

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Accepted / Filed

MAY - 1 2015

Federal Communications Commission
Office of the Secretary

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

PETITION TO DENY

The Office of Communication, Inc. of the United Church of Christ,¹ Rainbow/Push Coalition,² and Free Press³ (“Petitioners”), by their attorneys, the Institute for Public Representation, and pursuant to 47 U.S.C. § 309(d), and 47 CFR § 73.3584, petition to deny Fox Television Stations, Inc.’s (“Fox”) applications for renewal of television stations WWOR-TV, Secaucus, NJ, and WNYW, New York, NY.⁴

¹ UCC is a Protestant denomination comprised of nearly 6,000 congregations and more than 1.3 million members. For decades, the Office of Communication, Inc. of the United Church of Christ, Inc. has been a leading force in advocating diverse and responsive local media and to ensuring that women, persons of color and low-income persons have equal access to ownership, production, employment, and decision making in media. UCC churches are located throughout the country, including the New York, New York area.

² Rainbow/PUSH Coalition is a multi-racial, multi-issue, international membership organization that works to further social, racial, and economic justice for individuals who are disenfranchised politically, socially and economically. Rainbow/PUSH Coalition has vigorously worked to ensure equal opportunity and employment in media.

³ Free Press is a national, nonprofit nonpartisan organization that works to increase informed public participation in media policy debates and to generate policies that will produce a more competitive and public interest-oriented media system.

⁴ All three petitioners are parties in interest within the meaning of Section 309(d)(1) of the Communications Act. These parties have previously established their standing in a prior renewal proceeding against WWOR-TV and WNYW. In an abundance of caution, the parties have attached declarations demonstrating that they have members who reside within the service area of WNYW and WWOR-TV and would be aggrieved if the licenses are renewed.

Fox is controlled by K. Rupert Murdoch, who also controls News Corp., the publishers of the *New York Post* and the *Wall Street Journal*. The Commission's newspaper/broadcast cross-ownership (NBCO) rule prohibits any grant of a license that results in the common control of a daily newspaper and a television station serving the same area. Renewing the licenses of WWOR and WNYW, would clearly violate this rule, but for a "temporary" waiver for WWOR and the *New York Post* granted by the Media Bureau in August 2014 under delegated authority.⁵ Petitioners filed a timely application for review of the Bureau decision on October 8, 2014.

Petitioners now request that the Commission act on the application for review *before* acting on Fox's 2015 license renewal applications. Should the Commission reverse the Bureau's grant of the waiver on any of the requested grounds, then it must deny these applications for renewal. In the event the Commission does not reverse the Bureau decision, it nonetheless must consider whether grant of these applications would violate the NBCO rule because the premises underlying the Bureau's grant of a waiver have changed.

I. Background

In 2001, the Commission approved Fox's acquisition of WWOR-TV on the condition that it came into compliance with the NBCO Rule within 24 months. Fox did not comply. Fourteen years later, Fox still owns WWOR-TV along with WNYW(TV), the *New York Post*, and the *Wall Street Journal*, as well as other media outlets serving the New York metropolitan area.

In 2007, UCC/RPC filed a Petition to Deny the renewal of WWOR and WNYW.⁶ They urged the FCC to act on a then-pending Petition for Reconsideration, which if granted, would have rescinded Fox's earlier temporary waiver of the NBCO rule.⁷ Petitioners argued, much like

⁵ *Fox Television Stations, Inc.*, 29 FCC Rcd 9564, 9565 (2014) ("2014 Bureau Order").

⁶ Free Press opposed Fox's request for a modification of waiver to allow it to continue to own both stations and the *New York Post* on April 15, 2005.

⁷ Rather than repeat all of the facts and arguments made in the prior renewal, transfer and waiver

here, that if the FCC rescinded Fox's waiver as requested, renewal of the licenses for WWOR-TV and WNYW would violate the plain language of the NBCO Rule and the applications would be defective on their face. In the alternative, the 2007 Petition to Deny urged the FCC to designate the renewal applications for a hearing because Fox had failed to make the showing required by Section 309 of the Communications Act.

