

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
)	
Fox Television Stations, Inc.)	File Nos. BRCT – 20070201AJT
)	BRCT – 20070201AJS
Applications for Renewal of License of)	
WWOR-TV and WNYW)	
)	
)	

**PETITION TO DENY RENEWAL
OFFICE OF COMMUNICATION OF UNITED CHURCH OF CHRIST, INC.
AND
RAINBOW/PUSH COALITION**

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SUMMARY

The Office of Communication of the United Church of Christ, Inc. (UCC) and Rainbow/PUSH Coalition petition the FCC to deny Fox's renewal applications for WWOR-TV and WNYW. Despite the FCC's prohibition on the operation of both a newspaper and television station within a designated market, Fox currently operates *The New York Post* and two television stations, WWOR-TV and WNYW, in the New York metropolitan area.

First, UCC and Rainbow/PUSH Coalition urge the FCC to act on the pending Petition for Reconsideration, to rescind Fox's temporary waiver, and to deny renewal outright. In October 2006, the Commission granted Fox a second temporary 24-month waiver of the newspaper-broadcast cross-ownership ("NBCO") rule to permit Fox to continue operating both television stations and *The New York Post* after its previous 24-month waiver had expired. UCC and Rainbow/PUSH Coalition petitioned the FCC for reconsideration. If the FCC rescinds Fox's waiver, as UCC and Rainbow/PUSH Coalition seek, renewal of the licenses for WWOR-TV and WNYW would violate the plain language of the newspaper-broadcast cross-ownership rule and the applications would be defective on their face.

Alternatively, if the FCC does not grant the Petition for Reconsideration, UCC and Rainbow/PUSH Coalition urge the FCC to designate the renewal applications for a hearing because renewal would violate all three requirements of Section 309 of the Communications Act. Renewal would violate Section 309 because Fox has committed serious violations of numerous FCC rules and orders, notably the cross-ownership rule and the FCC waiver condition. In addition, Fox has violated rules governing its fundamental obligation to act with candor and those prohibiting *ex parte* communications. Because these actions constitute serious violations

and Fox's behavior demonstrates a pattern of abuse, renewal is not in the public interest.

Accordingly, if the FCC does not rescind the waiver and deny the licenses outright, the FCC should designate the applications for a hearing and then deny renewal.

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PETITION FOR DENIAL OF LICENSE RENEWAL

The Office of Communication of the United Church of Christ, Inc. and Rainbow/Push Coalition (“Petitioners”), by their attorneys, the Institute for Public Representation, and pursuant to Section 309(d) of the Communications Act, 47 U.S.C. § 309(d), and Section 73.3584 of the FCC Rules, 47 CFR § 73.3584, hereby petition to deny the applications for broadcast license renewal of Fox Television Stations, Inc., which operates WNYW and WWOR-TV, in New York, N.Y. The FCC should grant UCC and Rainbow/PUSH’s pending Petition for Reconsideration of the Commission’s grant of a second 24-month waiver, rescind Fox’s waiver of the cross-ownership rule, and deny renewal outright. Alternatively, because the licensee has committed serious violations of the Commission’s rules, its actions constitute a pattern of abuse, and it has not demonstrated that it has served the public interest, the Commission must designate a hearing to determine if the licenses should be renewed pursuant to Sections 309(k) and 309(e).¹

PETITIONERS

UCC is a Protestant denomination comprised of nearly 6,000 congregations and more than 1.3 million members. For decades, the Office of Communication of the United Church of Christ, Inc. has been a leading force in advocating diverse and responsive local media and to ensuring that women, persons of color and low-income persons have equal access to ownership, production, employment, and decision making in media. UCC churches are located throughout the country, including the New York, New York area. Members of these churches include many regular viewers of WNYW and WWOR-TV.

Rainbow/PUSH Coalition is a multi-racial, multi-issue, international membership organization that works to further social, racial, and economic justice for individuals who are

¹ See 47 U.S.C. §§ 309(e) & (k).

disenfranchised politically, socially and economically. Rainbow/PUSH Coalition has vigorously worked to ensure equal opportunity and employment in media. Members of Rainbow/PUSH Coalition include many regular viewers of WNYW and WWOR-TV.

Both UCC and Rainbow/PUSH Coalition are parties in interest within the meaning of Section 309(d)(1) of the Telecommunications Act.² As demonstrated in the attached declarations,³ both organizations have members who reside within the service area of WNYW and WWOR-TV and have incurred harm as a result of the stations' failure to serve the public interest.

FACTS

In the New York City area, Fox owns *The New York Post* daily newspaper and two broadcast stations, WWOR-TV (Channel 9, in Secaucus, New Jersey) and WNYW (Channel 5, in New York, New York). Fox has owned these outlets in violation of the newspaper-broadcast cross-ownership ("NBCO") rule and the Commission's order for a substantial portion of the prior license term.

Fox acquired WNYW in 1985. Since its parent corporation controlled *The New York Post*, the FCC required that it divest its interest in the newspaper or WNYW within two years to comply with the NBCO rule.⁴ Fox subsequently sold *The New York Post* to real estate developer Peter S. Kalikow.⁵ In 1993, however, after Mr. Kalikow's financial difficulties led the paper's

² 47 U.S.C. § 309(d); *see also Llerandi v. FCC*, 863 F.2d 79, 86 (D.C. Cir. 1998).

³ *See* Exhibit 1: Declarations.

⁴ *Metromedia Radio & Television, Inc.*, 102 FCC 2d 1334, ¶ 40 (1985), *aff'd*, *Health & Med. Policy Research Group v. FCC*, 807 F.2d 1038 (D.C. Cir. 1986).

⁵ *UTV of San Francisco, Inc.*, 16 FCC Rcd 14975, 14985 (2001).

parent company to declare bankruptcy, Fox requested and received a permanent waiver of the NBCO rule to own the newspaper and concurrently operate WNYW.⁶

In 2000, Fox proposed to acquire ten television stations from Chris-Craft Industries, Inc., including WWOR-TV, a station located in the New York Designated Market Area.⁷ In its transfer applications, Fox argued that the 1993 permanent waiver should extend to its acquisition of WWOR-TV, or in the alternative, that it should receive an “interim waiver” until the conclusion of the 2002 Biennial Regulatory Review of the Commission’s Broadcast Ownership Rules.⁸ UCC, Rainbow/PUSH, and others opposed Fox’s acquisition of WWOR-TV.⁹

In July 2001, the Commission rejected Fox’s claim that the 1993 permanent waiver extended to the acquisition of WWOR-TV, pointing out that a waiver granted during one set of market conditions “is not automatically extended to cover new combinations several years later under potentially changed market conditions.”¹⁰ Instead, the Commission granted a “temporary 24-month waiver within which to come into compliance with the” NBCO by divesting *The New York Post* or either of its two New York television stations.¹¹

The two-year temporary waiver expired in July 2003, and Fox did not come into compliance with the rule. Nor does it appear that Fox made *any* effort during the 24-month period to comply. Instead, Fox lobbied the FCC to amend the NBCO rule to allow cross-

⁶ *Fox Television Stations Inc.*, 8 FCC Rcd 5341, 5354 (1993).

⁷ *UTV of San Francisco, Inc.*, 16 FCC Rcd at 14987-89.

⁸ *Id.* at 14987.

⁹ See Petition to Deny by The Office of Communication, Inc. of the United Church of Christ, et al., File Nos. BALCT-20000918ABB, et al., filed Oct. 27, 2000 (“Petition to Deny”).

¹⁰ *UTV of San Francisco, Inc.*, 16 FCC Rcd at 14977.

¹¹ *Id.*, 16 FCC Rcd at 14990 n. 73. The Commission justified the temporary waiver on the grounds that “[a] temporary loss of diversity, if any, in the New York market during this period will be outweighed by the benefits of permitting an *orderly sale* to a qualified buyer committed to preserving the *Post* as a media voice.” *Id.* at 14989. In an unpublished opinion, the D.C. Circuit affirmed the FCC’s ruling. It found that the FCC had made an adequate public interest finding to approve the transfer, noting that “[a]lthough Fox could not fully complete Form 314 because it required waivers, to the extent that Fox required these waivers, the Commission found that granting temporary waivers would serve the public interest, and, therefore, the acquisition was in the public interest.” *Office of Comm’n of the United Church of Christ v. FCC*, No. 01-1374, 2002 U.S. App. Lexis 23330, at *4 (D.C. Cir. Nov. 8, 2002).

ownership. In June 2003, the Commission relaxed the NBCO rule and replaced the rule with a cross media limit allowing cross-ownership in most markets.¹² However, before the cross media limit took effect, the Third Circuit issued a stay on September 3, 2003, ordering that the old rule remain in effect pending judicial review.¹³

Even after the Third Circuit reversed the FCC in July 2004 and clarified that the NBCO would remain in effect pending judicial review of the FCC's decision on remand, Fox still did not comply with the NBCO as required by the Commission's 2001 Order. Instead, Fox retained both stations for an additional year without taking any action to divest either one. On September 22, 2004, Fox filed a "Petition for Modification of Permanent Waiver." Fox's petition requested the Commission to either permit common ownership of WWOR-TV, WNYW, and *The New York Post*, or to grant an additional temporary waiver until after the remand of the 2002 Biennial Regulatory Review.¹⁴

In 2005, while its waiver petition was pending, Fox underwent a corporate restructuring necessitating FCC approval and filed a Form 315 transfer of control application with a copy of the 2004 waiver request attached. On August 15, 2006, almost three years after the waiver expired, the FCC voted three to two to approve the transfer of control.¹⁵ The Order also granted a new permanent waiver for WNYW and *The New York Post*, and granted a new temporary waiver permitting continued common ownership of WWOR-TV for an additional 24 months.¹⁶ The UCC and Rainbow/PUSH filed a petition with the FCC, asking it to reconsider and reverse

¹² 2002 Biennial Regulatory Review, No. 03-3388, 18 FCC Rcd 13,620, 13790-813 (2003).

¹³ See *Prometheus Radio Project v. FCC*, 2003 U.S. App. Lexis 18390 (3d Cir. Sept. 3, 2003). In June 2004, the Third Circuit reversed and remanded the cross media limits, and ordered that the stay remain in place pending its review of the Commission's action on remand. *Prometheus Radio Project v. Federal Communications Commission*, 373 F.3d 372, 435 (2004).

¹⁴ Petition for Modification of Permanent Waiver by Fox Television Stations, Inc., filed September 22, 2004 ("2004 Waiver Request").

¹⁵ *K. Rupert Murdoch and Fox Entertainment Group, Memorandum Opinion and Order*, 21 FCC Rcd 11499 (2006) ("October 2006 Order").

¹⁶ October 2006 Order, at ¶ 1. The FCC has withheld the dissents of both Commissioners Adelstein and Copps.

that decision. The Petition for Reconsideration, attached as Exhibit 2 to this Petition to Deny, is still pending.

ARGUMENT

The FCC should act on the pending Petition for Reconsideration, rescind the waiver of the NBCO rule, and reject Fox's renewal applications outright. Alternatively, because renewal is contrary to the public interest in light of Fox's serious violation of the NBCO rule, rules governing candor before the FCC and *ex parte* communications, and demonstrated pattern of abuse, the FCC should designate the licenses for an evidentiary hearing and, ultimately, deny the license renewal applications.

I. THE FCC SHOULD ACT ON THE PENDING PETITION FOR RECONSIDERATION BEFORE CONSIDERING FOX'S RENEWAL APPLICATIONS

Before acting upon the license renewal applications, the FCC should first act on the Petition for Reconsideration filed by UCC and Rainbow/PUSH on November 6, 2006. The petition asked the FCC to reconsider its October 6, 2006 decision to grant a new 24-month temporary waiver of the newspaper/broadcast cross-ownership rule permitting Fox to own two television stations, WWOR-TV and WNYW, and *The New York Post*.

In the 2006 Order, the FCC identified two grounds for granting a new waiver for WWOR-TV—(1) to avoid a forced sale at an artificially depressed price (“fire sale”) and (2) to ensure Fox's continued investment in *The New York Post*.¹⁷ However, as UCC and Rainbow/PUSH Coalition argued in the Petition for Reconsideration, neither reason is supported by the record in this case. First, because the Commission gave Fox 24-months to avoid a fire

¹⁷ October 2006 Order, at ¶¶ 6 – 8.

sale in July 2001, Fox had *five years* to avoid a fire sale, and it failed to demonstrate that it was unable to sell (or able to sell only at an artificially depressed price) either *The New York Post* or one of the broadcast stations. Second, Fox did not make any showing, nor could it, that cross-ownership of two, powerful VHF stations was necessary to the survival of the *The New York Post*.

