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September 23, 2009

VIA HAND DELIVERY AND ELECTRONIC FILING

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: WWOR-TV Renewal Application
File No. BRCT-20070201AJT
Notice of *Ex Parte* Presentation
MB Docket No. 07-260

Dear Ms. Dortch:

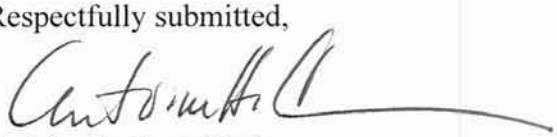
On September 22, 2009, the undersigned of this Firm, together with Maureen O'Connell, Senior Vice President, Regulatory and Government Affairs, News Corporation, and Joe DiScipio, Vice President, Legal and FCC Compliance, Fox Television Stations, Inc., met with Rick Kaplan of Commissioner Clyburn's office to discuss the license renewal application of television station WWOR-TV, Secaucus, NJ and News Corporation's pending requests for waiver of the newspaper/broadcast cross-ownership rule in New York. The meeting focused specifically on the issues set forth in the attached Exhibits A and B, as well as on the Supplement to Petition for Modification of Permanent Waiver, which News Corporation and Fox Television Stations, Inc. filed with the Commission on June 23, 2008 (the "Petition").

The Commission has accorded permit-but-disclose status under the *ex parte* rules to both WWOR-TV's license renewal application proceeding and the proceeding relating to the Petition (*see* Public Notice, FCC 07-114, rel. June 19, 2007; Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to Fox Television Stations, Inc. et al., dated July 24, 2009). Pursuant to Section 1.1206(b) of the Commission's Rules, an original and copy of this letter, and two

copies of the attachments, are being submitted to the Secretary's office. Copies also are being provided to the Commission staff that attended the meeting and to Barbara Kreisman and Best Copy and Printing, Inc., per the Public Notice. Finally, a copy is being filed electronically as part of MB Docket No. 07-260, pursuant to a request from the Commission's staff.

Should you have any questions concerning this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,



Antoinette Cook Bush
*Counsel to News Corporation and*
*Fox Television Stations, Inc.*

Enclosures

cc (via email): Rick Kaplan
Barbara Kreisman
Dave Roberts
Best Copy and Printing, Inc.
Angela J. Campbell, Counsel, Office of Communication, United Church of Christ

**EXHIBIT A**

**WWOR-TV: A STRONG COMMITMENT AND RECORD OF SERVICE TO THE VIEWERS OF NORTHERN NEW JERSEY**

The following outline sets forth the legal standard applicable to the renewal application filed for WWOR-TV, Secaucus, New Jersey ("WWOR-TV"), and clarifies that no special obligations have ever been imposed by the FCC outside of the requirement, adopted in 1983 as to the then licensee, that WWOR-TV's primary service area extended beyond its city of license (the primary service area for all other stations) and encompassed northern New Jersey. The outline then highlights WWOR-TV's impressive record of service to the viewers of northern New Jersey – a service which the station is committed to continuing for the indefinite future. Finally, it demonstrates that Section 309(k) of the Communications Act requires renewal of WWOR-TV's license without special programming conditions.

1) No Special Programming Obligation. WWOR-TV's obligation to serve the issues and interests of its community of license, Secaucus, is no different in kind or degree from any broadcaster's obligation to serve its community of license.

    a) Opposition to WWOR-TV's pending renewal application is premised on a misapprehension of the station's programming obligations. Opponents have attempted to manufacture special programming obligations for WWOR-TV, when in fact the station, at most, has a larger primary service area (northern New Jersey) than other licensees (their community of license).

    b) WWOR-TV became licensed to Secaucus under unique circumstances. Pursuant to Section 331 of the Communications Act, the Commission in 1983 reallocated WWOR-TV from New York to Secaucus. The enactment of Section 331 enabled the station's then licensee, RKO General, to terminate a pending renewal of license proceeding, avoiding possible loss of license, by agreeing to move the station from New York City to the state of New Jersey. In connection with the reallocation, the Commission observed that RKO General had a primary obligation to serve not only its city of license, but all of northern New Jersey lying within its Grade B contour.[1]

    c) In 1986, the Commission, acting upon an application for consent to assign the station's license to a subsidiary of MCA, considered and rejected arguments that RKO General had assumed a "higher obligation" to be responsive to the issues and concerns of its service area.[2] The Commission stated that RKO General's higher obligation was one only of the geographic coverage area to which the station was required to be responsive. Unlike other stations, which

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1 *In the Matter of Petition to Reallocate VHF Television Channel 9 from New York, New York to a City Within the Grade B Contour of Station WWOR-TV*, FCC 82-558, 53 Rad. Reg.2d 469 (1983).

