

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Applications for Renewal of Broadcast Station)	File Nos.
Licenses of)	
)	BRCDT-20120531AKE
Fox Television Stations, Inc.)	BRCDT-20120531AKK
)	BRCDT-20120531AJL
For Renewal of Station Licenses)	
WTTG and WDCA, Washington, D.C., and)	
WUTB, Baltimore, MD)	

OPPOSITION OF FOX TELEVISION STATIONS, INC.

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EXHIBITS

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and Fox Television Stations, Inc.

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Fox Television Stations, Inc. ("Fox"), licensee of television stations WTTG(TV) and WDCA(TV), Washington, D.C., and television station WUTB(TV), Baltimore, MD (collectively, the "Stations"), respectfully submits this Opposition to the Petition to Deny the above-captioned renewal applications, filed August 22, 2012, by Citizens for Responsibility and Ethics in Washington (the "Petitioner").¹ Although congested with allegations, the *Petition* is utterly devoid of facts that could serve as a legal basis for a petition to deny a broadcast station license renewal application. It should be summarily dismissed as both procedurally defective and irretrievably deficient as a matter of law.

I. INTRODUCTION AND SUMMARY

The *Petition* fails on procedural grounds for multiple reasons. First, it is not supported by an affidavit of an individual making specific allegations of fact based upon personal knowledge, nor does it rely upon any documents about which the Commission can

¹ See *In Re Application for Renewal of Broadcast Station Licenses of Fox Television Stations, Inc.*, File Nos. BRCDT-20120531AKE, BRCDT-20120531AKK, and BRCDT-20120531AJL, submitted by Citizens for Responsibility and Ethics in Washington, Melanie Sloan and Jeremy Miller (filed Aug. 22, 2012) (the "*Petition*").

take official notice. Specifically, the Petitioner relies almost exclusively on newspaper articles – which the Commission long has recognized to be unreliable hearsay – and a Parliamentary committee report from the United Kingdom. None of these materials forms an adequate basis for a petition to deny. Second, the *Petition* does not present a complaint from a party with standing to challenge the Stations’ license renewals.

Aside from these serious infirmities, the *Petition* seeks relief that the Commission is not statutorily permitted to provide, given that Section 309(k) of the Communications Act requires the FCC to grant the renewal applications if it finds that the Stations have served the public interest and that there have been no violations of the Communications Act or the FCC’s rules and regulations during the preceding terms of their licenses.² The *Petition* does not contain allegations that any of the Stations has failed to serve the public interest – indeed it makes no reference whatsoever to the Stations’ performances – nor does the Petitioner claim that Fox or any of the Stations has violated a single FCC rule or regulation. Accordingly, since its arguments relate solely to non-FCC allegations against entities other than Fox or any of the Stations, the *Petition* has wholly failed to establish a prime facie case against the Stations’ license renewal applications.

Even if the Commission were to overlook these defects, the *Petition* still would be fatally flawed. Culling from newspaper articles and the Parliamentary committee report, the Petitioner offers a wide-ranging account of alleged behavior solely attributable to independent, foreign corporate siblings of Fox. The Petitioner cobbles all of these allegations into a lengthy story of alleged misdeeds, claiming that employees of these separate European entities, News International Ltd. and News Group Newspapers Ltd.,

² See 47 U.S.C. § 309(k).

engaged in a pattern of wrongful, “criminal” behavior that somehow indicates that Fox lacks the requisite “character” to be a broadcast licensee.³ Based on the Commission’s longstanding precedent, neither the newspaper articles nor the Parliamentary report rise to the level of triggering the FCC’s character policy.

Fox does not mean in any way to diminish the gravity of the allegations levied against employees of these European companies or the now-closed *News of the World* newspaper. Nor does Fox’s parent company, News Corporation, consider these matters to be anything less than enormously serious. But the allegations remain just that – allegations – and no entity owned by News Corp. (and no individual in News Corp.’s “chain of responsibility,” as Petitioner puts it⁴) has been adjudicated by an “ultimate trier of fact”⁵ to have engaged in any misconduct. Although Petitioner notes that several individuals have been arrested and some even charged with violating U.K. law, all of these individuals were officers or employees of News International or News Group Newspapers.⁶

These basic facts expose further weaknesses in Petitioner’s already-faulty case. Petitioner lobs the unfounded charge that “News Corp. . . . has engaged in extensive and repeated violations of law . . .,” even though that company has not been adjudicated to have

³ *Petition*, at 3.

⁴ *See id.*

⁵ *Character Policy Statement*, 102 F.C.C.2d at 1205 & n. 62.

⁶ *See Petition*, at 18-19. Petitioner also points out that one employee and one contractor of *News of the World* pleaded guilty in 2006 to illegally intercepting voicemail messages in the United Kingdom. *See id.* But the *Petition* does not assert, nor could it, that this fact has any bearing on the FCC’s character policy or on the renewal applications. Neither the employee nor the contractor has ever been an officer or director, or otherwise an attributable interest holder, of News Corp. or Fox. The Commission has long made clear that misconduct by individuals is relevant to licensees, if at all, only if it involves an individual who holds an attributable interest in the licensee. *See In re Policy Regarding Character Qualifications in Broadcast Licensing*, 102 F.C.C.2d 1179, 1219 (1986) (subsequent history omitted) (“*Character Policy Statement*”).

committed any wrongdoing.⁷ The Commission has been resolute in refusing to consider allegations of conduct unrelated to the Communications Act or FCC rules absent an adjudication by an “ultimate trier of fact,”⁸ and Petitioner offers no reason why the Commission should depart here from its overwhelming precedent.

