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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In re Applications of	)	
	)	
UTV of San Francisco, Inc., KCOP Television, Inc.,	)	
UTV of San Antonio, Inc., Oregon Television, Inc.,	)	
UTV of Baltimore, Inc., WWOR-TV, Inc.,	)	File Nos. BALCT-20000918ABB,
UTV of Orlando, Inc., and United Television, Inc.	)	ABC, ABD, ABF, ABK, ABL,
(Assignors)	)	ABM, ABN, ABU, ABY, ABG,
	)	ABH, ABI, ABJ, ABO, ABP,
and	)	ABQ, ABR, ABS, ABV, ABW,
	)	ABX, ABZ, ACA, ACB, ACC,
Fox Television Stations, Inc.	)	ACD, ACE
(Assignee)	)	
	)	
For Consent to the Assignment of Licenses	)	
for Stations KBHK-TV, San Francisco, CA;	)	
KCOP-TV, Los Angeles, CA; KMOL-TV,	)	
San Antonio, TX; KPTV-TV, Portland, OR;	)	
WUTB-TV, Baltimore, MD; WWOR-TV,	)	
Secaucus, NJ; WRBW-TV, Orlando, FL;	)	
KMSP-TV, Minneapolis, MN; KTVX-TV,	)	
Salt Lake City, UT; KUTP-TV, Phoenix, AZ	)	

JOINT OPPOSITION OF FTS AND CHRIS-CRAFT

Dated: November 9, 2000

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JOINT OPPOSITION OF FTS AND CHRIS-CRAFT

The proposed assignors UTV of San Francisco, Inc., KCOP Television, Inc., UTV of San Antonio, Inc., Oregon Television, Inc., UTV of Baltimore, Inc., WWOR-TV, Inc., UTV of Orlando, Inc., and United Television, Inc. (collectively, "Chris-Craft") and the proposed assignee Fox Television Stations, Inc. ("FTS"), by their attorneys, hereby

submit this Joint Opposition to the Petition to Deny and Motion to Dismiss filed jointly by the Office of Communications, Inc. of the United Church of Christ, Black Citizens for a Fair Media, Center for Media Education, Consumer Federation of America, Consumers Union, New York Metropolitan Association of the United Church of Christ, Rainbow/PUSH Coalition, Valley Community Access Television, Academy of Latino Leaders in Action, the Institute for Public Representation, and Media Access Project (collectively, "Petitioners") against the above-referenced assignment applications (together, the "Application"). As demonstrated in this Opposition, there is no merit to the claims that the Application should be dismissed, denied, or designated for hearing. Rather, the public interest fully supports grant of the Application as filed.

I. INTRODUCTION AND SUMMARY

On September 18, 2000, Chris-Craft and FTS filed the Application for Commission consent to a transaction by which FTS will become the licensee of Chris-Craft's ten television stations ("Chris-Craft Stations").

Recognizing that acquisition of all of the Chris-Craft Stations would put FTS over the national audience cap, FTS requested a 12-month period of time in which to come into compliance. As the transaction also involves two of the top-four television stations in Salt Lake City, FTS also proposed to divest one of the Salt Lake City stations within 12 months, and to operate the two stations separately pending divestiture. Finally, with respect to continued ownership of the *New York Post*, FTS submitted that its *perma-*

nent waiver of the newspaper-television cross-ownership rule, which was granted in 1993, is sufficient to allow FTS to acquire an otherwise permitted duopoly station in New York without a required divestiture of the *Post*.

In the alternative, FTS requested interim relief to permit common ownership of WWOR-TV and the *Post* until conclusion of the to-be-initiated rulemaking proceeding on television-newspaper cross-ownership (and to take action required, if any, at the conclusion of that proceeding). Aside from these limited requests, all of which are consistent with the relief granted in other cases, the Application complies with the Commission's rules.

With a mixture of conjecture and conclusory assertions, Petitioners have objected to several aspects of the Application. Ignoring that FTS is not seeking a single new permanent waiver of the multiple ownership rules, Petitioners state that the Application is an "attempt to gut, through the waiver process, almost all of the Commission's remaining broadcast ownership rules . . . ."[1] It is impossible to reconcile this rhetoric with what is actually proposed by the Applicants, with the changes recently made to the Commission's multiple ownership rules, or with the facts.

FTS is proposing to comply fully with the Commission's duopoly and national audience cap rules, and seeks only a reasonable period of time consistent with past

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[1] Pet. at 4.

precedent in which to do so. Petitioners have failed to demonstrate how the public interest would be harmed by such a request.

FTS believes that the public interest in ensuring the continued stability, competitiveness and development of the *Post* would be sacrificed if the 1993 permanent waiver is not interpreted to permit creation of an otherwise permissible duopoly. The FCC in 1993 recognized that a permanent, rather than a temporary, waiver was indispensable to the long-term stability of the *Post*. Given the subsequent relaxation of the local television ownership rule which specifically excluded consideration of other media outlets such as newspapers, creation of permissible duopoly as proposed here would pose no threat to diversity and would ensure the continuation of the Post as a vigorous and competitive voice. If the Commission disagrees with FTS's belief that continued ownership of the *Post* is permitted under the 1993 waiver decision, FTS has requested only interim relief to avoid risk to the still uncertain future and competitiveness of what is only the fifth-ranked daily newspaper in the New York market. Petitioners have presented no substantial and material facts to the contrary.

FTS and Chris-Craft have shown that, consistent with Commission precedent and the facts, the limited temporary waivers or alternative interim relief sought in the Application will serve the public interest. Petitioners have failed to provide substantial evidence to rebut this showing. And, in all other respects, Petitioners have failed to present sufficient facts to raise a substantial and material question of fact as to

whether the Application will otherwise serve the public interest. Petitioners' conclusory statements and conjecture fall far short of this exacting standard, and should be rejected.

II. THE PROPOSED DUOPOLIES IN NEW YORK, LOS ANGELES, AND PHOENIX COMPLY WITH THE COMMISSION'S RULES.

A. The Commission's Carefully Fashioned Duopoly Rule Protects Competition and Diversity by Only Permitting Duopolies When at Least One of the Stations Is a Lower-Ranked Weaker Station.

