

relax or eliminate a rule.”⁷⁴ FTS has demonstrated that it meets the Commission’s standard for conditional relief.

First, the to-be-initiated rulemaking will examine the rule in question – the newspaper/broadcast cross-ownership rule.

Second, this Application falls within the scope of the proposals in the proceeding. In the *Biennial Review Report*, in announcing that it would initiate a rulemaking, the Commission stated: “There may be instances, for example, in which, given the size of the market and the size and type of the newspaper and broadcast outlet involved, sufficient diversity and competition would remain if a newspaper/broadcast combination were allowed.”⁷⁵ In granting News Corp a permanent waiver of the newspaper/broadcast cross-ownership rule in 1993, the Commission found the New York market to be uniquely diverse and competitive,⁷⁶ and FTS has demonstrated in the Application that the diversity of viewpoints and level of competition in the New York media marketplace

⁷⁴ *1998 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*, Notice of Inquiry, 13 FCC Rcd 11276, 11294, paras. 56, 58 (1998) (“*Biennial Review NOP*”).

⁷⁵ *1998 Biennial Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 15 FCC Rcd 11058, 11105-06, para. 83 (2000).

⁷⁶ *See Fox Television Stations, Inc.*, 8 FCC Rcd at 5351.

have dramatically increased since 1993.⁷⁷ The combination proposed in the instant Application involves a permissible duopoly of television stations that serve the nation's largest DMA and a struggling newspaper, the economic viability of which has depended on the financial commitment of News Corp.

Third, grant of interim relief would be consistent with the goals of competition and diversity. As demonstrated in the Application, and above, the New York DMA has myriad media outlets, so no harm would result from common ownership of the permissible duopoly and the *Post*. Also, by not taking action that could destabilize the *Post*, the Commission can avoid any threat to an alternative and diverse local information outlet.

Finally, "a substantial record already exists." Here, the Commission has a substantial record on the New York market from the prior permanent waiver proceeding and has had nearly seven years to observe and assess the actual impact of the WNYW/*New York Post* combination on competition and viewpoint diversity in the New York market. In addition, FTS has supplemented that record in the Application by demonstrating that the New York media marketplace has become even more competitive since the Commission granted the permanent waiver in 1993, and continued common ownership would not adversely affect the level of competition and diversity in the market.⁷⁸

⁷⁷ See Assignee's Exhibit No. 4 at 26, 29-32.

⁷⁸ See Assignee's Exhibit No. 4 at 29-32.

Petitioners contend that because the Commission has not yet initiated the rulemaking and because it will likely be a lengthy proceeding, any relief would be of a long duration, which could harm the public interest.⁷⁹ Petitioners, however, do not articulate any particular harms that could result from a long duration of common ownership. As discussed above, the Commission in its *Biennial Review NOI* set forth factors that justify interim waivers, including “protracted rulemaking proceedings.”⁸⁰ Thus, the possibility of a lengthy proceeding lends further support to FTS’s request for interim relief. FTS cannot dictate when the Commission releases the text of the Notice of Proposed Rulemaking to consider relaxation of the broadcast/newspaper cross-ownership rule; neither the timing of the release, nor the length of time the Commission takes to act, is within the control of FTS.

2. Given the Unique Circumstances Surrounding the Common Ownership of the *Post* and WNYW, Granting FTS’s Request Would Not Encourage Other Parties To Seek Interim Relief.

Contrary to Petitioners’ claim,⁸¹ because of the unique circumstances and equities of this case, granting the requested interim relief will not open the floodgates to others. No other parties are similarly situated. As Petitioners concede, FTS’s ownership of

⁷⁹ Pet. at 16.

⁸⁰ *Biennial Review NOI*, 13 FCC Rcd at 11294, para. 56.

⁸¹ Pet. at 17-18.

the *Post* and WNYW is a “special case.”⁸² FTS and News Corp hold a permanent waiver and have relied on that waiver in committing financial support to the development of the *Post* as a competitive news source. Any grant of relief would not be based solely on the pendency of the to-be-initiated rulemaking, but also on the unique circumstances, discussed above, relating to common ownership of the proposed duopoly and the *Post*.

V. ALLEGATIONS REGARDING THE IMPACT OF THE MERGER ON THE FUTURE OF THE UPN NETWORK ARE MERE SPECULATION.

Petitioners have also alleged that the proposed merger “*could* mean the end of the UPN network as it exists now”⁸³ or “*might* spell the end for the UPN network”⁸⁴ with an allegedly consequent loss of program diversity. Such allegations, however, are based on mere speculation that is insufficient to raise a substantial and material question of fact.⁸⁵

Petitioners have presented no evidence that FTS will not continue the current UPN affiliations of the eight Chris-Craft Stations presently carrying UPN programming.⁸⁶ Petitioners have presented no evidence that, if the Application were denied, Chris-

⁸² Pet. at 7.

⁸³ Pet. at 41 (emphasis added).

⁸⁴ Pet. at 43 (emphasis added).

⁸⁵ See, e.g., *Michael McDermott d/b/a McDermott Communications Co.*, 11 FCC Rcd 5750 (1996).

⁸⁶ The newspaper and magazine articles referred to by Petitioners (Pet. at 41) are insufficient to satisfy their burden under Section 309. See, e.g., *Univision*, 7 FCC Rcd 6672, 6673, para. 4 (1992) (“Affidavits based on “information and belief,” and
(continued...)

Craft (which no longer has any ownership interest in UPN) would necessarily continue to affiliate those eight stations with UPN. Petitioners have presented no evidence that Viacom, which now controls UPN, will offer reasonable or acceptable terms for an extension of the existing affiliation agreements, which are currently due to expire in January 2001. Petitioners have failed to present any evidence that Viacom will necessarily continue to operate UPN, even if the Chris-Craft Stations continue to affiliate with UPN. Such failures are fatal to Petitioners' argument. Absent evidence supporting each of the above points, there is no support for Petitioners' speculation that the merger would cause the demise of UPN.

FTS does not presently have any plans to terminate the affiliation agreements of the Chris-Craft UPN affiliates after the consummation of the merger. With the knowledge and consent of FTS, Chris-Craft has actively been engaged in negotiations with UPN in an effort to reach an agreement for an extension of the affiliations of all of Chris-Craft's eight UPN affiliates. While there can be no certainty that such negotiations will result in an agreement with Viacom, both Chris-Craft and FTS are hopeful that such an agreement can and will be reached.

⁸⁶ (...continued)
information set out in newspapers or magazines do not meet statutory requirements."); *Michael McDermott d/b/a McDermott Communications Co.*, 11 FCC Rcd at 5753-54 (rejecting petition to deny based on Section 309(d) framework because key aspects of submission were "mere speculation, unsupported by any fact pleading."); *KRPL, Inc.*, 5 FCC Rcd 2823, 2824 (1990) (finding that a newspaper article "is not an acceptable substitute for the submission of facts by a person having personal knowledge of the facts alleged").

In short, Petitioners have failed to raise a substantial and material question of fact that the proposed merger will cause the demise of UPN, and this allegation warrants neither further inquiry nor denial of the Application.

VI. THE APPLICATION AS FILED IS SUBSTANTIALLY COMPLETE AND THEREFORE PETITIONERS' MOTION TO DISMISS AND OTHER REQUESTS FOR RELIEF SHOULD BE DENIED.

