Fox Television Stations, Inc.
Exhibit No. 4, FCC Form 314
Section III (Assignee), Question 6.a.
September 2000

1. Duopoly Showings

(a) New York, New York DMA

FTS is the licensee of WNYW(TV), New York, New York. Based on the most recent all-day (9:00 a.m. - midnight) audience share data published by Nielsen Media Research in July 2000, station WNYW(TV) was tied for fifth with station WWOR-TV in the New York, New York DMA. As demonstrated in the following table, as of the date of this assignment application, more than eight independently owned and operating, commercial and noncommercial television stations are licensed to the New York, New York DMA. Accordingly, FTS's acquisition of WWOR-TV is permissible under the Commission's duopoly rule.

New York, NY (DMA Market No. 1) – 20 Independently Owned and Operating Full-Power Stations

	Call Sign / Channel		Affiliation	Licensee / Permittee	Ownership
1.	WABC-TV	(7)	ABC	ABC Inc.	Disney Enterprises, Inc.
2.	WCBS-TV	(2)	CBS	CBS Broadcasting, Inc.	Viacom, Inc.
3.	WEDW	(49)	PBS	Connecticut Public Broadcasting, Inc.	Connecticut Public Television and Radio
4.	WFME-TV	(66)	ETV	Family Stations, Inc.	Family Stations Inc.
5.	WHSE-TV	(68)	HSN	SKNJ Broadcasting Partnership	USA Broadcasting Inc.
	WHSI-TV	(67)	HSN (satellite of KHSE-TV)	USA Station Group Partnership of NJ	USA Broadcasting Inc.
6.	WLIW	(21)	ETV	Long Island ETV Council Inc.	Long Island ETV Council Inc.

New York, NY (DMA Market No. 1) – 20 Independently Owned and Operating Full-Power Stations

Call Sign / Channel	Affiliation	Licensee / Permittee	Ownership
7. WLNY (55)	IND	WLNY-TV Inc.	WLNY-TV Inc.
8. WMBC-TV (63)	IND	Mountain Broadcasting Corp.	Sun Young Joo, 92%
9. WNBC (4)	NBC	NBC Subsidiary Inc.	National Broadcasting Co.
10. WNET (13)	ETV	Educational Broadcasting Corp.	Educational Broadcasting Corp.
11. WNJU (47)	Telemundo	WNJU License Corp.	Telemundo Holdings Inc.
12. WNYE-TV (25)	ETV	Board of Education of the City of New York	Board of Education of the City of New York
13. WNYW (5)	Fox	Fox Television Stations Inc.	Fox Television Stations Inc.
14. WPIX (11)	WBN	Tribune New York Properties Inc.	Tribune Broadcasting Co.
15. WPXN-TV (31)	PAX	Paxson Communications License Co. L.L.C.	Paxson Communications Corp.
16. WRNN-TV (62)	IND	WRNN-TV Associates L.P.	New Mass Media Inc.
17. WTBY (54)	TBN	Trinity Broadcasting of N.Y. Inc.	Trinity Broadcasting Network Inc.
18. WWOR-TV (9)	UPN	BHC Communications	Chris-Craft Industries Inc.
19. WXTV (41)	Univision	WXTV L.P.	Univision Communications Inc.
20. WNJN (50)	ETV	New Jersey Public Broadcasting Authority	New Jersey Public Broadcasting Authority

(b) Los Angeles, California DMA

FTS is licensee of KTTV(TV), Los Angeles, California. Based on the most recent all-day (9:00 a.m. - midnight) audience share data published by Nielsen Media Research in July 2000, station KTTV(TV) was ranked third (in a tie with KTLA) and station KCOP-TV was ranked fifth (in a tie with KCAL) in the Los Angeles, California DMA. As demonstrated in the following table, as of the date of this assignment application, more than eight independently owned and operating, commercial and noncommercial television stations are licensed to the Los Angeles, California DMA. Accordingly, FTS's acquisition of KCOP-TV is permissible under the Commission's duopoly rule.

Los Angeles, CA (DMA Market No. 2) – 23 Independently Owned and Operating Full-Power Stations

	Call Sign / Channel		Affiliation	Licensee / Permittee	Ownership
1.	KABC-TV	(7)	ABC	ABC Holding Co. Inc.	Disney Enterprises, Inc.
2.	KADY-TV	(63)	UPN	Biltmore Broadcasting LLC	Biltmore Broadcasting LLC
3.	KCAL	(9)	IND	Young Broadcasting of Los Angeles Inc.	Young Broadcasting Inc.
4.	KCBS-TV	(2)	CBS	CBS Broadcasting, Inc.	Viacom, Inc.
5.	KCET	(28)	ETV	Community TV of Southern California	Community TV of Southern California
6.	KCOP	(13)	UPN	KCOP Television Inc.	Chris-Craft Industries Inc.
7.	KDOC-TV	(56)	IND	Golden Orange Broadcasting Co. Inc.	Golden Orange Broadcasting Co., Inc.
8.	KHIZ	(64)	IND	Sunbelt Television Inc.	Sunbelt Television Inc.

Los Angeles, CA (DMA Market No. 2) – 23 Independently Owned and Operating Full-Power Stations

	Call Sign / Channel		Affiliation	Licensee / Permittee	Ownership
9.	KHSC-TV	(46)	HSN	USA Broadcasting	USA Broadcasting
10.	KJLA	(57)	IND	Costa de Oro Television Inc.	Costa de Oro Television Inc.
11.	KLCS	(58)	ETV	Los Angeles Unified School District	Los Angeles Unified School District
12.	KMEX-TV	(34)	Univision	KMEX License Partnership G.P.	Univision Communications Inc.
13.	KNBC	(4)	NBC	NBC Subsidiary (KNBC-TV) Inc.	National Broadcasting Co.
14.	KOCE-TV	(50)	ETV	Board of Trustees, Coast Community College District	Coast Community College District
15.	KPXN	(30)	PAX	Paxson Los Angeles License, Inc.	Paxson Communications Corp.
16.	KRCA	(62)	IND	KRCA License Corp.	Liberman Broadcasting Inc.
17.	KSCI	(18)	IND	KSLS Inc.	International Media Group
18.	KTBN-TV	(40)	TBN	Trinity Broadcasting Network Inc.	Trinity Broadcasting Network Inc.
19.	KTLA	(5)	WBN	KTLA Inc.	Tribune Broadcasting Co.
20.	KTTV	(11)	Fox	Fox Television Stations Inc.	Fox Television Stations Inc.
21.	KVCR-TV	(24)	ETV	San Bernardino Community College District	San Bernardino Community College District
22.	KVEA	(52)	Telemundo	Estrella License Corp.	Telemundo Holdings, Inc.
23.	KWHY-TV	(22)	IND	Harriscope of Los Angeles Inc.	Harriscope Corporation