As demonstrated in the Application, FTS's proposed duopolies in New York, Los Angeles, and Phoenix fully comply with the Commission's duopoly rule, which requires that at least one station of the proposed duopoly not be ranked in the top four in the DMA and that after the transaction at least eight independent voices remain in the DMA. Petitioners have not questioned the fact that the proposed duopolies are permitted under the Commission's rules. Instead, Petitioners attack the proposed combinations based on standards they think the Commission should have adopted over the ones the Commission chose after careful deliberation.

The current duopoly rule, adopted in 1999, is the result of a long and deliberate rulemaking proceeding that took over eight years to complete.[2] In 1996 Congress, through Section 202 of the Telecommunications Act of 1996,[3] specifically

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2 *See Review of the Commission's Regulations Governing Television Broadcasting,* Notice of Inquiry, 6 FCC Rcd 4961 (1991); Notice of Proposed Rulemaking, 7 FCC Rcd 4111 (1992); Further Notice of Proposed Rulemaking, 10 FCC Rcd 3524 (1995).

3 Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "1996 Act").

directed the Commission to conduct a rulemaking proceeding concerning the retention, modification or elimination of the duopoly rule.[4] At the time the 1996 Act was enacted, the Commission already had spent five years conducting a rulemaking proceeding to evaluate whether to modify the duopoly rule.[5] The Commission then spent just short of an additional three years evaluating the record before it adopted the current rules.

The end result of these painstaking and exhaustive deliberations is a carefully fashioned duopoly rule that permits common ownership of two television stations (whether VHF or UHF) in the same DMA only in truly diverse and competitive markets (i.e., when eight television voices will remain after the creation of the duopoly) and only when one of the stations is a "weaker" station.[6]

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4 *See* Section 202(c)(2) of the 1996 Act.

5 The Commission complied with the requirements of Section 202 of the 1996 Act by issuing a Second Further Notice of Proposed Rulemaking, which sought to update the record, in light of "the new environment created by the 1996 Act." *See Review of the Commission's Regulations Governing Television Broadcasting,* Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 21655 (1996) ("*TV Duopoly Second Further NPRM*").

6 *Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12923-24, paras. 41, 65 (1999) ("*TV Duopoly Order*"). The Commission found that "there ha[d] been an increase in the number and types of media outlets available to local communities" and made the determination that "[i]n markets with many separate licensees and a variety of other media outlets . . . the benefits of joint ownership in certain instances outweigh the cost to diversity from permitting such combinations." *Id.* at 12922, para 37. The Commission expressed confidence that the new duopoly rule would properly balance the benefits of common ownership with its interest in maintaining diversity, stating that the new rules "reflect the degree of relaxation warranted by the growth of alternatives to

(continued...)

Petitioners offer no reasoned basis to depart from the clear standards articulated in the television duopoly rule or to reject the Commission's extensive analysis of the effects of joint ownership on diversity. Rather, Petitioners challenge the manner of determining compliance with the eight voice test and further argue that VHF-VHF duopolies should not be permitted.[7] Petitioners, however, fail to acknowledge that in the *TV Duopoly Second Further NPRM* the Commission engaged in a lengthy discussion and invited comment on whether to employ the DMA to determine the market and whether UHF and VHF stations should receive different treatment.[8] Further, in adopting the new television duopoly rule, the Commission specifically discussed comments that were submitted concerning these issues.[9]

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6 (...continued)
broadcast television, the demonstrated benefits of common ownership and [the Commission's] objective of ensuring diversity and competition." *Id.* at 12923-24.

7 Pet. at 21, 28.

8 *See TV Duopoly Second Further NPRM*, 11 FCC Rcd at 21663-68, paras. 14-28, 33-34.

9 *See TV Duopoly Order*, 14 FCC Rcd at 12925-26, 12929-30, paras. 46, 55. Petitioners also contend that "[t]he combination of two VHF stations in the two most-watched DMAs in the country was not intended by . . . Congress . . . ." Pet. at 27. This contention is based on language in the Senate Conference Report on the 1996 Act, which stated that is was the "intention of the conferees that, if the Commission revises the multiple ownership rules, it shall permit VHF-VHF combinations only in compelling circumstances." S. Conf. Rep. 104-230, 104 Cong. 2d Sess. 163 (1996). However, the *TV Duopoly Second Further NPRM* specifically quoted this language from the Senate Conference Report and invited comment on what might qualify as a "compelling circumstance." *See TV Duopoly* (continued...)

B. The Proposed Creation of Duopolies in New York and Los Angeles Is in Full Compliance with the Commission's Rule Which Permits Such Combinations in Diverse and Competitive Markets.

Petitioners express concerns about duopolies in New York and Los Angeles, citing the fact that these are the two largest markets in the country as if their large size should preclude a duopoly combination that is otherwise permitted by the rules.[10] In fact, the opposite is true. The sheer size of the New York and Los Angeles media markets ensures that these DMAs are uniquely diverse and will remain so after consummation of the proposal transaction.[11]

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9 (...continued)
Second Further NPRM, at 21673-74, para. 40. Accordingly, in adopting its duopoly rule, the Commission was fully aware of, and took into full consideration, congressional expectations.

10 Pet. at 26.

11 As demonstrated in the Application (Assignee's Exhibit No. 4 at 2-3 and Tables 4-J through 4-S), the New York market is uniquely competitive and diverse. Specifically, there are 14 full-power commercial television stations and 6 full-power noncommercial educational television stations serving the New York DMA. Further, after the proposed transaction there will remain 19 independent television voices in the market. Also, as demonstrated in the application, the New York market is served by at least 102 commercial and 23 noncommercial radio stations, which are licensed to 66 independent owners. Likewise, as demonstrated in the Application, Los Angeles is one of the most competitive and diverse markets in the nation. The Los Angeles DMA is served by 19 full-power commercial television stations and 4 full-power noncommercial educational television stations, and after the proposed transaction there will remain 22 independent television voices in the market. *See* Assignee's Exhibit No. 4 at 4-5. The Los Angeles market is served by at least 69 commercial and 7 noncommercial radio stations, which are licensed to 52 independent owners. *See BIA's Radio Yearbook 2000* (BIA Research, Inc. 2000) and *Broadcasting & Cable Yearbook 2000* (R.R. Bowker 2000).

