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FEDERAL COMMUNICATIONS COMMISSION
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Douglas L. Parker
Director
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Associate Director
Environmental Law Project
Angela J. Campbell
Associate Director
Citizens Communications Center Project
Christopher R. Day
J. Steven Farr
Fellows

April 4, 2001

VIA HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Ex Parte Communication*: DA 00-2246
Fox Television Stations, Inc. Application for Assignment of Broadcast Licenses and Assets of Chris-Craft Industries, Inc.
File Nos. BALCT-20000918ABB-ABD; BALCT-20000918ABF-ABS; BALCT-20000918ABU-ASBZ; BALCT-20000918ACA-ACE

Dear Ms. Salas:

On Tuesday, April 3, 2001, Angela Campbell, Christopher Day and Jennifer Mercer of the Institute for Public Representation spoke with William J. Friedman, Senior Legal Advisor to Commissioner Tristani, on behalf of the Office of Communication, 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"), regarding the above-referenced proceeding.

During the meeting, Petitioners' counsel discussed issues of concern with regard to Fox Television Stations, Inc.'s ("Fox") application. First, Petitioners' counsel discussed concerns regarding Fox's factual showings with regard to the Newspaper/Broadcast Cross-Ownership rule. In particular, Petitioners' counsel expressed concern that Fox has failed to make the factual

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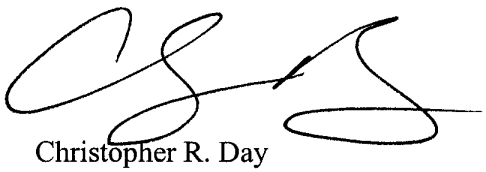
600 New Jersey Avenue NW Suite 312 Washington DC 20001-2075
202-662-9535 TDD: 202-662-9538 FAX: 202-662-9634

showing required under applicable Commission precedent. Second, Petitioners' counsel discussed Fox's lack of responsiveness to Commission requests for information. In particular, Petitioners' counsel detailed Fox's failure to provide complete information regarding its level of foreign ownership. Third, Petitioners' counsel pointed out Fox's failure to respond to the Commission's request to view Hart-Scott-Rodino ("HSR") documents currently at the U.S. Department of Justice ("DOJ"). Petitioners' counsel also detailed the fact that they have neither received nor reviewed a copy of any letter from DOJ stating that the HSR review of this transaction has been completed. Finally, Petitioners' counsel discussed concerns that Fox had failed to adequately respond to the Commission's request for further evidence showing that the transaction is in the public interest.

A chart summarizing some of the above-referenced issues was distributed at the meeting. A copy of this chart is attached to this letter. A subsequent *ex parte* letter to Mr. Friedman, dated April 4, 2001, containing a revised version of the chart with citations to sources referenced in the chart is also attached, along with a copy of an e-mail message sent to Mr. Friedman on April 4, 2001, containing exact electronic copies of materials previously filed at the Commission by Petitioners in this proceeding.

In compliance with the Commission's rules regarding *ex parte* communications, an original and one (1) copy of this letter is being filed with the Commission. Should you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,



Christopher R. Day
Angela J. Campbell

Counsel to the Petitioners

cc: William J. Friedman
Barbara A. Kreisman, MMB
David Roberts, MMB
David Brown, MMB
James R. Bird, OGC
International Transcription Services, Inc.
John C. Quale
William S. Reyner, Jr.
Marvin J. Diamond