The FCC should act on the Petition for Reconsideration and rescind the additional 24-month waiver. Because Fox will then be out of compliance with the NBCO rule, the FCC should deny the licenses outright. As the Supreme Court held in *FCC v. National Citizens Committee for Broadcasting*, “[i]f a license applicant does not qualify under standards set forth in [FCC] regulations, and does not proffer sufficient grounds for waiver or change of those standards, the Commission may deny the application without further inquiry.”¹⁸

II. GRANTING FOX’S APPLICATIONS FOR RENEWAL WOULD VIOLATE SECTION 309 OF THE COMMUNICATIONS ACT

Even if the FCC denies the Petition for Reconsideration, granting Fox’s application for renewal would nonetheless violate Section 309 of the Communications Act. Section 309(k) provides that the Commission may grant a license renewal application only if, upon consideration of the application and pleadings, it finds that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.¹⁹ Under 309(d), “if the Commission finds on the basis of the application, the pleadings filed, or other matters which it may officially notice” that “a substantial or material question of fact is presented or if the Commission for any other reason is unable to find that grant of the application would be consistent with” the public interest, it must designate the application for

¹⁸ 436 U.S. 775, 793 (1978).

¹⁹ 47 U.S.C. § 309(k); *see also* 47 U.S.C. § 309(a).

hearing pursuant to Section 309(e).²⁰ Because Fox fails to meet all three criteria of Section 309(k), the Commission must proceed to an evidentiary hearing and deny the license.

A. Fox Has Committed Serious Violations of FCC Rules

The FCC should designate the applications for a hearing and deny the license because Fox has committed serious violations of the NBCO rule, its duty of candor, and rules governing *ex parte* communications. A serious violation occurs when a licensee's station operation is "conducted in an exceedingly careless, inept and negligent manner and that the Licensee is either incapable of correcting or unwilling to correct the operating deficiencies."²¹ Fox has conducted itself with a careless indifference to the prohibition on cross-ownership and has demonstrated an unwillingness to correct its deficiencies. Moreover, in failing to come into compliance with the NBCO rule, Fox has violated its duty of candor before the commission by misrepresenting facts on its license renewal and transfer applications and violated rules governing *ex parte* communications.

1. Fox was in violation of the NBCO rule and the FCC's Order for three years without making any effort to comply

The NBCO rule states that "No license for a . . . TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates, or controls . . . a daily newspaper and the grant of such license will result in the Grade A contour of a TV station encompassing the entire community in which the newspaper is published."²² When adopting the rule, the FCC noted that "licensing of a newspaper applicant

²⁰ 47 U.S.C. § 309. *see Astroline Commc'n. Co. v. FCC*, 857 F. 2d 1556, 1561 (D.C. Cir. 1988).

²¹ *See Mark Hellinger*, 2007 FCC LEXIS 1508, *8, n. 14 (January 31, 2007); *Heart of the Black Hills Stations*, 32 FCC 2d 196, 198 (1971).

²² 47 CFR § 73.3555(d) (2002). "The formation of new TV-combinations in the same market is barred . . . They are considered to be in the same market if the Grade A contour of the TV station completely encompasses the community in which the newspaper is published." *Amendment of Sections 73.3, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations*, 50 FCC 2d 1046, 1132 (1975) ("1975 Second Report and Order").

for a new station in the same city as that in which the paper is published is not going to add to already existing choices, is not going to enhance diversity.”²³

Recognizing that Fox’s control of three media outlets within one market reduced diversity in its 2001 Order, the Commission granted Fox 24 months to comply with the NBCO rule and avoid a fire sale.²⁴ In clarifying that Fox had the option of divesting either station or the *Post*, the FCC stated that it was not directing the sale of the *Post* but “simply requiring that [Fox] be in compliance with our television/newspaper cross-ownership rule within 24 months from the consummation of the transaction.”²⁵ There was no ambiguity in the Commission’s directive. Indeed, in defense of the FCC’s action, on appeal of that order, Fox’s legal brief explicitly assured the D.C. Circuit that it understood what was required: “The two-year waiver is not a free pass; it is a temporary arrangement crafted by the Commission to allow Fox time to locate a new buyer for a fragile, money-losing enterprise.”²⁶ Despite this statement, Fox made no effort to comply with the FCC’s order. Not only did Fox not comply, but it failed to ask for an additional waiver for more than one year after the date by which it should have complied. As a result, Fox was in violation of the rule from July 2003 (when the 24-month waiver expired) until October 2006 (when the FCC released its order granting a new 24-month waiver). Thus, Fox violated the NBCO rule, as well as a condition of its license transfer.

2. Fox has violated its fundamental obligation to act with candor and trustworthiness

In addition to ignoring the cross-ownership rule and the FCC’s directive, Fox’s conduct evidences a lack of candor with the Commission. The Commission rules require that no person

²³ *Id.* at 1075.

²⁴ *UTV of San Francisco, Inc.*, 16 FCC Rcd at 14990 n. 73.

²⁵ *Id.*

²⁶ Brief for the Intervenor Supporting Appellee by Fox Television Stations, Inc., No. 01-1374, filed July 15, 2002 (“Brief for the Intervenor”).

“intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading.”²⁷ Because the Commission “has an affirmative obligation to license more than 10,000 radio and television stations in the public interest, . . . 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.”²⁸ In fact, since the Supreme Court’s 1946 decision in *Federal Communications Commission v. WOKO, Inc.*, “it has been clear that the Commission may refuse to renew a license where there has been willful and knowing misrepresentation or lack of candor in dealing with the Commission.”²⁹

Even slight misstatements can produce serious consequences, as the Commission may treat even the most insignificant misrepresentation as an event disqualifying a licensee from further consideration.³⁰ And candor is of such critical importance that the Commission traditionally reserves its harshest sanction, complete termination of a licensee’s rights, for instances in which the licensee has demonstrated a “pervasive pattern of misrepresentation especially when conjoined with . . . flagrant disregard of the rules.”³¹ Consequently, the Commission has denied license renewal or designated the application for a hearing in a variety of situations involving lack of candor about rule violations: for instance, where a station falsified transmission logs after the licensee failed to perform transmission tests,³² where a station

²⁷ 47 CFR §1.17. See also Policy Regarding character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1227-29 (1985) (“Character Policy Statement”).

²⁸ *RKO General, Inc. v. FCC*, 670 F.2d 215, 232 (D.C. Cir. 1981). See also *Sea Island Broadcasting Corp.*, 60 FCC 2d 146, 148 (1976).

²⁹ *Leflore Broadcasting Company Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980) (citing *WOKO, Inc.*, 329 U.S. 223 (1946)).

³⁰ Character Policy Statement, 102 FCC 2d at ¶ 61.

³¹ *Faulkner Radio, Inc.*, 88 FCC 2d. 612, 616 (1981).

³² *Nick J. Chaconas*, 28 FCC 2d 231 (1971) (denying license renewal application).

falsified log entries after failing to satisfy station operator requirements,³³ and where a licensee misrepresented the success and extent of its efforts to restore broadcasting service to residents.³⁴

In violation of its obligation of candor, Fox misstated its failure to comply with the NBCO rule on its renewal applications. In the renewal application for both WWOR-TV and WNYW, Fox certifies “that, with respect to the station(s) for which renewal is requested, there have been no violations by the licensee of the Communications Act of 1934, as amended, or the rules or regulations of the Commission during the preceding license term.”³⁵ Despite certifying to the contrary, Fox’s violation of the NBCO rule for over three years is indisputable.

In addition, Fox lacked candor concerning its transfer application. On the Form 315 Fox submitted in 2005 regarding its transfer, Fox falsely certified “that the proposed transfer complies with the Commission’s . . . cross-ownership rules” when it did not.³⁶ Moreover, Fox stated in an exhibit to the transfer application that it was granted a 24-month temporary waiver of the NBCO in 2001 and that in September 2004, it sought an extension of that waiver.³⁷

However, Fox did not disclose that its September 2004 request was objected to by Free Press.

And while Fox attached a copy of its September 2004 waiver request, it did not attach Free Press’ objection, or Fox’s own sixteen page opposition to Free Press’s objection. The omission of this material fact violates FCC Rule 1.17 and seems to be intended to mislead the

Commission. The fact that the Commission’s October 2006 Transfer Order characterizes Fox’s

³³ *Lewel Broad., Inc.*, 86 FCC 2d 896 (1981) (denying license renewal application).

³⁴ *Calvary Ed. Broad. Network*, 7 FCC Rcd 4037, 4040 (1992) (finding a material question of fact existed regarding the truthfulness of the licensee’s representations).

³⁵ FCC 303-S, Application for Renewal of Broadcast Station for WNYW (February 21, 2007), BRCT – 20070201AJS § II(4); FCC 303-S, Application for Renewal of Broadcast Station for WWOR-TV (February 1, 2007, BRCT – 20070201AJT § II(4). And while the WYNW application states that Exhibit 6 provides further explanation, Exhibit 6 merely refers viewer comments on Fox’s airing of indecent material. FCC 303-S, Application for Renewal of Broadcast Station for WNYW (February 21, 2007), BRCT – 20070201AJS, Attachment 6.

³⁶ FCC Form 315 (Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License Question 8(b)) (Sept. 21, 2005), BTCCT – 20050819AAF.

³⁷ *See id.*

applications as “unopposed” suggests that the Commission was misled by Fox’s lack of candor.³⁸

In its transfer application, Fox also misrepresented the circumstances in which the FCC previously granted the 24-month waiver. It implied that the FCC granted the 24-month waiver because of the pending proceedings reviewing the NBCO rule.³⁹ In fact, the FCC rejected that reason and instead granted the temporary waiver to give Fox time to comply with the rule while avoiding a “fire sale.”⁴⁰

3. Fox appears to have violated *ex parte* rules

In addition to misrepresentation on renewal and transfer applications, Fox also appears to have violated *ex parte* rules. The Commission’s *ex parte* rules forbid all *ex parte* presentations to Commission decision-making personnel in “restricted proceedings” and the Commission considers such infractions serious violations that may justify denial of a license renewal application.⁴¹ Fox’s 2004 waiver request was a restricted proceeding and thus any *ex parte* communication related to the waiver was impermissible.⁴² Yet, Fox, a sophisticated party with adequate legal representation, acted willfully to subvert the *ex parte* rules on at least two

³⁸ October 2006 Order, at ¶ 1.

³⁹ FCC Form 315, Exhibit 18 at 8 (“At the time, the 24-month waiver seemed to [Fox] to be more than adequate in duration to permit the Commission to complete proceedings looking toward repeal of the NBCO rule.”).

⁴⁰ See *Metromedia Radio & Television, Inc.*, 102 FCC 2d 1334, at ¶ 40 (1985).

⁴¹ *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 845 (D.C. Cir. 1970).

⁴² Restricted proceedings” include “applications for authority under Title III of the Communications Act, and all wavier proceedings (except those directly associated with tariff filings).” See 47 C.F.R. § 1.1202(b)(1) and § 1.1208, n.1; see also *Cumulus Licensing Corp.*, 16 FCC Rcd 1052, n.7 (2001) (holding that a third party’s objection ended an uncontested transfer application period and set into effect *ex parte* rules). On April 15, 2005, Free Press became a party to the proceeding when it filed an objection to Fox’s waiver and served the objection on counsel for Fox. Free Press Objection. Fox acknowledged Free Press’s objection by filing an opposition on May 10, 2005. See Opposition to Free Press Objection. Thus, once Free Press filed its objection, the *ex parte* rules prohibited all non-exempt *ex parte* presentations to Commission decision-making personnel. In fact, Free Press’s objection explicitly provided, “By filing this letter objecting to Fox’s waiver request, Free Press becomes a party as defined in 47 C.F.R. § 1.1202(d) and henceforth, all *ex parte* presentations to or from Commission decision-making personnel are prohibited under 47 C.F.R. § 1.1208. Free Press has served this letter on counsel for Fox as required by 47 C.F.R. 1.1202(b)(1).” Free Press Objection at 4.

occasions.⁴³ On or about May 30, 2006, we believe, Rupert Murdoch personally met with several FCC commissioners and discussed the waiver of the NBCO rule. Additionally, counsel for Fox communicated with staff from at least one Commissioner's office regarding the substance of the waiver request and the need for prompt action during the summer of 2006. Even though this issue was raised on Reconsideration, Fox never denied that these communications occurred.

Overall, Fox has committed serious violations of three significant FCC rules, notably the Commission's cross-ownership limit as well as rules governing candor and *ex parte* communications. Fox has committed these violations to avoid the NBCO rule and operate three media outlets in New York. These infractions rise to the level of serious violations because they have significant detrimental impact on the diversity of viewpoints available to the viewing public and demonstrate Fox's unwillingness to comply with the Commission's rules.⁴⁴

B. Fox's Actions, Taken Together, Constitute a Pattern of Abuse, and Renewal is Not in the Public Interest

Fox's operation of WWOR-TV and WNYW also violates 309(k) because the conduct illustrated above demonstrates a pattern of abuse.⁴⁵ Section 309(k) provides that the Commission may grant a license renewal application only if, upon consideration of the application and pleadings, it finds that there have been no other violations which, taken together,

⁴³ Cf. *In re NEW (Ed. FM) & WJMU(FM)*, FCC Order, DA 07-1952 (April 30, 2007) (admonishing MU, a small noncommercial educational licensee not represented by FCC counsel, for violation of the *ex parte* rules after the broadcaster communicated with FCC personnel and solicited the assistance of Members of Congress without notifying the opposing party; the FCC declined to take further action because while willful, the broadcaster acted out of ignorance rather than an intent to subvert the rules).

