Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| In the Matter of | ) | |
| | ) | |
| Fox Television Stations, Inc. | ) | File Nos. BRCT – 20070201AJT |
| | ) | BRCT – 20070201AJS |
| Applications for Renewal of License of | ) | |
| WWOR-TV-TV and WNYW | ) | |
| | ) | |
| Request for Waiver of the Newspaper- | ) | MB Dkt. No. 07-260 |
| Broadcast Cross-Ownership Rule Relating to | ) | |
| WWOR-TV and the New York Post | ) | |

**OPPOSITION OF**

**OFFICE OF COMMUNICATION, UNITED CHURCH OF CHRIST, INC., RAINBOW/PUSH COALITION AND FREE PRESS TO**

**FOX TELEVISION, INC. AND NEWS CORPORATION LIMITED'S SUPPLEMENT TO PETITION FOR MODIFICATION OF PERMANENT WAIVER**


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**Summary**

The Office of Communication of the United Church of Christ, Inc., Rainbow/PUSH Coalition, and Free Press request that the Commission deny Fox's Supplement to its Petition for Modification of Permanent Waiver and its license renewal for WWOR-TV. Despite the FCC's order that Fox comply with the NBCO rule by July 2003, Fox has made no effort to do so and its second temporary waiver expired more than six months ago. Fox's continued control over two VHF television stations and the *New York Post*, as well as numerous other media outlets in the New York DMA, violates the Commission's rules and harms the public interest.

Fox does not qualify for a waiver to the NBCO rule under any prong of the current test. It has not alleged that it is unable to sell the station, that the only sale possible would be at an artificially depressed price, or that separate ownership of the *Post* and WWOR-TV could not be supported in the locality. Nor has Fox demonstrated that the purpose of the NBCO rule – to increase diversity and competition – would be disserved by its application here. Divesting WWOR-TV would increase the number of independent voices in the DMA and spur competition in local newsgathering. In any event, Fox already has a waiver to co-own the *Post* and WNYW, and has failed to explain why its ownership of yet another VHF television station would enhance diversity and competition.

Although Fox asserts that the New York market is very diverse, Fox's recent acquisitions of the *Wall Street Journal* and over fifty newspapers, periodicals and specialty magazines covering various communities within New York City, demonstrate otherwise. Moreover, Fox's New York stations are now sharing news with three of the other four local news stations, further diminishing diversity and competition.

Even under the test articulated in the stayed *2008 Order*, Fox may not co-own WWOR-TV and the *Post*. Fox's cross-ownership would be presumed contrary to the public interest

because Fox owns the *Post* and *two* VHF television stations. Fox has not reversed this presumption because it has not demonstrated that the station or the newspaper is failed or failing and it has not promised to initiate at least seven hours of local news on a station that previously offered no local news. Nor has Fox made any showing to rebut the presumption.

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Appendix: Declarations

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| Applications for Renewal of License of WWOR-TV-TV and WNYW | ) | |
| | ) | |
| Request for Waiver of the Newspaper-Broadcast Cross-Ownership Rule Relating to WWOR-TV and the New York Post | ) | MB Dkt. No. 07-260 |

**OPPOSITION**

The Office of Communication of the United Church of Christ, Inc. ("UCC"), Rainbow/PUSH Coalition, and Free Press (collectively, "UCC *et al.*") oppose the Supplement to Petition for Modification of Permanent Waiver[1] filed by Fox Television Stations, Inc. and News Corporation Limited (collectively, "Fox") on June 23, 2008. Despite the FCC's ("FCC" or "Commission") order that Fox comply with the newspaper-broadcast cross-ownership rule ("NBCO rule") by July 2003, Fox has made no effort to do so and its second temporary waiver expired more than six months ago. Fox's continued control over two VHF television stations and the *New York Post*, as well as many other media outlets in the New York DMA, violates the Commission's rules and harms the public interest. Because Fox does not meet the test for a waiver under either the current NBCO rule or the newly-adopted but stayed *2008 Order*, the FCC should deny the waiver request and deny the license renewal for WWOR-TV.

[1] Supplement to Petition for Modification of Permanent Waiver, *Fox Television Stations, Inc., Applications for Renewal of License of WWOR-TV and WNYW*, File Nos. BRCT – 20070201AJT, BRCT – 20070201AJS (filed Jun. 23, 2008) ("Fox Supplement").

## I. Background

The origins of this case go back to Fox's acquisition of WWOR-TV along with nine other stations from Chris Craft in 2001.[2] UCC, Rainbow/PUSH Coalition, and others opposed Fox's acquisition of WWOR-TV because of the detrimental impact this acquisition would have on diversity of news in the New York metropolitan area.[3]

At that time, Fox already held the license of WNYW, a VHF station serving the New York DMA and the *New York Post* pursuant to a permanent waiver of the NBCO rule granted in 1993.[4] In 1993, the *Post* was in bankruptcy and the Commission granted a permanent waiver to preserve the *Post*, an important voice that would otherwise be silenced.[5]

In 2000, when Fox sought approval to acquire WWOR-TV, a second VHF station serving the New York DMA, it asked the Commission to amend the earlier permanent waiver to include WWOR-TV.[6] The Commission refused, stating that the "original waiver did not contemplate the addition of a second New York DMA television station to that combination," and it is "not adequate to allow the combination requested here."[7] Finding that "neither a permanent [waiver] nor a rulemaking-conditioned waiver is warranted in this case," the FCC granted Fox a temporary twenty-four month waiver for the sole purpose of permitting "an orderly disposition of assets and avoid[ing] forced sales."[8]

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[2] *UTV of San Francisco, Inc.*, 16 FCC Rcd 14975 (2001) ("*Chris Craft Order*").
[3] Petition to Deny by the Office of Communication of the United Church of Christ, Inc., *et al.*, *Applications of UTV of San Francisco, et al. (Assignors) and FOX Television Stations, Inc. (Assignee)*, File Nos. BALCT-20000918ABB, *et al.* (filed Oct. 27, 2000).
[4] *Chris Craft Order*, 16 FCC Rcd at 14985, ¶34.
[5] *Id.* at 14986-87, ¶¶35-37.
[6] *Id.* at 14987-89.
[7] *Id.* at 14987, ¶40.
[8] *Id.*at 14988, ¶42.

