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September 22, 2011

William T. Lake
Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: *Ex Parte* Presentation
Application for Renewal of License of WWOR-TV
File No. BRCT-20070201AJT; MB Docket No. 07-260

Dear Mr. Lake:

By and through its undersigned counsel, Fox Television Stations, Inc. (“Fox”), licensee of television station WWOR-TV, Secaucus, NJ, hereby responds in brief to the late-filed letter submitted to you by Voice for New Jersey (“VNJ”) on August 1, 2011 as part of the above-referenced proceeding.¹ While Fox does not see a need to respond to issues raised by VNJ that have been addressed in the past, Fox does feel compelled to correct the record with respect to certain new, erroneous factual claims set forth in VNJ’s letter.

¹ See Letter from Charles Lovey, Voice for New Jersey, to William T. Lake, Chief, Media Bureau, FCC (dated Aug. 1, 2011) (“VNJ Letter”). The VNJ Letter, it should be noted, was filed woefully out-of-time, since the Commission’s letter of inquiry in this proceeding directed that “Replies may be filed no later than **thirty (30) days** from Commission receipt of the Licensee’s response.” Letter, dated February 17, 2011, to Fox Television Stations, Inc., from William Lake, Chief, Media Bureau, DA 11-314, at 5 (emphasis in original) (“FCC Inquiry Letter”).

First, VNJ wrongfully claims that Fox overstated its count of employees (set forth in response to question 4 of the FCC’s inquiry letter).² As Fox previously explained, the Commission does not evaluate a broadcast station’s renewal application based on the number of its employees but on the basis of its overall issue-responsive programming during the preceding term of its license.³ Thus, Fox had no incentive to mislead the Commission. Fox only ever engaged in a conversation with VNJ about employees to rebut the preposterous allegations that Fox had abandoned its commitment to New Jersey and that it maintained only a “skeleton operation”⁴ in the state (allegations that are belied even by the “count” provided as part of the VNJ Letter, which acknowledges the presence of scores of employees).⁵

In any event, Fox strongly disputes the allegation that its method for counting employees, as explained in the April 4 Letter, was false or misleading; Fox stands by its previous submission. Curiously, VNJ chides Fox for “tak[ing] great care” to detail its count – reproaching Fox for “go[ing] on for four pages” of explanation – as if Fox’s decision to offer a comprehensive account of its methodology should be a mark against it.⁶ Fox’s willingness to back up all of its figures with a thorough explanation should be welcomed by the Commission. In contrast, VNJ supplied with its letter a declaration from Greg R. Hancox that offered no detail whatsoever as to how VNJ arrived at its count. Nor does VNJ explain why Mr. Hancox – a third party who is not employed by Fox – should even be considered a reliable source of information about WWOR employees. While Mr. Hancox is President of a local chapter of a union that represents some WWOR employees, his union by no means represents all of the individuals employed by Fox at the WWOR facility. Mr. Hancox simply is not privy to information that would enable him to know the aggregate number of people who work at the Secaucus facility. As a result,

² See VNJ Letter, at 6.

³ See e.g., Letter from Antoinette Cook Bush and Jared S. Sher, Counsel to Fox, to William T. Lake, Chief, Media Bureau, FCC, MB Docket No. 07-260 (April 4, 2011), at 4 (“April 4 Letter”).

⁴ See, e.g., Letter from Donna Sandorse, Voice for New Jersey, to Julius Genachowski, Chairman, FCC, MB Docket No. 07-260 (Nov. 27, 2009), Exhibit A, at 5 (alleging without basis that Fox is “maintaining little more than a skeleton operation in New Jersey”).

⁵ See VNJ Letter, at 6.

⁶ *Id.* at 7-8 (emphasis in original).

it is no surprise that the information provided by Mr. Hancox is incorrect. Accordingly, his declaration should be given no weight.⁷

Second, VNJ asserts without explanation that Fox has reduced WWOR's weeknight local newscast from "36 minutes to 27 ½ minutes" as of July 2011.⁸ As Fox's April 4 letter indicated, WWOR's newscast at the time Fox responded to the FCC Inquiry Letter was scheduled for 35 minutes beginning at 11 p.m. each weeknight.⁹ Moreover, Fox advised the Commission in a July 11, 2011 letter that it had restored its regularly-scheduled weeknight newscast to 10 p.m. as of June 27, 2011.¹⁰ This newscast is now scheduled to run for 30 minutes each weeknight; VNJ does not explain the basis for its claim that the newscast now lasts "27 ½ minutes." In any event, it is WWOR's overall presentation of responsive programming during the license term, and not the number of minutes of its current weeknight newscast, that is material in connection with the pending renewal application, especially given that Section 309(k) of the Communications Act limits evaluation of renewal applications to a station's performance during the preceding term of its license.¹¹

⁷ Because employment figures are not material to the underlying renewal application, Fox is not going to spend time pointing out all of the reasons why the information provided by Mr. Hancox is incorrect. For the same reason, Fox submits that its employee count should not be an issue in this proceeding, and it therefore advises the Commission that it will not undertake to inform the FCC every time it makes a staffing change. Should the Commission request specific information in the future with regard to staffing at WWOR, Fox will provide a response.

