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October 27, 2000

RECEIVED  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Room TW-A325  
445 Twelfth Street, SW  
Washington, DC 20554

Re: Motion to Dismiss Application (Form 314 and 345) for Assignment of Licenses of KBHK-TV, KCOP-TV, KMOL-TV, KMSP-TV, KPTV(TV), KTVX(TV), KUTP(TV), WWOR-TV, WUTB(TV), and WRBW(TV) and associated translator stations: 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

Dear Ms. Salas:

The Office of Communication, Inc. of the United Church of Christ, Center for Media Education, Consumer Federation of America, Consumers Union, New York Metropolitan Association of the United Church of Christ, the Rainbow/PUSH Coalition, and Valley Community Access Television ("Movants"), through undersigned counsel, hereby file their Motion to Dismiss ("Motion") the above-referenced Application. A Petition to Deny the above-captioned Application is also being filed concurrently with this Petition.

An original and four (4) copies of the Motion are enclosed. Should you have any questions concerning the Petition, please do not hesitate to contact the undersigned.

Respectfully submitted,

Christopher R. Day  
Angela J. Campbell

Counsel for the Movants

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

**RECEIVED**  
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**FEDERAL COMMUNICATIONS COMMISSION**  
**OFFICE OF THE SECRETARY**

In re 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., UTV of Orlando, Inc.	)	
United Television, Inc.	)	
(Assignors)	)	
	)	
and	)	File Nos. BALCT-20000918ABB,
	)	ABC, ABD, ABF, ABK, ABL,
	)	ABM, ABN, ABU, ABY, ABG,
Fox Television Stations, Inc.	)	ABH, ABI, ABJ, ABO, ABP, ABQ,
(Assignee)	)	ABR, ABS, ABV, ABW, ABX,
	)	ABZ, ACA, ACB, ACC, ACD, ACE
	)	
For Consent to 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	)	

**MOTION TO DISMISS**

The Office of Communication, Inc. of the United Church of Christ, Black Citizens for a Fair Media, the Center for Media Education, the Consumer Federation of America, Consumers Union, the New York Metropolitan Association of the United Church of Christ, the Rainbow/PUSH Coalition, and Valley Community Access Television (“Movants”) respectfully move for immediate dismissal of the above-captioned applications for consent to assign television licenses from Chris-Craft Industries (“CCI”) to Fox Television Stations’ (“Fox”) application for license transfer on the grounds that they are incomplete.

In its application, Fox failed to disclose ownership information for its indirect parent company, News Corp., or for several News Corp. subsidiaries involved in this transaction. Specifically, Fox has not revealed the necessary corporate information for the foreign-owned subsidiary Fox Entertainment Group, which will hold the broadcast assets obtained in this transaction. Consequently, the Commission is unable to make an affirmative finding on the record as required in Sections 309 and 310 of the Communications Act of 1934<sup>1</sup> that transfer of the CCI applications to Fox is in the public interest.

The Commission may only grant station license applications if it finds that the “public interest, convenience, and necessity will be served by the granting of such application.”<sup>2</sup> Similarly, no station license may be directly or indirectly transferred or assigned—nor may control of a corporation holding such license be transferred—to any person unless the Commission finds, based upon an adequate record, that approval of the application serves “the public interest, convenience and necessity.”<sup>3</sup> Where the application involves the transfer of a broadcast license to “any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens,” the license transfer will not be granted if the Commission makes an informed finding based on an adequate record “that the public interest will be served by the refusal or revocation of such license.”<sup>4</sup>

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<sup>1</sup>47 U.S.C. §§ 309-310 (1994).

<sup>2</sup>*Id.* at § 309(a).

<sup>3</sup>*Id.* at § 310(d).

<sup>4</sup>*Id.* at § 310(b).

In interpreting Section 310(b), the Commission has held that “the statutory policy is clear: foreign ownership above a certain level is of concern and must be scrutinized by the Commission.”<sup>5</sup> That scrutiny is triggered when an application involves a transfer of a broadcast license to an entity in which foreign ownership is 25% or higher.<sup>6</sup> Section 310(b)(4) gives the Commission a certain amount of discretion with respect to alien ownership in excess of the 25% benchmark because the Commission is allowed to approve a transaction found to be in the public interest.<sup>7</sup> However, “[i]f the Commission is to exercise its discretion in any meaningful way, it must be alerted to the fact that such discretion is at issue, and [be] given sufficient facts upon which to make the case-by-case analysis required.”<sup>8</sup>

