

HOGAN & HARTSON
L.L.P.

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WILLIAM S. REYNER, JR.
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December 13, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
WASHINGTON, DC 20004-1109
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VIA HAND DELIVERY

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

ORIGINAL

Re: *Notice of Written Ex Parte Presentation – DA 00-2246*
Applications Seeking Consent to the Assignment of
Chris-Craft Television Licenses to Fox Television Stations, Inc.
File Nos. BALCT-20000918ABB-ABD; BALCT-20000918ABF-ABS;
BALCT-20000918ABU-ABZ; BALCT-20000918ACA-ACE

Dear Ms. Salas:

Attached is a copy of a letter that was sent today, on behalf of Fox Television Stations, Inc. and The News Corporation Limited, to Mr. Roy J. Stewart, Chief of the Mass Media Bureau, regarding the above-referenced assignment applications. An original and one copy this *Notice of Ex Parte Presentation* are being filed in accordance with Section 1.1206(b) of the Commission's Rules.

Respectfully submitted,

HOGAN & HARTSON L.L.P.

By: William S. Reyner, Jr. / BJ
William S. Reyner, Jr.

Attorneys for Fox Television Stations, Inc.
and The News Corporation Limited

cc: Roy J. Stewart, Chief, MMB, Room 2-C337
Barbara Kreisman, MMB, Room 2-A665
David Roberts, MMB, Room 2-A728
David Brown, MMB, Room 2-A730
James Bird, OGC, Room 8-C818
International Transcription Services, Inc., Room CY-B402

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Mr. Roy J. Stewart
Chief, Mass Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Applications Seeking Consent to the Assignment of
Chris-Craft Television Licenses to Fox Television Stations, Inc.
File Nos. BALCT-20000918ABB-ABD; BALCT-20000918ABF-ABS;
BALCT-20000918ABU-ABZ; BALCT-20000918ACA-ACE**

Dear Mr. Stewart:

The above-referenced assignment applications (the "Applications") seek Commission consent to permit Fox Television Stations, Inc. ("FTS") to acquire, *inter alia*, WWOR-TV, Secaucus, New Jersey, which operates in the New York designated market area ("DMA").

FTS is the licensee of WNYW-TV, which is also located in the New York DMA. Additionally, NYP Holdings Inc. ("NYP"), a subsidiary of The News Corporation Limited ("News Corp"), is the owner of the *New York Post* and indirectly has an interest in FTS. Common ownership of WNYW-TV and the *New York Post* is permitted pursuant to the Commission's 1993 grant of a permanent waiver of section 73.3555(d)(3) of the Commission's Rules, which restricts common ownership or control of daily newspapers and television broadcast stations. ^{1/}

The Commission's recently modified television duopoly rule permits FTS to own WNYW and WWOR-TV. ^{2/} As detailed in the Applications, FTS believes that because the current duopoly rule permits the proposed acquisition of WWOR-TV by FTS and

^{1/} See *Fox Television Stations, Inc.*, 8 FCC Rcd 5341 (1993), *aff'd sub nom Metropolitan Council of NAACP Branch v. FCC*, 46 F.3d 1154 (D.C. Cir. 1995).

^{2/} See *Review of the Commission's Regulations Governing Broadcasting*, MM Docket No. 91-221, Report and Order, 14 FCC Rcd 12903 (1999).

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there is already in place a permanent waiver of the newspaper/television cross-ownership rule, no further action is required by the Commission to permit the television duopoly in the New York market and continued ownership of the *New York Post*.

Nevertheless, in order to facilitate the Commission's review of this matter and to provide a better understanding for the intensity and financial challenge of competing in this newspaper market, News Corp wishes to submit to the Commission financial information concerning the *New York Post's* operations. News Corp is deeply concerned that, if submitted, this extremely sensitive information could fall into the hands of the *Post's* competitors and could be used to the detriment of the *Post*. In fact, the competitive pressures are such that earlier this year the *Post* reduced its newsstand price in New York from 50 to 25 cents. In view of this situation, prior to submitting the *Post's* financial data to the Commission, News Corp wishes to secure confidential treatment for this information. Accordingly, pursuant to Sections 0.457 and 0.459 of the Commission's Rules, News Corp hereby requests confidential treatment of any and all financial information submitted to the Commission with respect to the *New York Post*.

The Commission has recognized that it is obligated to ensure that in the exercise of its duties it does not unnecessarily disclose information that might place a regulated entity at a competitive disadvantage. ^{3/} The Commission has recognized that these types of risks justify protecting financial information from unrestricted disclosure. ^{4/}

The government is not required to make available to the public documents in its possession which contain "commercial or financial information obtained from any person [that are] privileged or confidential . . ." 5 U.S.C. § 552(b)(4) ("Exemption 4 of FOIA"); see also 47 C.F.R. § 0.457(d). The United States Court of Appeals for the District of Columbia Circuit has held that information that is given to the government

^{3/} See, e.g., *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, 24822 (1998).

^{4/} For example, the Commission ruled in *American Satellite Company*, 1985 FCC LEXIS 3117 at ¶ 17 (1985), that release of a satellite construction contract including sensitive financial and technical information would cause the licensee competitive harm. See also *Mercury PCS II, LLC*, FCC 00-241, 15 FCC Rcd 14559 at ¶ 4 (2000) (discussing Bureau determination that documents disclosing filer's overall business strategy should not be disclosed because disclosure could adversely affect company's competitive position and ability to implement its business plan).

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voluntarily will be treated as confidential pursuant to Exemption 4 of FOIA "if it is of a kind that the provider would not customarily make available to the public." *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871 (D.C. Cir. 1992), cert. denied, 113 S. Ct. 1579 (1993). This test is used by the Commission to determine whether documents are exempt from disclosure. See, e.g., *Thomas N. Locke*, 8 FCC Rcd 8746 (1993).

The documents that News Corp wishes to file are clearly exempt from disclosure under the standard articulated in *Critical Mass Energy Project*. The financial information which is being volunteered is not only the type that would not customarily be made available to the public, but also it contains highly sensitive data that could – and certainly would – be used by competitors to the disadvantage of the *Post*.

For the foregoing reasons, News Corp hereby requests confirmation that financial information regarding the *New York Post* will be accorded confidential treatment pursuant to Section 0.457 of the Commission's Rules and 5 U.S.C. § 552(b)(4). Upon receipt of such confirmation, News Corp will provide the Commission with data reflecting the financial performance of the newspaper since its acquisition by NYP.

Respectfully submitted,

HOGAN & HARTSON L.L.P.

By:


William S. Reyner, Jr.

Attorneys for Fox Television Stations, Inc.
and The News Corporation Limited

cc: Chairman William E. Kennard
Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael K. Powell
Commissioner Gloria Tristani
Barbara Kreisman
Clay Pendarvis
Angela J. Campbell