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Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Fox Television Stations, Inc.)	File Nos. BRCDT-20150202ACT
)	BRCDT-20150202ACP
Applications for Renewal of License of)	
WWOR-TV and WNYW)	

**CONSOLIDATED OPPOSITION OF UCC, RAINBOW/PUSH, FREE PRESS,
AND VOICE FOR NEW JERSEY TO FOX TELEVISION STATIONS, INC.
OPPOSITION TO PETITIONS TO DENY**

The Office of Communication, Inc. of the United Church of Christ, Rainbow/PUSH Coalition, and Free Press (“UCC”), and Voice for New Jersey (“VNJ”), (collectively “Petitioners”), by their attorneys, the Institute for Public Representation, and pursuant to 47 U.S.C. § 309(d), and 47 CFR § 73.3584(b), hereby reply to the opposition of Fox Television Stations, Inc.¹ to Petitioners’ petitions to deny Fox Television Stations, Inc.’s (“Fox”) applications for renewal of television stations WWOR-TV, Secaucus, NJ, and WNYW, New York, NY.²

Fox’s opposition chiefly relies upon and assumes the validity of a 2014 Media Bureau Order.³ Petitioners have sought full Commission review of this decision based on numerous legal and factual errors and that Application for Review is still pending. For example, Fox contends that the Bureau found that Fox was in compliance with the newspaper/broadcast cross-ownership rule (“NBCO Rule”) at all times. In fact, the Bureau Order never addressed UCC’s claims on the merits. United Church of Christ, Office of Communication, Inc., Rainbow/PUSH Coalition, and Free Press, Application for Review at 10-12 (Oct. 8, 2014) (“UCC/RPC

¹ Consolidated Opposition of Fox Television Stations, Inc. to Petitions to Deny (June 1, 2015) (“Fox Opposition”).

² UCC Petition; VNJ Petition.

³ *Fox Television Stations, Inc.*, 29 FCC Rcd 9564, 9565 (2014) (“2014 Bureau Order”).

Application for Review”). Similarly, Fox responds to VNJ by claiming that the *2014 Bureau Order* already found that WWOR served the Northern New Jersey community during the 2007-2015 license term.⁴ In its application for review, VNJ argued that the Bureau had no authority to make this determination.⁵ Thus, the Commission must act on Petitioners’ pending applications for review *before* determining whether to grant renewal of these licenses.

Acting on the applications for review first will also avoid a situation similar to the previous license renewals of WWOR and WNYW, in which the Commission did not act on a pending reconsideration petition that would have been relevant on renewal until it was too late.⁶ More broadly, the Commission needs to resolve, not just for Fox but for similarly situated parties, the important legal and factual questions raised in Petitioners’ applications for review.⁷

Finally, Fox’s Opposition fails to substantively address whether its current waiver can be justified in light of the Fox corporate split and whether it needs a new waiver because it has begun publishing a local newspaper of general circulation, the *Wall Street Journal*, Greater New York edition. These are important question that should be addressed in a hearing even if the Commission denies the applications for review.

I. The Commission should grant UCC’s Application for Review and Petition to Deny.

UCC, Rainbow/PUSH, and Free Press demonstrated in their petition to deny that, if Fox lacks a valid waiver of the NBCO Rule, it cannot satisfy the Communications Act’s license renewal standard. Section 309(k) requires that before a station’s license can be renewed, the

⁴ Fox Opposition at 3-7; 13-14.

⁵ Voice for New Jersey, Application for Review (Oct. 8, 2014) (“VNJ Application for Review”).

⁶ Office of Communication of United Church of Christ, Inc. and Rainbow/PUSH Coalition Petition to Deny Renewal of WWOR-TV and WNYW, Dkt. No. 07-260 (May 1, 2007).

⁷ In any event, should the Commission act on these petitions to deny prior to the pending applications for review, any determination should be conditioned on the eventual outcome of the applications for review.

