain
Television Licenses to Sinclair Broadcast Group, Inc. and Glencairn, Ltd.*

Over the last several years, Sinclair Broadcasting Company (“Sinclair”) has pursued a strategy of acquiring interests in or management of more than one station in each market in which it has a television station. In so doing, it has continually pushed against the parameters of ownership structures prohibited by the Commission.

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.

Background

The first of Sinclair’s forays into multiple television station ownership came in 1991 when Sinclair acquired a station in Pittsburgh and sold its existing Pittsburgh station to that station’s manager Edwin Edwards, a Sinclair employee, on extremely favorable terms. Sinclair operated its new station in Pittsburgh and continued to program its original station through a Local Marketing Agreement (“LMA”).

After that, Sinclair sought to acquire the stations of a company that wanted to sell its four stations as a group. Two of the four stations, however, were in markets in which Sinclair already owned television stations and was thus prohibited from owning additional stations. Sinclair again enlisted Edwards to acquire the stations Sinclair could not own. Because Edwards did not have the financial resources to purchase these stations, the president of Sinclair proposed that his mother finance the acquisition. Carolyn Smith, the mother of the four owners of Sinclair, and Edwards established Glencairn, the acquiring company, 70% of the non-voting stock of which was owned by Smith and 30% by Edwards. The Glencairn stations, like the Pittsburgh station, were operated through LMAs by the Sinclair-owned stations in their markets.

In 1997, Sinclair and Glencairn again acquired a station group in tandem. This transaction involved the acquisition by Sinclair of stations in Asheville and San Antonio and the acquisition by Glencairn of an additional station in each of those markets. These new Glencairn stations, like the others, would be operated through LMAs by the Sinclair-owned stations in these markets. At the same time, Carolyn Smith transferred her ownership interest, now 90% of the equity in Glencairn, to trusts for her grandchildren – the minor children of the four brothers who own Sinclair. Applications for Review of these decisions filed by Pulitzer Broadcasting and Post-Newsweek Stations are before the Commission today.

Finally, in the transactions before the Commission today, Sinclair and Glencairn in 1998 filed applications for the stations owned by Sullivan. As the deal was initially structured, Sinclair would acquire five stations – in Buffalo; Madison; Richmond; Winston-Salem and Nashville, while Glencairn acquired five stations – in Dayton; Charleston, South Carolina; Charleston, West Virginia; Oklahoma City and Bluefield, West Virginia. Unlike the last transaction, these were not separate acquisitions of stations by Sinclair and Glencairn. Rather, in these transactions Sinclair would acquire the licenses and assets of five stations, as well as the non-license assets of the five stations to which Glencairn would acquire the license. Glencairn would then lease these stations' assets from Sinclair. All of the Sullivan stations have been operating through LMAs with Sinclair, and once transferred to Glencairn these stations will continue to do so. As to these stations, therefore, Sinclair will own the non-license assets and will control the programming through LMAs. The licenses themselves will be held by a company, 90% of which is owned in trust for the minor children of the owners of Sinclair.

In August 1999, the Commission amended its longstanding television local ownership rules to permit one licensee to own two television stations in markets in which eight independent television voices remain after the consolidation. That decision also rendered LMAs attributable as commonly owned stations – with limited grandfathering of existing LMAs – and thus prohibited LMAs except where and between those stations that could be commonly owned pursuant to the revised duopoly rules.

After the Commission's decision in 1999, Sinclair and Glencairn filed an application to amend the pending application of Glencairn to acquire the station in Oklahoma City, to make Sinclair not Glencairn the acquirer, as under the new rules a duopoly would be permissible in Oklahoma City. Also subsequent to the Commission's 1999 decision, Glencairn filed applications to sell to Sinclair stations in San Antonio, Milwaukee, Durham, and Birmingham, as these markets have sufficient voices in each market to permit duopolies pursuant to our rules. These transactions are also before the Commission today.

Discussion

In its August 1999 modification of the television local ownership rules, the Commission permitted one licensee to own two television stations in certain markets. In modifying these rules, the Commission fully intended licensees to avail themselves of the opportunity presented by the rule change. As the Commission intended, Sinclair has applied to acquire duopolies in those markets in which such common ownership is permissible. As the Commission also could have anticipated, Sinclair has challenged the rules in court, seeking and winning a stay of the requirement that it terminate its LMAs where such arrangements have been rendered violative of the rules.

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.

As petitioners point out, a number of facts related to the transfer of the Sullivan stations to Sinclair and Glencairn call into question whether Sinclair is the real party in interest behind Glencairn. For example, Edwards did not know the amount of debt that Glencairn was to assume to acquire the Sullivan stations. Whether Edwards intended to deceive the Commission or simply was mistaken in his declaration to the Commission, that he was ignorant of the most important term of the transaction may call into question whether he is actively involved in the corporate management of Glencairn and his purported control of Glencairn.

