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May 17, 2001

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**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*.<sup>1</sup> Now, with the clear existence of at least one other

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<sup>1</sup>See *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).

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 the *Post*."<sup>2</sup> 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."<sup>3</sup> 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*.<sup>4</sup> 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.<sup>5</sup>

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<sup>2</sup>Letter from William S. Reyner, Jr. to Magalie Roman Salas, Secretary, Federal Communications Commission at 1 (dated May 4, 2001, filed May 10, 2001).

<sup>3</sup>*Id.*

<sup>4</sup>*See Transohio Sav. Bank v. Director, Office of Thrift Supervision*, 1991 WL 201178, \*9 (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 "suppositious eventualities" of what the Commission may do at some time in the future)

<sup>5</sup>On 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*,

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- 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*.

\* \* \* \*

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

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*Inc.*, 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.

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cc: Chairman Michael K. Powell  
Commissioner Harold Furchtgott-Roth  
Commissioner Susan Ness  
Commissioner Gloria Tristani  
Roy J. Stewart, Chief, MMB  
Barbara A. Kreisman, MMB  
David Roberts, MMB  
David Brown, MMB  
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