LEGAL PROBLEMS IN FOX'S APPLICATION TO ACQUIRE THE LICENSES AND BROADCAST ASSETS OF CHRIS-CRAFT INDUSTRIES

Angela J. Campbell
Christopher R. Day
Jennifer L. Mercer

Institute for Public Representation
Georgetown University Law Center

April 3, 2001

NEWSPAPER/BROADCAST CROSS-OWNERSHIP

FACTORS SUPPORTING PERMANENT WAIVERS	FOX'S SHOWING
1. Unsuccessful efforts to sell the media entity to be acquired. a. In all previous permanent waiver cases detailed evidence of efforts to sell the entity to be acquired have been presented.	Neither Fox nor Chris-Craft have presented information suggesting that WWOR cannot be sold. Media reports indicate that a sale of WWOR would be highly lucrative. Similarly, there is no indication that the *New York Post* cannot be sold.
2. Financially troubled status of the media entity to be acquired. a. In all previous cases audited financial information, including tax returns, was presented to prove that the entity was on its "deathbed." b. In the 1993 WNYW/*Post* waiver case, such evidence was not required because the *Post* was in bankruptcy.	WWOR is a highly successful VHF station. In response to a Commission request for financial information on the *Post*, Fox failed to submit tax returns or any audited financial information. Furthermore, the one line of confidential information supplied by Fox does not rise to the level required in *all* earlier cases.
3. Common ownership limited to one newspaper and one AM station (as in *Columbia Montour* and *Kortes Comm.*) a. All previous permanent waiver cases involved *one* radio or television station and *one* daily newspaper.	Fox seeks a waiver to hold *two* large VHF televisions stations along with a daily newspaper.
4. High level of media diversity in the market. a. The FCC has never found that media diversity in and of itself is sufficient to allow a waiver.	Unlike the 1993 waiver case, Fox fails to present an extraordinary and compelling reason as to why a second permanent waiver is advisable here. Media diversity in and of itself has never been an extraordinary and compelling reason.
5. Entity to be acquired not a significant competitive force.	WWOR is one of the top 6 television stations in the New York market. In addition, Fox fails to prove that the *Post* is not a competitive force. To the contrary, Fox's information reveals an increasingly viable newspaper.
6. Proposed combination is unlikely to have an adverse effect on competition.	Fox fails to show how combined ownership of two large VHF stations in New York, in addition to a large daily newspaper, are unlikely to have an adverse effect on competition.

OTHER INFORMATION REQUESTED BY THE COMMISSION

REQUEST FROM THE COMMISSION	RESPONSE FROM FOX
Foreign Ownership	
1. "[P]rovide information that details the level of foreign investment and control in Newco, FEG and their parent companies."	1. Fox failed to provide the Commission with information on: a. Citizenship of the outside investors of FEG (Newco's parent company). b. Ownership of News Corp. Fox included a small footnote in its amended application stating that Mr. Murdoch controls 20%-30% of News Corp. However, Mr. Murdoch is not listed as a shareholder on News Corp's Australian Financial Report. Available information (gathered without Fox's aid) suggests that Mr. Murdoch may not actually control the 20%-30% of News Corp stock listed in the amended application.
Hart-Scott-Rodino	
2. "[R]equest . . . 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."	2. Fox refused to: a. Allow the FCC to review the HSR documents filed with DOJ. b. Provide a copy of a letter that it claims to have received from DOJ terminating the "review of this transaction, subject to News Corp's agreement . . . [to divest] one of the stations in the Salt Lake City market."
Public Interest Showing	
3. "We therefore require the applicants to supplement the record with an explanatory statement illustrating how the proposed transaction will serve the public interest."	3. Fox claims that no response is needed because the request "does not reflect the law." a. Notwithstanding the above, however, Fox reiterated its earlier claim that the Chris-Craft stations' ability to access "Fox News Edge," a centralized news service, satisfies the public interest standard delineated in Section 310(d) of the Act.

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April 4, 2001

VIA HAND DELIVERY

William J. Friedman
Senior Legal Advisor
Office of Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte Communication*: DA 00-2246
Fox Television Stations, Inc. Application for Assignment of Broadcast Licenses and Assets of Chris-Craft Industries, Inc.
File Nos. BALCT-20000918ABB-ABD; BALCT-20000918ABF-ABS; BALCT-20000918ABU-ASBZ; BALCT-20000918ACA-ACE

Dear Mr. Friedman:

Thank you for taking the time to meet with us on April 3, 2001, to discuss the Petition to Deny the applications of Fox Television Stations, Inc. for assignment of the broadcast licenses and assets of Chris-Craft Industries, Inc. Per your request, attached please find a revised copy of the summary of legal issues that was distributed at our meeting. This revised version contains citations to pertinent sources referenced in the summary.

