

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

In the Matter of )
Fox Television Stations, Inc. ) MB Docket No. 07-260
Application for Renewal of License of )
WWOR-TV, Secaucus, New Jersey ) File No. BRCT-20070201AJT
and )
Application for Renewal of License of )
WNYW(TV), New York, New York ) File No. BRCT-20070201AJS
and )
Application for Renewal of License of )
WWOR-TV, Secaucus, New Jersey ) File No. BRCDT-20150202ACT
and )
Application for Renewal of License of )
WNYW(TV), New York, New York ) File No. BRCDT-20150202AJP
and )
Application for Transfer of Control of )
WTTG(TV), Washington, DC et al. ) File No. BTCCT-20050819AAF et al.

MEMORANDUM OPINION AND ORDER

Adopted: July 11, 2018

Released: July 12, 2018

By the Commission: Commissioner Rosenworcel concurring.

1. The Voice for New Jersey (VNJ) and the Office of Communication, Inc. of the United Church of Christ, Rainbow/PUSH Coalition, and Free Press (UCC) filed Applications for Review of a decision by the Chief, Media Bureau, which, inter alia, granted the 2007 application for the renewal of the license of WWOR-TV, Secaucus, New Jersey. The Federal Communications Commission

1 Application for Review filed by Voice for New Jersey (VNJ AFR); Application for Review filed by the Office of Communication, Inc. of the United Church of Christ, Rainbow/PUSH Coalition, and Free Press (UCC AFR)(Collectively, Applications for Review). Free Press was originally a separate party to the underlying proceeding but has joined UCC and its co-filers in their application for review. Arguments made solely by Free Press will be referred to separately. We note that the VNJ AFR focused primarily on WWOR-TV's programming, while the UCC AFR focused on WWOR-TV's alleged noncompliance with the newspaper broadcast cross ownership rule. All cites regarding our discussion of WWOR-TV's programming refer to the VNJ AFR.

2 Application for Renewal of License of WWOR-TV, et al., Memorandum Opinion and Order, 29 FCC Rcd 9564 (MB 2014) (Bureau Order). Fox Television Stations, Inc. (Fox) filed a Consolidated Opposition (AFR Opposition)

(Commission) hereby denies those Applications for Review. We also deny the petitions to deny the pending applications for renewal of the licenses of WWOR-TV<sup>3</sup> and WNYW(TV), New York, New York,<sup>4</sup> filed by VNJ<sup>5</sup> and UCC<sup>6</sup> and grant the renewals.

2. The *Bureau Order* granted the license renewal of television station WWOR-TV, and denied both a petition to deny filed by VNJ (VNJ PTD) against the renewal of WWOR-TV and a petition to deny filed by UCC (UCC PTD) against the license renewals of WWOR-TV and WNYW(TV).<sup>7</sup> In addition, the *Bureau Order* denied a Petition for Modification of Permanent Waiver (Modification Petition) previously filed by Fox seeking to modify its current permanent waiver of the newspaper/broadcast cross-ownership rule,<sup>8</sup> which permits it to own both WNYW(TV) and the *New York Post (Post)*, in order to encompass the ownership of WWOR-TV.<sup>9</sup> Instead, the *Bureau Order* granted Fox a temporary waiver pending the outcome of the *2014 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*.<sup>10</sup> The *Bureau Order* also found that inaccurate statements made by Fox in the context of *ex parte* communications did not

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to the Applications for Review and both VNJ and UCC filed Replies. The Bureau did not grant the 2007 renewal of WNYW(TV), in the *Bureau Order*, due to matters outside the scope of that proceeding. *Bureau Order* at 9564, n.7. Those matters have been resolved and we grant both the 2007 and 2015 renewals here.

<sup>3</sup> File No. BRCDT-20150202ACT.

<sup>4</sup> File No. BRCDT-20150202ACP.

<sup>5</sup> Petition to Deny filed by Voice for New Jersey against Application for Renewal of License of WWOR-TV, File No. BRCDT-20150202ACT (VNJ 2015 PTD).

<sup>6</sup> Petition to Deny filed by United Church of Christ, Rainbow/PUSH Coalition, and Free Press against Applications for Renewal of License of WWOR-TV and WNYW(TV), File No. BRCDT-20150202ACT, *et al.* (UCC 2015 PTD). In the UCC 2015 PTD, UCC asks that we act on its application for review before acting on the 2015 station renewals. Instead, we are consolidating the proceedings because the issues raised in them overlap. Fox filed a Consolidated Opposition (Fox 2015 Opposition) to both petitions and VNJ and UCC filed a consolidated reply (2015 Reply).

<sup>7</sup> See WWOR-TV, Application for Renewal of License, File No. BRCT-20070201AJT; WNYW(TV), Application for Renewal of License, File No. BRCT-20070201AJS. The *Bureau Order* also denied an informal objection by Aristides Martinez against the renewal of WWOR-TV, but Mr. Martinez did not file an appeal. *Bureau Order*, 29 FCC Rcd at 9565, 9582, 9583. Separately, the Bureau denied an informal objection filed by the Tri-State Like-It-Is Coalition. *Letter from Barbara Kreisman, Chief, Video Division, Media Bureau, to Lisa V. Davis and Joe M. DiScipio* (Sep. 5, 2014).

<sup>8</sup> 47 CFR § 73.3555(d) (NBCO rule). Fox later filed a Supplement to Petition for Modification of Permanent Waiver. Supplement to Petition for Modification of Permanent Waiver filed by News Corporation and Fox Television Stations, File Nos. BRCT-20070201AJS and BRCT-20070201AJT (filed Jun. 23, 2008) (Supplement).

<sup>9</sup> See *Bureau Order*, 29 FCC Rcd at 9565, 9583, para. 57.

<sup>10</sup> *Id.* See *2014 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*, MB Docket No. 14-50, FCC 14-28, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371 (2014) (*2014 Quadrennial*), vacated and remanded by *Prometheus Radio Project v. FCC*, 824 F.3d 33 (3rd Cir. 2016). As discussed further below, the Commission recently repealed the NBCO rule, making both the waiver request and the pending objections to it moot. See *2014 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*, MB Nos. 14-50, FCC No. 17-156, Order on Reconsideration and Notice of Proposed Rulemaking, 2017 WL 5623028 (2017) (*2014 Quadrennial Recon*).

warrant further Commission investigation.<sup>11</sup> Finally, the *Bureau Order* denied a petition for reconsideration filed by Free Press of the Commission's order on reconsideration in the proceeding approving the restructuring of Fox Television Stations, Inc. (*Murdoch Recon*).<sup>12</sup>

## I. SUMMARY

3. In this Memorandum Opinion and Order, we uphold the decision of the Media Bureau (Bureau) in the *Bureau Order* and deny the Applications for Review.<sup>13</sup> After review of the pleadings and the record, we find that the Bureau properly applied the standard of review for petitions to deny throughout its decision, and we uphold the Bureau's finding that WWOR-TV met its special obligations to serve Northern New Jersey. Because of our action in the 2014 Quadrennial Recon repealing the NBCO rule, Fox's joint ownership of these properties is now permissible under our current rules and the challenge to the Bureau's grant of a temporary waiver is therefore moot.<sup>14</sup> We further find that the Bureau acted reasonably in finding that inaccurate statements made by Fox in the context of *ex parte* communications did not warrant further review or nonrenewal of Fox's license. We also uphold the Bureau's decision denying the outstanding petition for reconsideration of the Commission's order in the *Murdoch Recon*. The petitions to deny the 2015 renewals of stations WWOR-TV and WNYW(TV) raise arguments that the petitioners raised in their 2007 petitions to deny and that they reasserted in their Applications for Review, but apply them to the new renewal period. For the reasons set forth below, we deny the petitions and grant the WNYW(TV) 2007 renewal and WWOR-TV and WNYW(TV) 2015 renewals.

## II. STANDARD OF REVIEW

4. In their Applications for Review, VNJ and UCC argue that the Bureau did not apply the correct legal standard to their petitions to deny. Section 309(k)(1) of the Communications Act provides that the Commission "shall grant" a renewal application "if it finds, with respect to that station, during the preceding term of its license" that:

(A) the station has served the public interest, convenience, and necessity;

(B) there have been no serious violations of the Communications Act or the rules and regulations of the Commission; and

(C) there have been no other violations by the licensee of the Communications Act or the rules and regulations of the Commission, which, taken together, would constitute a pattern of abuse.<sup>15</sup>

If the licensee fails to meet these requirements, "the Commission may deny the application" after notice and opportunity for hearing, "or grant such application on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted."<sup>16</sup>

5. If a petition to deny has been filed against a renewal application, the Commission reviews the petition pursuant to Section 309(d) to determine whether it contains "specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with . . . subsection (k) of this section . . . ." <sup>17</sup> If so, the Commission examines

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<sup>11</sup> *Bureau Order* at 9574-76.

<sup>12</sup> *Id.* at 9579-83. *See, K. Rupert Murdoch*, Memorandum Opinion and Order on Reconsideration, 24 FCC Rcd 5824 (2009) (*Murdoch Recon*).

<sup>13</sup> *Bureau Order* at 9564.

<sup>14</sup> *See* paras. 53 to 54 *infra*.

<sup>15</sup> 47 U.S.C. § 309(k)(1).

<sup>16</sup> *Id.*

<sup>17</sup> 47 U.S.C. § 309(d)(1); *Astroline Communications Co. v FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988) (*Astroline Communications*). At this stage of the inquiry, the Commission determines whether the alleged facts, if true, "would

the record to determine whether a “substantial and material question of fact is presented to warrant further inquiry in a hearing.”<sup>18</sup> If the Commission determines that the record as a whole presents a substantial and material question of fact, or if it is unable to determine that the licensee has met the statutory renewal standard, it will designate the application for hearing.<sup>19</sup> If it finds that the record does not present any substantial and material questions of fact and that the licensee has met the statutory standard, the Commission will grant the application.<sup>20</sup> As an alternative to finding that renewal should be denied where the licensee has failed to meet the statutory standard, the Commission may grant the application subject to conditions, including renewal for less than the maximum term.<sup>21</sup>

6. VNJ argues that the *Bureau Order* failed to apply the correct legal standard.<sup>22</sup> Citing *Astroline Communications*, VNJ contends that the first step of the inquiry required under Section 309(d)(1), determining whether the petition to deny has raised specific allegations of fact such that grant of the application would be inconsistent with the public interest, is to be done on the basis of petitioners’ allegations alone and on the assumption that the facts set forth in the petition are true.<sup>23</sup> Then, the second step of the inquiry calls for the Commission, or in this case the Bureau acting on delegated authority, to review the entire record, weighing all the facts, and to determine “whether the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for.”<sup>24</sup> VNJ asserts that the Bureau erred because it did not separately perform the first step of the inquiry, did not assume that VNJ’s allegations of fact were true, dismissed VNJ’s reliance on WWOR-TV’s issues/programs lists, and did not perform the second step of the inquiry.<sup>25</sup>

7. With respect to the argument that the Bureau did not separately perform the first step of the inquiry, the D.C. Circuit has made clear that the first two steps of the statutory inquiry “are typically made concurrently.”<sup>26</sup> That is, the Commission ordinarily does not consider separately whether a petition makes out a *prima facie* case for denial of the application because “a negative resolution of the second question alone [whether the record presents a substantial and material question of fact that warrants further inquiry in a hearing] makes the first question moot.”<sup>27</sup> Consistent with the D.C. Circuit’s guidance, the Bureau resolved the second question negatively without separately discussing the first question. Even assuming the Bureau had concluded separately that VNJ satisfied the *prima facie* standard, the Bureau had ample grounds to conclude that VNJ had not satisfied the second step, for reasons we discuss further below.