Moreover, even in circumstances where non-FCC misconduct has resulted in an adjudication, the Commission only considers matters pertaining to corporate siblings of licensees when there is a sufficient nexus between the licensee and the entity found to have engaged in wrongdoing. The Petitioner acknowledges this legal standard, yet makes no attempt to connect the disparate dots between News Group Newspapers and News International – subsidiaries of News Corp. domiciled in and operating exclusively in Europe – and Fox – the domestic television station licensee subsidiary of News Corp. In point of fact, there is *no relationship* of any kind between News International and News Group Newspapers, on the one hand, and Fox, on the other hand.

As such, the Petitioner is left to try to impute to News Corp. allegations related to News Group Newspapers and News International, and then in turn to try and ascribe to Fox the misdirected charges about “character” levied at Fox’s parent. In the absence, however, of any findings of wrongdoing by News Corp. or its employees, and without any basis for tracing back to Fox the attenuated trail of alleged misconduct by entities in Europe, the *Petition* founders under the weight of its own rhetoric. Put simply, the Commission’s character policy deals not with an amorphous evaluation of conduct that “reflects negatively”

⁷ *Petition*, at 33.

⁸ *Character Policy Statement*, 102 F.C.C.2d at 1205 & n. 62.

on a licensee, as the Petitioner would have it,⁹ but rather with a specifically-defined class of adjudicated non-FCC misconduct. This policy, even if it were a permissible subject as part of a renewal evaluation, would not be triggered by Petitioner's allegations.

Equally significant, given that the allegations in the *Petition* relate to alleged activities by British companies acting in the U.K., is the finding of Ofcom, which confirmed just yesterday that a British license-holding entity owned 40% by News Corp. remains "fit and proper" to hold broadcast licenses.¹⁰ Ofcom is the independent regulatory and competition agency for the communications industries in the United Kingdom. As part of its fit and proper analysis (analogous to the Commission's character evaluation) the U.K. regulator reviewed essentially the same materials – records gathered as part of civil lawsuits, information from the Parliamentary committee report, and transcripts from a U.K. judge-led inquiry – referenced in the *Petition*.¹¹ Ofcom determined that there was no "reasonable basis . . . to reach any conclusion that [News Corp.] acted in a way that was inappropriate in relation to phone hacking, concealment, or corruption" to the extent that any of those activities took place at News International or News Group Newspapers.¹²

For all of these reasons, Fox respectfully requests that the Commission dismiss the *Petition* and promptly grant the Stations' renewal applications.

⁹ *Petition*, at 4.

¹⁰ *Decision Under Section 3(3) of the Broadcasting Act 1990 and Section 3(3) of the Broadcasting Act 1996: Licenses Held By British Sky Broadcasting Limited*, released Sept. 20, 2012 (available at <http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/fit-proper/bskyb-final.pdf>) ("*Ofcom Decision*").

¹¹ *See id.*

¹² *Id.* at ¶ 39.

II. THE *PETITION* IS FATALLY FLAWED AND SHOULD BE DISMISSED, BOTH BECAUSE PETITIONER LACKS STANDING TO CHALLENGE THE STATIONS' RENEWAL APPLICATIONS AND BECAUSE THE *PETITION* SEEKS RELIEF THAT THE COMMISSION HAS NO AUTHORITY TO PROVIDE

A. The Petitioner Has Not Demonstrated That It Is a Party In Interest Under the Communications Act, Nor Has Petitioner Adequately Supported Its Claims

Section 309(d) of the Communications Act mandates that petitions to deny “contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with” the renewal standards set forth in Section 309(k) of the Act.¹³ Equally significant, Section 309(d) requires that “[s]uch allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons *with personal knowledge thereof*.”¹⁴

As is apparent on its face, the *Petition* is not supported by an affidavit alleging facts about which Petitioner (or any of its members) has any personal knowledge. Rather, to the extent that it discusses information that could be considered “facts,” the *Petition* relies almost exclusively on two categories of information: newspaper articles and documents compiled by authorities in the United Kingdom as part of various ongoing probes of alleged misconduct there.¹⁵ The U.K. documents consist of (1) long-running statements and transcripts of testimony gathered in a judge-led inquiry about British press culture and (2) the report of a sharply-divided Parliamentary committee.¹⁶ Notably, neither of these documents contains

¹³ 47 U.S.C. § 309(d).

¹⁴ *Id.* (emphasis supplied).

¹⁵ *See generally* *Petition* and its exhibits. The only other categories cited by the *Petition* are Securities and Exchange Commission filings, which the Petitioner does not rely upon to support any of its charges that Fox lacks character.

¹⁶ *See Petition*, at Exhibits M (Committee Report) and N-U (Transcripts and Statements).

any adjudication of a violation of law by an ultimate trier of fact, as set forth in the *Character Policy Statement*.¹⁷

The Commission long has emphasized that it will not rely upon newspaper articles, which represent hearsay and are “not reliable evidence of the truth of the matters related in the article.”¹⁸ Specifically, the FCC has found that newspaper articles are *not* sufficient to meet the statutory requirements for a petition to deny: “a newspaper article is not an acceptable substitute for the requirement of Section 309(d) . . . that allegations in a petition to deny be supported by the affidavit of a person with personal knowledge of the facts alleged.”¹⁹ The affidavits here do not assert that any member of Petitioner has personal knowledge of any of the allegations contained in the *Petition*.

