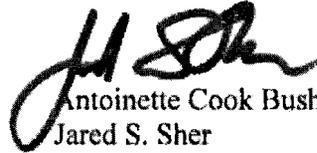


Chairman Julius Genachowski  
January 5, 2010  
Page 10

Respectfully submitted,



Antoinette Cook Bush  
Jared S. Sher  
*Counsel to Fox Television Stations, Inc.*

cc (via email): Commissioner Michael J. Copps  
Commissioner Robert M. McDowell  
Commissioner Mignon Clyburn  
Commissioner Meredith Atwell Baker  
Sheresse Smith  
Rosemary Harold  
Joshua Cinelli  
Rick Kaplan  
Bradley Gillen  
William Lake  
Barbara Kreisman  
Dave Roberts  
Best Copy and Printing, Inc.  
Donna Sandorse, Voice for New Jersey (via regular mail)

**EXHIBIT A**

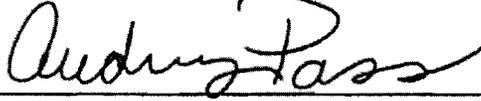
## DECLARATION

I, Audrey Pass, hereby state as follows:

1. I am Senior Director of Communications and Public Affairs for WWOR-TV, Secaucus, New Jersey. I submit this Declaration in connection with Fox Television Stations, Inc.'s letter responding to the letter from Voice for New Jersey ("VNJ"), dated November 27, 2009, submitted as part of the record in MB Docket No. 07-260.
2. WWOR-TV continues to operate out of a 110,000 square-foot headquarters facility in Secaucus, New Jersey. The facility serves as the station's main studio. WWOR-TV employs more than 75 people. The Secaucus facility is staffed with employees daily between the hours of approximately 7 a.m. and 11:45 p.m. WWOR-TV originates its live broadcast of a local newscast from the Secaucus facility each weekday.
3. Harry Martin continues to serve as the co-lead anchor (with Brenda Blackmon) for WWOR-TV's local newscast.
4. On or about November 4, 2009, an individual who identified himself as Charles Lovey (who previously has submitted filings to the Commission as a member of VNJ) visited WWOR-TV's Secaucus, New Jersey main studio and requested to inspect the public file. After he was given access to the file, he asked if the station had received any viewer comments during July, August and September 2009 related to WWOR-TV's decision to eliminate its regularly-scheduled weekend newscast and its public affairs program entitled "Real Talk."
5. On or about November 5, 2009, I called Mr. Lovey and informed him that I was looking into his question. I conducted research and determined that, with respect to viewer comments related to news and public affairs programming that the station received during July, August and September 2009, five emails had been mis-filed. All five of these emails related to WWOR-TV's decision to reschedule its local newscast from 10 p.m. to 11 p.m. on weeknights.
6. Promptly thereafter, I called Mr. Lovey again and informed him that five viewer emails related to news programming had been found mis-filed. I described the correspondence to him and invited him to return to WWOR-TV's main studio to view the emails (which by then had been placed in the proper file). Mr. Lovey expressed surprise that the station had not received any additional programming-related viewer correspondence, particularly related to weekend news and public affairs programming, during July, August and September 2009.
7. Upon further research, I determined that the five emails had been mis-filed by a temporary staff member employed by the station during the Summer of 2009. I determined that this staff member had not received adequate training, and I

coordinated with WWOR-TV's Vice President who oversees viewer services to ensure that supervisors provide better training for employees responsible for filing viewer emails.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, information and belief. Executed on January 5, 2010.



---

Audrey Pass  
Senior Director of Communications  
and Public Affairs  
WWOR-TV, Secaucus, New Jersey  
9 Broadcast Plaza  
Secaucus, NJ 07096

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November 13, 2009

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

RE: *Fox Television Stations, Inc. Applications for Renewal of Licenses of WNYW(TV) and WWOR-TV and Supplement to Petition for Modification of Permanent Waiver, Files Nos. BRCT-20070201AJS and BRCT-20070201AJT, and MB Docket No. 07-260*

Dear Ms. Dortch:

By and through their counsel, Fox Television Stations, Inc. ("Fox") and News Corporation ("News Corp") hereby submit this brief response to the letters from Adrienne Biddings to the Commission reporting on *ex parte* meetings between Commission staff and representatives of the Office of Communication of United Church of Christ, Inc. ("UCC") in connection with the above-referenced matters.<sup>1</sup> During its meetings, UCC made certain representations to the Commission regarding the status of Fox's license renewal applications for WNYW(TV) and WWOR-TV, as well as Fox's and News Corp's request for waiver of the newspaper-broadcast cross-ownership ("NBCO") rule in the intensely competitive and diverse New York market. Fox and News Corp submit this letter to set the record straight with respect to the several incorrect or incomplete assertions contained in the UCC Letters.

<sup>1</sup> See Letters from Adrienne Biddings, Institute for Public Representation, to Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 07-260 (dated Oct. 16, 2009 and Oct. 30, 2009) (the "UCC Letters").

