News Corporation

444 NORTH CAPITOL STREET, NW • WASHINGTON, DC 20001 • 202-824-6500 • FAX 202-824-6510

MAUREEN A. O'CONNELL, ESQ.
VICE PRESIDENT
REGULATORY AND GOVERNMENT AFFAIRS

2001 MAY 14 P 1:18

May 11, 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W
Washington, D.C. 20554

EX PARTE – DA 00-2246

Re: Applications Seeking Consent to the Assignment of
Chris-Craft Television Stations Licenses to Fox Television Stations, Inc.
File Nos. BALCT-20000918ABC, *et al.*

Dear Ms. Salas:

At the Commission's request, Fox Television Stations, Inc. ("Fox") is submitting the attached written summary of the lengths of time for which the Commission previously has granted temporary waivers of the newspaper/broadcast cross-ownership rule. As the attached summary demonstrates, the Commission has consistently recognized that divestitures of daily newspapers, such as the *New York Post,* may be more difficult than divestitures of broadcast stations.

In 1985, when the Commission previously ordered The News Corporation ("News Corp") to divest the *New York Post* as a condition of Fox's acquisition of WNYW(TV), the Commission granted a temporary waiver of two years.[1] The

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1 *See Metromedia Radio & Television, Inc.*, 102 FCC 2d 1334, 1349 (1985), *recon. denied* 59 R.R.2d 1211 (1986), *aff'd Health and Medicine Policy Research Group v. FCC*, 807 F.2d 1038 (D.C. Cir. 1986). The transaction in which Fox originally acquired WNYW(TV) also included, among others,

(continued...)

Commission determined that a two-year waiver period was appropriate to avoid forcing the distress sale of the *Post*. In addition, the Commission noted that, given the numerous media outlets serving New York City and the surrounding areas, no undue concentration of the media would result from the limited waiver.[2] In March 1988, News Corp complied with the divestiture order by selling the *Post* to a company controlled by Peter S. Kalikow, which ultimately was unsuccessful in running the newspaper and placed the *Post*'s parent company in bankruptcy in March 1993.[3]

As Fox stated in its Application (*see* Assignee's Ex. No. 4 at 24), WWOR-TV is a critical element to the $5.35 billion acquisition of Chris-Craft. If forced to choose between divesting one of the permissible duopoly stations and the *Post*, News Corp will sell or shut down the *Post*.

Any temporary waiver of the newspaper/television cross-ownership rule thus will require divestiture of the same daily newspaper – the *New York Post* – that was the subject of the Commission's two-year temporary waiver in 1985. In the intervening 13 years since divestiture, the *Post*'s financial condition has been far from smooth sailing. The *Post* spiraled to bankruptcy in 1993 and has since been stabilized through News Corp's capital investments and stewardship. Nevertheless, as stated in the Application (*see* Assignee's Ex. No. 4 at 33), the *Post* continues to incur losses and has slipped in rankings in the New York market. In addition, the overall economy appears to be slowing, with particular impact on print advertising, and competition in the New York daily newspaper market has become increasingly fierce.[4]

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1 (...continued)
WFLD-TV, Chicago, Illinois. Mr. Murdoch's then ownership of the *Chicago Sun-Times* created a second newspaper/television cross-ownership combination, which was also waived for a two-year period. *Id.* at 1353.

2 *See Metromedia Radio & Television, Inc.*, 102 FCC 2d at 1349-50.

3 *See Fox Television Stations, Inc.*, 8 FCC Rcd 5341, 5341-43 (1993).

4 *See*, *e.g.*, Felicity Barringer & Jayson Blair, *Free Version of Daily News*
(continued...)

Given the *Post*'s rocky financial history, a prospective purchaser will have no assurance that the *Post* will provide a profitable investment. Thus it will likely be difficult to find an entity willing to purchase the *Post*,[5] especially at a fair price that reasonably reflects News Corp's substantial investments (including News Corp's investment in a new printing plant), made in reliance on the 1993 permanent waiver.[6] In any event, the Commission should be reluctant to encourage the opportunistic purchase of the *Post* by a direct competitor in the market by virtue of an inadequate period for divestiture.