A. The Applicants Have Satisfied All of the Requirements Necessary for a Grant of the Application, and Petitioners Have Failed To Meet Their Burden.

1. The Applicants Have Satisfied Their Burden by Providing the Information Required by Form 314.

Section 309 of the Communications Act specifies how the Commission is to consider applications for Commission consent to assign broadcast licenses and any petitions to deny such applications. For decades, the Commission has determined whether grant of an assignment application would serve the public interest pursuant to Section 309 based on the information provided by applicants in response to specific questions on the appropriate Commission form (FCC Form 314). Despite that precedent, Petitioners take the position that all applications involving the sale of a broadcast station – even those not involving a waiver – must include a *separate* public interest showing, above and beyond the information called for in the FCC Form.⁸⁷

⁸⁷ See Pet. at 3-4. The Petitioners' suggestion that a separate public interest showing is required may be based on the Commission's treatment of cable, common carrier, satellite and wireless mergers. As the Commission recently observed, in those contexts it applies a four-factor test which includes "whether the merger promises
(continued...)

Substantial Commission practice and precedent establish that the submission of a complete current version of FCC Form 314 “provide[s] a sufficient basis” for approving an assignment application.⁸⁸ In fact, in the *Streamlining Order*, the Commission directed applicants to provide only the information necessary to respond to the questions on the Form itself (with reference, as appropriate, to specific worksheets).⁸⁹ FCC Form 314 does not require any applicant to demonstrate, through a separate showing above and beyond its specific answers to specific questions, how a particular transaction is consistent with the public interest.

The absence of a requirement for a public interest showing is not an oversight, but the carefully considered policy of the Commission, which repeatedly has affirmed the need to provide “concrete guidance” and “predictability to broadcasters in

⁸⁷ (...continued)
to yield affirmative public interest benefits that could not be achieved without the merger.” *In Re Shareholders of AMFM, Inc.*, Memorandum Opinion & Order, FCC 00-296, para. 7, n.9 (rel. Sept. 1, 2000). The Commission has not applied the four-factor test to broadcast mergers where, as discussed below, compliance with the public interest is determined by the applicant’s responses to the pertinent broadcast forms. *See Shareholders of AMFM, Inc. supra*, Separate Statement of William E. Kennard, Chairman (proposing a rulemaking to articulate a future framework for reviewing radio transfer applications that raise competition concerns).

⁸⁸ *See 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules and Processes*, 13 FCC Rcd 23056, 23067, para. 22 (1998) (“*Streamlining Order*”); *see also* 47 C.F.R. § 73.3540 (specifying that an application to assign or transfer control of broadcast station is to be made on the appropriate FCC Form).

⁸⁹ *See Streamlining Order*, 13 FCC Rcd at 23067, para. 22.

structuring their business transactions.”⁹⁰ In furtherance of this policy, the Commission has established an extensive framework of broadcast regulations and forms (Form 314 in the case of an assignment of a broadcast license), enabling applicants to provide information sufficient for the Commission to find that an assignment is consistent with the public interest without requiring that each applicant submit an amorphous and difficult-to-evaluate “public interest” statement.

Petitioners have cited no relevant precedent to support their novel theory that an FCC Form 314 application includes an implicit requirement that the applicant must submit a supplement containing an affirmative showing of the general public interest benefit of its proposal.⁹¹ To the contrary, the *Streamlining Order* confirms that no generalized public interest statement is required. Prior to the adoption of the *Streamlining Order*, applicants were required to submit a statement describing the programming on the station and explaining the manner in which that programming would serve the public

⁹⁰ *Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules*, 14 FCC Rcd 12903, 12948, para. 103 (1999).

⁹¹ Neither of the cases cited by Petitioners – *Joseph v. FCC*, 404 F.2d 207, 211 (D.C. Cir. 1968) and *Citizens Comm. To Save WEFM v. FCC* 506 F.2d 248, 259 (D.C. Cir. 1974) (see Pet. at 3) – supports Petitioners’ argument that the Applicants here were obligated to make a public interest showing above and beyond what was called for by the application form and what was presented in support of their limited waiver requests. *Joseph* merely held that the Commission had failed to make a public interest finding, not that the record was insufficient to support one. *Citizens* simply held that in that case a substantial and material question of fact had been raised under the now long-since-abandoned change of radio format precedent.

interest. But in the *Streamlining Order*, the Commission eliminated that requirement, even though it called for a far more specific narrative than the generic public interest statement now suggested by Petitioners.⁹² Indeed, the Mass Media Bureau routinely grants applications for consent to assignment of licenses without any suggestion that the applicants are required to file a separate public interest showing beyond the matters addressed in Form 314.⁹³ Accordingly, it was both unnecessary and, pursuant to the “checklist” approach adopted in the *Streamlining Order*, inappropriate for the Applicants to file a generalized public interest statement (above and beyond the narrow public interest showings associated with particular limited waiver requests, as discussed *supra*).

2. Petitioners Have Failed To Satisfy Their Clear Burden Under Section 309 of the Act.

While Applicants have furnished the Commission with all the information required for a grant of the Application, the Petitioners fall far short of satisfying their burden under Section 309 of the Communications Act to raise a substantial or material question of fact as to whether grant of the Application serves the public interest. Satisfac-

⁹² See, e.g., *Streamlining Order*, 13 FCC Rcd at 23176, 23184 (outlining instructions to revised Form 314, which explain that applicants “need no longer file a specific program service proposal”).

⁹³ Just this year, the Mass Media Bureau has granted a number of assignment applications that enable an entity to own two television stations in the same market without any separate showing as to how each particular proposed transaction specifically serves the public interest. See, e.g., FCC File Nos. BALCT- 20000920AAU (granting Boston duopoly to Hearst-Argyle); BALCT-19991201ABB (granting San Francisco duopoly to Cox); BALCT-19991116AJM (granting Kansas City duopoly to Scripps-Howard); BTCCT-19991116AJN (granting Dallas duopoly to FTS).

tion of this burden is a prerequisite for further Commission inquiry. As noted, Congress, courts, and the Commission have agreed that any aspect of a petition to deny should be rejected without further investigation if it does not “contain specific allegations of fact sufficient to show . . . that a grant of the application would be *prima facie* inconsistent with the [public interest] based on a personal knowledge affidavit or officially noticed materials.”⁹⁴ Even if this initial standard is met, the Petition still does not merit review unless it has alleged sufficient “specific facts” to raise “a substantial and material question of fact requiring an evidentiary hearing – i.e., that any judgment to the contrary would be so irrational as to be arbitrary and capricious.”⁹⁵

The substantial burden imposed by this two-pronged standard is consistent with congressional purposes underlying Section 309, as Congress “intended to vest in the FCC a large discretion to avoid time-consuming hearings . . . whenever possible.”⁹⁶ Accordingly, the Commission appropriately has required petitions to deny to be substantiated by credible and specific factual allegations before it considers the need to designate an

⁹⁴ *Tele-Media, Inc. v. FCC*, 697 F.2d 402, 409 (D.C. Cir. 1983) (quoting 47 U.S.C. § 309(d)(1)); *Univision Holdings, Inc. (Transferor) and Perenchio Television, Inc.*, 7 FCC Rcd 6672, 6673, para. 4 (1992).