In particular, Fox and News Corp strongly dispute the accuracy of the so-called “Fox Ownership Chronology” that UCC discussed at its October 15 meeting (and which was appended to one of the UCC Letters).<sup>2</sup> The chronology inexplicably omits several key facts, utterly ignores important steps taken by the Commission and the courts, and ultimately paints an exceedingly misleading picture of the history of Fox’s and News Corp’s efforts to seek relief from the NBCO rule – a rule that the Commission twice now has concluded abrogates the public interest. For example, even as UCC cites favorably to the decision of the U.S. Court of Appeals for the Third Circuit in the *Prometheus* case,<sup>3</sup> the chronology makes no mention whatsoever of the fact that the court found that “reasoned analysis support[ed] the Commission’s determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest.”<sup>4</sup> Collectively, this and other flaws so thoroughly undermine the validity of the UCC chronology that it simply should not be relied upon in making any substantive determinations about these proceedings. Attached hereto for the Commission’s reference is a revised clean version of the chronology that corrects UCC’s omissions and errors, together with a redline marked to show the changes.

Moreover, contrary to UCC’s erroneous assertion, Fox and News Corp are and always have been in compliance with the NBCO rule, as it has been applicable to them based on Commission waivers. UCC disingenuously asserts that “although the FCC’s approval of Fox’s acquisition of WWOR in July 2001 had been conditioned on its compliance with the [NBCO rule] within 24 months, it has been more than eight years, and Fox still has not complied with the NBCO rule.”<sup>5</sup> In order to make this misguided claim, though, UCC totally disregards the facts. The reality is that when the Commission consented to Fox’s acquisition of WWOR-TV, it specifically said that Fox would need to come into compliance with the NBCO rule only “*insofar as it is necessary under our rules at that time.*”<sup>6</sup>

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<sup>2</sup> See UCC Oct. 16 Letter, at Attachment (consisting of the “Fox Ownership Chronology”).

<sup>3</sup> See *id.* at 2-3 (citing *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004) (“*Prometheus*”).)

<sup>4</sup> *Prometheus*, 373 F.3 at 398.

<sup>5</sup> UCC Oct. 16 Letter, at 1; see also UCC Oct. 30 Letter, at 1.

<sup>6</sup> *In re Applications of UTV of San Francisco, Inc., et al. (Assignors) and Fox Television Stations, Inc. (Assignee)*, Memorandum Opinion & Order, 16 FCC Rcd 14975, ¶ 50 (2001) (“It is Further Ordered, That . . . [FTS] is granted a temporary 24-month period within which to come into

The Commission also noted that “[i]f our rules should change during that period to permit the proposed combination, then FTS and [K. Rupert Murdoch, News Corp’s chief executive officer] will not need to divest the [*New York Post*] or one of the television stations to come into compliance.”<sup>7</sup> As is clear from the corrected chronology, the NBCO rule *did* change during the intervening 24 months – the Commission voted to repeal the rule in June 2003.<sup>8</sup> Furthermore, as UCC acknowledges, the Commission subsequently granted Fox and News Corp an additional temporary waiver in 2006 as part of the reorganization of Fox Television Holdings, Inc.<sup>9</sup> And throughout the past 8 years, Fox and News Corp repeatedly and consistently have demonstrated both that this outmoded regulation should be repealed and that they are entitled to relief from its application in the nation’s most competitive and diverse media market. There is simply no basis for UCC’s implication that Fox has ignored or flouted the NBCO rule for any period of time.

In addition, UCC attempts to question Fox’s and News Corp’s basis for maintaining their ownership of WNYW(TV), WWOR-TV and the *New York Post* during the pendency of their requests for extension and modification of the waiver.<sup>10</sup> Fox and News Corp filed with the Commission a letter in December 2008, prior to the scheduled expiration of the 2006 waiver, explaining that, since the Commission had not yet acted on the multiple pending filings, the “existing temporary waiver will remain in effect pending a Commission decision on the merits of their requests.”<sup>11</sup> The letter added that, “[s]hould there be any question about the status of their temporary waiver,” Fox and News Corp “request, out of an abundance of caution, a temporary extension of their waiver of the NBCO rule . . . to permit common ownership” of these three media outlets “while the FCC completes its review.”<sup>12</sup> Commission precedent makes clear that Fox’s and News Corp’s temporary waiver

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compliance with the [NBCO rule] . . . *insofar as it is necessary under our rules at that time*”) (emphasis supplied).

<sup>7</sup> *Id.* at ¶ 45 n.73.

<sup>8</sup> *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) (*rev’d and remanded*, *Prometheus*, 373 F.3d at 372).

<sup>9</sup> *See* UCC Oct. 16 Letter, at 1; UCC Oct. 30 Letter, at 1.

<sup>10</sup> *See* UCC Oct. 16 Letter, at 2; UCC Oct. 30 Letter, at 1-2.

