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December 5, 2014

Marlene H. Dortch  
Secretary, Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

re: License Renewal for WWOR-TV, Dkt. No. 07-260

Dear Ms. Dortch:

After a series of *ex parte* meetings in late November, Voice for New Jersey (VNJ) writes to reiterate our concerns discussed in the pending Application for Review of the Media Bureau's August 8th Order denying VNJ's Petition to Deny. In particular, VNJ writes to more fully explain why the Bureau's comparison of WWOR to other stations licensed in New Jersey is illogical and leads to false conclusions. As the Commission has accorded permit-but-disclose status under the *ex parte* rules in this matter, VNJ would offer the following for your consideration.

First, VNJ strongly believes that comparing WWOR's service to its peers is contrary to the plain language of the Communications Act's license renewal standard, which states that "the Commission shall grant the application if it finds, *with respect to that station*, during the preceding term of its license . . . the station has served the public interest."<sup>1</sup> Because the statute directs the Commission to focus solely on the conduct of the licensee during the previous renewal period, it is inappropriate for the Commission to conduct a comparative analysis.

Further, we would observe that none of the other stations indicated in the Bureau's comparison were subject to a license challenge. Since the Media Bureau does not review the adequacy of a station's service in the absence of such a complaint, the fact that these other New Jersey stations had their licenses renewed is of no decisional significance.

Beyond these arguments, and even if the Commission could properly compare WWOR's conduct during its license renewals to other licensees, the Bureau erred in selecting WWOR's peers. VNJ strongly asserts that WWOR's peer group does not consist of other New Jersey-based television stations, but rather other VHF stations broadcasting in the New York DMA. (The entirety of the 1999 – 2007 license period being litigated

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<sup>1</sup> 47 U.S.C. § 309(k)(1)(A) (emphasis added).

preceded the conversion to digital television in 2009). The other VHF stations in the market are the more correct peer group because they have similar service obligations to WWOR, although WWOR has a unique service obligation to Northern New Jersey.

Comparing WWOR to its VHF peers in the New York DMA shows that WWOR fell far short of its peers when it came to providing responsive programming. According to VNJ's analysis (more fully detailed in its Petition to Deny), WWOR had 25 percent less news and public affairs programming than its VHF peers during the license renewal period that ended in 2007. Since 2007, WWOR provides only 10 percent of the news and public affairs programming that its peers do.

There is both historical and practical significance to analyzing WWOR vis-à-vis this peer group. At the time of the legislation enabling the relocation of WWOR's broadcast license in 1982, there were already a number of UHF broadcasters operating in New Jersey-- including some that the Media Bureau included in its inappropriate comparison. However, the number of people watching these stations, and the quality and social impact of their programming, were both dwarfed by the larger and more influential VHF stations that were the mainstay of most television viewers in northern New Jersey. All of these VHF stations were licensed in New York City. It was precisely this imbalance that the Commission sought to address when it approved the relocation of the WWOR station license.

Even now, after the broad implementation of cable and satellite service and the adaptation of DTV, the distinction of a channel assignment corresponding to the former VHF band remains extremely strong. Viewers demand access to these mainstream channels, and cable and satellite providers pay heavily for the rights to carry their programming. In contrast, the small stations formerly licensed in the UHF spectrum still have far less market penetration, still generate much less revenue, and typically specialize in niche segments (religious and/or foreign-language programming, in the case of the stations cited in the Media Bureau report). Accordingly the market differentiation between WWOR and other New Jersey-licensed stations remains, and comparison of the two categories of stations remains completely inapposite.

The Media Bureau is well aware of all of this. In its Order, it even recites the specific language of the Communications Act which provided for WWOR's relocation: "Section 331 requires the Commission to reallocate a VHF commercial television station to a community within a state that does not have such a station, upon notification from a licensee that it agrees to the reallocation." [Emphasis added] (see Order, Para 6).

Nonetheless, even if the former UHF channels were the proper peers of WWOR, the Bureau once again erred in concluding that WWOR aired just as much news and public affairs programming as those other channels. As VNJ identified in its Application for Review, WWOR still provided less programming than one station the Bureau compared it to in its Order. This fact reinforces WWOR's failure to provide responsive programming, even though the comparison is one of apples to oranges.

Once again, the Media Bureau is worse than wrong. For all of the reasons described above, the Bureau must know that any comparison of WWOR with other New Jersey-licensed stations would be entirely misleading. For it to go outside the record of this proceeding and, on its own initiative, conduct precisely this form of misleading investigation is wrong. For the Bureau then to dismiss VNJ's appropriate analysis and

all other supporting evidence in the record, and to reach a finding of fact based solely on its own thoroughly disingenuous concoction is worse than wrong. There may in fact be no greater evidence of the Bureau's shameless bias in favor of Fox, and its willingness to go to any lengths to achieve the outcome that it desires.

Again, VNJ thanks you for your attention to our concerns, and looks forward to a satisfactory resolution.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Lovey". The signature is written in a cursive style with a long horizontal stroke at the end.

Chuck Lovey, Member  
Voice for New Jersey

cc (via email):

Maria Kirby  
Adonis Hoffman  
Clint Odom  
Fox Television Stations via its counsel,  
Mace Rosenstein, Covington & Burling LLP