Now, eight years have passed, and Fox has made no effort to dispose of assets necessary to comply with the FCC's order and NBCO rule. Instead, Fox obtained, over Free Press' objection, an additional temporary twenty-four month waiver in October 2006.[9] Although both Commissioners Adelstein and Copps voted against the grant of a new waiver, their dissents were only recently released.[10]

UCC and Rainbow/PUSH Coalition sought timely reconsideration of the FCC's October 2006 order.[11] On January 15, 2008, the FCC voted 3 to 2 to deny the petition.[12] However, this order was not released until May 22, 2009, sixteen months after its adoption.[13] Commissioner Copps quoted from his original unreleased October 2006 dissent, noting that it continued to reflect his views:

> I believe today's decision is woefully deficient. It is nowhere near the searching *de novo* review that the Commission's precedent requires. Instead, the majority sweeps over the facts that led to these waivers, considers too little in the way of new data and reaches unsustainable conclusions about corporate efficiency, financial viability and market diversity. Loss of voices in a market due to waiver of rules like the newspaper-broadcast cross-ownership rule requires serious analysis. Yet there is no serious public interest analysis here. I must, therefore, dissent.[14]

Similarly, Commissioner Adelstein resubmitted his dissent prepared in connection with the October 2006 order. He castigated the Commission for "neglect[ing] its statutory obligation to

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[9] *K. Rupert Murdoch, (Transferor) and Fox Entertainment Group (Transferee)*, 21 FCC Rcd 11499 (2006).

[10] *K. Rupert Murdoch, (Transferor) and Fox Entertainment Group (Transferee)*, Memorandum Opinion and Order on Reconsideration, 2009 WL 1456517 (2009) ("*2009 Denial*").

[11] Petition to Deny Renewal by the Office of Communication of United Church of Christ, Inc. and Rainbow/PUSH Coalition, *Fox Television Stations, Inc., Applications for Renewal of License of WWOR-TV and WNYW,* File Nos. BRCT – 20070201AJT, BRCT – 20070201AJS (filed May 1, 2007).

[12] *2009 Denial*, 2009 WL 1456517.

[13] *Id.*

[14] *Id.* (Copps, dissenting).

protect the public interest," and making no attempt to evaluate whether any demonstrable public interest benefits resulted from Fox's cross-ownerships.[15] He noted that this failure was "particularly troublesome because WWOR-TV is the only VHF station in the State of New Jersey."[16] Despite the Commission's commitment to ensure that WWOR-TV would operate for the benefit of New Jersey, and despite concerns raised by several New Jersey elected officials, the Commission granted the waiver "without any mention or analysis of WWOR-TV's service record" under Fox's ownership.[17]

The October 2006 waiver expired on December 29, 2008. In the meantime, Fox filed license renewal applications for WNYW and WWOR-TV in February 2007.[18] UCC and Rainbow/PUSH Coalition filed a petition to deny the license renewals, as did Voice for New Jersey. The Commission held a public forum in Newark, NJ in November 2007, seeking public input on whether WWOR-TV's programming efforts had satisfied the public interest.[19] More than two years have elapsed since Fox filed its renewal application and the FCC still has not acted on it.

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[15] *Id.* (Adelstein, dissenting).
[16] *Id.*
[17] *Id.*
[18] *See* Application for Renewal of Broadcast Station License, WWOR-TV (filed February 14, 2007) *available at* http://fjallfoss.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.hts?context=25&appn=101167338&formid=303&fac_num=74197; Application for Renewal of Broadcast Station License, WNYW (filed Feb. 14, 2007) *available at* http://fjallfoss.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.hts?context=25&appn=101167337&formid=303&fac_num=22206.
[19] News Release, *FCC Announces Public Forum on WWOR-TV License Renewal in New Jersey* (Nov. 8, 2007) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278062A1.pdf.

In February 2008, however, the FCC did issue an order relaxing the NBCO rule.[20] Under this revised rule, which has been stayed, some cross-ownerships would be entitled to a presumptive waiver. However, as explained below, Fox does not qualify for a presumptive waiver, nor can it reverse or rebut the presumption that its cross-ownership is contrary to the public interest.

In June 2008, Fox filed its Supplement arguing that it was entitled to a permanent waiver under both the traditional waiver standard and the relaxed standard adopted in the *2008 Order*. UCC and Rainbow/Push Coalition filed a short letter noting their opposition.[21] On December 24, 2008, a few days before Fox's temporary twenty-four month waiver was set to expire, Fox filed a letter at the Commission stating that it believed that the temporary waiver would remain in effect pending a Commission decision on its outstanding Petition for Modification of Permanent Waiver.[22] Fox alternatively argued that, if the temporary waiver expires on December 29, 2008, it is entitled to a temporary extension of the waiver while the Commission completes its review of the pending permanent waiver requests.[23] To date, the Commission has not responded to either the June 2008 or December 2008 filings, or even put the Fox Supplement on public notice.

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[20] *2006 Quadrennial Regulatory Review*, Order, 23 FCC Rcd. 2010 (2008) ("*2008 Order*").

[21] Letter by UCC & Rainbow/PUSH Coalition, *Fox Television Stations, Inc., Applications for Renewal of License of WWOR-TV and WNYW*, File Nos. BRCT – 20070201AJT, BRCT – 20070201AJS (filed Jun. 30, 2008). UCC and Rainbow/PUSH Coalition believed that the Commission would seek public comment on Fox's request. However, because a year has now passed without any FCC action, UCC *et al.* file this opposition in case the Commission decides to act without seeking public comment.

[22] Letter re Status of Waiver, *Fox Television Stations, Inc., Applications for Renewal of License of WWOR-TV and WNYW*, File Nos. BTCCT-20050819AAF, *et al.* (filed Dec. 24, 2008) ("Status Letter"). Fox cites no authority to support its claims.

[23] *Id.*

## II. Argument

The Commission should act promptly to deny Fox's Supplement and to deny the license renewal for WWOR-TV. The Commission has already decided that the permanent waiver granted in 1993 for a single television station and daily newspaper does not cover the acquisition of a second television station. Thus, the Commission may not grant the license renewal application for WWOR-TV unless Fox meets the criteria for a waiver.

