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Angela J. Campbell
Associate Director
Citizens Communications Center Project

Christopher R. Day
J. Steven Farr
Fellows
VIA HAND DELIVERY

April 13, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Ex Parte Communication*: DA 00-2246
News Corporation and Fox Television Stations, Inc. Request for
Confidential Treatment of Material Filed on April 9, 2001
File Nos. BALCT-20000918ABB-ABD; BALCT-20000918ABF-ABS;
BALCT-20000918ABU-ABZ; BALCT-20000918ACA-ACE

Dear Ms. Salas:

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, Consumers Union, New York Metropolitan Association of the United Church of Christ, Rainbow/PUSH Coalition, and Valley Community Access Television ("Petitioners"), through undersigned counsel, hereby file a response to The News Corporation Limited ("News Corporation") and Fox Television Stations, Inc.'s ("Fox") April 11, 2001, letter regarding their request for confidential treatment of financial information concerning the *New York Post*.¹

News Corporation and Fox's April 11, 2001, letter to the Commission uses a mixture of conjecture and innuendo to insinuate motivation for Petitioners' April 10, 2001, objection² to

¹ See Letter from William S. Reyner, Jr. to Magalie Roman Salas, Secretary, Federal Communications Commission (dated April 11, 2001) (hereinafter "*Reyner Letter*").

² See Letter from Christopher R. Day and Angela J. Campbell to Magalie Roman Salas, Secretary, Federal Communications Commission (dated April 10, 2001).

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News Corporation and Fox's request for blanket confidential treatment of the *New York Post's* financial information and associated materials. News Corporation and Fox falsely accuse Petitioners of seeking to delay the aforementioned proceeding, and urge that, "[i]f Petitioners continue to refuse to avail themselves of the previously agreed upon Protective Order, the Commission should complete the processing of the . . . applications without further consideration of submissions from Petitioners with respect to the financial information."³

Petitioners have consistently sought disclosure of any non-confidential financial information filed in this proceeding because of the broad public interest implications of this proceeding, a fact recognized by the Commission's designation of this proceeding as "permit-but-disclose" for the purpose of the Commission's ex parte rules.⁴ Petitioners object to the execution of a protective order prior to a confidentiality determination by the Commission because it would effectively prevent other parties from gaining access to the information that is at the heart of this proceeding, and would prevent Petitioners from sharing this information with other potentially interested parties. Furthermore, execution of a protective order in the absence of a finding that confidential treatment is required by law would prevent the "full exchange on the multiple issues under consideration by the Commission."⁵

News Corporation and Fox also make frequent note of the "previously negotiated Protective Order."⁶ It is important to note that the terms of that Protective Order and the "Confidential Document" referred to therein only pertains to "the material submitted pursuant to the request of News Corp., dated January 22, 2001, for confidential treatment and the issuance of a protective order."⁷ Thus, on its face, the prior Protective Order only applies to News Corporation and Fox's previous submission, and does not apply to News Corporation and Fox's April 9, 2001, submission.

³ See *Reyner Letter*, at 3.

⁴ See *Mass Media Bureau Announces "Permit-But-Disclose" Ex Parte Status Accorded to Proceeding Involving Applications Filed By Fox Television Stations, Inc. and Chris-Craft Industries, Inc. for Consent to Transfer Control of Licenses and Authorizations*, DA 00-2246 (rel. Oct. 3, 2000).

⁵ *Id.*

⁶ See *Reyner Letter*, at 2.

⁷ See Order Adopting Protective Order, DA 01-528, at App. A, ¶ 2 (rel. Mar. 1, 2001).

Magalie Roman Salas

April 13, 2001

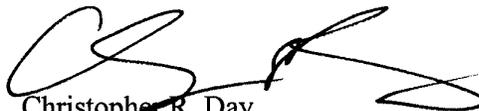
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When agreeing to the entry of the earlier Protective Order, Petitioners did not insist on first having the Commission make a ruling on confidential treatment for several reasons. First, News Corporation and Fox had disclosed to Petitioners in advance the exact nature of the information that it planned to submit. Second, the Protective Order also explicitly stated that Protective Order was not a determination that the information was entitled to confidential treatment and did not "constitute a resolution of the merits concerning whether any confidential information would be released publicly by the Commission upon a proper request under the Freedom of Information Act ("FOIA") or otherwise."⁸

The circumstances here are quite different. First, it appears, based on the limited information contained in News Corporation's April 9, 2001, letter to the Commission, that only some of the declaration and financial information submitted would be entitled to confidential treatment. Unlike the information submitted with News Corporation and Fox's January 22, 2001, filing, News Corporation and Fox's counsel have not volunteered any further information regarding the specifics of the information filed on April 9, 2001. Second, public access to any non-confidential information is critical. Under the instant circumstances, acquiescing to the entry of a protective order prior to Commission review of the submission and determination of whether confidential treatment is warranted would do a disservice to our clients and the public at large.

In the past, the Commission and the Mass Media Bureau have moved quickly to resolve issues of confidential treatment and issue protective orders, where necessary, in contested proceedings. In the instant case, Petitioners trust that the Commission will be able to resolve this issue in short order, and preserve the right of interested parties to provide meaningful comment on this proposed transaction.

Respectfully submitted,



Christopher R. Day
Angela J. Campbell

Counsel for the Petitioners

⁸ See *id.* at App. A, ¶ 1.

Magalie Roman Salas

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cc Chairman Michael K. Powell
Commissioner Harold Furchtgott-Roth
Commissioner Susan Ness
Commissioner Gloria Tristani
Roy Stewart, MMB
Barbara A. Kreisman, MMB
David Roberts, MMB
David Brown, MMB
James R. Bird, OGC
John C. Quale
Marvin J. Diamond
William S. Reyner, Jr.