<sup>11</sup> Letter from Antoinette Cook Bush and Jared S. Sher, Counsel, Fox Television Stations, Inc. and News Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, BTCCT-20050819AAF, *et al.*, Status of Waiver (filed Dec. 24, 2008), at 2.

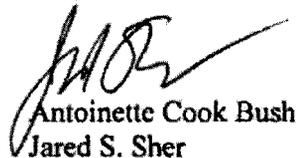
<sup>12</sup> *Id.*

"remain[s] in force" inasmuch as the Commission has not yet acted on their extension request or the modification petitions.<sup>13</sup> Although UCC has "questioned the legal basis" for this precedent, it cites to no countervailing authority.<sup>14</sup> UCC's discomfort with the law notwithstanding, Fox and News Corp have not violated any Commission rule or requirement.

If there is one thing about which Fox and News Corp can agree with UCC, it is that these proceedings – together with Fox's and News Corp's various efforts to seek a final, permanent answer to the questions raised here – have been pending for far too long.<sup>15</sup> Rather than suggest that an NBCO waiver in New York is unjustified as UCC alleges, however, the passage of time has served only to underscore that grant of the requested waiver would promote the public interest by preserving a diverse media outlet in an incredibly difficult economic environment for daily newspapers and television stations.

In short, 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. Accordingly, Fox and News Corp again request that the Commission grant their waiver request and finally bring to a close this years-long proceeding.

Respectfully submitted,



Antoinette Cook Bush  
Jared S. Sher

*Counsel to Fox Television Stations, Inc.  
and News Corporation*

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<sup>13</sup> *In re Counterpoint Communications, Inc. (Transferor) and Tribune Television Co. (Transferee)*, 20 FCC Rcd 8582, 8590 (2005) (affirming the Media Bureau's determination that the holder of an NBCO rule waiver "was 'in full compliance' with the Commission's multiple ownership rules" while its request for a waiver extension was pending) (citing *Letter from W. Kenneth Ferree, Chief, Media Bureau, to Tribune Television Co. c/o R. Clark Wadlow, Esq.* (Sept. 5, 2003)).

<sup>14</sup> UCC Oct. 16 Letter, at 2; UCC Oct. 30 Letter, at 1-2.

<sup>15</sup> See UCC Oct. 16 Letter, at 2; UCC Oct. 30 Letter, at 2.

Marlene H. Dortch  
November 13, 2009  
Page 5

Enclosures

cc (via email): William Lake  
Barbara Kreisman  
Mania Baghdadi  
Mary Beth Murphy  
Amy Brett  
Molly Fitzgerald  
Sarah Whitesell  
David Shaiman  
Alexis Zayers  
Dave Roberts  
Best Copy and Printing, Inc.  
Adrienne Biddings, Institute for Public Representation, Georgetown  
University Law Center

## COMPLETE FOX OWNERSHIP CHRONOLOGY

- 1976** -News Corporation (“News Corp”), through a subsidiary distinct from Fox Television Stations, Inc. (“Fox”), purchased the *New York Post*.
- 1986** -Fox acquired WNYW, a television station located in the New York DMA, and pursuant to its 1985 license transfer, was given two years to divest its interests in the *New York Post*. *Metromedia Radio & Television, Inc.*, 102 FCC2d 1334 (1985).
- Mar. 1988** -Pursuant to the FCC’s two year divestiture requirement, Fox sold the *New York Post* to real estate developer Peter S. Kalikow.
- 1993** -Fox reacquired the *New York Post* after Mr. Kalikow’s financial difficulties led the paper’s parent company to declare bankruptcy.
- Due to the lack of qualified purchasers or other viable alternatives that would ensure the survival of the newspaper, News Corp agreed to reassume management of the paper upon obtaining a permanent waiver of the newspaper/broadcast cross-ownership (NBCO) rule. Thus, Fox requested and received a permanent waiver of the NBCO rule to allow common ownership of the *New York Post* and WNYW. *Fox Television Stations Inc.*, 8 FCC Rcd 5341, 5354 (1993).
- Sept. 2000** -Fox proposed to acquire ten television stations from Chris-Craft Industries, Inc., including WWOR-TV, another television station located in the New York DMA.
- Fox argued that its 1993 permanent waiver should extend to its acquisition of WWOR-TV, or in the alternative, that it should receive an “interim waiver” until conclusion of the rulemaking proceeding that the Commission committed to initiate in the 1998 Biennial Regulatory Review of the Commission’s broadcast ownership rules.
- UCC, Rainbow/PUSH, and others opposed Fox’s acquisition of WWOR-TV.
- July 2001** -The Commission concluded “that it would be in the public interest to grant [Fox] a temporary 24-month period within which to come into compliance with the television/newspaper cross-ownership rule in the New York market . . .”, but only “insofar as it is necessary under our rules at that time . . .” *UTV of San Francisco, Inc.*, 16 FCC Rcd 14975, 14989-14990 (2001) (“Chris-Craft Order”). In an unpublished opinion, the D.C. Circuit affirmed the FCC’s ruling. It found that the FCC had made an adequate public interest finding to approve the transfer, noting that “[a]lthough Fox could not fully complete Form 314 because it required waivers, to the extent that Fox required these waivers, the Commission found that granting temporary waivers would serve the public interest, and, therefore, the acquisition was in the public interest.” *Office of Comm’n of the United Church of Christ v. FCC*, 51 Fed. Appx. 21 (2002).