UCC and Rainbow/PUSH Coalition have already shown in their 2007 petition to deny that allowing Fox to continue to own both television stations and the *Post* has had a detrimental impact on the diversity of programming available to viewers in New York and New Jersey and that Fox failed to meet any of the criteria for a waiver of the current NBCO rule.[24] Since that time, Fox has extended its control over media serving the New York DMA:

- In late 2007, Fox purchased the *Wall Street Journal*, a newspaper with a circulation of 294,382 in the New York metropolitan area.[25]
- In the last few years, Fox acquired over fifty community newspapers, periodicals and specialty magazines that serve the New York area, with a combined circulation of over 300,000.[26]
- On June 22, 2009, Fox began collaborating with WNBC, WPIX and WCBS on local news-gathering, including sharing staff and equipment.[27]

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[24] Petition to Deny Renewal by the Office of Communication of United Church of Christ, Inc. and Rainbow/PUSH Coalition, *Fox Television Stations, Inc., Applications for Renewal of License of WWOR-TV and WNYW*, File Nos. BRCT – 20070201AJT, BRCT – 20070201AJS (filed May 1, 2007).

[25] *Murdoch wins fight for Dow Jones*, BBC NEWS, August 1, 2007 *available at* http://news.bbc.co.uk/2/hi/business/6923474.stm; Circulation: Eastern Edition, WALL ST. J., revised April 8, 2009 *available at* http://www.wsjmediakit.com/newspaper/circulation/eastern.

[26] *See* Richard Perez-Pena, *News Corp. Buys Two Weeklies, Expanding New York City Reach*, N.Y. TIMES, July 3, 2007 *available at* http://www.nytimes.com/2007/07/03/business/media/03paper.html; *Happy Together! Brooklyn Paper Joins Other Papers at MetroTech*, BROOKLYN PAPER, March 30, 2009, *available at* http://www.brooklynpaper.com/stories/32/13/32_13_gk_ribbon_cutting.html

Thus, if anything, granting a waiver to Fox would be even more harmful to the public interest now than in the past.

The Third Circuit Court of Appeals recently reaffirmed its stay of the *2008 Order*,[28] and thus the NBCO rule and exceptions articulated in 1975 remain in effect.[29] But even if the NBCO test in *2008 Order* applied, Fox's showing would still be inadequate.

### A. Fox Has Not Met A Single Part Of The Applicable Four-Part Test For A Waiver To The NBCO Rule

The NBCO rule provides that "no license for [a] . . . television broadcast station shall be granted to any party . . . if such party directly or indirectly owns, operates, or controls a daily newspaper ... [in] the entire community in which such newspaper is published."[30] Because of Fox's common ownership of WNYW, WWOR-TV, and the *Post*, the plain language of the rule prohibits the renewal of WWOR-TV's license.

The Commission waives the rule in only four narrow circumstances: [1] where the licensee is unable to sell the station; [2] where the only sale possible would be at an artificially depressed price; [3] where separate ownership and operation of the broadcast station and newspaper could not be supported in the locality; or [4] where the purposes of the rule would be

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(footnote continued)

[27] *See* Katy Bachman, *N.Y. Stations to Pool Video News Content*, MEDIAWEEK, June 8, 2009 *available at* http://www.mediaweek.com/mw/content_display/news/local-broadcast/e3idbeede94114aaf42c5ce8d9efce1ba4e; *Fox and NBC Partner on Local News Services*, BNET BUSINESS NETWORK, Nov. 14, 2008, *available at* http://www.bnet.com/2448-13071_23-249263.html.

[28] *Prometheus Radio Project v. FCC*, Order, Dkt. No. 08-3078 *et al.* (3d. Cir. Jun. 12, 2009).

[29] *Amendment of Sections 73.34, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations*, Second Report and Order, 50 FCC 2d 1046, 1084-1085, ¶119 (1975), *aff'd sub nom. FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775 (1978) (*"NBCO Order"*).

[30] 47 C.F.R. § 73.3555(d) (2008).

disserved by its application.[31] The Commission imposes a heavy burden on applicants, who "must plead with particularity the facts and circumstances which would support a deviation from the general rule."[32] Moreover, "[w]here an extension of a waiver is requested ... the Commission expects to see evidence of efforts to divest properties, details of offers received, and reasons those offers were not reasonable."[33]

At the outset, Fox fails to show that it made a serious and sustained effort to comply with the NBCO rule before requesting a waiver. Although Fox was granted a twenty-four month waiver for the sole and explicit purpose of facilitating the sale of one of the cross-owned entities, it has made no effort to divest either WWOR-TV or the *Post*.[34] Consequently, Fox did not, and cannot, provide details of offers received or reasons that those offers were inadequate. Moreover, because Fox made no attempt to divest it cannot, and does not try, to qualify a waiver under any of the first three exceptions.

Nor has Fox satisfied the fourth exception, which requires a showing that the purpose of the rule – to increase diversity and competition – would be disserved by its application in this case. Under the fourth exception, Fox received a permanent waiver for its cross-ownership of

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[31] *NBCO Order* 50 FCC 2d at 1084-1085, ¶119.

[32] *See, e.g.*, *Angelo State University*, 19 FCC Rcd 24538, 24539 (2004); *Columbia Commc'ns Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987); *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664, 665 (D.C. Cir. 1968).

[33] *Counterpoint Communications, Inc. (Transferor) and Tribune Television Co. (Transferee)*, 20 FCC Rcd 8582, 8585 (2005).

[34] Fox's suggestion "that the Commission must evaluate ownership of WNYW(TV), WWOR-TV, and the *Post* in light of the fact that these outlets already are commonly-owned, and have been for more than 7 years," Fox Supplement at 29-30, should be rejected. Fox's extended ownership of WWOR-TV has only been permitted for the sole purpose that Fox "come into compliance with the newspaper-broadcast cross-ownership rule." *Chris Craft Order*, 16 FCC Rcd at 14990, ¶50. Were the Commission to allow Fox to use its ongoing violation of the NBCO rule as support for its current waiver request, it would create bad policy, insofar as it perversely encourages media moguls to buy properties in violation of the NBCO rule and to use the mere existence of those combinations to argue that they serve the public interest.

WNYW and the *Post* back in 1993.[35] However, the circumstances have changed significantly since that time. Unlike in 1993, Fox does not allege that it needs a waiver to save the *Post* from bankruptcy. In 1993 Fox promised to invest money in the *Post* and provide managerial, technical, and editorial assistance to help it grow, but Fox makes no such promises now. Instead it argues that the "'purposes of the rule would be disserved' by forcing a separation of News Corp's media properties" because Fox "could not rationally continue to invest in [the *Post*'s] future without the certainty afforded by a modification of the permanent waiver to include WWOR-TV."[36] All the while, Fox never explains why it needs a second television station in New York to keep the *Post* publishing.

