

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.<sup>40</sup>

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."<sup>41</sup> 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:

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<sup>40</sup> 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."

<sup>41</sup> *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.

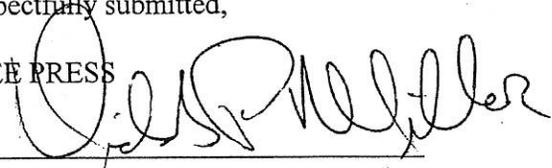
Sinclair's refusals to air the ABC programs are a different order of unreasonableness. Yes, they necessarily affect all Sinclair owned and affiliated stations having access to the preempted material. But the refusals are particularly unfortunate where Sinclair is the only source of the deleted program 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 

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November 1, 2004

ITS COUNSEL

CERTIFICATE OF SERVICE

I, James Hobson, hereby certify that I have this 1<sup>st</sup> 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 12<sup>th</sup> St. S.W.  
Washington, D.C. 20554

Hon. Michael Copps\*  
Commissioner  
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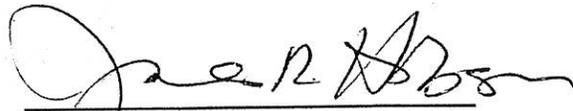
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Hon. Kevin Martin\*  
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James R. Hobson

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\* 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.

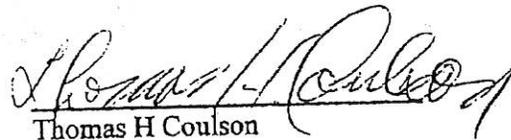
Earlier this year, I was among a group of citizens who spoke to the then-new General Manager of WLOS-TV, Jack Connors, asking for increased coverage of local political activities and races. I began to see taped statements from local candidates, which appeared to be a good start. Unfortunately, although 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.

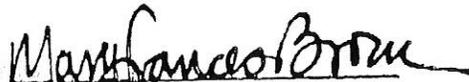
When Sinclair orders blackouts, this infringes my rights as a viewer. It is cheating. The use of the public airwaves is a privilege. Sinclair's blackout orders were unfair and an abuse of power.

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.

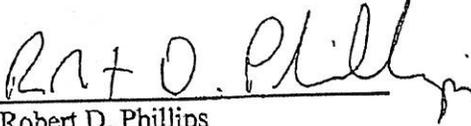
With my background, maybe I feel the loss more than other viewers, but it definitely affects the whole community. We have lost a local voice covering local stories. That's especially sad in this part of North Carolina, where we have the state capital, many universities, lots of scientific and applied 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