-The Commission rejected Fox's claim that the 1993 permanent waiver extended to the acquisition of WWOR-TV because a waiver granted during one set of market conditions "is not automatically extended to cover new combinations several years later under potentially changed market conditions." Chris-Craft Order, 16 FCC Rcd at 14977.

**June 2003** -The Commission repealed the NBCO rule, finding that "neither an absolute prohibition on common ownership of daily newspapers and broadcast outlets in the same market . . . nor a cross-service restriction on common ownership of radio and television outlets in the same market . . . remains necessary in the public interest"; the FCC replaced the rule with cross media limits allowing cross-ownership in most markets, including New York. *2002 Biennial Regulatory Review*, 18 FCC Rcd 13620 (2003).

**July 2003** -Absent the Commission's decision to repeal the NBCO rule, Fox's two-year temporary waiver would have expired on July 31, 2003. As the Commission said in the Chris-Craft Order, "[i]f our rules should change during [the 24 month waiver period] to permit the proposed combination, then FTS and Murdoch [News Corp's chief executive officer] will not need to divest the *Post* or one of the television stations to come into compliance." 16 FCC Rcd at 14990. Given that the rule had been repealed, Fox filed a letter with the Commission on July 21, 2003, seeking a temporary extension of the waiver to the extent necessary to permit the new ownership rules to go into effect.

**Sept. 2003** -The Third Circuit stayed implementation of all the Commission's proposed new rules, ordering that the *status quo ante* remain in effect pending judicial review. *Prometheus Radio Project v. FCC*, 373 F.3d 372, 398, 435 (3d. Cir. 2004). At oral argument before issuing the stay, Judge Scirica specifically asked appellant's counsel: "A stay would not affect any of the temporary waivers?" Counsel responded: "It would effectively continue them." Judge Scirica followed: "It would effectively continue them, but it would not abrogate them?" Counsel replied: "That's correct." *Prometheus Radio Project et. al. v. FCC*, Case No. 03-3388, Transcript of Hearing on Motion to Stay, September 3, 2003, at 36.

**July 2004** -The Third Circuit reversed the FCC's adoption of the cross media limits, but specifically found that "reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast crossownership was no longer in the public interest," that "the newspaper/broadcast cross-ownership ban undermined localism" and that the ban was not necessary to promote diversity; the court clarified that all of the old ownership rules would remain in effect pending judicial review of the FCC's decision on remand. *Prometheus*, 373 F.3d at 398-99, 435.

- Sept. 2004** -Fox and News Corp filed a “Petition for Modification of Permanent Waiver,” requesting that the Commission either modify their existing permanent waiver to permit common ownership of WWOR-TV, WNYW, and *The New York Post*, or to grant an additional temporary waiver until after the Commission’s action on remand from the 2002 Biennial Regulatory Review.
- Aug. 2005** -While its 2004 waiver request was pending, Fox sought FCC consent to undertake a corporate restructuring, necessitating the filing of a Form 315 transfer of control application, which detailed why the proposed recapitalization should have no bearing on the existing waivers of the NBCO rule permitting common ownership of the *Post* together with WNYW(TV) and WWOR-TV; a copy of the 2004 Modification Petition also was included as part of the application.
- Oct. 2006** -Almost three years after the FCC’s 2001 two-year waiver initially was set to expire for WWOR- TV, and more than three years after the FCC’s decision to repeal the NBCO rule, the FCC voted three to two to approve the corporate restructuring that transferred control of WWOR-TV and WNYW. *K. Rupert Murdoch, (Transferor) and Fox Entertainment Group (Transferee)*, 21 FCC Rcd 11499 (2006). The FCC has withheld the dissents of both Commissioners Adelstein and Copps.
- The FCC granted a new permanent waiver for WNYW and *The New York Post*, and granted a new 24-month temporary waiver permitting continued common ownership of WWOR-TV (which was scheduled to expire December 29, 2008). *Id.*
- The temporary waiver for WWOR-TV was granted to provide “sufficient certainty to assure that [Fox] and News Corp. will continue to take appropriate action or expend necessary capital to preserve and expand *The New York Post* without a concern that it would have to forfeit that investment by closing the newspaper or by a forced sale of a media interest at an artificially depressed price to achieve compliance with the multiple ownership rules” and “to ensure that the very purpose of the [NBCO] rule – to preserve competition and existing service to the public – is not disserved by a forced divestiture . . . in a market more than sufficiently competitive to withstand the harms that the rule was designed to prevent.” *Id.* at 11502.
- Nov. 2006** -The UCC and Rainbow/PUSH filed a petition for reconsideration with the FCC, asking it to reconsider and reverse its October 2006 Order; Fox filed an opposition to the petition.
- Feb. 2007** -Fox filed license renewal applications for WNYW and WWOR-TV. *See* [http://fjallfoss.fcc.gov/cgibin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.hts?context=25&appn=101167338&formid=303&fac\\_num=74197](http://fjallfoss.fcc.gov/cgibin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.hts?context=25&appn=101167338&formid=303&fac_num=74197).
- May 1, 2007** -UCC and Rainbow/PUSH filed a petition to deny these applications.

