

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
the Applications of)	
)	
UTV of San Francisco, Inc., KCOP Television, Inc.)	File Nos. BALCT-20000918ABB,
UTV of San Antonio, Inc., Oregon Television, Inc., UTV of Baltimore, Inc., WWOR-TV, Inc., and)	ABC, ABD, ABF, ABK, ABL,
UTV of Orlando, Inc. and United Television, Inc. (Assignors))	ABM, ABN, ABU, ABY, ABG,
)	ABH, ABI, ABJ, ABO, ABP,
)	ABQ, ABR, ABS, ABV, ABW,
)	ABX, ABZ, ACA, ACB, ACC,
)	ACD, ACE
)	
and)	
)	
Fox Television Stations, Inc. (Assignee))	
)	
For Consent to the Assignment of Licenses for Stations KBHK-TV, San Francisco, CA; KCOP-TV, Los Angeles, CA; KMOL-TV, San Antonio, TX; KPTV-TV, Portland, OR; WUTB-TV, Baltimore, MD; WWOR-TV, Secaucus, NJ; WRBW-TV, Orlando, FL; KMSP-TV, Minneapolis, MN; KTVX-TV, Salt Lake City, UT; KUTP-TV, Phoenix, AZ)	

MEMORANDUM OPINION AND ORDER

Adopted: July 23, 2001

Released: July 25, 2001

By the Commission: Chairman Powell and Commissioner Abernathy approving and issuing separate statements; Commissioners Tristani and Copps dissenting and issuing separate statements.

1. The Commission has before it for consideration the applications to assign the licenses of the ten television stations held by subsidiaries of Chris-Craft Industries¹ to Fox Television Stations, Inc. (FTS). A petition to deny was filed jointly by the Office of Communication, Inc. of the United Church of Christ, Academy of Latino Leaders in Action, Black Citizens for a Fair Media, Center for Media Education, Consumer Federation of America, Consumer's Union, New York Metropolitan Association of the United Church of Christ, Rainbow/PUSH Coalition, and Valley Community Access Television (Petitioners).² For

¹ The Chris-Craft subsidiaries involved are: UTV of San Francisco, Inc., KCOP Television, Inc., UTV of San Antonio, Inc., Oregon Television, Inc., UTV of Baltimore, Inc., WWOR-TV, Inc., and UTV of Orlando, Inc. and United Television, Inc., which will be collectively referred to as Chris-Craft.

² The Petitioners also filed a Motion to Dismiss Application, arguing that the application is materially incomplete and contains inconsistent information. The Petitioners further assert that because FTS's application is allegedly (continued....)

the reasons stated below, we deny the petition to the extent discussed below and grant the applications subject to conditions to ensure compliance with our multiple ownership and cross-ownership rules.

I. INTRODUCTION

2. On September 18, 2000, FTS and Chris-Craft filed applications seeking Commission consent to the assignment of ten television broadcast licenses held by Chris-Craft.³ FTS is the licensee of 24 television broadcast stations. FTS is a wholly-owned subsidiary of Fox Television Holdings, Inc. (FTH). An entity called Fox Entertainment Group (FEG) owns 100% of the common stock of FTH. FEG also has a 24% voting interest in FTH and all of the equity except for \$760,000. Rupert Murdoch owns 100% of the preferred stock, controls 76% of the votes and has a \$760,000 investment with a fixed 12% annual return in FTH. Mr. Murdoch is also chairman and chief operating officer of FTH. Following the transaction, FEG will be owned approximately 85.25% by FEG Holdings, Inc. and 14.75% by public shareholders. The News Corporation Limited (News Corp.), an Australian corporation, owns 100% of FEG Holdings.⁴

II. THE TRANSACTION

3. The parties seek to structure the transaction as a tax-free reorganization.⁵ Chris-Craft will be merged into News Publishing Australia Limited (NPAL), an acquisition subsidiary of News Corp. At the time of the mergers, NPAL, through intermediate subsidiaries, will transfer essentially all of the acquired broadcast assets to FEG, in exchange for shares of FEG stock. As set forth in the attached Exhibit B, those assets will be held by a newly formed subsidiary of FEG, Newco. The station licenses will be assigned to FTS. Newco will perform the day-to-day operations of the station pursuant to an operating agreement. On January 25, 2001, the applicants filed a draft of an amended operating agreement (Operating Agreement) that set out the respective rights and responsibilities of FTS and Newco regarding the stations' operations.⁶

4. Under the Operating Agreement, FTS has "authority, power, and control over the management and operations of the Stations" and is responsible for setting policy regarding programming, personnel, and finances. FTS has the right to approve all programming, including the power to direct the scheduling of

(Continued from previous page) _____

incomplete and inconsistent, it raises a substantial and material question of fact regarding lack of candor. Having reviewed the application in its entirety, we conclude that the application is materially complete, and thus we are capable of rendering a determination pursuant to Sections 309 and 310 of the Communications Act of 1934 based on the information before us. Having found that the application is materially complete and consistent, we reject the Petitioners' assertion that FTS's disclosures raise a substantial and material question of fact concerning lack of candor.

³ A complete list of the stations to be assigned is attached as Exhibit A.

⁴ Charts describing the corporate structure of the subject companies before and after the proposed transaction are attached in Exhibit B.

⁵ On March 21, 2001, the Internal Revenue Service issued a private letter ruling approving the transaction as a tax-free reorganization.

⁶ See Amendment to Assignee's Portion of the Application dated January 25, 2001, Exhibit No. 1. This amendment was filed in response to a letter dated December 21, 2000 from Roy J. Stewart, Chief, Mass Media Bureau, to counsel for the applicants (FCC Letter). Because the draft Operating Agreement attached to the FCC Letter has not been executed, any grant of the instant applications will be conditioned upon execution and filing of the final Operating Agreement consistent with Commission rules. 47 C.F.R. §73.3613.

any programming and to direct Newco to acquire, produce, pre-empt or discontinue any programming. FTS shall select and employ two employees, one management-level, at each station. FTS shall select the general manager of each station, who shall report directly to the chairman of FTS or an FTS employee designated by the chairman. In addition, the department heads of each station shall report to the respective department heads of FTS. FTS will direct the preparation of all budgets for the stations, have the right to approve specific equipment purchases, and direct purchases by Newco. FTS also will have the contractual right to cause the sale of the licenses and the assets of the stations without the approval of Newco as long as the sale is an arms-length transaction at fair market value.

5. The Operating Agreement vests responsibility for the day-to-day operations of the stations in Newco. Subject to the ultimate authority and control of FTS, Newco has the right to enter into programming contracts. Except for those individuals who work directly for FTS, Newco shall employ all personnel, subject to the control and approval of FTS. Newco will purchase all equipment, subject to the FTS approved budget and will pay all expenses and capital costs. All receipts will be deposited in Newco's accounts established for the respective stations for the benefit of Newco and FTS. Newco will receive 95% of all net income and pay 95% of all net losses, while FTS will receive 5% of all net income and pay 5% of all net losses. In the event of the sale of a station, Newco shall receive 95% of the profit and FTS shall receive the remaining 5%.

6. As a result of the transaction, television duopolies will be formed in the New York, Los Angeles, Phoenix, and Salt Lake City Designated Market Areas (DMAs). The applicants have made showings that these television duopolies will comply with our local multiple ownership rules, except in the case of Salt Lake City. There, the applicants have asked for a temporary waiver to come into compliance with our rules. The applicants have also requested a temporary waiver to come into compliance with our national ownership cap, which the combined company will exceed as a result of the proposed transaction. Finally, the proposed transaction would result in the common ownership of two television stations and the *New York Post (Post)* in New York City. In their showing, the applicants argue that the television/newspaper combination would comply with a waiver the Commission previously granted permitting the common ownership of one television station and the *Post*. In the alternative, the applicants request an interim waiver permitting the proposed combination pending the outcome of a rulemaking to re-examine the television/newspaper cross-ownership rule.

7. The Petitioners oppose the application on the grounds that the proposed transaction would violate the limits on alien ownership of broadcast licensees. The Petitioners also argue against the creation of the television duopolies in Phoenix, New York, and Los Angeles, and against allowing FTS the requested time to comply with the local multiple ownership rules in Salt Lake City. The Petitioners further oppose granting a waiver to permit Fox to come into compliance with the national ownership cap and oppose permitting the common ownership of two television stations in New York City and the *Post*.

III. ALIEN OWNERSHIP AND CONTROL

8. *Background.* Under Section 310(d) of the Communications Act, the Commission may grant its consent to a proposed transfer only if it determines that "the public interest, convenience, and necessity will be served thereby." The Commission generally considers whether the proposed transaction will be consistent with the Communications Act and the Commission's rules and, in addition to complying with those rules, whether the transaction would otherwise serve the public interest. Where broadcast licenses are concerned, the effects of a proposed transaction on the diversity of voices and economic competition in a given market have long been core considerations in determining whether a transaction serves the public interest, convenience, and necessity.

9. As we recently determined in *Deutsche Telekom/VoiceStream*, non-governmental alien ownership and control issues, such as those presented, in this case are governed by Section 310(b) of the

Communications Act.⁷ The alien ownership interests here are indirect as shown on Exhibit B and, therefore, we apply the alien ownership limits set forth in Section 310(b)(4) of the Communications Act, which prohibits granting a license to:

[A]ny corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by any foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the revocation or refusal of such license.⁸

10. In *Fox Television Stations, Inc. (Fox)*,⁹ the Commission held that the News Corp.'s interest in Twentieth Holding Corporation (Holdings)¹⁰ exceeded the 25% benchmark established in §310(b)(4). As illustrated in Exhibit B, Holdings was the immediate parent of FTS. Even though News Corp. owned shares of Holdings representing only 24% of the voting rights, the Commission found that News Corp. contributed over 99% of the capital invested and was entitled to virtually all of the economic incidents of the operation.¹¹ However, the Commission also found that Mr. Murdoch, by virtue of his controlling voting interest in Holdings, exercised *de jure* control over Holdings and, thereby, FTS.¹² The Commission also found that Mr. Murdoch was in charge of Holdings' day-to-day operations and dominated its corporate affairs.¹³ Therefore, even though FTS and Holdings were subsidiaries of News Corp. for financial reporting purposes, the totality of the evidence demonstrated that Mr. Murdoch exercised *de facto* control of the company. The Commission ordered FTS to submit a showing as to why its ownership structure served the public interest or to explain how it intended to bring that structure in line with the statutory benchmark.¹⁴

11. In its subsequent decision in the matter,¹⁵ the Commission found that the ownership structure was in the public interest. The Commission based its decision on the unique equities of the case, including what it found to be FTS's good faith understanding of the statute.¹⁶ The Commission also observed that the capital gains liability could be between \$200 million and \$720 million if FTS were required to restructure by selling a large portion of its stock to investors other than News Corp.¹⁷ The Commission weighed these

⁷ *VoiceStream Wireless Corporation, Inc., Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, Memorandum Opinion and Order (IB Docket No. 00-187), FCC 01-142 (2001), at ¶41.