Grant of at least a two-year temporary waiver will not result in undue concentration of the media in the New York marketplace. As demonstrated in the Application (*see* Assignee's Ex. No. 4 at 29-32), the New York City DMA is a uniquely competitive and diverse market, and News Corp and Fox have pledged to maintain the independence of the *Post* and WWOR-TV during any waiver period granted by the Commission (*see* Assignee's Ex. No. 4 at 28). Moreover, there is no

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4 (...continued)
Opens New Front in an Old Tabloid War, N.Y. Times, Sept. 11, 2000, at C-1; Jayson Blair, *The Post to Halve Its Newsstand Price*, N.Y. Times, Sept. 1, 2000, at B-4. (Copies of these articles are attached hereto.)

5 Mr. Mortimer Zuckerman – owner of the *Post*'s direct competitor the *Daily News* – has again professed a highly conditional interest in purchasing the *Post*, as he did in 1993. *See Fox Television Stations, Inc.*, 8 FCC Rcd at 5342, para. 10.

6 Contrary to Petitioners' unwarranted allegation of falsehood, News Corp is, in fact, the only existing newspaper/broadcast television cross-owner whose cross-ownership was not the result of grandfathering. *See* Ex Parte Communication of the Office of Communication, Inc. of the United Church of Christ, *et al.*, dated May 7, 2001, entitled "Responses to Fox and Chris-Craft's April 18, 2001 Ex Parte Filing." The *Kortes Communications* and *Montour Broadcasting* cross-ownership patterns cited by Petitioners involved radio, not television. And, although *Field Communications* involved a television/newspaper combination, that cross-ownership pattern has since been broken up because Fox is now the licensee of WFLD(TV), Chicago, Illinois.

other comparable newspaper market in the country. After all, the *Post* is the fifth ranked newspaper in the market in terms of both circulation and advertising sales.

Finally, this longer divestiture period is but a fraction of the relief that The Tribune Company ("Tribune") will enjoy because of an anomaly in the Commission's rules.[7] Specifically, Tribune currently owns WPIX, New York, New York, and *Newsday*, but is not required to come into compliance with the cross-ownership rule until the next license renewal for WPIX in 2007.[8]

Given the current state of the marketplace, the demonstrated financial losses being incurred to stabilize the *Post*, and the record established since 1993 showing that competition and diversity have thrived notwithstanding the

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7 *See* 47 C.F.R. § 73.3555(d). Specifically, the newspaper/television cross-ownership rule provides that "[n]o license for a . . . TV broadcast station shall be granted to any party (including parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper . . . [and] the Grade A contour of the TV station . . . encompass[es] the entire community in which such newspaper is published." As a result, the cross-ownership prohibition is not triggered immediately upon a televison licensee's purchase of a same-market newspaper. The cross-ownership rule would not apply until the time of the next license renewal for the television station in question.

8 Tribune also has taken advantage of this anomaly in the Commission's rules in Los Angeles, Calfornia, and is not required to comply with the newspaper/television cross-ownership rule in that market until 2006.

co-ownership of the *Post* and WNYW, clearly no harm could occur by a continuation of the ownership along with a permitted television duopoly for at least a two-year period.[9]

Respectfully submitted,

Maureen A. O'Connell/em

Maureen A. O'Connell
Vice President, Regulatory and Government Affairs
The News Corporation

Attachment
cc (w/attach.): Chairman Michael K. Powell
Commissioner Harold Furchtgott-Roth
Commissioner Susan Ness
Commissioner Gloria Tristani
Roy J. Stewart, MMB
Barbara A. Kreisman, MMB
David Roberts, MMB
David Brown, MMB
James R. Bird, OGC
Christopher R. Day
Angela Campbell

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9 In contrast to the situation presented by divestiture of the *Post,* in the three cases in which the Commission has granted merely 18 months to divest a newspaper, there is no indication that the newspapers in question had histories of financial difficulties and operating losses that obviously would increase the difficulty of selling the newspaper. Moreover, the applicant in each of those cases requested only 18 months in which to divest the newspaper. *See Stauffer Communications, Inc.*, 10 FCC Rcd 5165 (1995); *Twentieth Holdings Corp.*, 1 FCC Rcd 1201 (1986); *Golden West Associates, L.P.*, 59 R.R. 2d 125 (1985).

