

May 16, 2014

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

RE: Notice of *Ex Parte* Communication  
MB Docket No. 07-260  
File No. BRCT-20070201AJT

Dear Ms. Dortch:

On behalf of Fox Television Stations, Inc. (“Fox”), I am writing to briefly respond to the *ex parte* letter submitted as part of the above-referenced proceeding by the Institute for Public Representation (“Institute”) on May 7, 2014.<sup>1</sup> In its letter, the Institute purported to review the “regulatory history” of WWOR-TV’s waiver with respect to the newspaper/broadcast cross-ownership (“NBCO”) rule.<sup>2</sup> Unfortunately, as opponents of the station’s renewal application previously have done in this proceeding, the Institute makes several incorrect or incomplete assertions that portray a misleading picture of Fox’s compliance with the NBCO rule. This letter is intended to briefly set the record straight, but Fox does not desire to rehash here each and every legal argument set forth in the deep record of this proceeding. Fox respectfully requests that the Commission refer to the entire record, including especially Fox’s November 13, 2009 *ex parte* letter, for a comprehensive review of the NBCO rule as applicable to WWOR-TV.<sup>3</sup>

In particular, the Institute asserts in its latest letter that Fox “was out of compliance with the NBCO [rule] from 2003 until 2006,” following the conclusion of an initial 24-month temporary waiver granted by the Commission when Fox acquired WWOR-TV in 2001.<sup>4</sup> That is simply untrue. The reality is that when the Commission consented to Fox’s acquisition, it expressly 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>5</sup> The Commission also noted that “[i]f our rules should change during that period to permit the proposed combination,” then no divestitures would be necessary.<sup>6</sup>

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<sup>1</sup> See Letter from Andrew Jay Schwartzman, Institute for Public Representation, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07-260 (filed May 7, 2014) (“*Institute Letter*”).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> See Letter from Antoinette Cook Bush and Jared S. Sher, Counsel to Fox, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07-260 (filed November 13, 2009).

<sup>4</sup> *Institute Letter* at 2.

<sup>5</sup> *In re Applications of UTV of San Francisco, Inc., et al. (Assignors) and Fox Television Stations, Inc. (Assignee)*, 16 FCC Rcd 14975, ¶ 50 (2001) (emphasis supplied).

<sup>6</sup> *Id.* at ¶ 45 n. 73.

What the Institute neglects to mention in its letter is that the Commission *did* in fact repeal the NBCO rule in 2003, prior to the expiration of the initial 24-month waiver.<sup>7</sup> Although the U.S. Court of Appeals for the Third Circuit issued a stay preventing various changes to the Commission’s ownership rules, including elimination of the NBCO rule, from taking effect, the court found that “reasoned analysis support[ed] the [FCC]’s determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest.”<sup>8</sup> At oral argument before issuing the stay, a Third Circuit judge specifically asked appellant’s counsel – who happens to be the same counsel who signed the *Institute Letter* – if a stay would “affect any of the temporary waivers?” Counsel responded: “It would effectively continue them.” The judge followed: “It would effectively continue them, but it would not abrogate them?” Counsel replied: “That’s correct.”<sup>9</sup>

Furthermore, as the Institute’s letter acknowledges,<sup>10</sup> the Commission subsequently granted Fox and its parent company an additional temporary waiver in 2006 as part of a corporate reorganization. In doing so, the Commission indicated that it was acting 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.”<sup>11</sup>

Thereafter, Fox and its parent company made clear in multiple Commission filings not only that the outmoded NBCO rule should be repealed, but that Fox should be entitled to long-term relief from the rule in New York, the nation’s most diverse and competitive media market. Prior to the expiration of the 2006 waiver, Fox filed a letter with the Commission explaining that, since the FCC had not yet acted on Fox’s multiple pending requests for long-term relief, the “existing temporary waiver will remain in effect pending a Commission decision on the merits . . . .”<sup>12</sup> The letter added that, “[s]hould there be any question about the status of [the] temporary waiver,” Fox requested “out of an abundance of caution, a temporary extension . . . to permit common ownership” of WWOR-TV and the *New York Post* “while the FCC completes its review.”<sup>13</sup> Commission precedent makes clear that Fox’s temporary waiver “remain[s] in force”

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<sup>7</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 13260 (2003) (*rev’d and remanded*, *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004)).

<sup>8</sup> *Prometheus*, 373 F.3d at 398.

<sup>9</sup> *Prometheus Radio Project v. FCC*, Case No. 03-3388, Transcript of Hearing on Motion to Stay, September, 2, 2003, at 36.

<sup>10</sup> See *Institute Letter* at 2.

<sup>11</sup> *In re K. Rupert Murdoch (Transferor) and Fox Entertainment Group (Transferee)*, 21 FCC Rcd 11499, 11502 (2006).

<sup>12</sup> Letter from Antoinette Cook Bush and Jared S. Sher, Counsel, Fox, to Marlene H. Dortch, Secretary, FCC, BTCCT-20050819AAF, *et al.*, Status of Waiver (filed December 24, 2008), at 2.

<sup>13</sup> *Id.*

Marlene H. Dortch

May 16, 2014

Page 3

inasmuch as the FCC has not yet acted on the extension request or the long-term relief petitions.<sup>14</sup>

Accordingly, there is no basis for the Institute's allegation that WWOR-TV has "ignore[d] Commission rules and orders."<sup>15</sup>

To the extent that the Institute's letter also reiterates allegations concerning WWOR-TV's service to Northern New Jersey, Fox already has submitted ample evidence in the record of this proceeding demonstrating that the station has provided exemplary service – both during the license term covered by the pending renewal application and since the conclusion of that term.

This letter is being submitted electronically in the above-referenced docket, which has been granted permit-but-disclose status, pursuant to Section 1.1206(b) of the Commission's Rules. Should you have any questions concerning this submission, kindly contact the undersigned.

Respectfully submitted,

/s/

Jared S. Sher  
Vice President, Associate General Counsel  
21<sup>st</sup> Century Fox, Inc.

cc: Maria Kirby (via email)  
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<sup>14</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.* (September 5, 2003)).

<sup>15</sup> *Institute Letter* at 3.