The Commission has been equally steadfast in refusing to take official notice of a document unless it constitutes an “adjudicative fact” as governed by the Federal Rules of Evidence.²⁰ The FCC has stressed that “an adjudicative fact is defined as one not ‘. . . subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.’”²¹ The Commission has refused to take

¹⁷ See *Character Policy Statement*, 102 F.C.C.2d at 1205 & n. 62. As the Petitioner notes, at 3, News Group Newspapers has admitted liability as part of agreements to settle several civil lawsuits related to mobile telephone voicemail interception. These admissions, however, do not constitute adjudications of criminal wrongdoing capable of triggering the Commission’s character policy. In any case, as demonstrated below, even adjudicated non-FCC misconduct by News Group Newspapers would have no bearing on Fox’s qualifications as a licensee. See *infra*, at Section III.B.

¹⁸ Letter of Peter H. Doyle, Chief, Audio Division, Media Bureau, to Richard Zaragoza et al., 24 FCC Rcd 5743, 5747 (2009).

¹⁹ *In re Pikes Peak Broadcasting Co.*, 12 FCC Rcd 4626, 4630 (1997).

²⁰ *In re Western Communications, Inc.*, 59 F.C.C.2d 1441, 1455-56 (1976) (reversed on other grounds, 589 F.2d 594 (D.C. Cir. 1978)) (“*Western Communications*”).

²¹ *Id.* at 1455.

official notice of “legal arguments and assertions in other proceedings involving different parties and different factual situations.”²² Indeed, “[m]anifestly these types of matters are not within the contemplation” of the Federal Rules of Evidence.²³ To the extent that Petitioner relies upon a transcript in a U.K.-judge led inquiry and a British Parliamentary committee report, these are not documents that represent adjudicative facts under *Western Communications*.²⁴ Quite clearly, a transcript contains no more than the written record of testimony provided; it offers no adjudication of any kind. Likewise, the Parliamentary committee merely issued a report in a sharply-divided vote. The report is not an “adjudication[] made by an ultimate trier of fact,” as required by the *Character Policy Statement*.²⁵ Indeed, the Parliamentary committee report did not arise out of a trial, but rather legislative hearings that afforded witnesses none of the hallmarks of due process typical of an adjudicatory proceeding involving someone accused of wrongdoing. Participants who appeared before the committee, for example, were not represented by counsel and were not permitted to cross-examine witnesses who had given testimony against them. Even U.K. communications regulator Ofcom concluded, after taking account of the information in the committee report, that there was no basis for finding that News Corp. did anything wrong and that a company 40% owned by News Corp. remains a “fit and proper” broadcast licensee.²⁶ Ofcom certainly did not treat the Parliamentary committee report as an ultimate

²² *Id.*

²³ *Id.*

²⁴ *See Western Communications*, 59 F.C.C.2d at 1455.

²⁵ *Character Policy Statement*, 102 F.C.C.2d at 1204-05 & n. 62 (also describing FCC policy to “refrain from taking any action on non-FCC misconduct prior to adjudication by another agency or court”).

²⁶ *See generally, Ofcom Decision.*

adjudication, and neither should the Commission. The report cannot be considered information incapable of reasonable dispute.

Accordingly, because the Petitioner cannot satisfy the strictures of Section 309(d) of the Act, the *Petition* must be dismissed.

In addition, although the *Petition* contains affidavits indicating that Petitioner is an organization with members who reside in the Stations' service areas, these members have not shown how they would be harmed by grant of the renewal applications. The Commission has recognized the concept of "viewer" standing, but the D.C. Circuit has rejected the notion that there is "a *per se* rule that a person has standing to protect the 'public interest' by challenging any decision of the Commission regulating (or . . . declining to regulate) a broadcaster in whose listening or viewing area the person lives."²⁷ Rather, the court made clear that litigants can establish standing only if they can meet the traditional three-pronged test for standing by demonstrating injury-in-fact, a causal relationship between the purported harm and Commission action, and redressability.²⁸ Although the *Rainbow/PUSH* cases relate to judicial standing, the FCC has made clear that because Congress intended Section 309(d) to apply to parties "with a right to appeal a Commission decision," the FCC "must apply judicial standing principles."²⁹

²⁷ *Rainbow/PUSH Coalition v. FCC*, 330 F.3d 539, 542 (D.C. Cir. 2003).

²⁸ *See id.* at 543 (court also noting that past standing cases do not "purport to apply a more relaxed standard to audience members than to other litigants seeking to demonstrate their standing"). *See also Rainbow/PUSH Coalition v. FCC*, 396 F.3d 1235, 1240 (D.C. Cir. 2005) ("That Jones is a member of the station's listening audience, however, does not grant 'automatic audience standing' to Jones, or through him to [Rainbow/PUSH], to challenge a license renewal even when it is alleged the licensee will operate contrary to the public interest. Instead, [Rainbow/PUSH] must demonstrate that it satisfies each of the three prongs of the well-established test for standing.") (internal citation omitted).

²⁹ *In re Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, 82 F.C.C.2d 89, 95 (1980) ("Party in Interest Petition").

Consistent with the *Rainbow/PUSH* precedent, the FCC’s historic acceptance of “viewer” standing has been premised on the notion that viewers who petition against a renewal application “vindicate the principle that a broadcaster’s responsibility is to serve the needs of residents within its service area.”³⁰ Viewers therefore can be said to aid the Commission in determining whether *a station* operates in the public interest, and the “viewer” standing principle accounts for the traditional injury/causation/redressability requirements by implicitly presuming that a viewer suffers remediable harm if complaining about a local station’s performance.³¹ Allegations that a station fails to serve its community, “when made by a recipient of the licensee’s broadcast service, supply the predicate for finding injury in fact.”³² There is no logical basis for applying this standard to the Petitioner and its members, who do not even discuss the Stations, much less base the *Petition* on any allegations relating to the Stations’ actual broadcast performance.³³

Here, the Petitioner and its members allege no more than that they would be harmed because they do not trust Fox to comply with the law.³⁴ They do not even attempt to connect

³⁰ *In re CHET-5 Broadcasting, L.P.*, 14 FCC Rcd 13041, 13042 (1999). *See also In re Sagittarius Broadcasting Corp.*, 18 FCC Rcd 22551, 22553-54 (2003) (“alleged injury to a petitioner often arises from the petitioner’s interests as a member of the listening public . . . people who listen to a station on a regular basis . . . have legitimate interests in the station’s performance”) (footnotes omitted).