8. As discussed more fully below, the *Bureau Order* did not dismiss or disregard any of the

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alter the Commission’s public interest calculus.” *Gencom Inc. v. FCC*, 832 F.2d 171, 180-81 (D.C. Cir. 1987) (*Gencom*).

<sup>18</sup>*Astroline Communications*, 857 F.2d at 1561. The Commission’s focus and discretion are wider at this stage. *Gencom*, 832 F.2d at 181 (stating that, in the second step, the Commission “must consider not only petitioner’s evidence, but it must weigh that evidence against the facts offered in rebuttal...”).

<sup>19</sup> 47 U.S.C. §309(k)(2)-(3); *id.* § 309(d)(2), (e).

<sup>20</sup> *Astroline Communications*, 857 F.2d at 1561; 47 U.S.C. §309(k)(1).

<sup>21</sup> 47 U.S.C. § 309(k)(2).

<sup>22</sup> VNJ AFR at 7.

<sup>23</sup> *Id.* (citing *Astroline Communications*, 857 F.2d at 1561).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 8, 10.

<sup>26</sup> *Mobile Communications Corp. of Am. v FCC*, 77 F.3d 1399, 1410 (D.C. Cir. 1996) (*MCC*) (quoting *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 394 (D.C.Cir. 1985)).

<sup>27</sup> *Id.* (quoting *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 394 (D.C.Cir. 1985)) (emphasis in *Mobile Communications Corp.*) (emphasis added).

facts as alleged by VNJ, and, contrary to VNJ's assertion, it accepted them as true in determining whether a substantial and material question of fact had been presented to warrant further inquiry in a hearing.<sup>28</sup> Indeed, the Bureau discussed all of the facts alleged by VNJ in its petition and the conclusions VNJ drew from those facts in detail, as well as the totality of the record.<sup>29</sup> In particular, the Bureau did not dismiss VNJ's attempt to rely on WWOR-TV's issues/programs lists in determining whether it had made its prima facie case, as VNJ contends. Instead, the Bureau clearly stated that issues/programs lists are "fundamental in reviewing a station's performance during its license term."<sup>30</sup> The Bureau also pointed out, however, that issues/programs lists are intended to be representative and are not comprehensive, and concluded, based on the record, that WWOR-TV aired more than 1,000 stories directed to New Jersey issues between 1999 and 2007.<sup>31</sup> Accordingly, the Bureau considered VNJ's analysis of the issues-programs lists in the context of its step-two analysis of the record as a whole.

9. Finally, contrary to VNJ's allegation, the Bureau did perform the second step of the 309(d) inquiry, examining the entire record, including the renewal application itself and the material supplied by VNJ to determine whether there was a substantial and material question of fact meriting a hearing.<sup>32</sup> The record also included the transcript from a public forum in which VNJ participated that was held at Rutgers University in Newark, New Jersey on November 28, 2007, in order to solicit public comment on the station's renewal (Rutgers Forum).<sup>33</sup> Because the renewal proceeding had been made permit-but-disclose and docketed, materials from various *ex parte* presentations by Fox and the other parties, including VNJ, were also part of the record. In addition, VNJ introduced supplementary evidence into the record for the period after 2007 that reflected programming through and including what was currently being broadcast on the station.<sup>34</sup> As a result, the Bureau reviewed the station's performance up through the period covered by the most recent publicly available issues/programs lists before making its determination.<sup>35</sup> The Bureau reached a different *conclusion* from these facts than VNJ, finding that WWOR-TV had met its special service obligations to Northern New Jersey because the record, including VNJ's submissions, contained repeated examples of such service, and then finding that no substantial and material question of fact warranting further investigation existed on that issue.<sup>36</sup> In so finding, the Bureau applied the appropriate standard of review.<sup>37</sup>

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<sup>28</sup> *Bureau Order* at 9569, 9572.

<sup>29</sup> *Id.* at 9565, 9568-9573. VNJ also acknowledges that the Bureau did not challenge the facts presented by it in its pleading, which included a study prepared by the Eagleton Institute of Politics, Rutgers University (Eagleton Study), Attachment B to VNJ PTD and Exhibit A thereto, its own 12-day survey of WWOR-TV's newscasts, and a review of a selection of WWOR-TV's issues/programs lists. VNJ AFR at paras. 12, 15.

<sup>30</sup> *Bureau Order* at 9572-73, para. 26.

<sup>31</sup> *Id.*

<sup>32</sup> See VNJ AFR at 10. The *Bureau Order* contains multiple examples of the Bureau's reliance on the full record, which gave a broader picture than VNJ's evidence of WWOR-TV's service to its service area during the period at issue. See, e.g., *Bureau Order*, 29 FCC Rcd at 9568, 9572-73, para. 26.

<sup>33</sup> *Bureau Order*, 29 FCC Rcd at 9570, para. 20.

<sup>34</sup> See, e.g., Letter to Julius Genachowski, Chairman, FCC from Donna Sandorse, Member, VNJ, dated November 27, 2009 (discussing, *inter alia*, reductions in WWOR-TV's news programming); Letter to William T. Lake, Chief, Media Bureau, FCC from Charles Lovey, Member, Voice for New Jersey (Feb. 14, 2010) (responding to claims made by Fox regarding WWOR-TV's programming in response to inquiry by the Media Bureau); Letter from Charles Lovey, Member, Voice of New Jersey, to Mignon Clyburn, Acting Chairwoman, FCC (July 10, 2013) (describing *Chasing New Jersey* news program).

<sup>35</sup> *Bureau Order*, 29 FCC Rcd at 9573, para. 30. WWOR-TV's issues/programs lists for the relevant periods are available on the station's online public file. See, <https://stations.fcc.gov/station-profile/wwor-tv>.

<sup>36</sup> See *Bureau Order*, 29 FCC Rcd at 9569-9570, 9572-9574.

<sup>37</sup> VNJ also alleges that the Bureau applied the wrong evidentiary standard, requiring it to prove that its allegations that WWOR-TV had failed to meet its obligations to serve New Jersey were true, rather than to only raise a

10. UCC also contends that the Bureau failed to perform either step of the Section 309(d) inquiry in evaluating its petition to deny.<sup>38</sup> UCC's petition to deny alleged that Fox was in violation of the NBCO rule in the New York market, urged the Commission to act on a pending petition for reconsideration of its 2006 decision granting a 24-month waiver of the rule, and alleged that Fox violated the Commission's *ex parte* rules and engaged in misrepresentation in connection with prior proceedings. The Bureau dismissed the petition for reconsideration as untimely.<sup>39</sup> We address UCC's other allegations below.

### III. WWOR-TV'S PROGRAMMING

11. **General Standard.** The Commission has made clear that a fundamental public interest obligation of a television broadcaster is to air programming responsive to the needs and interests of its community of license.<sup>40</sup> Section 326 of the Act, however, prohibits any Commission actions that would "give the Commission the power of censorship" over Fox's transmissions.<sup>41</sup> Because of this statutory prohibition and related First Amendment principles, and because editorial discretion in the presentation of news and public information is the core concept underlying the regulation of broadcasting pursuant to the Communications Act, the Commission does not interfere with a licensee's selection and presentation of news and editorial programming.<sup>42</sup> Thus, with regard to news programming in particular, the Commission has repeatedly held that "[t]he choice of what is or is not to be covered in the presentation of broadcast news is a matter committed to the licensee's good faith discretion."<sup>43</sup>

12. **Special Service Obligation.** In 1982, Congress added Section 331 to the Communications Act of 1934, which states in relevant part:

It shall be the policy of the Federal Communications Commission to allocate channels for very high frequency commercial television broadcasting in a manner which ensures that not less than one such channel shall be allocated to each State, if technically feasible. In any case in which a licensee of a very high frequency commercial television broadcast station notifies the Commission to the effect that such licensee will agree to the reallocation of its channel to a community within a State in which there is allocated no very high frequency commercial television broadcast channel at the time of such notification, the Commission shall,

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substantial and material question of fact on the issue. *Citizens for Jazz on WRVR v FCC*, 775 F.2d at 397. However, in *Citizens for Jazz*, the court held that the Commission erred by requiring the petitioner to produce evidence that was "clear, precise, and indubitable," going beyond the standard of raising a "substantial and material question of fact." *Id.* Here, the Bureau found that, instead of raising a "substantial and material question of fact" about WWOR's service, the record instead showed that WWOR-TV actually was meeting its service obligation to its community of license during the relevant periods. *See paras. 16-24 infra.*

<sup>38</sup> UCC AFR at 11.

<sup>39</sup> *Bureau Order* at 9582, para. 52.

<sup>40</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, 27 FCC Rcd 4535, 4537, Second Report and Order (2012) (*Enhanced Disclosure*).

<sup>41</sup> 47 U.S.C. § 326.

<sup>42</sup> *See, e.g., Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 110 (1973) ("Congress intended to permit private broadcasting to develop with the widest journalistic freedom consistent with its public obligations."); *National Broadcasting Company v. FCC*, 516 F.2d 1101, 1112-1113, 1119-1120 (1974), *vacated as moot, id.* at 1180, *cert. denied*, 424 U.S. 910 (1976).

<sup>43</sup> *American Broadcasting Companies, Inc.*, 83 F.C.C.2d 302, 305 (1980). *See also Dr. Paul Klite*, 12 Com. Reg. (P&F) 79, 81-82 (MMB 1998), *review denied sub nom., McGraw-Hill Broadcasting Co.*, 16 FCC Rcd 22739 (2001) (*American Broadcasting Companies, Inc.*).

notwithstanding any other provision of law, order such reallocation.<sup>44</sup>

13. Subsequent to passage, RKO General, Inc. (RKO), then-licensee of channel 9 in New York, New York, filed a request under Section 331 to reallocate channel 9 to Secaucus, New Jersey. In 1983, the Commission granted the request to reallocate then-WOR-TV's community of license and, while recognizing that in most circumstances a licensee would be required to meet the needs and interests of its community of license, stated the following: "Considering RKO's statements with regard to its programming expectations in conjunction with the clear Congressional intent, . . . we expect RKO to perform a higher degree of service to its Grade B coverage area than is normally required of a broadcast licensee. At renewal time RKO will be judged by how it has met the obligation to serve the greater service needs of Northern New Jersey, which we view as broader than the specific needs of Secaucus."<sup>45</sup> In 1986, the Commission clarified that the station need only demonstrate that it has provided northern New Jersey viewers with the same level of service as any other licensee would be required to provide to its community of license.<sup>46</sup> In so doing, the Commission reiterated its basic renewal standard under which "[a] licensee need only have addressed community issues with whatever types of programming, that in its reasonably exercised discretion, it determined was appropriate to those issues."<sup>47</sup> WOR-TV subsequently changed its call sign to WWOR-TV, and was purchased by Fox in 2001.<sup>48</sup>

14. On February 1, 2007 and February 1, 2015, Fox filed its applications for renewal of the license of WWOR-TV, which VNJ opposed on the basis that WWOR-TV had failed to meet its "special obligation" to serve the needs of Northern New Jersey in terms of either the quality or the quantity of its news and public affairs programming. The 2007 renewal proceeding has a long and complicated procedural history, which we will not recount here in full. VNJ focused its arguments primarily on WWOR-TV's alleged failure to provide adequate coverage of New Jersey government and elections at the state and local levels, while also listing other topics that it believed the station should have covered. VNJ also alleged that the station had not properly identified itself with its community of license in its marketing, branding, and advertising.

