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September 15, 2009

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Files Nos. BRCT-20070201AJT and -20070201AJS
MB Docket No. 07-260
Fox Television Stations, Inc. and News Corporation
Request for Waiver of the Newspaper/Broadcast Cross-
Ownership Rule for WWOR-TV and WNYW(TV)

Dear Ms. Dortch:

By and through their counsel, Fox Television Stations, Inc. ("Fox") and News Corporation ("News Corp") hereby submit this letter to briefly respond to the Opposition pleading submitted July 15, 2009 by the Office of Communication, United Church of Christ, Inc. ("UCC"), Rainbow/PUSH Coalition and Free Press (collectively, "UCC *et al.*") in connection with the above-referenced request for waiver of the newspaper/broadcast cross-ownership ("NBCO") rule in the intensely competitive New York market.¹ The Opposition, *submitted more than one year after Fox and News Corp* filed a supplement to bolster their long-standing request for waiver, raises no new issues and therefore warrants only a brief response.

¹ See *In re Fox Television Stations, Inc., Applications for Renewal of License of WWOR-TV and WNYW, Request for Waiver of the Newspaper-Broadcast Cross-Ownership Rule Relating to WWOR-TV and the New York Post*, File Nos. BRCT-20070201AJT, BRCT-20070201AJS; MB Docket No. 07-260, Opposition of Office of Communication, United Church of Christ, Inc., Rainbow/PUSH Coalition and Free Press, dated July 15, 2009 (the "Opposition").

First and foremost, Fox and News Corp continue to believe, as they set forth in the Supplement, that their request for waiver of the NBCO rule in New York should have been granted several years ago.² Fox and News Corp originally submitted their waiver request in 2004.³ Had the Commission acted on the request at that time, or during the subsequent four years, it would have been compelled to grant Fox and News Corp a waiver permitting common ownership of two television stations (WNYW(TV) and WWOR-TV) and a daily newspaper (the *New York Post*) in New York, the nation's most diverse and competitive media market. This was especially clear after the Commission's judicially-affirmed decision to repeal the NBCO rule in 2003 upon finding that the rule may harm the FCC's localism goal while providing no benefit to the goals of diversity or competition.⁴

Because their request remained pending for years without action, however, Fox and News Corp filed the Supplement in June 2008 as called for in the Commission's 2006 quadrennial media ownership review order.⁵ In the Supplement, Fox and News Corp reiterated the manifold justifications warranting relief from the NBCO rule in a media market as vibrant as New York; they also explained that common ownership of these three non-dominant media outlets could not possibly cause any harm to the public interest. The Supplement also set forth the reasons why, even if the Commission were to review the request under the new four-factor test established in the quadrennial review proceeding, Fox and News Corp still deserved a waiver in New York – a market with literally hundreds of independently-owned media voices.

² See *In re Fox Television Stations, Inc., et al.*, Supplement to Petition for Modification of Permanent Waiver, filed June 23, 2008 (the "Supplement").

³ See *In re Fox Television Stations, Inc. and The News Corporation Limited, Request for Waiver of the Newspaper/Broadcast Cross-Ownership Rule Relating to WNYW(TV), WWOR-TV and the New York Post*, Petition for Modification of Permanent Waiver, filed September 22, 2004 (the "Modification Petition").

⁴ See *In re 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620 (2003) ("2003 Biennial Review Order"), *rev'd and remanded*, *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004) (but court finding that "reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest").

⁵ See *In re 2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report & Order, MB Docket No. 06-121, FCC 07-216 (rel. February 4, 2008) (the "2008 Report & Order").

Shortly thereafter, Rainbow/PUSH and UCC submitted a letter to the Commission expressing an intent to oppose the Supplement.⁶ They waited more than a year, however, to actually file the Opposition (without offering any good reason to justify their delay). In the meantime, UCC and Free Press separately sought reconsideration of (and filed an appeal in the D.C. Circuit relating to) the Commission's decision to grant consent to Fox's recapitalization transfer of control (which included a temporary extension of Fox's and News Corp's NBCO rule waiver in New York).⁷ Apparently, UCC *et al.* have now filed the Opposition because they are dissatisfied that the Commission consistently has ruled against them in the transfer of control proceeding. They should not be permitted, however, to serially file repetitive opposition documents one after another each time they encounter a defeat on the merits. Fox and News Corp submit that the Commission should not countenance these types of delay tactics, which can only be intended to impede finality in a waiver proceeding that has now been pending for nearly five years.