It is no accident that the VHF-VHF duopolies proposed in the Application are in the two largest television markets in the United States. The Commission's stringent eight independent voices/at least one station not-top-four-ranked test does in fact significantly limit the markets in which VHF-VHF duopolies may be created, thereby satisfying congressional admonition to limit VHF-VHF duopolies to compelling circumstances.[12]

Petitioners have failed to raise any substantial and material question of fact that FTS's proposed acquisition in New York and Los Angeles would serve the public interest. Indeed, in the context of the Commission's new duopoly rule, the Commission specifically chose to adopt a bright-line test, as opposed to the adoption of waiver-based regime, in order to "bring certainty to the permissibility of these transactions and expedite their consummation . . . ."[13] If the Commission were to accept Petitioners' general and unsupported objections, then the effectiveness of the Commission's carefully formulated bright-line test would be severely undermined.

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12 Under this test, it would appear that VHF-VHF duopolies would be prohibited in over 90% of the approximately 168 television markets in which there are two or more commercial VHF stations.

13 *TV Duopoly Order*, 14 FCC Rcd at 12932-33, para. 64.

C. The Phoenix Duopoly Complies with the Commission's Rules and Also Even Satisfies the Additional Requirements Advanced by Petitioners.

Petitioners do not challenge FTS's analysis demonstrating that, as provided for in Section 73.3555(b)(2) of the Commission's rules, eight independent voices will remain in the Phoenix DMA after the proposed duopoly is created, nor do they question FTS's showing that KUTP is not a top-four ranked station in the market. In fact, Petitioners' own analysis is premised on the finding that ten independent voices will remain in the DMA,[14] and Petitioners' "independent analysis verifies that FTS's acquisition of KUTP satisfies the top-four-ranked prong of the Duopoly Rule."[15]

Since Petitioners cannot question FTS's compliance with the current duopoly rule, they instead analyze the proposed Phoenix duopoly under a test of their own design.[16] This intricate test, as applied by Petitioners to the Phoenix duopoly, would

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[14] Pet. at 22-23 (arguing that three of the ten stations that were listed by FTS as post-merger DMA independent stations should not be included based on coverage and ratings issues).

[15] Pet. at 21-22.

[16] Certain of the Petitioners previously urged the Commission to abandon its bright-line rule for the number of stations that will be available post-merger in favor of an unworkable and complex scheme that includes proposals to (1) partition any DMA that contains stations with non-overlapping Grade B contours, (2) use a sliding scale based on the number of television households in a DMA to determine the minimum number of voices and (3) exclude noncommercial educational stations from the voice count test. *See* Petition for Reconsideration of Office of Communication, Inc. of United Church of Christ, Black Citizens for a Fair Media, Center for Media Education, Civil Rights Forum, League of United Latin American Citizens, (continued...)

exclude specialty stations (including foreign language and religious stations) and certain stations located in the DMA that do not deliver the same coverage to the city of Phoenix as other stations (regardless of the station's carriage on cable television systems in the city, the station's ratings or whether the station's delivery of a signal to the city is via translator).

The standard urged by Petitioners is not the one the Commission adopted. The Commission's definition of the "market" to be evaluated in the duopoly rule is unambiguous. The rule states in plain terms that the eight-independent-stations test is to be applied in the "DMA in which the communities of license of the TV stations in question are located." 47 C.F.R. § 73.3555(b)(2)(ii). The Commission expressly rejected a Grade B standard or any other coverage-based approach in choosing the DMA as the area to which to apply the eight-independent-voices test:

> We have chosen this DMA test based on our belief that, compared to the current Grade B signal standard, DMAs are a better measure of actual television viewing patterns, and thus serve as a good measure of the economic marketplace in which broadcasters, program suppliers and advertisers buy and sell their services and products."[17]

Thus, the Commission deliberately adopted a standard that reflects the fact that a station's audience reach, and hence its "local market," is not necessarily coextensive with the area of

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[16] (...continued)
Philadelphia Lesbian and Gay Task Force, Washington Area Citizens Coalition Interested in Viewers' Constitutional Rights, Wider Opportunities for Women, Women's Institute for Freedom of the Press, the Institute for Public Representation, and the Media Access Project, MM Docket Nos. 91-221 and 87-8, filed Oct. 20, 1999, at 4-15.

[17] *TV Duopoly Order,* 14 FCC Rcd at 12926, para. 47.

its broadcast signal coverage."[18] Indeed, when it adopted the DMA-based test, the Commission acknowledged that in some markets in the western United States, television stations in the same DMA could have Grade B contours that do not overlap.[19]

Ironically, even assuming, *arguendo*, that Petitioners' suggested methodology for analyzing duopolies were relevant, the proposed Phoenix duopoly would still satisfy their standard. Petitioners not only use faulty standards, but also apply the standards to incorrect facts in arguing that three stations should be eliminated from the list of independent voices in the market.[20]

KPAZ Petitioners argue that KPAZ should not count as a "voice" in the market, because it "lacks any recorded market share."[21] In fact, KPAZ does garner a recorded share in the market in at least some day parts.[22] Petitioners also mistakenly

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18 *Id.* at 12926-27, para. 48.

19 *Id.* at 12928, para. 51.

20 Pet. at 23.

21 Pet. at 23-24.

22 *See* Nielsen July 2000 Book. Even if Petitioners' facts were correct, the comparatively low ratings of KPAZ should not affect its status as a "voice" in the market. KPAZ is a specialty station offering religious programming. KPAZ-TV is owned and operated by the Trinity Broadcasting Network ("TBN"). KPAZ-TV airs the TBN network, which offers "positive Christian programming" on "420 low power and full power TBN and affiliate stations." *See* <http://www.tbn.org> (visited Nov. 9, 2000). The Commission has often recognized the valuable contribution to diversity by specialty stations and has observed that the low ratings generally earned by these stations in no way diminish their role as independent voices. *See*

(continued...)

assert that KPAZ is not carried on the Cox Communications cable system in the Phoenix area.[23] In fact, Cox Communications includes KPAZ in its channel line-up on Channel 21 in the Phoenix metropolitan area.[24] And KPAZ provides a predicted city grade signal to the Phoenix metropolitan area because its antenna is located at the Phoenix antenna farm on South Mountain, from which all stations licensed to Phoenix transmit their signals.[25] KPAZ clearly should be included as a "voice" in the Phoenix market under any test.

