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October 31, 2011

Mr. William T. Lake  
Chief, Media Bureau  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

re: Application for Renewal of Station License of WWOR-TV  
File No. BRCT-20070201AJT and MB Docket No. 07-260

Dear Mr. Lake:

We are writing today to respond to the letter to you dated September 22, 2011 from counsel to Fox Television Stations, Inc. ("Fox") in the captioned matter. The Commission has accorded permit-but-disclose status under the *ex parte* rules with respect to this proceeding. As a great deal of the subject matter in this proceeding has been discussed extensively in prior correspondence, we will be brief in our comments, and will seek to address only the salient issues raised by Fox's most recent letter with regard to your ongoing investigation<sup>1</sup>.

We would first like to correct any false impressions that may arise from the vastly differing portrayals of WWOR-TV employees working at the station's Secaucus headquarters. You will recall that Fox claimed a roster of 173 people employed by WWOR-TV at its Secaucus facility at the time of its April 4, 2011 response to your investigation<sup>2</sup>. In our August 1, 2011 letter to you, VNJ provided a declaration indicating that WWOR-TV employs only 69 people at the station's headquarters<sup>3</sup>.

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<sup>1</sup> See Letter dated February 17, 2011 to Fox Television Stations, Inc. from William Lake, Chief, Media Bureau, FCC, DA 11-314, MB Docket No. 07-260 (2/17/2011)

<sup>2</sup> Letter dated April 4, 2011 to Marlene Dortch, Secretary, FCC from Antoinette Cook Bush, Counsel to Fox Television Stations, Inc. (the "Response Letter"), MB Docket No. 07-260 (4/8/2011), p. 17

<sup>3</sup> Letter dated August 1, 2011 to William Lake, Chief, Media Bureau, FCC from Voice for New Jersey, MB Docket No. 07-260 (8/1/2011), Exhibit B, Declaration of Greg R. Hancox

In its September 22 letter Fox states that it “. . . had no incentive to deceive 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. . . . Fox strongly disputes the allegation that its method for counting employees, as explained in the April 4 Letter, was false or misleading.”<sup>4</sup>

Some context may be helpful here. First of all, there have been no “conversations” between VNJ and Fox since the Commission’s November, 2007 public hearing on the WWOR-TV license renewal. No subsequent communication has taken place beyond the parties’ written filings with the Commission. All of these communications have been addressed to the FCC’s Commissioners and staff, and are properly incorporated into the written record of the WWOR-TV license renewal proceeding. As such, Fox’s misrepresentations did not take place in the course of casual dialogue with VNJ. Rather, Fox’s claims were made directly to the Commissioners and staff, in writing and on the record, for the express purpose of obtaining a renewal of WWOR-TV’s station license.

Further, the answer incorporated in Fox’s reply to the Commission’s investigation (the “Response Letter”)<sup>5</sup> is thoroughly lacking in candor, as a review of the Commission’s inquiry and the Fox response will readily attest. In its February 17 letter, the Commission asked Fox to provide (at various points in time) “. . . the number of persons employed by the Station *at the Secaucus, New Jersey facility* (emphasis added). In making this inquiry, the Commission specifically cites Fox’s prior representations that “WWOR-TV currently employs over 250 individuals at the Secaucus facility” and that “WWOR-TV maintains a management and production staff with more than 75 employees *in its New Jersey facility every day*” (emphasis in original).<sup>6</sup>

It could hardly be more obvious that the scope of the Commission’s inquiry is limited to those employees who operate primarily out of WWOR-TV’s Secaucus headquarters. It clearly does not include all Fox employees whose job duties somehow relate to WWOR-TV.

Yet this all-encompassing scope is precisely what Fox employed in crafting its response to the Commission. As noted in our Letter of August 1, Fox’s response to the Commission was so contrived as to include members of Fox’s union negotiating team<sup>7</sup>, the Fox News Channel employee charged with looking after

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<sup>4</sup> Letter dated September 22, 2011 to William Lake, Chief, Media Bureau, FCC from Antoinette Cook Bush and Jared S. Sher, Counsel to Fox Television Stations, Inc., MB Docket No. 07-260 (9/22/2011), p.2

<sup>5</sup> Op. cit., Bush letter dated April 4, 2011 to Marlene Dortch, p. 17 - 21.

<sup>6</sup> Op. cit., Lake letter dated February 17, 2011 to Fox Television Stations, Inc., p. 4

<sup>7</sup> Op. cit., Bush letter dated April 4, 2011 to Marlene Dortch, p. 18, footnote 10.

that operation's disaster recovery studio<sup>8</sup>, and irregular, part-time fill-in employees who were paid at least once during the relevant time periods.<sup>9</sup>

It is noteworthy that the total employee count indicated in Fox's Response Letter is lower than it had previously claimed, even incorporating Fox's preposterously overreaching methods.<sup>10</sup> The tally indicated in the declaration of Greg R. Hancox, however, is (with the sole exception of the January, 2010 declaration of Audrey Pass, WWOR-TV's Senior Director of Communications and Public Affairs<sup>11</sup>) orders-of-magnitude below Fox's claims.

