May 17, 2001

VIA HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte Communication: DA 00-2246
Fox Television Stations, Inc. Applications for Assignment of Broadcast Licenses and Assets of Chris-Craft Industries, Inc.
File Nos. BALCT-20000918ABB-ABD; BALCT-20000918ABF-ABS;
BALCT-20000918ABU-ABZ; BALCT20000918ACA-ACE

Dear Ms. Salas:

On May 10, 2001, The News Corporation Limited ("News Corporation") and Fox Television Stations, Inc. ("Fox") filed an ex parte letter with the Commission that appears to shift the grounds on which News Corporation and Fox are seeking a further waiver of Newspaper/Broadcast Cross-Ownership Rule. Petitioners, through undersigned counsel, wish to briefly respond to these new issues.

- Over the course of this proceeding, News Corporation and Fox’s rationale for seeking another waiver of the Newspaper/Cross-Ownership Rule ("Rule") has undergone a metamorphosis. In their original application, News Corporation and Fox claimed that failure to grant a second waiver of the Rule would likely result in the demise of the Post.¹ Now, with the clear existence of at least one other

¹See Fox App. Ex. No. 4 at 35 ("Indeed, preventing Mr. Murdoch’s creation of a duopoly in New York could result in the demise of the New York Post. Surely the public interest would not be served by forcing divestiture and thereby threatening the survival of the Post. . . .") (emphasis added).
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purchaser, News Corporation and Fox have shifted their waiver argument to state  
that "it is very unlikely that [News Corporation] could obtain a fair price for the  
Post from an entity with the strength to avoid yet another bankruptcy or closure of  
of the Post."  

Not surprisingly, no basis or evidence is provided to support their latest assertion.

- Fox and News Corporation further state that "any proposed purchase price for the  
Post in fairness must be based upon the substantial investment made by News  
Corp in reliance on the permanent waiver granted by the Commission in 1993."  
This statement is factually and legally illogical for two reasons. First, the  
 purported "crisis" involving the future of the Post has been caused wholly by the  
insatiable appetite of News Corporation and Fox to absorb a second television  
station in New York City, and not any change in Fox's existing 1993 waiver or  
Commission rules or policy. Second, it is important to note that it is not the  
Commission's legal responsibility to ensure that News Corporation receives a  
profitable return on its apparent investments in the Post.  

The Commission's responsibility is to enforce its rules. In the instant case, the Commission should  
do this by granting, at most, a short-term waiver to divest either the Post or  
WWOR.

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2Letter from William S. Reyner, Jr. to Magalie Roman Salas, Secretary, Federal  

3Id.

(D.D.C.) ("Plaintiffs, by virtue of their participation in a comprehensively regulated industry, can  
hardly claim 'distinct investment-backed expectations.' The only reasonable expectation in such  
a heavily regulated field is that Congress would continue to regulate and that the rules were  
subject to change if necessary.") (citing Connolly v. Pension Benefit Guaranty Corp., 475 U.S.  
211, 224-25 (1986) and Penn Central Transportation Co. v. New York City, 438 U.S. 102, 124  
(1978)); see also FCC v. WJR, The Goodwill Station, Inc., 337 U.S. 265, 272 (1949) (stating that  
a Petitioner has no vested right in the "suppositional eventualities" of what the Commission may  
do at some time in the future)

5On May 11, 2001, Fox and News Corporation filed a letter with the Commission in  
which they argued for a two-year temporary waiver of the rule. See Letter from Maureen A.  
O'Connell to Magalie Roman Salas, Secretary, Federal Communications Commission, at 3 (filed  
May 11, 2001). The request ignores recent Commission precedent in which only twelve month  
waivers have been granted. See, e.g., Chancellor Media/Shamrock Radio Licenses, LLC, 15  
FCC Rcd 17053 (2000); Stauffer Amarillo Radio Trust, 11 FCC Rcd 14865 (1996); WHOA-TV,
Notwithstanding News Corporation's May 10, 2001 explanation (notable for both its length and lack of substantive information), the fact remains that necessary and relevant financial information was not provided in response to the Commission's April 3, 2001, request. The Commission specifically requested that News Corporation provide accompanying explanations for any financial information that was filed. Such explanation was conspicuously absent from News Corporation's second set of financial materials. Moreover, despite News Corporation's claims to the contrary, the operating losses of the Post are not the "fundamental issue before the Commission." The fundamental issue before the Commission is the applicability of a waiver in the instant transaction. One of the factors in making this determination is the overall financial viability of the Post. The operating losses incurred by the Post are but one of many indicia of financial viability of the Post. Petitioners' contention remains that in the absence of the information requested by the Commission on April 3, 2001, no record can be established regarding the overall financial situation of the Post.

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In light of the continued failure of Fox and News Corporation to provide information sufficient to justify a further waiver of the Newspaper/Broadcast Cross-Ownership Rule, the Commission must either deny Fox's application to acquire the broadcast license of WWOR, or definitively order the divestiture of the Post through issuance of a short-term waiver.

Respectfully submitted,

Christopher R. Day
Angela J. Campbell

Counsel for the Petitioners

_In re_ News Corporation, 11 FCC Rcd 20041 (1996); _Multimedia, Inc.,_ 11 FCC Rcd 4883 (1995). The single exception in the last ten years involved a grandfathered combination. _See Stauffer Communications, Inc.,_ 10 FCC Rcd 5165, ¶ 7 (1995) (pointing out that the combination in question "has existed for several years"). Furthermore, it is important to note that the proposed combination of WWOR, WNYW and the Post involves a type of combination for which the Commission has never issued a waiver of the Newspaper/Broadcast Cross-Ownership Rule.