TEMPORARY WAIVERS OF THE NEWSPAPER/BROADCAST CROSS -OWNERSHIP RULE

Three Year Waiver

Television and Radio:

Cosby N. Boyd, 57 FCC 2d 475 (1975) – *Requested 2 years if the Commission issued a tax certificate and 3 years if the Commission denied a tax certificate.* The Commission "emphasize[d] that waiver is merited only because of the convergence of two special circumstances: the precarious financial condition of the Star which currently threatens its survival and the fact that complete diversification of the ownership of the media properties currently held by WSCI will be realized within a period of time shorter than that required under the divestiture requirements in the Second Report [referring to the five year divestiture period for certain broadcast-newspaper cross-ownerships.]"

Two Year Waiver

Television:

Metromedia Radio & Television, Inc., 102 FCC 2d 1334 (1985), *recon. denied* 59 RR 2d 1211 (1986), *aff'd* Health and Medicine Policy Research Group v. FCC, 807 F.2d 1038 (D.C. Cir. 1986) – *Requested 24 months.* The Commission "recognize[d] that market factors associated with sales of daily newspapers may be different from those affecting broadcast properties, possibly making them more difficult to sell and therefore believe a waiver for a period of 24 months would be appropriate here."

18 Month Waivers

Television:

Stauffer Communications, Inc., 10 FCC Rcd 5165 (1995) – *Requested 18 months.* One of the factors for granting the request was that "this transaction would eventually allow a grandfathered newspaper-television cross-ownership in Topeka to be broken up as result of grant of these applications."

Twentieth Holdings Corp., 1 FCC Rcd 1201 (1986) – *Requested 18 months*. The Commission "recognize[d] that market factors associated with sales of daily newspapers may be different from those affecting broadcast properties, possibly [making] them more difficult to sell." This case involved the ownership of *The Boston Herald* and WXNE-TV, Boston, Massachusetts.

Golden West Associates, L.P., 59 RR 2d 125 (1985) – *Requested 18 months.* The Commission relied on "the many media outlets, broadcast and print, in the Los Angeles area" and that "the public interest would be served."

12 Month Waivers

Television:

WHOA-TV, Inc., 11 FCC Rcd 20041 (1996) – *Requested 12 months.*

Multimedia, Inc., 11 FCC Rcd 4883 (1995) – *Requested 18 months*. The FCC stated that "[a]s a general rule, a temporary waiver of twelve months from the date of consummation of a merger or other multiple-station transaction provides ample time to locate potential purchasers and to negotiate purchase agreements for the stations to be divested. Gannett has not proffered any factors that would support a departure from this general rule."

Radio:

Chancellor Media/Shamrock Radio Licenses, 15 FCC Rcd 17053 (2000) – *Requested 12 months.*

Stauffer Amarillo Radio Trust, 11 FCC Rcd 14865 (1996) – *Requested 18 months.* The FCC stated that 12 months provided "ample time to locate potential purchasers and to negotiate purchase agreements for the station(s) to be divested . . . There is no indication that prevailing market conditions are such that requiring disposal of a broadcast station in twelve months would result in a 'forced' sale."

6 Month Waiver

Television:

Combined Communications Corp. of Oklahoma, 12 FCC Rcd 1287 (Video Services Div. 1997) – *Requested 6 months.*

4 Month Waiver

Radio:

WDRQ, Inc., 12 FCC Rcd 11671 (1997) – *Requested 4 months.* There was an existing agreement with a buyer; just needed time to close.