15. In the order denying the petition, the Bureau relied on both the evidence in VNJ's petition and the totality of the record, and concluded that WWOR-TV had provided regular, substantive coverage

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<sup>44</sup> 47 U.S.C. § 331(a).

<sup>45</sup> *Channel 9 Reallocation (WOR-TV)*, Report and Order, 53 RR 2d 469, para. 5 (1983). In the same decision, the Commission granted WOR-TV a license to operate on channel 9 in New Jersey for a term of five years. *Id.* at paras. 10, 15.

<sup>46</sup> *RKO General, Inc.*, Decision, 1 FCC Rcd 1081, 1085-86, para. 26 (1986), *recon. granted in part and denied in part*, 2 FCC Rcd 113 (1987) ("RKO's performance is appropriately reviewed in the unique circumstances of this case, where the licensee has specifically represented that it would serve as a New Jersey outlet under section 331, and where that performance has been challenged by petitioners. We emphasize, however, that our review is limited to determining whether RKO met its obligation to serve the issues and concerns of northern New Jersey. The uniqueness of this case arises from the different 'community' to be served. Nothing in section 331 gives the Commission the right or obligation to second-guess the program content or the editorial discretion of this or any other licensee."); *id.* at 1086, para. 29 ("WOR-TV's performance should be judged in the same manner as any other television station in it[s] overall performance, except that its performance will be tied to northern New Jersey, not primarily Secaucus. . . . WOR-TV should serve northern New Jersey in the same manner as a station licensed to Chicago, for example, serves that city."). We note there are significant questions as to whether WWOR should continue to have to comply with the special New Jersey service obligation in connection with subsequent renewal applications, in light of Section 331's express concern about the availability of VHF stations and the fact and WWOR changed from a VHF to UHF station following the DTV transition. We do not reach this question today, however, as the parties have not raised it, and because we conclude, in any event, that WWOR has complied with its service obligation in connection with the present applications.

<sup>47</sup> *Id.* at 1086, para. 30.

<sup>48</sup> *UTV of San Francisco, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 14975 (2001) (*UTV of San Francisco*).

of local issues to New Jersey residents and that the station covered local politics, local stories, local weather, and local sports during the period under review.<sup>49</sup>

16. *VNJ's Application for Review.* In the AFR, VNJ argues that the Bureau did not give thorough consideration to the evidence that VNJ presented, including in part a study prepared by the Eagleton Institute of Politics, Rutgers University (“Eagleton Study”),<sup>50</sup> VNJ’s review of WWOR-TV’s issues/programs lists, and VNJ’s own 12-day survey of WWOR-TV’s news programming.<sup>51</sup> For the reasons stated below, we disagree with VNJ and find that the Bureau weighed all the evidence, correctly concluding that WWOR-TV met its obligations during the license term, and we uphold the *Bureau Order*.

17. **Eagleton Study.** VNJ relied on the Eagleton Study as an analysis of the coverage of the 2005 New Jersey elections, which looked at the highest-rated nightly news programs on 12 stations that serve New Jersey in the 30 days before the November 2005 elections.<sup>52</sup> The Eagleton Study concluded that 25% of the 44 WWOR-TV news broadcasts during the study period had an election story, compared to 52% for all New York stations.<sup>53</sup> Out of the 13 WWOR-TV election stories tracked by the study, 10 were specifically New Jersey stories. Nevertheless, the Eagleton Study concluded that WWOR-TV “barely covered the 2005 elections.”<sup>54</sup> Fox objected to both the methodology of the Eagleton study, which VNJ admitted did not capture all of the news coverage<sup>55</sup> by the stations that were part of the survey, and to the conclusions that VNJ drew from it.<sup>56</sup>

18. The *Bureau Order* found that the Eagleton Study “indicates that WWOR-TV produced substantial coverage of New Jersey elections during the survey period and that the average length of stories on WWOR-TV was significantly longer than those on the New York-based commercial stations.”<sup>57</sup> Therefore, although the Bureau was concerned about the methodology of the study, which only focused on 30 days out of a license term that lasted for years and which did not survey all of the station’s news and public affairs programming even during that limited time frame, but instead selectively reviewed the station’s programming, it still concluded that the Eagleton Study demonstrated that the station *was* covering New Jersey election issues.<sup>58</sup>

19. The Commission long ago expressly rejected the quantitative approach represented by the Eagleton Study, concluding that the focus of inquiry will be not on how much programming a licensee offers but on whether the station has failed to address issues of public importance to the community.<sup>59</sup>

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<sup>49</sup> *Bureau Order* at 9573, para. 32.

<sup>50</sup> See Attachment B to VNJ 2007 PTD and Exhibit A thereto. VNJ explains that the Eagleton Study is an analysis of the coverage of the 2005 New Jersey elections. Petition to Deny filed by Voice for New Jersey, BRCT-20070201AJT (filed Apr. 30, 2007) at 24 (VNJ PTD).

<sup>51</sup> VNJ PTD at 11-12.

<sup>52</sup> See VNJ PTD, Attachment B and Exhibit A thereto.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> VNJ PTD, Exhibit A at 8.

<sup>56</sup> Opposition to Petition to Deny filed by News Corporation and Fox Television Stations, Inc., BRCT-20070201AJT) at 12 (filed May 30, 2007) (Fox 2007 Opposition to VNJ).

<sup>57</sup> *Bureau Order* at 9572, para. 25. (“The study found that the average New Jersey election story on all evaluated stations was 2.5 minutes, but WWOR-TV’s story length was 4 minutes.”).

<sup>58</sup> *Id.*

<sup>59</sup> *Commercial TV Stations*, 98 F.C.C.2d 1075, 1093-94 (1984), *reconsideration denied*, 60 R.R. 2d 526 (1986) (“Since we are not concerned with the quantity of specified program categories, arguments based solely on the failure to present amounts of non-entertainment programming will not be appropriate. Petitioners raising programming issues will have to demonstrate that an individual station is failing to address issues facing the



The Commission has left no doubt that, in light of the paramount importance of First Amendment values and the Communications Act proscription against censorship, it will not second-guess a licensee's editorial judgments about how to address those issues.<sup>60</sup> Moreover, we agree with the Bureau that the Eagleton Study, along with the other record evidence demonstrating coverage of multiple issues of concern to the community, supports the Bureau's finding that WWOR-TV met its obligation to address issues of importance to Northern New Jersey viewers.<sup>61</sup>

20. **Issues/Programs Lists.** In addition to the Eagleton Study, VNJ used WWOR-TV's issues/programs lists from 2006 through the first quarter of 2007 to support its position that the station's news programming was inadequate.<sup>62</sup> In doing so, VNJ focused heavily on the quantity of news reported in the issues/programs lists as well as discussing its opinion of the quality of the stories reported.<sup>63</sup> VNJ argues that the Bureau discounted its reliance on the issues/programs lists and that citizens should be able to use issues/programs lists to make out a *prima facie* case to show that a station had failed to meet its public service obligations.<sup>64</sup>

21. The Bureau did not state that VNJ failed to make a *prima facie* showing, and thus, the Bureau did not deprive VNJ of its ability to use the lists for that purpose. To the contrary, the *Bureau Order* recognizes that issues/programs lists are integral to reviewing a station's performance during its license term.<sup>65</sup> Even though the lists are not meant to describe every story broadcast by the station, the Bureau analyzed those lists and found that they demonstrated that WWOR-TV had provided significant coverage of New Jersey issues.<sup>66</sup> Instead of discounting the issues/programs lists, the Bureau reviewed them, but came to different conclusions than VNJ regarding the adequacy of WWOR-TV's performance based on the lists and other record evidence. Specifically, it concluded that WWOR-TV had covered multiple issues of concern to its service area during the license term.<sup>67</sup>

22. In its application for review, VNJ objects to the Bureau's discussion of WWOR-TV's issues/programs lists relative to those of four other commercial New Jersey stations in 2013 and claims that this comparison violated section 309(k)(1)(A) of the Communications Act and VNJ's due process rights and was central to the renewal of WWOR-TV's license.<sup>68</sup> In addition, based on its analysis of the issues/programs lists of the other four stations, VNJ claims that one of the four stations in fact aired more

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community in its programming. The focus of an allegation in this context should not be on the mere amount of programming presented.”).

<sup>60</sup> See *supra* para. 11; *RKO General, Inc.*, 1 FCC Rcd 1086 (“A licensee need only have addressed community issues with whatever types of programming, that in its reasonably exercised discretion, it determined was appropriate to those issues.”); *American Broadcasting Companies, Inc.*, 83 F.C.C.2d at 305; see also *Klite, supra* (denying petition that cited excess of news stories dedicated to “mayhem” and under-coverage of issues involving the environment, arts, science, education, poverty AIDS, children and local elections).

<sup>61</sup> Thus, we disagree with VNJ's conclusion that WWOR “barely covered” New Jersey elections based on the Eagleton Study's finding that 25% of WWOR's news broadcasts included coverage of elections. See VNJ AFR at 3.

<sup>62</sup> VNJ AFR at 16; VNJ PTD at 6-9. The Bureau also reviewed the Service to New Jersey Exhibits submitted as part of WWOR-TV's 2015 license renewal application.

<sup>63</sup> Fox argued that VNJ's definition of New Jersey-focused coverage was too narrow, but contended that even abiding by that VNJ definition, there were more than 1,350 New Jersey-centric stories from 1999 through 2007. Fox 2007 Opposition at 23.

<sup>64</sup> VNJ AFR at 15-16.

<sup>65</sup> *Enhanced Disclosure*, 27 FCC Rcd at 4545.

<sup>66</sup> *Bureau Order* at 9572.

<sup>67</sup> *Id.* at 9572-73 (discussing specific examples of issue-responsive programming aired during the license term).

<sup>68</sup> VNJ AFR 17-18.

“New Jersey-focused stories” than WWOR-TV.<sup>69</sup> In light of the wealth of other evidence supporting the Bureau’s conclusions regarding WWOR-TV’s programming, we find that the discussion of the four other New Jersey stations was not necessary to support the Bureau’s license renewal decision, and we do not rely on it here. As a result, VNJ’s arguments based on that comparison are moot.

23. **Twelve-Day Survey.** In addition to the Eagleton Study and its review of WWOR-TV’s issues/programs lists, VNJ also undertook its own study, in which it conducted an “informal monitoring”<sup>70</sup> of WWOR-TV’s 10 p.m. newscast from April 9 to April 20, 2007.<sup>71</sup> VNJ claims that WWOR-TV’s New Jersey coverage during this period was higher than normal due to the presence of what it characterizes as three nationally significant news stories during this period, although it does not submit studies of any other time periods with less coverage for comparison.<sup>72</sup> VNJ also claims that WWOR-TV “ignored Northern New Jersey in pursuit of the New York City market” during the review period<sup>73</sup> and failed to cover many stories that VNJ believed to be important.<sup>74</sup> The *Bureau Order* stated that “a random survey of twelve days of programming, like the one performed by VNJ, although well-intentioned, is not representative of a station’s efforts over an 8-year license term.”<sup>75</sup> Moreover, the Bureau held that the survey indicated significant carriage of New Jersey-focused programming during the observation period.<sup>76</sup> In VNJ’s AFR, it contends that the Commission has long relied on such evidence and in particular has previously used a composite week to measure broadcast performance.<sup>77</sup> VNJ claims it provided more evidence “than any other petitioner since the Commission adopted its current license renewal process in 1984” and states that its evidence “is exactly the type that the Commission has asked citizens to provide when alleging that a licensee has failed to serve its community.”<sup>78</sup> VNJ concludes that, “in light of the Bureau’s *Order*, there is a serious question of whether citizens can ever successfully challenge a license renewal.”<sup>79</sup> VNJ argues in its application for review that in order to address the Bureau’s methodology concerns, petitioners would be required to undertake 24-hour monitoring of a

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<sup>69</sup> *Id.* at 19.

