May 7, 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 behalf of the Office of Communication, Inc. of the United Church of Christ, Academy of Latino Leaders In Action, Black Citizens for a Fair Media, Center for Media Education, Consumer Federation of America, Consumers Union, New York Metropolitan Association of the United Church of Christ, Rainbow/PUSH Coalition and Valley Community Access Television ("Petitioners"), attached please find copies of a written ex parte presentation concerning the above-referenced proceeding that was forwarded to the legal advisors of Chairman Powell and Commissioners Furchtgott-Roth, Ness and Tristani on May 7, 2001.

In compliance with the Commission’s rules regarding ex parte communications, an original and one (1) copy of this letter is being filed with the Commission Secretary. Should you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,

Christopher R. Day
Angela J. Campbell

Counsel for the Petitioners
cc: Susan Eid, Office of Chairman Powell (w/o attach.)
    William J. Friedman, Office of Commissioner Tristani (w/o attach.)
    Ben Golant, Office of Commissioner Furchtgott-Roth (w/o attach.)
    Mark Schneider, Office of Commissioner Ness (w/o attach.)
    David Goodfriend, Office of Commissioner Ness (w/o attach.)
    Barbara Kreisman, MMB
    David Roberts, MMB
    David Brown, MMB
    James R. Bird, OGC
    John C. Quale
    William S. Reyner, Jr.
    Marvin J. Diamond
May 7, 2001

VIA HAND DELIVERY

Susan Eid
Office of Chairman Michael Powell
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte Communication: DA 00-2246
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File Nos. BALCT-20000918ABB-ABD; BALCT-20000918ABF-ABS;
BALCT-20000918ABU-ABZ; BALCT-20000918ACA-ACE

Dear Ms. Eid:

On behalf of the Office of Communication, Inc. of the United Church of Christ, Academy of Latino Leaders in Action, Black Citizens for a Fair Media, Center for Media Education, Consumer Federation of America, Consumers Union, New York Metropolitan Association of the United Church of Christ, Rainbow/PUSH Coalition and Valley Community Access Television ("Petitioners"), attached please find a response to The News Corporation Limited’s ("News Corporation") April 18, 2001, ex parte filing. Also attached is a chart detailing Fox Television Stations, Inc. and News Corporation’s failure to make the showings required for a second waiver of the Newspaper/Broadcast Cross-Ownership Rule.

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Respectfully submitted,

Christopher R. Day
Angela J. Campbell
Counsel for the Petitioners

Attachments
May 7, 2001

VIA HAND DELIVERY

William J. Friedman
Office of Commissioner Tristani
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte Communication: DA 00-2246
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BALCT-20000918ABU-ABZ; BALCT-20000918ACA-ACE

Dear Mr. Friedman:

On behalf of the Office of Communication, Inc. of the United Church of Christ, Academy of Latino Leaders in Action, Black Citizens for a Fair Media, Center for Media Education, Consumer Federation of America, Consumers Union, New York Metropolitan Association of the United Church of Christ, Rainbow/PUSH Coalition and Valley Community Access Television ("Petitioners"), attached please find a response to The News Corporation Limited’s ("News Corporation") April 18, 2001, ex parte filing. Also attached is a chart detailing Fox Television Stations, Inc. and News Corporation’s failure to make the showings required for a second waiver of the Newspaper/Broadcast Cross-Ownership Rule.

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Christopher R. Day
Angela J. Campbell

Counsel for the Petitioners

Attachments
May 7, 2001

VIA HAND DELIVERY

Ben Golant
Office of Commissioner Furchtgott-Roth
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte Communication: DA 00-2246
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File Nos. BALCT-20000918ABB-ABD; BALCT-20000918ABF-ABS;
BALCT-20000918ABU-ABZ; BALCT-20000918ACA-ACE

Dear Mr. Golant:

On behalf of the Office of Communication, Inc. of the United Church of Christ, Academy of Latino Leaders in Action, Black Citizens for a Fair Media, Center for Media Education, Consumer Federation of America, Consumers Union, New York Metropolitan Association of the United Church of Christ, Rainbow/PUSH Coalition and Valley Community Access Television ("Petitioners"), attached please find a response to The News Corporation Limited's ("News Corporation") April 18, 2001, ex parte filing. Also attached is a chart detailing Fox Television Stations, Inc. and News Corporation's failure to make the showings required for a second waiver of the Newspaper/Broadcast Cross-Ownership Rule.