Commission must find that during the previous license renewal term, (1) “the station served the public interest, convenience, and necessity,” (2) “there have been no serious violations by the licensee of [the Communications Act or Commission rules],” and (3) “there have been no other violations by the licensee of [the Communications Act or Commission rules] which, taken together, would constitute a pattern of abuse.”⁸ If Petitioners’ theory is vindicated by the full Commission in the pending applications for review, the FCC cannot find that Fox has satisfied Section 309(k)’s renewal standard in this case.

A. Fox’s opposition underscores the need for the full Commission to settle important questions raised by UCC’s petition and previous pleadings.

Fox claims that in the *2014 Bureau Order*, “the Media Bureau has rejected” UCC’s previous account of Fox’s failure to comply with the NBCO Rule.⁹ Fox’s reliance on this particular point demonstrates why full Commission review is necessary. The *2014 Bureau Order* did not acknowledge, much less even address, UCC’s facts or arguments regarding Fox’s failure to comply with the NBCO Rule.¹⁰ Indeed, the lack of any consideration of Petitioners’ arguments was a central reason why they have sought full Commission review.¹¹ Fox seeks to transform the Bureau’s absence of any meaningful discussion of UCC’s argument into a broad finding that it has always complied with the NBCO Rule. Thus, the Commission should address UCC’s arguments in ruling on the application for review before addressing UCC’s petition to deny.

⁸ 47 U.S.C. § 309(k).

⁹ Fox Opposition at 3-7. The *2014 Bureau Order* granted license renewal of WWOR and extended the waiver of Fox’s cross-ownership of the *Post* until the effective date of the most recent Quadrennial Review.

¹⁰ The *2014 Bureau Order* acknowledges that UCC filed a petition to deny but does not actually recount or analyze the arguments made therein. See 29 FCC Rcd at 9565.

¹¹ UCC/RPC Application for Review at 10-12. The complex history of Fox’s various waivers and purported extensions of them are recounted in the Application for Review, which Petitioners incorporate by reference here.

Relatedly, as UCC argues in its application for review, Fox continues to misinterpret Commission precedent to argue that it has always complied with the NBCO Rule. Fox misreads *Counterpoint Communications, Inc.*, stating that it provides “clear precedent that when the holder of a waiver files a timely extension request, the waiver remains effective while the extension request is pending.”¹² *Counterpoint*, however, provide no such “clear precedent” on whether a waiver automatically renews and actually strongly suggest that they do not.¹³

Fox cherry picks language from the second *Counterpoint* decision to argue that “[t]he Commission stated unambiguously that inaction by the FCC in the face of a pending extension request ‘allow[s] waivers to remain in force.’”¹⁴ But the full sentence quoted by Fox actually states that “[w]e also do not intend to continue the practice of allowing waivers to remain in force through inaction for long periods of time.”¹⁵ Instead of allowing Fox to twist its words, the Commission must definitively rule on whether the mere filing of a waiver request in the absence of Commission action does extend an expired temporary waiver until the Commission rules on the request.

B. Because of Fox’s corporate split, grounds for the waiver of the NBCO Rule no longer exist.

Fox’s opposition cannot overcome Petitioners’ showing that, as a matter of law, the recent split of its print and broadcast assets into two separate companies abrogates any justification for a waiver of the NBCO Rule with respect to the *Post* and WWOR.¹⁶ Fox attempts to sidestep UCC’s argument by stating that “[n]otwithstanding the separation of News

¹² Fox Opposition at 6-7.

¹³ UCC/RPC Application for Review at 19-22. See *Counterpoint Communications*, 16 FCC Rcd 15044 (2001) (“*Counterpoint I*”); *Counterpoint Communications, Inc.*, 20 FCC Rcd. 8582 (2005) (“*Counterpoint II*”).

¹⁴ Fox Opposition at 7, n.22.

¹⁵ *Counterpoint II*, 20 FCC Rcd at 8590.

¹⁶ UCC Petition at 6-7.

Corp. from Fox's parent company, it remains true that Fox and News Corp., respectively, have made, and continue to make, substantial investments in WWOR and *The New York Post* in reliance on the waivers granted to-date."¹⁷

The fact that both 21st Century Fox, Inc. and News Corp. are commonly owned, however, is not relevant because each have fiduciary duties to their respective shareholders. These fiduciary duties mean that 21st Century Fox, Inc. cannot send a penny of its revenues to News Corp. to subsidize the *Post*, and *vice versa*. Fox's reliance on its common ownership of both companies is therefore a distraction. As Fox is well aware, the Commission's justification for the temporary waiver of the NBCO Rule that permits it to own WNYW, WWOR and the *Post* is based on the theory that the broadcast stations' profits would subsidize the *Post*.¹⁸ That scenario no longer exists because, as a matter of law, the stations cannot subsidize the *Post*.

Finally, even if both companies could somehow ignore their fiduciary duties and the broadcast stations could subsidize the *Post*, Fox offers absolutely no proof that it has done so. Fox's naked assertion that the two companies "have made, and continue to make, substantial investments in WWOR and *The New York Post*,"¹⁹ is not supported by any evidence. Even if Fox made investments, it does not claim, much less prove, that those investments were made because of the common ownership of the properties. To sustain a waiver, the burden is on Fox to show that waiving the rule better serves the public interest in competition and diversity than applying the rule.²⁰ Fox fails to meet this burden.²¹

¹⁷ Fox Opposition at 9.

¹⁸ *K. Rupert Murdoch, (Transferor) and Fox Entertainment Group, (Transferee)*, 24 FCC Rcd. 5824, 5829 (2009).

¹⁹ Fox Opposition at 6.

²⁰ *NBCO Order*, 50 FCC 2d 1046, 1084-1085, ¶119 (1975).

²¹ Fox's argument that the UCC Petition is "extraordinary" attempt by Petitioners to preemptively seek reconsideration of their pending applications for review is a red herring. Fox Opposition 10-11. As explained above, if the Commission determines that Fox lacked a valid waiver of the NBCO Rule during an earlier license term, renewal would plainly be inappropriate

C. Fox has also failed to show that a waiver for the Wall Street Journal would serve the public interest.

Even if Fox could justify a waiver to continue to own two television stations and the *Post*, that waiver does not cover the *Wall Street Journal*. *UTV of San Francisco, Inc.*, 16 FCC Rcd 14975, 14990 (2001). While the *Journal* may have been a solely a national newspaper when it was purchased, it has since become a New York paper as well. Fox's Opposition fails to grapple with this argument. Instead, Fox claims, based on a 30-year-old Commission decision, that the *Journal* is national newspaper and largely ignores the fact that it now publishes a paper of general circulation within the New York Market that implicates the NBCO Rule. If the Greater New York Section of the *Journal*, which was created in 2010, were sold separately from the larger paper, it would be considered a paper of general circulation. The mere fact that Fox packages the paper with the *Journal* does not transform it into a national newspaper as Fox claims.²² Because the underlying facts and public interest concerns have changed considerably since then, the Commission should take this opportunity to revisit its decision.

II. The Commission should grant VNJ's application for review and petition to deny.

Fox's main defense in response to VNJ's petition is that the pleading is defective as a matter of law because the Media Bureau has already pre-judged that WWOR's service to Northern New Jersey was sufficient in a separate proceeding concerning an earlier license

here absent Fox complying with the rule. There is nothing extraordinary about a determination of unresolved questions of law and fact from an earlier renewal term impacting the outcome of the present case.

²² Fox Opposition at 11-12. This determination has been called into question in light of former FCC Commissioner Michael Copps' call for a review of the decision. Letter to FCC Chairman Kevin J. Martin, *News Corp./Dow Jones Acquisition* (Oct. 25, 2007), 2007 WL 316908. Commissioner Copps noted that the Commission has not provided any updated market or legal analyses to support the *Journal*'s designation since 1995.

period.²³ This response underscores the need for the full Commission to grant the pending applications for review and reverse the Bureau decision upon which Fox chiefly relies.

VNJ's application for review asks the full Commission to overturn the *2014 Bureau Order* in part because that decision improperly adjudicated issues of fact that were not properly before it.²⁴ At no point in that earlier challenge did the Commission ever indicate that it would entertain a challenge to WWOR's service for a license term that had yet to expire – and for good reason. Section 309(k) prohibits the Commission from acting on a license renewal until “the licensee of a broadcast station submits an application to the Commission for renewal.”²⁵ Because Fox had yet to submit its license renewal at the time of the *2014 Bureau Order*, the Bureau was barred by the Communications Act from prejudging the license term. Similarly, Fox cannot transform VNJ's supplemental facts regarding WWOR's post-term performance into an actual review on the merits as a defense to the current petition to deny.²⁶

More fundamentally, however, Fox's opposition does not rebut VNJ's factual showing that WWOR has failed to serve the Northern New Jersey community as required by the Communications Act. Fox argues that VNJ's analysis is flawed because it either reflects a different peer group than that which Fox would prefer or otherwise impinges on the station's First Amendment rights.²⁷ Fox's quibbling with VNJ's analysis distracts from the reality that the station has consistently failed to serve its community of license.²⁸ No matter how WWOR's performance is analyzed and regardless of which broadcast stations it is compared to, VNJ's petition provides sufficient facts to show that the station's level of service to Northern New

²³ Fox Opposition at 13-14.

²⁴ VNJ Application for Review 20-22.

²⁵ 47 U.S.C. § 309(k).

²⁶ Fox Opposition at 14.

²⁷ Fox Opposition at 17-21.

²⁸ See VNJ Petition to Deny at 3-7.

Jersey is insufficient and continues to decline.²⁹ VNJ's analysis demonstrated that during the previous term, WWOR provided less responsive programming to its community of license than it had at any time previously. Its failure to provide meaningful responsive programming constitutes a failure to meet its obligations under the Communications Act.³⁰

Finally, Fox mischaracterizes VNJ's analyses of its programming as an intrusion into its editorial discretion.³¹ VNJ has said repeatedly that it is not asking the Commission to review the content of WWOR's programming or second-guess its editorial judgment.³² Instead, VNJ's evidence and statistical analyses in its petition to deny all point to the fact that regardless of the editorial discretion afforded to WWOR, it has utterly failed provide the level of service to its community required by the Communications Act. WWOR has wide discretion to determine how it will serve its community. That discretion, however, cannot be used to ignore its community of license. Because VNJ's evidence demonstrates that the licensee has failed to serve its community, the Commission should grant the petition and designate the matter for a hearing.

Conclusion

For the foregoing reasons, Petitioners ask the Commission to grant the pending applications for review, and then either deny the applications for renewal or designate the licenses for hearing.

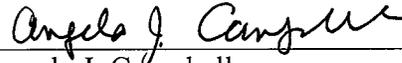
²⁹ VNJ Petition to Deny at 5-6.

³⁰ Fox's statement that "VNJ does not assert that WWOR has violated any Commission rule" is both disingenuous and misses the point. Fox Opposition at 13. WWOR's petition provides strong evidence that WWOR is violating its public service obligations to its community of license, which are required by the Communications Act. 47 U.S.C. § 309(d).

³¹ Fox Opposition at 20-21.

³² VNJ Petition to Deny at 15 ("We wish to be very clear on one point – VNJ is not suggesting that such stories are in any way 'wrong' or that WWOR does not have the editorial discretion to air them.").

Respectfully submitted



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CERTIFICATE OF SERVICE

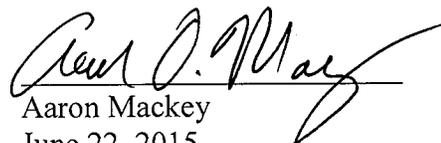
I, Aaron Mackey, Staff Attorney, Institute for Public Representation, do hereby certify that, on June 22, 2015, pursuant to 47 C.F.R. §1.47(f), a copy of the forgoing Reply to the Consolidated Opposition of Fox Television Stations, Inc. to Petitions to Deny was served by first class U.S. mail, postage prepaid, upon the parties at the addresses below.

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