Interim Waivers

6 months after resolution of pending proceeding:

Television:

Renaissance Communications Corp., 12 FCC Rcd 11866 (1997), *aff'd* Tribune v. FCC, 133 F. 3d. 61 (D.C. Cir. 1998), Renaissance Communications Corp., 13 FCC Rcd 4717 (Mass Med. Bur. 1998), 1998 Biennial Regulatory Review, FCC 00-191, MM Docket NO. 98-35 (rel. June 20, 2000) – *Requested permanent waiver or temporary waiver pending outcome of future rulemaking regarding newspaper/television cross-ownership. Originally granted 12 months, then extended until six months after review of the newspaper/television broadcast ownership rule in the 1998 biennial review and later extended until six months after completion of the rulemaking.* The Bureau, however, stated that "it should now be clear that the mere initiation of a proceeding stating that the rule would be examined, or merely the fact that such a proceeding was on the horizon, would not be sufficient to warrant an interim waiver."

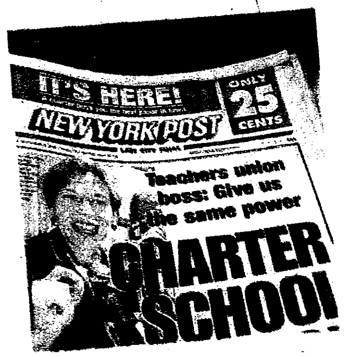
Radio:

NewCity Communications, Inc., 12 FCC Rcd 3929 (1997) – *Requested 18 months or until completion of the proceeding reexamining the radio-newspaper cross-ownership waiver policies*. The Commission stated that in recent mergers involving large media companies "a twelve month period was sufficient to avoid a forced sale of broadcast stations or newspapers. However, because we have recently released a Notice of Inquiry concerning our radio-newspaper cross-ownership waiver policies, we believe that the appropriate period for a temporary waiver is six months from the date of a final order in the radio-newspaper docket."

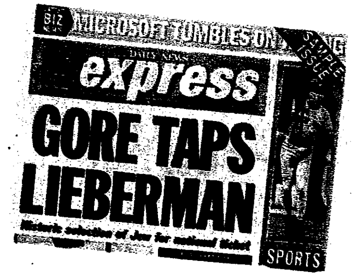
Capital Cities/ABC, Inc., 11 FCC Rcd 5841 (1996) and Letter to Joel Rosenbloom from Chief, Mass Media Bureau, Ref. No. 1800E1-DB (October 14, 1996). *Originally requested 12 months and granted 12 months; then requested to defer divestiture date until 6 months after action on the Commission's pending radio/newspaper proceeding, which also was granted.*

NY Times
Sept. 11, 2000

Daily News Opens a New Front in the Tabloid War



Carol Halebian for The New York Times



The New York Post cut its price to 25 cents as its main rival, The Daily News, prepared a free paper, Express.

Free Paper Raises Stakes in Battle With Post

By FELICITY BARRINGER with JAYSON BLAIR

Despite its Texas-size sense of its own primacy in almost everything, New York City in recent years has not been the site of the country's bloodiest newspaper war. That title went to Denver, where rival papers tried to starve each other into submission by offering themselves for a penny a day.

Penny, schmenny. Tomorrow, New York gets a new afternoon newspaper for nothing, courtesy of **The Daily News.** (The News itself still costs 50 cents.) After The News announced its plans for the free Daily News Express, The New York Post quickly cut its newsstand price to 25 cents from 50 cents within the city limits. If red ink trickled through the streets of Denver, it threatens to course through the streets of Manhattan.

What does it mean? Everyone in the business has his own take. But most agree that the sudden escalation of New York's long-running tabloid war makes the perennially uncertain newspaper landscape even more uncertain. A new weapon, the free daily afternoon newspaper, hurts The Post. The Post, however, has shown that it knows how to undercut The News. Four years ago, it introduced a cut-rate Sunday newspaper, forcing The News to cut its newsstand price; even so, in less than a year, circulation of The News's most valuable edition dropped more than 100,000 copies.

