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January 22, 2001

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

By Hand Delivery

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

Re: Applications for Assignment of Licenses from Subsidiaries of Chris-Craft Industries, Inc. to Fox Television Stations, Inc., File Nos. BALCT-20000918ABB-ABD, BALCT-20000918ABF-ABS, BALCT-20000918ABU-ABZ, BALCT-20000918ACA-ACE

Request for Confidentiality and a Protective Order Pursuant to 47 C.F.R. § 0.459 and 5 U.S.C. § 552(b)(4)

Dear Ms. Salas:

In a letter dated December 21, 2000 from Roy J. Stewart, Chief, Mass Media Bureau, to William S. Reyner, Jr., John C. Quale, and Marvin J. Diamond regarding the above-referenced proceedings (the "FCC Letter"), the Federal Communications Commission ("FCC" or "Commission") noted that The News Corporation Limited ("News Corp"), in a letter to Roy J. Stewart dated December 13, 2000, had proffered information regarding the financial condition of the *New York Post*. In that connection, News Corp requested confidential treatment of such information, which the Commission, in the FCC Letter, dismissed as premature.

While News Corp believes, as set forth in the December 13 letter, that the financial information, which is submitted herewith, is entitled to full confidential treatment,¹ News Corp is prepared to permit disclosure of the information to the

¹ As set forth in the Dec. 13 letter, the documents submitted herewith are exempt from disclosure under Critical Mass Energy Project, 975 F.2d 871 (D.C. Cir. 1992), cert. denied, 113 S. Ct. 1579 (1993) because the information is not the type that would customarily be made available to the public.

(continued...)

outside counsel for the Office of Communications, Inc. of the United Church of Christ, Academy of Latino Leaders in Action, 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, and Valley Community Access Television ("Petitioners"), pursuant to a protective order, the proposed form of which is attached hereto. Indeed, in its

¹ (...continued)

Moreover, even under the standard enunciated in Nat'l Parks and Conservation Ass'n v. Morton, 498 F.2d 765, 770 (1974), for information that is required to be submitted to the government, the documents submitted herewith are confidential because public disclosure is likely to "cause substantial harm to the competitive position of the party from whom the information was obtained." As stated in the attached declaration of Michael Carvalhido, Vice President, Finance of *The New York Post*, and in the December 13 letter, News Corp considers the financial information submitted herewith to be proprietary and competitively sensitive, and does not make this type of information available to the public. Public disclosure of the financial information is likely to cause *The New York Post* substantial competitive harm by allowing competitors to use such information to disadvantage the paper with readers and advertisers at a time when competition in the New York market has become increasingly fierce. See also Joint Opposition at 22, 30 n.69 and Applications at Exhibit No. 4, 29-31 for a discussion of the competitiveness of the New York marketplace.

The FCC Letter contends that the parties' prior statements regarding the current financial condition of the *New York Post* were not supported by affidavits. News Corp respectfully points out that statements made in response to questions on FCC Form 314 are certified as being true, complete and correct to the best of the signature's knowledge and belief and made in good faith. In addition, willful false statements on FCC Form 314 are punishable by fine and/or imprisonment pursuant to 18 U.S.C. § 1001 and/or revocation of any station license pursuant to 47 U.S.C. § 312(a)(1) and/or forfeiture pursuant to 47 U.S.C. § 503. *See* FCC Form 314 at page 4. In any event, News Corp has included the attached declaration of Michael Carvalhido, Vice President, Finance of *The New York Post*, regarding the financial information submitted herewith.

objection to the request for confidential treatment, the Petitioners recognize the use of a protective order by the Commission to provide adequate disclosure.²

The proposed order included herewith is similar to orders adopted in other merger proceedings subject to Commission review and the standard protection order adopted by the Commission in its examination of its policies concerning the treatment of confidential information.³ Furthermore, as the Commission noted in its examination of its policies concerning the treatment of confidential information, "[p]rotective orders can provide the benefit of protecting competitively valuable information while permitting limited disclosure for a specific public purpose."⁴

In conclusion, in accordance with the FCC letter, News Corp is renewing its request pursuant to 47 C.F.R. § 0.459 and 5 U.S.C. § 552(b)(4), as set forth in the December 13 letter (a copy of which is submitted herewith and incorporated herein by reference) and herein, for confidential treatment of the financial information of the *New York Post*, which is submitted herewith, and are requesting that these documents be subject to the issuance of a protective order in the form attached hereto. In connection herewith, News Corp also respectfully requests that, in its

² Ex-Parte Communications of Petitioners, dated December 21, 2000, at 6.