(c) Phoenix, Arizona DMA

KSAZ License, Inc., an indirect wholly owned subsidiary of FTS's parent Fox Television Holdings, Inc., is licensee of KSAZ-TV, Phoenix, Arizona. Based on the most recent all-day (9:00 a.m. - midnight) audience share data published by Nielsen Media Research in July 2000, station KSAZ(TV) was ranked third and station KUTP(TV) was ranked sixth (in a tie with KASW(TV)) in the Phoenix, Arizona DMA. As demonstrated in the following table, as of the date of this assignment application, more than eight independently owned and operating, commercial and noncommercial television stations are licensed to the Phoenix, Arizona DMA. Accordingly, FTS's acquisition of KUTP(TV) is permissible under the Commission's television duopoly rule.

Phoenix, AZ (DMA Market No. 17) – 11 Independently Owned and Operating Full-Power Stations					
	Callsign / Channel		Affiliation	Licensee / Permittee	Ownership
1.	KAET	(8)	ETV	Arizona Board of Regents	Board of Regents for Arizona State University
2.	KBPX	(13)	PAX	Paxson Phoenix License Inc.	Paxson Communications Corp.
3.	KMOH-TV	(6)	WBN	Multimedia Holdings Corp.	Gannett Broadcasting Group
	KNAZ-TV	(2)	NBC	Multimedia Holdings Corp.	Gannett Broadcasting Group
	KPNX	(12)	NBC	Multimedia Holdings Corp.	Gannett Broadcasting Group
4.	KNXV-TV	(15)	ABC	Scripps Howard Broadcasting Co.	E.W. Scripps Co.
5.	KPAZ-TV	(21)	TBN	Trinity Broadcasting of Arizona Inc.	Trinity Broadcasting Network Inc.

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Phoenix, AZ (DMA Market No. 17) – 11 Independently Owned and Operating Full-Power Stations					
	Callsign / Channel		Affiliation	Licensee / Permittee	Ownership
6.	KPHO-TV	(5)	CBS	Meredith Corp.	Meredith Broadcasting Group, Meredith Corp.
7.	KSAZ-TV	(10)	Fox	KSAZ License Inc.	Fox Television Stations Inc.
8.	KTVK	(3)	IND	KTVK, Inc.	Mac America Communications Inc.
	KASW*	(61)	WB	KASW-TV, Inc.	Brooks Broadcasting L.L.C.
9.	KTVW-TV	(33)	Univision	KTVW License Partnership, G.P.	Univision Communications Inc.
10.	KUSK	(7)	IND	KUSK Inc. (Debtor-In-Possession)	KUSK Inc. (Debtor-In-Possession)
11.	KUTP	(45)	UPN	United Television Inc.	United Television Inc.

*Denotes a brokered station operating pursuant to an LMA with an in-market station.

2. Request for Time to Comply with Television Duopoly Rule (Salt Lake City, Utah)

FTS is the licensee of television station KSTU, Salt Lake City. As a result of the proposed acquisition of television station KTVX, Salt Lake City, which is licensed to United Television, Inc., FTS would be licensee of two stations among the top four stations in the Salt Lake City DMA.[1] Common ownership of both stations is therefore not currently permitted under the Commission's local television multiple ownership rule absent a waiver. In light of the magnitude of the total divestiture required to comply with both the duopoly rule and the national audience reach cap, discussed below, FTS hereby requests a temporary waiver of 12 months from consummation of the proposed transaction to make such divestitures as are necessary to come into compliance with the duopoly rule in Salt Lake City.

Grant of a temporary waiver in this instance is consistent with Commission precedent and policies with respect to waivers of the duopoly rule in multiple station transactions. The Commission has recognized the value of granting temporary waivers in connection with multiple complex business transactions and "the overall benefits of allowing time for an orderly divestiture of broadcast properties."[2] The Commission has also recognized

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[1] Based on the most recent all-day (9:00 a.m. - midnight) audience share published by Nielsen Media Research in July 2000, station KTVX(TV) and KSTU(TV) are tied for first with a third station, KSL-TV, in the Salt Lake City DMA.

[2] *See In re Stockholders of CBS, Inc.*, 11 FCC Rcd 3733, 3764, para. 66 (1995) (finding that transfers of multiple stations support grant of a reasonable waiver period); *In re Multimedia, Inc.*, 11 FCC Rcd 4883, 4887, paras. 6,12 (1995) (granting 12-month waiver

that grant of a temporary waiver avoids a "forced sale" that could "unnecessarily limit the range of potential buyers."[3] Because the creation of the Salt Lake City duopoly is incidental to a larger merger transaction, 12 months is an appropriate time period to come into compliance with the Commission's local ownership rules.

While the Commission has set forth certain criteria that create a presumption that grant of a *permanent* waiver of the local ownership rules would be in the public interest,[4] the Commission historically has examined a number of factors in determining whether a *temporary* duopoly waiver would serve the public interest. These factors include the extent of overlap, the number of media voices available in the overlap area, the distinctiveness of the respective markets, the concentration of economic power resulting from the combination and the independence of the stations' operations.[5] For applications in which parties seek only a temporary waiver, the Commission has shown flexibility in according the factors different weight than it otherwise would in analyzing a permanent waiver request.[6]

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consistent with the "general rule"); *see also In re Shareholders of Pulitzer Publishing Company*, 13 FCC Rcd 22875, 22882, paras. 19-20 (1998).

3 *See In re Stockholders of CBS*, 11 FCC Rcd at 3755, para. 45.

4 *See* 47 C.F.R. § 73.3555, Note 7.