⁸ 47 U.S.C. §310(b)(4).

⁹ *Fox Television Stations*, 10 FCC Rcd 8452 (1995).

¹⁰ Holdings was the parent of FTS. As discussed in ¶13, *infra*, in a 1998 reorganization, Holdings became FEG, FTS became FTH and a new FTS was formed.

¹¹ *Id.* at 8456.

¹² *Id.*

¹³ *Id.* at 8457.

¹⁴ *Id.* at 8524.

¹⁵ *Fox Television Stations*, 11 FCC Rcd 5714 (1995) (*Fox II*).

¹⁶ *Id.* at 5723.

¹⁷ *Id.* at 5724.

equities and costs against the statutory interest in limiting foreign participation in broadcasting. It concluded that the inequity and expense of requiring corporate restructuring outweighed the statutory interest in limiting alien ownership in the unique circumstances present there, particularly because an American citizen exercised *de jure* and *de facto* control of the licensee and there was no reason to believe that Australian investment implicated national security concerns.¹⁸

12. The Commission then went on to consider future acquisitions by FTS, finding that “it would disserve the public interest to confine our decision to stations FTS already owns, for doing so would unnecessarily hinder the company’s ability to expand and frustrate its reasonable expectations of doing so.”¹⁹ The Commission therefore concluded that “FTS, as presently structured may, consistent with the public interest, acquire additional broadcast stations (up to the allowable maximum set forth in our ownership rules, see 47 C.F.R. §73.3555).”²⁰

13. In 1998, the staff granted a short form assignment (1998 Assignment) of the stations then licensed to FTS and its subsidiaries. The applicants stated that the stations would be transferred to a new FTS; FTS would be renamed Fox Television Holdings (the current FTH); and Twentieth Holdings Corporation would be renamed Fox Entertainment Group (FEG). See attached Exhibit B. The applicants further stated that, following the *pro forma* reorganization, approximately 18% of FEG’s stock would be publicly traded while the rest would continue to be ultimately owned by News Corp. The grant of the 1998 Assignment resulted in a reduction of the total alien equity interest in FEG.

14. The applicants argue that the proposed transaction is in compliance with the requirements of *Fox II* because FTS will have control of the station licenses and complete access to the operating assets of the stations. They argue that FTS, and thereby Mr. Murdoch, will have *de jure* and *de facto* control of the licensees, in accordance with *Fox II*. In contrast, the Petitioners contend that the structure proposed here is not the same as permitted in *Fox II* and requires us to conduct a new public interest analysis. The Petitioners contend that Newco, not FTS, will be in control of the Chris-Craft licenses, which they contend would violate §310(b)(4).²¹ Petitioners also claim that FTS has failed to demonstrate that grant of this transaction would be in the public interest.

15. *Discussion.* We agree with the applicants that the proposed structure complies with the Commission decision in *Fox II*. They are therefore entitled to rely on the holding of that case, and no additional public interest analysis under section 310(b)(4) is required under the circumstances here. The licenses will continue to be held by FTS and all of the stock of that entity will continue to be owned by FTH. Petitioners focus appropriately on whether Mr. Murdoch, an American citizen, will maintain *de jure* and *de facto* control over the licenses. The continuance of that control was the critical aspect of the structure that made possible the staff’s approval of the 1998 Assignment. The same control of the licenses

¹⁸ *Id.* at 5725.

¹⁹ *Id.* at 5728.

²⁰ *Id.*

²¹ Even if Newco is not in control of the licenses, Petitioners claim that the assignment to FTS would constitute a transfer of “bare licenses.” However, it is well established that the Commission will consider the entirety of the proposed transaction to determine whether it involves a bare license. *Douglas County*, 10 FCC Rcd 10429 (1995). Here, the physical assets are being assigned to a related company expressly to be used in the operation of the stations. The parties to the Operating Agreement are contractually required to transfer the physical assets along with the licenses if the stations are subsequently transferred. Therefore, no bare license issue is present. See *BBC License Subsidiary*, 10 FCC Rcd 7926, n.1 (1995).

by Mr. Murdoch, through his control of FTS, continues in the structure proposed here.

16. This conclusion is not altered by the fact that the stations' operating assets will be held by Newco, rather than FTS, because FTS will control the operations of the stations. The Commission's analysis of the station's locus of control generally rests on three factors: programming, personnel and finances.²² Here, under the first factor, FTS has the power to approve all programming, direct its scheduling and overrule any Newco programming decisions. FTS may require Newco to acquire, produce, pre-empt or discontinue any programming. Although Newco may enter into programming contracts and regularly schedule programming, all of its activities related to programming are subject to the approval and control of FTS, giving FTS control over station programming.

17. In regard to the second factor, personnel, the general manager, who is selected by FTS, and all of the department heads of each station report to FTS. Two employees at each station, including one management-level employee, are directly employed by FTS. Any personnel employed by Newco are subject to the control and approval of FTS. By having its own employees working at the station, including at least one manager, by having all of the department heads and the general manager report to FTS, and by subjecting all Newco personnel to the control and approval of FTS, the Operating Agreement gives FTS ultimate control over station personnel.

18. Under the third factor, finances, FTS retains control over the budget process. Although Newco can purchase equipment and make capital expenditures, it can only do so according to the budget prepared by FTS, making its financial actions subject to the control of FTS. Finally, FTS has the contractual right to cause the sale of the stations without Newco's consent, provided the sale is at arms-length.

19. We conclude that FTS has established that it will maintain the required control over the stations being acquired. In maintaining this control, FTS has complied with the mandate of *Fox II* that it, and thereby Mr. Murdoch, maintain *de jure* and *de facto* control over the licenses. Furthermore, the level of alien equity contribution has not increased. We find, therefore, that the proposed corporate structure complies with *Fox II* in all material respects, and thus no additional public interest analysis under Section 310(b)(4) is necessary.

IV. NATIONAL OWNERSHIP CAP

20. On November 7, 1996, we granted transfer of control applications that resulted in FTS owning stations having an aggregate national audience reach of 34.82 %.²³ Due to population changes within the respective DMAs and the addition of communities to two DMAs in Alabama, FTS's current aggregate national audience reach has increased to 35.352%. FTS states that following the merger with Chris-Craft it will control 34 television stations licensed to 29 DMAs having an aggregate national audience reach of 40.91%.

21. The Telecommunications Act of 1996 directed the Commission to amend its ownership rules to prohibit the grant, transfer or assignment of any television license to any entity if it would result in that entity having a cognizable interest in television stations with an aggregate national audience reach exceeding 35%.²⁴ Because FTS's aggregate national audience reach following the merger would exceed the cap by 5.91%, it has asked for 12 months to reduce its national audience reach to its current level of

²² See, e.g., *WGPR, Inc.*, 10 FCC Rcd 8140 (1995), *remanded and vacated on other grounds, sub nom, Serafyn v. FCC*, 149 F.3d 1213 (1998); *Choctaw Broadcasting Corporation*, 12 FCC Rcd 8534 (1997).

²³ *NWCG Holdings Corp.*, 11 FCC Rcd 16318, 16324 (1996).

²⁴ Telecommunications Act of 1996, §202(c)(1); 47 C.F.R. §73.3555(e).

35.352%. FTS argues that the 12-month temporary waiver would serve the public interest by permitting orderly divestiture while avoiding disruptions in programming and service to the respective communities, and would be consistent with Commission precedent.

22. The Petitioners maintain that a 12-month waiver should not be granted because viewpoint diversity and economic competition will be unduly compromised during the waiver period, and because FTS has not justified the need for a 12-month waiver in this instance. The Petitioners further contend that FTS's motive in requesting a 12-month waiver is to delay compliance in order to avoid it altogether. Alternatively, the Petitioners argue the Commission should order FTS to disclose their specific divestiture plans, and should only grant a 6-month temporary waiver of the national television multiple ownership rule, expressly conditioned upon divesting a sufficient number of television stations to reduce the national audience reach to 35%.

23. The Commission has determined that in multiple-station transactions the overall benefits of allowing time for an orderly divestiture will outweigh any temporary impact on diversity and competition from common ownership during a reasonable period following grant of the application.²⁵ In *Shareholders of CBS Corporation*, we granted a 12-month temporary waiver where CBS/Viacom's post-merger aggregate national audience reach was slightly more than 41%, which is slightly greater than the national audience reach that would exist immediately following the acquisition of the Chris-Craft stations by FTS.²⁶

We believe that a similar length of time to come into compliance with the national audience reach cap is warranted in this proceeding. Given the size of the proposed transaction, the practical difficulties of divesting the necessary stations, and our policy of avoiding forced sales, we conclude that the advantages of granting a 12-month temporary waiver of the national ownership cap in this instance will outweigh any temporary impact on diversity and competition and is in the public interest.²⁷

24. We will permit FTS to decrease its aggregate national audience reach to its current level of 35.352%, which will preserve the *status quo ante*. A group owner whose station acquisitions have been approved by the Commission will not be required to divest if the aggregate national audience reach subsequently exceeds the national ownership cap due solely to market changes.²⁸ Even though FTS's aggregate national audience reach currently exceeds the 35% national ownership cap, divestiture is not required because the increase from the original 34.82% to the current 35.352% was not the result of a station acquisition. Requiring FTS to divest the necessary stations to return to its current audience reach of 35.352% will not, therefore, result in a reduction of diversity and competition nationwide from its current level and is thus a fully sufficient remedy. We further believe that this approach is a logical extension of our existing policy regarding the effects of market changes on a licensee's national audience reach.

25. In *Fox Television Stations, Inc. v. FCC*, Dkt. No. 00-1222, *et al.* (D.C. Cir. 2001), the United States Court of Appeals for the District of Columbia Circuit recently stayed the portion of our order in *Shareholders of CBS*, 15 FCC Rcd 8230 (2000), which required CBS to divest some of its television stations in order to comply with the national television ownership cap. The validity of the national

²⁵ See, e.g., *Shareholders of CBS Corporation*, 15 FCC Rcd 8230, 8236 (2000).

²⁶ *Id.* at 8235.

²⁷ We will not require FTS to submit a specific divestiture plan. The Commission does not "infer, in the absence of evidence to the contrary, that [a party] will not faithfully carry out its representations." *News International, PLC*, 97 FCC 2d 349, 356 (1984), citing *KCOP Television, Inc.*, 71 FCC 2d 1430, 1433-34 (1979).