- May 31, 2007** -Fox filed an opposition to UCC and Rainbow/PUSH's petition to deny.
- Nov. 28, 2007** -Media Bureau held public forum in Newark, NJ to receive public input regarding sufficiency of WWOR-TV's programming effort in New Jersey.
- Feb. 2008** -The Commission released its order concluding the 2006 Quadrennial Review, "reaffirm[ing] [its] decision to eliminate the blanket ban on newspaper/broadcast cross-ownership . . .," and relaxing the NBCO rule and abandoning the cross-media limits adopted in 2003. The implementation of the Commission's relaxed NBCO rule is still under a stay pending the Third Circuit's review of the rule. *In re 2006 Quadrennial Review*, 23 FCC Rcd 2010, 2021 (2008).
- Although numerous licensees with outstanding license applications were referenced in the Commission's Order, Fox was not mentioned.
- June 23, 2008** -Fox and News Corp filed Supplement to Petition for Modification of Waiver, sought waiver under either old or new test.
- June 30, 2008** -UCC/Rainbow Push filed a letter, indicating an intent to respond to the Supplement and noting that the ex parte rules apply; the response was not filed until July 15, 2009, more than one year later.
- July 23, 2008** -Fox and News Corp filed a letter requesting permit but disclose treatment.
- Dec 24, 2008** -Fox and News Corp filed a letter stating their belief that the 2006 temporary waiver remains in effect pending action on merits; out of abundance of caution, they also asked the Commission to extend their temporary waiver pending completion of proceeding, taking into account "economic turmoil" and "financial distress" roiling the newspaper industry.
- May 22, 2009** -FCC released the order adopted Jan. 15, 2008, denying UCC's and Rainbow/PUSH's petition for reconsideration of the order granting consent to Fox's transfer of control. The Commission "reaffirm[ed] that our decision to renew the permanent waiver permitting ownership of WNYW-TV and the *New York Post* and to grant a temporary waiver permitting the further ownership of WWOR-TV was supported by the facts in the record and was in the public interest." See *In re K. Rupert Murdoch (Transferor) and Fox Entertainment Group (Transferee)*, Memorandum Opinion and Order on Reconsideration, FCC 08-15 (rel. May 22, 2009), at ¶¶ 13, 19.
- July 15, 2009** -UCC, Rainbow/PUSH and Free Press filed an opposition to Fox's and News Corp's Supplement to Petition for Modification of Permanent Waiver.
- Sept. 15, 2009** -Fox filed a reply to UCC, et al. July 15 opposition.

## COMPLETE FOX OWNERSHIP CHRONOLOGY

- 1976** -~~Fox~~-News Corporation ("News Corp"), through a subsidiary distinct from Fox Television Stations, Inc. ("Fox"), purchased the *New York Post*.
- 1986** -Fox acquired WNYW, a television station located in the New York DMA, and pursuant to its 1985 license transfer, was given two years to divest its interests in the *New York Post*. *Metromedia Radio & Television, Inc.*, 102 FCC2d 1334 (1985).
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- 1993** -Fox reacquired the *New York Post* after Mr. Kalikow's financial difficulties led the paper's parent company to declare bankruptcy.
- Due to the lack of qualified purchasers or other viable alternatives that would ensure the survival of the newspaper, News Corp agreed to reassume management of the paper upon obtaining a permanent waiver of the newspaper/broadcast cross-ownership (NBCO) rule. Thus, Fox requested and received a permanent waiver of the NBCO rule to allow common ownership of the *New York Post* and WNYW. *Fox Television Stations Inc.*, 8 FCC Rcd 5341, 5354 (1993).
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- Fox argued that its 1993 permanent waiver should extend to its acquisition of WWOR-TV, or in the alternative, that it should receive an "interim waiver" until ~~the~~ the conclusion of the 2002 rulemaking proceeding that the Commission committed to initiate in the 1998 Biennial Regulatory Review of the Commission's broadcast ownership rules.
- UCC, Rainbow/PUSH, and others opposed Fox's acquisition of WWOR-TV.
- July 2001** -The Commission granted Fox a concluded "that it would be in the public interest to grant [Fox] a temporary 24-month waiver period within which to come into compliance with the NBCO by divesting *The New York Post* or either of its two New York television stations. television/newspaper cross-ownership rule in the New York market . . .", but only "insofar as it is necessary under our rules at that time . . ." *UTV of San Francisco, Inc.*, 16 FCC Rcd 14975-14975, 14989-14990 (2001) ("Chris-Craft Order"). In an unpublished opinion, the D.C. Circuit affirmed the FCC's ruling. It found that the FCC had made an adequate public interest finding to approve the transfer, noting that "[a]lthough Fox could not fully complete Form 314 because it required waivers, to the extent that Fox required these waivers, the Commission found that granting temporary waivers would serve the public interest, and, therefore, the acquisition was in the public interest." *Office of Comm'n of the United Church of Christ v. FCC*, 51 Fed. Appx. 21

(2002). The Commission granted the waiver in order to permit an orderly disposition of assets and avoid forced sales. 16 FCCR at 14989.