Unfortunately, the Commission did not act on the Petition for Reconsideration before considering the applications for license renewal. Nor did it act on the renewal applications on a timely basis. Instead, the Bureau waited nearly an entire license term – until August 2014 – before renewing the license for WWOR.⁸ The Bureau Order provided no summary or analysis of UCC/RPC's allegations. Instead, it concluded that:

In light of the Commission's having just begun a proceeding that bears directly on the combination at issue here, which is admittedly unique (among other things, two television stations, one newspaper, the number one media market), we believe it is inappropriate to make a final ruling on Fox's request for a permanent waiver at this time. Therefore, we will deny its Modification Petition and Supplement. Instead, we will afford the licensee 90 days after the effective date of an order in the 2014 Quadrennial Review that either adopts a new NBCO rule or upholds our existing rule to (1) comply with the rule in effect at that time or (2) file a new request for a waiver of such rule.⁹

Petitioners filed an application for review urging the Commission to reverse the Bureau's decision for several reasons. First, it explained that it was irrational to grant a waiver based on the recently initiated 2014 Quadrennial Review, because the 2014 Quadrennial Review proposed to retain the NBCO rule and allow waivers only on a case-by-case basis.

modification proceedings, Petitioners ask that these filing be incorporated by reference.

⁸ Fox' 2007 renewal application for WNYW remains pending.

⁹ 2014 Bureau Order, 29 FCC Rcd at 9579, ¶ 44 (footnotes omitted).

Second, because the Commission is required to review its broadcast ownership rules every four years, the Bureau's "temporary" waiver in effect operated as a permanent waiver of the NBCO rule, which the Bureau's *Order* purported to deny.

Third, the Bureau's decision violated longstanding Commission policy of not granting waivers of the NBCO rule because of the pendency of a rulemaking proceeding. This is particularly important with regard to ownership rules, since the Commission is required to review its ownership limits every four years.

Finally, the application for review argued that the Bureau's action was arbitrary and capricious because even temporary waivers are available only where the applicant has demonstrated that the purpose of the rule—diversity and competition—is better served by waiving than enforcing the rule. Here, the Bureau failed to find that Fox met this standard and failed to address any of the objections raised by UCC/RPC. Denying UCC/RPC's Petition to Deny with no analysis or discussion also violated the requirements of Section 309(d) of the Communications Act. Had the Bureau properly considered the pleading before it, it should have concluded that the Petition to Deny established a *prima facie* case that renewal was not in the public interest and raised substantial and material questions of fact requiring a hearing.

II. Renewing WWOR's License Would Not Serve the Public Interest

The Commission may renew a broadcast station license only if it "upon examination of such application and upon consideration of such other matters as the Commission may officially notice, shall find that public interest, convenience, and necessity would be served by the granting thereof." 47 USC §309(a). Such a finding is not possible in this case.

A. The Commission should reverse the Bureau's 2014 waiver and deny Fox's renewal applications

The Commission's newspaper-broadcast cross-ownership (NBCO) rule prohibits the grant of a broadcast license to any party that "directly or indirectly owns, operates or controls a

daily newspaper” if the station's contour “encompass[es] the entire community in which such newspaper is published.” 47 CFR § 73.3555(d). Here, the stations’ contours encompass the area where the Murdoch-controlled *New York Post* and the *Wall Street Journal* are published. Thus, the license renewals may only be granted if Fox has a valid waiver of the NBCO rule.

As discussed above, although the Bureau granted an indefinite waiver to Fox, Petitioners have asked the full Commission to reverse that decision. The Commission can and should take official notice of Petitioners’ application for review and should grant it for the reasons stated in the application and summarized above. If the Commission reverses the Bureau’s grant of a temporary waiver, renewal of these licenses is prohibited under the NBCO Rule.

B. Should the Commission decline to overturn the Bureau’s 2014 waiver, it must nonetheless determine whether a waiver remains in the public interest in light of changed circumstances

If the Commission does not address the application for review first, or if it finds the Bureau’s actions reasonable and consistent with Commission precedent, it must nonetheless make an independent determination whether the waivers remain in the public interest in light of changed circumstances.

As noted above, the Bureau made no new findings to justify a new temporary waiver in 2014. When the Commission last considered the merits of a Fox waiver request in 2006, it found that “the conditions justifying that original [2001] waiver, the financial vulnerability of the *New York Post* . . . still exist,” that grant of a 24-month “waiver should provide sufficient certainty to assure that [Fox] and News Corp. will continue to take appropriate action or expend necessary capital to preserve and expand *The New York Post*.”¹⁰ The Commission affirmed this reasoning

¹⁰*K. Rupert Murdoch, (Transferor) and Fox Entertainment Group, (Transferee)*, 21 FCC Rcd 11499, 11502 (2006), recon. denied, 24 FCC Rcd. 5824 (2009).