2 *In re RKO General, Inc.*, 1 FCC Rcd 1081, 1086 (1986).

are required primarily to serve the needs of their "city of license," RKO General's primary obligation extended not only to Secaucus, but to all of its Grade B service area encompassing most of northern New Jersey.[3]

d) The Commission made clear that RKO General's "obligation to serve the issues and interests of northern New Jersey is no different in kind or degree from any licensee's obligation to serve its community of license."[4]

e) Most importantly, the Commission's decision related only to the question of whether RKO General, as seller of the station, had met its obligations as delineated in the decision allocating WWOR-TV to Secaucus and should be permitted to assign the license. As to the programming obligations of the buyer, MCA, the FCC refused a request by the State of New Jersey that it condition approval of the assignment on MCA's compliance with representations that it had made in the assignment application with respect to service to New Jersey. The FCC indicated that "it is apparent that [MCA] understands its service obligations," mooting any need for the imposition of a condition.[5]

f) The FCC again rejected complaints that WWOR-TV had failed to provide sufficient New Jersey programming in its review of a petition to deny WWOR-TV's spin-off to MCA shareholders in 1990.[6] In its decision, the Commission determined that the petitioner had failed to demonstrate, based on WWOR-TV's publicly-available issues/programs list, that the station had ignored New Jersey issues. In granting the consent to the transfer of control, the Commission imposed no conditions with respect to either a New Jersey physical presence requirement or special programming obligation.

g) In fact, since RKO General's acceptance of the reallocation of the station's license to New Jersey in 1983, the Commission has not once imposed any programming condition on the grant of an assignment of license for WWOR-TV or on the grant of its renewal applications. The Commission granted the station's 1987, 1994 and 1999 renewal applications without imposing any programming conditions. Nor did the Commission impose any special conditions with respect to New Jersey programming in connection with its grant of consent to the transfer of control of the station in 2001 to Fox Television Stations, Inc. ("FTS") or in the grant of consent in 2006 to the transfer of control of FTS from K. Rupert Murdoch to Fox Entertainment Group. While FTS intends to continue its exemplary service to all of New Jersey within the Grade B contour of WWOR-TV and maintain its presence in

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3 *Id.*

4 *Id.* at 1087.

5 *Id.* at 1090.

6 *In re Application of WWOR-TV, Inc. for Transfer of Control of Station WWOR-TV, Channel 9 Secaucus, New Jersey*, FCC 90-424, 6 F.C.C.R. 193 (1990).

the state, it is subject to no unique requirements with respect to service to New Jersey.

2) WWOR-TV Has Provided Exemplary Service to the Residents of Northern New Jersey.

a) *Daily News.* From the time that FTS acquired WWOR-TV in 2001 until the end of its most recent license term, the station broadcast more than 2000 hours of regularly scheduled newscasts; more than 200 hours of public affairs programming and in the last two years of the term alone, more than 20,000 public service announcements benefiting local charities and residents.

i) Nightly News, Seven Days a Week. WWOR-TV broadcast a one-hour nightly newscast, which spent a substantial amount of time covering issues of importance to northern New Jersey viewers, including extensive coverage of elections and local events.

ii) News Updates. During the last two years of the license term, WWOR-TV increased its news gathering capabilities, adding new staff and enhancing its mobile satellite coverage. As a result, the station added regularly scheduled local news updates running between 4:00 and 7:00 p.m. weeknights. WWOR-TV also interrupted regularly scheduled programming for breaking news reports of importance to northern New Jersey viewers. Examples of breaking news segments included severe weather warnings, Amber Alerts, and live addresses by the Governor of New Jersey. The station also carried live coverage of the Governor's annual State of the State address.

iii) Partnership with the Record. In 2007, the station also partnered with a local newspaper, *The Record* and Rasmussen, a provider of political data, to enhance its local coverage.

iv) News Crawls. WWOR-TV regularly ran news crawls to provide viewers with up-to-date coverage of news developments such as, school closings, major traffic and New Jersey election results.

b) *Weekly Public Affairs Programming.* WWOR-TV broadcast weekly half-hour public affairs programs *New Jersey Now* (formerly *Ask Congress*) and *Real Talk*. Each aired for one-half hour on Sundays at noon and 12:30 p.m., respectively. *NJ Now* provided a forum for New Jersey politicians to address issues of importance to New Jersey residents. *Real Talk* presented local social, economic and cultural issues, as well as local personalities, providing viewers access to civic and community leaders. The station also moved the air time for each of these programs from early Sunday morning to Sunday mid-day.