Fox also argues that "common ownership ... cannot possibly cause any public interest harms."[37] But, even if this were true, the mere "lack of harm" would not provide sufficient grounds for a waiver. The fourth exception requires that Fox show that diversity and competition would be *disserved* by enforcement of the rule. This is clearly not the case.

Thus, Fox fails to make a showing under any of the 4-prongs of the waiver standard.

### B. The Commission Should Reject Fox's Claim That Diversity In The New York Market Justifies Expanding Its Waiver

Fox nonetheless argues that a waiver is warranted because the New York market is characterized by "incredible diversity and competition" that has increased since 2004.[38] As evidence of this diversity, Fox cites not only the number of television station owners and daily newspapers serving the New York DMA, but also all radio stations licensed anywhere in the

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[35] *Fox Television Stations Inc., Licensee of Television Station WNYW, New York, New York, Request for Waiver of the Newspaper-Broadcast Cross-Ownership Rule*, Declaratory Ruling, 8 FCC Rcd 5341, 5343, ¶12.

[36] Fox Supplement at 17-18.

[37] *Id.* at 3.

[38] Fox Supplement at 19-22.

DMA, satellite and cable systems and channels, weekly newspapers, monthly magazines and websites. As explained below, most of these outlets do not provide local news to the entire area, and thus should not be included in assessing diversity and competition. Nonetheless, were the Commission to include them, it is important to recognize that Fox's recent activities have reduced diversity and competition in the New York DMA.

First, Fox recently acquired Dow Jones &, Co, the publisher of the *Wall Street Journal*. After the acquisition was announced, Commissioner Copps wrote Chairman Martin requesting that the FCC examine the public interest implications of News Corp.'s acquisition.

> There is no question that News Corp. ranks today as one of the most influential media companies in the world. In addition to owning Fox Broadcasting, it holds 35 full power TV licenses in the United States, including WNYW and WWOR-TV in the New York metropolitan area. It already owns newspapers all across the world, including the New York Post with a total paid circulation of 724,748. According to the Post's own website, this figure makes it the "5th largest newspaper in the country' and includes 'almost 500,000 ... exclusive readers you can't reach through any other New York paper."
>
> Nor is there any question that Dow Jones & Co. and the *Wall Street Journal* play a tremendously important role in both the national and New York media markets. The paper reports a total circulation of over 2.6 million, with a United States print circulation of 1.7 million. It is estimated that 302,000 of these readers live in the New York metropolitan area.[39]

Thus, with its ownership of the *Wall Street Journal*, Fox's ability to influence what stories are reported in New York, nationally, and even globally, has increased.

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[39] Letter from Michael J. Copps, Commissioner, FCC, to Kevin J. Martin, Chairman, FCC, 2007 WL 3169083 (October 25, 2007) (internal footnotes omitted). Copps acknowledges that the Commission had declined to apply the NBCO to "national newspapers" in 1986 and 1995. However, he observes that these decisions were reached with very little economic or legal analysis, and that the facts and public interest concerns have changed dramatically. *Id.*

Second, Fox recently began collaborating with NBC's WNBC, Tribune's WPIX and CBS's WCBS to gather local news. Their arrangement includes including sharing staff and equipment.[40] Consequently, five of the six New York television stations that regularly cover news are working together, leaving only ABC's WABC to gather news independently. Fox has entered into similar joint ventures in other major markets.[41]

In addition to collaborating with competing local television stations, Fox is also increasing sharing among different parts of the worldwide News Corp. media conglomerate. In April 2009, News Corp. Chairman and CEO Rupert Murdoch announced the formation of a new portal to "allow its worldwide editorial properties to share content and resources across the entire company."[42] Murdoch explained that he created the new unit "to share valuable news content and harness the power of News Corporation's vast editorial resources."[43] This entity will be headed by the former Executive Vice President of News Editorial for Fox News, who will report directly to Murdoch and will be charged with collaborating with "news chiefs across all News Corporation properties to improve news gathering efficiencies and identify areas of cost savings."[44]

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[40] *See* Katy Bachman, *N.Y. Stations to Pool Video News Content*, MEDIAWEEK, June 8, 2009 *available at* http://www.mediaweek.com/mw/content_display/news/local-broadcast/e3idbeede94114aaf42c5ce8d9efce1ba4e; *Fox and NBC Partner on Local News Services*, BNET BUSINESS NETWORK, Nov. 14, 2008, *available at* http://www.bnet.com/2448-13071_23-249263.html.

[41] News Release, The E.W. Scripps Company, *Fox Television Stations and the E.W. Scripps Company to Share Newsgathering Resources: Stations in Detroit, Phoenix and Tampa to pool General Market News Footage* (Apr. 1, 2009) *available at* http://pressreleases.scripps.com/downloads/pressreleases/1115/1115.pdf.

[42] Press Release, News Corporation, *News Corporation Forms Unit to Coordinate Editorial Assets* (Apr. 14, 2009) *available at* http://www.newscorp.com/news/news_414.html.

[43] *Id.*

[44] *Id.*

The public interest in diversity is harmed by these combined news efforts. The primary way to cut costs is to fire journalists. Indeed, on June 19, 2009, Fox fired twenty WNYW and WWOR-TV employees, including people who worked in news production and public affairs.[45] Reducing the size of news staffs diminishes the ability of the New York television news stations to cover events, do investigative reporting, follow up leads, check sources, and locate and interview experts who can analyze and explain current events. Smaller news staffs means the public has less local news coverage and informational programming. Moreover, Fox's collaboration with the three other local television stations reduces competition in newsgathering. With less competition, reporters have less incentive to follow through and provide in-depth coverage of stories covered by the joint news-gatherers. This also harms the public.

Third, Fox has recently purchased and now operates more than fifty community newspapers, periodicals and specialty magazines in New York City. Fox's holdings include thirteen Brooklyn newspapers, such as the recently acquired *Brooklyn Paper*; fourteen Queens newspapers; two Bronx newspapers; and *Caribbean Life*, an influential African/Caribbean American newspaper.[46] In addition, Fox lists itself as owning more than twenty-eight cable and

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[45] Richard Huff, *Bad news: Channel 5 and Channel 9 announce layoffs to off-camera employees – recession blamed*, N.Y. DAILY NEWS, Jun. 19, 2009.