⁹⁵ *See Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 394 (D.C. Cir. 1985).

⁹⁶ *See Gencom Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987) (quoting *Southwestern Operating Co. v. FCC*, 351 F.2d 834, 835 (D.C. Cir. 1965)).

application for hearing.⁹⁷ A petition to deny that is based only on “the allegation of ultimate, conclusory facts or more general allegations on information and belief, supported by general affidavits” cannot provide sufficient basis for further Commission consideration.⁹⁸ In this instance, the Petition does not meet its “burden of demonstrating with specificity the facts” which warrant further investigation as to the general public interest effects of the transaction proposed in the Application.⁹⁹ Instead of specific factual allegations as to how the proposed transaction will harm the public interest, the Petition relies on mere speculation and conclusory assertions.¹⁰⁰ Such allegations,

⁹⁷ See, e.g., *Beaumont Branch of the NAACP v. FCC*, 854 F.2d 501, 507 (D.C. Cir. 1988) (explaining that a petition to deny “must show the necessary specificity and support; mere conclusory allegations are not sufficient”); *Univision*, 7 FCC Rcd at 6673, para. 4 (1992) (“Section 309(d) of the Act imposes burdens on petitioners that wish to participate formally in Commission application proceedings. Petitioners must allege specific facts, and those facts must be matters of which we can take official notice or be supported by an affidavit from a person with first hand-knowledge of the facts alleged.”).

⁹⁸ See *Gencom Inc. v. FCC*, 832 F.2d at 180 n.11 (quoting S. Rep. No. 690, 86th Cong., 1st Sess. 3 (1959)); *Stone v. FCC*, 466 F.2d 316, 322 (D.C. Cir. 1972) (quoting same).

⁹⁹ *WAIT Radio, Inc. and Century Chicago Broadcasting, Ltd.*, 45 Rad. Reg. 2d 921 (1979).

¹⁰⁰ For example, the Petition makes the general assertion that the Application would “further reduce broadcast diversity in the United States” and would “substantially reduce advertising competition, viewpoint diversity, and independent news coverage.” Pet. at 3-4. Petitioners’ affidavits are likewise conclusory. The declarations from Robert Chase, Patricia Jordan, Jeff Chester, Mark Cooper and Gene Kimmelman assert harm to their organizations’ members or purposes from the loss of diversity and competition alleged to result from the proposed transaction,

(continued...)

without specific supporting evidence, cannot give rise to the substantial and material question of fact necessary to justify further Commission inquiry.¹⁰¹

B. The Description of the Proposed Ownership Structure Includes All Parties to the Application.

1. The Ownership Structure of FTS, the Entity that Will Hold the Chris-Craft Licenses, Has Been Previously Approved by the Commission.

Petitioners also incorrectly suggest that the Application is incomplete because FTS did not provide ownership information regarding “its indirect parent company, News Corporation, or for several News Corporation subsidiaries involved in this transaction.”¹⁰² The following brief background of the FTS ownership structure previously approved by the Commission will explain why the Application as filed includes all parties to the Application.

¹⁰⁰ (...continued)
without providing any factual support detailing how FTS's proposed ownership of two same-market television stations would cause such harm. *See, e.g.*, Declaration of Robert Chase (asserting, without any cite to specific supporting evidence, that United Church of Christ members in the New York, Los Angeles, Phoenix and Salt Lake City markets “will be harmed by the loss of diversity and competition” that Petitioners allege will occur if the proposed transaction is approved); Declaration of Patricia Jordan (asserting same, again without any factual support, with regard to Black Citizens for a Fair Media members in the New York area).

¹⁰¹ *See, e.g., Stone v. FCC*, 466 F.2d at 322; *Texas RSA 1 Limited Partnership*, 7 FCC Rcd 6584, 6585 (1992) (finding that a petition to deny failed to establish a *prima facie* case where the petitioner's pleadings were “replete with conclusory allegations unsupported by specific facts”).

¹⁰² Mot. to Dismiss at 3. Petitioners go so far as to suggest that the failure to disclose this information “raises questions of candor.” Mot. to Dismiss at 8.

The ownership structure of FTS, which will become licensee of the Chris-Craft Stations, mirrors the structure approved by the Commission as compliant with § 310(b). The Commission has expressly held in 1995 that “FTS as presently structured may, consistent with the public interest, acquire additional broadcast stations (up to the allowable maximum set forth in our ownership rules, *see* 47 C.F.R. § 73.3555).”¹⁰³ The ownership and control of FTS is the same today as it was in 1995 in all material respects.

In *Fox II*, the Commission found the ownership structure of FTS and the level of alien equity investment in FTS to be consistent with the public interest.¹⁰⁴ At the time of the Commission’s findings in 1995, FTS was a wholly owned subsidiary of Twentieth Holdings Corporation (“THC”). THC had two classes of stock: (1) redeemable preferred stock with a fixed return representing 76 percent of the total votes of THC and (2) common stock with all the remaining equity interest and the remaining 24 percent of the votes. All of the issued and outstanding preferred stock (7600 shares) of THC was owned and voted personally by Mr. Murdoch. All of THC’s common shares (2400 shares), entitled to virtually all of the equity of THC, was owned by News America Incorporated (“NAI”), which in turn was indirectly owned by News Corp.

The Commission found that because News Corp owned all of THC’s common stock, it was entitled to *all* of THC’s profits and losses and *all* of THC’s assets

¹⁰³ *Fox Television Stations, Inc.*, Second Memorandum Opinion and Order, 11 FCC Rcd 5714, 5728, para. 34 (1995) (“*Fox II*”).

¹⁰⁴ *See id.*

upon its sale or dissolution, subject only to the annual fixed interest payments of 12 percent on Mr. Murdoch's preferred stock and the return of his \$760,000 investment in the event of dissolution.¹⁰⁵ The Commission nevertheless approved this level of alien ownership because Mr. Murdoch, a U.S. citizen, exercised *de jure* and *de facto* control over FTS and THC and had "substantial influence" over News Corp.¹⁰⁶ The Commission also found that there had been no evidence of alien influence at FTS during its ten years as a broadcast licensee.¹⁰⁷

Following a *pro forma* restructuring in 1998, Mr. Murdoch continues to exercise the same *de jure* and *de facto* control over FTS through its parent Fox Television

¹⁰⁵ *Id.* at 5719-20, para. 15 & n.5. Petitioners also suggest that the Commission should be "concerned" because the holder of the common stock in FTH (i.e. FEG) may redeem Mr. Murdoch's preferred shares. Mot. to Dismiss at 7. The Petitioners are merely rehashing issues addressed and previously resolved by the Commission in 1995. As the Commission previously concluded, future redemption rights are not relevant to determining control until the shares are actually redeemed. *See Fox Television Stations, Inc.*, 10 FCC Rcd 8452, 8513, para. 152 (1995) ("*Fox I*"). The recent revision to the attribution rules did not change that conclusion. In addition, the Certificate of Incorporation of FTH provides that the Mr. Murdoch's preferred shares cannot be redeemed if the redemption would result in a violation of the alien ownership restrictions contained in 47 U.S.C. § 310(b). *See* Certificate of Incorporation of Fox Television Holdings, Inc., at (4)(C)(3)(ii).