KBPX Petitioners would not count Paxson-owned KBPX because it allegedly neither provides a Grade B signal to Phoenix nor is carried on the Cox Communications cable system.[26] KBPX is, however, assigned to the Phoenix DMA[27] and, as discussed above, the Commission has rejected a coverage-based approach in favor of a DMA-based test. But if KBPX is not counted as a separate "voice," the Commission

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22 (...continued)
Amendment of Part 76, Subparts A and D of the Commission's Rules and Regulations Relative to Adding a new Definition for 'Speciality Stations' and 'Speciality Format Programming', and Amending Quathe Appropriate Signal Carriage Rules, 58 FCC 2d 442, 452 (1976), *recon. denied*, 60 FCC 2d 661 (1976) (Commission recognized that "specialty stations" such as home shopping, religious and foreign language stations offer "desirable diversity of programming" despite attracting limited audiences).

23 Pet. at 24.

24 *See* Cox Communications channel line-up card dated July 2000 (Attachment A hereto).

25 *Television and Cable Factbook 2000*, at A66-A74.

26 Pet. at 23.

27 *Broadcasting and Cable Yearbook 2000*, at B-217.

should instead count KPPX, a station that is operated pursuant to an LMA by Paxson.[28] KPPX delivers a predicted Grade B signal to Phoenix, and is also carried by the local Phoenix cable systems.[29] It has a reported 1 share.[30] Its signal is transmitted from the South Mountain antenna farm that serves all stations licensed to Phoenix.[31] There is no reason to exclude KBPX/KPPX as a "voice" in the market.

KUSK Petitioners also would exclude KUSK from the analysis. They claim that KUSK is not "technologically available" in Phoenix and is not carried on the local cable systems.[32] KUSK's signal, however, is available throughout the Phoenix DMA by virtue of its 13 translators, including its Phoenix translator, which operates from Channel 17 in the Phoenix metropolitan area.[33] And KUSK is, in fact, carried at Channel

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28 KPPX was not listed separately by FTS in its Phoenix duopoly analysis in the Application. Paxson owns KBPX and operates KPPX pursuant to an LMA. If Petitioners do not wish to count KBPX under their analysis, then KPPX, as a Phoenix-based station, must be substituted.

29 *See* Cox Communications channel line-up card dated July 2000 (Attachment A hereto).

30 *See* Nielsen July 2000 Book.

31 *Television and Cable Factbook 2000*, at A66-A74 (Warren Communications News, 2000).

32 Pet. at 23.

33 *See* coverage map for KUSK translators (Attachment B hereto).

13 on the Cox Communications cable system.[34] Thus, KUSK also should count as a "voice" in Phoenix, even under Petitioners' test.

In short, Petitioners reject the Commission's bright-line DMA-based rule for evaluating duopolies and choose instead to apply their own standard. But even when the Petitioners' own voice-based theory is applied, an analysis based on correct factual information shows that ten independent voices will remain in the Phoenix market after the proposed combination.[35]

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34 *See* Cox Communications channel line-up card dated July 2000 (Attachment A hereto).

35 Petitioners also assert – without providing any evidence or case law in support of their claims – that the proposed duopolies will not serve the public interest. Nothing in Section 73.3555(b) requires such a showing for proposed duopolies that meet the requirements of that subsection. Moreover, FTS has a strong record of serving the public interest. For example, FTS provides expansive news coverage at the stations it operates. Significantly, FTS implemented dramatic expansions of news operations after acquiring its current stations in the duopoly markets at issue here. In 1996 when FTS acquired KSAZ, Phoenix, Arizona, the station offered 33 hours of news and public affairs programming per week. The station now offers 38½ hours of news and public affairs programming per week. KSAZ also provides a live Spanish-language translation of its 9 p.m. news programming on the SAP channel six nights per week, a unique service among English-language stations in the Phoenix market. In New York, WNYW offered just 13 hours of news programming per week prior to FTS's acquisition in 1985. FTS more than doubled the station's news to 27 hours per week. In Los Angeles, KTTV was offering 8½ hours of news per week when FTS acquired the station in 1986. The station now provides 24½ hours of news programming per week. Petitioners' unsubstantiated assertion that FTS's proposed duopolies in Phoenix, New York, and Los Angeles will harm the public interest should be rejected.

III. A TEMPORARY ONE-YEAR WAIVER IS WARRANTED TO PERMIT FTS TO DIVEST ITS INTEREST IN A SALT LAKE CITY STATION AND TO COMPLY WITH THE NATIONAL AUDIENCE CAP.

A. A 12-Month Temporary Waiver of the Duopoly Rule in Salt Lake City Is Reasonable and Consistent with Commission Precedent.

As common ownership of FTS's KSTU and Chris-Craft's KTVX would be inconsistent with the television duopoly rule because both are "top-four" stations, FTS has requested a 12-month temporary waiver within which to divest one of those stations. FTS has proposed to operate the two stations independently pending divestiture.[36]

After the filing of the Application, the Commission granted consent to Emmis Communications Corporation ("Emmis") to acquire several television stations from Lee Enterprises Incorporated ("Lee") in a multi-market transaction.[37] That transaction included Emmis' acquisition of a Lee station in the Honolulu, Hawaii DMA that did not comply with the current duopoly rule because Emmis already owned a Honolulu station and the Emmis and Lee stations were ranked in the top-four in the Honolulu DMA. The Commission granted Emmis' request for a temporary six-month waiver of the duopoly rule during which time Emmis is required to file the applications necessary to come into compliance with the rule.

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[36] *See* Assignee's Exhibit No. 4 at 8, 10-11.

[37] *See In re Applications of LINT Co.*, Memorandum Opinion and Order, DA 00-2199 (MMB, rel. Sept. 27, 2000) ("*Emmis*").

It is appropriate for the Commission to grant FTS a temporary waiver of the duopoly rule in the Salt Lake City DMA for precisely the same reasons that Emmis was afforded its temporary waiver. Consistent with *Emmis* and a string of Commission precedent, FTS's temporary acquisition of the KTVX(TV) is incidental to, and will facilitate, a multi-market, multi-station transaction.[38] Additionally, as pledged in the Application, FTS will maintain separate management for the two stations and will not engage in any joint advertising sales throughout the waiver period. Furthermore, as demonstrated in the Application, the requested temporary waiver will not have an undue adverse effect on competition and diversity in the Salt Lake City market.

