

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

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| In the Matter of                        | ) |   |
|   | ) |   |
| K. Rupert Murdoch                       | ) | File No. BTCCT-20050819AAF, <i>et al.</i> |
| (Transferor)                            | ) |   |
|   | ) |   |
| and                                     | ) |   |
|   | ) |   |
| Fox Entertainment Group                 | ) |   |
| (Transferee)                            | ) |   |
|   | ) |   |
| Applications for Transfer of Control of | ) |   |
| Fox Television Stations, Inc.           | ) |   |

**MEMORANDUM OPINION AND ORDER ON RECONSIDERATION**

**Adopted: January 15, 2008**

**Released: May 22, 2009**

By the Commission: Commissioners Copps and Adelstein dissenting and issuing separate statements.

**I. INTRODUCTION**

1. The Commission has before it a petition for reconsideration of our decision granting the applications to transfer control of Fox Television Stations, Inc. (“FTS”) from K. Rupert Murdoch (“Murdoch”) to Fox Entertainment Group, Inc. (“FEG”).<sup>1</sup> The petition was filed by the Office of Communication of the United Church of Christ, Inc. and Rainbow/PUSH Coalition (Petitioners).<sup>2</sup> An opposition was filed by FEG and FTS (collectively “Fox”). Petitioners filed a reply. For the reasons stated below, we dismiss the petition and affirm our grant of the applications.

**II. BACKGROUND**

2. On August 19, 2005, Murdoch and FEG filed a set of applications to transfer control of FTS. FTS is a wholly-owned subsidiary of Fox Television Holdings, Inc. (“FTH”). Murdoch owns 100 percent of FTH’s issued and outstanding Preferred Stock (7600 shares) and FEG owns 100 percent of FTH’s issued and outstanding Common Stock (2400 shares). Through its stock ownership, FEG is entitled to all of the equity in FTH, less a fixed-return equity interest held by Murdoch. This fixed-return equity interest entitles Murdoch to a fixed return at the rate of 12 percent per annum on his paid-in capital of \$760,000 (*i.e.*, \$91,200 per year) and, in the event of dissolution, an ultimate redemption of his shares for a fixed sum of \$760,000.

3. The applications proposed a recapitalization of FTH’s stock and a concurrent change in

<sup>1</sup> *Applications for Transfer of Control of Fox Television Stations, Inc. from K. Rupert Murdoch to Fox Entertainment Group, Memorandum Opinion and Order*, 21 FCC Rcd 11499 (2006). A list of the stations affected by the transfer and the associated file numbers is attached as Exhibit A.

<sup>2</sup> As discussed below, Free Press filed an opposition to a previous waiver request filed by Fox. That waiver request, which was included as part of the applications that were the subject of our order, and Free Press’s opposition, are discussed below. Free Press did not file any opposition to the applications at issue here.

the voting rights in FTH. Prior to the recapitalization, each share of FTH's Preferred Stock and each share of its Voting Stock would be entitled to one vote for all purposes. Therefore, Murdoch personally controlled FTH through his 76 percent voting interest, while FEG maintained a 24 percent voting interest. Pursuant to the recapitalization, each share of Preferred Stock would be entitled to .055 of a vote for all purposes and each share of Common Stock would be entitled to one vote for all purposes. That would reduce Murdoch's voting interest from 76 percent to 14.8 percent while increasing FEG's voting interest in FTH from 24 percent to 85.2 percent. The applications were placed on public notice on August 30, 2005 and granted on August 15, 2006. Our decision granting the applications was released on October 6, 2006.

4. FEG is a wholly-owned subsidiary of News Corporation (News Corp.).<sup>3</sup> Murdoch is the Chairman, Chief Executive Officer and a director of News Corp. and has a 29.5 percent voting interest in News Corp.<sup>4</sup> In addition, Murdoch has the power to appoint all eight directors of Cruden Financial Services, LLC, which holds 28.5 percent of the voting interest in News Corp. Four of those eight appointees must be the designees of Prudence MacLeod, Elisabeth Murdoch, Lachlan Murdoch, and James Murdoch. The applicant stated that the recapitalization of FTH would not change any of the voting arrangements in News Corp. It also stated that no new party would acquire any voting rights or equity in FTH, FEG or News Corp. The applications reflected that the existing owners of FTH – Murdoch and FEG – would remain in control of the company, and that no new media ownership combination would arise as a result of these transfers. Further, the applicants maintained that the proposed recapitalization would be without any discernible or meaningful change in the control or operation of the broadcast properties. Finally, the applicants stated that the purpose of the proposed recapitalization of the company was to reduce corporate complexity, yield operational efficiencies and financial savings, and free capital to ultimately sustain and improve levels of service the licensee provides the public.