¹⁰⁶ *Fox II*, 11 FCC Rcd at 5725, para. 27.

¹⁰⁷ *Id.* Although the Commission in 1995 did not reach the issue of Mr. Murdoch's control of News Corp, the Commission did find that the weight of evidence demonstrated that Mr. Murdoch personally held *de jure* and *de facto* control of THC and FTS. The Commission also noted that "[Mr.] Murdoch wields substantial influence over News Corp as well." *Fox Television Stations, Inc.*, Third Memorandum Opinion and Order, 11 FCC Rcd 7773 (1996) (quoting *Fox I*).

Holdings, Inc. ("FTH"), just as he did over FTS's parent (i.e., THC) in 1995. Specifically, in 1998 the Commission approved a short-form assignment of the stations licensed to FTS and its subsidiaries to a newly-formed subsidiary which was re-named "FTS." The company formerly known as "FTS" was re-named "Fox Television Holdings, Inc." ("FTH"). Mr. Murdoch acquired voting preferred stock of FTH representing 76 percent of the voting power of FTH. Mr. Murdoch's voting preferred stock in FTH is otherwise similar in all material respects to the THC preferred stock previously held by Mr. Murdoch prior to the *pro forma* reorganization. THC was re-named "Fox Entertainment Group, Inc." ("FEG"), and class A common stock of FEG was issued to the public. As the result of the public offering, News Corp's indirect equity interest in FTS decreased from virtually all of the equity to approximately 82 percent, with the remaining 18 percent being publicly traded.¹⁰⁸

¹⁰⁸ See File Nos. BALCT-980727LE, KM-KU, granted August 26, 1998. The broadcast assets of the stations were retained by FTH separate from the licenses held by FTS. See Letter from William S. Reyner, Jr. to Magalie Roman Salas, Secretary, FCC, dated Sept. 30, 1998. Similarly, as explained in Assignee's Exhibit No. 1, the Chris-Craft licenses and broadcast assets will be held by different entities. See, e.g., *Applications of BBC License Subsidiary and S.F. Green Bay License Subsidiary, Inc.*, 10 FCC Rcd 7926, n.1 (1995) (approving transfer of broadcast license where station operating assets would be held separately by the parent of the proposed licensee on the condition that the station operating assets must be conveyed with the station licenses in the event of a future assignment or transfer). At the effective time of the mergers, a subsidiary of FEG ("Newco") will acquire predominately all the Chris-Craft non-license broadcast assets. FTS will concurrently become the licensee of each of the Chris-Craft Stations and will control the operations of the Stations, pursuant to the Stations Operating Agreement to be entered into at closing between Newco and FTS. Pursuant to the Stations Operat-
(continued...)

As described in the Application, the proposed assignee of the Chris-Craft Stations remains controlled by Rupert Murdoch and has the same ownership structure approved in 1995-96, as supplemented with Commission approval in 1998 following the *pro forma* reorganization.¹⁰⁹ Following this *pro forma* restructuring, in accordance with its

¹⁰⁸

(...continued)

ing Agreement, net income and net losses from the operation of the Chris-Craft Stations will be shared on the basis of FTS receiving 5 percent of such income and losses and Newco (the wholly owned subsidiary of FEG) receiving 95 percent of the income and losses. See Stations Operating Agreement, Section 5. FEG's economic interest in the stations would not be greater under the proposed structure than it would be if all the Chris-Craft Station assets were owned outright by FTS and Newco were uninvolved in the Stations' operations. Consistent with the disclosures to and conclusion of the Commission in *Fox II*, as discussed above (see text at footnotes 104-109) FEG owns all of the equity of FTH, FTS' 100% parent, except for the voting fixed return preferred shares owned by Rupert Murdoch. Economically, those shares do not entitle Mr. Murdoch to any percentage interest in FTH. Rather, they entitle him to an ultimate redemption of his shares for a fixed sum of \$760,000, plus a fixed return at a fixed rate of 12% per annum on his paid-in capital (i.e., \$91,200 per year). Mr. Murdoch's direct interest in FTH is thus fixed and is not dependent on the size of the Stations' operating profits or losses. Consequently, as FEG owns all of the remaining economic interest in FTH, its ultimate interest in the Stations is the same, whether those Stations are owned 100% by FTS or profits and losses are split 95/5% between an FEG subsidiary and FTS as provided for in the Stations Operating Agreement. Either way, Mr. Murdoch is entitled to \$760,000 plus \$91,200 per year, and FEG the benefit of the rest. See FTS ownership structure charts (Attachment D hereto).

¹⁰⁹

As in 1995, Mr. Murdoch's voting preferred stock of FTH entitles him to a fixed 12% rate of return on his \$760,000 investment. Specifically, FTH's Certificate of Incorporation provides that the preferred stock with a par value of \$100 per share is entitled to "dividends at the fixed annual rate of \$12.00 per share, and no more, . . ." FEG (formerly, THC) and ultimately its parent News Corp, as the holder of the 2400 shares of voting common stock of FTH, are entitled to all of the profits and losses from the operations of FTH and its wholly owned subsidiary FTS, after payment of the modest fixed return to Mr. Murdoch. See *Fox II*, 11 FCC (continued...)

1995 conclusion that FTS as structured could acquire additional broadcast stations, the Commission approved FTH's acquisition of control of station KDFI-TV, Dallas, Texas.¹¹⁰ The proposed structure of the transaction thus complies with Commission precedent concerning the degree of alien ownership of FTS.

2. Information Relating to FEG Is Not Required Because, Under the Revised Attribution Rules, FEG Would Not Have an Attributable Interest in the Chris-Craft Stations.

Petitioners claim that ownership information for FEG is required on the basis of the Commission's recent revision to its ownership attribution rules.¹¹¹ The Commission adopted the "bright-line" equity/debt plus (EDP) attribution rule to take better account of relationships that permit significant influence over core operations of a broadcast licensee, but which do not rise to the level of control. Specifically, the Commission was concerned that multiple, non-attributable business interests in the same market could implicate diversity and competition concerns and thus should be attributable and subject to multiple ownership restrictions.¹¹²

¹⁰⁹ (...continued)
Rcd at 5719-20, para. 15 & n.5.

¹¹⁰ *See Application for Voluntary Transfer of Control of the License of KDFI-TV from John A. McKay to NW Communications of Texas, Inc.*, Public Notice dated Feb. 25, 2000, File No. BTCCT-19991116AJN. There also were numerous other station acquisitions by FTS between 1995 and 2000.

¹¹¹ Mot. to Dismiss at 9.

¹¹² *See Review of the Commission's Regulations Governing Attribution of Broadcast*
(continued...)