Salt Lake City is an extremely competitive and diverse market with 12 full-power commercial television stations and three full-power noncommercial educational television stations serving the DMA. Further, during the period of the temporary waiver 11 independent television voices will remain in the market.[39] The Salt Lake City market is

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38 *See Emmis*, para. 4 (citing *Milton S. Maltz*, 13 FCC Rcd 15527 (1998); *ITT-Dow Jones Television*, 13 FCC Rcd 4678 (1998); *AFLAC Broadcasting Group*, 12 FCC Rcd 3907 (1997); *Providence Journal Company*, 12 FCC Rcd 2883 (1997); *Stockholders of CBS Inc.*, 11 FCC Rcd 3733 (1996); and *Telemundo Group Inc.*, 10 FCC Rcd 1104 (1994)).

39 Although the *Broadcasting and Cable Yearbook 2000* lists KAZG as not yet on the air, in fact, KAZG is currently broadcasting. KAZG, Ogden, Utah (Channel 24, HSN), was recently licensed to Utah Communications, LLC, an entity with no other television interests in the Salt Lake City DMA (*see* File No. BLCT-19990126KE, granted Nov. 22, 1999).

also served by at least 44 commercial and 10 noncommercial radio stations,[40] which are licensed to 30 independent owners. All told, during the period of the requested temporary waiver, 39 independent broadcast media voices[41] operating full-service broadcast stations would remain in the Salt Lake City market.[42]

Not only is the Salt Lake City market more competitive than the Honolulu market, but a 12-month temporary waiver is also appropriate in today's changing economic climate. Six months ago, sales of television stations were robust. Now, however, due in large part to rising interest rates, less access to capital, and projections for declining advertising sales, there are numerous television stations on the market. This softer market warrants the 12-month divestiture period requested by FTS.

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40 In addition to the radio stations listed in Table 4-B and C of the Application, BIA lists additional commercial and noncommercial radio stations in the Salt Lake City Arbitron Metro Market. *See BIA's Radio Yearbook 2000* (BIA Research, Inc. 2000); Revised Tables 4-B and 4-C (Attachment C hereto).

41 Only Brigham Young University and the University of Utah own both television and radio stations in the Salt Lake City market.

42 By contrast, in Honolulu, where Emmis was granted its temporary waiver, the Commission found that there were only 27 independent broadcast media voices.

B. The Request for a 12-Month Waiver of the National Television Multiple Ownership Cap Is Consistent with Past Commission Precedent.

In order to facilitate consummation of the acquisition of the ten Chris-Craft Stations, FTS has requested 12 months to come into compliance with the national ownership cap. This limited transition period will enable FTS to complete divestiture in an orderly manner without harm to the public interest while avoiding disruptions in programming and service to the community.

The Commission has typically granted one-year divestiture periods to come into compliance with the national ownership limitation in multiple station transactions.[43] For example, in *CBS/Viacom*, the Commission recently granted a 12-month waiver of the national ownership and dual network rules. Petitioners suggest that a 12-month divestiture period could threaten diversity. The Commission, however, "has historically held, in multiple station transactions, that the overall benefits of allowing time for an orderly divestiture of broadcast properties outweighs the impact on diversity and competition from common ownership during a reasonable period following the grant of the application."[44]

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[43] *See* cases cited in Assignee's Exhibit No. 4, n.16. In footnote 131, Petitioners cite, as an example of the types of justifications previous applicants have made for waivers, arguments in support of a twenty-four—as opposed to a 12—month waiver that were rejected by the Commission. The Commission found those arguments unpersuasive and granted the applicants instead the 12 months appropriate to multiple broadcast station transactions. *See In re Shareholders of CBS Corp.*, 15 FCC Rcd 8230, 8236, paras. 20-22 (2000).

[44] *In re Shareholders of CBS Corporation*, 15 FCC Rcd at 8236, para. 22; *see also In re Multimedia, Inc.*, 11 FCC Rcd 4883, para. 6 (1995).

C. FTS Should Have To Divest Only of Enough Stations To Cause Its Audience Reach To Be Reduced To Its Current Level.

While FTS has committed to reduce its national audience reach to its current permitted level of 35.352 percent within 12 months, Petitioners argue that FTS should have to reduce its reach to 35 percent.[45] FTS has complied fully with the rule, but population shifts and a change in the Birmingham, Alabama market have raised FTS's national audience reach to 35.352 percent. No station acquisition is responsible for this level, and it is just as likely that further population shifts could reduce FTS's audience reach. Accordingly, flexibility is needed in determining compliance, and for this reason

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[45] Pet. at 39. Petitioners characterize the Commission's Multiple Ownership Order as ruling "that once the cap is exceeded, even when due to population shifts, the Commission will not approve any new acquisition until national audience reach is reduced to comply with the cap." Pet. at 39 (citing *1985 Multiple Ownership Order*, 100 FCC 2d at 91-92, para. 40 and n.52). Read in its entirety, the referenced passage states that group owners will not be required to divest stations in markets where population growth accounts for the increase in audience reach in excess of the cap:

> The Commission will not approve any acquisition if at the time that we consider the acquisition the owner already exceeds the limits established herein or will, as a result of the acquisition, exceed the audience reach limit. We will not, however, require divestiture once an acquisition has been approved. For example, a group owner that currently reaches 25 percent of the national audience may exceed this limit at some future time because of population shifts within ADI markets. While such an occurrence would prevent the group owner from acquiring new stations, it would not be required to divest any of its stations in order to comply with the 25 percent limit. Alternatively, group owners in markets with declining populations may, at some future time, be in a position to acquire additional television stations while remaining at or below the 25 percent audience reach limit.

1985 Multiple Ownership Order, 100 FCC 2d at 92, n.52.

the Commission has already determined that in such instances a group owner "would not be required to divest any of its stations in order to comply with the . . . limit."[46]

IV. GIVEN THE TURBULENT OWNERSHIP HISTORY AND NEAR DEMISE OF NEW YORK'S OLDEST DAILY NEWSPAPER PRIOR TO ITS REACQUISITION BY NEWS CORP, THE COMMISSION SHOULD NOT, AS PETITIONERS URGE, TAKE ANY ACTION THAT WOULD THREATEN THE STABILITY, COMPETITIVENESS, AND CONTINUED DEVELOPMENT OF THE *POST*.

A. FTS's Existing Permanent Waiver Permits Creation of a Duopoly Consistent with the Relaxed Local Television Ownership Rules.