5. In connection with the transfer applications, Murdoch and FEG sought a waiver of the newspaper/broadcast cross-ownership ("NBCO") prohibition to permit the continued ownership of WWOR-TV, Secaucus, New Jersey, WNYW(TV), New York, New York and *The New York Post*,<sup>5</sup> and a waiver of the local ownership rule for station KFCT(TV), Fort Collins, Colorado to continue to operate as a satellite of station KDVR(TV), Denver, Colorado.<sup>6</sup> Even though no new parties were introduced into the ownership structure and the existing owners of FTH would remain in control, the applicants sought the authority for this transaction on FCC Form 315, commonly referred to as a "long-form" application. Our review included a *de novo* review of any multiple ownership waivers held by the transferor, including an analysis of whether the desired public interest benefits have resulted from the past waivers and justify their extension in this case.

6. Our decision stated that the Commission has recognized the need for waiver of the NBCO prohibition in certain circumstances.<sup>7</sup> In the case of the waivers held by FTS and News Corp. to

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<sup>3</sup> News Corp. was formerly News Corporation Limited, an Australian Company. It was reincorporated as News Corporation, an American company, on November 12, 2004 as part of a corporate reorganization.

<sup>4</sup> The Commission has never made any finding as to whether Murdoch exercises control over News Corp. See, e.g., *Fox Television Stations, Third Memorandum Opinion and Order*, 11 FCC Rcd 7773, 7775 (1996).

<sup>5</sup> See 47 C.F.R. §73.3555(d).

<sup>6</sup> See 47 C.F.R. §73.3555(b) & (c), n.5. The petition for reconsideration does not raise the satellite waivers and, therefore, we do not re-examine the grant of those waivers herein.

<sup>7</sup> When it adopted the television/newspaper cross-ownership ban, the Commission foresaw the need to consider waivers where: (1) a licensee is unable to sell a station; (2) the only sale possible would be at an artificially depressed price; (3) the locality cannot support separate ownership and operation of the newspaper and broadcast station; or (4) for whatever reason, the purposes of the rule would be disserved by its application. See *Multiple*

(continued....)

permit common ownership of WNYW(TV), WWOR-TV and *The New York Post*, the Commission had previously found that the combined “special circumstances” of preserving the on-going viability of the newspaper in tandem with the diversity and competitiveness of the New York City market justified grant of the permanent rule waiver for ownership of WNYW(TV) and *The New York Post*, and grant of the temporary rule waiver for ownership of WWOR-TV and *The New York Post*.<sup>8</sup> In 2004, FTS and News Corp. filed a petition (“2004 Modification Request”) asking the Commission to modify the permanent waiver to also include common ownership of WWOR-TV or, at a minimum, to extend the temporary waiver with regard to WWOR-TV pending conclusion of the remand of the 2002 biennial review proceeding. Even though the 2004 Modification Request was never placed on public notice, Free Press filed a letter on April 15, 2005 which requested that the Commission either dismiss the waiver or place it on public notice. Fox filed a response to Free Press’s letter.<sup>9</sup>

7. As noted above, FTS filed the captioned transfer applications on August 19, 2005. FTS included a copy of the 2004 Modification Request as part of the waiver request therein, but did not mention the opposition of Free Press to the 2004 Modification Request. The waiver request states that the permanent WNYW(TV)/*New York Post* waiver saved the newspaper from extinction and preserved a unique and diverse media voice (as well as hundreds of jobs). It describes how the waiver permitted News Corp. to invest in an expansion of the newspaper by adding a Sunday edition and building a \$300 million state-of-the-art plant in the economically depressed South Bronx area. Finally, it demonstrates that New York City – the nation’s largest media market – is astoundingly diverse and competitive with over 18 independently-owned television stations, nearly 150 independent owners of commercial and noncommercial radio stations and 30 daily newspapers, and argues that the proposed waiver would not materially harm competition in that market. In the waiver request, applicants argue that continued uncertainty with regard to the repeal of the newspaper/broadcast cross-ownership prohibition has placed FTS in a position where it “cannot rationally continue to invest in the future of *The Post*” without the regulatory certainty that would result from modifying the permanent waiver to include WWOR-TV or extending its temporary waiver with respect to that station.