The Commission adopted the EDP bright-line test, as opposed to a case-by-case approach, to provide greater regulatory certainty. Petitioners, however, do not contend that FEG and its parent entities would be attributable owners of the Chris-Craft Stations under the EDP test. Indeed, FEG and its parent entities would not be deemed to hold an attributable interest in the Chris-Craft Stations because FEG does not supply over 15 percent of the total weekly broadcast programming hours of any of the Chris-Craft Stations.¹¹³ In addition, although FEG would now have an EDP interest in the existing FTS owned-and-operated stations because it holds all the equity and provides Fox network programming, FEG would not have an attributable interest in the Chris-Craft Stations as a same-market media entity because the Commission expressly provided that “to trigger application of the EDP rule to same-market media entities, the interest held in the media entity in the same market must be attributable without reference to the EDP rule.”¹¹⁴

Accordingly, FEG’s proposed equity interest in the Chris-Craft Stations would not be attributable since FEG would only have an attributable interest by virtue of the EDP rule. And because these interests would not be attributable, FEG, its parent entities, and their respective officers and directors were properly treated as not being

¹¹² (...continued)
and Cable/MDS Interests, 14 FCC Rcd 12559, 12579-80, paras. 38-39 (1999).

¹¹³ *See* 47 C.F.R. § 73.3555 Note 2(j).

¹¹⁴ *See Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 14 FCC Rcd at 12584, para. 52.

parties to the Application. Given that the proposed ownership structure of FTS faithfully adheres to the structure previously approved by the Commission, there is no basis for the Petitioners' request for case-by-case treatment of the Application.¹¹⁵

Nevertheless, if the Commission wishes, FTS will supply further ownership information for Newco and its parent entities, even though the Application as filed is substantially complete.

¹¹⁵ Petitioners also allege lack of candor based on a what was obviously a typographical error contained in the annual ownership report for Fox Television Holdings, Inc., dated August 25, 1999 – which is not even the most current ownership report on file for this entity. *See* Mot. to Dismiss at n.23. The most recent ownership report on file for FTH underscores that this was merely a typographical error. The ownership report (FCC Form 323) for Fox Television Holdings, Inc., filed March 31, 2000, following FTS's consummation of the acquisition of Station KDFI-TV, Dallas, Texas, states in the box for Question 11 on page 2 of FCC Form 323 that the 7600 issued and outstanding shares of preferred stock are "Voting." Petitioners are correct in their statement that the response to Question 10 on page 2 of the August 25, 1999 ownership report lists "Nonvoting" in the box describing the preferred stock held by Mr. Murdoch. *See* Mot. to Dismiss at n.23. However, Exhibit 2 of the August 25, 1999 ownership report lists in detail the officers, directors, and cognizable stockholders of Fox Television Holdings, Inc. and states (in tabular form) that the 7600 preferred shares held by Mr. Murdoch represent 7600 votes (or 76% of the vote) of Fox Television Holdings, Inc.

VII. CONCLUSION

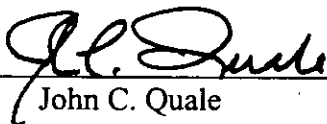
Petitioners have failed to meet the threshold requirement of advancing specific allegations of fact sufficient to show that grant of the Application as filed would be *prima facie* inconsistent with the public interest, convenience, and necessity. For the reasons set forth above, the Commission therefore should grant the Application and the relief requested therein.

Respectfully submitted,

UTV OF SAN FRANCISCO, INC.,
KCOP TELEVISION, INC.,
UTV OF SAN ANTONIO, INC.,
OREGON TELEVISION, INC.,
UTV OF BALTIMORE, INC.,
WWOR-TV, INC.,
UTV OF ORLANDO, INC., AND
UNITED TELEVISION, INC.

FOX TELEVISION STATIONS, INC.

By:



John C. Quale
Skadden, Arps, Slate, Meagher
& Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005
(202) 371-7200

and

Marvin J. Diamond
Law Offices of Marvin J. Diamond
444 Common Street, PMB365
Belmont, MA 02478
(617) 484-4171

Their Attorneys

Dated: November 9, 2000

By:



William S. Reyner, Jr.
Hogan & Hartson, L.L.P.
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-6510

Its Attorney

DECLARATION

Mitchell Stern hereby declares under penalty of perjury as follows:

1. I am the Chairman and Chief Executive Officer of Fox Television Stations, Inc.
2. I have reviewed the November 9, 2000 Joint Opposition to Petition to Deny of Fox Television Stations, Inc. and Chris-Craft, to which this Declaration is attached. The facts set out therein, except those of which official notice may be taken and those which are contained in another person's statement relating to the Opposition, are true and correct to the best of my knowledge, information and belief.



Mitchell Stern
Chairman and Chief Executive Officer

Date: 11/9/2000

COX Digital Cable Express

COMING SOON TO TEMPE

- 1 COX INFORMATION
- 2 QVC
- 3 KTVK - Independent
- 4 **HBO (SAP)**
- 5 KPHO - CBS
- 6 KASW - WB61
- 7 TBS - Atlanta
- 8 KAET - PBS
- 9 COX9
- 10 KSAZ - FOX
- 11 GOVERNMENT ACCESS
- 12 KPNX - NBC
- 13 KUSK - Independent
- 14 AZ NewsChannel
- 15 KNXV - ABC
- 16 KUTP - Independent 45
- 17 KPPX - PAXTV
- 18 WGN - Chicago
- 19 KTVW - Spanish
- 20 KDTP - Religious
- 21 KPAZ - Religious
- 22 LEASED ACCESS
- 23 DISCOVERY CHANNEL
- 24 LIFETIME
- 25 TNN
- 26 TNT
- 27 VH-1
- 28 USA
- 29 MTV
- 30 FX
- 31 ESPN CLASSIC
- 32 ESPN2
- 33 ESPN
- 34 FOX SPORTS NET AZ
- 35 DISNEY CHANNEL
- 36 CNN
- 37 NICKELODEON
- 38 HEADLINE NEWS
- 39 FOX FAMILY
- 40 A&E
- 42 C-SPAN
- 43 AMC
- 44 **SHOWTIME (SAP)**
- 45 COURT TV
- 46 FOOD NETWORK
- 47 MARKETVIEW
- 49 COUNTRY MUSIC TV
- 50 SCI-FI CHANNEL
- 51 COMEDY CENTRAL
- 52 E!
- 53 CARTOON NETWORK (SAP)
- 54 TV LAND
- 55 AZ NewChannel en Español
- 56 TELEMUNDO - KDR
- 57 GALAVISION
- 58 MSNBC

- 59 BET
- 60 BRAVO
- 61 **CINEMAX (SAP)**
- 62 TV GUIDE
- 63 THE LEARNING CHANNEL
- 64 CNBC
- 65 OUTDOOR LIFE
- 66 SPEEDVISION
- 67 ANIMAL PLANET
- 68 THE GOLF CHANNEL
- 69 THE WEATHER CHANNEL
- 70 PRODUCT INFO NETWORK
- 71 THE HISTORY CHANNEL
- 72 TURNER CLASSIC MOVIES
- 73 HOME & GARDEN TV
- 74 DISCOVERY HEALTH
- 75 HOME SHOPPING NETWORK
- 76 **THE MOVIE CHANNEL**
- 77 **STARZ!**
- 95 C-SPAN II
- 96 THE TRAVEL CHANNEL
- 98 COMMUNITY PROG.
- 99 EDUCATION ACCESS
- 100 INDEMAND PREVIEWS
- 101 DISCOVERY KIDS
- 102 DISCOVERY SCIENCE
- 103 DISCOVERY HOME & LEISURE
- 104 DISCOVERY CIVILIZATION
- 105 DISCOVERY WINGS
- 106 DISCOVERY HEALTH
- 199 INDEMAND PREVIEWS
- 200 **HBO**
- 201 **HBO PLUS**
- 202 **HBO SIGNATURE**
- 203 **HBO FAMILY**
- 204 **HBO COMEDY**
- 205 **HBO ZONE**
- 220 **CINEMAX**
- 221 **MOREMAX**
- 222 **ACTION MAX**
- 223 **THRILLER MAX**
- 240 **SHOWTIME**
- 241 **SHOWTIME 2**
- 242 **SHOWTIME 3**
- 243 **SHOWTIME EXTREME**
- 250 **TMC**
- 251 **TMC 2**
- 260 **STARZ!**
- 261 **STARZ! 2**
- 264 **STARZ! FAMILY**
- 265 **STARZ! CINEMA**
- 299 INDEMAND PREVIEWS