5 *See Iowa State University Broadcasting Corporation*, 9 FCC Rcd 481, 487-88, paras. 21-23 (1993), *aff'd sub nom. Iowans for WOI-TV, Inc. v. FCC*, 50 F.3d 1096 (D.C. Cir. 1995).

6 *See In re Stockholders of CBS*, 11 FCC Rcd at 3755, para. 44.

One relevant factor is the extent of overlap of the two stations. In this instance, the signals of the two stations substantially overlap. The Commission has previously granted temporary waivers where parties proposed common ownership of stations serving the same DMA, even if the stations' service areas substantially overlapped.[7] In temporary waiver situations, the Commission has stated that overlap is less of a concern so long as common ownership of the stations will not undermine the competitive balance in the market during the waiver period.[8]

As discussed above, however, the proposed common ownership fails the market rank test, and FTS will not seek to retain both stations. The rationale underlying the market rank test is to ensure "that the two largest TV stations cannot combine to dominate and exercise market power in advertising and programming markets in which TV stations compete."[9] To avoid the possibility of such a combination of market power in the advertising and programming

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7 *See In re Providence Journal Co.*, 12 FCC Rcd 2883, 2887, para. 11 (1997) (granting waiver even though the degree of overlap was "nearly complete" because of the number of other outlets remaining in the market); *AFLAC Broadcasting Group*, Inc., 12 FCC Rcd 3907, paras. 14, 19 (1997); *see also In re Stockholders of CBS*, 11 FCC Rcd at 3762-63, para. 62 (granting waiver even though degree of overlap was substantial).

8 *See In re Stockholders of CBS*, 11 FCC Rcd at 3763, paras. 62-63; *In re Telemundo Group, Inc., Debtor-in-Possession*, 10 FCC Rcd 1104, 1106, para. 12 (1994).

9 *See In the Matter of Section 257 Report to Congress: Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses*, Report, FCC 00-279, at para. 105 (rel. Aug. 10, 2000).

market during the divestiture period. FTS pledges to maintain the separateness of the stations' operations. By maintaining separate operations, FTS will preserve the level of competition and diversity that currently exists in the Salt Lake City DMA. The stations will not engage in joint or combined advertising sales, and each station will continue to make independent programming decisions. In addition FTS pledges to maintain separate operations with respect to management, programming, traffic, and advertising sales. Therefore, common ownership of the stations will not affect competition and diversity in the Salt Lake City DMA.

Moreover, as detailed in the attached tables, the Salt Lake City DMA contains numerous independent media outlets. The Salt Lake City DMA contains more than enough television outlets to support a duopoly involving either KSTU or KTVX and a station not ranked among the top four stations. As of the date of this assignment application, 11 independently owned and operating, commercial and noncommercial television stations are licensed to the Salt Lake City DMA. In addition, the Salt Lake City DMA contains:

- 13 AM and 13 FM radio stations
- 2 cable systems with 38 and 45 channels in use, respectively
- 7 low-power television stations
- 3 daily newspapers and 9 weekly publications
- 1 MDS and 4 MMDS stations
- 2 ITFS stations

Given the level of competition and diversity that exists in the Salt Lake City DMA, and given FTS's pledge to maintain separate operations of the stations during the divestiture period, a temporary waiver would be in the public interest. Grant of a 12-month temporary waiver of the duopoly rule for the Salt Lake City market would serve the public interest because of the overall benefits of permitting an orderly divestiture of broadcast properties as necessary to come into compliance with the Commission's ownership rules.

B. NATIONAL TELEVISION MULTIPLE OWNERSHIP

By this application, FTS requests Commission consent to acquire control of the licenses of the commercial television stations and associated broadcast auxiliary facilities held, directly or indirectly through subsidiaries, by Chris-Craft Industries, Inc. (the "Chris-Craft Stations"). Section 73.3555(e) of the Commission's rules[10] generally prohibits one party from having an attributable interest in television stations that reach more than 35 percent of national television households. Upon acquisition of the Chris-Craft Stations, Fox Television Holdings, Inc., parent of FTS (Fox Television Holdings, Inc. and FTS, collectively "Fox"), would have an attributable interest in 34 commercial television broadcast stations having a national audience reach of 40.91 percent.[11]

As of the date of this assignment application, the national audience reach of Fox Television Holdings, Inc. is 35.352 percent based on current audience reach data. In 1996, the Commission approved an approximately 35 (34.82) percent national audience reach of Fox Television Stations, Inc. without condition.[12] Since 1996, the national audience reach increased

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10 47 C.F.R. § 73.3555(e).

11 In addition to the Chris-Craft Stations, as disclosed in Assignor's Exhibit IV, as a result of this merger FTS will have a 17½ % attributable membership interest in Florence Television, LLC, the parent of Valley Television, LLC, licensee of WHDF(TV) (formerly WOWL-TV), Florence, Alabama. *See* attached Table 4-I entitled "Combined Fox/Chris-Craft National Audience Reach."

12 *See Applications of NWCG (Parent) Holdings Corp. & NWCG Holdings Corp. (Transferor) and Fox Television Stations, Inc.*, 11 FCC Rcd 16318, 16324, para. 12 & n.4

slightly due to population shifts within the markets and Nielsen Media Research's decision in 1997 to add the communities of Tuscaloosa, Anniston and Gadsden to the Birmingham, Alabama DMA. Because the national audience reach increased due to population shifts and not because of station acquisitions, no divestitures were required to reduce the audience reach. As the Commission recognized when first adopting the national audience cap, a station group owner found to be in compliance with the national ownership restrictions may in the future exceed the audience cap due to population shifts, but such owner would not be required to divest stations in order to come into compliance.[13]

This year, the Commission approved Fox's slightly increased national audience reach in granting Fox's application to create a duopoly in Dallas.[14] Fox intends to comply with the Commission's national audience cap by divesting a sufficient number of stations (which would not include any of the three proposed television duopolies in New York, Los Angeles, and

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(1996) (Commission approving acquisition that resulted in FTS's attributable interest in 22 television stations).

13 *See Amendment of Section 73.3555 of the Commission's Rules relating to Multiple Ownership of AM, FM and Television Broadcast Stations*, Memorandum Opinion and Order, 100 F.C.C.2d 74, 92 para. 40 & n.52 (1985).

14 *Application for Voluntary Transfer of Control of the License of KDFI-TV from John A. McKay to NW Communications of Texas, Inc.*, Public Notice dated February 25, 2000, File No. BTCCT-19991116AJN (Commission approving conversion of same-market LMA into a duopoly, which duopoly did not increase FTS's national audience reach of 35.14 percent).

Phoenix[15]) to reduce its post-transaction national audience reach to its current reach of 35.352 percent. In order to facilitate the prompt consummation of the proposed merger and assignment of licenses and the orderly disposition of television properties, Fox hereby requests a period of 12 months to make such divestitures as are necessary to reduce its national audience reach to the current level. In multiple station transactions, the Commission has repeatedly acknowledged "the overall benefits of allowing time for an orderly divestiture of broadcast properties."[16] A 12-month divestiture period therefore would serve the public interest and comport with the Commission's precedent in granting temporary waivers in situations involving multiple broadcast properties.

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15 When relaxing the television local ownership rules to permit duopolies, the Commission concluded that the "public interest would be served by counting a market only once when calculating an entity's national ownership reach." Because no market is counted more than once in calculating national audience reach, FTS's proposed acquisition of television duopolies in the New York DMA, the Los Angeles DMA, and the Phoenix DMA (and temporarily the Salt Lake City DMA) will not increase Fox's national audience reach. *See* 47 C.F.R. § 73.3555(e); *see also Broadcast Television National Ownership Rules*, FCC 99-208, 1999 FCC LEXIS 3816, para. 1 (rel. Aug. 6, 1999).

16 *See In re Shareholders of CBS Corp.*, 15 FCC Rcd at 8235-36, paras. 16, 18-22 (granting 12-month period to comply with broadcast national ownership and dual network rule); *In re Applications of Turner Broadcasting System, Inc.*, 11 FCC Rcd 19595, 19612-13, para. 41 (1996) (granting 12-month waiver to comply with cable-broadcast cross-ownership rule); *In re Young Broadcasting, Inc.*, 11 FCC Rcd 14632, 14635, para. 10 (1996) (granting 12-month period to comply with broadcast-cable cross-ownership rule); *In re Multimedia, Inc.*, 11 FCC Rcd at 4885, para. 6 (1995) (granting 12-month waiver to come into compliance with multiple ownership rules); *In re Stockholders of CBS, Inc.*, 11 FCC Rcd 3733 at 3775-76, para. 95 (1995) (granting 12-month period to come into compliance with national radio and television ownership rules).

C. NEWSPAPER BROADCAST CROSS-OWNERSHIP (New York, New York)

1. Introduction

By this application, Fox Television Stations, Inc. ("FTS"), which is the licensee of WNYW(TV), New York, seeks to become licensee of WWOR-TV, also New York, together with the other Chris-Craft Stations. As demonstrated above, common ownership of WWOR-TV and WNYW(TV) fully complies with the Commission's revised television duopoly rule. FTS and K. Rupert Murdoch, its controlling stockholder, also hold a permanent waiver of the newspaper/broadcast cross-ownership rule which authorizes common ownership of WNYW(TV) and the *New York Post*. As explained below, because the Commission has already granted FTS a permanent waiver to own the existing combination and has recently relaxed its local television ownership rules to permit the creation of duopolies in New York, FTS submits that it should be permitted to create a qualifying duopoly like any other owner of a New York television station. If, however, the Commission disagrees, the unique equities of this situation dictate that FTS be permitted to complete acquisition of control of all the Chris-Craft Stations and to retain WWOR-TV, pending the outcome of the Commission's soon to-be-initiated rulemaking proceeding to examine newspaper/broadcast cross-ownership.

The New York, New York DMA is a uniquely competitive and diverse media market. While diversity and competition would not be adversely affected by FTS's ownership of WWOR-TV, a process even to consider at this time the forced divestiture of a struggling newspaper could unnecessarily jeopardize the *Post* and profoundly harm the marketplace of ideas in New York.

2. Background

In 1993 the Commission granted FTS a permanent waiver of Section 73.3555(d)(3) of the Commission's rules to permit NYP Acquisition Corp., an indirect subsidiary of The News Corporation Limited ("News Corp"), to acquire the financially troubled *New York Post*. The waiver was necessitated by the fact that an indirect subsidiary of News Corp held approximately 99 percent of the equity and 24 percent of the vote of FTS's parent company.[17] The Commission granted FTS the permanent waiver of the broadcast/newspaper cross-ownership rule due to the *Post*'s history of financial losses and grim prospects for the future and the determination that, given the degree of media diversity in the New York market, application of the rule would disserve the public interest.[18] The Commission astutely recognized that a permanent, rather than temporary, waiver was indispensable to any attempt to ensure the long-term financial viability of the *Post*, which had been placed into bankruptcy. Specifically, without the assurance that News Corp would not be required once again to divest the *Post*, the

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17 *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). FTS is the licensee of WNYW(TV), New York, New York. The Commission's broadcast/newspaper cross-ownership rule, 47 C.F.R. § 73.3555(d)(3) restricts common ownership or control of a daily newspaper and a television broadcast station license with a Grade A contour that encompasses the entire community in which the newspaper is published.

18 *See Fox Television Stations, Inc.*, 8 FCC Rcd at 5349-50, para. 43.

Commission concluded that News Corp would have been hampered in its attempts to attract advertisers and readers and negotiate with labor unions, suppliers, and distributors.[19] The degree of certainty afforded by a permanent waiver thus was paramount to any hopes of reviving the failed *Post*.

In granting the permanent waiver, the Commission rejected arguments that a number of conditions be imposed on the grant, and instead, clarified that the waiver was personal to Mr. Murdoch and News Corp. Indeed, the Commission specifically emphasized the personal nature of the permanent waiver by stating that the waiver would terminate only upon the long-form transfer of control of WNYW or the *Post*.[20] The instant transaction involves no transfer of Mr. Murdoch's control over either WNYW or the *Post*.

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19 *See id.* at 5350-51, para. 45 & n.34. At the time of FTS's acquisition of WNYW in 1986, Mr. Murdoch controlled the *New York Post*, which he had purchased in 1976. As a function of the very same rule from which FTS seeks relief in the instant application, the Commission allowed FTS to acquire WNYW conditioned upon Mr. Murdoch divesting his interests in the *Post* within two years. *See Metromedia Radio and Television, Inc.*, 102 FCC2d 1334 (1985). Accordingly, News Corp sold its interest in the *Post* to a company controlled by Peter Kalikow. This company, however, was ultimately unsuccessful in running the newspaper, and in March 1993, the *Post*'s parent company was placed in bankruptcy. In this context, the Commission granted the permanent waiver that allowed Mr. Murdoch to re-acquire control of the *Post*.

20 *See Fox Television Stations, Inc.*, 8 FCC Rcd at 5353, para. 52.

3. Argument

(a) FTS's Existing Permanent Waiver Should Encompass the Ability to Create a Duopoly in New York Consistent with the Commission's Relaxed Local Television Ownership Rules.

The Commission's relaxed television duopoly rule now permits FTS, which is controlled by Mr. Murdoch, to own or control[21] the licenses of WNYW, New York, New York, and WWOR-TV, Secaucus, New Jersey, both of which serve the New York DMA.[22] Accordingly, given the relaxed television duopoly rule and the permanent waiver of the broadcast/newspaper cross-ownership rule to own the *Post*, Fox submits that creation of a permitted television duopoly in the New York DMA and continued ownership of the *New York Post* requires no Commission action at this time.[23]

In granting FTS a permanent waiver of the rules, the Commission grounded its analysis in the longstanding and oft repeated "twin fundamental principles underlying . . . [its]

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21 As used herein references to "ownership" mean all forms of ownership and control cognizable under section 73.3555 of the Commission's rules. 47 C.F.R. § 73.3555.

22 *See TV Duopoly Order*, 14 FCC Rcd 12903. The *TV Duopoly Order* sets forth no restriction whatsoever on the acquisition of television duopolies in qualifying markets by licensees already controlling a television station and daily newspaper pursuant to either a permanent or temporary waiver. *See generally id.*

23 Indeed, the Commission recently cited the permanent waiver granted to FTS and News Corp when it acknowledged that "the survival of some newspapers may depend on their joint operation with local broadcast *stations*." *1998 Biennial 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, 11105-06, para. 89 (2000) ("*1998 Biennial Review Report*") (emphasis added).

multiple ownership rules: promotion of maximum diversification of program and service viewpoints and prevention of undue concentration of economic power."[24] As to the first prong, the Commission concluded that "[g]iven the wide array of voices in New York City, any detriment to diversity caused by common ownership of the two media outlets would be negligible, even if we look only to its full-service television stations and four dailies."[25] Given the basis for the Commission's decision to relax the local ownership rules, FTS submits that its acquisition of a second television station in New York would in ***no*** respect alter the conclusion of the 1993 waiver decision as to diversity. In fact, an examination of the New York media market today would reveal a market vastly more diverse than in 1993.

In justifying relaxation of the television duopoly rule, the Commission focused its analysis on the television market and the television market only. Although acknowledging that other types of media may to some extent be substitutes for broadcast television, the Commission cautiously employed a minimum station count that includes only broadcast television stations when relaxing the duopoly rule.[26] The number of newspapers in the market was not relevant in any way to the Commission's criteria to permit duopolies. Consistent with the analytical approach of the duopoly proceeding, therefore, creation of a duopoly in New York would have

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[24] *Fox Television Stations, Inc.*, 8 FCC Rcd at 5347, para. 37.

[25] *Id.* at 5351, para. 48.

[26] *See TV Duopoly Order*, 14 FCC Rcd at 12935, para 69.

no unacceptable or otherwise adverse effect on diversity in the television market. This conclusion is not altered by the combination of such a duopoly with ownership of the *Post*. The underpinnings of the Commission's 1993 waiver decision are likewise unaffected by FTS's otherwise permissible creation of a television duopoly. And, as demonstrated below, adding WWOR-TV to the WNYW/*Post* combination would in fact have no adverse effect on viewpoint diversity in the New York DMA generally.

As to the second prong of its 1993 decision, "that of economic competition," the Commission observed that "we may consider antitrust policies in making public interest determinations . . . ."[27] More specifically, the Commission found that the *Post's* tiny share of advertising revenues when combined with WNYW(TV)'s advertising revenues did "not endanger Commission policy of preventing undue concentration of economic power."[28] The Commission also noted that the Department of Justice and the Federal Trade Commission would ultimately pass upon Mr. Murdoch's and News Corp's acquisition of the *Post*.[29]

Having concluded in the duopoly proceeding that the combination of one of the top-4 ranked stations in a large market with a non top-4 ranked station does not unduly threaten competition, the Commission should not undermine the benefits to the public interest created by

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[27] *Fox Television Stations, Inc.*, 8 FCC Rcd at 5352, para. 50.

[28] *Id.*

[29] *Id.* A Hart-Scot-Rodino filing is being made in connection with this transaction.

the permanent waiver by requiring divestiture of the *Post* as the price for an otherwise permissible duopoly – benefits that are the result of very large expenditures by News Corp. The Commission should not undo the 1993 waiver upon which News Corp has justifiably relied in investing millions of dollars in the *Post*.[30]

Finally, a critical factor underlying the grant of the permanent waiver to permit News Corp's ownership of the *Post* – the continued viability of the *Post* – would remain unaffected by FTS's acquisition of WWOR-TV. The Commission in 1993 recognized that a *permanent* waiver was necessary to ensure – rather than jeopardize – the newspaper's survival. Even if News Corp had achieved greater progress in turning around the *Post*, it should not be penalized for this success by preventing FTS from creating an otherwise permissible duopoly. The permanent nature of this waiver, by definition, therefore should enable FTS to enjoy the benefits afforded by the Commission to any other television licensee – namely the ability to create a qualifying television duopoly in New York.

(b) <u>Prematurely Causing Divestiture of the *New York Post* During the Pendency of the Rulemaking Proceeding Would Harm the Public Interest.</u>

If, however, the Commission disagrees and concludes that the previously granted permanent waiver does not extend to acquisition of a second television station in the New York DMA, then FTS requests that the Commission nevertheless permit common ownership of

[30] As the Commission noted in 1993 and as the Commission is well-aware, the Department of Justice and the Federal Trade Commission also will scrutinize the competition aspects of this transaction.

