Federal Communications Commission
Washington, D.C. 20554

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Re: Applications for Assignment of Licenses from Subsidiaries of Chris-Craft Industries, Inc. to Fox Television Stations, Inc., File Nos. BALCT-20000918ABB, *et al.*

Gentlemen,

On September 18, 2000, you filed applications on behalf of your clients to assign the licenses of the television stations held by subsidiaries of Chris-Craft Industries, Inc. (Chris-Craft) to Fox Television Stations, Inc. (FTS). We note that a petition to deny was filed by the Office of Communication, Inc. of the United Church of Christ, *et al.* (Petitioners). We also note that pursuant to a Public Notice dated October 3, 2000, DA 00-2246, this proceeding was designated as permit-but-disclose for *ex parte* purposes. While we have not reached any conclusions regarding the applications and pleadings, by this letter we seek additional information to aid in our review of certain issues. Our continuing review of these applications is not limited to the matters raised in this letter.

The application sets out an ownership structure whereby the licenses would be held by FTS and the station assets would be held by a newly created subsidiary of FTS's parent company, The News Corporation Limited (News Corp.), called Newco. Newco would run the stations pursuant to an operating agreement between it and FTS. Under the terms of the operating agreement, Newco would own all of the stations' assets and employ all of the stations' personnel. Newco would perform all of the day-to-day operations of the stations, purchase the stations' equipment, enter into and administer programming contracts and pay all station expenses and capital costs. Newco would also retain all the advertising and other receipts from station operations and would receive 95% of the net income from the stations. If the stations were sold, Newco would receive

95% of the proceeds of the sale. Finally, Newco has the right to approve or disapprove any sale. Newco's ownership of assets, combined with its dominance of station operations, station income and its power to control the sale of the station, raises the issue of whether Newco will be the controlling party and the *de facto* licensee of the stations being acquired.

The record indicates that FTS is a 100% owned subsidiary of Fox Television Holdings, Inc. (FTH). Rupert K. Murdoch owns 100% of the preferred stock and has 76% of the voting interest in FTH. News Corp. is the ultimate parent of Fox Entertainment Group (FEG), which owns 100% of the common stock and has 24% of the voting control of FTH. FEG also owns 100% of Newco, while FTS has no interest in Newco. In previous decisions, the Commission found that FTS was under the *de facto* and *de jure* control of Rupert Murdoch, an American citizen. *See Fox Television Stations*, 11 FCC Rcd 5714 (1995)(*Fox II*). Under the *Fox II* ownership structure, 99% of the economic benefit of the station operations flowed to the alien investors in the company, while 1% flowed to an American citizen, Mr. Murdoch. The Commission made clear that FTS would be permitted to acquire additional broadcast licenses, as long as it retained the structure approved at the time of the *Fox II* decision and as long as the breakdown of economic benefits between aliens and American citizens remained the same. *Id.* Subsequently, FTS did acquire additional television broadcast licenses within the ownership structure approved in *Fox II*. Newco, however, is not part of that ownership structure. Furthermore, with Newco receiving 95% of the economic benefits of the station, and with 99% of the remaining 5% going to the alien investors in FTS, the economic benefits to aliens in this new structure appear to exceed 99%. Moreover, if Newco is the actual controlling party with respect to the Chris-Craft stations, then those stations will have been acquired outside of the ownership structure approved in *Fox II*.

As discussed above, Newco is a wholly owned subsidiary of FEG. According to the application, FEG is owned 85.25% by FEG Holdings, Inc. and 14.75% by outside investors. The application does not state the citizenship of those investors. FEG Holdings, Inc. is in turn majority owned by News America Incorporated, which is owned by an Australian corporation, News Corp. Based on the application, it appears that Newco is a corporation that may be 100% foreign owned and controlled. This is in contrast to the Commission's decision in *Fox II*, where it found that Mr. Murdoch had *de jure* and *de facto* control of FTS. On the basis of Mr. Murdoch's control of FTS, the Commission permitted it to acquire television broadcast station licensees in spite of its level of foreign ownership. The Commission has never made a finding that Mr. Murdoch controls FEG or News Corp., so its decision in *Fox II* would not provide a basis to permit Newco to control broadcast licensees. If Newco is in control of the licenses of the Chris-Craft stations, this would appear to be a violation of Section 310(b)(4) of the Communications Act.