c) *Local Sports and Entertainment.* WWOR-TV provided a wide variety of entertainment and sports programming, including regular coverage of the New Jersey Nets, New York Giants and New York Yankees sporting events. The station also covered entertainment programs responsive to our diverse audience – for example, each year WWOR-TV brought the community coverage of the National Puerto Rican Day Parade and the MDA Telethon; in 2007 the station began carrying the McDonald's Gospelfest which it also plans to broadcast on a yearly basis. The station also recently broadcast the United Negro College Funds' Tribute to Smokey Robinson.

d) *WWOR-TV Is Committed to New Jersey.* The following examples, while not exhaustive, are representative of WWOR-TV's commitment to New Jersey.

i) WWOR-TV's Presence in New Jersey. WWOR-TV's main studio is located in a 110,000 square foot office complex in Secaucus, New Jersey. The station has invested nearly $12 million dollars toward the capital improvement of the facility since 2001.

ii) WWOR-TV has employed over 250 individuals at the Secaucus facility and employees often took part in a variety of events in and around northern New Jersey. For example, several employees have worked with the New Jersey Task Force on Fire Prevention, Leadership New Jersey and the NJ Mental Health Institute. The station also has partnered with the Community Food Bank of NJ, The New Jersey Center for Performing Arts and the Three Doctors Organization, among others, to help serve the community.

iii) Training and Internships. WWOR-TV has operated a paid apprentice program to identify qualified individuals for work in the broadcasting field. The program has successfully increased opportunities for minorities and women, which have been underrepresented in the field. The station also has provided internship opportunities for college students and supports the Emma Bowen Foundation for Minority Interest in Media, which helps fund a job and career development program, and has partnered with One Hundred Black Men on a mentoring program.

3) The FCC Should Renew WWOR-TV's License Without Conditions.

a) *Standard for Renewal.* Section 309(k) of the Communications Act, which governs television broadcast license renewals, was adopted as part of the Telecommunications Act of 1996. Section 309(k)(1) requires the Commission to grant a renewal application if specified requirements are satisfied: "If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, with respect to that station, during the preceding term of its license –

(A) the station has served the public interest, convenience, and necessity;
(B) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and
(C) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse."[7]

b) *Limited Authority to Deny or Condition a Renewal.* Only if the licensee fails to meet the standard of Section 309(k)(1), may the Commission deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."[8]

c) *WWOR-TV Has Satisfied the Requirements Section 309(k)(1) for Renewal.* Since there can be no finding of a serious rule violation or rule violations amounting to a pattern of abuse, the FCC must find that WWOR-TV did not serve the public interest in order to impose conditions pursuant to Section 309(k)(2) – a standard that it simply cannot meet. As demonstrated above, WWOR-TV's license is subject to no express conditions as to its programming to New Jersey. And quite apart from the question of whether it is subject to requirements applicable to no other television station, it is indisputable that WWOR-TV has provided exceptional service to northern New Jersey. Accordingly, imposition of special programming conditions on the grant of WWOR-TV's pending renewal application would violate Section 309(k)(2) of the Communications Act.

4) Even if the Commission Had the Authority—Which It Does Not—to Impose Conditions on the Grant of WWOR-TV's License Renewal, the FCC Must, if WWOR-TV Requests, Vacate Any Conditional Grant and Afford WWOR-TV a Full Evidentiary Hearing.

a) Under Section 1.110 of the Commission's rules, if the FCC grants any application subject to terms or conditions other than those requested by the applicant, the applicant may reject the grant and request an evidentiary hearing before an administrative law judge.[9] "Upon receipt of such request, the Commission will *vacate* its original action upon the application and set the application for hearing…."[10] The hearing would be a trial-type and include introduction of oral and written testimony with full right of cross-examination.

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7 47 U.S.C. § 309(k)(1).

8 47 U.S.C. § 309(k)(2).

9 47 C.F.R. § 1.110.

10 Id. (emphasis supplied).

b) An applicant may then request Commission review of the outcome of the hearing process[11] and appeal a final Commission decision imposing conditions to the United States Court of Appeals for the District of Columbia Circuit.[12] An applicant may also seek review of any court of appeals decision by filing a petition for writ of certiorari with the Supreme Court.