WWOR-TV and the existing WNYW/*New York Post* combination pending conclusion of the soon-to-be-initiated rulemaking proceeding to consider relaxation of the newspaper/broadcast cross-ownership restriction in larger media markets.[31] Deferring enforcement of the existing rule pending completion of the rulemaking would promote administrative efficiency and avoid the threat to diversity that could result from the premature divestiture of the greatly improved, but still struggling, *New York Post*. Given that (1) the permanent waiver granted in 1993 is one of only two permanent waivers to permit newspaper/television cross-ownership ever granted by the Commission,[32] (2) it was predicated on the grave financial condition of the *Post*, (3) the *Post* continues to incur significant losses and requires further capital investments,[33] and (4) the

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[31] In 1996 the Commission initiated an inquiry concerning proposed changes to the newspaper/radio cross-ownership waiver policy and invited public comment. *See Newspaper/Radio Cross-Ownership Waiver Policy*, 11 FCC Rcd 13003 (1996). However, the comments filed in that proceeding were considered in the Commission's 1998 Biennial Regulatory Review. *See 1998 Biennial Regulatory 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, 11288 (1998). On May 26, 2000, the Commission adopted the Biennial Review Report, in which it determined that the newspaper/broadcast cross-ownership rule should be retained, but indicated that there may be circumstances in which the rule may not be necessary to achieve its intended public interest benefits. Accordingly, the Commission stated that it would initiate a rulemaking proceeding to consider tailoring the rule. *See 1998 Biennial Review Report*, 15 FCC Rcd at 11105, para. 88. (Commission announcing plans to initiate a rulemaking proceeding to consider tailoring the applicability of the broadcast/newspaper cross-ownership rule).

[32] *See Fox Television Stations, Inc.*, 8 FCC Rcd at 5348, para. 40.

[33] *See infra* discussion at pages 32-34.

Commission has examined, and found, the New York media market to be uniquely diverse and competitive, allowing News Corp to retain ownership of the *Post* for the brief period of the rulemaking cannot open the floodgates for similar requests.[34] No similarly situated cross-owners exist. Furthermore, the addition of WWOR-TV to the already permitted broadcast/newspaper combination therefore would not prejudge the outcome of the Commission's announced rulemaking proceeding.[35]

Because the instant application involves an already permitted and established newspaper/television combination and because FTS's request to become licensee of WWOR-TV is part of a multi-station, multi-market transaction,[36] grant of relief pending the outcome of the Commission's reexamination of its newspaper/broadcast cross-ownership rule is wholly consistent with established precedent. In fact, several parties, including Cox Radio, Tribune Company, and The Walt Disney Company/ABC have been provided with identical relief in

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34 It should be stressed that any grant of a temporary waiver would not be based *solely* on the pendency of the rulemaking, but also on these additional unique circumstances relating to the *Post*.

35 *See infra* footnote 41.

36 Stations WWOR-TV and KCOP-TV are critical elements to this $5.35 billion transaction. If FTS were unable to fold either of these stations into its operations, the transaction would no longer be viable. Consequently, if the Commission does not permit the requested common ownership in New York, News Corp would be required to sell or shut down the *Post*.

similar situations.[37]

An interim waiver is especially justified here where the Commission expressly recognized in the *1998 Biennial Review Report* that there are certain scenarios where application of the rule may not make sense. Specifically, in announcing the soon-to-be-initiated newspaper/broadcast cross-ownership rulemaking, the Commission indicated its inclination to relax the rule in circumstances where "given the size of the market and size and type of the newspaper and broadcast outlet involved, sufficient diversity and competition would remain . . . ."[38] The combination proposed in the instant application involves television stations

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37 *See NewCity Communications, Inc.*, 12 FCC Rcd 3929 (1997) (granting a temporary waiver that continues until six months from the date of a final order in the newspaper/broadcast cross-ownership rulemaking proceeding; waiver allowed Cox Radio to acquire an FM station in addition to its already existing newspaper-television-radio combination); *Capital Cities/ABC, Inc.*, 11 FCC Rcd 5841, 5895 (1996) (granting 12-month waivers of newspaper/radio cross-ownership rule to the Walt Disney Company in Fort Worth, Texas and Detroit-Pontiac, Michigan) and *Letter to Joel Rosenbloom from Chief, Mass Media Bureau*, Ref. No. 1800E1-DB (October 24, 1996) (granting Disney's request to defer the divestiture date until six months from the effective date of the rulemaking proceeding); *Renaissance Communications*, 12 FCC Rcd 11866 (1997) (granting 12-month waiver of newspaper/television cross-ownership rule to Tribune Company, which published a newspaper in Fort Lauderdale, Florida, to allow it to acquire control of a television station in Miami) and *Stockholders of Renaissance Communications Corp.*, 13 FCC Rcd 4717 (1998) (granting an extension of Tribune's temporary waiver until six months after completion of the rulemaking proceeding). The Tribune extension followed shortly after the D.C. Circuit Court found the Commission's disparate treatment of Tribune (12-month waiver) and Capital Cities (waiver until six months after completion of rulemaking) "inexplicable." *See Tribune Co. v. FCC*, 133 F.3d 61, 69-70 (D.C. Cir. 1998).

38 *1998 Biennial Review Report*, 15 FCC Rcd at 11109, para. 95.

that serve the NewYork DMA – the nation's largest – and a struggling newspaper, the economic viability of which (as discussed below) still remains in question. Moreover, in the course of granting a permanent waiver to own the *Post*, the Commission has developed a substantial public record on the diversity of viewpoints and level of competition in the New York media marketplace – both of which have dramatically increased, not diminished, since 1993.[39] FTS's request for interim relief thus is not based on the pendency of a biennial review notice of inquiry proceeding because the Commission already has committed to initiating a specific rulemaking proceeding to consider relaxation of the newspaper/broadcast cross-ownership rule.[40]

Accordingly, the examination of a renewed permanent waiver request now would

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39 *See infra* discussion at pages 29-32.