In its letter, Fox claims that 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", and that his information is accordingly incorrect<sup>12</sup>.

VNJ acknowledges that Mr. Hancox's position as the President of a union local does not afford him first-hand knowledge of the full scope of employment at WWOR-TV's Secaucus headquarters. It does, however, place him in close working relationships with any number of individuals who have such knowledge. It is hardly a surprise that Mr. Hancox has not identified the sources of the information in his declaration. This notwithstanding, the declaration of a union official with a long history representing WWOR-TV employees clearly has credibility.

Tellingly, Fox fails to state *how* the information in the Hancox declaration is incorrect, despite the declaration's detailed account of WWOR-TV's Secaucus employees and their positions. Instead of identifying even one employee missing from Mr. Hancox's tally, Fox simply "disputes the allegation that its method for counting employees . . . was false or misleading; Fox stands by its previous submission."<sup>13</sup> Fox also has not seen fit to comment on the employee count as described in the declaration of Audrey Pass-- a document that it now presumably would like to keep at arm's length or farther, as it is reasonably consistent with the representations in the Hancox declaration, and thoroughly inconsistent with the inflated employee count in Fox's April 4 Response Letter.<sup>14</sup>

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<sup>8</sup> Ibid, p. 19, footnote 12

<sup>9</sup> Ibid, p. 20

<sup>10</sup> Op Cit., Voice for New Jersey letter dated August 1, 2011 to William Lake, p. 2

<sup>11</sup> Letter dated January 5, 2010 to Julius Genachowski, Chairman, FCC from Antoinette Cook Bush and Jared S. Sher, Counsel to Fox Television Stations, Inc., MB Docket No.07-260 (1/7/2010), Exhibit A.

<sup>12</sup> Op. cit., Bush and Sher letter dated September 22, 2011 to William Lake, p. 2 - 3.

<sup>13</sup> Ibid, p. 2

<sup>14</sup> Somewhat incredibly, Ms. Pass' Declaration was offered up after VNJ had called out Fox for its misrepresentation regarding the 250 employees supposedly working at WWOR-TV's Secaucus headquarters. We first raised this issue in a filing with the Commission dated November 27, 2009. Ms. Pass' Declaration is dated January 5, 2010, and was presented as Exhibit A to Fox's letter of that same date.

(In fairness, some explanation is proffered as to Fox's non-response regarding the employee count in the Hancox declaration. Fox sometimes buries its most embarrassingly flawed arguments in footnotes, and it has done so again here. In footnote 7 to its September 22 letter Fox states that "it is not going to spend the time" to point out Mr. Hancox's purported errors, as the employment figures "are not material to the underlying renewal application." With this, Fox rather conspicuously ignores two key facts. First, Fox's argument as to the materiality of its misrepresentations is hardly a matter of settled law or Commission precedent; VNJ has already thoroughly refuted this argument in its February, 2010 filing with the Commission.<sup>15</sup> Second, even if Fox's stated employment figures were ultimately found to be immaterial with respect to the WWOR-TV license renewal, they are a prime element of the Commission's investigation of Fox's misrepresentations.)

Once again, Fox suffers from having painted itself into a corner by refusing to acknowledge and correct its prior misrepresentations. It must now concoct absurdly convoluted methods to (nearly) support its previous claims, and blindly refute all evidence of its prior misstatements, no matter how clear or compelling.

Fox's September 22 letter is no more successful in its attempt to explain away the abundant lack of candor evidenced in its July 11, 2011 letter to the Commission.

In this letter, Fox again offers up its discredited beyond-the-scheduled-license-term argument in defense of its behavior. Despite these claims, however, Fox properly acknowledges the ongoing nature of the Commission's inquiries as described in your February 17 letter. Specifically referencing "the continuing nature of the inquiries" Fox advised the Commission of a scheduling change effective June 27, 2011 that moved WWOR-TV's weekday newscast from 11:00PM to 10:00PM.<sup>16</sup>

The scheduled broadcast time of WWOR-TV's news programming is, of course, but one subject of these inquiries. Among the Commission's other inquiries are "the total weekly airtime" of the station's news and public affairs programming;<sup>17</sup> and "the number of persons employed by the Station at the Secaucus, New Jersey facility."<sup>18</sup>

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<sup>15</sup> Letter dated February 15, 2010 to Julius Genachowski, Chairman, FCC from Charles Lovey, Member, Voice for New Jersey MB Docket No. 07-260 (2/16/2010), Exhibit A.