⁸ VNJ Letter, at 8.

⁹ See April 4 Letter, at 5-6.

¹⁰ See Letter from Antoinette Cook Bush and Jared S. Sher, Counsel to Fox, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07-260 (July 11, 2011).

¹¹ See 47 U.S.C. § 309(k); see also *In re Birach Broadcasting Corp.*, 16 FCC Rcd 5015, 5020 (2001) ("*Birach*") (*aff'd on other grounds sub nom, New World Radio, Inc. v. FCC*, 294 F.3d 164 (D.C. Cir. 2002) ("consideration of post-[license] term developments is fundamentally at odds with [the] backwards-looking standard" embodied in Section 309(k)). VNJ also accuses Fox of overstating the number of news trucks "utilized" at WWOR. VNJ Letter, at 7. Notably, VNJ does not claim that Fox's count of its trucks is incorrect; it merely observes that the satellite news truck has been used infrequently during the past three years. See *id.* The Commission's inquiry letter asked about the number of trucks "dedicated" to WWOR, and Fox answered accordingly. See FCC Inquiry Letter, at 4. As Fox pointed out, after June 2007 it added a dual path hybrid truck to WWOR's fleet (capable of transmitting via both satellite and microwave). See April 4 Letter, at 21. Given that a dual path truck offers substantially more flexibility, it is eminently

A review of both the facts and the law confirms that Fox has not engaged in a misrepresentation, nor has it exhibited any lack of candor. Fox's filings in this proceeding (particularly its letters to the Commission dated January 18 and April 4, 2011) explain in detail that the "*sine qua non* of misrepresentation or lack of candor is *intent* to deceive the Commission."¹² VNJ's latest letter, like similar letters before, simply ignores that Commission precedent requires an accuser to demonstrate by "substantial evidence"¹³ the requisite "desire, motive or logical reason to mislead that is the crux" of misrepresentation and lack of candor.¹⁴

In short, VNJ has never presented any evidence that Fox intended to deceive the Commission. Nor could it, given that changes regarding a broadcast station's employment and in the quantity of its news programming minutes do not form a proper basis for review of a renewal application.¹⁵ Fox continues to believe that, consistent with the longstanding statutory and regulatory framework applicable

reasonable for Fox to rely more frequently on its hybrid truck than on a truck that offers the ability to transmit programming solely via satellite.

¹² *In re Wireless Telecommunications, Inc.*, 24 FCC Rcd 3162, 3168 (2009) (citing *Fox River Broadcasting, Inc.*, 93 F.C.C. 2d 127, 129 (1983)) (emphasis supplied).

¹³ *In re Liberty Productions*, 16 FCC Rcd 12061, 12085 (2001).

¹⁴ *See In re Robert J. Kern et al.*, 23 FCC Rcd 13930, 13932 (internal citation omitted). *See also In re Mary V. Harris Foundation*, 22 FCC Rcd 16948, 16951, n.28 ("party alleging misrepresentation has the burden of proof to make a *prima facie* showing of intent to deceive") (citing *Merrimack Valley Broadcasting, Inc.*, 99 F.C.C.2d 680, 683, n.9 (1984)). VNJ also dismisses Fox's evidence of its effort to correct the oversight associated with its August 2009 *ex parte* letters, claiming that a "correction . . . must meet" certain threshold requirements, including that the correction be identified to all recipients of the prior statement. VNJ Letter, at 4. VNJ apparently summons this standard from thin air, for it cites no precedent or authority – from the Commission or otherwise. In fact, VNJ ignores FCC precedent holding that the Commission will *not* find a misrepresentation or lack of candor when licensee error is corrected somewhere in the public record. *See, e.g., Wireless Telecommunications*, 24 FCC Rcd 3162 at 3168 (FCC "declin[ing] to infer intent to deceive . . . when information is elsewhere disclosed or available in its records"); *Mary V. Harris Foundation*, 22 FCC Rcd at 16951 (application with incorrect ownership information did not show lack of candor because the corrected information was available in ownership reports separately filed with the Commission; thus, no evidence of intent to deceive). *See also In re Greater Muskegon Broadcasters, Inc.*, 11 FCC Rcd 15464, 15472 (1996) (FCC determining that party lacked intent to deceive "because all of the information which [the party] purportedly failed to reveal was on file in the . . . proceeding").

¹⁵ This is to say nothing, of course, about the illogic of asserting that a licensee could even conceivably try to conceal changes openly made to the program schedule of a station transmitted freely over-the-air.

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to the licensing of television stations, the FCC should grant WWOR a renewal of its license.

Respectfully submitted,

/s/

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

cc (via email): Chairman Julius Genachowski
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Charles Lovey, Voice for New Jersey (also via Federal Express)
Angela Campbell, Counsel to UCC and Rainbow/PUSH (also via
Federal Express)
Andrew Schwartzman, Media Access Project (also via Federal
Express)