²⁸ *Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations*, 100 FCC 2d 74, 92 n. 52 (1985).

television ownership cap is at issue in *Fox Television Stations* and the Court stayed the divestiture requirement until the resolution of that proceeding. In light of these developments, we believe it is appropriate to delay the effectiveness of our condition requiring FTS to come into compliance with the national ownership cap until the *Fox Television Stations* case is resolved. Accordingly, FTS will be afforded a period of 12 months following the entry of a final decision in *Fox Television Stations*, that is no longer subject to judicial review, upholding the national broadcast television ownership cap, or any other order dismissing the issues raised therein, to file any application or applications that may be necessary at that time to come into compliance with the national ownership limits.

V. LOCAL TELEVISION OWNERSHIP RULE

26. *Background and Standard.* The transaction will result in FTS owning two television stations in the New York, Los Angeles, Phoenix, and Salt Lake City DMAs. In the *Television Ownership Order*, we modified our rules to allow common ownership of two television stations in the same DMA, if eight independently owned and operating full-power commercial and noncommercial television stations will remain in the DMA post-merger, and at least one of the two stations to be commonly owned is not ranked among the top four in the DMA based on the most recent all-day (9:00 a.m. – midnight) audience share as measured by Nielsen Media Research or any comparable, professional, accepted audience ratings service.²⁹

FTS has submitted a showing that the newly created television duopolies in the New York, Los Angeles, and Phoenix markets will comply with our modified television duopoly rule.³⁰ FTS has stated that the newly created duopoly in Salt Lake City will not comply with our rules and has requested a 12-month temporary waiver of the television duopoly rule to come into compliance.

27. The Petitioners argue that creation of the four television duopolies is inconsistent with the public interest. With respect to the Phoenix market, the Petitioners argue that the Phoenix DMA does not represent actual viewing patterns, citing arguments made in their Petition for Reconsideration of the *Television Ownership Order*. The Petitioners assert that, of the 11 independently owned and operating television voices licensed to communities within the Phoenix DMA, two are not actually available over the air in the Phoenix metropolitan area, and a third does not have a recorded market share in the Phoenix DMA. Petitioners contend that, if these three stations are excluded as voices, then the combination will not comply with the voice count prong of the television duopoly rule. With respect to the proposed television duopolies in New York and Los Angeles, the Petitioners argue that the *Television Ownership Order* did not contemplate VHF-VHF combinations in these markets. The Petitioners further contend that, even if the proposed television duopolies in New York, Los Angeles and Phoenix are consistent with the television duopoly rule, they violate “core diversity concerns.” Finally, the Petitioners argue that the Commission should grant at most a six-month temporary waiver of the television duopoly rule in the Salt Lake City market since the proposed duopoly would result in excessive market concentration.³¹

28. *Discussion.* In our recently released *Memorandum Opinion and Second Order on Reconsideration*, we denied the Petitioners’ Petition for Reconsideration broadly challenging the

²⁹ *Review of the Commission’s Regulations Governing Television Broadcasting (Television Ownership Order)*, 14 FCC Rcd 12903, 12932 - 12933 (1999).

³⁰ All of the audience share statistics are based on the July 2000 Nielsen Ratings, the most current statistics available at the time the parties filed the assignment applications.

³¹ Petitioners also state that FTS’s acquisition of Chris-Craft stations affiliated with UPN “might spell the end of the UPN network.” The Petitioners do not offer any evidence in support of this speculative claim and we will not further consider it here.

geographic scope of the duopoly rule, and thus reaffirmed our conclusion that DMAs generally reflect actual viewing patterns by defining “the ‘market’ in a manner that is widely accepted and used by the advertising and broadcasting industries.” We did grant, however, partial reconsideration and modified the duopoly rule such that “[i]n counting the number of independently owned and operating, full-power stations in a market for purposes of our rule, we will count only those stations whose Grade B signal contour overlaps with the Grade B contour of at least one of the stations in the proposed combination.”³² In refining the duopoly rule, we did not extend this modification to exclude as voices those stations that fail to register a market share in the Nielsen Media Research all-day (9:00 a.m. – midnight) audience share report for the DMA. We noted that “assignment of a broadcast station to a particular market, and its continued success as a going concern, demonstrates that a station is a source of viable competition and diversity in a market, and therefore should be counted.”³³ Consequently, even excluding the two stations whose Grade B contours do not overlap the Grade B contours of either station in the proposed combination, FTS’s duopoly will still comply with the television duopoly rule in Phoenix. Having reviewed the showing submitted by the parties, we find that the television duopolies created by the merger of Fox and Chris-Craft in the Phoenix, New York, and Los Angeles DMAs will be in compliance with the television duopoly rule. As set forth in the *Television Ownership Order* and modified by the *Memorandum Opinion and Second Order on Reconsideration*, the Phoenix DMA, after the proposed merger, will include at least 8 independently owned and operating commercial and noncommercial television stations as identified by the modified voice count prong of the television duopoly rule. Additionally, at least one of the two commonly owned television stations is not among the top four-ranked stations.

29. With respect to the VHF-VHF combinations proposed in the Los Angeles and New York markets, the Commission received several comments in the broadcast television ownership proceeding advocating a limitation or ban on VHF-VHF or VHF-UHF combinations. Rather than limit or ban such combinations, we adopted a measured relaxation of our duopoly rule that consisted of a voice count and market rank component.³⁴ Accordingly, the VHF-VHF nature of the television duopolies created by the instant merger in New York and Los Angeles affords no basis for further inquiry here.

30. *Waiver Request.* Following the merger, FTS will own the licenses of KSTU(TV) and KTVX(TV), Salt Lake City, Utah, both of which are tied for first in audience share in the Salt Lake City DMA according to the most recent all-day (9:00 a.m. – midnight) data published by Nielsen Media Research. FTS acknowledges that common ownership of KSTU(TV) and KTVX(TV) would violate the television duopoly rule because the stations’ Grade B contours overlap, and both are ranked within the top four in the Salt Lake City DMA in terms of audience share. FTS, however, requests a temporary waiver of 12 months from consummation of the merger to make such divestitures as are necessary to come into compliance with the television duopoly rule in Salt Lake City. FTS argues that the Commission typically grants temporary waivers to accommodate multi-station transactions. FTS also asserts that a twelve-month temporary waiver is appropriate in this instance given the magnitude of the total divestiture required to comply with both the television duopoly rule and national audience reach cap.

31. As noted above, the applications here involve the assignment of ten television stations. As FTS has noted, several of our past decisions have found temporary waiver of our multiple ownership rules appropriate in order to facilitate multi-station transactions, especially when the waiver was incidental to the

³² *Review of the Commission’s Regulations Governing Broadcasting, Memorandum Opinion and Second Order on Reconsideration*, MM Docket No. 91-221, FCC 00-43, ¶9 and ¶17 (released January 19, 2001).

³³ *Id.* at ¶44.

³⁴ *Television Ownership Order*, 14 FCC Rcd at 12931.

larger transaction.³⁵ We continue to weigh requests for temporary waivers against our underlying goals of diversity and competition in the broadcast marketplace.³⁶

32. After a careful review of the record, we conclude that allowing FTS a limited period of time following consummation of the transaction to come into compliance with the television duopoly rule in the Salt Lake City market will not disserve the public interest. The stations to be commonly owned will represent only a small portion of this relatively large transaction. In addition, the temporary waiver's effect on competition and diversity is somewhat less consequential given the level of competition and diversity that already exists in the Salt Lake City market. Ten independently owned and operating commercial and noncommercial television stations, and a total of 30 broadcast media voices, will remain within the Salt Lake City market post-merger during the short period of common ownership of KSTU(TV) and KTVX(TV). Our conclusion here comports with previous decisions, in which the Commission granted temporary waivers of the television duopoly rule in markets where a similar number of voices remained during the period of common ownership.³⁷

33. In previous multiple station transactions involving temporary waiver requests, we have attempted to avoid any forced sale of station assets that could unnecessarily restrict the value of the stations to be divested and could artificially limit the range of potential buyers.³⁸ Though FTS requests one year to come into compliance with the television duopoly rule, it cites no cases involving only television station divestitures where we have granted more than a 6-month temporary waiver to come into compliance with that rule. We generally eschew granting 12-month waivers in such circumstances. Moreover, FTS has provided no evidence that either prevailing market conditions or FTS's own financial condition are such that providing 6 months to come into compliance with the television duopoly rule would result in a forced sale.³⁹ Consequently, we will deny FTS's request for a 12-month temporary waiver, and instead grant a 6-month temporary waiver of the television duopoly rule. We believe that a 6-month temporary waiver better balances our intention to avoid a forced sale with our concern for diversity and competition in the Salt Lake City market. We will also prohibit FTS from divesting the station to any party whose acquisition of FTS's station would require waiver of the television duopoly rule.⁴⁰

VI. TELEVISION/NEWSPAPER CROSS-OWNERSHIP RULE

34. *Background.* As discussed above, FTS, the licensee of WNYW(TV), New York, New York, seeks to become the licensee of WWOR-TV, Secaucus, New Jersey, which is in the New York City DMA.⁴¹ This combination, by itself, is in accord with our eight voice/top four-ranked standard for

³⁵ See, e.g., *The Providence Journal Company*, 12 FCC Rcd 2883 (1997); *Argyle Television, Inc.*, 12 FCC Rcd 10737 (1997).

³⁶ See *LINT Co.*, 15 FCC Rcd 18130, 18133 (2000); *Shareholders of CBS Corporation*, 15 FCC Rcd 8230, 8243 (2000).

³⁷ See, e.g., *LINT Co.*, 15 FCC Rcd at 18133 (temporary 6-month waiver granted where 13 independently owned and operating commercial and noncommercial television stations, and a total of 27 independently owned broadcast voices remained during period of common ownership).

³⁸ *Multimedia, Inc.*, 11 FCC Rcd 4883, 4885 (1995).

³⁹ *Id.*

⁴⁰ See *LINT Co.*, 15 FCC Rcd at 18130.

⁴¹ See ¶ 22, *supra*.

permissible television duopolies.⁴² FTS and Mr. Murdoch also hold a permanent waiver of the broadcast/newspaper cross-ownership rule⁴³ which authorized the common ownership of WNYW(TV) and the *New York Post*.⁴⁴ FTS does not request the issuance of another permanent waiver permitting common ownership of WNYW(TV) and the *Post* but instead argues that the permanent waiver, combined with our recent decision relaxing the duopoly rule in certain contexts,⁴⁵ permits it to acquire WWOR-TV without the need for an additional waiver. In the alternative, FTS argues that it should be granted an interim waiver of the broadcast/newspaper cross-ownership rule pending the outcome of a rulemaking regarding the revision or abolition of that restriction. FTS contends that failure to grant a waiver for any lesser period of time will create uncertainty in its relationships with subscribers, advertisers and unions that could further undermine the financial viability of the *Post*. The Petitioners claim that FTS has failed to demonstrate that its existing waiver automatically encompasses the second New York station that it seeks to retain or that an interim waiver would serve the public interest.