<sup>16</sup> Letter dated July 11, 2011 to Marlene Dortch, Secretary, FCC from Antoinette Cook Bush and Jared S. Sher, Counsel to Fox Television Stations, Inc., MB Docket No. 07-260 (7/12/2011).

<sup>17</sup> Op. cit., Lake letter dated February 17, 2011 to Fox Television Stations, Inc., p. 3, request #1.

<sup>18</sup> Ibid, p. 4, request #4.

In its April 4 letter, Fox represented that the station delivered 35 minutes of news programming each weekday evening<sup>19</sup>, and that the station employed 173 people at its Secaucus headquarters as of 3/25/11.<sup>20</sup> Clearly, both programming and staffing has been further reduced since the date of this letter.

In its September 22 letter, Fox states that “this newscast is now scheduled to run for 30 minutes each night,”<sup>21</sup> while questioning the representations in the Hancox declaration that the newscast in fact has a program time of only 27½ minutes. (Mr. Hancox has provided a new declaration which clarifies the basis for his representations; this is attached as Exhibit A).

Based on the information in this Exhibit, WWOR-TV’s June 27 scheduling change actually reduced the net broadcast time of the station’s newscast by more than 20%. Even using Fox’s figures, airtime was reduced by more than 14%. Either way, a material programming reduction obviously occurred.

Additionally, the (original) Hancox declaration makes clear that WWOR-TV has undertaken additional staff reductions, with more planned in the near future. The stage crew for the evening newscast (which had been four people in 2009) is now down to a single person, and 8 of 13 Master Control jobs are being eliminated from the station’s Secaucus headquarters.<sup>22</sup> None of these staffing changes are disputed by Fox in its September 22 letter.

As we previously noted, a scheduling change from late-night to prime time is generally construed as a positive development, and it is unsurprising that Fox would seek to share this news with the Commission. What is very clear, however, is that while Fox and its counsel are fully cognizant of the ongoing nature of the Commission’s inquiries, they have chosen to provide only that limited amount of updated information which casts the station in a favorable light.

At page three of its September 22 letter, Fox again argues that its current practices are of no consequence to the Commission and suggests that its misstatements and non-disclosure can therefore be overlooked.<sup>23</sup> However, in light of Fox’s energetic effort to brag about its practices subsequent to the filing of its renewal application (including a video presentation at a hearing in Newark and repeated oral presentations to Commissioners and staff), it is clear that Fox sought to influence the Commission’s decisionmaking with such information. *See Alabama Educational Television Commission*, 50 FCC 2d 461, 476 (1974)

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<sup>19</sup> Op. cit., Bush letter dated April 4, 2011 to Marlene Dortch, p. 5.

<sup>20</sup> Ibid, p. 17

<sup>21</sup> Op. cit., Bush and Sher letter dated September 22, 2011 to William Lake, p. 3.

<sup>22</sup> Op. cit., Voice for New Jersey letter dated August 1, 2011 to William Lake, Exhibit B, Declaration of Greg R. Hancox

<sup>23</sup> VNJ has previously distinguished *Birach Broadcasting Corp.*, 16 FCCRcd 5015, 5020 (2001), the case on which Fox attempts to rely. Cite. That case related to a station which was dark during its license term and then went back on the air thereafter. It is completely inapposite here.

“evidence of improved performance may in some circumstances be advanced by a renewal applicant as evidence of his willingness to correct deficient license term performance”). In any event, it is the veracity of the information submitted, and Fox’s intent in submitting it, not when it was submitted, which is at issue now.

Fox has scoured FCC case law to find a few cases it can cite out of context to argue that it had no reason to engage in misrepresentation and lack of candor.<sup>24</sup> It claims that since a “station’s employment and quantity of news programming minutes do not form a proper basis for review of a renewal application...,” Fox could not have intended to mislead the Commission. The problem with Fox’s theory is that its new misrepresentations and ongoing failures of disclosure were in response to a formal query from the Commission staff. The Commission’s letter stated that it was investigating whether material facts were being misrepresented, and proceeded to ask specific questions about Fox’s programming and employment practices. It is therefore impossible to argue that Fox could reasonably have believed that the false information was immaterial to the Commission.

If Fox truly believes (as it repeatedly asserts) that all of the staff-cutting and schedule-gutting that WWOR-TV has indulged in over the past five years is of no decisional significance, then it should have no problem sharing a little more bad news with the Commission. And, if Fox truly respects the Commission’s authority to conduct its investigation (as it also says it does), then it is plainly obligated to provide all information germane to the Commission’s ongoing inquiry. Fox’s practice in providing the Commission with only information favorable to its interests is indefensible, and manifests an appalling lack of candor.