We require the applicants to explain how the operating agreement, which appears to place virtually all control of the Chris-Craft licensees and 95% of the income from those stations in the hands of Newco, comports with *Fox II*. We also require the applicants to provide information that details the level of foreign investment and control in Newco, FEG and their parent companies. Further, in that this ownership structure differs from that approved in *Fox II*, we require the applicants to explain why the ownership structure proposed in the application is in the public interest. Finally, we request the applicants' permission to access and review the documents submitted to the U.S. Department of Justice in connection with Hart-Scott-Rodino review of the transaction, and to discuss the transaction with U.S. Department of Justice officials

involved in the investigation. Kindly submit a draft of your proposed waiver letter to be sent to the U.S. Department of Justice at your earliest convenience.

In *Fox Television Stations, Inc.*, 8 FCC Rcd 5341 (1993), the Commission granted a permanent waiver of the television/newspaper cross-ownership rule, 47 C.F.R. § 73.3555(d), that permitted FTS to own television station WNYW(TV), New York, while another subsidiary of News Corp. owned the *New York Post*. In the application, FTS contends that this waiver is sufficient to permit the continued ownership of the *New York Post* and WNYW(TV) by News Corp. subsidiaries and to permit FTS to acquire an additional television station in the New York City DMA, WWOR-TV, Secaucus, New Jersey. In the alternative, FTS argues that it should be granted an interim waiver to permit ownership of the *New York Post* and the two New York City DMA television stations pending the outcome of a rulemaking on whether to revise the television/newspaper cross-ownership rule.

To support its argument on the waiver issues, FTS contends that the New York media market is at least as competitive as it was at the time that the original waiver was granted and that the *New York Post* continues to suffer from serious financial difficulties. Although the application contains evidence in support of the argument regarding competition, it does not contain anything other than general statements, not supported by affidavits, regarding the current financial condition of the *New York Post*. While acknowledging its intention to provide further information with respect to the financial condition of the *New York Post*, FTS has not, as yet, proffered a documented factual showing in support of its assertion. Rather, by letter of December 13, 2000, FTS requested that the Commission confirm that "any and all financial information" FTS may, in the future, submit will be treated as confidential in accordance with Sections 0.457 and 0.459 of the Commission's Rules. Petitioners oppose FTS's request, stating that the request does not comport with the strictures of the Freedom of Information Act, 5 U.S.C. § 552 (b)(4), or Commission precedent. We find that FTS's request is premature and inconsistent with Section 0.459 of the Commission's Rules, which sets forth the procedures and specificity requirements for submitting requests that materials or information furnished to the Commission be withheld from public inspection. Accordingly, FTS's letter request will be dismissed without prejudice to FTS's subsequent submission, if it so chooses, of a request for confidentiality filed in accordance with Section 0.459 of the Commission's Rules.

In addition to the information requested above, Section 310(d) of the Act requires that, in order for a station license to be transferred or assigned, there must be a finding by the Commission that the public interest, convenience and necessity will be served thereby. We therefore require the applicants to supplement the record with an explanatory statement illustrating how the proposed transaction will benefit the public interest. The applicants may, for example, address the effects of the proposed transaction on such issues as local programming, economic competition, transaction-specific efficiencies that can demonstrably lead to consumer benefits, productivity enhancements that will flow through to consumers, and improved incentives for innovation that can lead to foreseeable benefits to consumers.

The requested information must be submitted in the form of an amendment to the applications, accompanied by a declaration of a person having personal knowledge of the truth of any factual

statements made. *See* 47 C.F.R. § 1.16. The applicants should provide the requested information as soon as possible, but in any event within 30 days from the receipt of this letter. Petitioners will be provided 10 days from receipt of the applicants' amendment to file a response. As the Bureau's evaluation of the license assignment applications at this point cannot proceed further without the additional information requested in this letter, the 180-day clock has stopped on day 80 until we receive sufficient information to allow the Bureau to proceed. Copies of the amendment must be served on Barbara J. Kreisman, Chief, Video Services Division, Mass Media Bureau and Angela J. Campbell, counsel for Petitioners.

Sincerely,

Roy J. Stewart
Chief, Mass Media Bureau

cc: Angela Campbell, Esq.