⁴⁴ In addition to misrepresenting facts on applications and engaging in prohibited *ex parte* communications, Fox has repeatedly failed to notify parties in the proceedings when petitioning the FCC for waivers. Despite the years of litigation between UCC and Rainbow/PUSH Coalition and Fox over the New York waiver, Fox failed to serve UCC and Rainbow/PUSH Coalition's counsel with a copy of the petition for a waiver for WWOR in 2004. Similarly, when Fox filed a Form 315 "transfer of control" application with the Commission in September 2005, which includes the prior waiver request, Fox did not serve the transfer application on counsel for UCC and Rainbow/PUSH Coalition. FCC Form 315 Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License (Sept. 21, 2005), File No. BTCCT – 20050819AAF.

⁴⁵ See 47 U.S.C. §309(k)(2).

constitute a pattern of abuse.⁴⁶ Conduct constitutes a pattern of abuse when “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules.”⁴⁷ Here, Fox has demonstrated an indifference to the cross-ownership rule, rules governing candor, and prohibitions on *ex parte* communications. Even if any individual infraction did not rise to the level of a serious violation, the conduct on the whole demonstrates that Fox cannot be relied upon to comply with the Commission’s rules and regulations.

Finally, 309(k) conditions renewal on the Commission’s finding that the station has served the public interest, convenience, and necessity.⁴⁸ Here, renewal would contravene rather than advance the public interest. Because Fox violated significant FCC rules, especially the cross-ownership rule, and these violations constitute a pattern of abuse, renewing Fox’s WWOR-TV and WNYW licenses is presumptively not in the public interest.

CONCLUSION

For the foregoing reasons, the FCC should grant the Petition for Reconsideration, rescind the license, and deny renewal. In the alternative, because Fox has not met the standard set forth in Section 309(k), the FCC should designate the applications for an evidentiary hearing.

Respectfully Submitted,

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⁴⁶ 47 U.S.C. § 309(k).

⁴⁷ *Heart of the Black Hills Stations*, 32 FCC 2d at 200, ¶ 11. See also *Ctr. for Study and Application of Black Econ. Dev.*, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, 7 FCC Rcd 4037 (1992).

⁴⁸ 47 U.S.C. § 309(k).

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Law Students

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Coalition

Dated: May 1, 2007

EXHIBIT 1

DECLARATION

- 1) My name is Robert Chase. I am the liaison between the Office of Communication, Inc. and the United Church of Christ.
- 2) The United Church of Christ (UCC) is a union of Protestant churches, the Congregational Christian Church and the Evangelical and Reform Church, which collectively includes more than 1.2 million people of whom a significant number are racial minorities. UCC members reside throughout the New York metropolitan area, including New Jersey, and in many other communities throughout the United States.
- 3) The Office of Communication, Inc. is a not-for-profit corporation of the United Church of Christ charged with responsibility for developing the Church's policies in media advocacy. Since the mid-1950's, the Office of Communication, Inc. has participated in proceedings before the Federal Communications Commission to promote a diversity of viewpoints, a greater role for citizens in Commission regulatory proceedings, and more minority involvement in the electronic mass media industries.
- 4) UCC has consistently opposed Fox's acquisition of WWOR-TV, Secaucus, New Jersey. UCC filed a Petition to Deny Fox's acquisition of WWOR-TV from Chris-Craft Industries in October 2000. In its petition, UCC challenged Fox's claim that its permanent waiver of the Newspaper/Broadcast Cross-Ownership (NBCO) rule to operate *The New York Post* and WNYW(TV) extended to WWOR-TV. UCC also opposed Fox's request in the alternative for an interim waiver for WWOR-TV until after the 2002 Biennial Review. After the Commission granted Fox a twenty four month temporary waiver to divest one their New York area broadcast stations or the *Post*, UCC appealed the FCC decision to grant a temporary waiver in the U.S. Court of Appeals for the D.C. Circuit.
- 5) UCC has continued to oppose Fox's cross-ownership. In 2006, the Commission granted Fox another two-year waiver of the NBCO rule. Along with Rainbow/PUSH, UCC filed for reconsideration, urging the FCC to reverse its decision and require divestiture.
- 6) I have reviewed the foregoing Petition to Deny. All of the relevant facts stated in the Petition are subject to official notice by the Federal Communications Commission, as they are drawn from the Commission's own orders, the transfer request itself, Commission and court decisions, or industry publications, or are supported by the attached Declarations.
- 7) A decision to renew the license of WWOR-TV or WNYW(TV) harms members of UCC who reside within the New York metropolitan area. Renewal will reduce the number of independently controlled sources of local news and public affairs that would be available had Fox complied with the FCC's 2001 Order to adhere to the NBCO by July 2003. Members of UCC residing in the New York area will be harmed by the loss of diversity and competition that will result if Fox is permitted to continue holding WWOR-TV along with WNYW(TV) and the *Post*. Members will be deprived of an independent voice in the media.
- 8) UCC members residing in New Jersey are harmed by consistently inferior local news coverage by WWOR-TV even though WWOR-TV was intended to serve citizens of New Jersey.

- 9) This Declaration has been prepared in support of the foregoing Petition to Deny and is filed on the behalf of members who are local residents.

This statement is true to my personal knowledge and is made under penalty of perjury of the laws of the United States of America.

Date Executed:

4/30/07

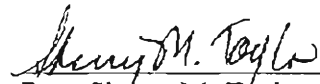


The Rev. Robert Chase
Executive Director
Office of Communication of the United
Church of Christ, Inc.

DECLARATION

1. My name is Rev. Sherry M. Taylor, and I am the Associate Conference Minister for the Association of New Jersey in the United Church of Christ's Central Atlantic Conference (916 South Rollong Road, Baltimore, Maryland 21228)
2. I work at 195 Ridgewood Ave., Glen Ridge, NJ 07028.
3. I am a regular viewer of the television stations serving the New York area, including WWOR-TV and WNYW(TV), as well as a regular reader of newspapers serving the New York area including *The New York Post*.
4. Fox's common ownership of *The New York Post*, WNYW(TV), and WWOR-TV harms me by sharply reducing the number of independent voices available to me. Unless the licenses are denied, my right to access diverse programming will continue to be harmed.
5. WWOR-TV does not provide me and my family with adequate local news coverage of New Jersey. Fox's ownership of WWOR-TV has limited the amount and diversity of coverage of local news and public affairs in New Jersey.
6. This Declaration has been prepared in support of the foregoing Petition to Deny.
7. This statement is true to my personal knowledge, and is made under penalty of perjury of laws of the United States of America.

Date Executed: _19 April 2007


Rev. Sherry M. Taylor

DECLARATION

- 1) My name is the Reverend Jesse L. Jackson, Sr. I am the Founder and President of the Rainbow/PUSH Coalition.
- 2) The Rainbow/PUSH Coalition is a multi-racial, multi-issue, international membership organization that works to further social, racial, and economic justice for individuals who are disenfranchised politically, socially and economically. The Rainbow/PUSH Coalition has vigorously worked to ensure equal opportunity and employment in media.
- 3) The Rainbow/PUSH Coalition has consistently opposed Fox's acquisition of WWOR-TV, Secaucus, New Jersey. The Rainbow/PUSH Coalition filed a Petition to Deny Fox's acquisition of WWOR-TV from Chris-Craft Industries in October 2000. In its petition, the Rainbow/PUSH Coalition challenged Fox's claim that its permanent waiver of the Newspaper/Broadcast Cross-Ownership (NBCO) rule to operate *The New York Post* and WNYW(TV) extended to WWOR-TV. The Rainbow/PUSH Coalition also opposed Fox's request in the alternative for an interim waiver for WWOR-TV until after the 2002 Biennial Review. After the Commission granted Fox a twenty four month temporary waiver to divest one their New York area broadcast stations or the *Post*, the Rainbow/PUSH Coalition appealed the FCC decision to grant a temporary waiver in the U.S. Court of Appeals for the D.C. Circuit.
- 4) Rainbow/PUSH Coalition has continued to oppose Fox's cross-ownership. In 2006, the Commission granted Fox another two-year waiver of the NBCO rule. Along with the United Church of Christ, Rainbow/PUSH Coalition filed for reconsideration, urging the FCC to reverse its decision and require divestiture.
- 5) I have reviewed the foregoing Petition to Deny. All of the relevant facts stated in the Petition are subject to official notice by the Federal Communications Commission, as they are drawn from the Commission's own orders, the transfer request itself, Commission and court decisions, or industry publications, or are supported by the attached Declarations.
- 6) A decision to renew the license of WWOR-TV or WNYW(TV) harms members of the Rainbow/PUSH Coalition who reside within the New York metropolitan area. Renewal will reduce the number of independently controlled sources of local news and public affairs that would be available had Fox complied with the FCC's 2001 Order to adhere to the NBCO by July 2003. Members of the Rainbow/PUSH Coalition residing in the New York area will be harmed by the loss of diversity and competition that will result if Fox is permitted to continue holding WWOR-TV along with WNYW(TV) and the *Post*. Members will be deprived of an independent voice in the media.
- 7) Rainbow/PUSH Coalition members residing in New Jersey are harmed by consistently inferior local news coverage by WWOR-TV even though WWOR-TV was intended to serve citizens of New Jersey.
- 8) This Declaration has been prepared in support of the foregoing Petition to Deny and is filed on the behalf of members who are local residents.

This statement is true to my personal knowledge and is made under penalty of perjury of the laws of the United States of America.

Date Executed: April 18, 2007

A handwritten signature in black ink that reads "Jesse L. Jackson, Sr." in a cursive style.

Reverend Jesse L. Jackson, Sr.
Founder and President
Rainbow PUSH Coalition

EXHIBIT 2

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
K. Rupert Murdoch)	
(Transferor))	File No. BTCCT-20050819AAF, <i>et al.</i>
)	
and)	
)	
Fox Entertainment Group)	
(Transferee))	
)	
Applications for Transfer of Control of)	
Fox Television Stations, Inc.)	

**PETITION FOR RECONSIDERATION OF
OFFICE OF COMMUNICATION OF THE UNITED CHURCH OF CHRIST, INC.
AND
RAINBOW/PUSH COALITION**

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Counsel for UCC and Rainbow/PUSH
Coalition

November 6, 2006

SUMMARY

The Office of Communication of the United Church of Christ, Inc. (UCC) and the Rainbow/PUSH Coalition petition the FCC to reconsider its October 6, 2006 decision to grant a new 24-month temporary waiver of the newspaper/broadcast cross-ownership rule to the Fox Entertainment Group permitting it to own two television stations, WWOR-TV, WNYW(TV), and a daily newspaper, *The New York Post*, all serving the New York metropolitan area.

UCC and Rainbow/PUSH Coalition challenged Fox's acquisition of WWOR-TV and nine other television stations from Chris-Craft in 2000 and unsuccessfully appealed the FCC's decision in July 2001 to allow the acquisition of these stations conditioned on Fox's coming into compliance with the cross-ownership rule within 24-months. Fox never complied with this condition. Instead, without notice to UCC or Rainbow/PUSH Coalition, Fox sought additional waivers from the FCC in September 2004 and again in September 2005.

In this Petition for Reconsideration, UCC and Rainbow/PUSH Coalition argue that the FCC's decision to grant Fox another 24-month waiver for WWOR-TV offends basic due process requirements by failing to give public notice and take public comment on Fox's waiver request.

Moreover, they argue that the FCC's decision is arbitrary and capricious because it is based on incorrect factual assumptions. Further, Fox failed to show, and the FCC failed to find, that Fox met any of the traditional criteria for waiving the newspaper-broadcast cross ownership rule. Specifically, Fox did not demonstrate that it was unable to sell (or able to sell only at an artificially depressed price) either the *Post* or one of the broadcast stations, or that allowing the common ownership would increase the diversity of viewpoints available to the public.

Instead, the Commission identifies two grounds for granting a new waiver for WWOR-TV—(1) to avoid a forced sale at an artificially depressed price (“fire sale”) and (2) to ensure

Fox's continued investment in the *Post*. However, neither reason is supported by the record in this case. Since the Commission already gave Fox 24-months to avoid a fire sale in July 2001, Fox has already had five years to avoid a fire sale. Second, even assuming for purposes of argument that cross-ownership is necessary for the continued success of the *Post*, Fox does not make any showing, nor could it, that cross-ownership of two, powerful VHF stations is necessary to the survival of the *Post*.