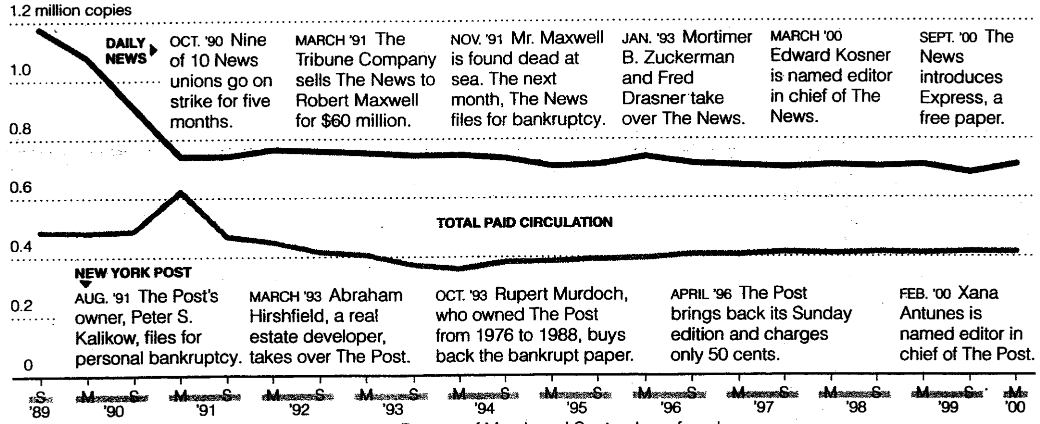
Leonard N. Stern, who, as the owner of The Village Voice, turned the paid alternative weekly into a free newspaper and then sold it at a significant profit, sees the latest developments in stark terms. "The Daily News is the dominant tabloid of the city, and it is now under challenge for its life," he said. Mr. Stern, chairman of the privately held Hartz Group, added: "This is it. I believe the battle has been joined. When it's over, things are not going to look the way they do today."

Mr. Stern's views are stark, but he is not alone. Even more moderate observers do not disagree about the intensity of the current battle, or the willingness of the combatants to incur short- or medium-term losses in pursuit of long-term dominance. John Morton, a newspaper industry analyst, observed, "When you have two papers, neither of which is making money, going at it in this fashion, what it promises to do is increase

Continued on Page 16

Tale of the Tabloids

In the 1990's, New York's two main tabloid newpapers have gone through turbulent changes. The Daily News, which never recovered its circulation after a strike 10 years ago, will introduce a free afternoon paper tomorrow.



Source: Audit Bureau of Circulations (circulation figures)

Data as of March and September of each year

The New York Times

Free Version of Daily News Opens New Front in an Old Tabloid War

Continued From First Business Page

the losses for both of them." He added that Rupert Murdoch, chairman of The Post's parent, the News Corporation, and Mortimer B. Zuckerman, co-owner of The News, have each demonstrated a determination to keep control of a New York newspaper. "It's not about money," he said. "It's about image and being the publisher of a major newspaper in the world's most important city."

So The News and The Post are willingly incurring extra economic pain at a time when there is already pain enough: the price of newsprint, the biggest nonlabor cost for any newspaper, is rising steeply in a market tighter than at any time in the last four years.

For The News, there is also the question of fighting a two-front war: Newsday, the Long Island newspaper, is beginning a circulation comeback in Queens after years of decline; its editor, Anthony Marro, said he planned to send in 15 people next year to strengthen a Queens-based editorial staff that now numbers about 45. (Newsday is now owned by the Tribune Company, the former owner of The Daily News.)

Indeed, to hear News executives tell it, you would not know that there was anything but fun and profit ahead. Their blithe willingness to flout received wisdom (newspapers that cost nothing are worth nothing to advertisers) has provoked guarded enthusiasm from both media analysts and advertisers. About 75,000 copies of Express will be distributed at 85 commuter hubs: bridges, tunnels, bus terminals and subway and train stations. It can carry news that breaks as late as noon, executives say.

Laura Pedrick/The New York Times

As commuters wait at the 30th Street Station in Philadelphia, some read copies of Metro, a Swedish-owned free newspaper.

Robert J. Broadwater, managing director of the media-centric investment bank Veronis, Suhler & Associates, is impressed. "I don't know if it will work for The News or anybody, but it's intriguing as all get-out," he said. "In the current market for news and information and entertainment, it's increasingly difficult to get and hold a paying subscriber or reader. Circulation is the biggest challenge."

Esther Eaton, advertising director at Seaman Furniture, one of The News's major advertisers, called Express "a great vehicle," adding, "There's difference between a penny-saver type vehicle and a real newspaper."