8. After analyzing the NBCO waiver request, we found that renewed waivers of Section 73.3555(d) of the Rules to permit the joint ownership of WNYW(TV), WWOR-TV and *The New York Post* were warranted. The pre-existing waivers permitting the common ownership of WNYW(TV), WWOR-TV and *The New York Post* were granted in significant part to preserve the operation of the newspaper after concluding that the public would benefit from such preservation and that competition in the subject market would not be adversely affected. We found that the demonstrable public interest benefits that resulted from the common ownership of those media properties justified a continuation of the existing waivers. We found that there was nothing in the record to indicate that the competitive nature of the market or the benefit to the public resulting from common ownership of those media properties had changed sufficiently to revisit the conclusions underlying the original grant of those waivers.

9. Based on our analysis, we found that a continued permanent waiver to permit the common ownership of WNYW(TV) and *The New York Post* was warranted. In addition, we found that a continued temporary waiver of the NBCO rule to permit common ownership of WWOR-TV and *The New*  
(Continued from previous page) \_\_\_\_\_

*Ownership – Second Report and Order in Docket No. 18110*, 50 FCC 2d 1046, 1084-85, *recon.* 53 FCC 2d 589 (1975), *aff’d sub nom. FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978).

<sup>8</sup> See *Fox Television Stations, Inc.*, 8 FCC Rcd 5341(1993), *aff’d sub nom. Metropolitan Council of NAACP Branch v. FCC*, 46 F.3d 1154 (D.C. Cir. 1995)(granting a permanent waiver of the rule); and *UTV of San Francisco Inc., Memorandum Opinion and Order*, 16 FCC Rcd 14975 (2001)(granting a temporary 24-month waiver of the rule with respect to WWOR-TV) (*Fox/Chris-Craft*).

<sup>9</sup> On November 2, 2006, Free Press filed a separate appeal of our order in this proceeding in the United States Court of Appeals for the District of Columbia Circuit, No. 06-1369.

*York Post* for 24 months would be appropriate and in the public interest. We concluded that a waiver would provide sufficient certainty to assure that FTS and News Corp. would continue to take appropriate action or expend necessary capital to preserve and expand *The New York Post* without being concerned about forfeiting that investment as a result of closing the newspaper or by a forced sale of a media interest at an artificially depressed price. We found that this result served the purpose of the NBCO rule to preserve competition and existing service to the public by preventing the need for a forced divestiture in a market more than sufficiently competitive to withstand the harms the rule was designed to prevent.

### III. STANDING

10. Petitioners did not file a petition to deny or participate in this proceeding prior to grant of the applications. Under our rules, a petition for reconsideration can only be filed by a person who is not a party to the proceeding if that person can show “good reason why it was not possible for him to participate in the earlier stages of the proceeding.”<sup>10</sup> Petitioners claim they were unable to participate in the earlier stages of this proceeding because the Commission failed to provide public notice and opportunity for public comment on Fox’s requested waivers. Petitioners further claim that they should have been served with copies of the 2004 Modification Request and with copies of the applications for transfer of control at issue because they had participated in the 2001 proceeding in which Fox acquired control of WWOR-TV. In addition, Petitioners argue that they have standing because they have members who reside in the service area of WWOR-TV and who are adversely affected by our decision.<sup>11</sup>

11. It is uncontested that the applications were placed on public notice on August 30, 2005. The public notice named the parties and the stations involved and included call signs, communities of license, facility identification numbers and the type of application filed. FEG states that public notice of the filing of the applications was also provided on-air on both WNYW(TV) and WWOR-TV, as well as in a New York daily newspaper. FEG states that the applications themselves were available for inspection at the stations and we note that they were also available in the Commission’s public reference room and on our web site. The Commission has repeatedly held that public notice constitutes constructive notice to interested parties of the filing of an application.<sup>12</sup> We did not grant the applications at issue here for almost a year after they appeared on public notice.<sup>13</sup> Petitioners, therefore, had ample opportunity to file a petition to deny or an informal objection to the applications and cannot claim that public notice of the applications and the associated waivers was not given.

12. Similarly, Petitioners’ claim that they should have been served with the applications is without merit. Almost five years ago, Petitioners participated in a wholly different proceeding involving the stations and newspaper at issue here. That proceeding has long been final and is no longer subject to review. Nothing in our rules requires a licensee to serve parties that have opposed one application related to its station with all further applications related to that station. Petitioners had no right to expect service of the applications at issue here.

13. Although Petitioners include affidavits of members who reside in the viewing area of the stations and who claim to be harmed by our decision with their petition to deny, this does not overcome their failure to participate earlier in the process. Based on the above, we find that Petitioners lack

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<sup>10</sup> 47 C.F.R. § 1.106(b)(1).

<sup>11</sup> Citing 47 U.S.C. § 405(a).

<sup>12</sup> See, e.g., *High Country Communications, Memorandum Opinion and Order*, 4 FCC Rcd 6237 (1989).

<sup>13</sup> To the extent that Petitioners contend the Commission was obligated to release some sort of “special” public notice of the filing of these particular applications, we note that there is no such extraordinary notice requirement. The Commission has released additional public notices soliciting public comment in specific proceedings, but is not obligated to do so.

standing to file a petition for reconsideration in this proceeding.<sup>14</sup>

#### IV. NBCO WAIVER

14. As discussed above, the applications at issue here were unopposed. Nonetheless, even though the petitioners here lack standing, we think that it is appropriate as a prudential matter to consider Free Press's objections to the 2004 Modification Request because Fox incorporated that request by reference into the transfer applications at issue here. Our failure to do so before was an oversight arising from the informal nature of Free Press's original objection and the fact that Free Press took no action to renew its objection when the transfer applications were filed and placed on public notice, such as by filing a petition to deny, as its letter suggested it would do if the waiver request were placed on public notice.

15. Considering Free Press's arguments, however, we do not find them persuasive. First, we disagree that Fox's 2004 request constituted an untimely petition for reconsideration of the Fox/Chris Craft Order because it sought either a permanent waiver or a waiver pending the outcome of our media ownership rulemaking. Under Commission rules, as noted above, a Form 315 application ordinarily requires a *de novo* review of any waivers held by the licensee. There is nothing in the Commission rules that prohibits an applicant from arguing for an outcome in that review that is different from the outcome in a previous waiver request. Thus, the filing of the instant waiver request cannot be characterized or dismissed as an untimely petition for reconsideration.

16. Second, we disagree with Free Press that granting the requested waiver would violate the stay issued by the Third Circuit in *Prometheus*. Again, the Commission's practice of conducting a *de novo* waiver review in connection with a Form 315 application is longstanding and predates the Commission rulemaking that is the subject of the stay. Nothing in the *Prometheus* decision prevents the Commission from continuing its waiver practices with respect to the rules that the court did not stay. Indeed, the Commission is obligated to take a "hard look" at waiver requests to determine whether the application of a rule in a particular circumstance would disserve the public interest.<sup>15</sup>

17. In addition to its procedural arguments, Free Press asserts that Fox had to justify an additional temporary waiver or a permanent waiver under our traditional four-prong test and that Fox failed to demonstrate that requiring immediate divestiture would severely curtail or eliminate service to the public. Under that test, a waiver may be granted if (1) a licensee is unable to sell a station; (2) if the only sale possible would be at an artificially depressed price; (3) the locality cannot support separate ownership and operation of the newspaper and broadcast station; or (4) for whatever reason, the purposes of the rule would be disserved by its application.<sup>16</sup>

18. The purpose of the NBCO rule is to promote diversity of voices. Our order makes clear, as did our previous orders regarding this NBCO combination, that a significant purpose of the waiver was to preserve the viability of the *New York Post*. Loss of the *New York Post* would decrease the diversity of voices in the New York markets and, thereby, disserve the purpose of the rule. Furthermore, because the grant of the waiver simply involves an internal corporate restructuring and does not create any new media

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<sup>14</sup> Free Press, like Petitioners, did not file any oppositions to the applications at issue here. Neither did it file a petition for reconsideration. Although this order discusses Free Press's opposition to the 2004 Modification Request, we do not believe Free Press has standing to seek review of our grant of the waiver.

<sup>15</sup> *WAIT Radio, Inc. v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (subsequent history omitted) ("a general rule, deemed valid because its overall objectives are in the public interest, may not be in the 'public interest' if extended to an applicant who proposes a new service that will not undermine the policy, served by the rule, that has been adjudged in the public interest.")

