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JUL 13 2001

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Applications for Assignment)
of Licenses from Subsidiaries)
of Chris-Craft Industries, Inc.)
to Fox Television Stations, Inc.)
)
REVIEW OF FREEDOM)
OF INFORMATION ACTION)
)
To: The Commission)

File Nos. BALCT-20000918ABB-
ABD; BALCT-20000918ABF-ABS;
BALCT-20000918ABU-ABZ;
BALCT-20000918ACA-ACE

FOIA Control No. 21-132

**APPLICATION FOR REVIEW
OF FREEDOM OF INFORMATION ACTION**

The News Corporation Limited ("News Corp."), parent corporation of Fox Television Stations, Inc. ("FTS"), by its attorneys and pursuant to Section 0.461(i)(2) of the rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. §0.461(i)(2), respectfully submits this application for review, in part, of the letter, dated June 28, 2001, from Roy J. Stewart, Chief, Mass Media Bureau, to Mr. Paul D. Colford, Daily News, L.P. (the "FCC Letter"), partially granting and partially denying Mr. Colford's request to review confidential documents filed by News Corp. with the Commission in the above-referenced application proceeding.

On January 22, 2001 and April 9, 2001, in order to facilitate the Commission's review of the above-referenced application proceeding and to provide the

Commission with a better understanding of the financial condition of the *New York Post* and the challenge of competing in the New York newspaper market, News Corp. submitted certain confidential financial information regarding the *New York Post* and related declarations, along with requests for confidential treatment of such documents.¹ News Corp. demonstrated that the information it submitted to the Commission is not the type that would customarily be made available to the public, and that public disclosure of such documents is likely to cause substantial harm to the competitive position of the *New York Post*. In particular, News Corp. expressed its "deep[] concern[] that . . . this extremely sensitive information could fall into the hands of the *Post's* competitors and could be used to the detriment of the *Post*."² News Corp., however, agreed to disclosure of the documents to outside counsel for the petitioners in the above-referenced application proceeding and specifically named persons associated with such petitioners pursuant to a protective order, which

¹ Letter, dated January 22, 2001, from Arthur M. Siskind, Senior Executive Vice President, The News Corporation Limited, to Ms. Magalie Roman Salas, Secretary, Federal Communications Commission ("January 22 Letter"). Letter, dated April 9, 2001, from Arthur M. Siskind, Senior Executive Vice President, The News Corporation Limited, to Ms. Magalie Roman Salas, Secretary, Federal Communications Commission ("April 9 Letter").

² Letter, dated December 13, 2000, from William S. Reyner, Jr., Hogan & Hartson L.L.P. to Ms. Magalie Roman Salas, Secretary, Federal Communications Commission, attached to and incorporated in the January 22 Letter.

was adopted by the Commission on February 27, 2001, as amended March 2, 2001 and April 18, 2001 (the "Protective Order").³

By e-mail dated April 27, 2001, Mr. Paul D. Colford, a business writer with the New York *Daily News*, the principal competitor to the *New York Post*, requested disclosure of these financial documents under the Freedom of Information Act ("FOIA"). In its response to Mr. Colford's FOIA request, News Corp. demonstrated once again that the information requested is highly confidential, competitively sensitive and not subject to disclosure under FOIA.⁴ Moreover, as stated in its response, News Corp. sought confidential treatment for its proprietary financial information precisely to keep it out of the hands of a direct competitor like the *Daily News*. Disclosure of this information in response to Mr. Colford's FOIA request would cause serious competitive injury to the *Post*, and Mr. Colford did not make any showing, let alone a "persuasive showing," to support such disclosure.⁵

³ Letter, dated February 8, 2001, from William S. Reyner, Jr., Hogan & Hartson L.L.P. and Christopher R. Day and Angela J. Campbell, Institute for Public Representation, Georgetown University Law Center, to Ms. Magalie Roman Salas, Secretary, Federal Communications Commission.

⁴ Letter, dated May 22, 2001, from William S. Reyner, Jr., Hogan & Hartson, L.L.P. to James J. Brown, Deputy Chief, Video Services Division, Mass Media Bureau (the "May 22 Letter").

⁵ Id. at 3-4.

In its response to Mr. Colford's FOIA request, the Commission agreed with News Corp. that public disclosure of the documents submitted by News Corp. to the Commission "is likely to cause substantial harm to the competitive position of the New York Post by allowing competitors to use such information to disadvantage the paper with readers and advertisers, at a time when competition in the New York market has become increasing fierce."⁶ Furthermore, the Commission found that "release of the financial data included in the January 22nd submission and attached to the Declarations of Messrs. DeVoe and Siskind . . . could conceivably assist a competitor in ascertaining the New York Post's financial position and its past and planned capital expenditures, and might be used against the New York Post in the market."⁷ Accordingly, the Commission concluded that it "do[es] not believe that the important public policy concerns underlying according confidential treatment of proprietary and competitively sensitive financial data, such as proffered by FTS and News Corp., is outweighed by [Mr. Colford's] asserted interest in disclosure."⁸

Nevertheless, the Commission stated that, with respect to the January 22 submission,

⁶ FCC Letter at 3 (quoting April 9 Letter at n.1).

⁷ Id. at 3.

⁸ Id.

[w]hile the actual revenue and operating profit (loss) figures will be withheld, *segregable factual portions* of those materials will be subsequently made available to [Mr. Colford] in accord with Section 0.461(i)(2) of the Commission's rules. Similarly, we will withhold the actual and projected revenue and expenditure figures in the financial information attached to the Declarations of Messrs. DeVoe and Siskind, albeit *segregable factual portions* will later be released.⁹

The Commission did not identify or describe the "segregable factual portions" of the financial information submitted by News Corp. Furthermore, with respect to the declarations themselves, the Commission determined that it would release Mr. DeVoe's one page statement describing the financial data attached to his declaration and paragraphs 1 through 6 of Mr. Siskind's declaration, which describe the attached financial data.¹⁰

It is not clear from the FCC Letter precisely what "segregable factual portions" of the financial data the Commission proposes to release. Accordingly, News Corp. respectfully requests that the Commission provide News Corp. with sufficient detail of the intended disclosure so that News Corp. can appropriately respond prior to release of any confidential information. For all the reasons stated above and in its prior pleadings, moreover, News Corp. respectfully submits that the financial information in its entirety is confidential and should not be disclosed

⁹ Id. at 4 (emphasis added).

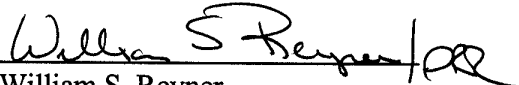
¹⁰ Id. at 4.

publically, let alone to the principal competitor of the *New York Post*. As indicated in the May 22 Letter, the *Post* (ranked fifth in the market) and the *Daily News* (ranked first) are engaged in a fierce competitive battle for readers and advertisers in the New York market. Disclosure of any proprietary and confidential information to the *Daily News* would cause serious competitive injury to the *Post*.

Accordingly, News Corp. respectfully requests that the Commission review the decision of the Chief, Mass Media Bureau, to disclose "segregable factual portions" of the confidential information that News Corp. submitted to the Commission on January 22, 2001 and April 9, 2001 and find that no such information should be disclosed, except pursuant to the terms of the Protective Order.

Respectfully submitted,

THE NEWS CORPORATION LIMITED

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Dated: July 13, 2001

CERTIFICATE OF SERVICE

I, Katherine M. Kline, hereby certify that I have this 13th day of July, 2001, mailed by First Class mail, postage prepaid, or by hand delivery, a copy of the "Application for Review of Freedom of Information Action" to the following:

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