35. In 1985, Mr. Murdoch, as the controlling principal of the News Corp. subsidiary News America Television Incorporated, acquired WNYW(TV) in connection with a multi-station, multi-market transaction by which 7 full-service broadcast television stations were acquired from Metromedia Radio and Television, Inc. At that time, Mr. Murdoch controlled the *Post*, which had been acquired in 1976. As a condition to the grant of the application, Mr. Murdoch was required to divest his interest in the *Post* within two years in order to conform to the requirements of the broadcast/newspaper cross-ownership rule.⁴⁶ In March 1988, News Corp complied with the condition, selling its interest in the *Post* to a company controlled by real estate developer Peter S. Kalikow. Following his personal bankruptcy, Mr. Kalikow was unable to support the *Post*'s operations as he had planned with funds from his real estate holdings. As a result, Mr. Kalikow made several unsuccessful attempts to secure alternate funding for the *Post*. After these attempts failed, Mr. Kalikow placed the *Post*'s parent company in bankruptcy. During the bankruptcy proceeding, Mr. Murdoch agreed to assume management of the paper conditioned upon obtaining a permanent waiver of the cross-ownership rule and his making an offer to purchase the *Post*'s assets. Subsequently, Mr. Murdoch sought a waiver from the Commission that would permit a News Corp. subsidiary to acquire the *Post* and allow FTS to retain the license of WNYW(TV).

36. Mr. Murdoch based the request for permanent waiver of the television/newspaper cross-ownership rule on two grounds. First, he argued that he was the only "viable" purchaser who demonstrated a willingness to undertake the financial burden of stabilizing and revitalizing the *Post*. Mr. Murdoch stated that his commitment to the *Post* involved infusing up to \$350,000 in cash per week, as well as providing managerial, technical and editorial skills necessary to operate the *Post* in the highly competitive New York market.⁴⁷ He contended that a strict application of the television/newspaper cross-ownership rule would disserve the underlying policy of diversity by eliminating an important voice in the New York market. Second, as support for his contention that permitting common ownership of the *Post* and WNYW(TV)

⁴² See ¶ 25 *supra*.

⁴³ See 47 C.F.R. § 73.3555(d).

⁴⁴ *Fox Television Stations Inc.*, 8 FCC Rcd 5341 (1993) (*Post Waiver*).

⁴⁵ *Television Ownership Order*, 14 FCC Rcd at 12932.

⁴⁶ *Metromedia Radio and Television, Inc.*, 102 FCC 2d 1334 (1985), *aff'd*, *Health and Medicine Policy Research Group v. FCC*, 807 F.2d 1038 (D.C. Cir. 1987).

⁴⁷ *Post Waiver*, 8 FCC Rcd at 5345

would not unduly impact diversity in the New York market, he noted that the New York City area of dominant influence (ADI) contained “20 television stations, 97 AM and FM radio stations, 62 percent cable penetration and cable systems providing at least 56 different satellite-delivered program services, 36 daily newspapers with an average aggregate daily circulation of 4.5 million, and 338 weekly newspapers.”⁴⁸

Given the size and competitive nature of the New York market, Mr. Murdoch maintained that common ownership of WNYW(TV) and the *Post* would preserve diversity by rescuing “an important competitive voice and source of viewpoint diversity,” without resulting in either excessive media control or competitive advantage to Fox.⁴⁹

37. The Commission analyzed the waiver request by examining the “special circumstances” under which the proposed combination was to be formed, and by assessing the diversity and competitiveness of the New York City market. The Commission concluded that the request had been amply justified, “comporting with the high burden necessary to warrant grant of a waiver” of the television/newspaper cross-ownership rule.⁵⁰ With respect to the “special circumstances,” the Commission looked to the financial condition of the *Post*, whose bankrupt status threatened the existence of a media voice in the New York market.⁵¹ The Commission stated that the substantial funds necessary for capital improvements and for continuing operating losses raised an issue as to whether any alternative buyer would be willing to risk future liabilities of such magnitude in order to preserve the *Post* as an alternative voice. Consequently, the Commission concluded that Mr. Murdoch’s involvement with the *Post* may have been “pivotal to the newspaper’s survival.”⁵²

38. With respect to diversity and competition, the Commission found that any cost to diversity resulting from common ownership of WNYW(TV) and the *Post* would be outweighed by the benefit to diversity that would result from preservation of the *Post* as a viable voice.⁵³ The Commission further found that “[g]iven the wide array of voices in New York City, any detriment to diversity caused by common ownership of two media outlets would be negligible,” even were one to consider only full-service television stations and the four daily newspapers then serving the New York market.⁵⁴ In addition, the Commission determined that the proposed combination would not result in undue market concentration as the addition of the *Post* would only add 1% to FTS’s 5% share of the combined television-newspaper advertising market.⁵⁵

The Commission, therefore, concluded that grant of the waiver would not disserve the twin purposes of the television/newspaper cross-ownership rule, diversity and competition.⁵⁶ In deciding to grant a permanent rather than a temporary waiver, the Commission concluded that failure to do so would hamper the *Post* in its attempts to attract advertisers and readers and to negotiate with labor unions, suppliers, and distributors.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 5353.

⁵¹ *Id.* at 5349.

⁵² *Id.* at 5350.

⁵³ *Id.* at 5352.

⁵⁴ *Id.* at 5351.

⁵⁵ *Id.* at 5352.

⁵⁶ *Id.* at 5350.

The Commission believed that only a permanent waiver could provide the degree of certainty that was necessary to revitalize the bankrupt *Post*.⁵⁷

39. *Discussion.* Section 73.3555(d)(3) of the Commission's rules provides that "no license for [a] ...TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates, or controls a daily newspaper and the grant of such license will result in" the Grade A contour of that television station encompassing the entire community in which such newspaper is published.⁵⁸ Though FTS has a permanent waiver for its WNYW(TV)/*New York Post* combination, the proposed transaction will result in FTS owning a second New York television station, WWOR-TV, whose Grade A contour will also encompass the entire community in which the *Post* is published. FTS is not requesting an additional permanent waiver, but instead contends that its existing permanent waiver is adequate to permit the new combination. In the alternative, FTS contends that it is appropriate and consistent with past practice for the Commission to issue an interim waiver permitting common ownership of WNYW(TV), WWOR-TV, and the *Post* until conclusion of a proceeding to consider relaxation of the broadcast/newspaper cross-ownership rule. According to FTS, "examination of a renewed permanent waiver request now would 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."⁵⁹

40. The original waiver was based on the particular combination of WNYW(TV) and the *Post* under the control of Mr. Murdoch and News Corp. The original waiver did not contemplate the addition of a second New York DMA television station to that combination. We agree with the Petitioners that the original waiver is not adequate to allow the combination requested here. As we recently noted in our ownership proceedings, a waiver granted under market conditions that exist at a given place and time is not automatically extended to cover new combinations several years later under potentially changed market conditions.⁶⁰ By adding a new television station to the existing combination of WNYW(TV) and the *Post*, the proposed transaction clearly would create a new television/newspaper combination not contemplated at the time the original waiver was granted. Therefore, a new waiver of the television/newspaper cross-ownership rule is necessary in order to permit the combination requested here.

41. With respect to the requested waiver pending the outcome of any future television/newspaper cross-ownership rulemaking, FTS cites one instance involving the Tribune Company where it contends that the Commission provided a similar waiver of the television/newspaper cross-ownership rule.⁶¹ In the Tribune proceeding, the Commission deferred consideration of the waiver until after the outcome of the Commission's review of the television/newspaper cross-ownership rule in the 1998 biennial review of the ownership rules. In the *Biennial Review Report*, we extended the waiver until the conclusion of the

⁵⁷ *Id.*

⁵⁸ 47 C.F.R. §73.3555(d)(3). *See, also, Amendment of Sections 73.34, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, Second Report and Order*, 50 FCC 2d 1046 (1975) (*Multiple Ownership Second Report and Order*), *recon.*, 53 FCC 2d 589 (1975), *aff'd sub nom. FCC v. National Citizens Comm. For Broadcasting*, 436 U.S. 775 (1978).

⁵⁹ *Application of Fox Television Stations for Assignment of Licenses Controlled by Chris-Craft Industries, Inc.*, Exhibit 4, Section III, page 27 (September 18, 2000).

⁶⁰ *Review of the Commission's Regulations Governing Television Broadcasting, Memorandum Opinion and Second Order on Reconsideration*, MM Docket Nos. 91-221, 87-8, FCC 00-431 (released January 19, 2001).

⁶¹ *Stockholders of Renaissance Communications Corp.*, 13 FCC Rcd 4717, 4718 (1998).

television/newspaper cross-ownership rulemaking.⁶² That decision was predicated on the unusual circumstances that led to extension of the waiver; in particular, the fact that the Commission had not clearly articulated its policy on interim waivers prior to that time. In a subsequent Tribune proceeding, however, we cautioned future applicants that it “should now be clear that the mere initiation of a proceeding stating that the rule would be examined, or merely the fact that such a proceeding was on the horizon, would not be sufficient to warrant an interim waiver.”⁶³ Consequently, we will not grant FTS an “interim” waiver as requested.

42. Although we believe that neither a permanent nor a rulemaking-conditioned waiver is warranted in this case, we do believe that a temporary waiver of the television/newspaper cross-ownership rule is appropriate. In multiple-station, multiple-market merger transactions, such as presented here, it is not uncommon for the combined properties of the merged entity to create violations of the Commission’s ownership rules in some markets. In these circumstances, the Commission has granted temporary waivers of its rules, including the television/newspaper restriction, to permit an orderly disposition of assets and avoid forced sales.⁶⁴ We have concluded that such transactional accommodation serves that public interest by promoting the free alienability of broadcast properties.⁶⁵ In evaluating the propriety and nature of such waivers, we assess the need for the waiver and the harm to the goals underlying the relevant rule as a result of the waiver. The rule barring the common ownership of broadcast stations and newspapers grew out of our twin goals of maximizing diversity, while preventing undue concentration.⁶⁶

43. With respect to diversity within the New York market, standard industry sources indicate that the New York market is made up of 6,918,600 households, with 6,874,900 television households spread out across 29 counties in parts of four states.⁶⁷ If we permit the requested common ownership of WWOR-TV and WNYW(TV), the New York DMA will still have at least 19 independent television voices.⁶⁸ Over 120 commercial and noncommercial radio stations are licensed to communities within the New York DMA, with over 65 independently owned and operated radio station groups. New York’s cable penetration rate is 74%, with at least 8 independent cable operators providing service in the market.⁶⁹ Finally, according to FTS, 25 daily newspapers are published in the DMA, as well as hundreds of local weeklies.

