

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
the Applications of)

UTV of San Francisco, Inc., KCOP Television, Inc.)
UTV of San Antonio, Inc., Oregon Television, Inc.,)
UTV of Baltimore, Inc., WWOR-TV, Inc., and)
UTV of Orlando, Inc. and United Television, Inc.)
(Assignors))

File Nos. BALCT-20000918ABB,
ABC, ABD, ABF, ABK, ABL,
ABM, ABN, ABU, ABY, ABG,
ABH, ABI, ABJ, ABO, ABP,
ABQ, ABR, ABS, ABV, ABW,
ABX, ABZ, ACA, ACB, ACC,
ACD, ACE

and)

Fox Television Stations, Inc.)
(Assignee))

For Consent to the Assignment of Licenses)
for Stations KBHK-TV, San Francisco, CA;)
KCOP-TV, Los Angeles, CA; KMOL-TV,)
San Antonio, TX; KPTV-TV, Portland, OR;)
WUTB-TV, Baltimore, MD; WWOR-TV,)
Secaucus, NJ; WRBW-TV, Orlando, FL;)
KMSP-TV, Minneapolis, MN; KTVX-TV,)
Salt Lake City, UT; KUTP-TV, Phoenix, AZ)

FURTHER SUPPLEMENTAL PROTECTIVE ORDER

Adopted: April 18, 2001

Released: April 19, 2001

By the Chief, Mass Media Bureau:

1. On April 3, 2001, the Mass Media Bureau, Video Services Division directed the News Corporation Limited (News Corp) to submit further information regarding the financial condition of the *New York Post* in connection with our consideration of the above-captioned applications. Although some information had been submitted in response to a December 21, 2000 request, we determined that additional information was necessary in order to evaluate properly the claims raised with respect to the financial condition of the newspaper. News Corp had accompanied its initial January 22, 2001 submission with a request for confidential treatment pursuant to Sections 0.457 and 0.459 of the Commission's rules. 47 C.F.R. §§0.457 and 0.459. Thereafter, News Corp and The Office of Communications of the United Church of Christ, *et al.* (Petitioners) negotiated a proposed protective order which we released as Protective Order, DA 01-528, and subsequently amended by Supplemental Protective Order, DA 01-579. In the April 3, 2001 letter, we stated that "requests for confidential treatment" of

the additional financial information would be entertained "consistent with our protective order procedures in this proceeding." Letter from Barbara Kreisman, Chief, Video Services Division, to William S. Reyner, Jr., John C. Quale, and Marvin J. Diamond, April 3, 2001, at page 2.

2. On April 9, 2001, News Corp responded, and requested that the additional financial information furnished be subject to the existing Protective Order, DA 01-528, as amended by the Supplemental Protective Order, DA 01-579, incorporating by reference the arguments for confidentiality raised in its December 13, 2000 and January 22, 2001 letters. News Corp requests that Paragraph 2 of the existing Protective Order be supplemented as follows:

"Confidential Document" shall also mean the financial information and data submitted by News Corp, with a request for confidential treatment, in response to the letter, dated April 3, 2001, from Barbara A. Kreisman, Chief, Video Services Division, Mass Media Bureau, to William S. Reyner, Jr., John C. Quale, and Marvin J. Diamond. As used herein, Confidential Document may refer to the singular or the plural.

As with its previous confidentiality requests, News Corp maintains that the financial information and data submitted are proprietary and competitively sensitive and, therefore, it does not make this type of information available to the public. News Corp further states that public disclosure of the documents submitted is "likely to cause substantial harm to the competitive position of the *New York Post* by allowing competitors to use such information to disadvantage the paper with readers and advertisers at a time when competition in the New York market has become increasingly fierce." Letter from Arthur M. Siskind, Senior Executive Vice President of The News Corporation Limited, to Magalie Roman Salas, Secretary, Federal Communications Commission, April 9, 2001, at page 2 footnote 1.

3. The Petitioners object to "blanket" confidential treatment of the financial information submitted in response to the April 3, 2001 letter. The Petitioners contend that the Commission's established policy is to make most information filed in Title III licensing proceedings publicly available in order to provide opportunities for comment by the public. The Commission should further allow the widest public access to the information, the Petitioners contend, since the case is being treated as "permit-but-disclose" with respect to the *ex parte* rules. The Petitioners argue that the "Commission should expediently review any information submitted by Fox and [News Corp]...to determine the extent to which the information is entitled to confidential treatment." Letter from Christopher R. Day and Angela Campbell, Attorneys for The Office of Communications of the United Church of Christ, *et al.*, to Magalie Roman Salas, Secretary, Federal Communications Commission, April 10, 2001, at page 3. The Petitioners state that, to the extent any information is entitled to confidential treatment, it should be subject to entry of a protective order consistent with the existing Protective Order, DA 01-528, as amended by the Supplemental Protective Order, DA 01-579.

4. We have reviewed the information submitted in response to our April 3, 2001 letter. While Commission policy is to make most information submitted in Title III licensing proceedings routinely available for public inspection, the Commission will limit disclosure to individuals and entities who file a petition to deny and execute a protective order in those circumstances where an applicant has made an adequate showing under Section 0.459 of the Commission's rules, 47 C.F.R. §0.459. *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, 24838-39 (1998). We believe that subjecting the information provided by News Corp to a protective order is appropriate in this instance given that the information is treated confidentially by News Corp, and is not otherwise publicly available. 5 U.S.C. §552(b)(4). *See Landfair v. U.S. Department of Army*, 645 F. Supp. 325, 327 (D.D.C. 1986) (commercial and financial information can include business sales statistics, research data, technical designs, overhead and operating costs, and information on financial condition). We also agree that, given the level of competition that already exists in the New York market, release of the information to the public could result in a negative competitive impact on the *New York Post*.

5. In the April 3, 2001 letter we stated that the Petitioners would be granted 10 days from the receipt of the amendment to file a response. Receipt of a redacted version by the Petitioners met service requirements. With respect to the response period, however, the Petitioners have not properly received the amendment until the financial information is available for review. Consequently, the ten-day period will begin to run from the release date of the instant order. Any reference to confidential information in the decision regarding the above-referenced applications will be consistent with the existing Protective Order, DA 01-528.

6. Accordingly, IT IS ORDERED, That the request to supplement the Protective Order, DA 01-528, as amended by the Supplemental Protective Order, DA 01-579, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau