



GEORGETOWN UNIVERSITY LAW CENTER
INSTITUTE FOR PUBLIC REPRESENTATION

Douglas L. Parker
Director

Hope M. Babcock
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Environmental Law Project

Angela J. Campbell
Associate Director
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Christopher R. Day

J. Steven Farber
Fellows

June 4, 2001

2001 JUN -5 P 12:43

VIA HAND DELIVERY

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

Re: *Ex Parte Presentation: 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; BALCT20000918ACA-ACE

Dear Ms. Salas:

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"), attached please find copies of a written *ex parte* presentation and meeting request concerning the above-referenced proceeding that was forwarded to Commissioners Abernathy and Capps on June 4, 2001.

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

Respectfully submitted,

Christopher R. Day
Angela J. Campbell

Counsel for the Petitioners

Magalie Roman Salas

June 4, 2001

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cc: Commissioner Kathleen Abernathy
Commissioner Michael Copps
Barbara Kreisman, MMB
David Roberts, MMB
David Brown, MMB
James R. Bird, OGC
John C. Quale
William S. Reyner, Jr.
Marvin J. Diamond



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Dear Commissioner Abernathy:

We would like to be among the first to congratulate you on your appointment to the Commission. We look forward to working with you during your term. As you are likely aware, one of the first issues that will be on the new Commission's agenda is Fox Television Stations, Inc.'s ("Fox") pending acquisition of the broadcast licenses and assets of Chris-Craft Industries, Inc. ("Chris-Craft"). We represent a broad-based coalition of public interest and viewers groups ("Petitioners")¹ that filed a Petition to Deny on October 27, 2000, in opposition to Fox's Application. On behalf of the Petitioners, we would like to arrange a meeting with you and your staff to discuss our continuing concern with regard to the Fox Application

¹Petitioners consist 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.

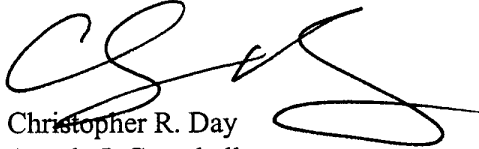
The Honorable Kathleen Abernathy
June 4, 2001
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In order to concisely detail our concerns regarding certain issues in the Application, we have attached two short briefing papers. The first briefing paper provides a historical summary of the various filings in this proceeding. The second briefing paper contains a summary of the exact legal concerns that we have with regard to a number of Fox's waiver requests.

In compliance with the Commission's rules regarding ex parte communications, an original and one (1) copy of this letter and attachments is being filed with the Commission Secretary.

Thank you in advance for your assistance with this request. We look forward to meeting with you and your staff in the near future.

Very truly yours,



Christopher R. Day
Angela J. Campbell

Counsel for the Petitioners

cc: Magalie Roman Salas, Secretary
Barbara Kreisman, MMB
David Roberts, MMB
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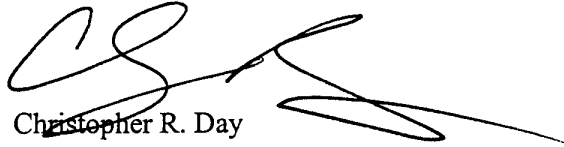
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Thank you in advance for your assistance with this request. We look forward to meeting with you and your staff in the near future.

Very truly yours,

A handwritten signature in black ink, appearing to read "CR Day", written over the typed name of Christopher R. Day.

Christopher R. Day
Angela J. Campbell

Counsel for the Petitioners

cc: Magalie Roman Salas, Secretary
Barbara Kreisman, MMB
David Roberts, MMB
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Summary of Issues Fox Television Applications

On September 18, 2000, Fox Television Stations, Inc. ("FTS") filed applications to acquire the licenses and broadcast assets of ten television stations owned by Chris-Craft Industries, Inc. and its subsidiaries ("Chris-Craft"). These applications requested waivers of three broadcast ownership rules: 1) the Newspaper/Broadcast Cross-Ownership Rule; 2) the Duopoly Rule; and 3) the National Market Cap Rule. In addition, Fox proposed an ownership structure that would split the Chris-Craft station assets from the Chris-Craft licenses in order to minimize the payment of capital gains taxes. Under the proposed ownership structure, the stations assets would be held by "Newco," a direct subsidiary of News Corporation, an Australian corporation, while the station licenses would be held by FTS. This ownership structure would differ materially from the ownership structure approved by the Commission in 1995.