³¹ *See, e.g., Party in Interest Petition*, 82 F.C.C.2d at 100 (a listener who alleges equal employment opportunities deficiencies “satisfies the injury in fact requirement . . . because the broadcaster’s shortcomings are depriving him of” viewpoint diversity); *In re Shareholders of Tribune Co.*, 22 FCC Rcd 21266, 21269 (2007) (permitting viewer standing where allegations related to violation of cross-ownership rules because viewer “would be harmed” by lack of ownership and viewpoint diversity in the event of a violation).

³² *Party in Interest Petition*, 82 F.C.C.2d at 99.

³³ Even the seminal D.C. Circuit case that sanctioned the premise of “viewer” standing recognized the risk that this concept would invite petitions to deny from advocates “not concerned with the quality of broadcast programming.” *Office of Communications of the United Church of Christ v. FCC*, 359 F.2d 994, 1006 (1966). The court thus suggested that the FCC exercise its discretion carefully in administering “viewer” standing. *See id.*

³⁴ *See Petition*, at 2-4.

the allegations about the “character” of Fox’s corporate parent or siblings to the Stations’ on-air programming or performance (save for the conclusory statement that they cannot “rely on the quality or content of” Fox’s broadcasts).³⁵ Given that the Petitioner cannot show that grant of the Stations’ renewal applications would cause it any particular injury, and in any event fails to show how denial of the renewal applications would have any effect on Petitioner’s members as viewers or on the Stations’ service, the Commission should find that the Petitioner is not a party in interest as required by Section 309(d) of the Act.

B. The Commission Is Precluded By Statute From Evaluating Allegations of Non-FCC Misconduct As Part of a Renewal Application

Wholly apart from Petitioner’s failure to comply with the Act’s procedural safeguards, the *Petition* also fails as a matter of law to set forth a legal basis for Commission action. In calling for an evaluation of alleged non-FCC misconduct as part of a renewal proceeding, the Petitioner ignores the clear statutory text of Section 309(k) of the Act. That provision provides, in pertinent part, that if a broadcast licensee submits an application for renewal:

the Commission *shall grant* the application if it finds, *with respect to that station*, during the preceding term of its license –
(A) the station has served the public interest, convenience, and necessity;
(B) there have been no serious violations by the licensee of this chapter or the rules and regulations of the Commission; and
(C) there have been no other violations by the licensee of this chapter or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.³⁶

³⁵ See *id.* at Exhibit A, at 3 & Exhibit B, at 2. Both the Commission and the U.S. Court of Appeals for the D.C. Circuit have made clear that a supporting affidavit “consisting of conclusory facts . . . [is] insufficient to make a prima facie case.” *In Re Interstate Consolidation, Inc.*, 15 FCC Rcd 3330, 3333 (2000) (citing *Gencom v. FCC*, 832 F.2d 171, 180 n.11 (1987)). See also *Stone v. FCC*, 466 F.2d 316, 322 & n.13 (1972) (citing S. Rep. No. 690, 86th Cong., 1st Session 3 (1959) (discussing legislative history stating that “ultimate, conclusionary facts or more general allegations on information and belief, supported by general affidavits . . . are not sufficient . . .”).

³⁶ 47 U.S.C. § 309(k) (emphasis supplied).

By its plain terms, Section 309(k) limits Commission review during a renewal proceeding to “that station” which has sought renewal. “Congress ... has expressly limited the scope of the license renewal inquiry to matters occurring at the particular station for which license renewal is sought.”³⁷ And, with respect to “that station,” the statute only permits the FCC to evaluate whether the station has served the public interest through its programming and service to its community and whether there have been violations – serious or otherwise – of the Act or the Commission’s rules and regulations.³⁸

The *Petition* does not allege that any of the Stations failed to serve the public interest, or that any of them were deficient in providing issue-responsive programming to their communities of license. Nor does the *Petition* assert that any of the Stations – or anyone else, for that matter – violated a single FCC rule or regulation. Accordingly, the *Petition* fails to assert a claim that can be reviewed by the Commission in a renewal proceeding consistent with Section 309(k).

III. THE ALLEGATIONS OF UNADJUDICATED NON-FCC MISCONDUCT CONTAINED IN THE *PETITION* DO NOT TRIGGER THE COMMISSION’S CHARACTER POLICY AND DO NOT AMOUNT TO A PRIMA FACIE CASE AGAINST THE STATIONS’ RENEWAL APPLICATIONS

Even if the Commission were to evaluate Petitioner’s claims on the merits, notwithstanding the procedural and legal deficiencies outlined above, the FCC still should find that the *Petition* fails to raise a prime facie case against the Stations’ renewal applications.

³⁷ *Sagittarius*, 18 FCC Rcd at 22555. Note that Congress added this provision to the Act in 1996, well after the Commission adopted its policies concerning “character.”

³⁸ *See In re ACC Licensee, Inc.*, 22 FCC Rcd 18535, 18537 (2007) (finding that, while it is “unclear whether, under Section 309(k), we have the authority to deny the renewal of [a station] absent such violations,” the question did not need to be addressed because the petition to deny was rejected on other grounds).

A. The FCC's Character Policy Does Not Apply to Non-FCC Misconduct Unless It Has Been Adjudicated

The *Petition* is premised exclusively on the argument that Fox does not “possess the requisite character qualifications to hold broadcast licenses.”³⁹ As described above, the *Petition* makes nary a reference to Fox itself, and instead asserts that allegations against News Corp. and certain of its officers and directors warrant a hearing before grant of the Stations’ renewal applications. These allegations center on the investigation of phone hacking at the *News of the World* newspaper and related fallout, including charges that individuals misled government bodies in the United Kingdom. Based on still-pending investigations, and relying upon an outdated Commission statement about licensees having “good character,” Petitioner posits that Fox is unqualified to be a licensee.⁴⁰

The Commission, however, has confirmed time and again that allegations of unadjudicated non-FCC misconduct do *not* amount to a *prima facie* case against a renewal application. “It is well established that unadjudicated allegations of misconduct not involving the Communications Act or Commission rules or policies normally do not constitute the basis of a *prima facie* showing that an applicant lacks the character qualifications to be a Commission licensee.”⁴¹ In addition, “[t]he fact that a party has been or may be investigated by a government agency alone is not sufficient to warrant a designation of its application for hearing.”⁴² The FCC “has repeatedly held that an adjudicated finding of

³⁹ *Petition*, at 11.

⁴⁰ *Id.* at 8 n.13 (citing *In re Policy Regarding Character Qualifications*, 87 F.C.C.2d 836, 839 (1981) (quoting 47 C.F.R. § 73.24(d) (1980))).

⁴¹ *In re Shareholders of Stop 26 Riverbend, Inc.*, 27 FCC Rcd 6516, 6524 (2012). See also *In re Stockholders of Renaissance Communications Corp.*, 12 FCC Rcd 11866 (1997) (no *prima facie* case in absence of demonstration of non-FCC misconduct).

⁴² *ACC Licensee*, 22 FCC Rcd at 18538.

serious wrongdoing . . . is necessary for an application to be designated for hearing when non-broadcast related conduct is at issue.”⁴³ In the *Character Policy Statement*, after explaining that it had long been the practice “to refrain from taking any action on non-FCC misconduct prior to adjudication by another agency or court,” the Commission determined that “[i]n the future, our current practice will be our actual policy.”⁴⁴ Thus, the FCC “will consider misconduct as being relevant to an applicant’s character qualifications only where there has been an adjudication” that falls into certain specified categories.⁴⁵

In a 2007 decision addressing charges of unadjudicated non-FCC misconduct by a sibling company of a broadcast licensee, the Media Bureau dismissed a petition to deny for failing to establish a prima facie case against a renewal application.⁴⁶ The Bureau concluded that the allegations – that licensee principals and the licensee sibling company evidenced “a disturbing propensity to engage in wrongdoing” including money laundering to aid a foreign dictator – were almost entirely unadjudicated.⁴⁷ Even though the petitioner in that case alleged that “facts uncovered by the investigating agencies reflect an unacceptable level of

⁴³ *Id.* (citation omitted). See also *In re Comcast Corp.*, 26 FCC Rcd 4238, 4351 (2011) (FCC “will not consider in its character determination disputes that are the subject of litigation ‘absent an ultimate adjudication by an appropriate trier of fact’”); *In re AT&T Wireless Services, Inc.*, 19 FCC Rcd 21522, 21548-49 (2004) (describing the FCC’s “long-held position [] that there ‘must be an ultimate adjudication before an appropriate trier of fact, either by a government agency or court, before we will consider the activity in our character determinations’”) (citations omitted).

⁴⁴ *Character Policy Statement*, 102 F.C.C.2d at 1205.

⁴⁵ *Id.* The categories of non-FCC misconduct that the Commission will consider relevant once adjudicated are: felony criminal convictions; violations of antitrust or unfair competition laws involving media; and fraudulent representations to government agencies. Thus, to the extent that the *Petition*, at 3, references News Group Newspapers’ admission of liability in connection with the settlements of civil lawsuits related to mobile phone voicemail interception, these admissions are not relevant to an evaluation of alleged non-FCC misconduct.

⁴⁶ *ACC Licensee*, 22 FCC Rcd at 18535.

⁴⁷ *Id.* at 18536.

malfeasance and a deceitful lack of candor,” the Bureau held that the absence of an adjudication precluded further action.⁴⁸

Similarly, in considering a petition to deny the transfer of control of various licenses in 2004, the full Commission took note of allegations by a third party that a non-license-holding sibling company of a licensee “reportedly [was] the subject of a criminal investigation [for] . . . the circumvention of disabling of encryption technologies (*i.e.*, hacking).”⁴⁹ Consistent with precedent, the Commission held that “[u]nadjudicated non-FCC violations should be resolved by a court with proper jurisdiction and should not be prejudged by our processes.”⁵⁰ And in a 1992 decision by the full Commission, in a case involving allegations of stock manipulation, the FCC observed that the underlying issues “constitute highly technical areas of the law in which the Commission lacks expertise.”⁵¹ As a result, “in the absence of an ultimate conviction . . . we believe it would be inappropriate for us to attempt to assess and resolve questions of federal law, and testimony and evidence presented in regard thereto, which are outside our principal area of jurisdiction.”⁵²

The FCC’s reluctance to consider unadjudicated matters stems from its recognition that it “lack[s] the expertise and the resources to interpret other statutes and to make value

⁴⁸ *Id.* The petitioner in that case filed a “supplement” to its petition to deny after the licensee’s sibling company pleaded guilty to one count of criminal violation of the Bank Secrecy Act. Even then, the Bureau refused to designate the renewal for hearing, given the lack of a nexus between the guilty corporate entity and the licensee. *See id.* *See also infra*, at Section III.B.