on reconsideration in 2009.¹¹ It further explained that “a significant purpose of the waiver was to preserve the viability of the *New York Post*” and that “in the years since our previous waivers regarding Fox and the *New York Post*, it has invested hundreds of millions of dollars in the paper to improve it and its service to the community.”¹² Thus, it concluded that “[l]oss of the *New York Post* would decrease the diversity of voices in the New York markets and, thereby, disserve the purpose of the rule.”¹³

Preserving the viability of the *New York Post*, however, can no longer justify a waiver of the NBCO rule. At the time the previous waivers were granted, the *New York Post*, WWOR and WNYW were all controlled by News Corp. However, on June, 28, 2013, the old News Corp. was split in two. Its publishing assets, including the *New York Post*, were spun off into a new entity, also named News Corp. The old News Corp., which retained the entertainment and broadcasting assets, was renamed 21st Century Fox, Inc.¹⁴ Although the two corporations are now separately traded public companies, one individual, K. Rupert Murdoch continues to control both.¹⁵

In the wake of the spinoff of the *New York Post* to an independent company, there is no

¹¹ 24 FCC Rcd at 5927.

¹² *Id.* at 5829.

¹³ *Id.*

¹⁴ *See* 21st Century, Inc. Form 10-K (August 13, 2014) at p. 3.

¹⁵ Both 21st Century Fox and the new News Corp. are controlled by K. Rupert Murdoch through the Murdoch Family Trust. Fox does not dispute this. *See* 21st Century, Inc. Form 10-K (August 13, 2014) at p. 22. Murdoch is Chairman and CEO of 21st Century Fox and Executive Chairman of News Corp. and serves on the board of both. For all the reasons described above and in the Application for Review, the Order granting the waiver request is erroneous and requires reversals by the Commission. Once the Commission grants UCC and RPC’s Application for Review, Fox will no longer have a waiver to own both stations and the *New York Post* and would be in violation of the NBCO Rule. By the terms of the NBCO Rule, the Commission cannot grant renewal so long as it continues to own WWOR, WNYW, and the *New York Post*.

longer any possible benefit that can accrue to the *New York Post* from the fact that the two companies are under common control. The Board of Directors and management of 21st Century Fox have a fiduciary obligation to their shareholders and cannot subsidize or otherwise take actions to benefit the *New York Post*. Accordingly, the waivers for both WNYW and WWOR should be terminated.

In addition, by its terms, the Bureau's 2014 waiver only applies to the two television stations and the *New York Post*. When News Corp. acquired the *Wall Street Journal* in 2007, the case law with respect to common ownership of a "national" newspaper and a TV station was ambiguous.¹⁶ However, in April, 2010, the *Wall Street Journal* began to publish a "Greater New York Section" covering all manner of local news and sports stories.¹⁷ Note 6 to 47 C.F.R. §73.3555 defines a daily newspaper as "one which is published four or more days per week, which is in the dominant language in the market, and which is circulated generally in the community of publication." The *Wall Street Journal* is published six days a week in English, and has a circulation in the New York area of approximately 170,000.¹⁸ Thus, the Greater New York Section is a "daily newspaper" within the meaning of the NBCO rule. As a result, even if the 2014 Bureau waiver were valid as to the *New York Post*, it does not support a waiver as to the Greater New York Section of the *Wall Street Journal*, and renewal of the licenses is not permitted under the NBCO rule.

¹⁶ See UCC/RPC/FP Opposition to Fox Television, Inc. and News Corporation Limited's Supplement to Petition for Modification of Permanent Waiver (July 15, 2009) at 10-11.

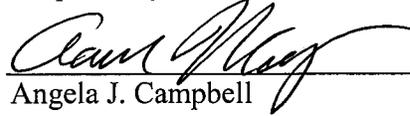
¹⁷ See *Wall Street Journal Launches "Greater New York,"*
<http://www.dowjones.com/pressroom/presskits/wsjnyedition/wsjnypresskit.asp>.

¹⁸ See
http://www.wsjmediakit.com/files/uploads/201410/PDF_NewspaperRegionalRates2015.pdf at page 11

Conclusion

For the foregoing reasons, the Commission should rescind the Bureau's grant of a waiver pending the outcome of the 2014 Quadrennial Review and deny Fox's applications for renewal of television stations WWOR and WNYC.