UCC and Rainbow/PUSH Coalition also argue that the Commission should consider whether Fox's conduct in connection with this proceeding, specifically its failure to comply with the FCC's 2001 order, its lack of candor in its application, and its possible violation of *ex parte* rules, is consistent with the Commission's rules and policies regarding character. The Commission should also address whether WWOR-TV is meeting its obligation to serve the citizens of New Jersey.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
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(Transferor))	File No. BTCCT-20050819AAF, <i>et al.</i>
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and)	
)	
Fox Entertainment Group)	
(Transferee))	
)	
Applications for Transfer of Control of)	
Fox Television Stations, Inc.)	

PETITION FOR RECONSIDERATION

The Office of Communication of the United Church of Christ, Inc. (UCC), and the Rainbow/PUSH Coalition, by their attorneys, the Institute of Public Representation, and pursuant to 47 U.S.C. §405(a) and 47 C.F.R. §1.106, respectfully petition the Federal Communications Commission (FCC or Commission) to reconsider its decision to grant a new 24-month temporary waiver of the newspaper/broadcast cross-ownership rule (NBCO), 47 C.F.R. § 73.3555(d), to the Fox Entertainment Group to allow it to own WWOR-TV, Secaucus, New Jersey, in conjunction with WNYW(TV), New York, and *The New York Post*.

BACKGROUND

On October 6, 2006, the Commission released an order granting a permanent waiver of the NBCO, to allow continued cross-ownership of *The New York Post* and WNYW(TV), and a 24-month temporary waiver to allow the continued cross-ownership of the *Post* and WWOR-TV, Secaucus, New Jersey. In the same order, the Commission approved the transfer of control of

Fox Television Stations, Inc. (FTS) from K. Rupert Murdoch to Fox Entertainment Group, Inc. (FEG).¹

A. Fox's Waiver for WNYW(TV)

The Commission has previously addressed Fox's New York media holdings on several occasions. In 1985, as part of a purchase of seven broadcast television stations from Metromedia Radio and Television, Inc., Fox acquired WNYW(TV). Since Fox already controlled the *Post*, it was required to divest its interest in the newspaper (or WNYW(TV)) within two years in order to comply with the NBCO.² In March 1988, Fox sold the *Post* to real estate developer Peter S. Kalikow.³

Soon after acquiring the *Post*, however, Mr. Kalikow's financial difficulties led the paper's parent company to declare bankruptcy. Fox requested a permanent waiver of the NBCO so that it could purchase the *Post* and concurrently maintain WNYW(TV). In 1993, the Commission granted the permanent waiver, finding that a permanent waiver promoted diversity, since the *Post* provided an alternative voice in the New York market, and without Fox's investment the newspaper would go out of business.⁴

B. Fox's Temporary Waiver for WWOR-TV

After the FCC relaxed the TV duopoly rule in 1999, the following year Fox attempted to acquire ten television stations from Chris-Craft Industries, Inc. One of these stations was WWOR-TV, Secaucus, New Jersey, which is located in the New York Designated Market Area.⁵

¹ *K. Rupert Murdoch and Fox Entertainment Group, Memorandum Opinion and Order*, FCC Order 06-122, released (Oct. 6, 2006) ("October 2006 Order").

² *Metromedia Radio and Television, Inc.*, 102 FCC 2d 1334 (1985), *aff'd*, *Health and Medicine Policy Research Group v. FCC*, 807 F.2d 1038 (D.C. Cir. 1987).

³ *UTV of San Francisco, Inc.*, 16 FCC Rcd 14975, 14985 (2001).

⁴ *Fox Television Stations Inc.*, 8 FCC Rcd 5341, 5352 (1993).

⁵ *UTV of San Francisco, Inc.*, 16 FCC Rcd at 14987-89.

In its transfer applications, Fox argued that the 1993 permanent waiver should extend to its acquisition of WWOR-TV, or in the alternative, that it should receive an “interim waiver” until the conclusion of the 2002 Biennial Regulatory Review of the Commission’s Broadcast Ownership Rules.⁶

The United Church of Christ, Rainbow/PUSH Coalition and other organizations representing viewers in the New York City region timely filed a Petition to Deny the Fox Applications with the Commission in October 2000.⁷ Among other reasons, UCC and Rainbow/PUSH Coalition opposed the transfer because it violated the NBCO Rule and Fox failed to support its request for a waiver under any of the Commission’s waiver criteria.⁸ In particular, UCC *et al.* pointed out that Fox had failed to show that it met any of the Commission’s long-established waiver requirements, including (1) inability to sell the *Post* or one of the stations, (2) forced sale of either entity at an artificially depressed price, (3) inability of the New York City market to support separate ownership, or (4) that enforcement of the cross-ownership rule would disserve the purposes of diversity and economic competition.⁹ On the contrary, the Petition noted, “enforcement of the rule here directly supports” both diversity and economic competition.¹⁰ Similarly, in their Reply, UCC and Rainbow/PUSH Coalition reiterated their opposition to Fox’s waiver request noting that “Grant of a waiver would diminish

⁶ *Id.* at 14987.

⁷ Petition to Deny by The Office of Communication, Inc. of the United Church of Christ, et al., File Nos. BALCT-20000918ABB, et al., filed Oct. 27, 2000 (“Petition to Deny”).

⁸ *See* Petition to Deny, at 10-13.

⁹ *See id.* at 10-11.

¹⁰ *Id.* at 11.

both competition and diversity by reducing the number of independently owned television stations and concentrating power in the hands of Fox.”¹¹

In July 2001, the Commission rejected Fox’s claim that the 1993 permanent waiver extended to the acquisition of WWOR-TV, pointing out that “a waiver granted under market conditions that exist at a given place and time is not automatically extended to cover new combinations several years later under potentially changed market conditions.”¹² Regarding Fox’s request for an interim waiver predicated on the forthcoming 2002 Biennial Regulatory Review, the Commission noted that “the fact that such a proceeding was on the horizon, would not be sufficient to warrant an interim waiver.”¹³ Instead, the Commission granted a “temporary 24-month waiver within which to come into compliance with the” NBCO.¹⁴ The Commission justified the temporary waiver on the grounds that “[a] temporary loss of diversity, if any, in the New York market during this period will be outweighed by the benefits of permitting an *orderly sale* to a qualified buyer committed to preserving the *Post* as a media voice.”¹⁵ The Commission explained that Fox was not required to sell the *Post*, rather, it had the option of divesting either of its two New York television stations, or the *Post*, just as long it came into compliance with the NBCO rules by the expiration of the waiver.¹⁶

UCC and Rainbow/PUSH Coalition appealed the Commission’s decision to United States Court of Appeals for the D.C. Circuit. Fox intervened and assured the court: “The two-year

¹¹ Reply to Joint Opposition of Fox and Chris-Craft by The Office of Communication, Inc. of the United Church of Christ, et al., File Nos. BALCT-2000918ABB, et al., filed Reply Nov. 22, 2000 (“Reply to Joint Opposition”).

¹² *UTV of San Francisco, Inc.*, 16 FCC Rcd at 14987.

¹³ *Stockholders of Renaissance Communications Corp.*, 13 FCC Rcd 4717, 4718 (1998); *UTV of San Francisco, Inc.*, 16 FCC Rcd at 14988.

¹⁴ *UTV of San Francisco, Inc.*, 16 FCC Rcd at 14990.

¹⁵ *Id.* at 14989.

¹⁶ *Id.* at n. 73.

waiver is not a free pass; it is a temporary arrangement crafted by the Commission to allow Fox to time to locate a new buyer for a fragile, money-losing enterprise.”¹⁷

In an unpublished opinion, the D.C. Circuit affirmed the FCC’s ruling. It found that the FCC had made an adequate public interest finding to approve the transfer, noting that “[a]lthough Fox could not fully complete Form 314 because it required waivers, to the extent that Fox required these waivers, the Commission found that granting temporary waivers would serve the public interest, and, therefore, the acquisition was in the public interest.”¹⁸ The court further found that “the FCC acted well within its discretion in setting the waiver period at 24-months,”¹⁹ given that Appellants had presented no evidence as to why a shorter period would have achieved the same goals. Judge Tatel issued a concurring opinion in which he agreed that the result was required by precedent, but expressed concern that the Commission had converted an obligation to find affirmative public interest benefits into a rule allowing a license transfer “so long as the acquisition (eventually) does no harm.”²⁰

The twenty four month waiver expired in July 2003. However, Fox did not come into compliance with the rule as required by the FCC’s order. Nor does it appear that Fox took any effort during the 24 month period to comply. It appears that Fox was counting on the FCC amending the NBCO rule to allow cross-ownership. And in fact, in June 2003, the Commission relaxed the ownership restrictions imposed by the NBCO and replaced the rule with a cross media limit allowing cross-ownership in most markets.²¹ However, before the cross media limit took effect, the Third Circuit issued a stay on September 3, 2003, ordering that the old rule

¹⁷ Brief for the Intervenor Supporting Appellee by Fox Television Stations, Inc., No. 01-1374, filed July 15, 2002 (“Brief for the Intervenor”).

¹⁸ *Office of Communication of the United Church of Christ v. FCC*, 2002 U.S. App. Lexis 23330.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 6.

²¹ *In the Matter of the 2002 Biennial Regulatory Review*, 18 FCC Rcd 13,620 (2003).

remain in effect pending judicial review.²² In June 2004, the Third Circuit reversed and remanded the cross media limits, and ordered that the stay remain in place pending its review of the Commission's action on remand.²³ Thus, the NBCO's prohibition against common ownership of a television station and daily newspaper serving the same area has been continuously in effect since its adoption and remains in effect today.

C. After Failing to Comply with the FCC Order, Fox Asked for More Waivers

Even after it became clear that the NBCO would remain in effect, Fox still did not comply with the NBCO as required by the Commission's 2001 Order. Instead, on September 22, 2004, Fox filed a document it called "Petition for Modification of Permanent Waiver," requesting the Commission to either permit common ownership of WWOR-TV, WNYW(TV), and the *Post*, or to grant an additional temporary waiver until after the remand of the 2002 Biennial Regulatory Review.²⁴

Despite the years of litigation between UCC and Rainbow/PUSH Coalition and Fox over the New York waiver, Fox failed to serve UCC and Rainbow/PUSH Coalition's counsel with a copy of the petition for a waiver for WWOR-TV. Nor did the FCC provide any public notice or seek comment on Fox's September 2004 waiver request.

²² *Prometheus Radio Project v. Federal Communications Commission*, 2003 U.S. App. Lexis 18390.

²³ *Prometheus Radio Project v. Federal Communications Commission*, 373 F.3d 372, 435 (2004).

²⁴ Petition for Modification of Permanent Waiver by Fox Television Stations, Inc., filed September 22, 2004 ("2004 Waiver Request").

Notwithstanding the absence of public notice, Free Press, an organization who became aware of the request, filed an opposition to the petition on April 15, 2005.²⁵ Free Press's opposition requested that if the Commission did not simply dismiss Fox's waiver petition as requested, it should at least seek public comment on it. Free Press cited UCC and Rainbow/PUSH Coalition's opposition to Fox's original acquisition of WWOR-TV and noted that many members of the public would likely object if they knew about Fox's proposal.²⁶

Free Press also argued against the waiver request on both procedural and substantive grounds. Procedurally, Free Press asserted that since Fox previously sought either a permanent waiver or an interim waiver in 2001 and was rejected on both counts, its request constituted an untimely petition for reconsideration. Substantively, Free Press noted that Fox failed to meet any of the prongs of the waiver test.²⁷ Not only had Fox failed to document any attempts to sell *any* of its New York media properties, but it had failed to present any evidence that divesting either television station or the *Post* would cause any of the media entities to go out of business. Moreover, Fox did not demonstrate that common ownership in this case would increase diversity or competition.

Fox filed a sixteen page "Opposition to Free Press Objection" on May 10, 2005. The Opposition generally reiterated the same arguments from Fox's waiver petition. In addition, Fox

²⁵ Letter from Timothy Karr, Campaign Director, Free Press, to Chairman Kevin J. Martin, Federal Communications Commission (Apr. 15, 2005) Free Press Opposition Letter, ("Free Press Opp.").

²⁶ Free Press Opp. at P.4.

²⁷ See *Multiple Ownership*, Free Press Opp. at 3-4. *Second Report and Order in Docket No. 18110*, 50 FCC 2d 1046, 1084-85, *recon.* 53 FCC 2d 589 (1975), *aff'd sub nom. FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978) ("1975 Order").

argues that the Commission should not seek public comment on its latest waiver request “because it would serve no useful purpose.”²⁸

While its waiver petition was pending, Fox underwent a corporate restructuring necessitating FCC approval. As a result, in September 2005, Fox filed a Form 315 “transfer of control” application with the Commission.²⁹ Exhibit 18 provides some background regarding Fox’s prior waivers and repeats arguments made in the 2004 waiver request. Fox also attached a copy of the 2004 waiver request.