<sup>70</sup> *Aff. of Amanda Missey in Support of Petition to Deny Renewal Application*. VNJ PTD, Exhibit D at 1.

<sup>71</sup> VNJ states that the April 18 newscast was omitted due to a recording error. VNJ PTD at 11.

<sup>72</sup> The stories that VNJ cites involved injuries sustained by then Governor Jon Corzine in an automobile accident, the controversy generated by comments made by radio personality Don Imus regarding the Rutgers Women’s Basketball Team, and storm damage caused to the state by a Nor’easter. VNJ PTD at 12. It does not seem unusual that stories like these and others addressing New Jersey issues might simultaneously be of national and local interest. Determining what programming is responsive to the needs and interests of the community can be a difficult task and is one that we ordinarily leave to the good faith editorial discretion of the licensee. We do not believe there is a reason to disturb that discretion absent a clear pattern of abuse.

<sup>73</sup> VNJ AFR at 3.

<sup>74</sup> *Id.* at 3-4, 12-13.

<sup>75</sup> *Bureau Order* at 9573, (citing *Oregon Alliance to Reform Media*, Letter, 22 FCC Rcd 15183 (Vid. Div. 2007), *aff’d Portland Area Commercial Television Stations Application for Renewal of License*, Memorandum Opinion and Order, 28 FCC Rcd 2762 (2013).

<sup>76</sup> *Bureau Order* at 9572.

<sup>77</sup> VNJ AFR at 12-13. Unlike VNJ’s monitoring survey and the Eagleton Survey, a composite week is a sampling method in which individual days and weeks are selected at random to construct a week that contains different days of the week from different weeks of the quarter. *Standardizing Program Reporting Requirements in Broadcast Licensees*, Notice of Inquiry, 26 FCC Rcd 16525, 16532 (2011).

<sup>78</sup> *Id.* at 12.

<sup>79</sup> *Id.* at 15.

station throughout its entire license term.<sup>80</sup>

24. We disagree with VNJ's position that the Bureau's concerns regarding VNJ's methodology were a significant factor in the outcome of the Bureau's decision and that 24-hour monitoring is necessary to demonstrate that a licensee has failed to serve the needs and interests of its community. Just as with the Eagleton Study, the Bureau's analysis was not quantitative, but based on whether the station failed to address issues of public importance to the community. Like the Eagleton Study, the 12-day survey does not support VNJ's conclusions, but instead shows that WWOR-TV plainly did address issues of concern to Northern New Jersey during the period at issue.<sup>81</sup>

25. **Other Record Evidence.** As the standard of review requires, the Bureau reviewed the WWOR-TV renewal application and the exhibits attached to it. These exhibits listed representative examples from throughout the license term of the station's service to its community of license. The Bureau found that these exhibits provided evidence that the station had met its obligations to serve its community of license by demonstrating coverage of a range of New Jersey-relevant topics, including crime, government/politics, the economy, children/youth, transportation, homeland security, health, and the environment, all covered with New Jersey-centric stories.<sup>82</sup>

26. In order to seek wider input in this proceeding, on November 28, 2007, a public forum was held at Rutgers University in Newark, New Jersey, so that the public would have the opportunity to comment on whether WWOR-TV had fulfilled its public service obligations.<sup>83</sup> More than forty speakers, including the late Senator Frank Lautenberg, representatives from VNJ, representatives from local citizens' groups, activist organizations, police and firemen's groups, other broadcasters, and representatives from WWOR-TV spoke at the forum.<sup>84</sup> Several speakers alleged that WWOR-TV failed to cover adequately issues of concern to Northern New Jersey in general or issues of concern to their constituencies in particular.<sup>85</sup> Other speakers commended WWOR-TV for its news coverage and for its community service.<sup>86</sup> Fox made a presentation on its own behalf, highlighting WWOR-TV's service to

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<sup>80</sup> VNJ AFR at 2.

<sup>81</sup> See para. 18 *supra*. For example, VNJ said that WWOR-TV aired stories about injuries sustained by New Jersey Governor Jon Corzine in an automobile accident; the controversy generated by comments made by radio personality Don Imus regarding the Rutgers Women's Basketball team; and storm damage sustained by the state due to a Nor'easter. *Bureau Order*, 29 FCC Rcd at 9570. In its application for review, VNJ again raises the issue of WWOR-TV's "branding" and its alleged attempts to move the station from New Jersey to New York. VNJ AFR at 4. The Bureau found that the issue of branding was not relevant to its consideration of WWOR-TV's renewal application because no allegation has been made that the station has failed to comply with our rules on station identification. See 47 CFR. § 73.1201. Also, no other rule violation had been alleged in connection with WWOR-TV's branding and the station had not moved out of New Jersey. We agree with the Bureau and find no further cause for inquiry on these issues.

<sup>82</sup> *Bureau Order* at 9573.

<sup>83</sup> *Id.* at 9570, para. 20.

<sup>84</sup> *Id.*

<sup>85</sup> See, e.g. Testimony of Ms. Ingrid Reed, Eagleton Institute New Jersey Project, *Transcript of Media Bureau Public Forum on WWOR-TV License Renewal in New Jersey (Transcript)* at 47-53; Testimony of Ms. Donna Sandorse, Voice for New Jersey, *Transcript* at 34-41; Testimony of Mr. Chuck Lovey, Voice for New Jersey, *Transcript* at 58-60; Testimony of Mr. Bill Hassal, *Transcript* at 58-61; William Terry, One Organization, *Transcript* at 123-126; Daniel Schoenberg, *Transcript* at 107-108.

<sup>86</sup> See, e.g. Testimony of Ms. Wendy White, Three Doctors Foundation, *Transcript* at 53-57; the Rev. Jacques DeGraff, Newark Community Health Centers, *Transcript* at 72-74; Mr. Dale Alexander, United Negro College Fund, *Transcript* at 78-80; Larry Petrillo, New Jersey Division of Fire Safety, *Transcript* at 122-123; Sharon Brown, African American Festival, *Transcript* at 87-89.

New Jersey. These submissions were also part of the record considered by the Bureau.<sup>87</sup>

27. In an *ex parte* filing,<sup>88</sup> Fox contended that, from 1999 through 2007, WWOR-TV broadcast significantly more news than other similarly ranked stations.<sup>89</sup> Citing the *2006 Quadrennial Review*, it stated that over 60% of stations ranked fifth or below in their respective markets provided no local news at all during the period studied by the Commission. The remaining 40% provided 458 minutes over a two-week period. In contrast, Fox represented that WWOR-TV, which at the time of the filing was ranked sixth in its DMA, provided 850 minutes of local news over any given two-week period from 1999 through 2007.<sup>90</sup> Fox further represented that, at the time of the *ex parte*, other stations licensed to New Jersey were providing less than 3.0 hours of local news and public affairs programming per week while WWOR-TV was broadcasting over 8.0 hours of such programming per week.<sup>91</sup>

28. VNJ argues that the Bureau erred in that it did not specifically address a selection of stories that VNJ claims WWOR-TV failed to cover, the type of evidence VNJ asserts the Commission has previously asked for in connection with a petition to deny alleging that a station has failed to meet its public service obligation.<sup>92</sup> These stories range from an increase in homicides in Newark from 2004-2006 to creation of a public park in Paterson to government ethics reform led by the Woodbridge mayor.<sup>93</sup> According to VNJ, its list of examples showed “a neglect of New Jersey issues” by WWOR-TV, but the Bureau nonetheless found that VNJ had failed to meet its burden.<sup>94</sup> Contrary to VNJ’s arguments, the Commission in *RKO General* did not criticize petitioners for failing to identify a single *story* that the station had failed to cover, but for failing to identify a single *issue* that the station had failed to cover.<sup>95</sup> The *Bureau Order* explains that VNJ’s own evidence supports the proposition that WWOR-TV was providing significant coverage of New Jersey politics during the period under review.<sup>96</sup> The Bureau also found significant coverage of other New Jersey-centric issues,<sup>97</sup> as reflected in record evidence of large numbers of stories covering crime, economics, and the environment, among other subjects.<sup>98</sup>

29. In an *ex parte* filing raising the issue of WWOR-TV’s post-2007 performance, VNJ alleged that Fox had reduced its level of news and public affairs programming at WWOR-TV.<sup>99</sup> VNJ represented that, as of July 13, 2009, WWOR-TV had cut its news programming from one hour per day to two and one-half hours per week and its public affairs programming from one hour per week to one-half hour. In response, Fox contended that, even at its reduced level of service, it still met the required level of

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<sup>87</sup> *Bureau Order* at 9570, para 20.

<sup>88</sup> The proceeding had been made permit-but-disclose and the parties submitted *ex parte* filings.

<sup>89</sup> Letter from Jared S. Sher, Counsel, News Corporation and Fox Television Stations, Inc., to Marlene Dortch, Secretary, FCC, Exhibit A at 7 (September 4, 2009).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> VNJ AFR at 13-14.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 14 (citing *RKO General, Inc.*, 1 FCC Rcd at 1087).

<sup>95</sup> *RKO General, Inc.*, 1 FCC Rcd at 1087.

<sup>96</sup> *Bureau Order* at 9573, paras. 26-29.

<sup>97</sup> *Id.*

<sup>98</sup> *See, e.g.*, WWOR-TV, Application for Renewal of License, File No. BRCT-20070201AJT, New Jersey Service Reports (referring to both its pre-2007 issues-programs lists and its New Jersey service reports) (citing Fox 2007 Opposition VNJ at 5).

<sup>99</sup> Letter from Donna Sandorse, Member, Voice for New Jersey, to Chairman Julius Genachowski (Nov. 27, 2009).

service to warrant renewal.<sup>100</sup>

30. In 2013, Fox reported to the Commission that it made further changes in its news programming when it revised the format of its regular news program, renaming it *Chasing New Jersey*.<sup>101</sup> Fox describes *Chasing New Jersey* as a “radically new approach that allows reporters to engage more deeply in reporting and with one another to analyze important local and national news issues.”<sup>102</sup> According to Fox, the program includes stories with local and national interest including politics, investigative reporting, sports, and weather.<sup>103</sup> Shortly after *Chasing New Jersey*’s premiere, VNJ wrote to the Commission expressing its concern about the program’s news content, but acknowledging that it was premature, at that time, to judge the program’s quality.<sup>104</sup> Because of the introduction of this evidence by the parties, the staff reviewed the relevant issues/programs lists for this period, available to the parties and the public on the Commission’s website, prior to issuing its decision.