5) Subjective Review of a Broadcaster's Editorial Choices Is Not within the Purview of the Commission.

a) The First Amendment and Section 326 of the Communications Act prohibit the Commission from interfering with broadcasters' free speech rights or improperly interfering with the programming decisions of licensees.[13]

b) The Supreme Court has recognized the degree to which Congress has directed the Commission to steer clear of oversight of broadcast news— "Congress intended to permit private broadcasting to develop with the widest journalistic freedom," and – since it is not physically possible to provide time for all viewpoints – "the right to exercise editorial judgment was granted to the broadcaster."[14]

c) The Commission itself has stated that, "the general rule is that the Commission [will] not sit to review the broadcaster's news judgment, the quality of his news and public affairs reporting, or his taste."[15]

6) The Commission Has No Basis to Make Quantitative Judgments About WWOR-TV's Programming

a) The Commission long-ago eliminated its quantitative guidelines for non-entertainment, local and informational programming. Prior to its 1984 deregulation order, the Commission maintained renewal application processing guidelines specifying the amount of non-entertainment programming that television stations were required to broadcast to ensure

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11 47 C.F.R. § 1.115(a).

12 *See* 47 U.S.C. § 402(b)(2); *Tribune Co. v. FCC*, 133 F.3d 61, 66 (D.C. Cir. 1998) ("[W]hen the Commission grants an application subject to some condition which the applicant did not request, the application has been denied for purposes of § 402(b).").

13 *See* 47 U.S.C. § 326. *See also, In re John Neely, Esq.*, 2007 WL 1246137 (2007) (finding that "the Commission will not take adverse action on a license renewal application based on subjective determination of a listener or group of listeners as to what constitutes appropriate programming").

14 *Columbia Broadcasting System v. Democratic National Committee, et.al.*, 412 U.S. 94, 110-11 (1973).

15 *In re Complaints Concerning Network Coverage of the Democratic National Convention*, 16 FCC 2d 650, 654 (1969).

routine processing of their renewal application and avoid additional review.[16] The Commission ultimately concluded that the processing guidelines imposed burdensome compliance costs and raised potential First Amendment concerns by unnecessarily infringing on the editorial discretion of broadcasters.[17]

b) FTS has clearly demonstrated that it has provided programming responsive to issues of concern to viewers in northern New Jersey. Moreover, WWOR-TV has provided more local news on average than other similarly ranked commercial television stations in the United States and has carried more local news and public affairs programming than other full power stations licensed in New Jersey.

   i) A brief review of the programming of local New Jersey stations reveals that, on average, WWOR-TV broadcast over 8.0 hours of local news and public affairs programming per week. Other full-power commercial stations licensed in New Jersey broadcast less than 3.0 hours of local news and public affairs programming per week.

   ii) WWOR-TV carried significantly more news than other similarly situated stations. Nationally, over 60 percent of stations ranked fifth or below in a market provide no local news at all.[18] The FCC's own 2005 study reveals that the remaining 40 percent of stations ranked fifth and below averaged 458 minutes over a two week period.[19] In contrast, WWOR-TV, which is ranked sixth in the DMA, provided over 850 minutes of local news over any given two week period during the license term.

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16 *Revision of Programming and Commercialization Policies, Ascertainment Requirements and Program Log Requirements for Commercial Television Stations*, 98 FCC 2d 1076 (1984) ("*TV Deregulation Order*").

17 *TV Deregulation Order,* at ¶¶ 8, 27.

18 *See 2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Order on Reconsideration, MB Docket No. 06-121, FCC 07-216 (Released Feb. 4, 2008), at ¶ 62, n.204 ("*Quadrennial Review Order*").

19 *Quadrennial Review Order*, at ¶ 62, n.204.

**EXHIBIT B**

## Full-Power Television Stations Licensed in New Jersey

| Station | Community of License | Renewal Status |
|---|---|---|
| WMCN-DT | Atlantic City | Granted 8/7/08 |
| WWSI(TV) | Atlantic City | Granted 11/5/07 |
| WGTW-TV | Burlington | Granted 5/31/07 |
| WNJS(TV) (noncommercial) | Camden | Granted 5/31/07 |
| WNJU(TV) | Linden | Granted 1/31/08 |
| WNJN(TV) (noncommercial) | Montclair | Granted 7/18/07 |
| WNJB(TV) (noncommercial) | New Brunswick | Granted 5/31/07 |
| WFUT-TV | Newark | Granted 6/1/07 |
| WNET(TV) (noncommercial) | Newark | Granted 5/31/07 |
| WMBC-TV | Newton | Pending |
| WXTV(TV) | Paterson | Granted 10/3/07 |
| WWOR-TV | Secaucus | Pending |
| WNJT(TV) (noncommercial) | Trenton | Granted 5/31/07 |
| WUVP-TV | Vineland | Granted 10/3/07 |
| WFME-TV (noncommercial) | West Milford | Granted 5/31/07 |
| WMGM-TV | Wildwood | Pending |

Source: Television & Cable Factbook 2008, Warren Communications; FCC CDBS Database