The Commission placed Fox’s transfer application on Public Notice on August 30, 2005. The Public Notice gave no indication that Fox was also seeking new waivers of the NBCO for WNYW and WWOR.³⁰ Nor did Fox serve the transfer application on counsel for UCC and Rainbow/PUSH Coalition. There is no indication that Fox served a copy on Free Press.

D. The FCC Grants Fox More Waivers

The FCC voted three to two to grant the transfer and the waivers on August 15, 2006. However, the Order was not released for more than seven weeks.³¹ The Order references separate statements by Chairman Martin and Commissioner McDowell, as well as dissents by Commissioners Copps and Adelstein. However, as of today, the last day for filing reconsideration of the 2006 Order, no separate or dissenting statements have been released.

²⁸ Opposition to Free Press Objection by Fox Television Stations, Inc., filed May 10, 2005 at 18.

²⁹ FCC Form 315 Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, File No. BTCCT – 20050819AAF.

³⁰ To discover that Fox’s corporate restructuring included a request for waiver of the cross-ownership rule, someone would have had to pull up the broadcast actions listed in the Commission’s Daily Digest summaries and then see the one line among many of “Broadcast Actions” referring to Fox, and then go to the FCC website and call up the application and then read the appendixes to that application.

³¹ Although the Order indicates that it was released on October 6, 2006, a Friday before the Columbus Day weekend, the text did not appear in the Daily Digest for that date. It appeared instead on the Daily Digest for October 10, 2006.

The 2006 Order incorrectly describes Fox’s application as “unopposed.”³² It then explains that “[b]ecause the parties seek the authority for this transaction on FCC Form 314, commonly referred to as a ‘long-form’ application, our review includes a *de novo* review of any multiple ownership waivers held by the transferor.”³³ The Order grants the transfer of control, grants a new permanent waiver for WNYW(TV) and the *Post*, and grants a new temporary waiver permitting continued common ownership of WWOR-TV for an additional 24-months.

II. PETITIONERS MEET THE CRITERIA FOR REQUESTING RECONSIDERATION.

Section 405(a) of the Communications Act permits reconsideration by “any other person aggrieved or whose interests are adversely affected” by a Commission decision.³⁴ The FCC rules provide that:

any...person whose interests are adversely affected by any action taken by the Commission....may file a petition requesting reconsideration of the action taken. If the petition is filed by a person who is not a party to the proceeding, it shall state with particularity the manner in which the person’s interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding.³⁵

UCC and Rainbow/PUSH Coalition are adversely affected by the Commission’s decision to grant Fox an additional twenty four month waiver. As demonstrated in the attached Declarations,³⁶ both UCC and the Rainbow/PUSH Coalition have members who reside within the service area of WWOR-TV and are the intended beneficiaries of the viewpoint diversity that

³² October 6, 2006 Order at ¶ 1.

³³ *Id.* at ¶ 5.

³⁴ 47 USC §405(a).

³⁵ 47 C.F.R. §1.106(b)(1)(2005).

³⁶ *See* Attachments Exhibit 1 Declarations.

the NBCO rule is designed to promote.³⁷ The second 24-month extension granted to Fox to operate WWOR-TV harms each organization's members by causing a loss of diverse viewpoints available to them and decreasing competition in the provision of local news. Each group's members are deprived of the opportunity to have a different licensee, perhaps one controlled by minorities or women, making programming decisions about what to air and how to serve the community.

UCC and Rainbow/PUSH Coalition were unable to participate in the earlier stage of this proceeding because the Commission failed to provide public notice and opportunity for public comment on Fox's requested waivers. Nor did Fox serve counsel for Petitioners with either its September 2004 Waiver Petition or its September 2005 Application for Transfer of Control, despite the fact that both organizations had formally opposed the grant of a temporary waiver for WWOR in the first place. Thus, UCC and Rainbow/PUSH Coalition meet the criteria for seeking reconsideration.

III. THE COMMISSION SHOULD RECONSIDER ITS DECISION TO GRANT FOX A NEW TEMPORARY WAIVER OF THE NBCO

The Commission's grant of a new temporary waiver violated basic principles of due process and administrative law because it provided no notice, or opportunity for public comment on Fox's waiver request, was based on erroneous facts, and was not supported by the record. Thus, the Commission should reconsider its decision.

³⁷ See *Rainbow/PUSH Coalition Coalition v. FCC*, 396 F.3d 1235, 1239 (D.C. Cir. 2005) (quoting *Rainbow/PUSH Coalition Coalition v. FCC*, 330 F.3d 539, 542 (D.C. Cir. 2003)).

A. The Commission Violated the APA and Fundamental Principles of Due Process by Failing to Provide Notice and an Opportunity for Comment

As the Supreme Court has noted, “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”³⁸ Indeed, the APA requires that in adjudications, the “agency shall give all interested parties opportunity for the submission and consideration of facts, arguments . . . or proposals of adjustment when time, the nature of the proceeding, and the public interest permit.”³⁹

Here, UCC and Rainbow/PUSH Coalition were parties to the original transfer proceeding. Yet, despite the fact that there was plenty of time for public comment, and it would have served the public interest to solicit comment here, the FCC failed to give interested parties the opportunity to submit facts and arguments for consideration.⁴⁰ The Commission’s failure to seek public comment on Fox’s request for a new waiver is a clear abuse of discretion. As a result of not receiving broad public comment, the Commission based its decision on Fox’s self-interested version of the facts, without subjecting any of Fox’s claims that the waiver serves the public interest to input from the public. This is the essence of arbitrary decision making.

³⁸ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); See also *Jones v. Flowers*, 126 S.Ct. 1708 (2006).

³⁹ 5 U.S.C. §554(c). See generally Richard J. Pierce, Sidney A. Shapiro, & Paul R. Verkuil, *Administrative Law and Process* § 6.4.3b (4th ed. 2004); Jerry L. Mashaw, Richard A. Merrill, Peter M. Shane, *Administrative Law: The American Public Law System* 407 (5th ed. 2003).

⁴⁰ When Fox sought waivers of the NBCO in 1993, the Commission gave the public the opportunity to comment. *Fox Television Stations Inc.*, 8 FCC Rcd 5341, 5341(1993).

B. The FCC’s Decision to Grant Fox a New Waiver was Based on Incorrect Facts

Reconsideration is also necessary because the Commission’s decision was based on factually incorrect premises. First, the Order states that Fox’s application was unopposed, and does not acknowledge that Free Press filed an objection to Fox’s waiver petition.⁴¹ Since granting the waivers was essential to approving Fox’s transfer request, it is not true that Fox’s application was unopposed. Moreover, if the public had notice and opportunity to comment, others would likely have opposed Fox’s request as well.

Second, the Order states that “the existing waivers permitting the common ownership of WNYW(TV), WWOR-TV and *The New York Post* were granted primarily to preserve the operation of the newspaper after concluding that the public would benefit from preservation of the newspaper and that competition in the subject market would not be adversely affected.”⁴² However, as detailed above, this characterization is false. While the Commission granted the 1993 waiver permitting common ownership of WNYW(TV) and the *Post* primarily to preserve the operation of the newspaper,⁴³ that was not the reason for granting the temporary waiver for WWOR. Instead, as described above, the FCC granted that waiver so that Fox could come into compliance with the NBCO while avoiding a “fire sale.”⁴⁴

C. The FCC’s Grant of A New Waiver for WWOR is Arbitrary and Capricious

The Commission may approve transfers of control only in instances where the transfer serves the public interest.⁴⁵ On its face, approving an application that violates FCC rules does

⁴¹ October 6, 2006 Order ¶1.

⁴² *Id.* at ¶7.

⁴³ *Fox Television Stations.*, 8 FCC Rcd 5341, 5345 (1993).

⁴⁴ *UTV of San Francisco, Inc.*, 16 FCC Rcd at 1490.

⁴⁵ 47 U.S.C. § 310(d). *See also Telemundo Inc. v. FCC*, 802 F.2d 513, 517 (D.C. Cir. 1986);

not serve the public interest. Thus, the Commission can only grant Fox’s transfer application if it finds that it would serve the public interest to waive the cross-ownership rule. Indeed, the Commission acknowledges that its

review includes a *de novo* review of any multiple ownership waivers held by the transferor. Such a review is required because multiple ownership waivers apply to a particular licensee as constituted at the time the waiver is granted and do not automatically accrue to a new licensee who represents a new ownership combination.⁴⁶

1. Fox Has Not Shown, Nor does the FCC Find, that it is Entitled to a Waiver Under the Traditional Four-Prong Test for Waivers of the NBCO

Despite this acknowledgement, the FCC’s order lacks any analysis that would support a grant of the WWOR waiver under the traditional four-part test. In adopting the NBCO, the Commission set out four criteria where a waiver would be appropriate: (1) a licensee is unable to sell a station; (2) if the only sale possible would be at an artificially depressed price; (3) the locality cannot support separate ownership and operation of the newspaper and broadcast station; or (4) for whatever reason, the purposes of the rule would be disserved by its application.⁴⁷ An applicant seeking a waiver under the fourth exception is obligated to “plead with particularity the facts and circumstances which would support a deviation” from the rule.⁴⁸

The burden is on Fox to show its inability to sell (or sell only at an artificially depressed price) either the *Post* or one of the broadcast stations, yet Fox presented no evidence supporting either contention. In contrast, when the Commission granted Tribune a new temporary waiver of

Office of Communication of the United Church of Christ v. FCC, 911 F.2d 813, 817 (D.C. Cir. 1990); *Microwave Acquisition Corporation v. FCC*, 145 F.3d 1410, 1412 (D.C. Cir. 1998).

⁴⁶ October 6, 2006 Order at ¶5.

⁴⁷ See *Multiple Ownership – Second Report and Order in Docket No. 18110*, 50 FCC 2d 1046, 1084-85, *recon.* 53 FCC 2d 589 (1975), *aff’d sub nom. FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978).

⁴⁸ See, e.g., *Angelo State University* 19 FCC Rcd at 24539.

the NBCO to permit common ownership of the *Hartford Courant* newspaper and television station WTXX, the Commission detailed Tribune's multiple attempts at identifying a potential buyer to comply with the NBCO before the expiration of its temporary waiver.⁴⁹ Nor did Fox demonstrate that New York, the largest media market in the United States, is incapable of supporting separate ownership of a newspaper and a television station.

In fact, statistics indicate Fox's New York media properties are thriving financially. Figures cited by the Commission actually show that over the past four years, the *Post* has increased its coverage from 5.3% to 7.3% of New York households, coming close to the coverage of *The New York Times* at 8.4%. The *Post* also increased its share of advertising revenues from 4% to 6.3%.⁵⁰ In fact, the *Post* is one of the few newspapers in a major market that has increased circulation over the last six months.⁵¹ Similarly, WNYW(TV) is ranked third among New York television stations with 15% of estimated station revenue, while WWOR-TV has 7.3%. WNYW(TV) also has the highest estimated power ratio, which is the ratio of revenue share to audience share, and WWOR-TV has the third highest. Both scores indicate that they each receive a percentage share of the market revenues greater than their local commercial share of the viewing audience.⁵²

Finally, the Commission does not find under prong four that the purpose of the NBCO, *i.e.*, promoting diversity and competition is better served by waiving the rule.⁵³ Clearly, Fox's common control of two powerful VHF television stations, both with local newscasts, and one of

⁴⁹ *Counterpoint Communications*, 20 FCC Rcd 8582 (2005).

⁵⁰ October 6, 2006 Order ¶7.

⁵¹ Katharine Q. Seelye, *Newspaper Circulation Falls Sharply*, N.Y. TIMES, Oct. 31, 2006.

⁵² BIA FINANCIAL NETWORK, INVESTING IN TELEVISION MARKET REPORT, 2006 Ratings, (2nd Ed. 2006).

⁵³ The primary purpose of the rule is to ensure "diversity in ownership as a means of enhancing diversity in programming services to the public." 1975 Order.

the major New York daily newspapers, reduces the diversity of local news sources available to the residents of the New York metropolitan area. Enforcing the rule would promote diversity by enabling a different owner, possibly even one controlled by minorities or women, to exercise editorial control about what stories to cover and perspectives to present.

2. The Commission's Stated Reasons for Granting a New Waiver are Not Supported by the Record

Instead of applying the traditional four-prong test, the Commission identifies two grounds for granting a new waiver for WWOR-TV—1) to avoid a forced sale at an artificially depressed price (“fire sale”) and 2) to ensure Fox’s continued investment in the *Post*.⁵⁴ However, neither reason is supported by the record in this case.