³ Applications of America Online, Inc. and Time Warner, Inc. for Transfers of Control, 15 FCC Rcd 6117; Applications of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., 13 FCC Rcd 11166 (1998); Applications for Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc. (Transferor) to AT&T Corp. (Transferee), 14 FCC Rcd 12286 (1998); Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from GTE Corporation (Transferor) to Bell Atlantic Corporation (Transferee), 13 FCC Rcd 22751 (1998); Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation (Transferor) to SBC Communications, Inc. (Transferee), 13 FCC Rcd 21724 (1998); Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, 3 FCC Rcd 24816 (1998), Appendix C.

⁴ Id. at 24831.

decision regarding the Applications, the Commission refrain from publicly revealing any confidential information.⁵

Respectfully submitted,

THE NEWS CORPORATION LIMITED

By: 
Arthur M. Siskind
Senior Executive Vice President


cc: Roy J. Stewart
Barbara Kreisman
Christopher R. Day (without attached confidential documents)
Angela J. Campbell (without attached confidential documents)

⁵ See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, 3 FCC Rcd at 24853 ("In most instances, we expect it will be possible to write an order without publicly revealing the confidential information.")

DECLARATION OF MICHAEL CARVALHIDO

Michael Carvalhido hereby declares, under penalty of perjury as follows:

1. I am the Vice President, Finance, of the *New York Post*.
2. I prepared the financial information relating to the *New York Post* ("Financial Information") that is being submitted in connection with The News Corporation Limited's ("News Corp") Request for Confidentiality and a Protective Order Pursuant to 47 CFR §0.459 and 5 U.S.C. §552(b)(4), dated January 22, 2001. The Financial Information is true and correct to the best of my knowledge, information and belief.
3. News Corp considers the Financial Information to be proprietary and competitively sensitive, and does not make financial information of this type available to the public. Public disclosure of the Financial Information is likely to cause the *New York Post* substantial competitive harm at a time when competition in the New York newspaper market has become increasingly fierce. In fact, in response to a decision by a principal competitor, *The New York Daily News*, to offer a free afternoon edition, the *New York Post* reduced its newsstand price from 50 to 25 cents beginning September 4, 2000. The Financial Information could be used by competitors like *The Daily News* to disadvantage the *New York Post* with readers and advertisers in this highly competitive marketplace.
4. The foregoing is true and correct to the best of my knowledge, information and belief.



Michael Carvalhido
Vice President, Finance

Date: Jan 19, 2001

HOGAN & HARTSON
L.L.P.

WILLIAM S. REYNER, JR.
PARTNER
DIRECT DIAL (202) 637-6510

December 13, 2000

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

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

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).

Mr. Roy J. Stewart
December 13, 2000
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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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December 13, 2000
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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).

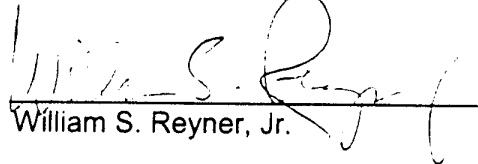
The documents that News Corp wishes to file are clearly exempt from disclosure under the standard articulated in *Critical Mass Energy Project*. The financial information which is being volunteered is not only the type that would not customarily be made available to the public, but also it contains highly 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

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

In the matter of)	
)	File Nos.
Applications for Assignment of Licenses)	BALCT-20000918ABB-ABD,
from Subsidiaries of Chris-Craft Industries,)	BALCT-20000918ABF-ABS,
Inc. to Fox Television Stations, Inc.)	BALCT-20000918ABU-ABZ,
)	BALCT-20000918ACA-ACE
)	

PROTECTIVE ORDER

By the Chief, Mass Media Bureau:

1. On September 18, 2000, Fox Television Stations, Inc. ("FTS") and subsidiaries of Chris-Craft Industries, Inc. ("Chris Craft") filed applications with the Federal Communications Commission (the "Commission" or the "FCC") pursuant to Section 310(d) of the Communications Act to assign FCC licenses held by subsidiaries of Chris Craft to FTS. The Commission has received financial information from The News Corporation Limited ("News Corp") (the "Submitting Party") and a request for confidential treatment of such documents and issuance of a protective order. Because these documents may contain confidential and proprietary information, the Bureau hereby enters this Protective Order to ensure that the documents produced to the Commission and considered by the Submitting Party to be confidential and proprietary are afforded protection. This Order does not constitute a resolution of the merits concerning whether any confidential information would be released publicly by the Commission upon a proper request under the Freedom of Information Act ("FOIA") or otherwise.

2. *Non-Disclosure of Confidential Documents.* Except with the prior written consent of the Submitting Party, or as hereinafter provided under this Order, neither Confidential Documents nor the contents thereof may be disclosed by a reviewing party to any person. "Confidential Documents" shall mean the material submitted pursuant to the request of News Corp, dated January 22, 2001, for confidential treatment and the issuance of a protective order.