- 500 INDEMAND PREVIEWS
- 501 INDEMAND I
- 502 INDEMAND II
- 591 THE HOT NETWORK
- 593 SPICE 2
- 901 SHOWCASE I
- 902 SHOWCASE II
- 903 ORIGENS
- 904 NEW RELEASES
- 905 AMERICAN ORIGINALS
- 906 SOUNDS OF THE SEASON
- 907 FOR KIDS ONLY
- 908 WORLD BEAT
- 909 BODY & SOUL
- 910 CLASSIC R&B
- 911 R&B HITS
- 912 DANCE
- 913 RAP
- 914 METAL
- 915 ALTERNATIVE ROCK
- 916 PROGRESSIVE
- 917 CLASSIC ROCK
- 918 ROCK HITS
- 919 SOFT ROCK
- 920 HIT LIST
- 921 '80s
- 922 '70s
- 923 SOLID GOLD OLDIES
- 924 TODAY'S COUNTRY
- 925 CLASSIC COUNTRY
- 926 BIG BAND
- 927 SINGERS AND STANDARDS
- 928 EASY LISTENING
- 929 CLASSICAL MASTERPIECES
- 930 LIGHT CLASSICAL
- 931 ATMOSPHERES
- 932 LIGHT JAZZ
- 933 JAZZ
- 934 BLUES
- 935 GOSPEL
- 936 CONTEMPORARY CHRISTIAN
- 937 MUSICA LATINA
- 938 TROPICAL
- 939 MEXICANA
- 940 TEJANO
- 941 FOLKLORICA
- 942 BOLEROS
- 943 INTERNATIONAL LOVE SONGS
- 944 BRAZILIAN POP
- 945 BRAZILIAN BEAT

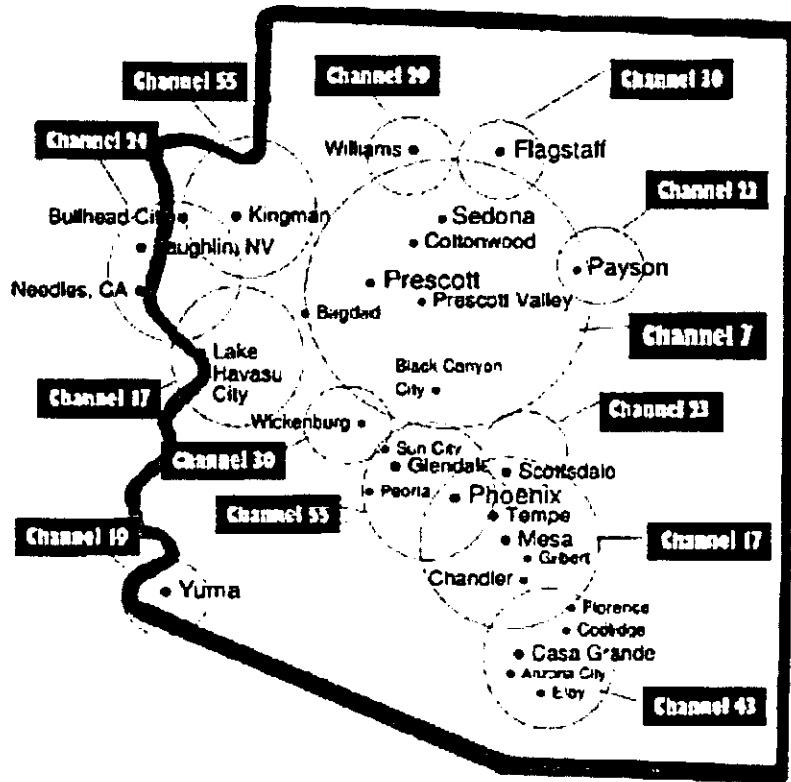


Table 4-B
MEDIA VOICES - SALT LAKE CITY MARKET
AM RADIO STATIONS

<u>Call Sign</u>	<u>Service</u>	<u>Community of License</u>	<u>Owner</u>	<u>Programming</u>
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Commercial Stations

KNRS	AM	Salt Lake City	Clear Channel	News/Talk
KALL	AM	Salt Lake City	Clear Channel	Talk
KWLW	AM	N. Salt Lake	Clear Channel	Country
KTKK	AM	Sandy	United Bcstg	News/Talk
KSVN	AM	Ogden	Azteca Bcstg	Spanish
KSOS	AM	Brigham City	First National Bcstg	Oldies
KBEE	AM	Salt Lake City	Citadel Comm Corp	Children
KFNZ	AM	Salt Lake City	Citadel Comm Corp	Sports
KOVO	AM	Provo	Great Stock Co	Spanish
KIQN	AM	Tooele	InteliQuest Media	News
KKDS	AM	S. Salt Lake	Carlson Comm Int'l	Adlt Stndrd
KSL	AM	Salt Lake City	Bonneville Int'l	News/Talk
KWUN	AM	Murray	Venture Bcstg	Sports
KDYL	AM	Salt Lake City	Simmons Media	Nostalgia
KSOP	AM	S. Salt Lake	KSOP Inc	Country
KSRR	AM	Provo	Morey, Robert H.	FullService
KLO	AM	Ogden	Webb, John	Nostalgia
KYFO	AM	Ogden	Bible Bcstg	Chrst/Span
KLLB	AM	West Jordan	United Security Fin	Gospel
KMRI	AM	W. Valley City	KMRI Radio LLC	Gospel
KSGO	AM	Centerville	Utah Spanish Radio	Spanish
KXOL	AM	Brigham City	First National Bcstg	Oldies

Non-Commercial Stations

KEYY	AM	Provo	Biblical Ministeries Worldwide	Religious
KANN	AM	Roy	Faith Comm	ChrsContemp

*Based upon data recorded in *Broadcasting and Cable Yearbook 2000, BIA Market Report 2000* and review of FCC Databases.