As described above, in July 2001, the Commission already gave Fox 24 months to come into compliance with the NBCO and thus avoid a fire sale. Fox has already had five years to divest one of its properties, more than enough time to avoid a depressed sale. Given Fox’s failure even to try to comply with the Order, and its refusal to even promise that it will make efforts to comply in the near future, the Commission’s claim that a waiver is in the public interest to avoid a fire sale is completely without merit.⁵⁵

⁵⁴ The Commission’s entire analysis of why it granted a new waiver for WWOR-TV consists of only a few sentences in the October 6, 2006 Order ¶8:

In addition, we believe that a temporary waiver of the rule to permit continued ownership of WWOR-TV and The New York Post for 24 months is appropriate and in the public interest. This waiver should provide sufficient certainty to assure that FTS and News Corp. will continue to take appropriate action or expend necessary capital to preserve and expand The New York Post without a concern that it would have to forfeit that investment by closing the newspaper or by a forced sale of a media interest at an artificially depressed price to achieve compliance with the multiple ownership rules. In other words, we will act appropriately to ensure that the very purpose of the rule – to preserve competition and existing service to the public – is not disserved by a forced divestiture under these circumstances in a market more than sufficiently competitive to withstand the harms the rule was designed to prevent.

⁵⁵ *UTV of San Francisco, Inc.*, 16 FCC Rcd at 14990.

Second, even assuming for purposes of argument that cross-ownership is necessary for the continued success of the *Post*,⁵⁶ the Commission's grant of a new permanent waiver for WNYW should provide sufficient support. Fox does not make any showing, nor could it, that cross-ownership of two, powerful VHF stations is necessary to the survival of the *Post*.

IV. ON RECONSIDERATION, THE COMMISSION SHOULD ADDRESS ADDITIONAL QUESTIONS CONCERNING FOX'S CHARACTER, COMPLIANCE WITH EX PARTE RULES, AND ADEQUACY OF PUBLIC SERVICE

On reconsideration, the Commission should not only consider input from the public on whether granting Fox a new waiver is in the public interest, but it should consider whether Fox's conduct in connection with this proceeding is consistent with the Commission's rules and policies regarding character. The Commission should also investigate whether Fox violated the *ex parte* rules, and address whether WWOR-TV is meeting its obligations to serve the citizens of New Jersey.

A. Fox's Conduct Raises Questions about its Character and Fitness as a Licensee

In deciding whether grant of a license application is in the public interest, the Commission must assess whether the applicant possesses the requisite "character."⁵⁷ Character encompasses two central qualities: "reliability" and "truthfulness."⁵⁸ Fox's conduct in this and related proceedings suggests that it has been neither reliable nor truthful. The Commission's

⁵⁶ As the Commission itself notes, the competitive position of the *Post* has improved substantially over the past few years. Also, Fox recently purchased a number of smaller local papers in the outer boroughs of the City further consolidating the number of outlets available to citizens who resides in Brooklyn and Queens. See Maria Aspan, *News Corp. Buys Two Groups of Weekly Papers*, N.Y. TIMES, Sept. 28, 2006, at C14.

⁵⁷ See *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor, to SBC Communications, Inc.; Transferee*, 13 FCC Rcd 21292, 21305 P26 (1998) ("*SBC-SNET Order*").

⁵⁸ *Character Policy Statement*, 102 FCC 2d 1179, 1209 (1986).

policy is “to treat any violation of any provision of the Act, or of our Rules or policies, as possibly predictive of future conduct and, this, as possibly raising concerns over the licensee’s future truthfulness and *reliability*, without further differentiation.”⁵⁹

Refusing to comply with the Commission’s orders illustrates that Fox is an unreliable licensee. As described above, the Commission’s order in July 2001 granted Fox twenty four months to comply with the NBCO to avoid a fire sale. There was no ambiguity in the Commission’s directive. Indeed, on appeal of that order, Fox’s brief explicitly assured the D.C. Circuit that it understood what was required. “The two-year waiver is not a free pass; it is a temporary arrangement crafted by the Commission to allow Fox to time to locate a new buyer for a fragile, money-losing enterprise.”⁶⁰ Despite this statement, Fox blatantly disregarded the order and did not come into compliance with the NBCO rule.

Here, Fox is asking for another waiver of the same rule for the same media properties. Nonetheless, the Commission inexplicably fails to mention, much less analyze, the impact of Fox’s failure to comply with the 2001 Order on its qualifications to remain an FCC licensee.

Fox also violated the duty of candor with the Commission. The Commission “has an affirmative obligation to license more than 10,000 radio and television stations in the public interest . . . 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 need in order to fulfill its statutory mandate.”⁶¹ Every licensee knows that misrepresentations to the Commission are treated as serious offenses. Even slight

⁵⁹ *Id.* at 1210 (emphasis added).

⁶⁰ Brief for the Intervenor Supporting Appellee by Fox Television Stations, Inc., No. 01-1374, filed July 15, 2002 (“Brief for the Intervenor”).

⁶¹ *RKO General, Inc. v. FCC*, 670 F.2d 215, 232 (D.C. Cir. 1981); *see also Sea Island Broadcasting Corp.*, 60 F.C.C.2d 146, 148 (1976), *see also* 47 CFR §1.17; Character Policy Statement, 102 FCC 2d at 1228.

misstatements can produce serious consequences, as the Commission may treat even the most insignificant misrepresentation as an event disqualifying a licensee from further consideration.⁶²

Candor is of such critical importance that the Commission traditionally reserves its harshest sanction, complete termination of a licensee's rights, for instances in which the licensee has demonstrated a "pervasive pattern of misrepresentation ... conjoined with ... *flagrant disregard of the rules.*"⁶³

On its Form 315, Fox falsely certifies "that the proposed transfer complies with the Commission's . . . cross-ownership rules."⁶⁴ In the attached Exhibit 18, Fox states that it was granted a 24-month temporary waiver of the NBCO in 2001 and that in September 2004, it sought an extension of that waiver.⁶⁵ However, Fox does not disclose that its September 2004 request was objected to by Free Press. And while Fox attaches a copy of its September 2004 waiver request, it does not attach Free Press' objection, or its own sixteen page opposition to Free Press's objection. This omission of this material fact violates FCC Rule 1.17 and seems to be intended to mislead the Commission. The fact that the Commission characterizes Fox's applications as "unopposed" suggests that it was misled by Fox's lack of candor.

Fox also lacks candor in describing the circumstances in which the FCC previously granted the 24-month waiver. It implies that the FCC granted the 24 month waiver because of the pending proceedings reviewing the NBCO.⁶⁶ In fact, the FCC rejected that reason and

⁶² *Id.* at 1210.

⁶³ *California Public Broadcasting Forum v. FCC*, 947 F.2d 505 (D.C. Cir 1991), *Faulker Radio, Inc.*, 88 F.C.C.2d, 612, 616 (1981) (emphasis added).

⁶⁴ FCC 315 ("Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License Question 8(b)").

⁶⁵ Ex. 18 at 3-4.

⁶⁶ *Id.* at 3 ("At the time, the 24-month waiver seemed to Fox to be more than adequate in duration to permit the Commission to complete proceedings looking toward repeal of the NBCO rule.").

instead granted the temporary waiver to give Fox time to comply with the rule while avoiding a “fire sale.”⁶⁷ Thus, on reconsideration, the Commission should examine the impact of Fox’s lack of candor on its fitness to remain a Commission licensee.

B. The Commission Should Investigate Whether Fox Engaged in Impermissible Ex Parte Communications

The Commission’s ex parte rules forbid all ex parte presentations to Commission decision-making personnel in “restricted proceedings.” “Restricted proceedings” include “applications for authority under Title III of the Communications Act, and all waiver proceedings (except those directly associated with tariff filings).”⁶⁸ Thus, both Fox’s waiver request and its transfer application are restricted proceedings.

This case does not fall under note 1 to §1.208, which allows a party to freely make presentations to the Commission in a restricted proceeding that involves only one party. On April 15, 2005, Free Press became a party to the proceeding when it filed an objection to Fox’s waiver and served the objection on counsel for Fox.⁶⁹ Fox acknowledged Free Press’s objection by filing an opposition on May 10, 2005.⁷⁰ Thus, once Free Press filed its objection, the ex parte rules prohibited all non-exempt ex parte presentations to Commission decision-making personnel. In fact, Free Press’s objection explicitly provided, “By filing this letter objecting to Fox’s waiver request, Free Press becomes a party as defined in 47 C.F.R. § 1.1202(d) and henceforth, all *ex parte* presentations to or from Commission decision-making personnel are

⁶⁷ *supra* at 4.

⁶⁸ 47 C.F.R. § 1.1208.

⁶⁹ *See* 47 C.F.R. § 1.1202(b)(1) and § 1.1208, n.1; *see also Cumulus Licensing Corp.*, 16 FCC Rcd 360, n.7. (2001) (holding that a third party’s objection ended an uncontested transfer application period and set into effect ex parte rules).

⁷⁰ Opposition to Free Press Objection.

prohibited under 47 C.F.R. § 1.1208. Free Press has served this letter on counsel for Fox as required by 47 C.F.R. 1.1202(b)(1).”⁷¹

Nevertheless, it appears that on at least two occasions Fox may have engaged in prohibited ex parte communications with Commission decision-making personnel in violation of these rules. On or about May 30, 2006, Rupert Murdoch personally met with several FCC commissioners and evidently discussed this matter. Moreover, counsel for Fox communicated with staff from at least one Commissioner’s office regarding the substance of the waiver request and the need for prompt action during the summer of 2006. On reconsideration, the Commission should investigate whether Fox violated the ex parte rules and impose appropriate sanctions.

C. The Commission Should Examine WWOR-TV’s Failure To Fulfill Its Obligation To Serve New Jersey

On reconsideration, UCC and Rainbow/PUSH Coalition ask that the Commission consider whether a new waiver to allow Fox to continue to operate WWOR-TV serves the public interest in light of WWOR-TV’s failure to meet its special obligations to serve the citizens of New Jersey.

In 1982, RKO, the licensee for WWOR-TV of New York City, was embroiled in a fight to retain its license for the station.⁷² Congress passed an amendment requiring the Commission to issue a license to any existing commercial VHF licensee that volunteered to move to a state that was not being served by present licensees.⁷³ While its license renewal application was still pending, RKO notified the Commission that it agreed “to the reallocation of WWOR-TV from

⁷¹ Free Press Opp.

⁷² Charles B. Goldfarb, *Reallocating Channel 9 from New York City to Secaucus, New Jersey* 2 (July 28, 2003) (a Congressional Research Service memo to Senator Frank Lautenberg of New Jersey) (“CRS Memo”). The amendment is codified at 47 U.S.C. § 331.

⁷³ CRS Memo at 1-2.

New York, New York, to Secaucus, New Jersey.”⁷⁴ The Commission ordered the reallocation, granted RKO a new five year license, and dismissed competing applications as moot.⁷⁵ In its Order, the Commission made clear that it “expected that the licensee will devote itself to meeting the special needs of its new community (and the needs of the Northern New Jersey area in general).”⁷⁶ The Commission recognized the “unique set of circumstances” present in the highly populated and previously unserved area of Northern New Jersey and “expect[ed] RKO to perform a higher degree of service to its Grade B coverage area than is normally required of a broadcast licensee.”⁷⁷ The Order indicated that at renewal time, “RKO will be judged by how it has met the obligation to serve the greater service needs of Northern New Jersey.”⁷⁸ Subsequently Senator Bill Bradley of New Jersey, the sponsor of the Congressional amendment, stated that the reallocation would mean the license holder would move its studios and offices to New Jersey with the purpose of serving the people of New Jersey.⁷⁹

The licensee of WWOR-TV continues to have a special public interest obligation to the citizens of New Jersey. For license renewal, all television stations in New York and Philadelphia must demonstrate that they maintain a physical presence and news gathering capacity in New Jersey.⁸⁰ WWOR-TV has a greater responsibility to serve New Jersey than its New York or Philadelphia counterparts because its primary community of license is northern New Jersey.”⁸¹

As former Chairman Michael Powell indicated in a letter to Senator Frank Lautenberg of New

⁷⁴ CRS Memo at 2.

⁷⁵ CRS Memo at 2.

⁷⁶ CRS Memo at 3 (quoting Channel 9 Reallocation (WOR-TV), 53 RR 2d 469 (1983)).

⁷⁷ CRS Memo at 3 (quoting Channel 9 Reallocation (WOR-TV), 53 RR 2d 469 (1983)).

⁷⁸ CRS Memo at 3 (quoting Channel 9 Reallocation (WOR-TV), 53 RR 2d 469 (1983)).

⁷⁹ CRS Memo at 3 (citing 128 Cong. Rec. 10946 (daily edition) (Aug. 3, 1982) (remarks of Senator Bradley)).

⁸⁰ Michael K. Powell, *Letter to Senator Frank R. Lautenberg* (Apr. 2, 2004). See also CRS Memo at 4.

⁸¹ CRS Memo at 4.