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Angela J. Campbell

Counsel for the Petitioners

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May 7, 2001

VIA HAND DELIVERY

David Goodfriend
Office of Commissioner Ness
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte Communication: DA 00-2246
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BALCT-20000918ABU-ABZ; BALCT-20000918ACA-ACE

Dear Mr. Goodfriend:

On behalf of the Office of Communication, Inc. of the United Church of Christ, Academy of Latino Leaders in Action, Black Citizens for a Fair Media, Center for Media Education, Consumer Federation of America, Consumers Union, New York Metropolitan Association of the United Church of Christ, Rainbow/PUSH Coalition and Valley Community Access Television ("Petitioners"), attached please find a response to The News Corporation Limited’s ("News Corporation") April 18, 2001, ex parte filing. Also attached is a chart detailing Fox Television Stations, Inc. and News Corporation’s failure to make the showings required for a second waiver of the Newspaper/Broadcast Cross-Ownership Rule.

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Respectfully submitted,

Christopher R. Day
Angela J. Campbell

Counsel for the Petitioners

600 New Jersey Avenue NW Suite 312 Washington DC 20001-2015
May 7, 2001

Mark Schneider
Office of Commissioner Ness
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; BALCT-20000918ACA-ACE

Dear Mr. Schneider:

On behalf of the Office of Communication, Inc. of the United Church of Christ, Academy of Latino Leaders in Action, Black Citizens for a Fair Media, Center for Media Education, Consumer Federation of America, Consumers Union, New York Metropolitan Association of the United Church of Christ, Rainbow/PUSH Coalition and Valley Community Access Television ("Petitioners"), attached please find a response to The News Corporation Limited’s ("News Corporation") April 18, 2001, ex parte filing. Also attached is a chart detailing Fox Television Stations, Inc. and News Corporation’s failure to make the showings required for a second waiver of the Newspaper/Broadcast Cross-Ownership Rule.

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Angela J. Campbell

Counsel for the Petitioners

Attachments
Responses to Fox and Chris-Craft’s April 18, 2001 Ex Parte Filing

1. Fox/Chris-Craft Contention:

"The Post’s situation is unique – no other cross-owner has similar equities warranting interim relief. News Corp. is the only newspaper/broadcast cross-owner whose cross-ownership is not the result of grandfathering. Instead the Commission granted News Corp a permanent waiver, making an affirmative finding that News Corp’s common ownership of a newspaper and a broadcast station in New York would serve the public interest."

Petitioners’ Response:

Fox and Chris-Craft’s claim that "News Corp is the only newspaper/broadcast cross-owner whose cross-ownership is not the result of grandfathering" is patently false. In fact, there have been four cases where permanent waivers of the newspaper/broadcast cross-ownership rule have been granted.1 However, all of these cases involved very fact-specific situations involving a failing broadcast or newspaper entity where no other purchaser was available, much like the Post’s situation in 1993. The situation in 1993 was radically different that the situation now, where at least one other purchaser exists for the Post. Accordingly, any findings made in 1993 are inapplicable to the current situation.

2. Fox/Chris-Craft Contention:

"The Commission has now had almost eight years of experience with this cross-ownership, and the record indicates no harm to competition or diversity in the New York market. Rather the record indicates that the Post is a fierce competitor.

Petitioners’ Response:

The Commission has had no experience with a waiver of the Rule that would allow a common owner to control two powerful VHF television stations and a major daily newspaper in one market. Such a combination would result in the loss of one major independent broadcast voice in New York.

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3. **Fox/Chris-Craft Contention**

"Requiring News Corp to divest the Post would jeopardize the stability and continued development of the newspaper as an alternate news source without producing any countervailing public interest benefits. For example, a divestiture order would make it difficult for the Post to retain key employees in the highly competitive New York Market. When the Commission forced News Corp to divest the Post fifteen years ago, the newspaper ended up in bankruptcy, losing many of its readers, advertisers and key employees. In this difficult advertising market, the newspaper should not again be placed in such a precarious position and New York should not be threatened with the loss of one of its major dailies."

**Petitioners' Response:**

Any order requiring compliance with the Newspaper/Broadcast Cross-Ownership Rule would not jeopardize the future of the Post. In 1993, when the last waiver was granted, a bankruptcy court made the determination that no other party was willing to purchase the Post other than News Corporation. In the instant case, Fox and News Corporation have not submitted financial information showing the paper is in imminent danger of bankruptcy or closure. Furthermore, at least one other highly qualified purchaser has come forward and stated that they have a strong interest in acquiring the Post. It is also highly probable that other potential purchasers would come forward in the event of a sale. Accordingly, any Commission order requiring compliance with the Rule will not result in the "loss" of the Post as Fox and Chris-Craft claim.

