

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Fox Corp. Request for Permanent Waiver of) MB Docket No. 20-378
Newspaper-Broadcast Cross-Ownership Rule)

MOTION FOR EXTENSION OF TIME

Free Press respectfully requests an extension of time to file initial comments in response to the Federal Communications Commission’s *Public Notice* released on November 13, 2020,¹ regarding the Fox Television Stations, LLC (“Fox”) request for a permanent waiver of the newspaper-broadcast cross-ownership rule for WWOR-TV, Secaucus, NJ (“WWOR”) and the *New York Post* newspaper.²

Though in general “[i]t is the policy of the Commission that extensions of time shall not be routinely granted,”³ given the extraordinary timing and circumstances in play here, the Commission should not consider this cynically-timed request at all – much less do so on a shockingly compressed, late-opened, and holiday-interrupted time frame buried after an election and in the midst of an administration transition. Any consideration of Fox’s request thus necessitates an indefinite extension, even though the initial timing of the *Public Notice* indicates that the Commission is artificially (and perhaps intentionally) constraining parties’ ability to comment on or oppose the waiver.

¹ *Media Bureau Seeks Comment on Request for Permanent Waiver of Newspaper-Broadcast Cross-Ownership Rule Filed by Fox Corp.*, Public Notice, MB Docket No. 20-378, DA 20-1350 (rel. Nov. 13, 2020) (“*Public Notice*”).

² Fox Corp. Request for Permanent Waiver of Newspaper-Broadcast Cross-Ownership Rule, 47 C.F.R. § 73.3555(d), MB Docket No. 20-378 (filed Oct. 5, 2020) (“Fox Permanent Waiver Request”).

³ 47 C.F.R. § 1.46(a).

Background

Fox filed its request on October 5, 2020. The Commission then sat on it for over a month. Notably, it was only after the presidential election was called for President-Elect Biden that the Media Bureau saw fit to issue the *Public Notice* seeking comment on Fox's request. The Bureau released that item apparently some time after 5 p.m. on Friday, November 13, 2020. In fact, it materialized late enough in the day (in a classic, late-Friday federal agency news dump) that it did not appear in the Commission's daily digest until the following Monday, November 16.⁴

Argument

The Commission should delay consideration of this permanent waiver request indefinitely, for at least three reasons.

First: Although the Commission provided a docket number in the *Public Notice*, Free Press's search for the filing showed that the promised docket was not opened in the Electronic Comment Filing System until mid-day on Tuesday, November 17, 2020. This despite the *Public Notice*'s overly optimistic claim, flatly false at the time it was made last Friday, that the waiver request "is available" via ECFS. Whether that statement was purposefully misleading or merely mistaken, the resulting delay made it difficult or impossible for the public to review Fox's request until four days (or 28 percent of the time allotted) had elapsed in an already exceedingly short 14-day cycle for initial comments. As if that deadline a mere two weeks after issuance of the Friday night notice were not enough to indicate the rushed nature of this whole endeavor, that deadline conspicuously falls on Friday, November 27, 2020, the day after the Thanksgiving federal holiday. The timing alone reeks of impropriety, as these procedural tactics seem designed to tip the scale heavily against public participation and in Fox's favor.

⁴ See Federal Communications Commission, "Daily Digest," Vol. 39, No. 715 (Nov. 16, 2020), <https://www.fcc.gov/edocs/daily-digest/2020/11/16>.

Second: The timing of this proceeding is also incredible in light of not just the pace of events around the election, but that election's results. No matter the current president's apparent unwillingness to accept reality, a transition is underway. With it will come a change in the Commission's majority and in its chair, at whose direction the Bureau initiated this proceeding so conveniently timed for Fox but no one else.

It did so despite a letter from the chairmen of the Commission's authorizing committee and subcommittee in the House of Representatives, requesting that the agency "immediately stop work on all partisan, controversial items under consideration, consistent with applicable law and regulation, and follow the norms set by past transfers of power."⁵ And it did so despite a letter from New Jersey Senators Menendez and Booker specifically regarding this waiver, illustrating that this action is both partisan and controversial. The Senators explained, writing even before the Commission had rushed the *Public Notice* out the door, that granting Fox's request "would undermine the Commission's own goals of diversity, localism, and competition" and "reward Fox . . . even though the company has failed to meet its responsibilities to New Jersey" and therefore "flouted its responsibility under the law and under its license."⁶

Third, and finally: As the Commission is well aware, Free Press and other parties have opposed the "temporary" but remarkably durable string of waivers granted to Fox and WWOR over the last nineteen years. What's more, the rulemaking proceeding dealing with the

⁵ See Letter from Chairman Pallone, Committee on Energy and Commerce, and Chairman Doyle, Subcommittee on Communications and Technology, to Hon. Ajit V. Pai, Federal Communications Commission (Nov. 10, 2020), <https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/FCC%20Letter%20re%20stop%20work%20request.pdf>.

⁶ See Letter from Senator Menendez and Senator Booker to Hon. Ajit V. Pai, Federal Communications Commission (Nov. 9, 2020), <https://www.menendez.senate.gov/newsroom/press/menendez-booker-demand-fcc-hold-wwor-tv-to-its-legal-obligation-to-provide-local-news-coverage-to-njans>.

cross-ownership rule at issue is subject to pending Supreme Court review, with initial merits briefs submitted this past Monday – prior to the actual (if not the claimed) date on which this docket opened. Fox’s filing points to that case and suggests the waiver is necessary protection against some kind of “interim” application of the cross-ownership rule; yet asserts improperly that parties adverse to Fox, opposed to this waiver, and party to the Supreme Court litigation may have been obligated to call for such an “interim” measure.⁷

Leaving aside the merits of that curious claim, the fact that this issue is before the Court illustrates there is no need now to rush a “permanent” decision. The spectacle of Fox’s lawyers writing about the “cloud of regulatory uncertainty”⁸ over the station after nearly two decades of continuous relief is comical. But however cloudy Fox and friends may fear their future is under a new administration, there’s no reason to steam ahead on insufficient notice in the wake of an election and the week of Thanksgiving, all while the rules in play are still in court.

Conclusion

The Commission should delay its consideration of the permanent waiver indefinitely, in light of the truncated pleading cycle, ongoing transition, and pending litigation cited by Fox.

Respectfully Submitted,

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⁷ Fox Permanent Waiver Request at 5-6.

⁸ *Id.* at 2.