Further, there is the question of whether the Sullivan-Sinclair-Glencairn transaction was structured to allow Sinclair to pay almost all of the purchase price of the Sullivan stations and Glencairn to obtain the Sullivan stations it acquired at a small fraction of their value. The five stations to be acquired by Glencairn were to be sold for \$8 million. These five stations, according to estimates based upon comparable sales, should be worth approximately \$90 million. While the Commission traditionally does not examine the purchase price in a station sale, it will consider such matters if there is reason to suspect the parties have attempted a sham transaction in order to avoid compliance with rules.

If these facts regarding the structure and value of the transaction were the case, it would call into question whether Glencairn is a truly independent company or whether Sinclair was making decisions about what stations Glencairn should acquire and at what price. Furthermore, until modified after being questioned by FCC staff, the Sullivan-Sinclair-Glencairn deal was structured so that Sinclair would be the holder of the promissory note on Glencairn's purchase of the Sullivan stations, in violation of the Commission's existing policy on television LMA's.

In addition, Glencairn's proposed sale of all but two of its existing television stations to Sinclair immediately following adoption of the new multiple ownership rules raises questions about its control of these stations prior to those sales. This raises questions of whether these stations were merely owned by Glencairn but controlled by Sinclair until such time as Sinclair could own them under our revised multiple ownership rules. In addition, Glencairn is not to receive cash for the sale of its stations but rather Sinclair stock, which would further tie the two companies together financially. These facts call into question Glencairn's independent decision making ability.

Finally, Glencairn terminated its proposed acquisition of the station in Oklahoma City when Sinclair was able to acquire it under the new television duopoly rule. While Glencairn maintains that this was done to reduce the amount of debt that it was assuming, it is questionable why an independent company such as Glencairn would walk away from such a deal without compensation company could take its place.

Though the decision of the majority imposes a forfeiture on Sinclair and Glencairn, it nonetheless allows all but one of the transactions at issue to go forward with minor changes. While the majority's finding that an illegal transfer of control occurred is an important step toward curtailing Sinclair's – and any future licensee's – attempts to circumvent the Commission's local ownership rules, it does not go far enough.

The assessment of a fine combined with the approval of the transfers at issue is incongruous. The finding that an illegal transfer of control occurred at least raises questions about the control of Glencairn on an ongoing basis, and about the independence of Glencairn from Sinclair once Glencairn is controlled by the mother of Sinclair's owners and owned in trust for their minor children. These questions require designation for hearing.

With each transaction over the years, Sinclair has stretched the limits of the Commission's local television ownership rules. In each of several transactions that have come before it, the Mass Media Bureau has reviewed the transaction and the Petitions to Deny filed alleging illegal transfers of control, and has permitted the transaction to go through. The transactions before the Commission today raise issues that prompted the majority to find that there has been an illegal transfer of control and to assess a fine. But the Commission nonetheless has allowed the transaction to go through without further review. Each transaction moves the line to which all of our licenses are subject. And this decision moves it further still.

If anyone wonders how Sinclair will next push against the Commission's rules, recent press reports may give us a preview. Reportedly, Sinclair's NBC affiliate in Tallahassee has combined its operations with the ABC affiliate in that market. Because the ABC affiliate retains control of its programming, Sinclair asserts in the press that this relationship is consistent with FCC rules, including the attribution of Local Marketing Agreements as common ownership. I hope that the Commission will investigate this relationship for consistency with our local television ownership rules.

Conclusion

I therefore dissent from the grants of applications for transfers of the licenses to various television stations to Glencairn and Sinclair. Because the relationship between Sinclair and Glencairn and the ownership and control of Glencairn raise a number of questions of fact related to these transactions, I believe that we cannot grant these applications without further review. I therefore dissent from the majority's decision not to designate these applications for a hearing.

In addition, I dissent from the denial of the Applications for Review filed by Pulitzer Broadcasting and Post-Newsweek Stations. Given the finding of illegal transfer of control of Glencairn to Sinclair, and the outstanding questions of fact regarding independence of Glencairn, I believe that these transactions should be reviewed and designated for hearing. In addition, the issues related to Sinclair's control of Glencairn

and the subsequent transfer of legal control of Glencairn to Carolyn Smith raise questions regarding the transfer of Carolyn Smith's ownership of Glencairn to trusts for her grandchildren such that these transfers should similarly be reviewed.

I approve the decision of the majority to the extent that it finds that an illegal transfer of control occurred vis-à-vis Sinclair's control of Glencairn. I also approve the assessment of a forfeiture on Sinclair and Glencairn, as well as the decision of the majority to deny the transfer of WFBC in Anderson, South Carolina from Glencairn to Sinclair.