Jersey on the subject of WWOR-TV, “[r]egardless of where a station’s main studio is located, it must continue to serve the needs and interests of the residents of its community of license.”⁸²

UCC and Rainbow/PUSH Coalition, both of whom have members who live in New Jersey, allege that WWOR-TV has neglected its obligation to serve New Jersey. Since acquiring the license for Channel 9, Fox has repeatedly shown that it would rather incorporate the station into its New York City media empire rather than serve the citizens of New Jersey. For example, in 2004, Fox planned to move the bulk of the station’s operations to New York City, prompting an outrage in New Jersey.⁸³ In response, both New Jersey Senators and five of the state’s House members, including Steve Rothman, the representative of the district that includes Secaucus, called on the Commission to investigate “before relocation plans are fully implemented and New Jersey residents are irrevocably harmed.”⁸⁴ In the face of Congressional pressure, Fox finally backed down and decided to remain in New Jersey.⁸⁵

Despite abandoning its plans to physically move from New Jersey, WWOR-TV’s coverage has all but left the state. Under Fox, WWOR-TV has also shown a lack of commitment to informing Jersey voters. A recent study by Dr. Mathew Hale for the Eagleton NJ Project found that WWOR-TV provided less coverage of the 2005 New Jersey state elections than

⁸² Powell, *Letter to Senator Frank R. Lautenberg*.

⁸³ *See, e.g.*, Press Release, Congressman Steve Rothman, Rothman Calls on FCC to Determine Whether WWOR-TV's Move to NYC Violates Federal Licensing Agreement (Feb. 26, 2004), available at http://www.house.gov/rothman/news_releases/rel_022604a.htm. Congressman Rothman represents the district that includes Secaucus, NJ.

⁸⁴ Press Release, Senator Frank R. Lautenberg, Lawmakers Call On FCC to Investigate Fox News' Attempts to Move WWOR T.V. Out of New Jersey (Sept. 10, 2004), available at <http://lautenberg.senate.gov/newsroom/record.cfm?id=254269&>.

⁸⁵ *E.g.*, Press Release, Congressman Steve Rothman, Rothman Hails WWOR-TV's Decision to Remain in New Jersey (Oct. 8, 2004), available at http://www.house.gov/rothman/news_releases/rel_100804.htm.

competitors based in New York City.⁸⁶ WWOR-TV only aired ten stories that focused on the New Jersey elections; by contrast, WABC aired 18, WCBS aired 21, and WNBC aired 33.⁸⁷ In fact, the only one of the “big four” New York stations that aired fewer stories on the New Jersey elections was WNYW(TV), also owned by Fox, with seven.⁸⁸ Nine of WWOR-TV’s ten stories focused on the governor’s race and one on multiple races, leaving New Jersey without a single commercial broadcast station that focused on down-ticket races.⁸⁹ As the study summarized, “it is debatable how much of a commitment WWOR-TV had to covering New Jersey elections in general.”⁹⁰ Fox’s poor service to New Jersey should lead the Commission to question whether Fox should be allowed to continue to operate the station, let alone obtain a waiver permitting common ownership.

A brief look at the station’s website is enough to show that the station is now targeting the New York audience, not the New Jersey one.⁹¹ The main station page has a picture of the New York City skyline, with the station’s new name, “My 9 New York” displayed prominently. As of October 30, 2006, “New Jersey” does not appear once on the station’s homepage. The weather section brings up the current weather conditions and forecast for Central Park, New

⁸⁶ Dr. Mathew Hale, *Television Coverage of the 2005 New Jersey Election: An Analysis of the Local News Programs on Local New Jersey, New York, and Philadelphia Stations*, Eagleton NJ Project, Eagleton Institute of Politics (June 2006), available at http://www.eagleton.rutgers.edu/NJProject/CampaignsElections/Election05_TVCoverage_Report.pdf.

⁸⁷ Hale at 11.

⁸⁸ Hale at 11.

⁸⁹ Hale at 13, 22.

⁹⁰ Hale at 22.

⁹¹ See Attachment 2.

York, rather than anywhere in New Jersey.⁹² The public affairs section gives a phone and fax number to contact the Public Affairs Department; both numbers have New York area codes.⁹³

CONCLUSION

For the foregoing reasons, the FCC must reconsider its grant of a new waiver of the NBCO cross-ownership rule. UCC and Rainbow/PUSH Coalition urge the Commission to rescind the grant of a new waiver for WWOR-TV and promptly to enforce the conditional waiver that was previously granted in 2001. Alternatively, at a minimum, the Commission should rescind the grant of the waiver, put Fox's waiver request on public notice and give the public an opportunity to comment on it. It must also consider whether Fox has the character to remain a Commission licensee in light of its blatant refusal to comply with the prior FCC order and its lack of candor. It should also investigate whether Fox engaged in improper ex parte communications and whether WWOR-TV has provided adequate public service to New Jersey.

Respectfully Submitted,

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Counsel for UCC and Rainbow/PUSH
Coalition

Dated: November 6, 2006

⁹² Id.

⁹³ Id. The page states, "You may fax Community Calendar announcements to 212-879-0636. If you have any questions about community relations, Community Calendar, public service announcements or public affairs programs on My9, call 212-452-3811. . . ."

Attachment 1

Declarations

DECLARATION

- 1) My name is Robert Chase. I am the Executive Director of the United Church of Christ, Office of Communication, Inc. and the Minister and Team Leader for the Proclamation, Identity and Communication Ministry of the United Church of Christ.
- 2) The United Church of Christ (UCC) is a union of Protestant churches, the Congregational Christian Church and the Evangelical and Reform Church, which collectively includes more than 1.2 million people of whom a significant number are racial minorities. UCC members reside throughout the New York metropolitan area, including New Jersey, and in many other communities throughout the United States.
- 3) The Office of Communication, Inc. is a not-for-profit corporation of the United Church of Christ charged with responsibility for developing the Church's policies in media advocacy. Since the mid-1950's, the Office of Communication, Inc. has participated in proceedings before the Federal Communications Commission to promote a diversity of viewpoints, a greater role for citizens in Commission regulatory proceedings, and more minority involvement in the electronic mass media industries.
- 4) UCC consistently opposed Fox's acquisition of WWOR-TV, Secaucus, New Jersey. UCC filed a Petition to Deny Fox's acquisition of WWOR-TV from Chris-Craft Industries in October 2000. In its petition, UCC challenged Fox's claim that its permanent waiver of the Newspaper/Broadcast Cross-Ownership (NBCO) rule to operate *The New York Post* and WNYW(TV) extended to WWOR-TV. UCC also opposed Fox's request in the alternative for an interim waiver for WWOR-TV until after the 2002 Biennial Review. After the Commission granted Fox a twenty four month temporary waiver to divest one their New York area broadcast stations or the *Post*, UCC appealed the FCC decision to grant a temporary waiver in the U.S. Court of Appeals for the D.C. Circuit.
- 5) UCC was not served with a copy of Fox's September 22, 2004 request for a waiver of the NBCO, nor did the FCC place the waiver request on public notice. Additionally, UCC was not served with a copy of Fox's 2005 transfer application (to which the waiver request was appended), and the Commission's Public Notice regarding the transfer application did not provide any indication that Fox was seeking an additional waiver. As a result, UCC was unable to file timely objections to Fox's waiver requests.
- 6) I have reviewed the foregoing Petition for Reconsideration. All of the relevant facts stated in the Petition are subject to official notice by the Federal Communications Commission, as they are drawn from the Commission's own orders, the transfer request itself, Commission and court decisions, or industry publications, or are supported by the attached Declarations.
- 7) The FCC's decision to grant an additional twenty four month waiver of the NBCO to permit continued ownership of WWOR-TV harms members of UCC who reside within the New York metropolitan area. This order reduces the number of independently controlled sources of local news and public affairs that would be available had Fox complied with the FCC's 2001 Order to adhere to the NBCO by July 2003. Members of UCC residing in the New York area will be harmed by a permanent loss of diversity and competition that will result if

Fox is permitted to continue holding WWOR-TV along with WNYW(TV) and the *Post* on either a permanent or temporary basis. Members will be deprived of an independent voice in the media.

- 8) UCC members residing in New Jersey are harmed by consistently inferior local news coverage by WWOR-TV even though WWOR-TV was intended to serve citizens of New Jersey.
- 9) This Declaration has been prepared in support of the foregoing Petition to Deny.

This statement is true to my personal knowledge and is made under penalty of perjury of the laws of the United States of America.

Date Executed: Nov. 1, 2006

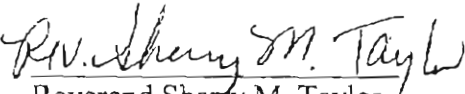


The Rev. Robert Chase
Executive Director
Office of Communication of the United
Church of Christ, Inc.

DECLARATION

1. My name is Reverend Sherry M. Taylor, and I am the Associate Conference Minister for the Association of New Jersey in the United Church of Christ's Central Atlantic Conference. [I am affiliated with United Church of Christ, Congregational church located at 220 West &th Street, Plainfield, New Jersey.
2. I work at 195 Ridgewood Ave., Glen Ridge, NJ 07028.
3. I am a regular viewer of the television stations serving the New York/New Jersey metropolitan area, including WWOR-TV and WNYW(TV), as well as a regular reader of newspapers serving the New York area including *The New York Post*.
4. Fox's common ownership of *The New York Post*, WNYW(TV), and WWOR-TV harms me by sharply reducing the number of independent voices available to me. Unless reversed on reconsideration, the FCC's grant of a twenty four month temporary waiver will allow the company to continue its common ownership for a significant period of time. This recent waiver also provides a disincentive for Fox to find a new owner, and possibly a minority owner, for either the *Post* or one of the television stations.
5. WWOR-TV does not provide me and my family with adequate local news coverage of New Jersey. Fox's ownership of WWOR-TV has limited the amount and diversity of coverage of local news and public affairs in New Jersey. The New Jersey's governor's race received less coverage on WWOR-TV than it did on the major networks. During this election season, it has not covered local races nor issues in New Jersey adequately. WWOR-TV did not provide adequate coverage of the contested Plainfield mayoral race; nor a series of bias crimes that occurred in the city; nor the dispute between the former mayor and the County Sheriff's department. It has not covered the news in the surrounding communities.
6. Because UCC, via its counsel, was not aware of Fox's request for a waiver of the cross-ownership rule, filed in September 2005, UCC and I were unable to present an objection earlier. UCC, via its counsel, did not learn of Fox's request until after the FCC released its decision on October 6, 2006.
7. This Declaration has been prepared in support of the foregoing Petition for Reconsideration.
8. This statement is true to my personal knowledge, and is made under penalty of perjury of laws of the United States of America.

Date Executed: 2 November 2006


Reverend Sherry M. Taylor

DECLARATION

1. My name is Reverend Michael W. Caine, and I am the Regional Conference Minister for the New York Conference of the United Church of Christ. I am a member of the Judson Memorial Church, located 55 Washington Square South, New York, New York 10012
2. I work at 79-11 Caldwell Avenue, Middle Village, New York 11379. My home address is 319 Webster Avenue, Brooklyn New York 11230.
3. I am a regular viewer of the television stations serving the New York area, including WWOR-TV and WNYW(TV), as well as a regular reader of newspapers serving the New York area including *The New York Post*.
4. Fox's common ownership of *The New York Post*, WNYW(TV), and WWOR-TV harms me by sharply reducing the number of independent voices available to me. Unless reversed on reconsideration, the FCC's grant of a twenty four month temporary waiver will allow the company to continue its common ownership for a significant period of time. This recent waiver also provides a disincentive for Fox to find a new owner, and possibly a minority owner, for either the *Post* or one of the television stations.
5. Because the United Church of Christ (UCC), via its counsel, was not aware of Fox's request for a waiver of the cross-ownership rule, filed in September 2005, the UCC and I were unable to present an objection earlier. The UCC, via its counsel, did not learn of Fox's request until after the FCC released its decision on October 6, 2006.
6. This Declaration has been prepared in support of the foregoing Petition for Reconsideration.
7. This statement is true to my personal knowledge, and is made under penalty of perjury of laws of the United States of America.