4. **Fox/Chris-Craft Contention:**

"As detailed in the Confidential Amendment filed April 9, 2001, despite News Corp's significant investment in the Post during the past 7 years the Post continues to incur losses."

**Petitioners' Response:**

On April 3, 2001, the Commission directed Fox and News Corporation to file "any available, independently audited certified financial statements" or "similarly probative statements" accompanied by "an explanation and analysis of their contents by a properly qualified expert." Fox and News Corporation did not comply with these directives. Instead of submitting an audited balance sheet, Fox and News Corporation submitted an unaudited "Statement of Operations," which does not detail any of the Post assets, and does not describe any of the Post's purported liabilities. In the absence of independently audited balance sheets that show the full financial situation of the Post, it is impossible for the Commission to make any record determination as to the financial condition of the Post.
5. **Fox/Chris-Craft Contention:**

"The Commission is on the verge of starting a rulemaking to examine whether there are situations, given the size of the market and size and type of the newspaper and television station, where this rule should be relaxed. What market – New York, the largest media market in the country – and what newspaper – the Post, which ranks only fifth among New York newspapers in terms of advertising and circulation – better illustrates why the Commission should relax the rule.

**Petitioners' Response:**

As of now, the Newspaper/Broadcast Cross-Ownership Rule is in force, and should be enforced. As the Commission clearly stated in *Renaissance II*, "it should now be clear that the mere initiation of a proceeding stating that the rule would be examined, or merely the fact that such a proceeding was on the horizon, would not be sufficient to warrant an interim waiver." To the extent that Fox and Chris-Craft wish to make policy arguments against the Rule, the appropriate time would be in the context of any proceeding reexamining that Rule, not in this proceeding.

6. **Fox/Chris-Craft Contention:**

"As set forth in detail in the Application, the New York City media marketplace has become even more competitive since the grant of the permanent waiver in 1993.

**Petitioners' Response.**

In 1993, the New York Arbitron Radio Metro market was served by 52 radio stations owned by 37 independent owners. In 2000, the New York Arbitron Metro market had 74 radio stations owned by only 34 independent owners. Even with a huge increase in the actual number of radio stations, the number of diverse owners has actually decreased.

WNYW has a Local Commercial Share of 12% in 1999. WWOR-TV had a Local Commercial Share of 11% in 1999. If this transaction is approved, Fox and News Corporation will control more of the New York television market than any other competitor.

Furthermore, since 1993, one of the Post's major newspaper competitors, Newsday, has closed its New York offices and has ceased publication of *New York Newsday.*

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7. **Fox/Chris-Craft Contention:**

"The Tribune Company, which owns Channel 11 in New York, has recently purchased Newsday, which ranks 3rd in terms of coverage and 2nd in terms of advertising dollars in the New York DMA. Because the cross-ownership rule is not triggered by a TV station's purchase [sic] a newspaper, Tribune has obtained de facto interim relief. Tribune's newspaper cross-ownership in New York (and Los Angeles) won't be subject to FCC review until 2006. Tribune has indicated publicly that it made its investment based on the belief that the rule will be relaxed before that date.

**Petitioners' Response**

Comparing Tribune's instant situation with Fox's proposed acquisition is like comparing apples and oranges. In the case of Tribune, they own one New York television station and a Long Island-based newspaper. Should the Fox/Chris-Craft transaction be approved, Fox and its ultimate parent company, News Corporation, will control two VHF television stations and one of three major daily newspapers in New York City. Fox and Chris-Craft allege that "fairness requires that News Corp be treated no differently that its major competitors." If that is the case, the status quo should be maintained, and Fox's request for a second waiver of the Newspaper/Broadcast Cross-Ownership Rule should be denied.

Furthermore, it is important to note that to the extent that Tribune wishes to retain WPIX when its license come up for renewal, or obtain another broadcast station in the interim period, it will be required to obtain a waiver of the Newspaper/Broadcast Cross-Ownership Rule.

8. **Fox/Chris-Craft Contention:**

"In Fort Lauderdale - a market that is far less diverse than New York - the Commission granted Tribune precisely the interim relief News Corp seeks here for a combination of a television station and a leading newspaper in the market.