**I. Fox’s Application Omits Required Information Necessary for the Commission to Make a Public Interest Determination**

In this proceeding, News Corp., an Australian corporation, through its subsidiaries, is seeking prior Commission consent for the voluntary transfer of CCI’s broadcast licenses first to one subsidiary of News Corp. and then to another subsidiary of News Corp. To avoid having CCI’s stockholders pay U.S. capital gains taxes, the parties have entered into three separate “Agreement and Plan of Merger” contracts. Each contract sets forth and requires that certain ownership changes be consummated in a particular sequence.<sup>9</sup>

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<sup>5</sup>*Fox Television Stations, Inc.*, 10 FCC Rcd 8452, 8475 (1995) [hereinafter *Fox I*].

<sup>6</sup>47 U.S.C. § 310(b)(4).

<sup>7</sup>*Fox I*, 10 FCC Rcd at 8474.

<sup>8</sup>*Id.* at 8474-8475.

<sup>9</sup>The lead contract was entered into by and among CCI; News Corp.; News Publishing Australia Limited (“NPAL”), a Delaware corporation and indirect wholly owned subsidiary of

At the end of this complex merger process, the licenses formerly held by CCI and its subsidiaries are to be held by Fox Television Stations (“FTS”).<sup>10</sup> Meanwhile, the assets of the broadcast stations formerly held by CCI and its subsidiaries will be held by Fox Entertainment Group (“FEG”).<sup>11</sup> Fox identifies the officers and directors of FTS and states that Fox Television Holdings (“FTH”) is the direct parent of FTS, holding 100% of the equity interests, including 100% of the voting interests.<sup>12</sup>

The application also lists the officers and directors of FTH and represents that K. Rupert Murdoch, a United States citizen, has less than a 1% equity ownership interest in FTH but holds

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News Corp., as “Acquisition Sub”; and Fox Television Holdings, Inc. (“FTH”). *Fox App.*, Section II, Ques. 3, Ex. III, “Chris-Craft/News Corp. Agreement” at 1-2. Under the CCI/News Corp. Agreement, subject to the prior consent of the Commission, Chris-Craft is to merge “with and into” NPAL. *Id.*

As the second sequenced step in the overall transaction, a second “Agreement and Plan of Merger” was entered into by and among BHC Communications Inc. (“BHC”), a Delaware corporation and direct, wholly owned subsidiary of CCI, News Corp.; NPAL as “Acquisition Sub”; and FTH. *Fox App.*, Section II, Ques. 3, Ex. III, “BHC/News Corp. Agreement” at 1-2. Under the BHC/News Corp. Agreement, subject to the prior consent of the Commission and to the prior consummation of the CCI/News Corp Agreement, BHC is to merge “with and into” NPAL. Such merger is referred to as the “BHC Merger.” *Id.*

In the third and last of the sequenced transactions in the overall transaction, a third “Agreement and Plan of Merger” was entered into by and among United Television, Inc. (“UTV”), a Delaware corporation and direct, wholly owned subsidiary of CCI; News Corp. NPAL as “Acquisition Sub,” and FTH. *Fox App.*, Section II, Ques. 3, Ex. III, “UTV/News Corp. Agreement” at 1-2. Under the UTV/News Corp. agreement, subject to the prior consent of the Commission and to the prior consummation of the CCI/News Corp. and BHC/News Corp. Agreements, UTV is to merge “with and into” NPAL. Such merger is referred to as the “UTV Merger.” *Id.*

<sup>10</sup> *Fox App.* Section III, Ques. 3, Ex. 1 at 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Fox App.*, Section III, Ques. 4, Ex. 2 at 3.

a 76% voting interest in the corporation.<sup>13</sup> FEG, which ultimately will receive all the broadcast assets acquired from CCI and its subsidiaries,<sup>14</sup> holds the balance of the ownership (more than 99%) and voting (24%) interests in FTH.<sup>15</sup> However, Fox does not list the owners, officers, or directors of FEG, which indirectly holds the vast majority of the equity in FTS. Further, Fox's application states that 82% of FEG is indirectly owned by News Corp., and the remaining 18% is publicly traded.<sup>16</sup> However, the application omits the officers, directors, and shareholders of News Corp. Thus, nothing is known about the ownership of the foreign corporation that will receive all the broadcast assets from the proposed transaction.