A copy of this letter and its attachment will be filed with the Commission Secretary and those individuals listed in DA 00-2246 in compliance with the Commission's *ex parte* rules. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Christopher R. Day
Angela J. Campbell

Counsel to the Petitioners

600 New Jersey Avenue NW Suite 312 Washington DC 20001-2075
202-662-9535 TDD: 202-662-9538 FAX: 202-662-9634

NEWSPAPER/BROADCAST CROSS-OWNERSHIP

	FACTORS SUPPORTING PERMANENT WAIVERS	FOX'S SHOWING
1.	Unsuccessful efforts to sell the media entity to be acquired. *See Columbia Montour Broadcasting Co.*, 13 FCC Rcd 13007, 13013 (1998); *Kortes Communications, Inc.*, 15 FCC Rcd 11846, ¶ 17 (2000). a. In all previous permanent waiver cases detailed evidence of efforts to sell the entity to be acquired have been presented. *See, e.g., Columbia Montour*, 13 FCC Rcd at 13009-10, ¶¶ 9-12; *Kortes Communications*, 15 FCC Rcd 11846, ¶¶ 7-8; *Fox Television Stations, Inc.*, 8 FCC Rcd 5341, 5346-47, ¶¶30-32.	Neither Fox nor Chris-Craft have presented information suggesting that WWOR cannot be sold. *See* Petition to Deny Application for Assignment of Licenses, filed Oct. 27, 2000, at 10; Further Response To Amended Application for Assignment of Licenses, filed Mar. 14, 2001, at 7-8. Media reports indicate that a sale of WWOR would be highly lucrative. Similarly, there is no indication that the *New York Post* cannot be sold. *See* Petition to Deny at 10.
2.	Financially troubled status of the media entity to be acquired. *Columbia Montour*, 13 FCC Rcd at 13013; *Kortes Communications*, 15 FCC Rcd 11846, ¶ 17. a. In all previous cases audited financial information, including tax returns, was presented to prove that the entity was on its "deathbed." *See, e.g., Columbia Montour*, 13 FCC Rcd at 13008-09, ¶¶ 7-8; *Kortes Comm.*, 15 FCC Rcd 11846, ¶ 5-6. b. In the 1993 WNYW/*Post* waiver case, such evidence was not required because the *Post* was in bankruptcy. *See Fox Television Stations*, 8 FCC Rcd at 5349-50, ¶¶ 43-44 & n. 23-25.	WWOR is a highly successful VHF station. *See* Petition to Deny at 10 & n.28. In response to a Commission request for financial information on the *Post*, Fox failed to submit tax returns or any audited financial information. Furthermore, the one line of confidential information supplied by Fox does not rise to the level required in *all* earlier cases. *Cf.* Petition to Deny at 10 & n.26-27; Further Response at 4.
3.	Common ownership limited to one newspaper and one AM station (as in *Columbia Montour* and *Kortes Comm.*). *Columbia Montour*, 13 FCC Rcd at 13013; *Kortes Communications*, 15 FCC Rcd 11846, ¶ 17. a. All previous permanent waiver cases involved *one* radio or television station and *one* daily newspaper. *See generally Columbia Montour, Kortes Communications, Fox Television Stations*; *Field Communications Corp.*, 65 F.C.C.2d 959 (1977).	Fox seeks a waiver to hold *two* large VHF televisions stations along with a daily newspaper.

NEWSPAPER/BROADCAST CROSS-OWNERSHIP

4. High level of media diversity in the market. *Columbia Montour*, 13 FCC Rcd at 13013; *Kortes Communications*, 15 FCC Rcd 11846, ¶ 17. a. The FCC has never found that media diversity in and of itself is sufficient to allow a waiver. *See Stockholders of Renaissance Communications Corp.*, 12 FCC Rcd 11866, 11885, ¶ 46 & n.36 ("the existence of even a considerable number of media voices in a market is not sufficient, without additional 'special circumstances,' to justify a waiver").	Unlike the 1993 waiver case, Fox fails to present an extraordinary and compelling reason as to why a second permanent waiver is advisable here. Media diversity in and of itself has never been an extraordinary and compelling reason. *Cf.* Petition to Deny at 11-12 & n.31; Reply to Joint Opposition, filed Nov. 22, 2000, at 16 & n.36.
5. Entity to be acquired not a significant competitive force. *Columbia Montour*, 13 FCC Rcd at 13013; *Kortes Communications*, 15 FCC Rcd 11846, ¶ 17.	WWOR is one of the top 6 television stations in the New York market. In addition, Fox fails to prove that the *Post* is not a competitive force. To the contrary, Fox's information reveals an increasingly viable newspaper. *See* Petition to Deny at 11 & n.27; *see also* Fox App. Ex. No. 4 at 27.
6. Proposed combination is unlikely to have an adverse effect on competition. *Columbia Montour*, 13 FCC Rcd at 13013; *Kortes Communications*, 15 FCC Rcd 11846, ¶ 17.	Fox fails to show how combined ownership of two large VHF stations in New York, in addition to a large daily newspaper, are unlikely to have an adverse effect on competition. *See* Petition to Deny at 13, 16; Reply to Joint Opposition at 13-14.