**Petitioners' Response:**

The Tribune case in Fort Lauderdale is not analogous to the present situation. Again, Fox and Chris-Craft conveniently omit the fact that the Fort Lauderdale situation involved one television station and one newspaper, rather than two VHF television stations and a major daily newspaper as Fox and News Corporation have proposed.
## NEWSPAPER/BROADCAST CROSS-OWNERSHIP

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<th>FACTORS SUPPORTING PERMANENT WAIVERS</th>
<th>FOX’S SHOWING</th>
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<td>2. Financially troubled status of the media entity to be acquired. <em>Columbia Montour</em>, 13 FCC Rcd at 13013; <em>Kortes Communications</em>, 15 FCC Rcd 11846, ¶ 17.&lt;br&gt;a. In all previous cases audited financial information, including tax returns, was presented to prove that the entity was on its “deathbed.” <em>See, e.g.</em>, <em>Columbia Montour</em>, 13 FCC Rcd at 13009-09, ¶¶ 7-8; <em>Kortes Comm.</em>, 15 FCC Rcd 11846, ¶ 5-6.&lt;br&gt;b. In the 1993 WNYW/Post waiver case, such evidence was not required because the Post was in bankruptcy. <em>See Fox Television Stations</em>, 8 FCC Rcd at 5349-50, ¶¶ 43-44 &amp; n. 23-25.</td>
<td>WWOR is a highly successful VHF station. <em>See Petition to Deny at 10 &amp; n.28</em>. In response to a Commission request for financial information on the Post, Fox failed to submit tax returns or any audited financial information. Furthermore, the one line of confidential information supplied by Fox does not rise to the level required in all earlier cases. <em>Cf Petition to Deny at 10 &amp; n.26-27; Further Response at 4</em>.</td>
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### NEWSPAPER/BROADCAST CROSS-OWNERSHIP

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<th>3. Common ownership limited to one newspaper and one AM station (as in <em>Columbia Montour</em> and <em>Kortes Comm.</em>). <em>Columbia Montour</em>, 13 FCC Rcd at 13013; <em>Kortes Communications</em>, 15 FCC Rcd 11846, ¶ 17.</th>
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<td><strong>Fox seeks a waiver to hold two large VHF television stations along with a daily newspaper.</strong></td>
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<tr>
<td>a. All previous permanent waiver cases involved <em>one</em> radio or television station and <em>one</em> daily newspaper. <em>See generally Columbia Montour, Kortes Communications, Fox Television Stations: Field Communications Corp.</em>, 65 F.C.C.2d 959 (1977).</td>
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<td>Unlike the 1993 waiver case, Fox fails to present an extraordinary and compelling reason as to why a second permanent waiver is advisable here. Media diversity in and of itself has never been an extraordinary and compelling reason. <em>Cf. Petition to Deny at 11-12 &amp; n.31; Reply to Joint Opposition, filed Nov. 22, 2000, at 16 &amp; n.36.</em></td>
</tr>
<tr>
<td>a. The FCC has never found that media diversity in and of itself is sufficient to allow a waiver. <em>See Stockholders of Renaissance Communications Corp.</em>, 12 FCC Rcd 11866, 11885, ¶ 46 &amp; n.36 (“the existence of even a considerable number of media voices in a market is not sufficient, without additional 'special circumstances,' to justify a waiver”).</td>
</tr>
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<td>5. Entity to be acquired not a significant competitive force. <em>Columbia Montour</em>, 13 FCC Rcd at 13013; <em>Kortes Communications</em>, 15 FCC Rcd 11846, ¶ 17.</td>
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<td>WWOR is one of the top 6 television stations in the New York market. In addition, Fox fails to prove that the <em>Post</em> is not a competitive force. To the contrary, Fox’s information reveals an increasingly viable newspaper. <em>See Petition to Deny at 11 &amp; n.27; see also Fox App. Ex. No. 4 at 27.</em></td>
</tr>
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<td>6. Proposed combination is unlikely to have an adverse effect on competition. <em>Columbia Montour</em>, 13 FCC Rcd at 13013; <em>Kortes Communications</em>, 15 FCC Rcd 11846, ¶ 17.</td>
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<td>Fox fails to show how combined ownership of two large VHF stations in New York, in addition to a large daily newspaper, are unlikely to have an adverse effect on competition. <em>See Petition to Deny at 13, 16; Reply to Joint Opposition at 13-14.</em></td>
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