As the Application explains, the Commission in 1993 granted News Corporation Limited ("News Corp") a permanent waiver of the broadcast/newspaper cross-ownership rule due to the *New York Post*'s history of financial losses and grim prospects for the future and the determination that, given the degree of media diversity in the New York market, application of the rule would disserve the public interest.[47] The Commission concluded in 1993 that "[g]iven the wide array of voices in New York City, any detriment

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46 *See 1985 Multiple Ownership Order*, 100 FCC 2d at 91. Petitioners claim that the KDFI-TV decision is irrelevant to the current transaction because it reflected a conversion of a same-market LMA into a duopoly. *See* Pet. at n.147. Commission staff, however, expressly requested information concerning the national audience reach while processing the KDFI-TV application. In response, FTS filed an amendment, on February 2, 2000 certifying that the acquisition of KDFI-TV would not increase the national audience reach. In the amendment, FTS explained that the then-35.14 percent audience reach was due to population shifts within the markets and Nielsen Media Research's decision in 1997 to add the communities of Tuscaloosa, Anniston, and Gadsden to the Birmingham, Alabama DMA. Following submission of this information, the Commission granted the application.

47 Assignee's Exhibit No. 4 at 17.

to diversity caused by common ownership of the two media outlets would be negligible, even if we look only to its full-service television stations and four dailies."[48] As to the effect of the combination on economic competition, the Commission found that it did "not endanger Commission policy of preventing undue concentration of economic power."[49]

In the Application, FTS demonstrated that the New York DMA, with 19 independently owned full power television stations and 25 daily newspapers, is even more competitive today.[50] And over the past several years, competition and diversity have flourished, with News Corp and FTS maintaining the independence of the *Post* and WNYW.

The Application further pointed out that in relaxing the television duopoly rule, the Commission analyzed the television market only and found that the number of newspapers in a market was not relevant in any way to the criteria for determining permissible duopolies. Accordingly, creation of a permissible duopoly in New York would have no unacceptable or otherwise adverse effect on diversity in the local television market, nor would creation of such a duopoly undermine in any way the 1993 permanent waiver decision.

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48 *Fox Television Stations, Inc.*, 8 FCC Rcd 5341, 5351, para. 48 (1993).

49 *Id.* at 5352, para. 50.

50 Assignee's Exhibit No. 4 at 29-30.

Failure to permit creation of a duopoly, as the Application pointed out, however, would undermine the permanent nature of the relief afforded in 1993. The Commission recognized that a permanent, rather than a temporary, waiver was indispensable to any attempt to bring long-term stability to the *Post,* which had been placed in bankruptcy. Without the assurance that it would not be required once again to divest the *Post,* the Commission concluded that News Corp would have been hampered in its attempts to attract advertisers and readers and to negotiate with labor unions, suppliers and distributors.[51]

Petitioners do not seriously dispute FTS's analysis of the 1993 decision and the impact of the revised duopoly rules on that permanent waiver. Instead, Petitioners simply contend that the existing permanent waiver should be limited to the specific set of facts presented in 1993 to justify the waiver.[52] Petitioners cite neither case law nor sound policy reasons, however, that warrant a narrow reading of the 1993 decision.

In fact, the "highly unusual circumstances" (Pet. at 7) present in 1993 continue to exist today and strongly favor preservation of News Corp's ownership of the *Post.* As Petitioners recognize, News Corp first acquired the *New York Post* – the nation's oldest continuously published daily newspaper – in 1976. In 1985, the Commission granted its consent to the acquisition of WNYW on the condition that News Corp divest its

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51 *See Fox Television Stations, Inc.* 8 FCC Rcd at 5353, para. 52.

52 Pet. at 8.

interest in the *Post*.[53] As required by the Commission, News Corp sold the *Post*, but the purchaser in 1993 placed the corporate parent of the *New York Post* in bankruptcy after multiple unsuccessful efforts to sell the paper.[54]

Other than News Corp, no potential purchaser came before the Bankruptcy Court to propose any interim plan to save the *New York Post*. News Corp agreed to assume management of the *Post* conditioned upon obtaining a permanent waiver of the Commission's cross-ownership rule and making a successful offer to purchase the *Post*'s assets.[55]

As the Commission in 1993 correctly recognized, News Corp brought the funds and expertise necessary to resuscitate the *Post*. Only through a permanent waiver of the cross-ownership rule – one which guaranteed that News Corp would not once again be forced to divest the *Post* – could News Corp justify the large investment needed to stabilize the newspaper and implement a long-term plan to negotiate with labor unions, suppliers,

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53 *See Applications of Metromedia Radio & Television, Inc. (Assignor) to News America Television Incorporated (Assignee)*, 102 F.C.C.2d 1334, 1353, para. 40 (1985).

54 *See Fox Television Stations, Inc.*, 8 FCC Rcd at 5342-43.

55 *See id.* at 5343. News Corp acquired the *Post* through an indirect wholly owned subsidiary.

and distributors and to win back advertisers and readers, and thus save a major daily newspaper.[56]

Notwithstanding News Corp's significant investment in the *Post* during the past six and one-half years, the *Post* continues to incur losses. As noted above, competition among media outlets in the New York DMA has intensified. The *Post*'s competitive ranking has actually declined since 1993. Moreover, as explained in the Application,[57] News Corp is making substantial investments to bring the facilities of the *Post* up to 21st century technological standards. Specifically, News Corp has committed to building a new $250 million, state-of-the-art plant for the newspaper in the South Bronx to replace the paper's existing obsolete equipment.[58] The new plant, which is targeted for completion in December 2001, will bring numerous jobs and employment opportunities to an otherwise economically disadvantaged area of New York City. Given these tremendous public interest benefits resulting from News Corp's reacquisition of the *Post* pursuant to the express permanent waiver, the Commission should not repeat prior history and once again

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56 *See id.* at 5350-51, para. 45.

57 *See* Assignee's Exhibit No. 4 at 32-34.

