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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.'s Request to File Confidential
Financial Information Concerning the Operations of the *New York Post*
File Nos. BALCT-20000918ABB-ABD; BALCT-20000918ABF-ABS;
BALCT-20000918ABU-ABZ; BACT-20000918ACA-ACE

Dear Ms. Salas:

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"), through undersigned counsel, hereby object to the second request of Fox Television Stations, Inc. ("Fox"), dated January 22, 2001, to file confidential financial information concerning the *New York Post's* operations.¹

¹ See Letter to Magalie Roman Salas, Secretary, Federal Communications Commission from Arthur M. Siskind, Senior Executive Vice President, The News Corporation Limited (dated January 22, 2001). We note that Petitioners did not receive a copy of this letter until 6:00 p.m. on January 25, 2001.

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List A B C D E

As stated previously in our December 16, 2000 letter objecting to Fox and News Corporation's first request and our December 21, 2000 letter detailing the legal standard for confidential treatment of information in a broadcast license transfer proceeding, any attempt to shield any financial information regarding the *New York Post's* operations from public scrutiny is not acceptable in the context of a broadcast transfer application.

To the extent that the Commission or Mass Media Bureau decides to grant confidential treatment to Fox and News Corporation's financial data, Petitioners are willing to enter into a protective agreement to access any non-public material. Petitioners, however, object to the "model" protective order associated with Fox and News Corporation's December 22, 2001 filing. Specifically, we note that this protective order does not follow the model protective order form prescribed by the Commission in its 1998 Order regarding the confidential treatment of information submitted to the Commission.² For example, Fox and News Corporation's "model" order would likely preclude access to the *New York Post's* financial material by outside attorneys working with the Institute for Public Representation ("Institute").³

We also note that the Institute is part of the Georgetown University Law Center clinical legal education program. As such, law students are an integral part of the Institute's staff, and provide substantial assistance in the preparation of legal documents and filings in this and other matters before the Commission. Unfortunately, under the Fox and News Corporation agreement, it appears that law students would also be precluded from participating in the review of financial materials.

² See *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Red 24816 (1998) at Appendix C. ("Confidential Treatment Order"). All of the "standard protective orders" that Fox and News Corporation cite in footnote 3 of their January 22, 2001, letter involve common carrier proceedings. In the *1998 Confidential Treatment Order*, the Commission stated that "relevant case law indicates that petitioners to deny must be afforded access to all information submitted by licensees that bear upon their applications." *Id.* at 24837. In addition, the Commission further stated that "[w]e will continue the practice of making broadcast and other Title II license applications routinely available for public inspection." *Id.* at 24838-39. Accordingly, Fox and News Corporation's contention that the protective orders adopted in the common carrier proceedings referenced in footnote 3 of their January 22, 2001, letter should be adopted almost *verbatim* in this Title III proceeding is without merit.

³ See, e.g., Fox and News Corporation Proposed Protective Order, Appendix A (placing limitations on the use of information received under the protective order by "public interest organization[s]").

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Due to the unique nature of the Institute's public interest practice and clinical education program, any protective order must allow access to the financial documents by attorneys who have associated with the Institute and the Institute's law students. To the extent that the Commission or the Mass Media Bureau decides to grant confidential treatment to the *New York Post's* financial information, the Institute can provide a model protective order, based on Appendix C of the Commission's Confidential Treatment Order, that allows for associated counsel and student access to the financial information.

Until the *New York Post's* financial information becomes available for review, either through public release or execution of a protective order, it is impossible for Petitioner's counsel to provide a response to the assertions presented by Fox in Section V. of its January 25, 2001 letter accompanying its amended application, or in the separate January 22, 2001, letter from Arthur M. Siskind requesting confidential treatment of the *New York Post's* financial information. Accordingly, Petitioners request thirty (30) days from date of first access to the *New York Post's* financial information to file a response to issues concerning Fox and News Corporation's proposed combination of the New York Post, WNYW and WWOR.⁴

An original and four (4) copies of this letter are enclosed. 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

⁴ See *id.* at 24839 ("If the Commission decides to issue a protective order, interested parties generally will be given *at least 30 days* from the date the protected material become available to file or supplement a petition to deny.") (emphasis added).

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cc: Magalie Roman Salas, Secretary
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