Les Goodstein, chief operating officer of The News, said executives at The News conceived the idea when they heard that Metro, a Swedish-owned free newspaper, would be distributed to Philadelphia commuters in cooperation with the city's transit authority. "We are taking the concept and refining it to fit the needs of the New York area," he said. And maybe trying to discourage the executives of Metro's parent company, the Modern Times Group, from thinking about a move to New York. Earlier this year, Modern Times executives discussed a possible collaboration with The Post, but those talks were not productive, according to an executive involved in the talks.

Express, as designed, will split its 40 pages roughly equally between advertising and editorial material: pictures, listings and short, 300-word articles, emphasizing topics like business, entertainment and sports. In Europe, such free dailies began to win audiences more than two decades ago. But almost all were morning publications — and New Yorkers can choose from The Post, The News, The New York Times and Newsday in the morning.

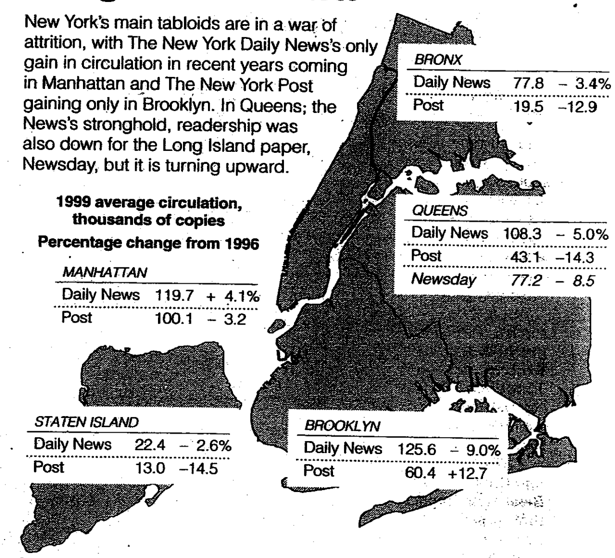
"The gaping hole," Mr. Goodstein said, "was in the afternoon."

The high-profile introduction is generating guarded excitement among advertisers, who have been less than enthusiastic about reader erosion. The News — which a decade ago had a circulation of more than a million — is struggling to keep its circulation figure above 700,000 for the six-month period ending Sept. 30.

In fact, erosion of New York City circulation has affected not just The News but The New York Times as well. The Post has bucked this trend the last few years but has lost some of its core Manhattan readership. Others who remain loyal to The Post have known it since it was an afternoon newspaper itself — and save it for the train or bus ride home. Tomorrow, these readers of The Post

Losing in Core Markets

New York's main tabloids are in a war of attrition, with The New York Daily News's only gain in circulation in recent years coming in Manhattan and The New York Post gaining only in Brooklyn. In Queens; the News's stronghold, readership was also down for the Long Island paper, Newsday, but it is turning upward.



Source: Audit Bureau of Circulations

The New York Times

will be offered a free copy of Express by a novel crew of hawkers, including an actress, an opera singer and a handful of leggy cheerleaders.

If The News wants to grab The Post's readers, it would not mind slicing into Newsday's advertising revenue. Last year, Newsday's Queens circulation increased after three years of losses, while the Queens circulation of The News dipped. Retailers like Seaman Furniture, which advertise in both, have limited budgets. Eventually, Ms. Eaton said, new expenditures for ads in Express would require her to cut spending elsewhere. Perhaps at Newsday. Or, perhaps, at The News.

Cannibalization of readers and advertising dollars, is a consideration for executives of The News. But Mr. Goodstein said he was not worried. Express, he said, posed little threat to The News. "If we compare them, the morning paper is the novel, the evening paper is the Cliffs Notes." Edward Kosner, editor in chief of The Daily News, said Express has a staff of 20, about half carved out of The News staff and many of the rest hired, for the moment, on a contingency basis.

"The New York market is going to stay competitive," Mr. Goodstein said. "The way we're positioning our product is as an all-day news product." Much of its breaking business news will come from the San Francisco-based Web site CBSMarketwatch.com.