-The Commission rejected Fox's claim that the 1993 permanent waiver extended to the acquisition of WWOR-TV because a waiver granted during one set of market conditions "is not automatically extended to cover new combinations several years later under potentially changed market conditions." *Id.* Chris-Craft Order, 16 FCC Rcd at 14977.

**June 2003** -The Commission ~~relaxed the NBCO rule and~~ repealed the NBCO rule, finding that "neither an absolute prohibition on common ownership of daily newspapers and broadcast outlets in the same market . . . nor a cross-service restriction on common ownership of radio and television outlets in the same market . . . remains necessary in the public interest"; the FCC replaced the rule with cross media limits allowing cross-ownership in most markets, including New York. 2002 Biennial Regulatory Review, 18 FCCR FCC Rcd 13620 (2003).

**July 2003** -~~Fox~~ Absent the Commission's decision to repeal the NBCO rule, Fox's two-year temporary waiver expires without Fox having made any effort to come into compliance with the rule would have expired on July 31, 2003. As the Commission said in the Chris-Craft Order, "[i]f our rules should change during [the 24 month waiver period] to permit the proposed combination, then FTS and Murdoch [News Corp's chief executive officer] will not need to divest the Post or one of the television stations to come into compliance." 16 FCC Rcd at 14990. Given that the rule had been repealed, Fox filed a letter with the Commission on July 21, 2003, seeking a temporary extension of the waiver to the extent necessary to permit the new ownership rules to go into effect.

**Sept. 2003** -The Third Circuit stayed implementation of all the Commission's proposed new rules, ordering that the old rule status quo ante remain in effect pending judicial review. Prometheus Radio Project v. FCC, 373 F.3d 372 (3d. Cir. 2003). 372, 398, 435 (3d. Cir. 2004). At oral argument before issuing the stay, Judge Scirica specifically asked appellant's counsel: "A stay would not affect any of the temporary waivers?" Counsel responded: "It would effectively continue them." Judge Scirica followed: "It would effectively continue them, but it would not abrogate them?" Counsel replied: "That's correct." Prometheus Radio Project et. al. v. FCC, Case No. 03-3388, Transcript of Hearing on Motion to Stay, September 3, 2003, at 36.

**July 2004** -The Third Circuit reversed the FCC's change to the NBCO and clarified that's adoption of the cross media limits, but specifically found that "reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast crossownership was no longer in the public interest," that "the newspaper/broadcast cross-ownership ban undermined localism" and that the ban was not necessary to promote diversity; the court clarified that all of the old

~~NBCO ownership rules would remain in effect pending judicial review of the FCC's decision on remand. *Prometheus*, 373 F.3d at 398-99, 435, *id.*~~

~~Fox still had made no efforts to come into compliance with the NBCO as the Commission ordered 3 years prior in July 2001.~~

**Sept. 2004** -~~Fox and News Corp filed a "Petition for Modification of Permanent Waiver,"~~ requesting that the Commission either modify their existing permanent waiver to permit common ownership of WWOR-TV, WNYW, and *The New York Post*, or to grant an additional temporary waiver until after the Commission's action on remand from the 2002 Biennial Regulatory Review.

**Aug. 2005** -~~While its 2004 waiver request was pending, Fox underwent~~ sought FCC consent to undertake a corporate restructuring, necessitating FCC approval, and filed the filing of a Form 315 transfer of control application with a copy of the 2004 waiver request attached, which detailed why the proposed recapitalization should have no bearing on the existing waivers of the NBCO rule permitting common ownership of the *Post* together with WNYW(TV) and WWOR-TV; a copy of the 2004 Modification Petition also was included as part of the application.

**Oct. 2006** -~~Almost three years after the FCC's 2001 two-year waiver expired for WWOR-TV~~ initially was set to expire for WWOR-TV, and more than three years after the FCC's decision to repeal the NBCO rule, the FCC voted three to two to approve the transfer of corporate restructuring that transferred control of WWOR-TV and WNYW. ~~K. Rupert Murdoch, (Transferor) and Fox Entertainment Group (Transferee), 21 FCC Rcd 11499 (2006).~~ The FCC has withheld the dissents of both Commissioners Adelstein and Copps.