<sup>16</sup> *Multiple Ownership-Second Report and Order*, 50 FCC 2d at 1084-85.

combinations, it does not reduce the diversity of voices in the New York market.

19. In *Fox/Chris Craft*, we granted the NBCO waiver relying on the fourth prong of the waiver test. Fox states 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. In light of the public interest benefits that have resulted from the preservation of the *New York Post*, which would have been unlikely without Fox's substantial investments, the fact that the waiver simply involves an internal corporate restructuring and does not create any new media combinations, and because of the extreme diversity of voices in the New York market, we affirm our finding under the fourth prong of the Commission's waiver standard that the purposes of the NCBO rule would be disserved by application of the rule in these circumstances. We therefore reaffirm that our decision to renew the permanent waiver permitting ownership of WNYW-TV and the New York Post and to grant a temporary waiver permitting the further ownership of WWOR-TV was supported by the facts in the record and was in the public interest.

#### V. ORDERING CLAUSES

20. IT IS ORDERED THAT the petition for reconsideration filed by the Office of Communication of the United Church of Christ, Inc. and Rainbow/PUSH Coalition IS DISMISSED and our decision granting the transfer of control of Fox Television Stations from K. Rupert Murdoch to Fox Entertainment Group IS AFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**EXHIBIT A**

| <u>Station</u> | <u>Community</u>   | <u>ID No.</u> | <u>File No.</u>   |
|----------------|--------------------|---------------|-------------------|
| WTTG(TV)       | Washington, DC     | 22207         | BTCCT-20050819AAF |
| WDCA(TV)       | Washington, DC     | 51567         | BTCCT-20050819AAG |
| WNYW(TV)       | New York, NY       | 22206         | BTCCT-20050819AAH |
| WWOR-TV        | Secaucus, NJ       | 74197         | BTCCT-20050819AAI |
| WFLD(TV)       | Chicago, IL        | 22211         | BTCCT-20050819AAJ |
| WPWR(TV)       | Gary, IN           | 48772         | BTCCT-20050819AAK |
| KTTV(TV)       | Los Angeles, CA    | 22208         | BTCCT-20050819AAL |
| KCOP-TV        | Los Angeles, CA    | 33742         | BTCCT-20050819AAM |
| KRIV(TV)       | Houston, TX        | 22204         | BTCCT-20050819AAN |
| KTXH(TV)       | Houston, TX        | 51569         | BTCCT-20050819AAO |
| KSTU(TV)       | Salt Lake City, UT | 22215         | BTCCT-20050819AAP |
| KDVR(TV)       | Denver, CO         | 126           | BTCCT-20050819AAQ |
| KFCT(TV)       | Ft. Collins, CO    | 125           | BTCCT-20050819AAR |
| WFXT(TV)       | Boston, MA         | 6463          | BTCCT-20050819AAS |
| WHBQ-TV        | Memphis, TN        | 12521         | BTCCT-20050819AAT |
| WTFX-TV        | Philadelphia, PA   | 51568         | BTCCT-20050819ABD |
| WBRC(TV)       | Birmingham, AL     | 71221         | BTCCT-20050819ABG |
| WGHP(TV)       | High Point, NC     | 72106         | BTCCT-20050819ABJ |
| WDAF-TV        | Kansas City, MO    | 11291         | BTCCT-20050819ABT |
| KSAZ-TV        | Phoenix, AZ        | 35587         | BTCCT-20050819ACN |
| KUTP(TV)       | Phoenix, AZ        | 68886         | BTCCT-20050819ABB |
| KDFW(TV)       | Dallas, TX         | 33770         | BTCCT-20050819ABZ |
| KDFI(TV)       | Dallas, TX         | 17037         | BTCCT-20050819ACC |