But can The Daily News's daily circulation (730,542 for the six months ended March 31) withstand the possible hammer effect of The Post's price cut? With a circulation measured at 436,544 for the period ended March 31, The Post looses less from such an action than The News does if it follows suit.

Mr. Murdoch, for his part, is legendary for using blunt instruments like price cuts to good effect in one market after another. In London, a 1993 price cut at The Times of London brought in close to 400,000 new readers, more than half of whom stayed even when the price went back up. Its rival, The Daily Telegraph, was forced to cut its own prices in response.

In Britain, cuts in the cover price are a more dire move, since 35 percent to 50 percent of most British newspapers' revenue come from readers. By contrast, most American newspapers gain close to 80 percent of their revenue from advertisers. Still, analysts believe The Post already loses at least $10 million annually; the new price cut should add millions more to the loss column.

As Mr. Stern sees it, Mr. Murdoch's willingness to sustain that kind of drain makes him a fearsome competitor. "I've been in many businesses, including publishing. I can tell you categorically: I don't want to be in any business where I have to compete with Rupert Murdoch."

Ken Chandler, publisher of The Post, alluded to the News Corporation's willingness to endure economic pain when he said, "I remind people that we have a history of being patient and taking a long-term view with newspapers." He added, "Basically, we just see this price change as a chance to introduce new readers to the paper and reintroduce old readers who may not have looked at us recently," pointing out that the paper has increased its daily circulation by 50,000 in the last five years.

Keeping that upward momentum is important, particularly when $200 million worth of new presses are nearing completion. Some observers suggest it may also be important for The Post to impress federal regulators with its willingness to publish at great cost to itself — so they will not overrule the News Corporation's recently announced plans to buy a second television station in New York as an unacceptable concentration of media power.

For his part, Mr. Chandler is willing to do some genteel trash-talking about his rivals at The News. "Our hawkers will go toe to toe with theirs," he said. "And we have got a few things that we're keeping close to our chest that will make life more interesting." He does not rule out the possibility that his morning paper will publish a few evening special editions of its own. Major events at the Summer Olympics in Sydney are scheduled for the early-morning hours, East Coast time — perfect timing for a noon deadline.

Indeed, it is no accident that Express is starting just as the Summer Olympics are about to begin and the pre-Christmas advertising begins to roll in. But then what? Ms. Eaton of Seaman said she was originally asked to commit to 16 weeks of advertising (she committed to 8). Mr. Goodstein said Express's viability — meaning its appeal to advertisers — would be continually monitored; it is clear that it could be abandoned quickly if its usefulness seemed doubtful.

Meanwhile, executives at The Post will be monitoring their own circulation; Mr. Chandler does not rule out further price cuts, ignoring Mr. Goodstein's provocative description of The Post's move as a "desperation" strategy.

"Obviously this is a very, very competitive environment," Mr. Chandler said. "We are wholly focused on The Post and we see The Post as a long-term investment."

NY Times
Sept. 11, 2000

NYTimes
Sept 1, 2000

The Post to Halve Its Newsstand Price

By JAYSON BLAIR

The New York Post will reduce its daily newsstand price to 25 cents from 50 cents starting Monday, a move taken two weeks after its main competitor, The Daily News, said it would begin distributing a free afternoon edition.

The Post, owned by the News Corporation, is reducing its price to attract more readers, said Ken Chandler, the publisher. The reduction will apply every day except Sunday, Mr. Chandler said in an interview yesterday.

Both The Post and The Daily News have experimented with lower newsstand prices in the past.

The Post reduced its price to 25 cents on Staten Island for two years in the mid-1990's and its daily circulation in that borough doubled to 12,000, company officials said. The paper lost only 1,000 subscribers when the price went back to 50 cents, the officials added.

"This is a very aggressive market and we basically see this on the eve of our 200th anniversary as a chance to introduce new readers to the paper," Mr. Chandler said.

The Post, which faces tough competition for advertising dollars from The New York Times and The Daily News, hopes that the lower price and improvements related to a new color printing plant opening in the Bronx next year will help it capture a larger share of the city's newspaper readers.

Two weeks ago, The Daily News announced its plan for a free afternoon edition that could cut into The Post's circulation during the September audits, often used to determine the next year's ad rates.