Table 4-C
MEDIA VOICES – SALT LAKE CITY MARKET
FM RADIO STATIONS

<u>Call Sign</u>	<u>Service</u>	<u>Community of License</u>	<u>Owner</u>	<u>Programming</u>
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Commercial Stations

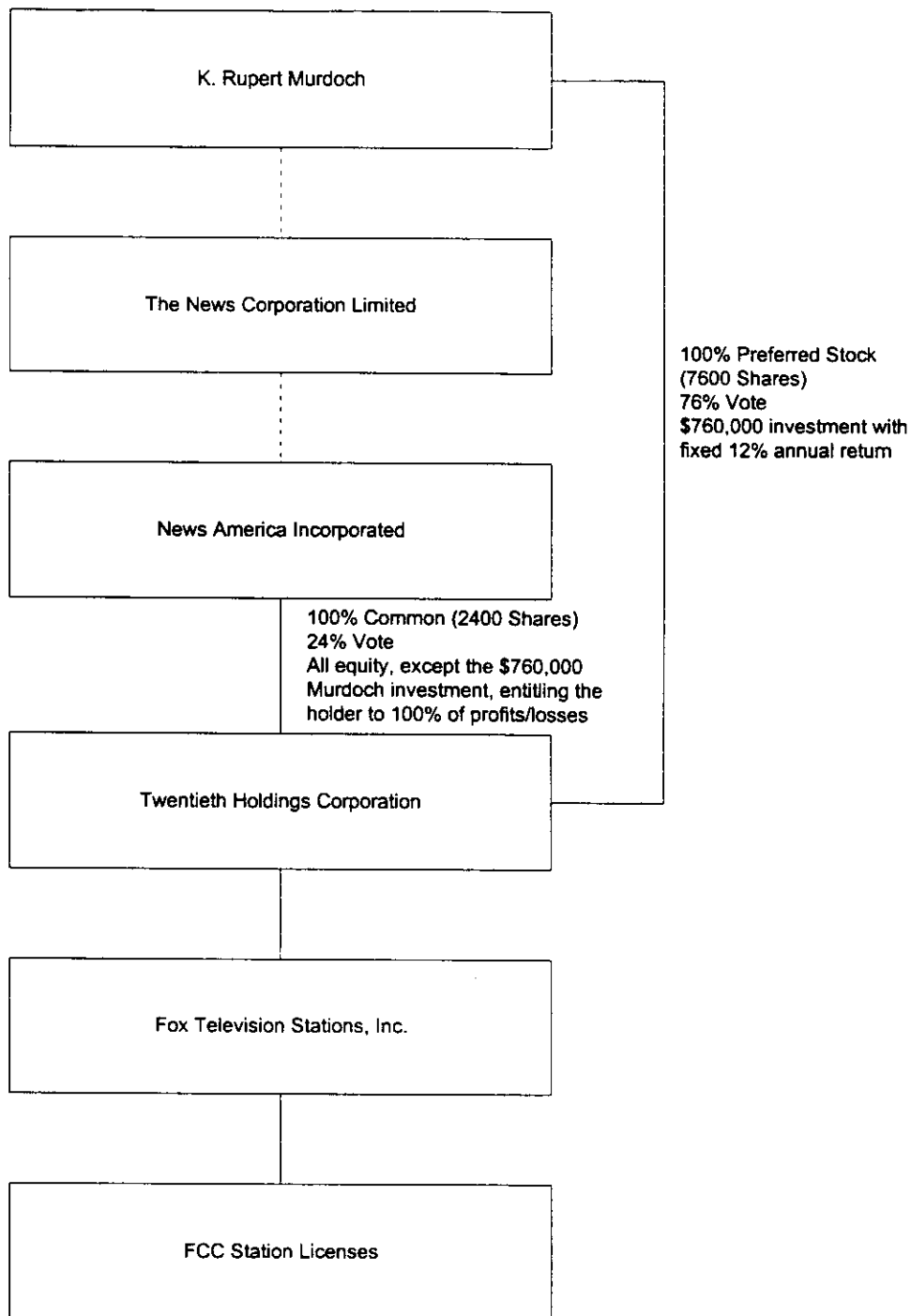
KUUU	FM	Tooele	Marathon Media	Rhyme/CHR
KSNU	FM	Roy	Marathon Media	Rhyme/Oldes
KTCE	FM	Payson	Moenkopl Comm	CHR
KUBL	FM	Salt Lake City	Citadel Comm Corp	Country
KBEE	FM	Salt Lake City	Citadel Comm Corp	AC
KBER	FM	Ogden	Citadel Comm Corp	AOR
KENZ	FM	Orem	Citadel Comm Corp	Alternative
KURR	FM	Bountiful	Clear Channel	Rock
KKAT	FM	Ogden	Clear Channel	Country
KODJ	FM	Salt Lake City	Clear Channel	Oldies
KZHT	FM	Provo	Clear Channel	CHR
KYFO	FM	Ogden	Bible Bestg	Christian
KXRK	FM	Provo	Simmons Media	Alternative
KSFI	FM	Salt Lake City	Simmons Media	Soft AC
KQMB	FM	Midvale	Simmons Media	Modern AC
KRSP	FM	Salt Lake City	Simmons Media	Clsc Rock
KBZN	FM	Ogden	Webb, John	Smooth Jazz
KSOP	FM	Salt Lake City	KSOP Inc	Country
KCPX	FM	Centerville	Trumper Comm Inc	70s Hits
KOSY	FM	Spanish Fork	Trumper Comm Inc	Soft AC
KRAR	FM	Brigham City	Trumper Comm Inc	Soft AC
KISN	FM	Salt Lake City	Trumper Comm Inc.	Hot AC