[46] *See Good Buy! The Brooklyn Paper Joins News Corp.*, BROOKLYN PAPER, Mar. 12, 2009, *available at* http://www.brooklynpaper.com/stories/32/10/32_10_gk_good_buy.html.; *Happy Together! Brooklyn Paper Joins Other Papers at MetroTech*, BROOKLYN PAPER,, Mar. 30, 2009, *available at* http://www.brooklynpaper.com/stories/32/13/32_13_gk_ribbon_cutting.html; Press Release, News Corporation, *News Corporation Acquires Two New York City Neighborhood Newspaper Groups – TimesLedger and Courier-Life* (Sept. 28, 2006) *available at* http://www.newscorp.com/news/news_314.html; News Corporation's Community Newspaper Group 'About Us' Web Page, http://www.yournabe.com/our_newspaper/about_us/.

satellite channels on systems serving the New York area.[47] Fox also owns the popular social networking website, MySpace.

Thus, even if the Commission were to look beyond broadcast stations and daily newspapers,[48] it would need to assess the public interest considerations of Fox's other media holdings and collaborative news gathering ventures. Fox's acquisition of the *Wall Street Journal* and numerous community papers, as well as its joint venture with competing local television stations, suggest that diversity and competition in the New York DMA has decreased, not increased, in recent years.

### C. Fox Does Not Qualify For A Cross-Ownership Under The Test Adopted In The Stayed *2008 Order*

Even if the *2008 Order* were in effect, Fox would still fail to meet the heavy burden necessary for a waiver. In the rules adopted in the *2008 Order*, which have been stayed, the Commission will presume a cross-ownership is in the public interest if it satisfies certain conditions. One condition is that the cross-ownership involves only one broadcast (radio or television) station and one daily newspaper.[49] Because Fox seeks a waiver to permit common control of two television stations and one or two daily newspapers, it is presumed contrary to the public interest.

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[47] Fox Supplement at Exhibit A, Table 7: Additional Cable & Satellite Television Channels.

[48] In adopting the NBCO rule, the Commission noted that magazines, periodicals, and out of market broadcast stations were also present. However, it discounted their importance because "[i]f they did deal with locally oriented issues, it was their own locality which was the focus. Such a situation does not bespeak a real diversity on vital issues of local concern." *NBCO Order*, 50 FCC 2d at 1081.

[49] *2008 Order*, 23 FCC Rcd at 2018-2019, ¶13 (2008). The Commission will presume a cross-ownership is in the public interest and apply a positive presumption if four conditions are satisfied: [1] the cross-ownership is in one of the top twenty DMAs; [2] the station is not ranked among the top four television stations in the market; [3] the cross-ownership involves only one broadcast station; and [4] eight voices remain post-merger.

While it may be possible in some cases to reverse or rebut this presumption, the Commission emphasized that "[t]o the extent that a proposed combination does not qualify for a positive presumption, it will have a high hurdle to cross to win Commission approval."[50] Fox fails to meet this "high hurdle" by a long shot.

### 1. Fox's Showing Is Insufficient To Reverse The Negative Presumption

Under the *2008 Order*, a party can reverse the negative presumption in one of two ways. First, it can demonstrate that the station or newspaper is failed or failing:

> In order to qualify as failed, the newspaper or broadcast outlet has to have stopped circulating or have been dark for at least four months immediately prior to the filing of the assignment or transfer of control application, or must be involved in court-supervised involuntary bankruptcy or involuntary insolvency proceedings. To qualify as failing, the applicant must show that (1) the broadcast station has had a low all-day audience share (*i.e.*, 4 percent or lower), (2) the financial condition of the newspaper or broadcast station is poor (*i.e.*, a negative cash flow for the previous three years), and (3) the combination will produce public interest benefits. In addition, as with requests for failed station waivers of the local television ownership rule, the applicant must show that the in-market buyer is the only reasonably available candidate willing and able to acquire and operate the failed or failing newspaper or station and that selling the newspaper or station to any out-of-market buyer would result in an artificially depressed price.[51]

Fox cannot reverse the presumption on this ground. Fox does not contend that the either the *New York Post* or WWOR-TV has failed or is failing. It fails to demonstrate that no out-of-market buyer could be found. It refers vaguely to the bad economy, but the economy affects all media owners. It also cites a few newspaper articles suggesting that the newspaper industry is "stumbling" and that "the *Post* itself is highly unprofitable, losing an estimated $50 million per

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[50] *Id.* at 2049, ¶68.

[51] *Id.* at 2048, ¶65 (footnotes omitted).

year."[52] But Fox does not provide any financial details about the *Post*'s supposed losses, much less demonstrate that it had a negative cash flow for the past three years.

If anything, Fox's data suggests that the *New York Post* is far from failing. The *Post* has the second highest circulation among daily newspapers published in the New York DMA, ahead of even the *New York Times.*[53] The *Post* is also second in the percentage of households that subscribe, at 7.8%.[54] Moreover, the *Post* had $310.3 million in operating revenue in 2007.[55] In contrast, when the Commission granted the 1993 waiver, the *Post* was failing. It was in the midst of bankruptcy proceedings and was dead last in circulation amongst the major, daily New York newspapers.[56] Moreover, Mr. Murdoch promised to infuse $350,000 per week into the *Post*, and to provide managerial, technical, and editorial assistance to help the paper grow.[57] Now the *Post* is second in circulation and Fox is making no promises to invest money or provide other assistance. If anything, Fox is reducing the workforce and independent newsgathering operations of all of its media entities.[58] And instead of promising to build up the *Post,* Fox threatens to stop investing in it unless it receives a waiver for WWOR-TV.[59] Thus, Fox has not shown that any of the cross-owned properties are failed or failing.