OTHER INFORMATION REQUESTED BY THE COMMISSION

REQUEST FROM THE COMMISSION	RESPONSE FROM FOX
Foreign Ownership 1. "[P]rovide information that details the level of foreign investment and control in Newco, FEG and their parent companies." Letter to William Reyner from Chief, Mass Media Bureau, Dec. 21, 2000, at 2 ("Commission Letter").	1. Fox failed to provide the Commission with information on: a. Citizenship of the outside investors of FEG (Newco's parent company). *See* Letter to Commission Secretary, Applications for Assignment of Licenses, filed Jan. 25, 2001, at 7 ("Fox Letter"); Response to Amended Application, filed Feb. 8, 2001, at 21-22, 23. b. Ownership of News Corp. Fox included a small footnote in its amended application stating that Mr. Murdoch controls 20%-30% of News Corp. However, Mr. Murdoch is not listed as a shareholder on News Corp's Australian Financial Report. Available information (gathered without Fox's aid) suggests that Mr. Murdoch may not actually control the 20%-30% of News Corp stock listed in the amended application. *See* Fox Letter, Attachment C at 15; Response to Amended Application at 24-25.
Hart-Scott-Rodino 2. "[R]equest . . . 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." Commission Letter at 2.	2. Fox refused to: a. Allow the FCC to review the HSR documents filed with DOJ. *See* Fox Letter at 23-24; Response to Amended Application at 32. b. Provide a copy of a letter that it claims to have received from DOJ terminating the "review of this transaction, subject to News Corp's agreement . . . [to divest] one of the stations in the Salt Lake City market." Fox Letter at 23; *see also* Response to Amended Application at 32 (stating that DOJ claims that this is still an 'open investigation').

OTHER INFORMATION REQUESTED BY THE COMMISSION

Public Interest Showing

3. "We therefore require the applicants to supplement the record with an explanatory statement illustrating how the proposed transaction will serve the public interest." Commission Letter at 3.

3. Fox claims that no response is needed because the request "does not reflect the law." Fox Letter at 18; Response to Amended Application at 28-29.

    a. Notwithstanding the above, however, Fox reiterated its earlier claim that the Chris-Craft stations' ability to access "Fox News Edge," a centralized news service, satisfies the public interest standard delineated in Section 310(d) of the Act. *See* Fox Letter at 20-22; Response to Amended Application at 28, 30-31.

Subject: **Electronic Copies of Fox Petition to Deny Filings**
Date: Wed, 04 Apr 2001 13:48:58 -0500
From: Christopher Robert Day <crd5@law.georgetown.edu>
To: wfriedma@fcc.gov
BCC: campbeaj@law.georgetown.edu

Mr. Friedman,

Per your request, attached please find electronic copies, in WordPerfect 8 format, of record filings made by Petitioners in connection with Fox Television Stations, Inc.'s Application for Assignment of the Broadcast Licenses and Assets of Chris-Craft, Industries, Inc. These electronic copies, to the best of our knowledge, are exactly the same as the paper filings made through the Secretary's office.

We do note that Petitioners' March 14, 2001, Further Response contains confidential information that was filed pursuant to a Protective Order issued in DA 01-528.

A copy of this e-mail will be filed with the Secretary in compliance with the Commission's ex parte rules. Should you have any questions, please do not hesitate to contact me.

Christopher R. Day
Fellow/Staff Attorney
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, NW, Suite 312
Washington, DC 20001
(202) 662-9543
(202) 662-9634 (facsimile)

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