31. In its AFR, VNJ argues that WWOR-TV’s post-2007 performance amounted to a “near-complete abandonment of its primary service obligation to the residents of Northern New Jersey” and that the Bureau’s conclusion that the station met its service obligation during this period was arbitrary and capricious.<sup>105</sup> VNJ further argues that the Bureau “concluded that because the programming provided some coverage of Northern New Jersey, WWOR met its public service obligations.”<sup>106</sup> VNJ contends that the Bureau failed to analyze the evidence that it presented and that the *Bureau Order*’s conclusions run counter to the evidence, while raising a due process concern based upon the staff’s reliance on WWOR-TV’s issues/programs lists for this period, which VNJ asserts were not in the record.<sup>107</sup> The *Bureau Order* explicitly considers the post-2007 evidence submitted by VNJ, which VNJ acknowledges.<sup>108</sup> The Bureau also considered all of Fox’s filings in response to VNJ’s allegations and its response to the Bureau’s letter of inquiry regarding alleged reductions to WWOR-TV’s programming and staffing, in addition to the issues/programs lists and its review of *Chasing New Jersey*.<sup>109</sup> Further, the non-record materials that staff reviewed were identified in the Bureau’s decision and were publicly available.<sup>110</sup> We

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<sup>100</sup> Letter from Antoinette Cook Bush, Fox Television Stations, Inc., to Chairman Julius Genachowski, FCC (Jan. 5, 2010); see also Letter from Charles Lovey, Member, Voice for New Jersey, to Chairman Julius Genachowski, FCC (Feb. 15, 2010) (Response to Fox’s Jan. 5, 2010 Letter).

<sup>101</sup> See Letter from Maureen A. O’Connell, Senior Vice President, 21st Century Fox, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte Communication from Maureen A. O’Connell, filed in MB Docket No. 07-260 (July 26, 2013) (*O’Connell Letter Ex Parte*).

<sup>102</sup> *Id.* at 1.

<sup>103</sup> *Id.*

<sup>104</sup> Letter from Charles Lovey, Member, Voice for New Jersey, to Mignon Clyburn, Acting Chairwoman, FCC, MB Docket No. 07-260, at 2 (filed Jul. 10, 2013).

<sup>105</sup> VNJ AFR at 29-20.

<sup>106</sup> VNJ AFR at 20.

<sup>107</sup> VNJ AFR at 19-20.

<sup>108</sup> *Bureau Order* at 9571-72; VNJ AFR at 20.

<sup>109</sup> Letter from Antoinette Cook Bush and Jared S. Sher, Counsels to Fox Television Stations, Inc., to Julius Genachowski, Chairman, FCC, MB Docket No. 07-260 (filed Jan. 5, 2010) (January 2010 Bush and Sher Letter); see also, Letter from Antoinette Cook Bush and Jared S. Sher, Counsels to Fox Television Stations, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07-260 (filed Apr. 4, 2011) (LOI Response).

<sup>110</sup> The issues/programs lists are housed on the Commission’s website, and we may take official notice of these lists under section 309(d) of the Act, 47 USC § 309(d). *Moss v. FPC*, 502 F.2d 461, 465 (D.C.Cir.1974), *rev’d in part on other grounds*, 424 U.S. 494 (1976) (Federal Power Commission “was entitled to act, as it did, on the data available to it and from other proceedings before the Commission”); *Fort Myers Broad. Co.*, 19 FCC Rcd 19556, 19560 (MB 2004) (FCC records and precedent are the proper subject of official notice). Although archived episodes of *Chasing New Jersey* are available on WWOR-TV’s web site, we find it unnecessary to rely on staff’s review of sample

note that VNJ admits that one of its representatives visited the station after 2007 to review the issues/programs lists and that VNJ discussed the contents thereof in a filing with the Commission during this proceeding.<sup>111</sup> Consequently, VNJ was not prejudiced by the Bureau's consideration of WWOR-TV's issues/programs lists.

32. VNJ contends that the Bureau, by considering WWOR-TV's post-2007 issues/programs lists as part of its review of the 2007 license renewal application, improperly prejudged WWOR-TV's post-2007 performance in advance of WWOR-TV's next license renewal proceeding.<sup>112</sup> Section 309(k) requires the Commission to base its renewal decision on the licensee's performance during "the preceding term."<sup>113</sup> However, section 307(c)(3) provides that the Commission shall continue a license in effect pending its decision on any renewal application.<sup>114</sup> Further, section 503(b)(6) establishes a limitations period for the imposition of forfeitures that is tied to the commencement of the "current" license term and states that "[a] separate license term shall not be deemed to have commenced as a result of continuing a license in effect under section 307(c) pending decision on an application for renewal of the license."<sup>115</sup> Thus, under these statutory provisions, it was appropriate for the Bureau to review the licensee's performance for the entire period from the commencement of the preceding renewal term until the license was renewed.<sup>116</sup> A contrary interpretation would force the Commission to evaluate the licensee's performance during this period only at the end of its ensuing license term, long after any acts or omissions occurred. It could also result in the grant of a renewal to a licensee whose behavior up to the time it filed its license renewal application warranted an unconditional grant, but whose behavior since calls for the imposition of forfeitures or other enforcement action. The Bureau's review of WWOR-TV's post-2007 performance was also consistent with Commission practice of considering events that occur both before and after the filing of a renewal application.<sup>117</sup> In any event, VNJ itself raised the issue of WWOR-TV's performance after 2007.<sup>118</sup> Being a full participant in the proceeding and having been the party who raised the issue of WWOR-TV's performance post-2007, VNJ cannot now claim surprise that the Bureau reviewed that performance in making its ruling. Moreover, VNJ has now had an opportunity to respond to the Bureau's analysis and we have considered VNJ's response in reaching our determinations.<sup>119</sup> We

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episodes of that program given that staff also relied on WWOR-TV's 2013 and 2014 issues/programs lists which include news stories aired after WWOR-TV replaced its nightly news with *Chasing New Jersey*. Those lists indicate coverage of matters of concern to the local community.

<sup>111</sup> Letter from Donna Sandorse, Member, Voice for New Jersey, to Julius Genachowski, Chairman, FCC, MB Docket No. 07-260, Exhibit A (Nov. 27, 2009).

<sup>112</sup> VNJ AFR at 21-22.

<sup>113</sup> 47 U.S.C. § 309(k)(1).

<sup>114</sup> *Id.* § 307(c)(3).

<sup>115</sup> *Id.* § 503(b)(6).

<sup>116</sup> See *Cesar Chavez Found.*, Memorandum Opinion and Order, 2018 WL 1872123 at 1, para. 1 (rel. Apr. 18, 2018) (license term runs through grant of license renewal application).

<sup>117</sup> See *RKO General, Inc. v. FCC*, 670 F.2d 215 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927, 456 U.S. 1119 (1982) (denial of renewal based on lack of candor that occurred after the end of the three-year license term under review); *Committee for Open Media v. FCC*, 543 F.2d 861, 870 (D.C. Cir. 1976) ("[T]he Commission will consider issues based on events occurring subsequent to the filing of the application as well as those transpiring before"); *United Television Co.*, Memorandum Opinion and Order, 20 FCC.2d 278 (1969) (Commission considered events that occurred after issuance of hearing designation order).

<sup>118</sup> See *Bureau Order* at 9571.

<sup>119</sup> Moreover, contrary to VNJ's claims, the Bureau's review of WWOR's post-2007 performance did not violate the Commission's policy of discounting a station's performance improvements where the improvements were intended to offset prior deficient performance. VNJ alleged that WWOR's post-2007 performance deteriorated, and its allegations thus did not even implicate that policy. Rather than concluding that WWOR-TV's post-2007 performance was sufficient to overcome prior deficiencies, the Bureau concluded that WWOR-TV provided

find that the Bureau acted properly in reviewing WWOR-TV's post-2007 performance.

33. A petitioner cannot make its case merely by alleging that a licensee has failed to cover certain individual stories that the petitioner believes are important.<sup>120</sup> A licensee is not required to cover every possible story on a particular issue or every possible issue of concern to the community.<sup>121</sup> Instead, the licensee will exercise its editorial discretion to determine which stories, and indeed which issues, to cover in response to the needs and issues of concern to its community of license, and the Commission will not interfere with that discretion “unless the broadcaster was unreasonable or discriminatory in its selection of issues or . . . has offered such nominal levels of responsive programming as to have effectively defaulted on its obligation to contribute to the discussion of issues facing its community.”<sup>122</sup> Petitioners have a heavy burden to prove that licensees have abused their discretion in this area.<sup>123</sup> VNJ has not met that burden. There is no evidence to support a finding that WWOR-TV engaged in any of the behaviors indicating abuse of editorial discretion. The record clearly indicates that WWOR-TV met its “special obligation” to serve the needs and interests of viewers in Northern New Jersey. WWOR-TV covered a wide range of issues oriented to the needs and interests of viewers in Northern New Jersey, even if the stories that it selected or the issues it addressed are not the ones that VNJ would have selected.<sup>124</sup> Like the petitioners in *RKO General*, VNJ's arguments here go to matters that are within the licensee's editorial discretion and with which the Commission cannot and will not interfere. As discussed above, a licensee is not required to cover every story or issue of public concern. The Bureau fully considered the totality of the record, including the evidence presented by VNJ, and applied the law to determine whether WWOR-TV abused its editorial discretion in determining how best to meet the needs and interests of viewers in Northern New Jersey. We find the Bureau properly concluded that WWOR-TV met its special obligation to serve Northern New Jersey by providing issue-responsive programming and properly granted WWOR-TV's renewal and denied VNJ's PTD, finding there was no substantial and material question of fact that required further investigation.

34. **2015 WWOR Renewal.** In its 2015 PTD, VNJ again objects to the amount, content, and type of issues-responsive programming aired by WWOR-TV.<sup>125</sup> In support of its arguments, VNJ

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significant coverage of New Jersey issues from 1999-2007 and also concluded that it satisfied its New Jersey programming obligation throughout its license term. *Bureau Order*, 29 FCC Rcd at 9573, para. 25-31.

<sup>120</sup> *American Broadcasting Companies, Inc.*, at 305, paras. 9-10. See VNJ AFR at 13-14 (stating, for example, that WWOR-TV failed to cover a 25% increase in homicides in Newark, major residential development projects in Jersey City, and failed efforts to reform property taxes).

<sup>121</sup> *Id.* (“That the events listed by the licensee did not correspond with the items chosen by petitioner does not warrant further action by the Commission. A licensee is under no obligation to cover each and every newsworthy event which occurs within a station's service area.” (internal citations omitted)); *License Renewal Applications of Certain Commercial Television Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 5 FCC Rcd 3847, 3848, para. 9 (1990) (*Philadelphia Renewals*) (“Rather, the licensee is required to contribute to the overall discussion of community issues . . .”).

<sup>122</sup> *Philadelphia Renewals*, 5 FCC Rcd at 3847-3848, para. 8.

<sup>123</sup> *Id.* at 3847-48.

<sup>124</sup> The Bureau correctly held that this special obligation serves only to broaden the geographic area that WWOR-TV is obligated to serve, not to increase its obligations in any other way. *RKO General Inc.*, at 1086, 1088, paras. 29, 35 (“[WWOR-TV's] performance should be judged in the same manner as any other television station in it[s] overall performance, except that its performance will be tied to northern New Jersey, not primarily Secaucus,”) and “[j]ust as we would not purport to tell a licensee of New York City how much coverage it should devote to New York high school sports, neither will we intrude in the editorial discretion of a New Jersey station”).

<sup>125</sup> VNJ also repeats its argument that WWOR-TV has what it terms “additional, unique obligations to New Jersey.” VNJ 2015 PTD at 19. As explained above, it is well settled law that WWOR-TV's special obligation to New Jersey

submits its own analysis of two of WWOR-TV's quarterly issues-programs lists and its analysis of *Chasing News* over a two-week period.<sup>126</sup> It then compares WWOR-TV's performance during the periods it reviewed to that of what VNJ deems to be the stations "peer group" during the same time-frame.<sup>127</sup>

35. As we discussed above,<sup>128</sup> and as VNJ concedes in its petition to deny,<sup>129</sup> the Commission long ago expressly rejected the quantitative approach to reviewing a licensee's service to its community, concluding that the focus of inquiry will be not on how much programming a licensee offers but on whether the station has failed to address issues of public importance to the community.<sup>130</sup> Furthermore, the Commission has repeatedly made clear that we will not second-guess a licensee's editorial judgments about which issues to address and how to address those issues.<sup>131</sup> VNJ's assertion that there is a proper "peer group" to use for evaluating WWOR-TV's performance<sup>132</sup> is unsupported by Commission precedent, and in light of our reliance on broadcasters' editorial discretion in meeting the needs and interests of their community, we find no basis under the Communications Act or our rules to require WWOR-TV to air the same type or amount of issue-responsive programming as any other broadcaster.

36. It is clear based on the evidence presented by VNJ, that during both of the periods under review, WWOR-TV aired issues of concern to its community. Although VNJ itself plainly would cover issues differently than the current licensee does,<sup>133</sup> as long as a licensee is covering issues of concern to its community of license (or in the case of WWOR-TV, the Grade B contour), a petition to deny based simply on that difference of viewpoint does not present specific allegations of fact demonstrating *prima facie* case that grant of the application would be inconsistent with the statutory renewal standard. Review of the total record in the 2015 renewal proceeding, including WWOR-TV's issues-programs lists up through the most recent quarter available, demonstrates that the station has continued to air issue-responsive programming on multiple subjects, including politics, education, and transportation.<sup>134</sup> Therefore, there is no substantial and material question of fact warranting further inquiry regarding the issues raised in VNJ's 2015 PTD.

37. We find that VNJ's 2015 PTD failed to allege facts that, if true, would establish that grant of the application is *prima facie* inconsistent with the statutory renewal standard and, even assuming VNJ established a *prima facie* case for denial of renewal, we find that the record as a whole does not present a substantial and material question of fact that requires further investigation. Therefore, we deny VNJ's

(Continued from previous page) \_\_\_\_\_

is to serve its entire Grade B service contour and that it will be judged at renewal time on how well it met the needs of Northern New Jersey rather than just its community of license. *Supra* at para 12.

<sup>126</sup> VNJ 2015 PTD at 6, 11 and accompanying Exhibits.

<sup>127</sup> VNJ 2015 PTD at 5, 8.

<sup>128</sup> See para. 18.

<sup>129</sup> VNJ 2015 PTD at 4.

<sup>130</sup> *Commercial TV Stations*, 98 FCC.2d 1075, 1093-94, para. 37 (1984), *reconsideration denied*, 60 R.R. 2d 526 (1986).

<sup>131</sup> *Philadelphia Renewals*, 5 FCC Rcd at 3847-48, paras. 8-9.

<sup>132</sup> See VNJ 2015 PTD at 8-10 (discussing the reallocation of channel 9 from New York to New Jersey pursuant to section 331(a) of the Communications Act, 47 U.S.C. § 331(a)).

<sup>133</sup> See, e.g., VNJ 2015 PTD at 7, 15, 17. We note that in some cases VNJ objects that WWOR-TV does not cover New Jersey issues adequately, but that in other cases it does not cover non-New Jersey stories adequately, including national and international news. *Id.* at 7, 17-18. As we have previously stated, broadcasters have editorial discretion in choosing which issues to cover.

<sup>134</sup> See, Application for Renewal of License of WWOR-TV, File No. BRC DT-20150202ACT and associated pleadings; see also WWOR-TV Issues/Programs Lists 2015-2017: <https://publicfiles.fcc.gov/tv-profile/wwor-tv/issues-and-programs-lists/e09cd70e-fb95-7c68-b412-5f984ba8f201/> (last visited April 24, 2018).



2015 PTD.

#### IV. VNJ'S ALLEGATIONS REGARDING FOX'S *EX PARTE* PRESENTATIONS

38. **Background.** In a letter dated November 27, 2009, VNJ alleged that Fox had overstated its level of news and public affairs programming and its staffing levels at WWOR-TV, after significant cuts in those areas as of July 13, 2009.<sup>135</sup> It points to an exhibit (Exhibit) that WWOR-TV attached to two *ex parte* letters filed on August 26, 2009. This Exhibit contained information regarding WWOR-TV's daily local newscasts; its weekly public affairs programs; its public service announcements; its local sports and entertainment programming; and its presence in northern New Jersey, including the number of employees working for WWOR-TV.<sup>136</sup> In the exhibit, Fox stated that it had "highlight[ed] 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."<sup>137</sup> On September 4, 2009, in connection with a permit-but-disclose *ex parte* communication with Commission staff, Fox attached to an *ex parte* filing a slightly revised version of the Exhibit (Revised Exhibit), in which some passages had been changed to the past tense.<sup>138</sup> Fox did not disclose to Commission staff that it had revised the Exhibit or submitted a replacement Exhibit to accompany the August 26, 2009 *ex parte* filing. VNJ asserted that the Exhibit was factually inaccurate when filed on August 26, 2009.<sup>139</sup>

39. Fox responded to VNJ's allegations in a letter dated January 5, 2010,<sup>140</sup> stating that it was always Fox's intent that any statements in the Exhibit regarding its programming and staffing referred only to the renewal period from 1999 to 2007.<sup>141</sup> Fox further stated that the Revised Exhibit makes this position clear and that WWOR-TV remained entitled to renewal even at its new level of service.<sup>142</sup> In a letter dated January 18, 2011, Fox submitted the declaration of Maureen O'Connell, Senior Vice President, Regulatory & Government Affairs, News Corporation, who stated that, to the best of her knowledge, recollection, and belief, she shared with Commission staff general information about the changes at the station in meetings on August 25, 2009.<sup>143</sup> She went on to state that it belatedly occurred to her that the attachment to the *ex parte* filing submitted in conjunction with those meetings might be

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<sup>135</sup> Letter from Donna Sandorse, Member, VNJ, to Julius Genachowski, Chairman, FCC, MB Docket No. 07-260 (Nov. 29, 2009).

<sup>136</sup> Letter from Jared S. Sher, Counsel to News Corporation and Fox Television Stations, Inc., to Marlene Dortch, Secretary, FCC, MB Docket No. 07-260, Exhibit A (filed Aug. 26, 2009). The Exhibit, which was undated, also contained legal arguments in support of Fox's positions in this proceeding. Fox had submitted this Exhibit previously to the Commission in connection with other *ex parte* communications with Commission staff.

<sup>137</sup> *Id.*

<sup>138</sup> Letter from Jared S. Sher, Counsel to News Corporation and Fox Television Stations, Inc., to Marlene Dortch, Secretary, FCC, MB Docket No. 07-260, Exhibit A (filed Sep. 04, 2009). The revised exhibit included the reference to WWOR-TV's "impressive record of service to the viewers of northern New Jersey" and the commitment to continue this service. *Id.*

<sup>139</sup> Letter from Donna Sandorse, Member, VNJ, to Julius Genachowski, Chairman, FCC, MB Docket No. 07-260 (Nov. 27, 2009).

<sup>140</sup> Letter from Antoinette Cook Bush and Jared S. Sher, Counsels to Fox Television Stations, Inc., to Julius Genachowski, Chairman, FCC *et al.*, MB Docket No. 07-260, Exhibit B (filed Jan. 5, 2010).

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> Letter from Antoinette Cook Bush and Jared S. Sher, Counsels to Fox Television Stations, Inc., to Julius Genachowski, Chairman, FCC *et al.*, MB Docket No. 07-260, Exhibit B (Jan. 18, 2011), (O'Connell Declaration). The *Bureau Order* erroneously stated that the O'Connell Declaration was attached to the LOI Response. Fox submitted the January 18, 2011 letter in response to allegations of misrepresentation and lack of candor by the Media Access Project, UCC, and Free Press. See Letter from Media Access Project, et al., to Julius Genachowski, Chairman, FCC, MB Docket No. 07-260 (Dec. 7, 2010).

confusing and she directed Fox's counsel to edit and revise the WWOR-TV summary so that it would more clearly indicate that it referred to the period from 1999 to 2007.<sup>144</sup> Ms. O'Connell declared that she did not believe these changes were of decisional significance to the pending renewal application and did not intend to mislead anyone at the Commission.<sup>145</sup>

40. The Commission sent a Letter of Inquiry (LOI) regarding the allegations,<sup>146</sup> and Fox replied on April 4, 2011.<sup>147</sup> In its submission, Fox stated that WWOR-TV made changes to its programming and staffing levels in July 2009 due to the national economic recession at that time.<sup>148</sup> Fox contended that the programming changes were evident to the station's viewers and were made openly on the air and in program guides.<sup>149</sup> Fox said that, although it inadvertently did not update the Exhibit when it was included with its August 26, 2009 filing,<sup>150</sup> it did submit the Revised Exhibit subsequently without prompting.<sup>151</sup> As part of the LOI Response, Fox included the Declaration of Dennis Swanson, President of Station Operations for Fox Television Stations, Inc. In his Declaration, Mr. Swanson stated that he had met with the offices of two Commissioners and had informed them that: (1) due to the national financial crisis, WWOR-TV was losing money and the station could no longer afford a full hour of daily news programming, (2) the station had cut its newscast from one hour to 30 minutes each day; (3) Fox had reduced staff at the station by approximately 35%, and (4) even with those reductions the station was still losing money.<sup>152</sup>

41. In its application for review, VNJ argues that the Bureau erred in concluding "that any confusion created by Fox's filing was unintentional and was harmless error," because the reasons for Fox's misrepresentation were disputed.<sup>153</sup> Instead, VNJ contends that the Bureau should have asked whether the evidence raised a substantial and material question of fact requiring a hearing.<sup>154</sup>

42. **Legal Standard.** The Commission and the courts have recognized that "[t]he FCC relies

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<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Letter from William T. Lake, Chief, Media Bureau, Letter of Inquiry, 26 FCC Rcd 1296 (Vid. Div. 2011) (LOI).*

<sup>147</sup> *Letter from Antoinette Cook Bush and Jared S. Sher, Counsels to Fox Television Stations, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07-260 (April 4, 2011) (LOI Response).*

<sup>148</sup> *Id.* at 3.

<sup>149</sup> *Id.* at 4.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*, Exhibit A, Declaration of Dennis Swanson (Swanson Declaration). In a letter dated August 11, 2011, VNJ takes issue with the Declaration made by Mr. Swanson, arguing that it does not comport with an *ex parte* filing made by Ms. O'Connell on September 24, 2009 in regard to the same meeting. Letter from Charles Lovely, Member, Voice for New Jersey, to William T. Lake, Chief, Media Bureau, FCC, MB Docket No. 07-260 (filed Aug. 11, 2011) (VNJ Aug. 11, 2011 Letter). In her *ex parte* letter, Ms. O'Connell makes general statements that Mr. Swanson said that the station had been hurt by the economic crisis and even after the crisis ends would face significant challenges from a variety of alternate media, but that it has provided and will continue to provide "exemplary service" to Northern New Jersey. She also wrote that Mr. Swanson asked the Commission not to impose "onerous conditions that no other broadcaster is forced to confront." See Letter from Maureen O'Connell, Senior Vice President Government and Regulatory Affairs, News Corporation, to Marlene Dortch, Secretary, FCC, MB Docket No. 07-260 (filed Sep. 24, 2009). VNJ did not attend the meeting. Any questions raised by VNJ as to the truthfulness or accuracy Mr. Swanson's declaration are therefore speculative. See VNJ Aug. 11, 2011 Letter at 3-4. We do not find the statements in Ms. O'Connell's *ex parte* letter inconsistent with Mr. Swanson's declaration.