Movants submit that without this information, the Commission is precluded from exercising its discretion under Section 310(b)(4) "in any meaningful way"<sup>17</sup> to determine whether a foreign entity is actually in control or exerting undue influence and, in turn, whether the application serves the public interest.

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

<sup>14</sup> *Fox App.*, Section III, Ques. 3, Ex. 1 at 2. According to Fox, "[a]t the effective time of the mergers, NPAL [the "Acquisition Sub" that will have acquired the assets of CCI and its subsidiaries], through intermediate subsidiaries, will contribute predominately all the acquire broadcast assets to [FEG]." *Id.*

<sup>15</sup> *Fox App.*, Section III, Ques. 4, Ex. 2 at 5.

<sup>16</sup> *Fox App.*, Section III, Ques. 9, Ex. 5 at 2. Fox's application notes that "[b]ecause shareholders of the Chris-Craft entities will receive shares of News Corp. stock, [FEG] will issue additional shares upstream to a News Corp. subsidiary and News Corp.'s indirect ownership of [FEG] is expected to increase to approximately 85.25 percent, well below the 99 percent level approved by the Commission in 1995." *Id.* at 3 n.2.

<sup>17</sup>*Fox I*, 10 FCC Rcd at 8474.

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## II. Omitted Foreign Ownership Interest is Crucial to the Commission's Public Interest Determination

The foreign ownership limitations of Section 310(b) reflect Congress' desire to "safeguard the United States from foreign influence' in the field of broadcasting."<sup>18</sup> Given this Congressional concern and the fact that Fox has substantially exceeded the foreign ownership benchmark, it is impossible to see how the Commission could determine whether this transaction could result in undue foreign influence without knowing the identities of the foreign owners, officers, and directors involved in this transaction.

Full ownership information is also needed because the Commission's Application Form 314 requires the proposed assignee to make a variety of character-related certifications with respect to itself and to all "parties" to its portion of the application.<sup>19</sup> If character matters with respect to the assignee, surely it should matter with respect to an alien owner which has a more than 99% direct or indirect ownership interest in the assignee.

For example, if there were an adverse final action taken against this proposed assignee by any court or administrative body in a civil or criminal proceeding brought under any law related to any felony, mass media-related antitrust or unfair competition, fraudulent statements to another governmental unit or discrimination, the Commission would want to know about it in

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<sup>18</sup>*Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended*, 103 FCC 2d 511, 516-17 (1985).

<sup>19</sup>*See, e.g., Fox App.*, Section III, Ques. 7 ("Character Issues"), 8 ("Adverse Findings") and 13 ("Anti-Drug Abuse Act Certification").

detail.<sup>20</sup> Given that the Commission has already held that control by a foreign corporation and/or foreign ownership above a certain amount *per se* raises a public interest "concern" under Section 310(b)(4) of the Communications Act,<sup>21</sup> the past conduct (of the types identified in Question No. 8) by foreign owners of more than 99% of the equity held directly or indirectly in the proposed assignee is surely material to the public interest determination required under the same Section of the Communications Act.

The Commission needs to be particularly concerned about the character qualifications of corporate owners where, as here, the rights of the United States citizen who will have voting "control" of the Television Stations are apparently subject to termination ("redemption") by those foreign owners for any reason, or for no reason at all.<sup>22</sup> Depending upon the terms and conditions for such redemption, Mr. Murdoch's voting "authority" may be real or illusory, permanent or only transitory. The fact that a transfer of control caused by such "redemption" may be effectuated only with the prior approval of the Commission is not responsive to the inherent concern that the alien owners of 99% of the company can manipulate the conduct of the United

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<sup>20</sup>*Fox App.*, Section III, Ques. 8. See generally, *Policy Regarding Character Qualification in Broadcast Licensing*, 102 FCC 2d 1179 (1986), *recon. denied*, 1 FCC Rcd 421 (1986), *modified*, 5 FCC Rcd 352 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991).

<sup>21</sup>*Fox I*, 10 FCC Rcd at 8475.

<sup>22</sup>*Fox I*, 10 FCC Rcd at 8513, 8520. The Commission found in *Fox I* that auditor documents showing that "two thirds of [Fox's] common shares may at any time vote to redeem the preferred shares" did not raise a substantial question of fact as to the question of operational control of FTH. However, in its recently revised Attribution rules, the Commission changed the factors used to determine corporate ownership and retained the "discretion to review individual cases that present unusual issues . . . where it would serve the public interest." *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, MM Dkt. 94-150, 14 FCC Rcd 12,559, 12581 (1999).