-The FCC granted a new permanent waiver for WNYW and *The New York Post*, and granted a new 24-month temporary waiver permitting continued common ownership of WWOR-TV ~~until (which was scheduled to expire December 27, 2008.29, 2008).~~ *Id.*

- The temporary waiver for WWOR-TV was granted to provide "sufficient certainty to assure that [Fox] and News Corp. will continue to take appropriate action or expend necessary capital to preserve and expand *The New York Post* without a concern that it would have to forfeit that investment by closing the newspaper or by a forced sale of a media interest at an artificially depressed price to achieve compliance with the multiple ownership rules." *Id.* At and "to ensure that the very purpose of the [NBCO] rule – to preserve competition and existing service to the public – is not disserved by a forced divestiture . . . in a market more than sufficiently competitive to withstand the harms that the rule was designed to prevent." *Id.* at 11502.

**Nov. 2006** -The UCC and Rainbow/PUSH filed a petition for reconsideration with the FCC, asking it to reconsider and reverse its October 2006 Order; Fox filed an opposition to the petition.

**Feb. 2007** -Fox filed license renewal applications for WNYW and WWOR-TV. *See* [http://fjallfoss.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.hts?context=25&appn=101167338&formid=303&fac\\_num=74197](http://fjallfoss.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.hts?context=25&appn=101167338&formid=303&fac_num=74197).

**May 1, 2007** -UCC and Rainbow/PUSH ~~opposed~~filed a petition to deny these applications.

**May 31, 2007** -Fox filed an opposition to UCC and Rainbow/PUSH's petition to deny.

**Nov. 28, 2007** -Media Bureau holds public forum in Newark, NJ to receive public input regarding sufficiency of WWOR-TV's programming effort in New Jersey.

**Feb. 2008** -The Commission released its order concluding the 2006 Quadrennial Review, "reaffirm[ing] [its] decision to eliminate the blanket ban on newspaper/broadcast cross-ownership . . .," and relaxing the NBCO rule and abandoning the cross-media limits adopted in 2003. The implementation of the Commission's relaxed NBCO rule is still under a stay pending the Third Circuit's review of the rule. *In re 2006 Quadrennial Review*, 23 FCC Rcd 2010, 2021 (2008).

-Although numerous licensees with outstanding license applications were referenced in the Commission's Order, Fox was not mentioned.

**June 23, 2008** -Fox Files and News Corp filed Supplement to Petition for Modification of Waiver, sought waiver under either old or new test.

**June 30, 2008** -UCC/Rainbow Push filed a letter. Intend, indicating an intent to respond. Ex to the Supplement and noting that the ex parte rules apply; the response was not filed until July 15, 2009, more than one year later.

**July 23, 2008** -Fox request and News Corp filed a letter requesting permit but disclose treatment.

**Dec 24, 2008** -Fox and News Corp filed a letter. States stating their belief that the 2006 temporary waiver remains in effect pending action on merits; ask FCC to take into account "economic turmoil." out of abundance of caution, they also asked the Commission to extend their temporary waiver pending completion of proceeding, taking into account "economic turmoil" and "financial distress" roiling the newspaper industry.

**May 22, 2009** -FCC releases order adopted Jan. 15, 2008, denying UCC's Pet for recon. Of transfer for failure to demonstrate good cause.

**May 22, 2009** -FCC released the order adopted Jan. 15, 2008, denying UCC's and Rainbow/PUSH's petition for reconsideration of the order granting consent to Fox's transfer of control. The Commission "reaffirm[ed] that our decision to renew

the permanent waiver permitting ownership of WNYW-TV and the *New York Post* and to grant a temporary waiver permitting the further ownership of WWOR-TV was supported by the facts in the record and was in the public interest.” See *In re K. Rupert Murdoch (Transferor) and Fox Entertainment Group (Transferee)*, Memorandum Opinion and Order on Reconsideration, FCC 08-15 (rel. May 22, 2009), at ¶¶ 13, 19.

**July 15, 2009** -UCC files, Rainbow/PUSH and Free Press filed an opposition to Fox's and News Corp's Supplement to Petition for Modification of Permanent Waiver.

**Sept. 15, 2009** -Fox files filed a reply to UCC, et al, July 15 opposition.

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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.<sup>1</sup> 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.

<sup>1</sup> 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.<sup>2</sup> Fox and News Corp originally submitted their waiver request in 2004.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.

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

<sup>3</sup> 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").

<sup>4</sup> 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").

<sup>5</sup> 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.<sup>6</sup> 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).<sup>7</sup> 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 reconsideration<sup>8</sup> (together with the other record filings in these proceedings) as a fulsome response to the repetitious claims raised in the Opposition.<sup>9</sup>

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

<sup>7</sup> 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).

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

<sup>9</sup> 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

Marlene H. Dortch  
September 15, 2009  
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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,



Antoinette Cook Bush  
Jared S. Sher  
*Counsel to Fox Television Stations, Inc.  
and News Corporation*

cc: Austin Schlick, FCC  
Barbara Kreisman, FCC  
Dave Roberts, FCC  
Best Copy and Printing, Inc.  
Angela J. Campbell, Institute for Public Representation, Georgetown  
University Law Center

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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.