<sup>153</sup> VNJ AFR at 22-24.

<sup>154</sup> *Id.*

heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing.”<sup>155</sup> In considering an applicant's character, one of the Commission's primary purposes is to ensure that licensees will be truthful in their future dealings with the Commission. Full and clear disclosure of all material facts in every application is essential to the efficient administration of the Commission's licensing process, and proper analysis of an application is critically dependent on the accuracy and completeness of information and data that only the applicant can provide. Misrepresentation and lack of candor raise serious concerns as to the likelihood of a licensee's truthfulness.<sup>156</sup> Both misrepresentation, which involves a false statement of fact, and lack of candor, which involves evasion, concealment or other failure to be fully informative, require an intent to deceive.<sup>157</sup> Section 1.17(a)(2) of the Commission's rules further requires that no person may provide, in any written statement of fact, “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”<sup>158</sup> Similarly, section 1.65 requires licensees to notify the Commission within 30 days whenever any information furnished in a pending application “is no longer substantially accurate and complete in all significant respects” or “[w]henver there has been a substantial change as to any other matter which may be of decisional significance” with respect to a pending application.<sup>159</sup> A finding of intent to deceive is not required to find a violation of these sections, but the incorrect information must be material (section 1.17) or potentially decisionally significant (section 1.65). For the reasons discussed below, we affirm the Bureau's determination that the record failed to raise a substantial and material question of fact with respect to intent to deceive. Though the record indicates Fox provided false or incorrect information, we cannot find that a substantial and material question exists as to whether any violation of Section 1.17(a)(2) or 1.65, to the extent one exists, is a “serious violation” justifying designation of an issue under section 309(k)(1) of the Act.

43. Fox revised the incorrect materials on its own initiative, informing the offices of the Commissioners and the Commission staff of the relevant changes to WWOR-TV's staffing and programming.<sup>160</sup> Further, any changes in programming were made clear to anyone who watched the station.<sup>161</sup> Accordingly, we agree with the Bureau's conclusion that the record does not support an inference that Fox intended to deceive the Commission either in supplying the incorrect information or in

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<sup>155</sup> See, e.g., *Contemporary Media Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000) (citation omitted).

<sup>156</sup> *Character Policy Statement*, Report, Order and Policy Statement, 102 FCC.2d 1179 (1986). The fundamental importance of truthfulness and candor on the part of applicants and licensees in their dealings with the Commission is well established. See *FCC v. WOKO, Inc.*, 329 U.S. 223 (1946); *Lebanon Valley Radio, Inc.*, Decision, 35 FCC.2d 243 (Rev. Bd. 1972); *Nick J. Chaconas*, Decision, 28 FCC.2d 231 (Rev. Bd. 1971).

<sup>157</sup> *Trinity Broadcasting of Florida, Inc.*, Initial Decision, 10 FCC Rcd 12020, 12063, para. 336 (1995).

<sup>158</sup> 47 CFR § 1.17(a)(2). Section 1.17(a)(1) prohibits intentionally incorrect statements or omissions of material factual information necessary to prevent any material factual statement from being incorrect or misleading, 47 CFR § 1.17(a)(1).

<sup>159</sup> 47 CFR § 1.65.

<sup>160</sup> See LOI Response, Swanson Declaration at para. 4. “To the best of my knowledge and belief, at those meetings (i) I told the Commission that, as a result of the national financial crisis, WWOR-TV was losing money and could no longer afford to broadcast a full hour news each day; (ii) I explained that the station had cut its daily newscast from one hour to 30 minutes; (iii) I said that Fox had reduced staff at the station by approximately 35% and (iv) I said that, even after accounting for these changes, WWOR-TV's news operations lose money.”; see also O'Connell Declaration at para. 6 (“Although I do not recall with precision what was said at each meeting (which took place more than 16 months ago), to the best of my knowledge, recollection and belief, I did share with Commission staff general information about the changes at WWOR-TV that had been necessitated by the economy.”)

<sup>161</sup> *Bureau Order* at 9576, para. 37.

failing to inform the Commission that it had revised the *ex parte* exhibit.<sup>162</sup> Also, as the *Bureau Order* makes clear, Fox believed that the only period at issue was the time prior to the filing of its renewal application, and it made an effort to indicate that its claims were confined to that period.<sup>163</sup> That belief was incorrect, but it was a plausible explanation for Fox's failure to alert the Commission that it had revised the incorrect materials and undermines any inference of intent to mislead on the part of Fox.<sup>164</sup> The record does not raise a substantial and material question of fact regarding the truthfulness of the Swanson and O'Connell declarations, which the Bureau implicitly deemed credible. We too believe those declarations to be credible, and we find that they support the Bureau's conclusion that Fox did not intend to deceive the Commission.<sup>165</sup> Thus, the Bureau had a sound basis for concluding that the record did not present a substantial and material question of fact as to whether Fox engaged in misrepresentation or lack of candor.<sup>166</sup>

44. Lastly, we recognize, of course, that the materials were incorrect, and thus there is a potential violation of Section 1.17(a)(2). Moreover, we also recognize that Section 1.65 imposes an ongoing duty on a licensee to update information supplied to the Commission if there has been a substantial change in information which may be of decisional significance in a Commission proceeding involving a pending application. To the extent there exists a violation of either rule here, we do not find that there exists a substantial and material question of fact as to whether it would justify designation under 309(k)(1) of the Act. As a matter of our enforcement discretion, even were we to find that the post-application developments and revisions to the *ex parte* were subject to disclosure, we find significant Fox's efforts to correct the *ex parte* exhibit and the fact that Fox disclosed the changes to staff in an *ex parte* meeting. The Commission has broad discretion to fashion remedies,<sup>167</sup> and we do not believe Fox's conduct, on the facts of this case, warrants further action.

## V. THE NEWSPAPER/BROADCAST CROSS-OWNERSHIP RULE

45. In 1993, the Commission granted Fox a permanent waiver of the NBCO rule to permit

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<sup>162</sup> *Id.*

<sup>163</sup> *Id.*; see also LOI Response at 35-48 (explaining why Fox believed the post-application developments were not legally relevant and pointing out that Fox provided information on programming and staffing in the first instance to counter VNJ's allegation that WWOR-TV had abandoned New Jersey).

<sup>164</sup> Fox also explained why it believed the reductions in programming and staffing were not potentially decisionally significant, based on First Amendment principles and case law regarding the evaluation of broadcasters' service. *Id.* at 41-42. VNJ criticizes the Bureau for failing to specifically respond to the MAP/UCC/Free Press letter of December 7, 2010, which was written before the Bureau issued its LOI, in which UCC/MAP/Free Press stated: "The fact that a presentation may be truthful when viewed in isolation does not resolve a candor question because the statement may be incomplete or misleading in context." Letter from Andrew Jay Schwartzman, Media Access Project, to Julius Genachowski, Chairman, FCC, MB. Docket No. 07-260 (Dec. 7, 2010). Based on the record, including Fox's response to the LOI, the Bureau found that Fox's statements were not incomplete or misleading in context and, explaining the basis for this conclusion, found there was nothing that warranted further inquiry on this point.

<sup>165</sup> Intent to deceive is a necessary element to misrepresentation and lack of candor. *Swan Creek Communications, Inc. v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994); *Citadel Broadcasting Co.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 7083, 7090, para. 14 (2007).

<sup>166</sup> See VNJ AFR at 23-24 (claiming the Bureau failed to address allegations that Fox lacked candor). VNJ claims that, even if Fox did not intend to deceive the Commission, "its failure to call attention to these material changes is a separate violation of the Commission's rules." VNJ provides no analysis or discussion of this claim, nor any citation to the rules. As explained in this section, our analysis of Fox's submission of erroneous information applies equally to its failure to affirmatively inform the Commission that it had revised the *ex parte* exhibits to use the past tense.

<sup>167</sup> *Lorain Journal Co. v. F.C.C.*, 351 F.2d 824, 831 (D.C. Cir. 1965); *USA Broadcasting, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 4253, 4256, paras. 9-10 (2004).

common ownership of WNYW(TV) and *The New York Post (Post)*.<sup>168</sup> Pursuant to an order released July 25, 2001, Fox acquired ten television stations from Chris-Craft Industries, Inc.,<sup>169</sup> including WWOR-TV. In granting the assignment applications, the Commission rejected Fox's arguments that its original permanent waiver was adequate to permit the combined ownership of WNYW(TV)/WWOR-TV and the *Post*. Therefore, the Commission found that a new waiver would be necessary to authorize the combination that was requested in that proceeding. Based on the record before it, the Commission did not disturb the permanent waiver between WNYW(TV) and the *Post*, and it gave Fox twenty-four months from consummation of the transaction to come into compliance with the NBCO rule by divesting either the *Post* or WWOR(TV), unless the NBCO rule was amended prior to running of the temporary waiver, and such amendment would permit common ownership.<sup>170</sup> The Commission specifically stated that, "[i]f our rules should change during that period to permit the proposed combination, the FTS and Murdoch will not need to divest."<sup>171</sup>

46. By an order released July 2, 2003, the Commission voted to repeal the NBCO rule.<sup>172</sup> Fox filed a letter with the Commission on July 21, 2003, seeking clarification or extension of "[its] waivers pending the effective date of the new media ownership rules."<sup>173</sup> This request was still pending when the U.S. Court of Appeals for the Third Circuit, in an unpublished opinion on September 3, 2003, issued a stay that prevented the repeal of the NBCO rule, among other rule changes, from going into effect.<sup>174</sup> This stay did not have any effect on the status of existing waivers or waiver requests before the Commission.<sup>175</sup> Ultimately, the Third Circuit reversed and remanded both the NBCO rule repeal and other media ownership rule changes stating that "[t]he stay currently in effect will continue pending our review of the Commission's action on remand."<sup>176</sup> During this time, the Commission did not respond to Fox's July 21, 2003 request for clarification or extension of its 2001 temporary waiver, nor did the Commission seek to enforce compliance with the reinstated NBCO rule as to the Fox NBCO combination.

47. On September 22, 2004, before the Commission acted on remand in the Third Circuit litigation, Fox filed a Petition for Modification of Permanent Waiver (Modification Petition). In the Modification Petition, Fox asked the Commission to modify its permanent waiver that permitted the joint ownership of WNYW(TV) and the *Post* to encompass the ownership of WWOR-TV. It based this request on the Commission's decision in the *2002 Biennial*, which would have permitted the combination

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<sup>168</sup> *Fox Television Stations, Inc.*, Declaratory Ruling, 8 FCC Rcd 5341, 5350, para 22 (1993), *recon. denied*, 8 FCC Rcd 8744 (1993), *aff'd*, *Metropolitan Council of N.A.A.C.P. Branches v. FCC*, 46 F.3d 1154 (D.C. Cir. 1995).

<sup>169</sup> *UTV of San Francisco*, Memorandum Opinion and Order, 16 FCC Rcd 14975 (2001).