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|          |                 |       |                   |
|----------|-----------------|-------|-------------------|
| KTBC(TV) | Austin, TX      | 35649 | BTCCT-20050819ACG |
| KTVI(TV) | St. Louis, MO   | 35693 | BTCCT-20050819ABX |
| WTVT(TV) | Tampa, FL       | 68569 | BTCCT-20050819ABK |
| WAGA(TV) | Atlanta, GA     | 70689 | BTCCT-20050819ABM |
| WJBK(TV) | Detroit, MI     | 73123 | BTCCT-20050819ABN |
| WITI(TV) | Milwaukee, WI   | 73107 | BTCCT-20050819ABO |
| WJW(TV)  | Cleveland, OH   | 73150 | BTCCT-20050819ABR |
| KMSP-TV  | Minneapolis, MN | 68883 | BTCCT-20050819AAU |
| WFTC(TV) | Minneapolis, MN | 11913 | BTCCT-20050819AAV |
| KFTC(TV) | Bemidji, MN     | 83714 | BTCCT-20050819AAW |
| WRBW(TV) | Orlando, FL     | 54940 | BTCCT-20050819AAX |
| WOFL(TV) | Orlando, FL     | 41225 | BTCCT-20050819AAY |
| WOGX(TV) | Ocala, FL       | 70651 | BTCCT-20050819AAZ |
| WUTB(TV) | Baltimore, MD   | 60552 | BTCCT-20050819ABA |



**DISSENTING STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*Re: K. Rupert Murdoch (Transferor) and Fox Entertainment Group (Transferee), Applications for Transfer of Control of Fox Television Stations, Inc., File No. BTCCT-20050819AAF, et al.*

Because the Memorandum Opinion and Order released on October 6, 2006 was unaccompanied by Commissioners' statements, I now include my original statement which continues to reflect my thoughts and conclusions on this proceeding:

As today's decision acknowledges, the Commission's review of a "long-form" Section 314 transfer of control includes a *de novo* review of media ownership waivers held by the transferor. This means the Commission has a duty to examine carefully whether the public interest compels extension of previously granted waivers. This is as it should be. After all, Congress charged the Commission with inquiring in *any* license transfer whether the "public interest, convenience and necessity will be served."

On this account, I believe today's decision is woefully deficient. It is nowhere near the searching *de novo* review that the Commission's precedent requires. Instead, the majority sweeps over the facts that led to these waivers, considers too little in the way of new data and reaches unsustainable conclusions about corporate efficiency, financial viability and market diversity. Loss of voices in a market due to waiver of rules like the newspaper-broadcast cross-ownership rule requires serious analysis. Yet there is no serious public interest analysis here. I must, therefore, dissent.

The Order on Reconsideration does nothing to address these concerns. Indeed, it fails to even *mention* the fact that, with the acquisition of the Wall Street Journal, News Corp. operates *two* of the New York market's most popular television stations and *two* of its most popular newspapers. I therefore renew my dissent.

**DISSENTING STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: K. Rupert Murdoch (Transferor) and Fox Entertainment Group (Transferee), Applications for Transfer of Control of Fox Television Stations, Inc., File No. BTCCT-20050819AAF, et al.*

I dissent from this *Order on Reconsideration*, but I am resubmitting my dissenting statement which was originally prepared in connection with the *Memorandum Opinion and Order* released on October 6, 2006. Inexplicably, the Commission did not release Commissioners' statements at that time.

I must dissent from this Memorandum Opinion and Order because, once again, the Commission has slighted the needs of the American public, neglected its statutory obligation to protect the public interest, and as a result, produced a decision that falls short even of the Commission's own standards.<sup>1</sup> Because the Commission has not engaged in a thorough and genuine analysis of the waivers granted by today's decision, it has once again failed to protect the interests of the American people, especially the people of northern New Jersey.<sup>2</sup> When it comes to this particular examination of its duty to protect the public interest, the Commission has failed the test.

The instant Application for Transfer of Control involves not just one waiver of our cross-ownership rules, but multiple waivers. The granting of waivers of long established rules warrants careful scrutiny of Fox's application. Unfortunately, this kind of attention was not paid by the Commission. It distresses me that in this supposedly *de novo* review of a major application, the Commission provides merely five paragraphs of cursory discussion that ignore issues of significant public concern.

Today's order permits the common ownership and control of two of the top six television stations – WWOR-TV (Channel 9) and WNYW (TV Channel 5) – and one of the top daily newspapers, the *New York Post*, in the New York metropolitan media market. It is inappropriate to proceed in matters such as this when our media ownership rules are under review. We should not grant permanent and temporary waivers of rules before we have concluded a comprehensive review of the media ownership rules. This is another situation where the Commission has put the cart before the horse.

I am most critical of the fact that the Commission makes no attempt to determine the "demonstrable public interest benefits" that have resulted from the common

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<sup>1</sup> In the Order, the Commission acknowledges that "[o]ur evaluation to continue the waivers therefore includes a determination of whether the desired public interest benefits have resulted from past waivers *and* justify their extension in this case." Memorandum Opinion and Order, ¶ 5 (emphasis added). But the Commission does not even attempt to evaluate whether the "desired public interest benefits" have resulted from Fox ownership of WWOR-TV in Secaucus, New Jersey.

<sup>2</sup> Amazingly, the Order states that "there is nothing before us to indicate that the competitive nature of the market or that the benefit to the public resulting from common ownership of these media properties have changed sufficiently to revisit the conclusion underlying the grant of those waivers." Yet, the Commission did not even mention, review or consider the April 15, 2005 objection filed by Free Press against Fox Television, Inc.'s Petition for Modification of Permanent Waiver, which was attached to Fox's application to transfer the licenses at issue.

ownership of WNYW (TV) and WWOR-TV. This is particularly troublesome because WWOR-TV is the only VHF station in the State of New Jersey. As several New Jersey elected officials reminded the Commission, WWOR-TV has unique public interest obligations to the residents of northern New Jersey – one of the most densely populated regions in the nation and a prime terrorist target – but the Commission made no effort to address the elected officials’ concerns.

Perhaps the Commission has forgotten the history of WWOR-TV. In 1983, by a special act of Congress, the Commission reallocated Channel 9 (WWOR-TV) from New York to Secaucus, New Jersey. In the Reallocation Order, the Commission acknowledged that it was “guided strictly by what [it] perceive[d] to be the intent of the legislation to license a station to ‘operate for the public benefit of the unserved state [of New Jersey].’”<sup>3</sup>

The Commission said that WWOR-TV would “operate in New Jersey for the benefit of the people in [the] State. . . . This station [would] not be a New Jersey station in name only. It [would] serve the people of New Jersey.”<sup>4</sup> The Commission further stated that “the lack of *local* VHF television service to this highly populated area of northern New Jersey presented a unique set of circumstances. . . . Accordingly, we expect [the licensee of WWOR-TV, now Fox Television Stations] to perform a *higher degree of service* to its Grade B coverage area than is normally required of a broadcast licensee.”<sup>5</sup> The Commission has never held the licensee of WWOR-TV to this higher standard.

WWOR-TV is important to the people of New Jersey and their needs should not be ignored. WWOR-TV has greater special service obligations to New Jersey than its New York City or Philadelphia-based counterparts because its primary community of license is northern New Jersey. In a letter to Senator Frank R. Lautenberg, Chairman Powell reassured the Senator that the Commission would prioritize the review of WWOR-TV. He said that “[WWOR-TV’s] service to Northern New Jersey, which the Commission viewed as broader than the community of Secaucus, would be reviewed during proceedings to renew WWOR-TV’s license.”<sup>6</sup>

In spite of this promise to conduct a thoughtful review in a proceeding that implicates WWOR-TV’s license, the Commission now grants this instant application to transfer WWOR-TV’s license without any mention or analysis of WWOR-TV’s service record, particularly under the ownership of Fox Television Stations. In fact, Fox makes no attempt to proffer any support that it has met its special obligations to the citizens of New Jersey. The Commission should have taken this opportunity to review WWOR-TV’s service record and encourage more locally focused news coverage.

In 2001, the Commission granted Fox a so-called “temporary” waiver of the newspaper/broadcast cross ownership rule to permit common ownership of WWOR-TV

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<sup>3</sup> Channel 9 Reallocation (WOR-TV), 53 RR 2d 469 (1983), quoting S. Rep.No. 530, 97<sup>th</sup> Cong. 2d Sess. 690 (1982).

<sup>4</sup> *Id.*, quoting 128 Cong. Rec. 10946 (daily edition) August 3, 1982 (remarks of Senator Bradley).

<sup>5</sup> *Id.* (emphasis added)

<sup>6</sup> *Id.*

and the *New York Post*. In today's order, the Commission grants Fox yet another "temporary" waiver to continue ownership of these assets. This Commission may be well served to remember President Ronald Reagan's admonition, to paraphrase, "There is nothing so permanent as a temporary government [waiver]."

Accordingly, for these reasons and in light of the increased concentration of ownership in the New York market, I dissent from this *Order*.