**EXHIBIT B**

## DECLARATION

I, Maureen A. O'Connell, hereby state as follows:

1. I am Senior Vice President, Regulatory & Government Affairs, News Corporation, which is the indirect parent of Fox Television Stations, Inc. ("Fox"). I submit this Declaration in connection with Fox's letter to the Commission as part of MB Docket No. 07-260, dated January 18, 2011 (the "Letter").
2. I have reviewed the Letter, as well as a letter to the Commission, dated December 7, 2010, submitted by Media Access Project ("MAP") as part of this proceeding, and I am familiar with their contents. I also am familiar with the issues related to the renewal application filed by television broadcast station WWOR-TV, Secaucus, New Jersey, which is licensed to Fox, including with respect to petitions to deny filed by Voice for New Jersey, the Office of Communication of United Church of Christ, Inc. and the Rainbow/PUSH Coalition.
3. WWOR-TV filed its license renewal application on February 1, 2007. In June 2007, the Commission by public notice designated issues related to the station's renewal proceeding as permit-but-disclose pursuant to the *ex parte* rules. In November 2007, the Commission announced plans to hold a public hearing in New Jersey with respect to WWOR-TV's license renewal application. As a result, in preparation for engaging in *ex parte* discussions with the FCC staff, and for Fox's appearance at the public hearing, I directed Fox's counsel to draft a summary of key issues related WWOR-TV's renewal application. The document, entitled "WWOR-TV: A Strong Commitment and Record of Service," dealt with three overarching subjects: (i) it refuted erroneous arguments about the purported "unique" legal standard applicable to review of WWOR-TV's service; (ii) it provided a review of WWOR-TV's service to New Jersey during its preceding license term; and (iii) it detailed the legal standards applicable to FCC review of all broadcast license renewal applications under Section 309(k) of the Act (and the First Amendment). Fox has utilized the document (or a form of it) at various *ex parte* meetings with members of the Commission and its staff.
4. In the Summer of 2009, in response to the national economic recession and the substantial economic challenges afflicting the broadcast business, WWOR-TV was forced to make certain adjustments to its programming and staffing levels.
5. Following the swearing-in of Chairman Genachowski to the Commission in June 2009, I scheduled *ex parte* meetings with the new Chief of the Media Bureau and the new General Counsel (and their staffs) for August 25, 2009 to reiterate Fox's view as to the applicable legal standard governing WWOR-TV's license renewal application.
6. Together with Fox's outside counsel, I attended meetings with the Media Bureau and Office of General Counsel on August 25, 2009. During the meetings, the

discussion focused on legal issues, including the statutory renewal standard set forth in Section 309(k) of the Communications Act, as well as FCC precedent regarding the applicable standard of review for WWOR-TV (subjects (i) and (iii) in the WWOR-TV paper described above). Although I do not recall with precision exactly what was said at each meeting (which took place more than 16 months ago), to the best of my knowledge, recollection and belief, I did share with Commission staff general information about the changes at WWOR-TV that had been necessitated by the economy. But because I did not (and do not) view these changes as significant to the pending renewal application, these changes were not the focus of discussion during the meetings.

7. Following the meetings, Fox filed a copy of the same WWOR-TV summary document that it previously had discussed and provided to Commission staff. The August 25, 2009 meetings were the first that Fox held with Commission staff in which the quantities of WWOR-TV's news and public affairs programming or staffing were substantively different than those quantities during the preceding term of WWOR-TV's license. As a result, it only belatedly occurred to me following the meetings that some of the text of the WWOR summary document may have been confusing. Specifically, a portion of the document – describing the quantities of WWOR-TV's news and public affairs programming, as well as the size of its staff – originally was drafted in the present tense because, at the time that the document was prepared in 2007, the stated quantities were accurate.
8. I therefore directed Fox's counsel to edit and revise the WWOR summary so that, going forward, its text would more precisely characterize the station's stated quantities of news and public affairs programming and staffing levels as those applicable to the preceding term of the station's license. Although I did not and do not believe that the changes made at WWOR-TV are of decisional significance with respect to the station's pending renewal application, I directed Fox's counsel to take this step with the hope that modifying the document would avoid the types of accusations that nonetheless arose in MAP's letter.
9. I directed that the WWOR-TV summary document be modified without prompting from the Commission or any third party.
9. At no time during the August 25, 2009 meetings or thereafter did I ever have any intention, desire, goal, design or plan to mislead anyone at the Commission.
10. Fox utilized the revised version of the WWOR-TV document in connection with *ex parte* meetings held with staff from Commissioner Baker's and Commissioner Clyburn's offices on September 3 and September 22, 2009. Following each of those meetings, Fox filed a copy of the revised document with the FCC.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, information and belief. Executed on January 18th, 2011.



Maureen A. O'Connell

Senior Vice President, Regulatory & Government Affairs

News Corporation

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