Alternatively, a party may reverse the presumption against cross-ownership if "it initiates local news programming of at least seven hours per week on a broadcast outlet that otherwise

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[52] Fox Supplement at 37-39.
[53] *Id.* at Exhibit A, Table 1: Mass Circulation Daily Newspapers Published in the New York DMA. The *New York Daily News* has the largest circulation at 654,220, followed by the *New York Post* at 579,512, and the *New York Times* at 475,343.
[54] *Id.* at Exhibit A, Table 9: Position of the *New York Post* in the New York Market.
[55] *Id.* Fox does not provide data for 2008.
[56] *Chris Craft Order*, 16 FCC Rcd at 14989, ¶44.
[57] *Id.* at 14986, ¶36.
[58] *See supra* at 11.
[59] Fox Supplement at 17-18.

was not offering local newscasts prior to the combined operations."[60] Fox cannot make this showing either. WWOR-TV offered local newscasts prior to being acquired by Fox. Moreover, Fox does not promise to provide any additional local news programming, much less the requisite seven hours per week.

### 2. Fox Fails To Rebut The Presumption That Its Cross-Ownership Is Not In The Public Interest

To rebut the negative presumption, an applicant must "demonstrate by *clear and convincing evidence* that, post-merger, the merged entity will increase the diversity of independent news outlets (*e.g.*, separate editorial and news coverage decisions) and increase competition among independent news sources in the relevant market."[61] In making this determination, the Commission considers four factors:

> (1) the extent to which the cross-ownership will serve to increase the amount of local news disseminated through the affected media outlets in the combination;
>
> (2) whether each affected media outlet in the combination will exercise its own independent news judgment;
>
> (3) the level of concentration in the Nielsen DMA; and
>
> (4) the financial condition of the newspaper or broadcast station, and if the newspaper or broadcast station is in financial distress, the owner's commitment to invest significantly in newsroom operations.[62]

Fox's showing under each factor is insufficient to rebut the presumption against its cross-ownership of two television stations and one or more daily newspapers.

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[60] *2008 Order*, 23 FCC Rcd at 2049, ¶67.
[61] *Id.* at ¶68 (footnotes omitted, emphasis added).
[62] *Id.*

### a. Fox Has Not Shown That Its Cross-Ownership Increases The Diversity Of Independent Local News Outlets

Fox has not shown that its cross-ownership of WNYW, WWOR, and the *Post* has increased or will increase the diversity of independent local new outlets. Fox claims that WWOR-TV "provides extensive news and information, especially about political issues relevant to New Jersey viewers," and has added hourly news updates from 4 to 7 pm on weekdays (the duration of each "update" is not specified), and broadcast public service announcements.[63] However, it utterly fails to establish the two points critical to this factor: the extent that it will increase local news and that any such increase is directly attributed to the cross-ownership.

If anything, WWOR-TV has failed to provide adequate local news coverage to its community of license. The Commission specifically licensed WWOR-TV to Secaucus, NJ to serve northern New Jersey, which, historically, had not been served by a single television station.[64] Voice for New Jersey filed a petition to deny the license renewal for WWOR-TV in 2007, alleging that WWOR had failed to provide adequate news coverage of New Jersey

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[63] Fox Supplement at 31.

[64] As explained in a 2003 memorandum by the Congressional Research Service, Congress passed an amendment in 1982 requiring the Commission to issue a license to any existing commercial VHF licensee that volunteered to move to a state that was not being served by present licensees. While its license renewal application was still pending, RKO notified the Commission that it agreed "to the reallocation of WWOR-TV from New York, New York, to Secaucus, New Jersey." The Commission ordered the reallocation, granted RKO a new five year license, and dismissed competing applications as moot. In its order, the Commission made clear that it "expected that the licensee will devote itself to meeting the special needs of its new community (and the needs of the Northern New Jersey area in general)." Channel 9 Reallocation (WWOR-TV), 53 RR 2d 469 (1983), The Commission recognized the "unique set of circumstances" present in the highly populated and previously unserved area of Northern New Jersey and "expect[ed] RKO to perform a higher degree of service to its Grade B coverage area than is normally required of a broadcast licensee." The order indicated that at renewal time, "RKO will be judged by how it has met the obligation to serve the greater service needs of Northern New Jersey." Charles B. Goldfarb, Reallocating Channel 9 from New York City to Secaucus, New Jersey, Congressional Research Service Memorandum (Jul. 28, 2003).

elections and New Jersey government, adequate local news coverage in its community of license, or honor the specific obligations imposed on the station by the FCC.[65]

In November 2007, the FCC held a public forum in Newark to get input on whether WWOR-TV was meeting its program obligations to northern New Jersey. Public officials and individual citizens raised serious concerns about WWOR-TV's commitment to New Jersey.[66] For example, Senator Lautenberg testified that WWOR-TV had closed its news bureau in the capital Trenton, and even tried to relocate to New York City.[67] A viewer testified that WWOR-TV failed "to provide sufficient news coverage to keep the public informed of relevant events throughout the service area."[68]

In its petition for reconsideration of Fox's October 2006 temporary waiver, UCC and Rainbow/PUSH Coalition, both of whom have members in New Jersey, made similar allegations.[69] Because the FCC denied UCC and Rainbow/PUSH Coalition's petition for

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[65] Petition to Deny Renewal by the Voice for New Jersey, *Application for Renewal of Station License of WWOR(TV)*, File No. BALCT BRCT-20070201AJT (filed Apr. 28, 2007).

[66] News Release, *FCC Announces Public Forum on WWOR-TV License Renewal in New Jersey* (Nov. 8, 2007) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278062A1.pdf.

[67] Transcript, *FCC Media Bureau Public Forum on WWOR-TV License Renewal in New Jersey* (Nov. 28, 2007) at 11:12-18.

[68] *Id.* at 37:2-4.

[69] Among other things, the petition presented a study by Dr. Mathew Hale for the Eagleton NJ Project finding that WWOR-TV provided less coverage of the 2005 New Jersey state elections than its competitors based in New York City. The petition also pointed out that WWOR-TV's website targeted the New York audience by its picture of the New York City skyline, with the station's new name, "My 9 New York" displayed prominently. Although the WWOR-TV website as of July 6, 2009, http://www.myfoxny.com/subindex/My9Homepage, now identifies the station simply as "my9tv," it nowhere mentions that the station is licensed to Secaucus, NJ.

reconsideration on procedural grounds, it did not address these claims on the merits.[70] Nor has it acted on Voice for New Jersey's petition to deny which raised a similar issue.

Recent articles suggest that WWOR-TV's local coverage may be decreasing. On June 19, 2009, Fox fired twenty employees at WNYW and WWOR-TV, and announced "programming changes that could include trimming the 10 p.m. newscast to a half-hour and moving it to 11 o'clock,"[71] These cuts were in addition to WWOR-TV's previous decision to lay off three news writers and not renew contracts for two news correspondents/fill-in anchors.[72]

#### b. Fox Has Not Shown That Its Cross-Owned Entities Will Exercise Independent News Judgment

Not only has Fox failed to commit to increase local news, but it has not shown that WWOR-TV, WNYW, and the *Post* will exercise independent news judgment. Fox states:

> If the Commission grants a waiver permitting continued ownership of these media, News Corp and FTS are entirely committed to maintaining full separation between the newspaper and the broadcast stations when it comes to selecting the news and formulating editorial positions. Even though the stations may share newsgathering resources from time to time, they will remain independent when it comes to exercising news judgment.[73]

It is difficult to understand how Fox's media outlets can simultaneously share newsgathering and maintain full separation in selecting the news. If they are sharing reporters or camera crews, they will necessarily decide jointly what stories to cover. This joint decision-making limits both the diversity of stories covered and the diversity of perspectives on the same stories. This public

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[70] *2009 Denial*, 2009 WL 1456517. UCC *et al.* maintain that the Commission was wrong to deny the petition for reconsideration on procedural grounds.

[71] Richard Huff, *Bad news: Channel 5 and Channel 9 announce layoffs to off-camera employees – recession blamed*, N.Y. DAILY NEWS, Jun. 19, 2009.

[72] *Id.*

[73] Fox Supplement at 34.

interest harm is further compounded by Fox's joint news gathering with three other New York stations, discussed above. Moreover, its recently-launched content-sharing portal to be used by all Fox media would seem to be at odds with this commitment to editorial independence.[74]

Finally, the claim of editorial independence is illusory because each of Fox's media outlets is ultimately responsible to Rupert Murdoch. The Commission previously found that "Mr. Murdoch was in charge of [Fox's] day-to-day operations,"[75] and in fact Murdoch is known to have a strong imprint on his companies. His influence on the *Wall Street Journal* "is visible on the front page, where there are bigger headlines, more political coverage, and fewer of the long, sometimes whimsical yarns that were one of the paper's signatures. They have also made articles shorter and pushed some business coverage deeper into the paper."[76] And after Murdoch acquired the *Brooklyn Paper*, it changed its position regarding the controversial Atlantic Yards

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[74] Press Release, News Corporation, *News Corporation Forms Unit to Coordinate Editorial Assets* (Apr. 14, 2009) *available at* http://www.newscorp.com/news/news_414.html. In addition, Fox has relocated almost all of its local papers into one building in downtown Brooklyn, and all of its New York City daily papers (and the Dow Jones Newswire) to the News Corporation headquarters in Manhattan. *See Happy Together! Brooklyn Paper Joins Other Papers at MetroTech*, BROOKLYN PAPER, Mar. 30, 2009, *available at* http://www.brooklynpaper.com/stories/32/13/32_13_gk_ribbon_cutting.html; Rafat Ali, *The Wall Street Journal To Drop, Well,* WALL ST. J. (May 22, 2008) *available at* http://www.forbes.com/2008/05/22/wall-street-journal-tech-cx_pco_0522paidcontent.html. Similarly, Fox consolidated much of the WWOR-TV and WNYW workforce after WWOR-TV was acquired in 2000. *See Woodman v. WWOR-TV*, 411 F.3d 69, 72 (2d Cir. 2005).

[75] Indeed, it was the fact that Mr. Murdoch personally exercised control over the stations that served as a basis for waiving the alien ownership restrictions when News Corp. was an Australian corporation. *Chris Craft Order*, 16 FCC Rcd at 14978, ¶10.

[76] Tim Arango & Richard Pérez-Peña, *Murdoch's Soft Spot for Print Slows News Corp.*, NEW YORK TIMES, Feb. 22, 2009 *available at* http://www.nytimes.com/2009/02/23/business/media/23paper.html?_r=1&pagewanted=1&8dpc.

project and abandoned its steadfast defense of local property owners in favor of a developer-friendly position.[77]

### c. Fox Has Not Shown That New York Is Competitive In The Provision Of Local News

The FCC should reject Fox's assertion that its media combinations have no detrimental impact on competition in the New York market because the New York market is so competitive.[78] The *2008 Order* provides that market concentration will be measured by "the extent to which media outlets in a particular market compete in the provision of local news and information to consumers within that market and the impact that the proposed combination would have on such concentration."[79] The Commission declined to use a single metric because "there are too many qualitative and quantitative variables in evaluating different markets and combinations to reduce the task at hand to a precise mathematical formula."[80] However, if a party wants to use a given metric to analyze concentration, it should "include a thorough explanation for the metric proposed for use and why that metric is relevant to the task of evaluating whether a particular combination will or will not unduly undermine diversity and increase concentration in the provision of news and information in the local media market."[81]

Fox has not met this requirement. Fox relies on a report by BIA's Dr. Fratik finding that the HHI for the New York DMA is a relatively low 763.[82] But Fox fails to explain why HHI is the relevant metric for analyzing concentration in the provision of local news and information.

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[77] *Web readers ask: What was that pro-arena editorial?* BROOKLYN PAPER, June 18, 2009 *available at* http://www.brooklynpaper.com/stories/32/24/32_24_web_chatter.html.
[78] Fox Supplement at 34-36.
[79] *2008 Order*, 23 FCC Rcd at 2051-2052, ¶72.
[80] *Id.* at 2052-2053, ¶73.
[81] *Id.*
[82] Fox Supplement at Exhibit B: Analysis of the Level of Concentration in the New York Market.

Fratrik analyzed the advertising revenue shares of all local television and radio stations and all local newspapers (both daily and weekly). However, measuring advertising revenues does not measure competition in the provision of local news and information because far more media outlets sell advertising than provide local news.

Even assuming *arguendo* that HHI is a relevant metric, Fratrik's analysis vastly overstated the degree of competition. To properly determine HHI, one must first define the relevant product and geographic markets. The relevant product market consists of products that consumers regard as reasonable substitutes. Here, there is no reason to believe that a WWOR-TV viewer in New Jersey would regard Long Island Media Group's community papers serving Nassau and Suffolk Counties on Long Island as reasonable substitutes for WWOR-TV. In addition, Fratrik used the New York DMA as the relevant geographic market, but then included many small radio stations and newspapers that serve only a small portion of the New York DMA. Because Fratrik included in his HHI calculation media outlets that are not reasonable substitutes and do not serve the relevant geographic market, his result is meaningless.

