

**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.¹ 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.² 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 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.

¹ 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.

² 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.

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].’”³

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.”⁴ 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.”⁵ 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.”⁶

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 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*.

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

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

⁵ *Id.* (emphasis added)

⁶ *Id.*