3. *Permissible Disclosure.* Subject to the requirements of Paragraph 5,

Confidential Documents may be reviewed by outside counsel of record. Subject to the requirements of Paragraph 5 and subject to the obligation to secure the confidentiality of Confidential Documents in accordance with the terms of this Order, such counsel may disclose Confidential Documents to any of the following persons, so long as they are not involved in competitive decision making for any competitor of any Submitting Party: (i) the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in this proceeding; (ii) Commission officials involved in this proceeding; and (iii) outside consultants or experts retained for the purpose of assisting counsel in these proceedings.

4. *Access to Confidential Documents.* Persons described in Paragraph 3 shall have the obligation to ensure that access to Confidential Documents is strictly limited as prescribed in this Order. Such persons shall further have the obligation to ensure: (i) that Confidential Documents are used only as provided in this Order; and (ii) that Confidential Documents are not duplicated except as necessary for filing at the Commission under seal as provided in Paragraph 7.

5. *Procedures for Obtaining Access to Confidential Documents.* In all cases where access to Confidential Documents is permitted pursuant to Paragraph 3, and before reviewing or having access to any Confidential Documents, each person seeking such access shall execute the Acknowledgment of Confidentiality attached hereto and file it with the Commission and serve it upon each Submitting Party so that it is received by each Submitting Party five business days prior to such person's reviewing or having access to any such Confidential Documents. Each Submitting Party shall have an opportunity to object to the disclosure of Confidential Documents to any such person. Any objection must be filed at the Commission and served on counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment of Confidentiality. Until any such objection is resolved by the Commission and any court of competent jurisdiction prior to disclosure, and unless that objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Confidential Documents.

6. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Documents outside the terms of this protective order, such requests will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

7. *Use of Confidential Information.* Persons described in Paragraph 3 may, in any documents that they file in this proceeding, reference information found in Confidential Documents or derived therefrom (hereinafter, "Confidential Information"), but only if they comply with the following procedures:

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings;

b. The portions of the pleadings containing or disclosing Confidential Information must be covered by a separate letter to the Secretary of the Commission referencing this Protective Order;

c. Each page of any party's filing that contains or discloses Confidential Information subject to this Order must be clearly marked: "Confidential information included pursuant to Protective Order, MM Docket No. ___;" and

d. The confidential portion(s) of the pleading shall be filed with the Secretary of the Commission and served on each Submitting Party. Such confidential portions shall be filed under seal, and shall not be placed in the Commission's Public Files. A party filing a pleading containing Confidential Information shall also place a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's Public Files. Parties may provide, under seal, courtesy copies to Commission staff of pleadings containing Confidential Information.

8. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing parties, by viewing this material: (a) agree not to assert any such waiver; (b) agree not to use information derived from any Confidential Document to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

9. *Subpoena by Court or Other Agencies.* If a court or another administrative agency subpoenas or orders production of Confidential Documents or Confidential Information that a party has obtained under terms of this Order, such

party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court or administrative agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such productions prior to the production or disclosure of any Confidential Documents or Confidential Information.

10. *Client Consultation.* Nothing in this Order shall prevent or otherwise restrict counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Documents; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not disclose Confidential Documents or Confidential Information.

11. *Violations of Protective Order.* Persons obtaining access to Confidential Documents or Confidential Information under this Order shall use the information solely for preparation and the conduct of this proceeding as delimited in Paragraphs 4, 7 and 10, and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such information for any other purpose, including business, governmental, commercial, or other administrative, regulatory or judicial proceedings. Should a party that has properly obtained access to Confidential Information under this Order violate any of its terms, that party shall immediately notify the Commission and the Submitting Party of such violation. Further, should such violation consist of improper disclosure of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violation of this Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or equity against any party using Confidential Information in a manner not authorized by this Protective Order.

12. *Termination of Proceeding.* The provisions of this Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding (which includes any administrative review or judicial review), Confidential Documents and all copies of same shall be returned to the Submitting Party. No material whatsoever derived from Confidential Documents may be

retained by any person having access thereto, except outside counsel to a party in this proceeding may retain, under the continuing strictures of this Order, two copies of each pleading containing Confidential Information prepared on behalf of that party. All counsel of record shall make certification of compliance herewith and shall deliver the same to counsel for the Submitting Party not more than three weeks after conclusion of this proceeding.

13. *Authority.* This Order is issued pursuant to Sections 4(i) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (i) and 310(d); Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4); and authority delegated under Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321; and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

APPENDIX A

ACKNOWLEDGMENT OF CONFIDENTIALITY

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding and I understand it. I agree that I am bound by this Order and that I shall not disclose or use any Confidential Documents or any information gained therefrom except as allowed by the Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the order is due solely to my capacity as counsel to a party or other person described in Paragraph 3 of the foregoing Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Order.

Executed at _____ this ___ day of _____, 2001

Signature

Title

CONFIDENTIAL

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