#### d. Fox Has Not Shown That The *Post* Is In Significant Financial Distress

As discussed above, not only has Fox failed to show that any of its three properties are failed or failing, but it has not properly documented any financial distress. To show significant financial distress, Fox must show that "the newspaper or the broadcast station is operating at a loss."[83] Such a showing can be made through "tax filings, earning statements, annual reports or other records showing that the newspaper has had several years of losses."[84] Yet instead of submitting financial records, Fox cites to three newspaper articles to support its claim that the

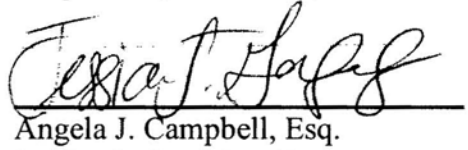
[83] *2008 Order*, 23 FCC Rcd at 2053, ¶74.
[84] *Id.*

*Post* is unprofitable.[85] Even if Fox were to submit records showing that the *Post* is experiencing significant losses, it does not follow that allowing the existing cross-ownership to continue would serve the public interest. Fox has had one cross-ownership since 1993 and two since 2001. If it is still experiencing losses at the *Post* after this many years of cross-ownership, there is no reason to believe that extending the cross-ownerships would make any difference in terms of the *Post*'s profitability. However, allowing the cross-ownerships to continue would harm the public interest in diversity and competition while encouraging Fox and other similarly situated companies to flout the Commission's rules.

## III. Conclusion

For the foregoing reasons, UCC *et al.* respectfully request that the Commission deny Fox's Supplement to Petition for Modification of Permanent Waiver and deny WWOR-TV's renewal application.

Respectfully Submitted,



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July 15, 2009

[85] Fox Supplement at 38, n.133.

# Appendix: Declarations

## DECLARATION

1. My name is Robert Chase and I am a member of the United Church of Christ, at the Riverside Church, located at 490 Riverside Drive, New York, NY 10027.

2. My home address is 389 Washington Street, Jersey City, NJ 07302.

3. I am a regular viewer of the television stations serving the New York area, including WWOR-TV and WNYW(TV), as well as a regular reader of newspapers serving the New York area including *The New York Post*.

4. Fox's common ownership of *The New York Post*, WNYW(TV), and WWOR-TV harms me by sharply reducing the number of independent voices available to me. Unless the licenses are denied, my right to access diverse programming will continue to be harmed. For example, in my work I encounter many groups and individuals within the Muslim community who are making positive contributions to local and global society. Yet these outlets rarely carry such stories.

5. WWOR-TV does not provide me and my family with adequate local news coverage of New Jersey. Fox's ownership of WWOR-TV has limited the amount and diversity of coverage of local news and public affairs in New Jersey. Jersey City has a vibrant and ethnically diverse population, including Hispanics, Filipinos, Indians and Koreans and yet there is very little programming about these communities which proliferate in the New Jersey cities and towns that border the Hudson River, from Bayonne to Fort Lee—all well within the market region that these media outlets serve.

6. This Declaration has been prepared in support of the foregoing Objection to Fox's waiver request.

7. This statement is true to my personal knowledge, and is made under penalty of perjury of laws of the United States of America.

Date Executed: 6/16/09

Rev. Robert Chase

**DECLARATION**

1. My name is Victor Brown, and I am a member of the Rainbow PUSH Coalition located at 930 E 50th St. Chicago IL 60615

2. I reside at 198 Heberton Ave. S.I. N.Y. 10302

3. I am a regular viewer of the television stations serving the New York area, including WWOR-TV and WNYW(TV), as well as a regular reader of newspapers serving the New York area including *The New York Post*.

4. Fox's common ownership of *The New York Post*, WNYW(TV), and WWOR-TV harms me by sharply reducing the number of independent voices available to me. Unless the licenses are denied, my right to access diverse programming will continue to be harmed. If Fox complied with the rule, as it should, then the stations or newspaper would be have to be divested to a new owner, possibly a minority or female owner.

5. WWOR-TV does not provide me and my family with adequate local news coverage of New York. Fox's ownership of WWOR-TV has limited the amount and diversity of coverage of local news and public affairs in New York.

6. This Declaration has been prepared in support of the foregoing Objection.

7. This statement is true to my personal knowledge, and is made under penalty of perjury of laws of the United States of America.

Date Executed: 24 June 2009

Rev. Dr. Victor A. Brown

ATTN: JESSICA GONZALEZ

**DECLARATION OF TIMOTHY KARR**

1) My name is Timothy Karr. I am the Campaign Director for Free Press and am based in the New York office at 307 West 38th Street, Suite 1805, New York, NY 10018. I am also a member of Free Press' Activist Network.

2) I reside at Two 14th Street #202, Hoboken, New Jersey 07030.

3) I am a regular viewer of WWOR-TV and WNYW(TV) and reside within the stations' viewing area.

4) I reside within the circulation area of the *New York Post*.

5) Any temporary or permanent waiver allowing Fox Television Stations, Inc. ("Fox") to continue to own WWOR-TV, WNYW(TV) and the *New York Post* would result in an extension of the already serious decrease in the number of media owners and sources of news in Hudson County. I am harmed because the combination of WWOR-TV, WNYW(TV) and the *New York Post* results in fewer independent voices available to me.

6) The continued combination of WWOR-TV and WNYW(TV) eliminates an independent local news voice from WWOR-TV and allows Fox to program two of the six VHF television stations with regular local news programming in the New York DMA. In addition, the *New York Post* is one of three major daily newspapers published in the area. I am harmed because another waiver would allow Fox three of the nine sources of local news coverage.

7) I have reviewed the Objection to Fox's supplement to its petition to modify its waiver to allow it to continue to own WWOR(TV), WNYW(TV) and the *New York Post*.

8) This Declaration has been prepared in support of the foregoing Objection.

This statement is true to my personal knowledge and is made under penalty of perjury of the laws of the United States of America.

Date Executed: JUNE 17, 2009

Timothy Karr
Two 14th Street #202
Hoboken, New Jersey 07030

**Certificate of Service**

I hereby certify that a copy of the foregoing opposition has been served by first-class mail, postage prepaid, on July 15, 2009, on the following persons:

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