On October 27, 2000, 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") filed a Petition to deny the applications. This Petition, and the accompanying Motion to Dismiss, delineates a number of substantial and material questions of fact regarding the proposed ownership structure and the degree of foreign influence involved. In addition, the Petition also details certain substantial questions of material fact concerning the broadcast ownership waivers sought by Fox.

On December 21, 2000, the Mass Media Bureau ("Bureau") sent Fox a letter requesting clarification of certain material foreign ownership issues. The letter states that "it appears that Newco is a corporation that may be 100% foreign owned and controlled." The letter further states that: "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." In order to resolve this factual question, the letter requested that Fox provide: 1) an explanation showing how Fox's proposed Operating Agreement between FTS and Newco comports with *Fox II*; 2) "information that details the level of foreign investment and control in Newco, FEG and their parent companies;" 3) a showing of how Fox's proposed ownership structure would serve the public interest; and 4) permission to access and review documents submitted to the U.S. Department of Justice ("DOJ") in connection with the Hart-Scott-Rodino review of this transaction.

The Bureau letter also requested further information regarding the financial situation of the *New York Post*, and a statement detailing the overall public interest benefit that would occur as a result of this transaction. On January 25, 2001, Fox provided its response to the letter. In the response, Fox offered minor changes to the proposed Operating Agreement between FTS and Newco. Fox also stated that the public interest would be served through its acquisition of the Chris-Craft assets because those stations would have access to "Fox News Edge," a centralized

news gathering service. In addition, News Corporation and filed limited financial information concerning the operations of the New York Post.

On April 3, 2001, the Commission issued yet another information request to News Corporation and Fox requesting "any available, independently audited certified financial statements, prepared in accordance with Generally Accepted Accounting Principles (GAAP), or similarly probative statements that support your contentions regarding the New York Post's financial viability. On April 9, 2001, News Corporation filed some addition information with the Commission.

On April 12, 2001, Mortimer B. Zuckerman, Chairman & Co-Publisher of the *New York Daily News* forwarded a letter to Petitioners' counsel stating that, in the event the Commission requires divestiture of the *New York Post*, that he would be prepared to "make a bid to purchase the *New York Post*," and that if such bid was successful that he would operate the *New York Post* as an editorially independent newspaper." A copy of this letter was filed with the Commission on April 16, 2001.

On April 30, 2001, Petitioners filed their response to Fox and News Corporation's latest submission. In that response, Petitioners noted that the information submitted was not audited by any independent party and was not a sufficient statement of the Post's financial situation. Petitioners also noted that Mr. Zuckerman's letter contradicted one of Fox and News Corporation's center claims: that the Post would fail if another waiver of the Newspaper/Broadcast Cross-Ownership Rule was not granted.

Attached is a copy of a summary of legal showing required to justify a waiver of the Commission's Newspaper/Broadcast Cross-Ownership Rule. This summary further details, point-by-point, the failure of News Corporation and Fox to justify the grant of a second waiver to acquire WWOR-TV, while maintaining control of WNYW and the *New York Post*.

Also attached is a summary of the items requested by the Commission in its December 21, 2000, letter that were never submitted by Fox. To date, the Mass Media Bureau has made no effort to obtain this information. In the absence of this information, Petitioners submit that it is difficult, if not impossible, for the Commission to compile a sufficient record to address the substantial foreign ownership and Section 310(d) concerns raised by Petitioners.