⁴⁹ *In re General Motors Corp.*, 19 FCC Rcd 473, 485 (2004).

⁵⁰ *Id.* at 487 (citation omitted).

⁵¹ *In re Shareholders of GAF Corp.*, 7 FCC Rcd 3225, 3231 (1992).

⁵² *Id.* (noting that it would be “more appropriate” to “allow such matters to be considered and resolved in the proper forum . . .”) (citation omitted).

judgments about behavior unrelated to the broadcast licensing function.”⁵³ This prudential approach, by which FCC rightfully declines to “engage in initial determinations, but rather [seeks] to defer to those entities with primary authority over such matters,” prevents the Commission from attempting to substitute its own expertise for competent authorities who hold day-to-day responsibility for enforcing laws outside of the Communications Act.⁵⁴ If this makes sense for allegations of U.S.-based misconduct, it is especially sensible when allegations, like those in the *Petition* here, relate to pending proceedings arising under the laws of a foreign country. The FCC cannot reasonably be expected to know better (or more quickly) how to conduct an investigation of potential U.K. law violations than authorities in the United Kingdom.⁵⁵

The Commission’s prudential approach is particularly appropriate in the instant case, given that Ofcom, the regulatory agency with direct jurisdiction over licensing in the U.K., already reviewed the same matters raised in the *Petition* and concluded that allegations relating to misconduct at *News of the World* and News Group Newspapers do *not* implicate the British “fit and proper” standard (which is akin to the Commission’s “character” evaluation).⁵⁶ Specifically, Ofcom evaluated the same Parliamentary committee report

⁵³ *Character Policy Statement*, 102 F.C.C.2d at 1191.

⁵⁴ *In re Existing Shareholders of Clear Channel Communications, Inc.*, 23 FCC Rcd 1421, 1433 n. 80 (2008).

⁵⁵ The *Petition* itself reflects the logic of this approach. It is laden with statements that suggest that “[i]f” a certain fact is correct, then there would be evidence of lying to government officials, or that someone “appears to have lied.” *Petition*, at 17 (emphasis supplied). By their very nature, these conditional statements confirm that there has been no resolution of the charges underlying Petitioner’s allegations. The Commission has made clear that not only will it “refrain from making licensing decisions based on mere allegations,” it also will not address matters that have led to “an indictment or are otherwise in the process of being adjudicated” *In re Policy Regarding Character Qualifications in Broadcast Licensing*, 5 FCC Rcd 3252 (1990).

⁵⁶ See *Ofcom Decision*, at ¶ 46.

referenced in the *Petition* as well as the transcript released as part of the U.K. judge-led press inquiry.⁵⁷ Ofcom also took note of information related to the civil lawsuits against News Group Newspapers.⁵⁸ Ofcom concluded, “having taken into account all the relevant factors,” that British Sky Broadcasting (“Sky”) – 40% owned by News Corp. – remains a “fit and proper” broadcast licensee.⁵⁹ Just as is the case with Fox here, Ofcom found that there is no evidence that Sky was “directly or indirectly involved in any of the wrongdoing either admitted or alleged to have taken place” at *News of the World*.⁶⁰ Ofcom also determined that there was no “reasonable basis . . . to reach any conclusion that [News Corp.] acted in a way that was inappropriate in relation to phone hacking, concealment, or corruption” to the extent that any of those activities took place at News International or News Group Newspapers.⁶¹

The Petitioner attempts to lightly cast aside the FCC’s precedent, observing that the Commission has preserved an exception permitting review of unadjudicated misconduct if there are “‘circumstances in which an *applicant* has engaged in nonbroadcast misconduct so egregious as to shock the conscience and evoke almost universal disapprobation.’”⁶² (As a threshold matter, in invoking this exception, Petitioner tacitly concedes that its allegations relate to unadjudicated misconduct.) Yet while it cites to this exception, the *Petition* contains no attempt to apply it to Fox – the applicant in the instant matter. The Petitioner does not

⁵⁷ See *id.* at ¶ 13.

⁵⁸ See *id.*

⁵⁹ *Id.* at ¶ 46.

⁶⁰ *Ofcom Decision*, at ¶ 41.

⁶¹ *Id.* at ¶ 39. Ofcom similarly concluded that there is “no basis on which to conclude that Rupert Murdoch acted in a way that was inappropriate” with regard to the same matters, and that there is no “reasonable basis to find that James Murdoch knew of widespread wrongdoing . . . [at *News of the World*] or that . . . he was complicit in a cover up.” *Id.* at ¶¶ 33, 38.

⁶² *Petition*, at 8 (quoting *Character Policy Statement*, 102 F.C.C.2d at 1205 n. 60) (emphasis supplied).

even assert (much less demonstrate) that the alleged misconduct it attributes to News Corp. or its European subsidiaries is “egregious” under this standard. In any event, the Commission “in a long line of cases” has clearly defined the exceedingly narrow scope of unadjudicated misconduct for which this exception might apply: drug trafficking and child molestation.⁶³ The FCC has been equally clear about the variety of allegedly deplorable misconduct that does *not* implicate this exception, including charges of bribery,⁶⁴ lying to government agencies and elected officials,⁶⁵ racial discrimination,⁶⁶ financial fraud,⁶⁷ and even animal cruelty.⁶⁸ Whatever the outcome of the U.K. probes described in the *Petition*, the circumstances clearly do not entail conscience-shocking misconduct as the FCC has defined the term.