Yet for all of this misbehavior and misinformation, Fox’s greatest failings with respect to the Commission’s inquiry are not even discussed in its September 22 letter. As amply documented in our August 1 letter to you, Fox has failed utterly to produce the scope of documentation called for in the Commission’s inquiry.<sup>25</sup>

For the sake of brevity, we will not recount our prior argument in detail here. Suffice it to say that Fox has not produced any documentation relating to its activities after September, 2009. At that point in time, Fox was actively engaged in concealing its prior misrepresentations. More than 12 months would pass

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<sup>24</sup> *Wireless Telecommunications*, 24 FCCRcd 3162, 3168 (2009), involved an inadvertent inconsistency, which is not remotely similar to the circumstance here, where Fox attempted to “correct” the record by presenting different information to different members of the FCC staff without pointing out that fact. In *Mary V. Harris Foundation*, 22 FCC2d 16948, 16951 (2007), the applicant failed to keep its application updated with respect to non-decisional information. *Greater Muskegon Broadcasters, Inc.*, 11 FCCRcd 15464, 15472 (1996), is entirely inapposite, since the licensee was found not to have made any misrepresentations.

<sup>25</sup> Op. cit., Voice for New Jersey letter dated August 1, 2011 to William Lake, p. 4 -6.

before Fox had any reason to believe that anyone would take notice its misstatements.

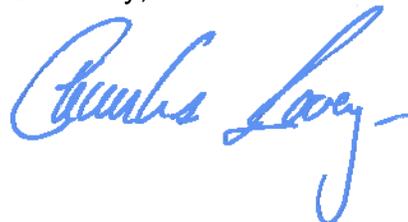
Fox's refusal to provide documentation produced after September, 2009 is based on an absurd argument that was thoroughly repudiated in our August 1 letter. We note again that Fox did not even see fit to comment on this matter in its September 22 letter; it obviously can produce nothing to bolster a logically absurd and legally unsupportable position, and simply hopes the matter will go away.

The upshot of Fox's failure to produce the requested documents is clear. Fox's counterfeit cutoff date of September, 2009 serves to shield the very documentation that is at the heart of the Commission's inquiry. This outrageous position cannot stand.

VNJ has produced a substantial written record in support of its allegations of misrepresentation and lack of candor by Fox. In denying these allegations, Fox has offered little more than abstruse legalistic arguments rife with finely parsed definitions and tortured logic. If Fox is truly innocent of wrongdoing, it should have no problem producing documentation supporting its case. In fact, Fox would be expected to welcome the opportunity.

Sunlight can both illuminate and disinfect; let it do its work here. The Commission should be satisfied with nothing less.

Sincerely,



Charles Lovey, Member  
Voice for New Jersey

copy (via email): Chairman Julius Genachowski  
Commissioner Michael J. Copps  
Commissioner Robert M. McDowell  
Commissioner Mignon Clyburn  
Fox Television Stations, Inc. via its counsel,  
Antoinette Cook Bush and Jared S. Sher  
(also via regular mail)

# EXHIBIT A

## DECLARATION

I, Greg R. Hancox, am the President of Local 59 of The International Alliance of Theatrical Stage Employees. Based on information which has been made available to me and which I consider to be reliable I hereby state as follows:

- 1) In a prior declaration dated July 22, 2011, I stated that WWOR-TV, Secaucus, NJ reduced its scheduled weekday newscast to 27 ½ minutes as of June 27, 2011.
- 2) I have reviewed the September 22, 2011 letter to the Federal Communications Commission from Antoinette Cook Bush and Jared S. Scher, counsel to Fox Television Stations. In this letter, Fox questions this claim and asserts that the newscast “is now scheduled to run for 30 minutes each weeknight.”
- 3) When WWOR-TV’s weekday newscast was scheduled for 11:00PM, the broadcast began “straight up” at 11:00PM and was not off until 11:35PM. The program schedule provided for four 2-minute commercial breaks. Net of commercial breaks, this schedule provided 27 minutes of news programming.
- 4) In June, 2011, the station’s news broadcast was rescheduled to 10:00PM. Two or three nights per week, the broadcast begins “straight up” at 10:00PM. The other nights, the broadcast does not begin until 10:01PM.
- 5) Effective with the rescheduling, the news broadcast now goes off at 10:27:25 or 10:27:30 each evening. The program schedule provides for three 2-minute commercial breaks. Net of commercial breaks, this schedule provides from 20 ½ to 21 ½ minutes of news programming (depending on the actual start time).

I hereby swear that the foregoing is true and correct to the best of my knowledge, information and belief.



Date: October 19, 2011

By: Greg R. Hancox  
President, Local 59, IATSE