40 *Cf. 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*, Notice of Inquiry, 13 FCC Rcd 11276, 11294, para. 55 (1998) ("*Biennial Review NOI*"). In the *Biennial Review NOI*, the Commission itself made a distinction with respect to conditional waivers between pending biennial review proceedings and rulemaking proceedings containing specific proposals. Unlike specific rulemakings, such as the duopoly proceeding, in biennial reviews the Commission has no substantial record on, and no specific proposals to modify, the rules under review. This approach to conditional waivers makes sense in the context of biennial review proceedings, which must occur every two years. Otherwise, unless the biennial review proceeding were completed well before the time to initiate the next biennial review, the conditional waiver theoretically could be renewed in perpetuity until Congress eliminates that statutory requirement to conduct biennial review proceedings of broadcast ownership rules not already under review in pending proceedings. Here, in contrast, the Commission has announced a rulemaking proceeding with specific proposals to relax the newspaper/broadcast cross-ownership rule. And the Commission has acquired experience and a substantial record on the New York media marketplace and the unique circumstances justifying the permanent waiver to own the *Post*.

be an inefficient use of the Commission's limited resources given that the cross-ownership rule ultimately may be relaxed to permit the cross-ownership in question. Deferral of the request for waiver during the pendency of the rulemaking proceeding would promote administrative efficiency and ensure the continued stability of the *Post* at least through the conclusion of the newspaper/broadcast cross-ownership rulemaking proceeding.[41] Moreover, deferral of action is consistent with the Commission's grant of interim relief in the television duopoly rule pending conclusion of the local television ownership proceeding.[42]

Even without this precedent and sound policy reasons, there are other additional compelling reasons why the Commission should allow cross-ownership pending the outcome of the rulemaking proceeding. Seven years of service and experience have proven that the Commission's decision to grant FTS a permanent waiver was the right decision that has served the residents of the New York DMA. A very sick *New York Post* has risen from its deathbed under News Corp's ownership to become a truly diverse voice in New York. While the New

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41 Of course, FTS recognizes that any interim relief granted would be without prejudice to any action the Commission takes in the newspaper/broadcast cross-ownership rulemaking. Accordingly, within thirty days of the effective date of the newly revised cross-ownership rules, FTS would make any Commission filings necessitated by the new rule.

42 *See Review of the Commission's Regulations Governing Television Broadcasting*, Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 21655, 21681 (1996) (discussing interim policy that permitted conditional waiver of the duopoly rule pending outcome of the then-pending local television ownership rulemaking proceeding); *see also Biennial Review NOI*, 13 FCC Rcd at 11294, para. 56 (discussing examples of when interim waivers are permissible).

York media market has continued to experience the addition of numerous new outlets (as discussed below), News Corp, although not required to do so, has operated the newspaper separately from WYNW, and the *New York Post* has consistently printed its own views. Moreover, News Corp has kept its commitment to pump resources, management and capital into a money-losing enterprise, assuring New Yorkers that this diverse outlet will continue.

The Commission has had approximately seven years to observe and assess the actual impact of the WNYW/*New York Post* combination on competition and viewpoint diversity in the New York market. Not only have competition and diversity flourished, but News Corp and FTS have demonstrated a track record of maintaining the independence of the *Post* and WNYW. For example, the *Post* and WNYW do not share staff members or facilities. The newsgathering and news reporting operations of WNYW and the *Post* do not overlap, and the day-to-day responsibility for the editorial positions and news judgment are held by different individuals.[43] During the pendency of the rulemaking, FTS and News Corp pledge to maintain the independence of the *Post* and WWOR-TV.

As when Mr. Murdoch originally acquired control of WNYW,[44] the Commission is once again confronted with a choice – this time a very easy choice: (1) prematurely consider unnecessarily imposing another possible death sentence on the *New York Post* as it did in 1986 or

43 WNYW and the *Post* merely utilize the same wire services (AP and Reuters) and achieve cost savings of only $50,000 per year through joint political polling.

44 *See supra* discussion in footnote 19.

(2) take the prudent course of granting the instant application and simply requiring that, within thirty days of the effective date of the newly revised cross-ownership rules, FTS make any Commission filings necessitated by the new rule. Deferral will permit the Commission to properly examine and establish appropriate broad policy in this area while permitting any consideration of the specifics of the *New York Post*/WNYW/WWOR-TV common ownership to be based on a full record of the facts and circumstances existing at that time. In the meantime, there is absolutely no threat to diversity and competition in the New York media market.

(c) The New York Media Market Remains Uniquely Diverse and Competitive.

As demonstrated below, and in the attached tables, since the grant of the permanent waiver in 1993, the New York media marketplace has become even more competitive.

- The New York media marketplace is this country's most competitive. It is the most populous in the country comprising 6,918,600 households and 6,874,990 television households. Its 29 constituent counties span portions of New York, New Jersey, Connecticut, and Philadelphia.[45]

- Even taking into account the proposed common ownership of stations WNYW and WWOR-TV, the New York DMA would be served by at least 19 independently owned and operating full power television stations (*see supra* table at Part A.1(a)).

- Over 120 commercial and noncommercial radio stations are licensed to communities within the New York DMA, which equates to over 65 independently owned and operating radio station groups.[46]

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45 *See Broadcasting & Cable Yearbook 2000*, at B-211.

46 *See* attached Table 4-J.

- The cable penetration in the New York DMA is 74 percent,[47] and at least eight independently owned cable television systems serve communities within the New York DMA.[48]

- At least 80 additional program channels are available over the various cable systems serving the New York DMA.[49]

- In addition to over-the-air broadcast channels and public access, educational and government channels, at least 19 additional sources of cable television news are available to cable subscribers throughout the New York DMA.[50]

- Direct broadcast satellite (DBS) services, such as DIRECTV and EchoStar, offer over 150 channels of digital entertainment and informational programming to households in the New York DMA equipped with low-cost 18 inch satellite dishes.[51]

- Five MDS/MMDS systems serve communities in the New York DMA.[52]

- As to the level of print media diversity in New York, 25 daily newspapers are published within the New York DMA, and twelve newspapers from other markets have spillover coverage in the New York market.[53] In addition, hundreds of weekly newspapers are published within the New York DMA.[54]

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47 *See Broadcasting & Cable Yearbook 2000*, at C-4.

48 *See* attached Table 4-L.

49 *See* attached Table 4-K.

50 *See* attached Table 4-Q.

51 *See Broadcasting & Cable Yearbook 2000*, at E-6.

52 *See* attached Table 4-S.

53 *See* attached Table 4-O.

54 *See* attached Table 4-P.