States citizen simply by threatening to redeem his voting stock at a nominal cost relative to the overall worth of the company, thereby injecting the “foreign influence” feared by Congress.

Accordingly, Fox should have disclosed all ownership information up the chain of ownership from FTH. Further, Fox should have answered all Section III questions as applied separately not only to each of FTS and FTH (and their respective officers and directors) and Mr. Murdoch, but also to each of News Corp., FEG, any other News Corp. subsidiaries involved in this transaction, and each corporation’s respective officers, directors and stockholders.

Fox’s failure to disclose all of this information also raises questions of candor.<sup>23</sup> Under Commission Rule 1.17, an applicant must not make any “willful material omission bearing on any matter within the jurisdiction of the Commission.”<sup>24</sup> The Commission noted in its 1995 decision finding Fox under alien control,

[a] licensee’s duty of candor is critical given the FCC’s many duties . . . . As a result, the Commission must rely heavily on the completeness and accuracy of the submissions made to it, and its applicants in turn have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate.<sup>25</sup>

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<sup>23</sup>A question of candor is also raised by inconsistencies between ownership information presented in the application and information Fox previously filed with the Commission. Exhibits 2 and 5 to Fox’s portion of the application lead the reader to believe the 7,600 shares of redeemable preferred stock owned by Mr. Murdoch are “voting.” *Fox App.*, Section III, Ques. 4, Ex. 2 at 3; Section III, Ques. 9, Ex. 5 at 1. However, Fox’s Ownership Report dated August 25, 1999, and filed with the Commission on behalf of FTH represents that those shares are “nonvoting.” *FCC Form 323, Ownership Report*, Ques. 10 (Aug. 25, 1999).

<sup>24</sup>47 U.S.C. § 1.17.

<sup>25</sup> *Fox I*, 10 FCC Rcd at 8478. Although the Commission held that Fox was under alien ownership in excess of the 25% benchmark established in Section 310(b)(4), the Commission later approved Fox’s corporate structure on the grounds that such approval served the public interest. *Fox Television Stations, Inc.*, 11 FCC Rcd 5714, 5728 (1995) [hereinafter *Fox II*].

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All Commission licensees are aware of their duty to be candid. In particular, Fox was on notice that it must fully disclose all information about its ownership structure because it had participated in two prior proceedings to determine whether its ownership structure complied with the Communication Act's alien ownership limits. Thus, Fox's failure to provide full information is especially troubling.

Fox asserts that ownership structure proposed in the transaction "maintains the ownership structure and level of alien ownership . . . previously approved by the Commission" in the Commission's 1995 decisions, *Fox I* and *Fox II*.<sup>26</sup> However, Fox's reliance on these past determinations is misplaced. Under the recently revised Attribution rules, the Commission has the "discretion to review individual cases that present unusual issues . . . where it would serve the public interest."<sup>27</sup> Therefore, the Commission must affirmatively determine that this new application complies under its new attribution policy. Without a complete and current record before it, the Commission cannot, as a matter of law, make the requisite finding that granting the application serves the public interest.

Because Fox's application is materially incomplete and contains inconsistent information, the Commission is not able to make the public interest findings required under Sections 309 and

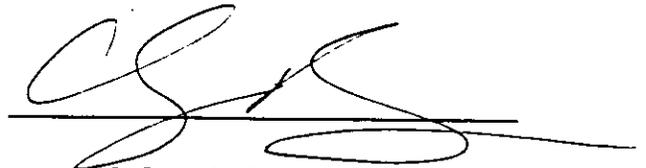
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<sup>26</sup>*Fox App.*, Section III, Ques. 9, Ex. 5 at 3 (footnote omitted). In 1995, the Commission approved News Corp.'s ownership of more than 99% of the equity of FTH on the grounds that "the unique equities of this case support a determination to approve [Fox's] ownership structure." *Fox II*, 11 FCC Rcd at 5728.

<sup>27</sup>*Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 14 FCC Rcd 12,559, 12581 (1999).

310 of the Communications Act. Movants, therefore, respectfully move for immediate dismissal of Fox's application.

Respectfully Submitted,



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October 27, 2000

Counsel for Movants

CERTIFICATE OF SERVICE

I, Martha Rodriguez, hereby certify that I have this 27<sup>th</sup> day of October, 2000, mailed by First Class mail, postage prepaid, a copy of the "Motion to Dismiss" to the following:

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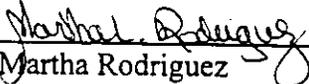
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