NEWSPAPER/BROADCAST CROSS-OWNERSHIP

FACTORS SUPPORTING PERMANENT WAIVERS	FOX'S SHOWING
<p>1. Unsuccessful efforts to sell the media entity to be acquired. <i>See Columbia Montour Broadcasting Co.</i>, 13 FCC Rcd 13007, 13013 (1998); <i>Kortes Communications, Inc.</i>, 15 FCC Rcd 11846, ¶ 17 (2000).</p> <p>a. In all previous permanent waiver cases detailed evidence of efforts to sell the entity to be acquired have been presented. <i>See, e.g., Columbia Montour</i>, 13 FCC Rcd at 13009-10, ¶¶ 9-12; <i>Kortes Communications</i>, 15 FCC Rcd 11846, ¶¶ 7-8; <i>Fox Television Stations, Inc.</i>, 8 FCC Rcd 5341, 5346-47, ¶¶ 30-32.</p>	<p>Neither Fox nor Chris-Craft have presented information suggesting that WWOR cannot be sold. <i>See</i> 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. <i>See</i> Petition to Deny at 10.</p> <p>Furthermore, an experienced publisher has expressed an intention to bid for the New York Post and operate the paper as an "editorially independent" entity if divestiture is ordered. <i>See</i> Letter from Christopher R. Day and Angela J. Campbell to Magalie Roman Salas, filed April 16, 2001, at 1; Letter from Mortimer B. Zuckerman to Magalie Roman Salas, filed April 26, 2001.</p>
<p>2. Financially troubled status of the media entity to be acquired. <i>Columbia Montour</i>, 13 FCC Rcd at 13013; <i>Kortes Communications</i>, 15 FCC Rcd 11846, ¶ 17.</p> <p>a. In all previous cases audited financial information, including tax returns, was presented to prove that the entity was on its "deathbed." <i>See, e.g., Columbia Montour</i>, 13 FCC Rcd at 13008-09, ¶¶ 7-8; <i>Kortes Comm.</i>, 15 FCC Rcd 11846, ¶ 5-6.</p> <p>b. In the 1993 WNYW/<i>Post</i> waiver case, such evidence was not required because the <i>Post</i> was in bankruptcy. <i>See Fox Television Stations</i>, 8 FCC Rcd at 5349-50, ¶¶ 43-44 & n. 23-25.</p>	<p>WWOR is a highly successful VHF station. <i>See</i> Petition to Deny at 10 & n.28.</p> <p>In response to a Commission request for financial information on the <i>Post</i>, Fox failed to submit tax returns or any audited financial information.</p> <p>Furthermore, the one line of confidential information supplied by Fox does not rise to the level required in <i>all</i> earlier cases. <i>Cf.</i> Petition to Deny at 10 & n.26-27; Further Response at 4.</p>

NEWSPAPER/BROADCAST CROSS-OWNERSHIP

<p>3. Common ownership limited to one newspaper and one AM station (as in <i>Columbia Montour</i> and <i>Kortes Comm.</i>). <i>Columbia Montour</i>, 13 FCC Rcd at 13013; <i>Kortes Communications</i>, 15 FCC Rcd 11846, ¶ 17.</p> <p>a. All previous permanent waiver cases involved <i>one</i> radio or television station and <i>one</i> daily newspaper. See generally <i>Columbia Montour</i>, <i>Kortes Communications</i>, <i>Fox Television Stations</i>; <i>Field Communications Corp.</i>, 65 F.C.C.2d 959 (1977).</p>	<p>Fox seeks a waiver to hold <i>two</i> large VHF television stations along with a daily newspaper.</p>
<p>4. High level of media diversity in the market. <i>Columbia Montour</i>, 13 FCC Rcd at 13013; <i>Kortes Communications</i>, 15 FCC Rcd 11846, ¶ 17.</p> <p>a. The FCC has never found that media diversity in and of itself is sufficient to allow a waiver. See <i>Stockholders of Renaissance Communications Corp.</i>, 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”).</p>	<p>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. <i>Petition to Deny</i> at 11-12 & n.31; <i>Reply to Joint Opposition</i>, filed Nov. 22, 2000, at 16 & n.36.</p>
<p>5. Entity to be acquired not a significant competitive force. <i>Columbia Montour</i>, 13 FCC Rcd at 13013; <i>Kortes Communications</i>, 15 FCC Rcd 11846, ¶ 17.</p>	<p>WWOR is one of the top 6 television stations in the New York market. In addition, Fox fails to prove that the <i>Post</i> is not a competitive force. To the contrary, Fox’s information reveals an increasingly viable newspaper. See <i>Petition to Deny</i> at 11 & n.27; see also <i>Fox App. Ex. No. 4</i> at 27.</p>
<p>6. Proposed combination is unlikely to have an adverse effect on competition. <i>Columbia Montour</i>, 13 FCC Rcd at 13013; <i>Kortes Communications</i>, 15 FCC Rcd 11846, ¶ 17.</p>	<p>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 <i>Petition to Deny</i> at 13, 16; <i>Reply to Joint Opposition</i> at 13-14.</p>

OTHER INFORMATION REQUESTED BY THE COMMISSION

REQUEST FROM THE COMMISSION	RESPONSE FROM FOX
<p>Foreign Ownership</p> <p>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”).</p>	<p>1. Fox failed to provide the Commission with information on:</p> <ul style="list-style-type: none">a. Citizenship of the outside investors of FEG (Newco’s parent company). <i>See</i> 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. <i>See</i> Fox Letter, Attachment C at 15; Response to Amended Application at 24-25.
<p>Hart-Scott-Rodino</p> <p>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.</p>	<p>2. Fox refused to:</p> <ul style="list-style-type: none">a. Allow the FCC to review the HSR documents filed with DOJ. <i>See</i> 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; <i>see also</i> 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.