- At least 23 weekly and monthly magazines have average circulations in excess of 100,000 in the New York DMA. For example, *Time* sells 392,636 copies on average each week; *Newsweek*, 253,130; and *U.S. News and World Report*, 162,181.[55]

- Since grant of the permanent waiver in 1993, the Internet has exploded onto the scene as yet another source of diverse viewpoints. As of May 2000, the Internet penetration rate in the New York market is at least 42 percent. At least 15 different news web sites are New York based or oriented.[56]

As the following data confirm, creation of a television duopoly in the New York DMA by FTS, as now permitted by the Commission's local television ownership rules, and continued ownership of the *New York Post* by News Corp, would not adversely affect the level of competition and diversity in the New York DMA – this country's most diverse and competitive marketplace of ideas.

- The circulation of the *New York Post* covers only 5.3 percent of the households in the New York DMA on any given day. And the *Post* accounts for approximately only 4 percent of advertising dollars spent on the top five daily newspapers in the New York DMA, which obviously translates to an even smaller percentage of the ad dollars spent on all newspapers in the New York DMA.[57]

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55 *See* attached Table 4-M.

56 *See* attached Table 4-R.

57 *See* attached Table 4-N.

- In 1999 the *New York Post* ranked 5th in terms of coverage and advertising dollars in the New York DMA, behind *The New York Daily News*, *The New York Times*, *Newsday*, and *The Newark Star-Ledger*. The *Post* also ranks 5th in terms of circulation, behind *The New York Times*, *New York Daily News*, *Newsday*, and *The Newark-Star Ledger*.[58]

(d) Failure to Grant the Requested Interim Relief Would Jeopardize the Viability of the *New York Post*.

News Corp's stewardship of the *Post* has benefitted the New York public. For example, the *New York Post* launched a Sunday edition in April 1996; in June of this year it also launched its "Sports Week" publication. In addition, through multi-million dollar capital improvement projects News Corp has demonstrated its commitment to the viability of the *Post* as an alternative and diverse media voice. Specifically, News Corp has committed to building a new $200 million, state-of-the-art plant for the newspaper in the South Bronx, which is a blighted neighborhood, on a site that has been abandoned and unused since the 1970s.[59] The target date for completion of this plant is December 2001. Despite the lower costs of locating this facility outside the city and state of New York, News Corp is committed to keeping the newspaper and its operations in New York City.

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58 *See* attached Tables 4-N and 4-O. The *Post*'s daily circulation for the six months ending March 31, 2000 was 436,544; the *Post*'s Sunday circulation for the same period was 358,545.

59 Currently the *New York Post* is published from a printing facility located in lower Manhattan. The plant's obsolete equipment unfortunately does not accommodate the printing of advertising and editorial pages in color, restricts the number of pages in each issue, and will not permit the inclusion with the newspaper of any type of supplements or magazines.

This building project, which was undertaken with the participation and support of numerous federal, state, and local agencies and elected officials, will benefit a blighted urban area, keep jobs in the city of New York, and benefit the community in numerous ways. For example, the *Post* – assuming News Corp's continued ownership – is committed to increase its workforce at the plant by 100 new jobs and will spend up to $1 million annually for ongoing employee training in the second through the fourth year of operation of the new plant. In addition, the *Post* under News Corp's ownership has agreed to use best efforts to achieve minority and female-owned business enterprise participation of not less than 25 percent of the total dollar value of the work performed for, or purchase orders relating to, the construction of the new plant. News Corp has also agreed to use its best efforts to achieve 30 percent minority and female workforce participation during the construction.

Despite the commitment and investment of its current owner, as in 1993, the *Post* continues to lose money and has slipped in its rankings in the New York market. As detailed above, in 1999 the *New York Post* ranked 5th in terms of coverage, advertising dollars, and circulation in the New York DMA, behind *The New York Daily News*, *The New York Times*, *Newsday*, and *The Newark Star-Ledger*.[60] Further, 66 percent of the *Post*'s daily readers and 72 percent of the *Post*'s Sunday readers also read another local newspaper.

As further testament to the fierce competition facing the *Post*, in August 2000 *The Daily News* announced plans for a free afternoon edition that could cut into the *Post*'s circulation

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60 *See* attached Tables 4-N and 4-O.

during the September audits, which are often used to determine the advertising rates for the upcoming year. The *New York Post* responded by reducing its newsstand price from 50 cents to 25 cents per copy effective Monday, September 4, 2000.[61]

4. Conclusion

As the Commission is well aware, it has proved very difficult for most cities to support just ***two*** independent daily newspapers. But the New York DMA is unique – there are now ***25*** daily newspapers published in the market. And, the newspaper involved in the instant application is not a dominant paper in the market – the *New York Post* ranks only 5th in terms of coverage, advertising revenues, and circulation. Indeed, the *Post* is merely a second-read newspaper for approximately two-thirds of its subscribers.

In summary, forcing FTS and News Corp to choose between creating a television duopoly in the New York DMA and the already permitted ownership of the *Post* would threaten the continued existence of the *Post* as an alternative media voice. There is no valid public interest reason even to address this issue at this time given the pendency of the rulemaking and the demonstrated lack of harm to diversity and competition. The public interest simply can only be harmed by prematurely forcing divestiture and thereby placing the future viability of the *New York Post* in jeopardy.[62] As the Commission recently has conceded, "there may be circumstances

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[61] *See* Jayson Blair, *The Post to Halve Its Newsstand Price*, N.Y. Times, Sept. 1, 2000, at B-4.

[62] *See Fox Television Stations, Inc.*, 8 FCC Rcd at 5351, para. 45 (Commission stating its "independent interest in ensuring that our rules are not enforced in a manner that

in which the [broadcast/newspaper cross-ownership] rule may not be necessary to achieve its intended public interest benefits."[63] Common ownership of WNYW, WWOR-TV, and the *New York Post* presents exactly such a circumstance. Indeed, preventing Mr. Murdoch's creation of a duopoly in New York could result in the demise of the *New York Post*. Surely the public interest would not be served by forcing divestiture and thereby threatening the survival of the *Post*, which was founded in 1801 by Alexander Hamilton and is the nation's oldest continuously published daily newspaper.

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jeopardizes the survival of a newspaper").

[63] *1998 Biennial Review Report*, 15 FCC Rcd at 11105, para. 88.