In any event, with regard to the arguments raised in the Opposition, Fox and News Corp submit that the filings that already comprise the record of these proceedings amply demonstrate that grant of a waiver is warranted here. Indeed, this ground has been trod heavily before. Rather than repeat all of the various arguments in response to UCC *et al.*'s latest salvo, Fox and News Corp simply request that the Commission consider its recently-filed opposition to Free Press' petition for reconsideration⁸ (together with the other record filings in these proceedings) as a fulsome response to the repetitious claims raised in the Opposition.⁹

⁶ See Letter to Marlene H. Dortch, Secretary, FCC, from Jessica J. Gonzalez, Counsel to Rainbow/PUSH and UCC, dated June 30, 2008.

⁷ See *In re K. Rupert Murdoch (Transferor) and Fox Entertainment Group (Transferee)*, Memorandum Opinion and Order, 21 FCC Rcd 11499 (2006); *In re K. Rupert Murdoch (Transferor) and Fox Entertainment Group (Transferee)*, Memorandum Opinion and Order on Reconsideration, FCC 08-15 (rel. May 22, 2009).

⁸ See *In re K. Rupert Murdoch (Transferor) and Fox Entertainment Group, Inc. (Transferee)*, File Nos. BTCCCT-20050819AAF *et al.*, Opposition of Fox Entertainment Group, Inc. and Fox Television Stations, Inc., filed July 8, 2009.

⁹ As noted above, the Commission's new four-factor test is not controlling, since Fox and News Corp deserve to have their waiver request adjudicated on the basis of the original Modification Petition. Yet Fox and News Corp do think that it is worth pointing out at least two substantial flaws undermining UCC *et al.*'s reasoning in addressing the showing made in the Supplement relating to the four-factor test. First, the Opposition incongruously argues that Fox failed to show that its New York media outlets will exercise independent news judgment because the stations

In short, whether evaluated pursuant to the long-pending Modification Petition or the new four-factor test, there can be no doubt that in a market as diverse and competitive as New York, common ownership of WNYW(TV), WWOR-TV and the *New York Post* causes no public interest harms and should be permitted. Indeed, the record now overwhelmingly reflects that common ownership of these three outlets has been a boon to localism, competition and diversity. Accordingly, Fox and News Corp request that the Commission grant their waiver request and finally bring to a close this years-long proceeding.

Respectfully submitted,



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and the newspaper are “ultimately responsible to Rupert Murdoch.” Opposition, at 20. Of course, when media outlets are commonly-owned, they *always* will be ultimately responsible to the common parent (and its executive leadership). The truism that the news directors of each of WWOR-TV and WNYW(TV) and the publisher of the *New York Post* report ultimately to Mr. Murdoch can hardly be relevant, or else the Commission’s determination in the 2008 *Quadrennial Review Order* to make editorial separation a factor in its waiver analysis would be nugatory. Second, *UCC et al.* criticize Fox’s showing in the Supplement that the New York market is highly competitive, alleging for example that Fox should not have considered media outlets on Long Island as competitive with WWOR-TV – a station licensed to Secaucus, NJ – due to their lack of geographic proximity. See Opposition, at 22. Fox continues to believe that its HHI analysis, as set forth in the Supplement, constitutes a valid and rational measure of the tremendous competition that characterizes the New York market. Taking *UCC et al.*’s criticism at face value, however, would only *support* Fox’s waiver request. Even if the Commission were to find that a television station in New Jersey does not compete with outlets located in other parts of the New York market, that would compel a conclusion that common ownership of WWOR-TV with WNYW(TV) and the *New York Post* has no bearing on competition in the market, and thus that a waiver would not impact the allegedly distinct media consumers of WWOR-TV.