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May 11, 2001

VIA FACSIMILE

Mark Schneider
Office of Commissioner Susan Ness
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

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

Dear Mr. Schneider:

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"), we are providing a further written analysis of recent Commission precedent regarding the issuance of interim waivers of Commission rules.

In their Joint Opposition and certain subsequent filings, Fox Television Stations, Inc. ("Fox") and Chris-Craft Industries, Inc. ("Chris-Craft") have alluded to certain language in the Commission's 1998 Biennial Review Notice of Inquiry as support for their proposition that an open-ended interim waiver allowing combined ownership of the New York Post and WNYW and WWOR-TV is appropriate in the instant case. As we stated previously in our Reply, grant of

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an interim waiver here would be inconsistent with FCC policy and with the public interest.¹ We write here to provide a further elaboration of those points.

First, in the *Biennial Review NOI*, the Commission restated its general policy against the grant of interim or conditional waivers on the basis of an ongoing rulemaking or inquiry proceeding.² The Commission acknowledged that it has granted interim waivers in "certain cases" where there is a "pending proceeding [] examining the rule in question" and the Commission "concludes that the application before it falls within the scope of the proposals in the proceeding, and a grant of the interim waiver would be consistent with the Commission's goals of competition and diversity."³ The Commission further noted that this type of waiver relief "is most likely to occur where protracted rulemaking proceedings are involved and where a substantial record exists on which to base a preliminary inclination to relax or eliminate a rule."⁴ However, the Commission concluded that interim or conditional waivers would not be appropriate in the case of the broadcast ownership rules under review in the *Biennial Review*, which included the Newspaper/Television Cross-Ownership Rule.⁵

Even if the Commission had not already decided that it would be inappropriate to grant interim waivers of the Newspaper/Television Cross-Ownership Rule, Fox and Chris-Craft meet none of the aforementioned criteria. First, there is currently no ongoing proceeding to re-examine the Newspaper/Television Cross-Ownership Rule. Moreover, to the extent that the Commission has indicated a willingness to initiate such a proceeding, there is no indication that the type of relief requested by Fox and Chris-Craft is within the range of action contemplated in a hypothetical future proceeding.⁶

¹See Petition to Deny at 13-20; Reply at 17-18.

²See *1998 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 13 FCC Rcd 11276, 11294-95, ¶¶ 56-58 (1998) (hereinafter "*Biennial Review NOI*").

³*Id.* at 11294, ¶ 56.

⁴*Id.*

⁵*Id.* at 11294, ¶ 57.

⁶See *1998 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 15 FCC Rcd 11058, 11105, ¶ 95 (2000) (concluding that the Newspaper-Broadcast Cross-Ownership Rule continued to serve the public interest and only limited tailoring was under

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Second, grant of an interim waiver of the Newspaper/Television Ownership Rule to allow the unprecedented combination of two VHF television stations and a major daily newspaper would be inconsistent with the "Commission's goals of competition and diversity."⁷

Third, this is not a case where "protracted rulemaking proceedings are involved and where a substantial record exists on which to base a preliminary inclination to relax or eliminate a rule."⁸ In fact, the Commission has yet to even issue a Notice of Proposed Rulemaking to relax or eliminate the Newspaper/Television Cross-Ownership Rule. Thus, no record exists on which a preliminary determination might be made.

Fourth, while the *Biennial Review NOI* dealt with the Commission's general policy regarding interim waivers, it did not specifically address interim waivers of the Newspaper/Television Cross-Ownership Rule. That specific issue was addressed, however, in the *Renaissance II* case, where the Commission specifically stated that "we think it should now be clear that the mere initiation of a proceeding stating that such a proceeding was on the horizon, would not be sufficient to warrant an interim waiver."⁹ Because the *Renaissance II* case clearly sets forth the Commission's position on interim waiver of the Newspaper/Television Cross-Ownership Rule, that specific precedent should take precedence in the instant case. Indeed, in the *Biennial Review NOI*, Commission notes that the grant of an extension of the Tribune Company's temporary waiver in Miami in *Renaissance II* "was based on special circumstances and does not, in our view, stand in contradiction to the conditional waiver standard we articulate here."¹⁰

consideration).

⁷*Biennial Review NOI*, 13 FCC Rcd at 11294, ¶ 56.

⁸*Id.*

⁹*Stockholders of Renaissance Communications Corp.*, 13 FCC Rcd 4717, 4719, ¶ 4 (1998).

¹⁰*Biennial Review NOI*, 13 FCC Rcd at 11295, n.90. Further, the Commission made clear that an earlier letter extending a conditional waiver of the Newspaper-Radio Cross-Ownership rule (which is the subject of a pending proceeding) for ABC/Capital Cities-Disney - "to the extent that it suggests that the pendency of a proceeding by itself would be sufficient basis for a waiver," was "superseded." *Id.* at 11295, ¶ 58.

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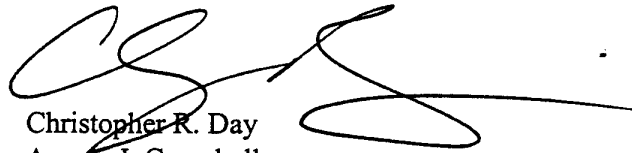
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For all of the above reasons, grant of interim waiver would not be appropriate in the instant case. Accordingly, the Commission should reject Fox and Chris-Craft's request for an interim waiver of the Newspaper/Broadcast Cross-Ownership Rule and deny Fox's application to acquire the license of WWOR-TV, or at the most, grant a short, fixed-term waiver to allow Fox and News Corporation to divest either the Post or WWOR-TV to achieve compliance with the requirements of the Rule.

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 Secretary. Should you have any questions regarding this letter, please do not hesitate to contact the undersigned.

Respectfully submitted,



Christopher R. Day
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