58 The existing plant does not accommodate the printing of advertising and editorial pages in color, restricts the number of pages in each issue, and does not permit the automated insertion of any type of supplements or magazine inserts with the newspaper. Although the Application referred to a $200 million investment (Assignee's Exhibit No. 4 at 32), a more current estimate of the cost of the new plant is $250 million.

take action that would result in divestiture of the *Post*, thereby destabilizing the newspaper and threatening its continuation as a vigorous and competitive voice.[59]

In granting News Corp a permanent waiver, the Commission concluded that common ownership of the *New York Post* and a television station in the New York market would *not* thwart the public interest objectives underlying the broadcast/newspaper cross-ownership restriction – namely, the twin goals of viewpoint diversity and economic competition.[60] As demonstrated in the Application, creation of a permissible television duopoly by News Corp is similarly consistent with these goals.[61] In these circumstances the burden should be placed on Petitioners to explain why News Corp, which has already rescued the *Post*, should be barred from creating a permissible duopoly without having to divest the *Post*. In fact, Petitioners have presented no evidence that the *Post*/WNYW combination has harmed diversity and competition in the New York market during the past six and one-half years. Nor have Petitioners presented any evidence that adding an additional station to that combination would cause harm to the New York marketplace of

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[59] Petitioners suggest that News Corp has the choice of divesting WWOR-TV or the *Post*. In the application, however, FTS stressed that the acquisition of stations WWOR-TV and KCOP-TV are critical elements to this $5.35 billion transaction and that if common ownership of WNYW/WWOR-TV and the *Post* were not permitted, News Corp would be required to sell or shut down the *Post*. *See* Assignee's Exhibit No. 4 at n.36.

[60] *See Fox Television Stations, Inc.*, 8 FCC Rcd at 5348-49.

[61] Assignee's Exhibit. No. 4 at 19-22.

ideas.[62] Accordingly, the 1993 decision, properly interpreted, and the public interest strongly support preservation of News Corp's ownership of the *New York Post* following acquisition of WWOR-TV.

1. In Adopting the New Television Duopoly Rules, the Commission Recognized that Creation of a Duopoly of This Type Would Not Harm Diversity.

Petitioners contend that FTS's purchase of WWOR-TV creates a new ownership pattern that adversely affects diversity.[63] The Commission, however, after a lengthy rulemaking proceeding (discussed in more detail in Part II above), already has

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[62] Contrary to Petitioners' argument, *NewCity Communications* does not support the proposition that FTS needs additional waivers to acquire WWOR-TV and retain the existing WNYW/*Post* combination. *NewCity Communications* involved the acquisition of an additional radio station in the Atlanta market by Cox Radio, whose existing ownership of a VHF television station, an AM/FM radio combination, and the two leading Atlanta daily newspapers had been grandfathered when the Commission adopted the broadcast/newspaper cross-ownership rule. Cox Radio sought and was granted a temporary waiver that continued until six months from the date of the final order in the then-ongoing proceeding to examine the Commission's radio newspaper cross-ownership policies. *NewCity Communications* thus involved a *grandfathered* television/AM-FM radio combination/*Atlanta Journal/Atlanta Constitution* combination, not a permanent waiver – as granted to News Corp – based on a careful review of competition and diversity in the market. Unlike Cox Radio, which was seeking to retain its two grandfathered daily newspapers in the Atlanta market, FTS and News Corp are simply trying to retain ownership of the fifth-ranked (based on circulation) daily newspaper in the New York market, which News Corp has saved from extinction once before. Moreover, News Corp has invested tremendous resources to resuscitate the *Post* in reliance on the permanent waiver. And thus, in addition to substantial factual differences, the instant situation presents equities that were not present in the grandfathered cross-ownership at issue in *NewCity Communications.*

[63] Pet. at 13.

concluded that acquisition of a second lower-rated television station in New York would have no unacceptable effect on diversity.

The Commission carefully tailored relaxation of the television duopoly restriction to permit consolidation only in those markets where the core values of competition, diversity and localism will not be undermined. In doing so, the Commission adopted strict television voice and ratings standards and *rejected the inclusion of other media – such as newspapers* – in its determination of adequate competition and diversity to permit dual television station ownership.[64] Accordingly, News Corp's ownership of the *Post* should not be relevant to the creation of a permitted duopoly.

2. As the Application Demonstrated, the Extraordinarily Vibrant New York Media Market Is Even More Competitive Today than in 1993.

The Application demonstrated that the New York media market has only become more competitive since grant of the waiver. Even taking into account the proposed common ownership of stations WNYW and WWOR-TV, the New York DMA would be served by at least 19 independently owned full power television stations. Over 65 independently owned radio groups serve the DMA, which has cable penetration of 74 percent. And the market is served by *25 daily newspapers* published in the DMA, and 12 daily newspapers have spillover coverage into the DMA.[65]

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64 *See TV Duopoly Order*, 14 FCC Rcd at 12935.

65 Assignee's Exhibit No. 4 at 29-30.

The *Post*, moreover, continues to garner only a minuscule share of advertising dollars in the market. In fact, the *Post* ranks fifth among New York newspapers in terms of both advertising dollars and circulation in the DMA, slipping from fourth in 1993.[66]

The Petitioners would have the Commission disregard this media cornucopia on the ground that the newspaper-broadcast rule only looks at newspapers and radio and television stations.[67] In fact, as the Commission has recognized, a considerable number of media sources in a market is one of the factors that it may consider when concluding that enforcement of the cross-ownership restriction would disserve the public interest.[68] Moreover, if examination of the media marketplace is confined to newspaper and broadcast stations, as Petitioners contend, the Commission's relaxation of the local

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66 *See* Assignee's Exhibit No. 4 at 32; *Fox Television Stations, Inc.*, 8 FCC Rcd at 5345.

67 Pet. at 13.

68 *See, e.g., Fox Television Stations, Inc.*, 8 FCC Rcd 5341, n.37 (Commission noting that the number of voices present in the market is a factor in its diversity analysis); *Applications of Metromedia Radio & Television, Inc. (Assignor) to News America Television Incorporated (Assignee)*, 102 FCC 2d at 1349-50, para. 28 (concluding that the "existence of numerous media outlets serving New York, Chicago and surrounding areas supports [the Commission's] conclusion that no undue concentration of the media would result from a limited waiver").

television ownership rules means *a fortiori* that the proposed acquisition of WWOR-TV will not harm diversity.[69]

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[69] In arguing that many of the news/information sources in the New York DMA listed in the Application should be disregarded because these sources are not "free of charge" and may require subscription fees or the purchase of equipment (*see* Pet. at 13 and n.34), Petitioners ignore that reception of free over-the-air signals – and access to the news/information contained in these signals – requires a not insignificant investment in a television set.