Non-Commercial Stations

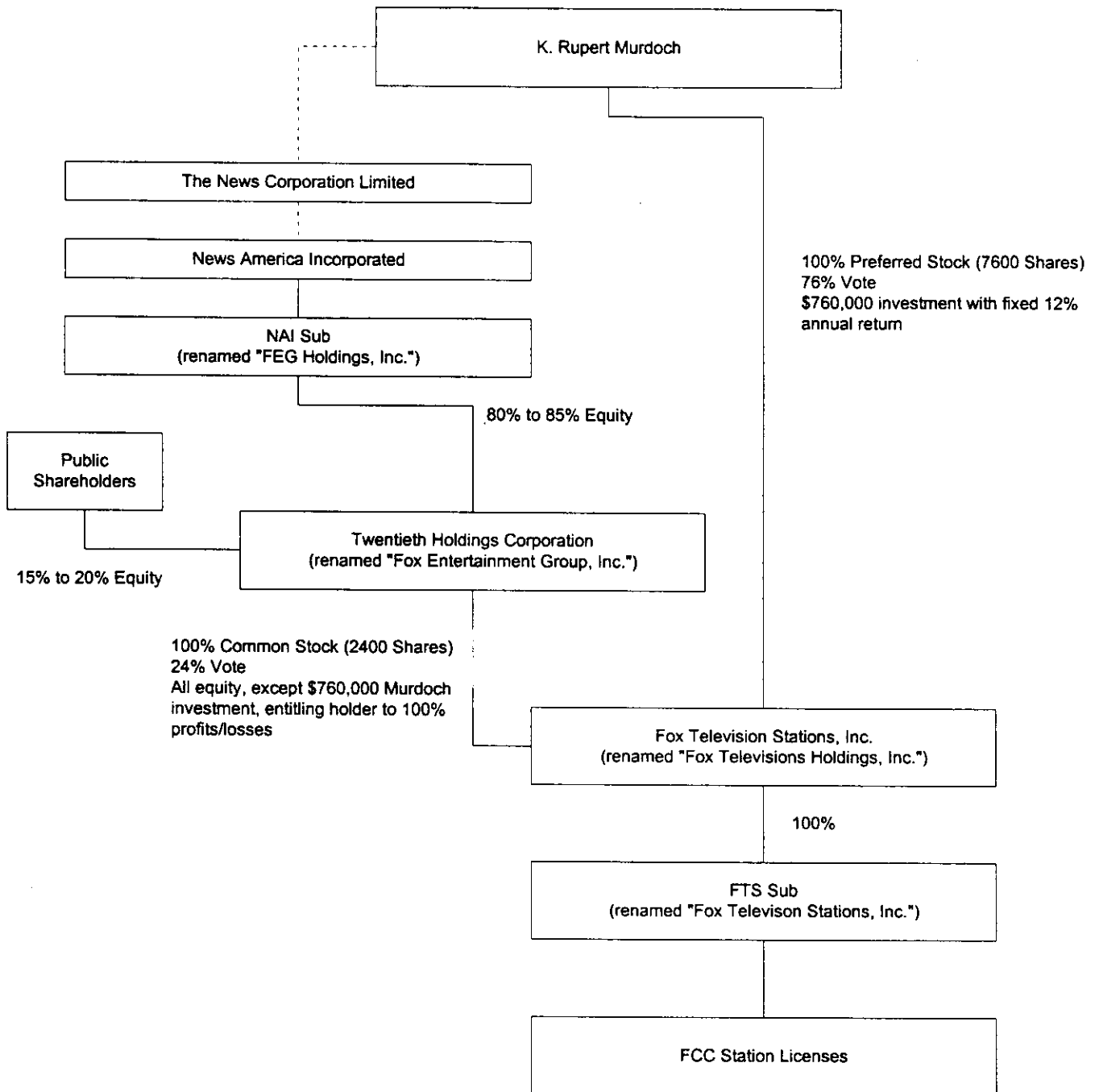
KWCR	ED-FM	Ogden	Weber State College	CHR
KOHS	ED-FM	Orem	Alpine School Dist.	Alternative
KPGR	ED-FM	Pleasant Grove	Alpine School Dist.	CHR/Educ
KBYU	ED-FM	Provo	Brigham Young Univ.	Classical
KCPW	ED-FM	Salt Lake City	Community Wireless of Park City Inc	News/Talk
KRCL	ED-FM	Salt Lake City	Listeners Community Radio of Utah	Diversified/Educ
KUER	ED-FM	Salt Lake City	University of Utah	News/Classical/Jazz
KUFR	ED-FM	Salt Lake City	Family Stations Inc	Christian Religious

*Based upon data recorded in *Broadcasting and Cable Yearbook 2000*, *BIA Market Report 2000* and review of FCC Databases.

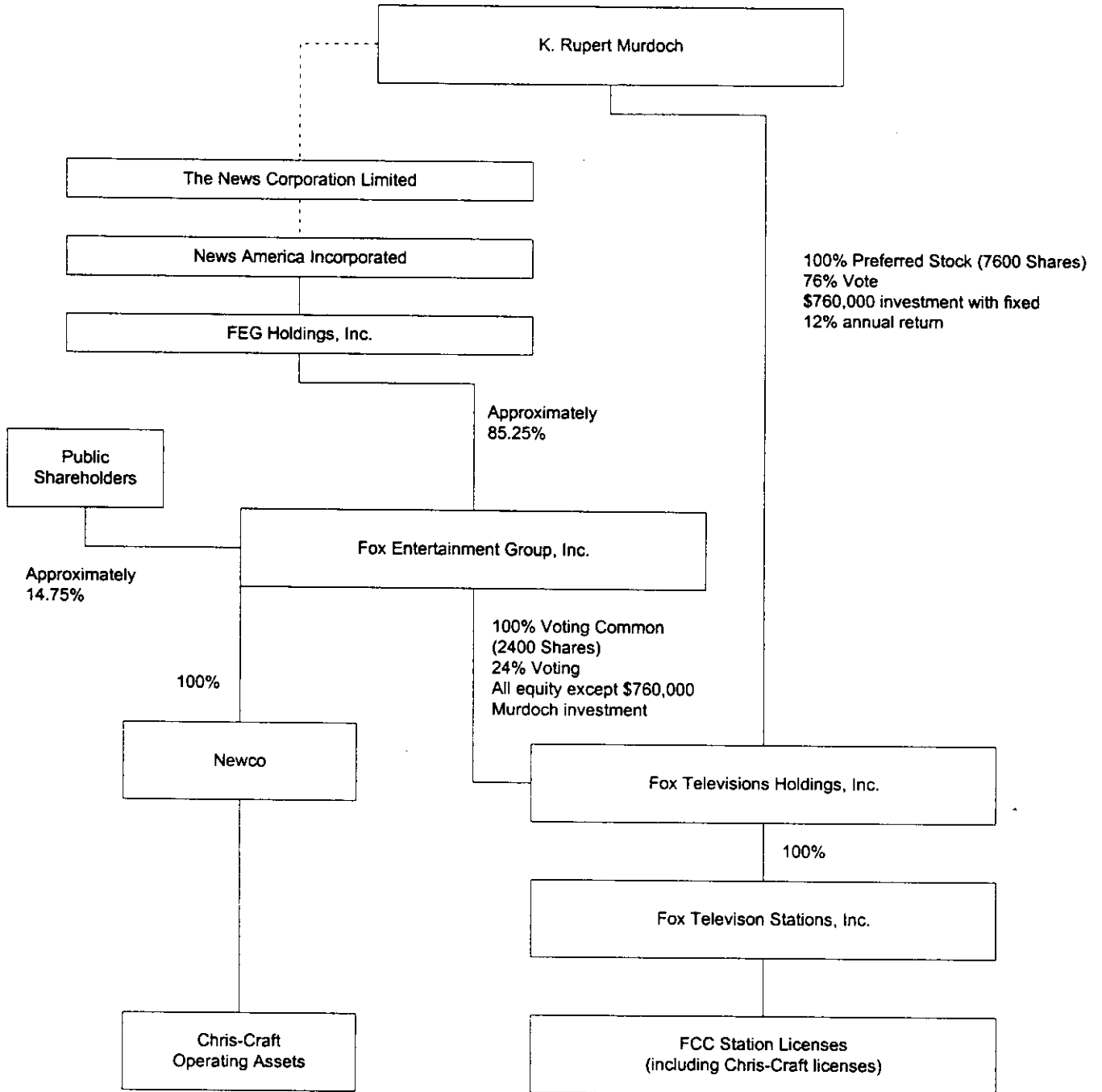
Structure Approved in 1995



Structure Approved in 1998 Following *Pro Forma* Reorganization



Proposed Structure for Chris-Craft Acquisition



CERTIFICATE OF SERVICE

I, Katherine M. Kline, hereby certify that I have this 9th day of November, 2000, mailed by First Class mail, postage prepaid, or by hand delivery, a copy of the "Joint Opposition of FTS and Chris Craft" to the following:

Christopher R. Day
Angela J. Campbell

Veronica Manahan
Emily Roskey
Jennifer Hetterly
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Georgetown University Law Center

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Katherine M. Kline

* Hand delivered