The Petitioner’s willingness to ignore FCC precedent is just as pronounced in the *Petition*’s repeated attempts to invoke the broad concept of “character” as a morality test to which Fox must be subjected as part of the renewal process.⁶⁹ While the Commission continues to refer to the concept of a “character inquiry,” it has made abundantly clear that

⁶³ *In re USA Broadcasting, Inc.*, 19 FCC Rcd 4253, 4256 (2004) (citations omitted).

⁶⁴ *See In re IT & E Overseas, Inc.*, 4 FCC Rcd 3774 (1989).

⁶⁵ *See In re Weigel Broadcasting Co.*, 11 FCC Rcd 17202 (1996); *In re WQED Pittsburgh*, 15 FCC Rcd 202 (1999) (*reversed on other grounds*, 15 FCC Rcd 2534 (2000)).

⁶⁶ *See In re Robert Blanchard*, 22 FCC Rcd 16936 (2007).

⁶⁷ *See In re Multimedia, Inc.*, 11 FCC Rcd 4883 (1995).

⁶⁸ *See In re Secret Communications II, LLC*, 18 FCC Rcd 9139 (2003). *See also In re Shareholder of Univision Communications, Inc.*, 22 FCC Rcd 5842, 5855 n. 85 (2007) (“[F]raudulent representations to another governmental unit are considered only when a specific finding of fraudulent representation is adjudicated”).

⁶⁹ *See generally Petition*.

“the scope of [its] analysis will be much narrower than the term ‘character’ implies.”⁷⁰ In fact, in the *Character Policy Statement*, the Commission modified the range of non-FCC misconduct that it would consider relevant and emphasized that it no longer concerns itself with attempting to evaluate “‘moral’ character” in ways that “sometimes colored past Commission deliberations.”⁷¹ Notwithstanding these clear statements and the controlling 1986 *Character Policy Statement*, the Petitioner cites to a 1981 case and persists in accusing Fox of having “bad character” based on nothing other than allegations and assertions about unadjudicated non-FCC misconduct by independent corporate entities.⁷² The Commission easily should dismiss these unfounded arguments.

B. The *Petition* Cannot Draw Any Nexus Whatsoever Between News Corp.’s European Subsidiaries and Fox, and Accordingly Would Not Present Any Issues for Consideration Even If There Were Adjudicated Wrongdoing

In the event that any individual employed at News International, News Group Newspapers or *News of the World*, or any of the entities themselves, is adjudicated in the future to have engaged in wrongdoing, the *Petition* still would fall woefully short of establishing a prima facie case against the Stations. As the Petitioner readily acknowledges, the *Character Policy Statement* makes clear that even when adjudicated, the Commission will consider non-FCC misconduct by a parent or sibling of a licensee only if: (1) there is “a close, ongoing relationship” between the licensee and the company at issue; (2) they “have common principals”; and (3) those principals are “actively involved in day-to-day operations of the broadcast subsidiary.”⁷³ In other words, “non-FCC misconduct should not be

⁷⁰ *Character Policy Statement*, 102 F.C.C.2d at 1183.

⁷¹ *Id.* at 1190.

⁷² *See Petition*, at 2, 8 n. 13 (citing *Character Qualifications*, 87 F.C.C.2d at 839).

⁷³ *See Petition*, at 10 (citing *Character Policy Statement*, 102 F.C.C.2d at 1218-19).

considered relevant unless there is a sufficient nexus between the broadcast subsidiary” and the parent or sibling subsidiary adjudicated to have engaged in wrongdoing.⁷⁴

This test cannot be met in connection with the matters raised in the *Petition*, because, quite simply, there is no ongoing relationship whatsoever between either News International or News Group Newspapers, on the one hand, and Fox on the other hand. This is so overwhelmingly clear that the *Petition* does not even attempt to claim otherwise.

Instead, the *Petition* spends an inordinate amount of time attempting to demonstrate the existence of a close relationship between Fox and News Corp.⁷⁵ That is a total non-sequitur. Even assuming *arguendo* that there were a close relationship (and Petitioners, relying solely on newspaper articles – several nearly two decades old⁷⁶ – have not met their burden of demonstrating that this is the case), it still would be irrelevant under the *Character Policy Statement*. For even though News Corp. is the parent of News International and News Group Newspapers, News Corp. itself has not been charged with any wrongdoing. That News Corp. is the parent of subsidiaries operating in Europe does not *ipso facto* make News Corp. the party accused of, or responsible for, any of those subsidiaries’ alleged wrongdoing. And Petitioner has offered no rationale for why the Commission should ignore the distinction between separate legal entities.

⁷⁴ *In re Policy Regarding Character Qualifications in Broadcast Licensing*, 7 FCC Rcd 6564, 6567 (1992) (“1992 Character Policy Recon.”).

⁷⁵ *See Petition*, at 11-15.

⁷⁶ *See id.* at 12-13. Not only does Petitioner cite to newspaper articles dating back to 1992, its cites relate almost exclusively to K. Rupert Murdoch’s alleged role in operating the FOX broadcast network. As noted, these articles cannot form the basis for a petition to deny, but even if the FCC considers them, they do even purport to offer current information regarding Mr. Murdoch’s relationship to the Stations or Fox the licensee.