Moreover, contrary to Petitioners' assertions, the media sources listed in the Application (*see* Assignee's Exhibit No. 4, Tables 4-J through 4-S) contain many sources of local New York-oriented content and are not merely limited to DBS and MMDS. For example, at least nine of the radio stations in the New York DMA, which are listed in Table 4-J of the Application, are all news, news/talk, business news, talk, or sports news. *See Snapshots 2000*, at 1184 (Media Framework 2000). In addition, *USA Today* and *The Wall Street Journal* are both published in the New York DMA and have comparable circulations to the *Post* within the DMA (based on figures from Newspaper Advertising Source):

- *The Wall Street Journal* 254,792
- *USA Today* 199,007

And the top three regional magazines in the New York DMA have a combined circulation of 619,000, which is almost double the *Post*'s 1999 DMA circulation of 368,429:

- *New York Magazine* 438,073
- *Connecticut Magazine* 86,807
- *New Jersey Monthly* 94,131

See Snapshots 2000, at 1189 (citing circulation figures provided by Audit Bureau of Circulation/BPA International). In addition, several of the cable news services listed in the Application at Table 4-Q are *local* cable news sources (*e.g.*, New York 1 News, News 12 Bronx, News 12 Connecticut, News 12 Long Island, News 12 New Jersey, and News 12 Westchester).

News Corp and FTS submit that the public interest would *not* be served if the Commission, purportedly in the name of diversity and localism, threatened at this point in time the stability and continued development of the *Post* as an alternative news source.[70] As demonstrated above, adding WWOR-TV to the WNYW/*Post* combination would have no adverse effect on diversity and competition in the New York television market.[71]

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[70] In addition to the acquisition costs in 1993, News Corp has spent over $25 million on capital improvements for the newspaper and, as discussed above, is investing an additional $250 million in the new South Bronx printing facility. Moreover, to respond to ever increasing competition in the New York newspaper market – in particular, the announcement by the *Daily News* of a free afternoon edition – the *Post* recently has reduced its newsstand price from 50 cents to 25 cents per copy within the New York City area.

[71] Petitioners argue that FTS should be required to show that News Corp would be unable to sell the *Post* (or would have to sell it for an artificially depressed price). Pet. at 10. In fact, in 1993 the Commission made no finding that News Corp was the only purchaser. Rather, the Commission granted the permanent waiver based on the fourth "catch-all" criterion that application of the rule would disserve the diversity and competition goals of the Commission. *See Fox Television Stations, Inc.*, 8 FCC Rcd at 5349. Contrary to Petitioners' claim (Pet. at 9), FTS is not requesting an additional permanent waiver of the broadcast/newspaper cross-ownership rule, and therefore has not made a showing of (1) the inability to sell the broadcast station or newspaper; (2) the inability to sell the broadcast station or newspaper without accepting an artificially depressed price; or (3) the inability of the locality to support the separate ownership of the enterprises. FTS maintains that it has demonstrated in the full record developed in 1993, as supplemented by additional data contained in the Application, that the unique equities surrounding this situation – News Corp's permanent waiver, the *Post*'s precarious financial position generally, and the extremely diverse and competitive character of the New York market – dictate that FTS be permitted to complete acquisition of control of all of the Chris-Craft Stations and retain ownership of WNYW/*Post* combination. That is, even though the Application as filed does not request a further permanent waiver, FTS nevertheless has made the requisite showing under the fourth "catch-all" waiver criterion. The extraordinary circumstances that justified granting News

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B. In the Alternative, Preserving News Corp's Ownership of the *New York Post* Pending Completion of the Rulemaking Proceeding Is Required by the Public Interest.

In the Application, FTS requested that if the Commission nevertheless concludes that the previously granted permanent waiver does not encompass the permitted duopoly in the New York DMA, then the Commission should permit common ownership of WWOR-TV, WNYW and the *Post* pending conclusion of the soon-to-be-initiated rulemaking proceeding to consider relaxation of the newspaper/broadcast cross-ownership restriction in larger markets.[72] At the conclusion of that proceeding, FTS would make any appropriate filings containing complete showings under the standards adopted in the rulemaking, or, if then required, FTS would divest the *Post*.

1. FTS's Request for Interim Relief Is Consistent with the Commission's Policies.

Petitioners wrongly state that the Commission has a blanket policy against waivers based on the pendency of a rulemaking. In support, Petitioners cite an opinion of the Chief of the Mass Media Bureau indicating that the initiation of a rulemaking alone is not enough.[73] FTS's request is not based solely on the pending rulemaking. Moreover, the

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[71] (...continued)
Corp a permanent waiver in 1993 have not dissipated.

[72] Assignee's Exhibit No. 4 at 22-29.

[73] Pet. at 15 & n.44 (citing *Stockholders of Renaissance Communications Corp.*, 13 FCC Rcd 4717, 4719 (1998)). Petitioners also argue that none of the cases cited in the Application supports grant of interim relief because the cases did not involve (continued...)

Commission itself stated recently that it would grant interim waivers when the "pending proceeding is examining the rule in question, the Commission concludes that the application before it falls within the scope of the proposals in the proceeding, and a grant of an interim waiver would be consistent with the Commission's goals of competition and diversity. This is most likely to occur where protracted rulemaking proceedings are involved and where a substantial record exists on which to base a preliminary inclination to

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[73] (...continued)
two VHF television stations and a daily newspaper. Pet. at 18. Specifically, they argue that cases involving radio/newspaper cross-ownership are not analogous to television because "radio stations are more numerous." Pet. at 19. The Commission rejected this distinction in adopting the cross-ownership rule. "While on the one hand it could be argued that the larger number of radio facilities means there already is more diversity than in television, the fact is that we wish to encourage still greater diversity." Accordingly, the Commission decided that the newspaper/broadcast cross-ownership rule would apply equally to radio and television. *In re Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, Second Report and Order*, 50 FCC 2d 1046, 1076 para. 104 (1975).

Petitioners also argue that the *Tribune* waiver does not support interim relief in this case because *Tribune* involved only one television station and a newspaper, and because the waiver was granted in part due to confusion surrounding the Commission's waiver policy. Pet. at 19. Unlike *Tribune*, which involved the creation of an entirely new cross-interest in both a television station and the leading newspaper in the market, the proposed cross-ownership in this case would not create a new and untested ownership pattern. Further, as noted above, the Commission has determined that the number of newspapers in the market was not relevant in any way to the Commission's criteria to permit duopolies. *See TV Duopoly Order*, 14 FCC Rcd at 12935, para. 69.