44. Of the 5 major daily newspapers in New York ranked by circulation, the *Post* ranks last. The *Post* covers 5.3% of New York households on any given day and accounts for less than 4% of advertising revenues among the top 5 newspapers. By contrast, the top-ranked *New York Daily News* covers 9.9% of households and receives 18.2% of advertising revenue and the second-ranked *New York Times* covers 9.4%

⁶² 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, 15 FCC Rcd 11058, 11109 – 11110 (2000) (Biennial Review Report).

⁶³ *Id.*; *Stockholders of Renaissance Communications Corp.*, 13 FCC Rcd at 4718.

⁶⁴ Indeed, this is precisely the type of waiver granted to FTS and Mr. Murdoch in connection with the purchase of broadcast television stations owned by Metromedia Radio and Television, Inc. See ¶34, *supra*.

⁶⁵ *Multimedia, Inc.*, 11 FCC Rcd at 4885; *Stockholders of CBS, Inc.*, 11 FCC Rcd 3733, 3755 (1995).

⁶⁶ *Multiple Ownership Second Report and Order*, 50 FCC 2d at 1074.

⁶⁷ *Broadcasting and Cable Yearbook 2000* at B-211.

⁶⁸ *BIA Research*, New York, NY Market Overview as of 1/05/2001.

⁶⁹ *Id.*; *Broadcasting and Cable Yearbook 2000*, at C-4.

of households while receiving 45.3% of advertising revenue.⁷⁰ FTS represents that in response to the competitive pressures from these other papers, the *Post* cut its newsstand price from \$.50 to \$.25 in September, 2000. As evidence of its commitment to the *Post*, in spite of its apparently weak competitive position, News Corp. notes that it has committed to further investment in the paper, including building a \$250 million printing facility in the South Bronx.

45. As a result of the diverse nature of the New York market,⁷¹ the clearly non-dominant position of the *Post* in that market, as well as the *Post*'s unique history of significant financial difficulties,⁷² we conclude that it would be in the public interest to grant FTS a temporary 24-month period within which to come into compliance with the television/newspaper cross-ownership rule in the New York market, to the extent compliance has not been waived by the existing waiver permitting common ownership of WNYW(TV) and the *Post*. A temporary loss of diversity, if any, in the New York market during this period will be outweighed by the benefits of permitting an orderly sale to a qualified buyer committed to preserving the *Post* as a media voice.⁷³ We note that grant of a 24-month temporary waiver here is consistent with our treatment of the television/newspaper combination created when Mr. Murdoch originally acquired WNYW(TV).⁷⁴ We further believe that the competitive position of the *Post* may be vulnerable and thus any shorter period of time to come into compliance would run a substantial risk of a forced sale. Under these circumstances, the 24-month period afforded FTS will commence from the date of consummation of the instant transaction.

VII. ADMINISTRATIVE MATTERS

46. We have reviewed the proposed merger and the related pleadings and find that the applicants are fully qualified and that grant of the assignment of the licenses controlled by Chris-Craft to Fox Television Stations will serve the public interest, convenience, and necessity.

47. Accordingly, IT IS ORDERED, That the Motion to Dismiss Application filed by the Office of Communication, Inc. of the United Church of Christ, Academy of Latino Leaders in Action, Black Citizens for a Fair Media, Center for Media Education, Consumer Federation of America, Consumer's Union, New York Metropolitan Association of the United Church of Christ, Rainbow/PUSH Coalition, and Valley Community Access Television IS DENIED, and That the petition to deny is GRANTED IN PART, and DENIED IN ALL OTHER RESPECTS.

⁷⁰ *Circulation 2000*; Nielsen Media Research AdViews for 1999. Figures for the *New York Times* are for the local edition.

⁷¹ In the *Biennial Review Report*, we noted that "there may be circumstances in which the [broadcast/newspaper cross-ownership] rule may not be necessary to achieve its intended public interest benefits." *Biennial Review Report*, 15 FCC Rcd at 11105. We, therefore, determined to institute a rulemaking considering whether to tailor the rule accordingly. *Id.*

⁷² See *Post Waiver*, 8 FCC Rcd 5341.

⁷³ We note that we are not directing the sale of the *Post*. FTS and Mr. Murdoch also have the option of selling either of the two subject television stations. We are simply requiring that FTS be in compliance with our television/newspaper cross-ownership rule within 24 months from the consummation of the transaction, to the extent compliance has not been waived by the existing waiver permitting common ownership of WNYW(TV) and the *Post*. If our rules should change during that period to permit the proposed combination, then FTS and Murdoch will not need to divest the *Post* or one of the television stations to come into compliance.

⁷⁴ *Metromedia Radio and Television, Inc.*, 102 FCC 2d at 1353.

48. IT IS FURTHER ORDERED, That the request for 12 months to come into compliance with the national television ownership cap, Section 73.3555(e), IS GRANTED, and THAT within 12 months of the issuance of a final order in *Fox Television Stations, Inc. v. FCC*, Dkt. No. 00-1222, *et al.* (D.C. Cir. 2001), that is no longer subject to judicial review, upholding the national broadcast television ownership cap, or any other order dismissing the issues raised therein, Fox Television Stations is directed to file any application or applications that may be necessary at that time to reduce its aggregate national audience reach to its pre-merger level.

49. IT IS FURTHER ORDERED, That the request for 12 months to come into compliance with the television duopoly rule, Section 73.3555(b), in the Salt Lake City market IS DENIED, however, we GRANT a temporary 6-month period from the date of consummation of the instant transaction for Fox Television Stations to file the application necessary to bring it into compliance in the Salt Lake City market.

50. IT IS FURTHER ORDERED, That from the date of consummation of the instant transaction, Fox Television Stations IS GRANTED a temporary 24-month period within which to come into compliance with the television/newspaper cross-ownership rule, 47 C.F.R. §73.3555(d)(3), insofar as it is necessary under our rules at that time, and to the extent compliance has not been waived by the existing waiver permitting common ownership of WNYW(TV) and the *Post*.

51. Accordingly, IT IS ORDERED, That the applications for consent to the assignment of the Chris-Craft broadcast station licenses, applications BALCT-20000918ABB-ABD, ABF, ABK, ABL-ABN, ABU, ABY and BALTT-20000918ABG-ABJ, ABO-ABS, ABV-ABX, and ABZ-ACE, ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