Respectfully submitted



Angela J. Campbell

Andrew Jay Schwartzman

Aaron Mackey

Institute for Public Representation

Georgetown University Law Center

600 New Jersey Avenue, NW

Suite 312

Washington, DC 20001

(202) 662-9535

May 1, 2015

*Counsel for UCC and
Rainbow/PUSH Coalition*

Angela Campbell
Georgetown Law Center
202-662-9634

DECLARATION

1. My name is David K. Popham and I am a member of the United Church of Christ, at the First Congregational Church, located at 40 S Fullerton Ave, Montclair, NJ 07042.
2. My home address is 16 Douglas St, Bloomfield NJ 07003.
3. I am a regular viewer of the television stations serving the New York area, including WWOR-TV and WNYW(TV), as well as a regular reader of newspapers serving the New York area including *The New York Post*.
4. Fox's common ownership of *The New York Post*, WNYW(TV), and WWOR-TV harms me by sharply reducing the number of independent voices available to me. Unless the licenses are denied, my right to access diverse programming will continue to be harmed. My concern here is particularly around the issue of diverse and differing opinions. When new sources represent the same interests, i.e. the concerns of their one owner there is a flattening of the presentation and a weaving of a singular narrative around incident. I have in mind the death of Eric Garner and the narrative of culpability shared among these news outlets.
5. WWOR-TV does not provide me and my family with adequate local news coverage of New Jersey. Fox's ownership of WWOR-TV has limited the amount and diversity of coverage of local news and public affairs in New Jersey. I have yet to receive any significant coverage of the New Jersey state budget problems. I became concerned when talking with a New Jersey legislature at the lack of knowledge I have about a state budget which borders on a crisis. Yet from WWOR-TV there is only silence. Apparently, even though they claim to report for my state, Trenton is considered too far away to report about. For that matter very little coverage of New Jersey politics comes out of New York.
6. This Declaration has been prepared in support of the foregoing Objection to Fox's waiver request.
7. This statement is true to my personal knowledge, and is made under penalty of perjury of laws of the United States of America.

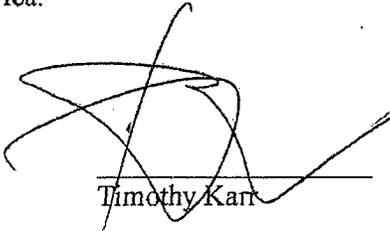
Date Executed: 4-28-15


David K. Popham

DECLARATION

1. My name is Timothy Karr, and I am the Senior Director of Strategy at Free Press, located at 40 Main Street, Suite 301, Florence, MA 01062.
2. Free Press is a national, nonpartisan organization with more than 900,000 members working to reform the media and increase public participation in critical communications policy debates.
3. I reside at Two 14th Street, Hoboken, NJ, 07030.
4. I am a regular viewer of the television stations serving the New York area, including WWOR-TV and WNYW(TV), as well as a regular reader of newspapers serving the New York area including *The New York Post*.
5. Fox's common ownership of *The New York Post*, WNYW(TV), and WWOR-TV harms me by sharply reducing the number of independent voices available to me. Unless the licenses are denied, my right to access diverse programming will continue to be harmed. If Fox complied with the rule, as it should, then the stations or newspaper would have to be divested to a new owner, possibly a minority or female owner.
6. WWOR-TV does not provide me and my family with adequate local news coverage of New Jersey. Fox's ownership of WWOR-TV has limited the amount and diversity of coverage of local news and public affairs in New Jersey.
7. This Declaration has been prepared in support of the foregoing Petition to Deny.
8. This statement is true to my personal knowledge, and is made under penalty of perjury of laws of the United States of America.

Date Executed: MAY 1, 2015

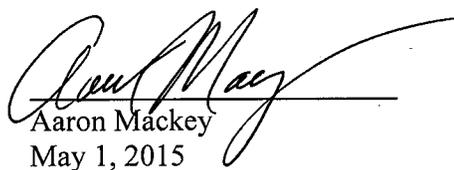


Timothy Karr

CERTIFICATE OF SERVICE

I, Aaron Mackey, Staff Attorney, Institute for Public Representation, do hereby certify that, on May 1, 2015, pursuant to 47 C.F.R. §1.47(f), a copy of the forgoing Petition to Deny Renewal of WWOR(TV) was served by first class U.S. mail, postage prepaid, upon the party at the address below.

Joseph M. Di Scipio
Fox Television Stations, Inc.
400 North Capitol Street, NW
Suite 890
Washington, DC 20001


Aaron Mackey
May 1, 2015