In proceedings in review of the very *Character Policy Statement* that governs these matters, the Commission acknowledged that “it is a well established principle of corporation law that a corporate subsidiary has a separate identity from its parent company”⁷⁷ Likewise, the FCC has held that even though a parent “exercises control” over subsidiaries, “these are distinct corporations which can have very different functions and purposes, notwithstanding the parent-subsidiary relationship.”⁷⁸ The Petitioner cannot will away legal distinctions merely because they are inconvenient to its case.⁷⁹

At most, the *Petition* alleges that News Corp. “failed generally to remedy the wrongs of its subsidiaries or aid the police, courts, and government in finding and punishing those responsible.”⁸⁰ In reality, News Corp. has cooperated extensively with U.K. police and other officials and has voluntarily provided to authorities a tremendous amount of information, some of which has proved critically important in the U.K. police’s investigation of wrongdoing. In particular, News Corp. established a Management and Standards Committee (MSC), independent of the subsidiaries where the alleged misconduct occurred, to take responsibility for all matters in relation to allegations about improper conduct at News International and News Group Newspapers. The MSC works to ensure full cooperation with

⁷⁷ *In re Character Qualifications in Broadcast Licensing*, 1 FCC Rcd 421, 423 (1986).

⁷⁸ *In re Comparative Consideration of 76 Groups of Mutually Exclusive Applications*, 22 FCC Rcd 6101, 6118 (2007) (FCC refusing to “impute the localism qualifications of one corporation to a separately organized . . . [subsidiary] corporation”). *See also In re Application of Progress Energy Service Company, LLC*, 19 FCC Rcd 3967, 3968 (2004) (FCC finding that a parent company’s waiver did not suffice to excuse a subsidiary from compliance with its rules).

⁷⁹ Even as it identifies various arrested individuals as employees or agents of *News of the World* or News International, the *Petition* nonetheless erroneously asserts that “[m]ultiple News Corp. [e]xecutives and [r]eporters [h]ave [b]een [a]rrested or [c]harged” *Petition*, at 18. Putting aside that even this claim reflects no adjudication, the Petitioner has no basis for characterizing any arrested or charged individual as an employee of News Corp. It simply is not true.

⁸⁰ *Id.* at 28.

all investigations. It is authorized to conduct internal investigations and has powers to direct News International staff to cooperate fully with all external and internal investigations, and to preserve, obtain and disclose appropriate documents. Petitioner's assertions notwithstanding, this is not an accusation sufficient to establish a prima facie case that Fox lacks the requisite character to hold broadcast licenses.

The *Petition* does point out that one employee and one contractor of *News of the World* pleaded guilty in 2006 to illegally intercepting voicemail messages in the United Kingdom,⁸¹ but the Petitioner does not assert, nor could it, that this fact implicates the FCC's character policy or has any bearing on the Stations' renewal applications. Neither the employee nor the contractor has ever been an officer or director, or otherwise an attributable interest holder, of News Corp. or Fox.⁸²

Given that Petitioner cannot point to any relevant adjudication in connection with the matters addressed in the *Petition*, and in light of the complete lack of any nexus between Fox and the European entities whose alleged activities are the subject of the *Petition*, there is no basis for the Commission to give the *Petition* any further consideration.

IV. CONCLUSION

As the foregoing demonstrates, the Petitioner's exclusive complaint is that Fox lacks the requisite "character" to be a licensee. The *Petition*, however, is not supported by an appropriate affidavit of a party in interest with personal knowledge of the facts alleged. Moreover, the *Petition* seeks relief that the Commission – consistent with its mandate under

⁸¹ See *id.*, at 18 (citation omitted).

⁸² For all of the same reasons outlined above, the *Petition*'s parting shot – allegations against *News of the World* relating to 9/11 victims and charges that an entirely separate News Corp. subsidiary was investigated in 2005 in connection with the purchase of FLOORgraphics – fails to state a claim. See *id.* at 32-33. Neither of these two allegations resulted in any adjudication of wrongdoing against anyone.

Section 309(k) of the Act – cannot provide. Even if the Commission nonetheless were to evaluate the merits of Petitioner’s claims, it still should find that the *Petition* fails to establish a prima facie case. As the FCC has made clear, non-FCC misconduct is not an appropriate subject for Commission review unless it has been adjudicated by an ultimate trier of fact. Since the Petitioner cannot point to any relevant adjudication, the *Petition* should be dismissed and the Stations’ license renewal applications should be granted.⁸³

⁸³ Fox is aware that several informal objections have been filed in relation to the Stations’ renewal applications. *See, e.g.*, Letter from Bradley Snow to FCC, dated Sept. 6, 2012; Letter from Geraldine Saran to FCC, dated Aug. 27, 2012. To the extent that these objections, and any others that have been or may be filed in the future, focus exclusively on the subject matter of the *Petition*, Fox requests that they be dismissed for the same reasons set forth herein.

Respectfully submitted,

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Its Attorneys

September 21, 2012

EXHIBIT A

DECLARATION

I, Ellen S. Agress, hereby state as follows:

1. I am Senior Vice President and Deputy General Counsel of News Corporation, parent of the licensee of television broadcast stations WTTG(TV), Washington, D.C., WDCA(TV), Washington, D.C., and WUTB(TV), Baltimore, Md.
2. I have read the foregoing Opposition of Fox Television Stations, Inc. to the Petition to Deny filed by Citizens for Responsibility and Ethics in Washington, dated September 21, 2012 (the "Opposition").
3. Other than documents about which the Commission may take official notice, I have personal knowledge of the facts contained in the Opposition and declare that such facts are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 21, 2012.



Ellen S. Agress
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and Deputy General Counsel
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CERTIFICATE OF SERVICE

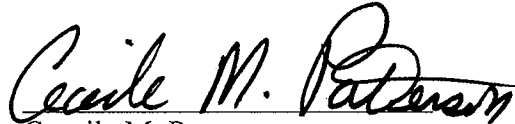
I hereby certify that on this 21st day of September, 2012, a true and correct copy of the foregoing Opposition to Petition to Deny has been served, in the delivery manner specified, on the following persons at the addresses shown below:

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Melanie Sloan
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(Via Federal Express)

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