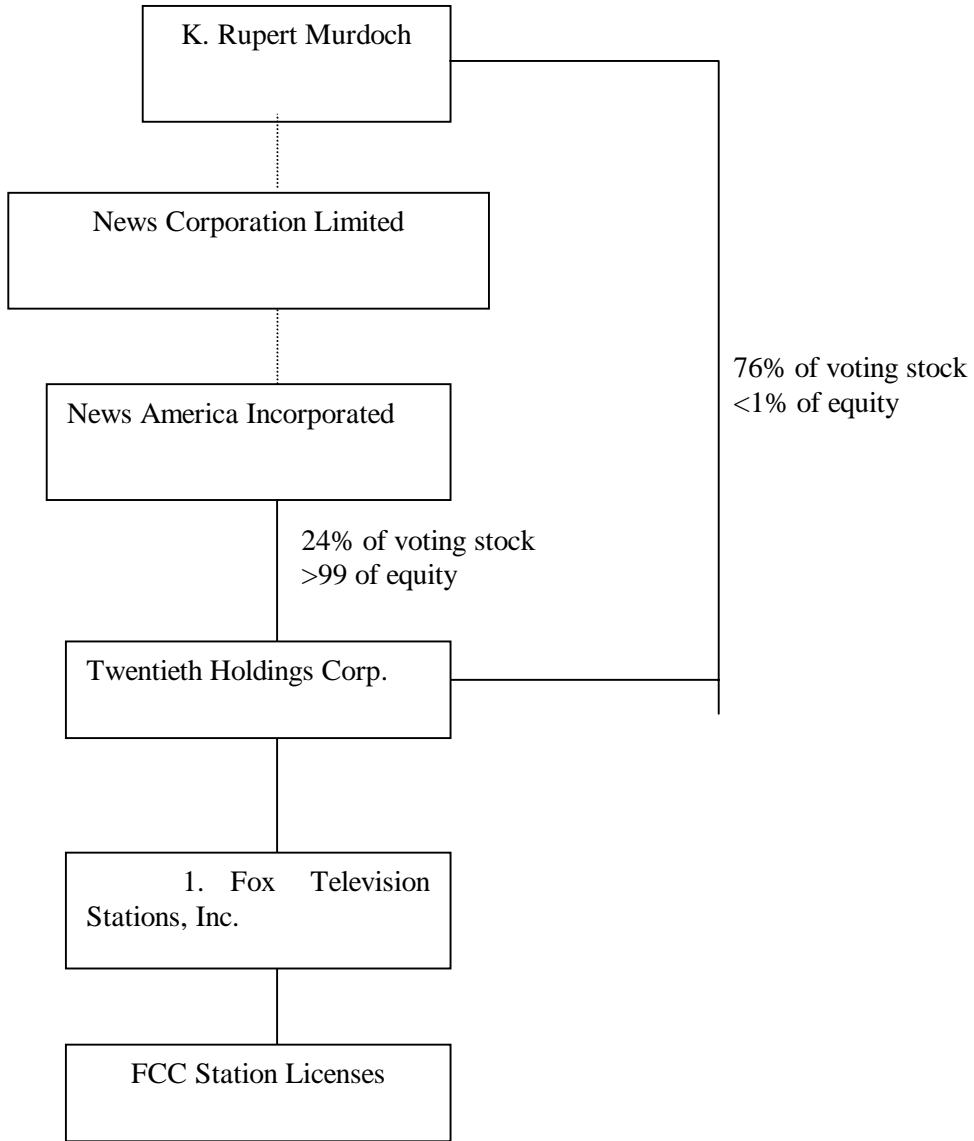
EXHIBIT A

FULL-SERVICE STATIONS TO BE ASSIGNED

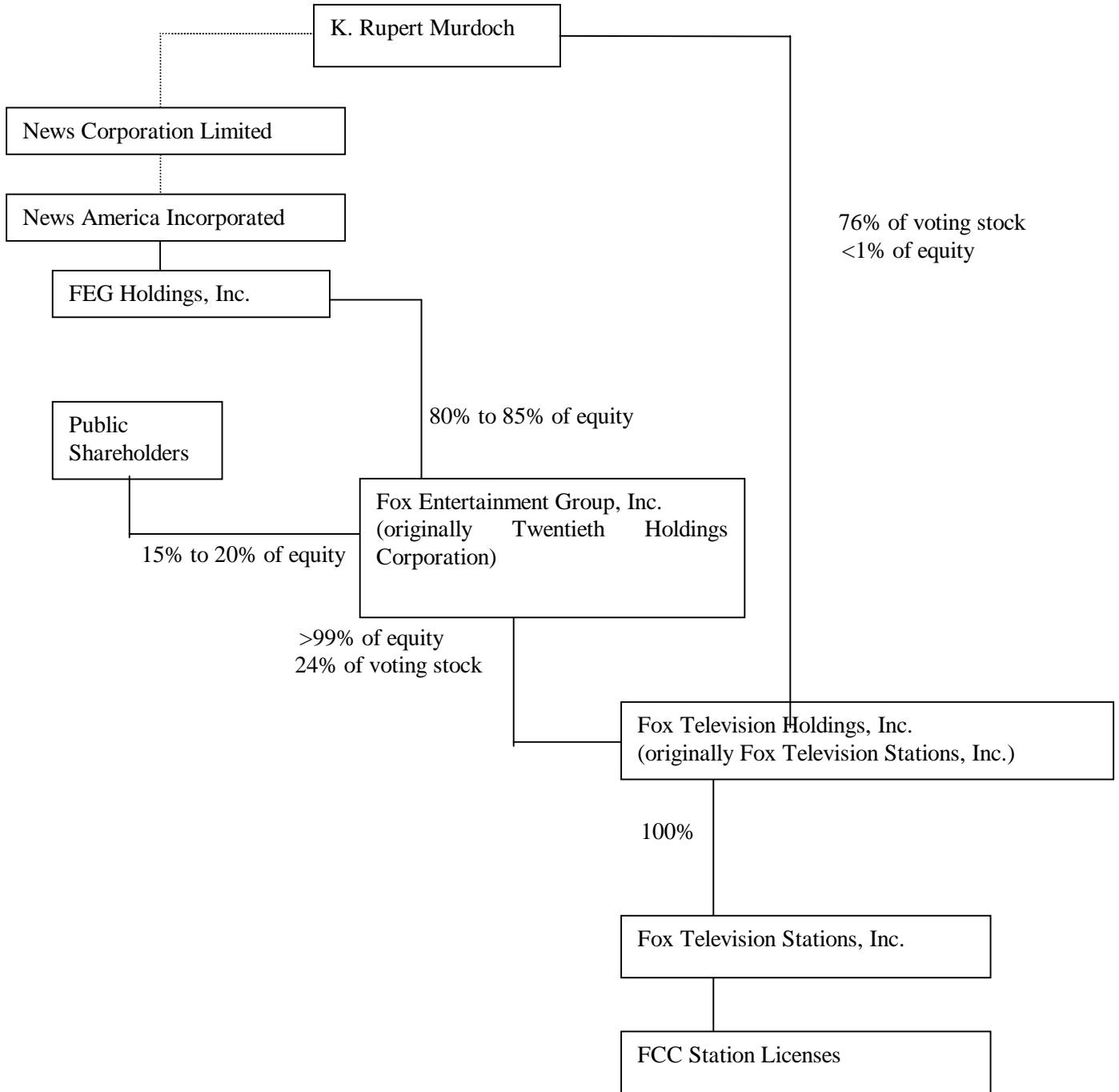
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KCOP-TV, Los Angeles, California	Facility I.D. 33742
KMOL-TV, San Antonio, Texas	Facility I.D. 69618
KPTV(TV), Portland, Oregon	Facility I.D. 50633
WUTB(TV), Baltimore, Maryland	Facility I.D. 60552
WWOR-TV, Secaucus, New Jersey	Facility I.D. 74197
WRBW(TV), Orlando, Florida	Facility I.D. 54940
KMSP-TV, Minneapolis, Minnesota	Facility I.D. 68883
KTVX(TV), Salt Lake City, Utah	Facility I.D. 68889
KUTP(TV), Phoenix, Arizona	Facility I.D. 68886

EXHIBIT B

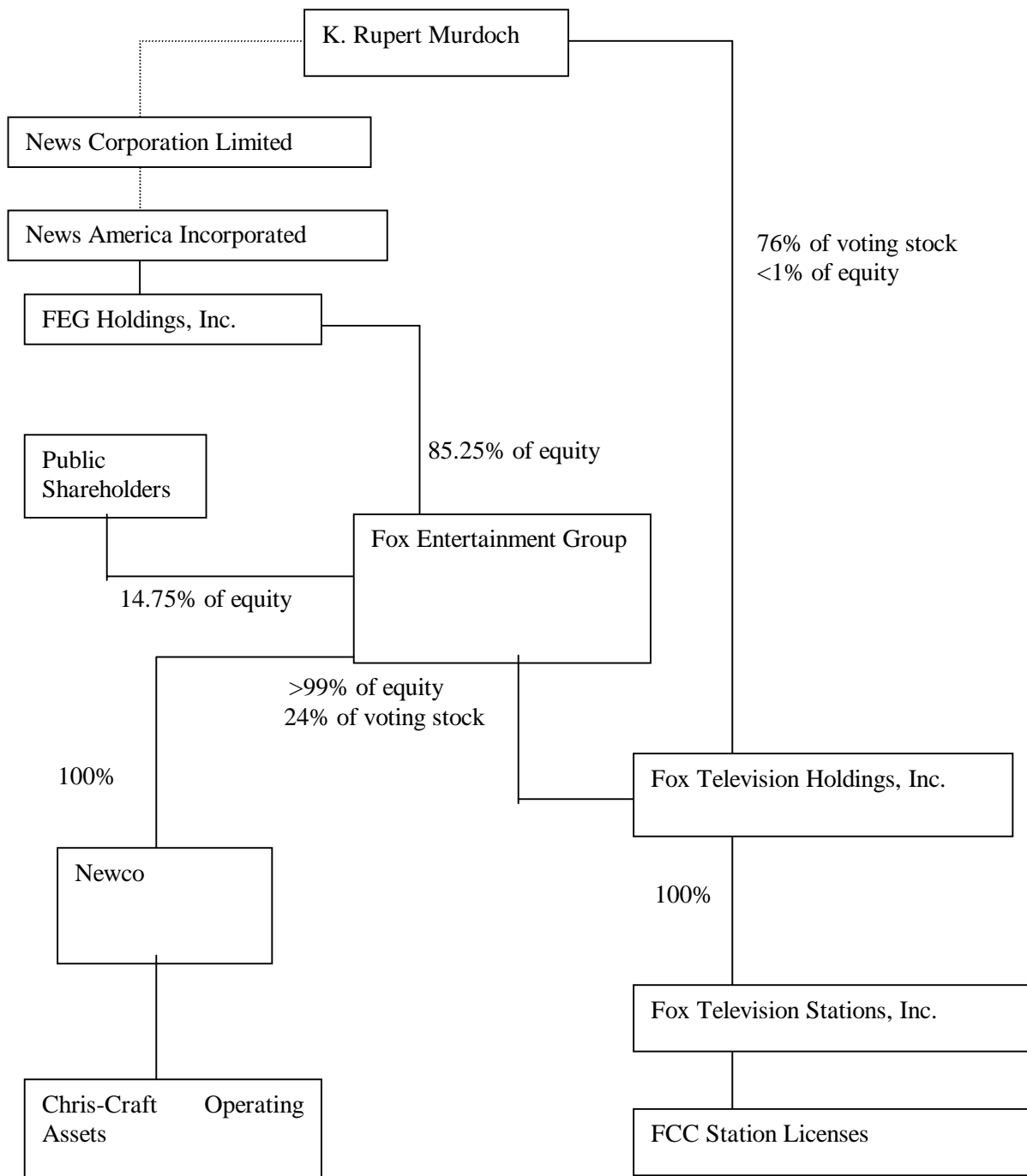
OWNERSHIP STRUCTURE ORIGINALLY APPROVED IN *FOX II*



CURRENT OWNERSHIP STRUCTURE OF FOX TELEVISION STATIONS, INC.
 (FOLLOWING COMMISSION APPROVAL OF *PRO FORMA* REORGANIZATION)



OWNERSHIP STRUCTURE FOLLOWING ACQUISITION OF CHRIS-CRAFT STATIONS



July 25, 2001

STATEMENT OF CHAIRMAN MICHAEL K. POWELL

Re: *Assignment of Broadcast Licenses Held by Subsidiaries of Chris-Craft Industries, Inc., to Fox Television Stations, Inc.*

Today the Commission approved the assignment of certain licenses from Chris Craft Industries, Inc. to Fox Television Stations, Inc., finding the assignment to be in the public interest. The Commission conditioned its approval on the divestiture of various assets in order to bring the company into compliance with our broadcast ownership rules. I write separately to highlight the basis upon which the Commission found the transaction to be in the public interest; and, to challenge the suggestion by the minority that the Commission has somehow abandoned its public interest obligation. To the contrary, today's decision affirms the fact that Commission rules and long standing Commission precedent guide our public interest deliberations.

I. THE PUBLIC INTEREST STANDARD

The Commission is required to examine a license transfer (often in the context of a merger) and must affirmatively find that the transfer is in the public interest.⁷⁵

In the context of mass media transactions, the Commission's analysis is simplified by the extensive structural ownership rules Congress and the Commission have promulgated. The benefits of these prophylactic rules are that they are clear and provide some certainty to marketplace participants. They have the additional benefit of administrative efficiency in reviewing combinations.

The extensive rulemaking proceedings used to develop the broadcast ownership rules take full account of the Commission's diversity goals and concentration concerns. These rules squarely embody the Commission's public interest goals of limiting the effect of market power and promoting diversity of viewpoints in the market.⁷⁶ A transaction that complies with structural rules designed to advance the public interest (when they exist), should not be subject to further ad hoc review; otherwise the exalted benefits of such rules would be eviscerated.

⁷⁵ Section 310(d) of the Communications Act provides, in pertinent part, that the Commission may only grant a proposed license transfer if it determines that "the public interest, convenience, and necessity will be served thereby." 47 U.S.C. § 310(d).

⁷⁶ See, e.g., In the Matter of Review of the Commission's Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules, MM Docket Nos. 91-221, 87-8, FCC 99-209, *Report and Order*, 14 FCC Rcd 12903, ¶¶ 1, 15 (1999) ("ultimate objectives of [the Commission's] ownership rules are to promote diversity and to foster economic competition. . ."); In the Matter of 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, MM Docket No. 98-35, FCC 00-191, *Biennial Review Report*, 15 FCC Rcd 11058, ¶¶ 5-6 (2000); *Time Warner Entertainment Co. v. United States*, 211 F.3d 1313, 1320 (D.C. Cir. 2000) (government responded "the promotion of diversity in ideas and speech, as well as the preservation of competition, are important governmental interests. . .").