Date Executed: 6. November 2006



the Reverend Michael W. Caine



NATIONAL HEADQUARTERS

930 East 50th Street
Chicago, Illinois 60615
Phone: (773) 373-3366 * Fax: (773) 373-3571

DECLARATION

LaSalle Street Project
Located within the
National Office in Chicago, IL

**Public Policy Institute &
Telecommunications Project**
727 15th Street NW
Suite 1200
Washington, D.C. 20005
Phone: (202) 393-7874
Fax: (202) 393-1495

Wall Street Project
Empire State Building
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Suite 2701
New York, NY 10118
Phone: (212) 425-7874
Fax: (212) 968-1412

Entertainment Project
1968 West Adams Boulevard
Suite 300
Los Angeles, CA 90018
Phone: (323) 734-3900
Fax: (323) 734-3913

Technology Project
560 20th Street
Oakland, CA 94612
Phone: (510) 669-2202
Fax: (510) 763-2680

Peachtree Street Project
Herndon Plaza
100 Auburn Avenue
Suite 101
Atlanta, GA 30303
Phone: (404) 525-5663 or 5668
Fax: (404) 525-5233

Automotive Project
First National Building
660 Woodward Avenue
Suite 1433
Detroit, MI 48226
Phone: (313) 963-9005
Fax: (313) 963-9012

**Right to Return and
Reconstruction Project**
650 Poydras, Suite 1025
New Orleans, LA 70130
Phone: (504) 529-4223
Fax: (504) 529-4232


- 1) My name is the Reverend Jesse L. Jackson, Sr. I am the Founder and President of the Rainbow/PUSH Coalition.
- 2) The Rainbow/PUSH Coalition is a multi-racial, multi-issue, international membership organization that works to further social, racial, and economic justice for individuals who are disenfranchised politically, socially and economically. The Rainbow/PUSH Coalition has vigorously worked to ensure equal opportunity and employment in media.
- 3) The Rainbow/PUSH Coalition consistently opposed Fox's acquisition of WWOR-TV, Secaucus, New Jersey. The Rainbow/PUSH Coalition filed a Petition to Deny Fox's acquisition of WWOR-TV from Chris-Craft Industries in October 2000. In its petition, the Rainbow/PUSH Coalition challenged Fox's claim that its permanent waiver of the Newspaper/Broadcast Cross-Ownership (NBCO) rule to operate *The New York Post* and WNYW(TV) extended to WWOR-TV. The Rainbow/PUSH Coalition also opposed Fox's request in the alternative for an interim waiver for WWOR-TV until after the 2002 Biennial Review. After the Commission granted Fox a twenty four month temporary waiver to divest one their New York area broadcast stations or the *Post*, the Rainbow/PUSH Coalition appealed the FCC decision to grant a temporary waiver in the U.S. Court of Appeals for the D.C. Circuit.
- 4) The Rainbow/PUSH Coalition was not served with a copy of Fox's September 22, 2004 request for a waiver of the NBCO, nor did the FCC place the waiver request on public notice. Additionally, the Rainbow/PUSH Coalition was not served with a copy of Fox's 2005 transfer application (to which the waiver request was appended), and the Commission's Public Notice regarding the transfer application did not provide any indication that Fox was seeking an additional waiver. As a result, the Rainbow/PUSH Coalition was unable to file timely objections to Fox's waiver requests.
- 5) I have reviewed the foregoing Petition for Reconsideration. All of the relevant facts stated in the Petition are subject to official notice by the Federal Communications Commission, as they are drawn from the Commission's own orders, the transfer request itself, Commission and court decisions, or industry publications, or are supported by the attached Declarations.
- 6) The FCC's decision to grant an additional twenty four month waiver of the NBCO to permit continued ownership of WWOR-TV harms members of the Rainbow/PUSH Coalition who reside within the New York metropolitan area.

Rev. Jesse L. Jackson, Sr., *Founder & President*
Martin L. King, *Chairman*
www.rainbowpush.org

- 7) This order reduces the number of independently controlled sources of local news and public affairs that would be available had Fox complied with the FCC's 2001 Order to adhere to the NBCO by July 2003. Members of the Rainbow/PUSH Coalition residing in the New York area will be harmed by a permanent loss of diversity and competition that will result if Fox is permitted to continue holding WWOR-TV along with WNYW(TV) and the *Post* on either a permanent or temporary basis. Members will be deprived of an independent voice in the media. Moreover, by granting Fox an additional temporary waiver, the Commission eliminates an opportunity for potential minority or female ownership, which is an issue of great concern for the Rainbow/PUSH Coalition.
- 8) Rainbow/PUSH Coalition members residing in New Jersey are harmed by consistently inferior local news coverage by WWOR-TV even though WWOR-TV was intended to serve citizens of New Jersey.
- 9) This Declaration has been prepared in support of the foregoing Petition to Deny.

This statement is true to my personal knowledge and is made under penalty of perjury of the laws of the United States of America.

Date Executed: November 6, 2006



Rev. Jesse L. Jackson, Sr.
Founder and President
Rainbow/PUSH Coalition, Inc.



NATIONAL HEADQUARTERS

930 East 50th Street
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**Right to Return and
Reconstruction Project**
650 Poydras, Suite 1025
New Orleans, LA 70130
Phone: (504) 529-4223
Fax: (504) 529-4232

1. I, Dr. Rev. David Jefferson, am a member of the Rainbow/PUSH Coalition located at Wall Street Project, 5 Hanover Square, 2nd Floor, New York, NY 10004.

2. I reside at 149 Springfield Ave.; Newark, NJ 07103.

3. I am a regular viewer of the television stations serving the New York area, including WWOR-TV and WNYW(TV), as well as a regular reader of newspapers serving the New York area including *The New York Post*.

4. Fox's common ownership of *The New York Post*, WNYW(TV), and WWOR-TV harms me by sharply reducing the number of independent voices available to me. Unless reversed on reconsideration, the FCC's grant of a twenty four month temporary waiver will allow the company to continue its common ownership for a significant period of time. This recent waiver also provides a disincentive for Fox to find a new owner, and possibly a minority owner, for either the *Post* or one of the television stations.

5. WWOR-TV does not provide me and my family with adequate local news coverage of New Jersey. Fox's ownership of WWOR-TV has limited the amount and diversity of coverage of local news and public affairs in New Jersey.

6. Because I was not aware of Fox's request for a waiver of the cross-ownership rule, filed in September 2005, I was unable to present an objection earlier. I did not learn of Fox's request until after the FCC released its decision on October 6, 2006.

7. This Declaration has been prepared in support of the foregoing Petition for Reconsideration.

8. This statement is true to my personal knowledge, and is made under penalty of perjury of laws of the United States of America.

Date Executed: 11/03/06


Dr. Rev. David Jefferson

Attachment 2

Webpages



New York

Home Weather News What's On Public Affairs I-Team Contact Us About Us

desire
 MON - FRI NIGHTS
 8PM
 SAT NIGHT
 WEEKLY RECAP
 8PM



FASHION HOUSE PH
 MON - FRI NIGHTS
 9PM
 SAT NIGHT
 WEEKLY RECAP
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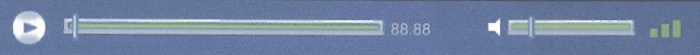


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My Hot Picks
 SPA Chicks

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My 9's "Fashion House" stars (l-r) Taylor Kinney, Joel Bevil and Donna Feldman join a chorus line of Be Derick and Morgan Fairchild look-alikes. "Team 20" and "Team 100" squared off in Times Square. "Fashion House" airs on My 9 Mon-Sat at 9 p.m.

Tue	Wed	Thu	Fri	Sat
				
Chance of Rain High: 63° Low: 52°	Rain High: 62° Low: 51°	Pt. Sunny High: 64° Low: 47°	Pt. Sunny High: 57° Low: 43°	Mostly Cloudy High: 56° Low: 48°

Conditions

Updated: 3:51 PM EST on November 06, 2006

Observed at **Central Park, New York**















Temperature	55°F
Humidity	36%
Dew Point	28°F
Wind	Variable at 4 mph
Pressure	30.39 in
Conditions	Clear
Visibility	10.0 miles
Clouds	Clear (CLR) : -
Yesterday's Maximum	49°F approx.
Yesterday's Minimum	37°F approx.
Yesterday's Heating Degree Days	22 approx.
Sunrise	06:32 AM (EST)
Sunset	04:46 PM (EST)
Moon Rise	05:16 PM (EST)
Moon Set	07:59 AM (EST)
Moon Phase	

New York Tides

TODAY	TIME	LEVEL (feet)
High	8:08 AM EST	6.19'
	8:42 PM EST	4.99'
Low	2:53 PM EST	-0.63'
TOMORROW	TIME	LEVEL (feet)
High	8:56 AM EST	5.99'
Low	2:54 AM EST	-0.44'
	3:42 PM EST	-0.46'

Forecast

Forecast as of 4:16 PM EST on November 6, 2006

	Tonight Mostly clear this evening...then becoming partly cloudy. Lows in the mid 40s. West winds around 5 mph.
	Tuesday Mostly cloudy. A chance of showers in the afternoon. Highs in the lower 60s. Light and variable winds...becoming east around 5 mph late in the morning...then becoming south in the afternoon. Chance of rain 40 percent.
	Tuesday Night Rain. Lows in the lower 50s. South winds 5 to 10 mph...becoming east late. Chance of rain 80 percent.
	Wednesday Mostly cloudy with rain likely in the morning...then becoming partly cloudy with rain tapering off during the afternoon. A 60 percent chance of rain. Highs in the lower 60s. South winds 10 to 15 mph.
	Wednesday Night Partly cloudy. Lows in the lower 50s. Southwest winds 10 to 15 mph.
	Thursday Partly cloudy. Highs in the mid 60s.
	Thursday Night Mostly clear. Lows in the upper 40s.
	Friday Mostly sunny. Highs in the upper 50s.
	Friday Night Mostly clear. Lows in the lower 40s.
	Veterans Day Partly cloudy. Highs in the mid 50s.
	Saturday Night Partly cloudy. Lows in the upper 40s.
	Sunday Partly cloudy. Highs in the mid 50s.
	Sunday Night Partly cloudy. Lows in the lower 40s.
	Monday Partly cloudy. Highs in the lower 50s.

Local Radar



Regional Radar



US Radar



Public Affairs

[Public Affairs](#) | [PSA'S](#) | [Public Affairs Programs](#) | [Special Events](#)

My9-WWOR's Public Affairs Department handles a lot of the things you contact a television station for. Questions about community relations, public affairs programs, public service announcements, Community Calendar listings, and various special projects. Scroll down the page for more information about us

You may fax Community Calendar announcements to 212-879-0636. If you have any questions about community relations, Community Calendar, public service announcements or public affairs programs on My9, call 212-452-3811 or e-mail joe.silvestri@foxtv.com.

We hope you'll visit the rest of the Public Affairs pages and see what's going on. You'll find specific information about public service announcements and COMMUNITY CALENDAR under their headings. For information on our three programs, go to Public Affairs Programs, get information on the program hosts and then select the title of the program you are interested in learning more about.

Thank you for your interest in My9 and for taking the time to check us out



Certificate of Service

I, Marvin Ammori, hereby certify that on this 6th day of November 2006, a copy of the foregoing Petition for Reconsideration of Office of Communication of the United Church of Christ, Inc. and Rainbow/PUSH Coalition, was served by first-class mail, postage prepaid, upon the following:

Molly Pauker
Fox Television Stations, Inc.
5151 Wisconsin Avenue, NW
Washington, DC 20016
Vice President, Corporate and Legal Affairs
mollyp@foxtv.com

John C. Quale
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC 20005
Counsel for Fox Television Stations, Inc.
jquale@skadden.com

In addition, I have provided courtesy copies via email to all individuals listed below.

Chairman Kevin J. Martin
Federal Communications Commission
445 12th Street SW, 8th Floor
Washington, DC 20554
Kevin.Martin@fcc.gov

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street SW, 8th Floor
Washington, DC 20554
Michael.Copps@fcc.gov

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street SW, 8th Floor
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Commissioner Deborah T. Tate
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445 12th Street SW, 8th Floor
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Commissioner Robert M. McDowell
Federal Communications Commission
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Heather Dixon
Legal Advisor for Media Issues for Chairman Martin
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Donna Gregg
Media Bureau Chief
Federal Communications Commission
445 12th Street SW, 8th Floor
Washington, DC 20554
Donna.Gregg@fcc.gov

Marvin Ammori

Certificate of Service

I, Marvin Ammori, hereby certify that on this 1st day of May 2007, a copy of the foregoing Petition to Deny of Office of Communication of the United Church of Christ, Inc. and Rainbow/PUSH Coalition, was served by first-class mail, postage prepaid, upon the following:

Molly Pauker
Fox Television Stations, Inc.
5151 Wisconsin Avenue, NW
Washington, DC 20016
Vice President, Corporate and Legal Affairs
mollyp@foxtv.com

John C. Quale
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC 20005
Counsel for Fox Television Stations, Inc.
jquale@skadden.com

In addition, I have provided courtesy copies via email to all individuals at Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, listed below.

Chairman Kevin J. Martin
Kevin.Martin@fcc.gov

Commissioner Michael J. Copps
Michael.Copps@fcc.gov

Commissioner Jonathan S. Adelstein
Jonathan.Adelstein@fcc.gov

Commissioner Deborah T. Tate
Deborah.Tate@fcc.gov

Commissioner Robert M. McDowell
Robert.McDowell@fcc.gov

Michelle Carey
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Marvin Ammori