In other areas, Congress and the Commission have not set out strict structural rules. As a result, the Commission reviews these transactions in a more case specific manner. This is the case with telephone mergers. In this area there are no rules on the number of lines or central offices that a company may own. As a result, the Commission developed a four-prong test to guide its review in such cases. The analytical framework suggested by the minority would have the Commission overlay this four-prong test, or some other equally ambiguous standard, on top of our structural rules, to determine if the transaction would “*otherwise* serve the public interest.” I fail to see the wisdom of this redundancy, applying two bodies of law designed to achieve the same basic objectives.

1. II. PUBLIC INTEREST FINDINGS

This transaction contravenes three of the Commission’s broadcast ownership rules; the national ownership cap,⁷⁷ the local television multiple ownership rule,⁷⁸ and the television/newspaper cross-ownership rule.⁷⁹ The Commission *specifically* conditioned its approval on the licensee’s compliance with these rules. Consistent with long-standing Commission precedent, the *Order* gives the licensee a reasonable amount of time to divest assets in order to comply with our rules. In so doing, the *Order* conducts a public interest test under each rule; weighing the request for a temporary waiver against our underlying goals of diversity and competition in the broadcast marketplace.⁸⁰

For example, with regard to the national ownership cap, the *Order* finds; “The Commission has consistently determined that in multiple station transactions the overall benefits of allowing time for an orderly transition will outweigh any temporary impact on diversity and competition from common ownership during a reasonable period following grant of the application.”⁸¹ The *Order* further notes that “given the size of the proposed transaction, the practical difficulties of divesting the necessary stations, and our policy of avoiding forced sales, ... the advantages of granting a ... *temporary waiver* ... will outweigh any temporary impact on diversity and competition and is in the public interest.”⁸² In regard to the duopoly in Salt Lake City, the fact that ten independent commercial and non commercial stations and 30 broadcast media voices will remain in the market post merger, provided a basis for the *Order* to find that a six month waiver from the duopoly rule would not “disserve the public interest.” Furthermore, in granting the temporary waiver of the television/newspaper cross-ownership rule, the *Order* points

⁷⁷ Telecommunications Act of 1996, § 202(C)(1); 47 C.F.R. § 73.3555(e).

⁷⁸ Review of the Commission’s Regulations Governing Television Broadcasting (Television Ownership Order), 14 FCC Rcd 12932-12933 (1999).

⁷⁹ 47 C.F.R. § 73.3555(d)

⁸⁰ See *LINT Co.*, 15 FCC Rcd 18130, 18133 (2000); *Shareholders of CBS Corporation*, 15 FCC Rcd 8230 (2000).

⁸¹ *Shareholders of CBS Corporation*, 15 FCC Rcd at 8236.

⁸² *Order* at para. 23. (emphasis added)

out that the New York market would still have 19 independent TV voices, over 120 commercial and noncommercial radio stations, 25 daily newspapers and hundreds of weekly papers.⁸³

Given these findings, one is left wondering why the minority so mischaracterizes the *Order's* grant of compliance periods as somehow constituting “permanent waivers of the Commission’s rules.” As is highlighted above, granting parties a reasonable period of time for divestiture of assets to satisfy our rules is a long-standing and well-settled Commission principle. *See Shareholders of CBS Corporation*, 15 FCC Rcd 8230, 8236 (2000) (Commission grants 12 months for company to comply with the national ownership cap); *AT&T/MediaOne*, 15 FCC Rcd 9816 (2000) (Commission grants slightly under 12 months for company to divest assets to comply with the cable horizontal ownership cap). The Commission is not unique in this regard. In its antitrust review of mergers, the Department of Justice and the Federal Trade Commission typically provide parties with a reasonable amount of time for divestiture in order to come into compliance with the antitrust statutes. I find it fantastic that the minority would characterize these divestiture periods as deviations from our rules in order to approve the transaction.

III. FOREIGN OWNERSHIP

The Commission takes seriously the statutory limits placed on certain transactions. Under Section 310(b)(4) of the Communications Act, Congress prohibits the grant of a license to “any corporation directly or indirectly controlled by any other corporation of which more than one fourth of the capital stock is owned of record or voted by aliens ... or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the revocation or refusal of such license.”⁸⁴

In 1995, the Commission, pursuant to the requirements of Section 310(b)(4), found that, although News Corp.'s interest in Twentieth Holdings Corporation (the parent of Fox Television Stations (“FTS” or “Fox”)) exceeded the 25% benchmark established in Section 310(b)(4), the ownership structure was in the public interest.⁸⁵ The Commission also held that, “it would disserve the public interest to confine our decision to stations FTS already owns, for doing so would unnecessarily hinder the company’s ability to expand and frustrate its reasonable expectations for doing so.”⁸⁶ The Commission concluded that, “FTS, as presently structured may, consistent with the public interest, acquire additional broadcast stations.”⁸⁷ As the *Order* discusses in detail, the corporate structure present here is consistent with our previous Fox decision.⁸⁸ The claim that News Corp/Newco, rather than FTS, controls the stations is simply not consistent with Commission precedent.

The Commission’s analysis of the station’s locus of control generally rests on three factors; programming, personnel and finances. FTS will have the ultimate control and decision making authority in each of these three areas: all of its programming activities are subject to the

⁸³ *Order* at para. 43.

⁸⁴ 47 U.S.C. § 310(b)(4)

⁸⁵ *Fox Television Stations*, 11 FCC Rcd 5714, 5723 (1995)

⁸⁶ *Id.* at 5728.

⁸⁷ *Id.*

⁸⁸ *Order* at para. 19.

approval and control of FTS; the general manager and all of the department heads of each station report to FTS; and FTS controls the budget process.⁸⁹ The Office of General Counsel and the Mass Media Bureau found that the proposed ownership structure complies with the Commission's 1995 Fox decision; thereby concluding that no additional public interest analysis is necessary under Section 310(b)(4). I have the highest confidence in the independent legal analysis and judgment of the Commission staff in reaching this conclusion.

The minority's strained effort to distinguish the corporate structure presented in this transaction from the prior Fox decision is not persuasive. By elevating "form over substance," the minority essentially presents the Commission with two alternatives. We could undo the 1995 Fox decision, that created for the first time in the history of television, a competitive fourth network that provides a uniquely diverse voice in American political discourse; or turn the clock back to 1995 and freeze the company forever as it existed at that time in an environment in which its competitors are not similarly restrained. One is left to wonder why anyone who places a high value on diversity of voices and competition in the media marketplace would find either result serves the public interest.

2. IV. CONCLUSION

In short, where there are clearly applicable structural rules, reflecting the Commission's or Congress' diversity and concentration judgments, I believe a license transfer to be in the public interest if the parties satisfy the rule. As is the case here, in multiple-station, multiple market transactions, it is common for the combined entity to create temporary violations of our ownership rules. Consistent with Commission precedent, however, the *Order* balances the grant of a compliance period, against any potential harm to the goals underlying the rule. Beyond this detailed analysis, engaging in an additional, more subjective, evaluation using some ambiguous standard is unnecessarily complex and redundant. This additional burden places more weight on a review process that is already laboring under the demands of a fast-paced, innovation-driven marketplace.

Finally, on behalf of the agency, I feel compelled to address Commissioner Tristani's assertion that; "the decision also shows the lengths the Commission will go to avoid standing in the way of media mergers." While we may have a respectful disagreement over the public interest standard and the rote application of the four-prong test in license transfers, this sweeping assertion is not only offensive, but absurd. If the majority was on the crusade she suggests, then the Commission would have granted permanent waivers of our rules, which it clearly did not.

⁸⁹ *Order* at para. 16-18.

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN ABERNATHY

In re: Transfer of Control of Broadcast Licenses Held By Subsidiaries of Chris-Craft Industries Inc. to Fox Television Stations Inc, File nos. BALCT-20000918ABB, et al (rel. July 25, 2001).

I support today's decision to grant the applications of Fox and Chris-Craft to transfer certain broadcasting authorizations. I write separately to briefly express my views on a few aspects of today's decision.

The issues presented by this transaction were by no means frivolous. Indeed the transfer, absent the conditions imposed today, would run afoul of our existing national ownership cap, local television ownership rules, and the television/newspaper cross-ownership rule. While some have expressed significant doubts about the continued utility of some of these rules, an adjudication is not the appropriate venue for revisiting these rules. When that day comes, I have no doubt all interested parties will wholeheartedly engage in the debate. In the interim, we have an obligation to enforce our rules as written.

Today's item does enforce our rules, while also balancing the business needs of the parties to have an orderly transition for the new company. In this regard, I believe the size and scope of today's marketplace demands the flexibility afforded by temporary waivers of our rules that allows companies a grace period to come into compliance post-closing. Any other approach would needlessly require parties to engage in fire sales prior to closing in hopes that their government will ultimately approve the transaction. Having been on all sides of these transactions – as an FCC employee, a businesswoman, and a private attorney – I do not believe a forced restructuring prior to government approval best serves the public interest.

As the dissenters note, this transaction also presented issues regarding the nature of the foreign ownership structure of Fox under Section 310 of the Act. The Commission initially approved the ownership structure of Fox in *Fox Television Stations Inc.*, 10 FCC Rcd. 8452 (1995). I believe the Fox ownership structure set forth in today's item is consistent with that decision.

The Commission's 1995 precedent does not require that every element of the exact structure of Fox remain set in stone for eternity in order for additional stations to be added. That approach ignores the reality of today's changing marketplace and would unnecessarily tie the hands of this robust and relatively new competitor. Since the structure of Fox after this transaction is consistent with the essential elements of our 1995 Fox decision, it is not necessary to revisit that analysis here

I also write separately to emphasize the importance of the Commission acting on these types of applications quickly. Today's marketplace is extremely dynamic – delays of ten months simply will not do. Such a delay means ten months of uncertainty, delayed investment, and untold transaction costs. The American people and the parties to this transaction deserve better service from their government. Regardless of the outcome, the Commission owes it to its customers to provide prompt and clear answers to regulatory questions – regardless of how difficult. I look forward to working with my colleagues to ensure that future applications move through the Commission with considerably more dispatch.

July 24, 2001

Dissenting Statement of Commissioner Gloria Tristani

Re: Transfer of Control of Broadcast Licenses Held by Subsidiaries of Chris-Craft Industries, Inc., to Fox Television Stations, Inc.

I dissent from today's decision to permit Fox to acquire ten television stations from Chris-Craft. The transfer of these television station licenses violates the Communications Act and raises serious concerns regarding the ongoing concentration in the ownership of television stations and other media. This decision also shows the lengths the Commission will go to avoid standing in the way of media mergers.

Moreover, the majority ignores the effect of the Fox/Chris-Craft merger on one of the Communications Act's fundamental purposes – maintaining a diversity of viewpoints and voices. Preserving and promoting a diverse media is essential to our democracy. Today's decision further diminishes the marketplace of ideas.

There are several significant problems with the majority's decision. First, today's decision effectively eliminates the requirement that merger applicants demonstrate to the FCC that their license transfer would serve the public interest. The majority fails to identify a single public interest benefit resulting from this merger. The Communications Act, however, directs the FCC to permit a broadcast license to be transferred *only* if “the public interest, convenience, and necessity would be served thereby.”⁹⁰

In the context of license transfers, the Commission has required merger applicants to pass a four-part test.⁹¹ In the application before us, however, the Commission discusses only two of those four factors, the facts of which are not in dispute:

- (a) **Does the transaction violate the Communications Act?** Answer: Yes, it allows a single company to own television stations that will reach more than 35% of the national audience, in violation of the 1996 Telecommunications Act.

- (b) **Does the transaction violate the Commission's rules?** Answer: Yes, in three ways. The transaction violates the FCC's newspaper-broadcast cross-ownership proscription, the national television ownership cap, and the local television ownership limits.

Even using the Order's own incomplete version of the public interest test, the transaction clearly should not be approved. The decision finds that the newly-merged Fox/Chris-Craft will violate the Communications Act and the FCC's rules, and the decision identifies no offsetting benefits. Yet the majority deems this

⁹⁰ 47 U.S.C. § 310(d).

⁹¹ Just six months ago, the Commission reiterated its four-part public interest inquiry for license transfers: (1) whether the transaction would result in a violation of the Communications Act; (2) whether the transaction would result in a violation of the Commission's rules; (3) whether the transaction would substantially frustrate or impair the Commission's implementation or enforcement of the Communications Act; and (4) whether the transaction promises to yield affirmative public interest benefits. *Applications for Consent to the Transfer of Control of License and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner, Inc., Transferee*, Memorandum Opinion and Order, FCC 01-12 (rel. Jan. 22, 2001).

transaction to be in the public interest and proceeds to grant waivers of our most significant television ownership rules so that Fox can close its transaction.

The scope of today's decision should not be obscured by the piecemeal nature of the waivers Fox has received. Today's decision grants Fox waivers of three of the most critical broadcast ownership limitations – the national ownership cap, the television-newspaper cross-ownership restriction, and the local duopoly rule for ownership of television stations. Collectively, the grant of these waivers – and they are waivers, no matter how else they might be characterized by others -- signals that no matter how many rule violations would result from a proposed broadcast transaction, this Commission will find a way to let the deal go through. In fact, the newspaper-broadcast waiver issued today shows how far the Commission will go in order to avoid scuttling the sale of television stations. In seeking a waiver of the newspaper-television cross-ownership ban for New York City, Fox put forth two rationales, both of which the Order rejects. But the majority then goes on to supply reasoning Fox never even proposed and grants the waiver!⁹²

The Chairman's proposition in his separate statement that the public interest is demonstrated by compliance (or in the case of Fox/Chris-Craft, *expected future compliance*) with existing FCC rules is misplaced. The public interest requirement is an independent one that permeates, and is embodied in, the Communications Act. It is not vague or ambiguous as the Chairman suggests but is a standard that must be satisfied by every broadcast licensee that seeks to transfer its license. Section 310(d) states that "No construction permit or station license ... shall be transferred ... to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby."⁹³ Had Congress intended to permit license transfers upon a mechanical showing of compliance with existing rules, it would have said so in the Communications Act.

The public interest requirement is also an independent one in the context of telephone mergers. There are specific pro-competition rules that are just as fundamental to the telephone industry as the ownership rules are to the broadcast industry, yet the FCC has consistently required more than mere compliance with these rules in order for telephone mergers to be approved. For example, in the Qwest-U S WEST merger, the FCC conducted an exhaustive analysis on the record to ensure that the merged entity would not violate the restriction on Bell Company provision of in-region long distance service prior to receiving 271 approval.⁹⁴ That analysis was the beginning, rather than the end, of the public interest analysis in that merger. The Commission then went on to identify specific public interest benefits to that merger.⁹⁵ Consequently, I cannot agree that mere compliance with existing rules satisfies the public interest.

Second, this Order allows a foreign corporation to control ten television stations in the United States, in violation of Section 310(b) of the Communications Act. That provision prohibits a corporation that is more than 25% foreign-owned from holding an FCC-issued broadcast license unless the FCC determines that such ownership would serve the public interest. In a pair of 1995 decisions that serve as a backdrop to today's decision, the FCC found that News Corp, a foreign-owned corporation, should be permitted (through its subsidiaries) to own U.S. television stations because: (1) Rupert Murdoch himself

⁹² Order at paras. 39-42.

⁹³ 47 U.S.C. § 310(d).

⁹⁴ *In the Matter of Qwest Communications International, Inc. and US WEST, Inc., Applications for Transfer of Control of Domestic and International Section 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, FCC 00-91 (rel. Mar. 10, 2000).

⁹⁵ *Id.* at paras. 56-62.

was an American citizen and would, through Fox Television (FTS), his majority-owned company, control the stations; and (2) because the tax consequences of not allowing News Corp to own the stations would be significant.⁹⁶

In seeking to acquire Chris-Craft, Fox has created a new subsidiary (Newco) that is 85% owned by a foreign company, News Corp. Fox had initially planned to let Newco own the Chris-Craft stations and run them on a day-to-day basis. After receiving indications from Commission staff that the proposed structure might result in the Chris-Craft stations being under the control of the foreign-owned Newco, Fox restructured the proposed relationship in an attempt to show that Murdoch/FTS, not News Corp/Newco, would control the Chris-Craft stations.

However, the record continues to demonstrate that the Chris-Craft stations will, as a practical matter, be controlled by the foreign-based News Corp/Newco rather than by Murdoch/FTS. First, Newco controls all the assets of the 10 television stations except the bare licenses, earns 85% of the profits from those stations, and bears 85% of the economic risks. Second, Newco will perform the day-to-day operations of the stations, including making programming decisions, purchasing equipment, and employing the stations' personnel.⁹⁷ It is difficult to see how a company such as Newco that bears virtually all the economic risk of owning the television stations and that runs the stations on a day-to-day basis can be said not to control those stations. But that is what the majority concludes, and in so doing, permits foreign-owned News Corp/Newco to effectively control ten U.S. television stations without identifying a single public interest benefit.

The Fox/Chris-Craft decision confirms that this Commission will no longer give meaningful consideration to the public interest when parties wish to transfer television broadcast licenses. According to the majority, even when a proposed transaction would result in sweeping noncompliance with the Communications Act and our rules *and* where the Order itself identifies no public interest benefits resulting from the transaction, the Commission stands ready to approve the license transfer and will grant as many waivers as it takes to allow the deal to go forward. The result is another unwarranted reduction in viewpoint diversity and the marketplace of ideas. I cannot see how this result serves the public interest. For these reasons, I dissent.

⁹⁶ *Fox Television Stations*, 10 FCC Rcd 8452 (1995); *Fox Television Stations*, 11 FCC Rcd 5714 (1995).

⁹⁷ Letter from John Quale and Marvin Diamond, Counsel for Chris-Craft Industries, Inc. and William Reyner, Counsel for Fox Television Stations, Inc. to Magalie Roman Salas, Federal Communications Commission (Jan. 25, 2001) at 10-14.

STATEMENT OF COMMISSIONER MICHAEL J. COPPS

Re: *Applications for the Assignment of Chris Craft Television Licenses to Fox Television Stations, Inc.*

I must respectfully dissent from the approval of this license transfer. This transaction presents a number of unique and troubling questions. In the final analysis, I cannot support the grant of an application that stretches the statutes, denies operative Commission rules and omits critically important consideration of the public interest.

As I review this and future transactions, I bear in mind my responsibility to faithfully implement Congressional mandates. The principal statutory inquiry that we must undertake in any license transfer is whether the “public interest, convenience, and necessity will be served by the granting of such application.”

In this case, the Applicants claim that, so long as the transfer complies with the Communications Act and the Commission’s rules, “there is no requirement that applicants make a public interest showing.” We need not even reach that question here, because these license transfer applications require waivers of operative rules. I recognize that, in some instances, short-term waivers may be necessary to effectuate a license transfer that is otherwise in the public interest. But in approving this transfer, the Commission is granting waivers of three different ownership rules. Certain of these are long-term waivers that appear to be based on the anticipation that prior to the termination of the waivers, the rules may be relaxed such that compliance need *never* occur. Sound decisions should not be premised upon subjective conjecture about how future actions by the courts, Congress or the Commission may change the law or alter the rules under which we are instructed to operate.

I am further troubled by today’s decision permitting foreign ownership in circumstances generally proscribed by the Act. The Act expressly provides that an additional public interest finding is required for a transfer to a corporation “that is directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens.” In its 1995 decision regarding the acquiring company, the Commission stated that “Section 310(b) was intended to safeguard domestic station licenses from undue foreign influence and control.” The Commission found that this Congressional intent, and the national security interests that underlie it, have “effectively created a presumption in the broadcast area that, absent special considerations that outweigh the statutory concerns, the public interest will be served by denying licenses to entities with alien ownership above 25 percent.”

In the same 1995 decision, however, the Commission approved a transaction and found that for the purposes of the foreign ownership rules, Fox may continue to acquire television stations “consistent with the public interest” subject to the same ownership structure. Rather than explain how the instant transaction would serve the public interest, or even how the denial of the grant of these applications would not serve the public interest, Applicants rely entirely on the going forward approval of the ownership structure in the 1995 Commission decision. Had I been on the Commission at the time of that decision, I would not have accepted such an open-ended provision. Accepting the precedent in this instance, it nevertheless does not appear to me that this transaction is consistent with the ownership structure that the Commission approved in 1995 and ratified by a short form assignment and minimal restructuring in 1998. Although the Applicants have gone to great lengths to design agreements so that another company technically holds the station licenses transferred here, that company will not by any indicia own these stations. Indeed, the ownership and control schemata underlying this Applicant grow murkier and more Byzantine with each new iteration.

More fundamentally, today’s decision, taken *en toto*, does not even consider the public interest benefits that could counterbalance the failure to comply with Commission rules and the granting of waivers. Some of the waivers at issue here are close calls, and, were they backed by a showing of the public interest, I might be able to support their grant. The record of this proceeding, however, is

deafeningly silent when it comes to laying out the benefits to the American people of this proposed transaction.

I hope that in the future, parties making application to the Commission will take seriously the provisions of the Communications Act that require us to evaluate whether a grant serves the public interest. It is a responsibility that I take with the utmost seriousness and it will continue to be the critical determination in my decisions on this Commission.