<sup>170</sup> *Id.* at 14987, 14990.

<sup>171</sup> *Id.* at 14989, para. 45, fn. 73.

<sup>172</sup> *In re 2002 Biennial 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 Notice of Proposed Rulemaking, 18 FCC Rcd 13620 (2003), (*2002 Biennial*) *rev'd and remanded*, *Prometheus Radio Project v FCC*, 373 F.3d 372 (3d. Cir. 2004)(*Prometheus*). UCC characterizes this as a "more relaxed" NBCO restriction, but it was a repeal of the rule.

<sup>173</sup> Letter from John C. Quale to W. Kenneth Ferree, Chief, Media Bureau, Federal Communications Commission (July 21, 2003). Because this letter specifically requested an extension of the NBCO waiver "pending the effective date of the new media ownership rules," we disagree with UCC's assertion that there was a one-year gap in the period between when its first twenty-four-month waiver expired and when it requested a new waiver. See UCC AFR at 4; see also UCC Reply at 5.

<sup>174</sup> *Prometheus Radio Project v. F.C.C.*, No. 03-3388, 2003 WL 22052896 (3d. Cir. 2003).

<sup>175</sup> *Id.* The court was silent as to these matters.

<sup>176</sup> *Prometheus v. F.C.C.*, 373 F.3d 372, 435 (3d. Cir. 2004).

of WNYW(TV), WWOR-TV and the *Post* under the newly adopted cross-media limits,<sup>177</sup> although that decision was stayed and the proceeding subsequently remanded by the *Prometheus* Court. In the alternative, Fox asked that the 24-month temporary waiver be extended pending the conclusion of the remand. On April 15, 2005, Free Press filed an objection to the Modification Petition. On August 19, 2005, Fox filed a transfer of control application in connection with its corporate restructuring.<sup>178</sup> It attached a copy of the Modification Petition to its corporate restructuring transfer of control application. In an order released on October 6, 2006, the Commission granted the transfer of control application in the corporate restructuring proceeding and granted Fox a new 24-month temporary waiver permitting continued common ownership of WWOR-TV.<sup>179</sup>

48. On February 4, 2008, in its 2006 Quadrennial Review proceeding, the Commission released an order adopting new NBCO rules. With respect to pending waiver requests involving NBCO combinations consisting of more than one broadcast station and/or more than one newspaper and with respect to waivers granted pending the outcome of the Quadrennial Review proceeding, licensees were required to either amend their existing waiver requests or file new permanent waiver requests based on the new NBCO rules.<sup>180</sup>

49. In response to the *2008 Report and Order*, on June 23, 2008, Fox filed a Supplement. In it Fox argued, as it had before, that its original permanent waiver permitting the ownership of WNYW(TV) and the *Post* should be read to encompass ownership of WWOR-TV. It also argued that the New York market is diverse and competitive enough to justify grant of a permanent waiver to permit common ownership of WNYW(TV), the *Post*, and WWOR-TV. UCC filed an opposition to the Supplement on July 15, 2009.

50. Prior to the expiration of Fox's temporary waiver on December 29, 2008, granted in October 2006 in the corporate restructuring proceeding, Fox filed a letter with the Commission in which it stated, "[s]hould there be any question about the status of the temporary waiver," Fox requested "out of an abundance of caution, a temporary extension... to permit common ownership" of WWOR-TV and the *Post* "while the FCC completes its review" of the waiver requests.<sup>181</sup>

51. *UCC's Application for Review*. UCC's petition to deny the WNYW(TV) and WWOR-TV license renewal applications asked that the Commission grant UCC's pending petition for reconsideration of the Commission's 2006 corporate restructuring order granting Fox a temporary NBCO waiver,<sup>182</sup> rescind the waiver, and then deny the renewals of WWOR-TV and WNYW(TV) because,

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<sup>177</sup> *2002 Biennial*, 18 FCC Rcd 13620, 13804 (2003) (permitting any newspaper and broadcast cross-media combinations that comply with the local television ownership rule and local radio rule in markets with 9 or more TV stations).

<sup>178</sup> Application for Transfer of Control of Fox Television Stations, Inc., File Nos. BTCCT-20050819AAF, *et al.*, Exhibit 18. (The applications were filed as part of a corporate reorganization in the context of News Corp, its parent company, becoming a United States corporation.)

<sup>179</sup> *K. Rupert Murdoch*, Memorandum Opinion and Order, 21 FCC Rcd 11499 (2006), *aff'd Murdoch Recon*. (*Murdoch Recon*, although ruling on a UCC petition for reconsideration that was found to be procedurally defective, ruled on the merits of Free Press' objections to the Modification Petition, which Free Press had filed in an unrelated proceeding. *Murdoch Recon* at 5827-5829.)

<sup>180</sup> 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 on Reconsideration, 23 FCC Rcd 2010, 2056-57 (2008) (*2008 Report and Order*).

<sup>181</sup> Letter from Antoinette Cook Bush and Jared S. Sher, Counsel, Fox, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07-260, File No. BTCCT-20050819AAF, *et al.*, Status of Waiver, at 2 (Dec. 24, 2008).

<sup>182</sup> The petition for reconsideration to which UCC referred in its petition to deny the renewal applications was subsequently denied in the *Murdoch Recon*. The *Bureau Order*, in addition to considering petitions to deny the license renewal applications, considered and denied Free Press's petition for reconsideration of the 2009 order, which denied reconsideration of the Commission's 2006 order in the corporate restructuring proceeding, because

absent the waiver, the renewal of the licenses would violate the NBCO rule and the applications would be defective on their faces.<sup>183</sup> In the alternative, UCC asked that the Commission designate WWOR-TV's renewal for hearing on the grounds that Fox had failed to make the required showing under Section 309(k) and its renewal would violate that section of the Act.<sup>184</sup> The Bureau denied the petition in all respects and granted Fox a temporary waiver of the NBCO rule permitting common ownership of the *New York Post*, WNYW(TV) and WWOR-TV until ninety days after the effective date of an order in the 2014 *Quadrennial* review proceeding.<sup>185</sup> At that time, the licensee would either have to comply with the new rule or file a new waiver request.

52. In its application for review, UCC argues that: (1) Fox was in violation of the NBCO rule from July 2003 until October 2006 because its 24-month waiver lapsed during that period;<sup>186</sup> (2) a request for a waiver of the NBCO rule is not adequate to protect a party from being in violation of the rule until the Commission acts on its waiver; (3) the Commission violated its own precedent by granting a temporary waiver contingent on the outcome of a rulemaking; (4) the temporary waiver given to Fox is a *de facto* permanent waiver; and (5) the Bureau failed to conduct the analysis necessary to support grant of an NBCO waiver.<sup>187</sup>

53. The NBCO rule has had a particularly complicated history. In 2003, the rule was repealed by Commission order, and replaced with broader cross-media limits.<sup>188</sup> Common ownership of WNYW(TV), WWOR-TV, and the *New York Post* would have complied with this new rule.<sup>189</sup> However, the Third Circuit stayed implementation of the cross-media limits.<sup>190</sup> In 2004, the Third Circuit remanded the order, and the original NBCO rule was reinstated.<sup>191</sup> In 2008, a new revised NBCO rule was adopted.<sup>192</sup> The Court once again vacated and remanded the revised NBCO Rule, and the original rule was once again the law.<sup>193</sup> In 2017, after extensive debate and analysis, the Commission repealed the NBCO rule.<sup>194</sup> For many years, this rule was in a state of constant flux, and, as this summary demonstrates, Fox has accordingly relied on pending requests for waivers or requests for extensions of pre-existing waivers as the basis for continued operation of newspaper-broadcast combinations until the Commission ruled on its waiver requests. Within the context of this unique state of affairs related to the NBCO rule, Fox's reliance on pending waiver requests or requests for extension of pre-existing waivers as the basis for continued operation of newspaper-broadcast combinations was reasonable. Fox had a temporary waiver that expired in July of 2003 shortly after the Commission originally repealed the NBCO rule and replaced it with cross-media limits. The Court's stay of the repeal was silent as to pending waiver requests, and

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Free Press had not previously participated in that proceeding. The Bureau also found that Free Press's arguments were flawed for the same reasons the Commission denied UCC's petition in 2009. *Bureau Order* at 9579-9582.

<sup>183</sup> UCC PTD at 5. The temporary waiver had been granted in *K. Rupert Murdoch*, Memorandum Opinion and Order, 21 FCC Rcd 11499 (2006). UCC did not file a petition to deny in that proceeding.

<sup>184</sup> UCC PTD at 5.

<sup>185</sup> *Bureau Order* at 9583.

<sup>186</sup> VNJ AFR at 9.

<sup>187</sup> *Id.*

<sup>188</sup> 2002 *Biennial* at 13804 (2003) (permitting any newspaper and broadcast cross-media combinations that comply with the local television ownership rule and local radio rule in markets with 9 or more TV stations.).

<sup>189</sup> *Id.*

<sup>190</sup> *Prometheus* Unpublished.

<sup>191</sup> *Prometheus Radio Project v. F.C.C.*, 373 F.3d 372 (3d Cir. 2004).

<sup>192</sup> 2008 *Report and Order*.

<sup>193</sup> *Prometheus Radio Project v. F.C.C.*, 652 F.3d 431 (3d Cir. 2011).

<sup>194</sup> See 2014 *Quadrennial Recon* at 9802.

Fox had sought guidance from the Commission, to which the Commission did not originally respond or even place on public notice.<sup>195</sup> Under these circumstances, we find no basis to conclude that UCC's allegations that Fox violated the NBCO rule during this interim period or other record evidence raises a substantial and material question of fact as to whether Fox's continued operation of the NBCO combination resulted in a serious violation of the Communications Act or the Commission's rules or multiple violations establishing a pattern of abuse. Thus, we conclude that these allegations do not require further inquiry as to Fox's qualifications for renewal.<sup>196</sup>

54. We note that the Commission repealed the NBCO rule in the *2014 Quadrennial Recon*, which is now effective, and UCC's challenge to the Bureau's grant of a temporary NBCO waiver is therefore moot.<sup>197</sup> While under Section 309(a) of the Act, we must evaluate each application to determine whether grant would be in the public interest, because the Commission has already found that banning newspaper/broadcast cross-ownership is not in the public interest, we need not determine separately whether Fox's ownership of *The Wall Street Journal*, or any other newspaper, contravenes the public interest.<sup>198</sup> In any case, we do not find that the public interest would be disserved by these commonly held properties, especially in light of our repeal of the NBCO rule.

55. For these reasons UCC's application for review is denied. UCC's 2015 PTD, which raises the same arguments as the application for review, is dismissed in part as moot, and denied in all other respects.<sup>199</sup>

## VI. OTHER MATTERS

56. UCC alleges in its application for review that the Bureau failed to address claims it made regarding Fox's candor based on Fox's alleged failure to disclose an NBCO rule violation in its renewal applications in the 2007 proceeding and a similar alleged failure when it certified in 2005 that its corporate restructuring would comply with Commission rules.<sup>200</sup> As discussed above, ever since Fox acquired WWOR-TV it has either operated with a temporary waiver permitting the joint ownership of WWOR-TV/WNYW(TV) and the *Post*, or it was actively seeking an extension or modification of a previously granted waiver. At no point during that time period has there been a break in this chain. Because Fox has been either operating with the Commission's direct authorization or actively seeking such authorization since it acquired WWOR-TV, we cannot find that Fox has misrepresented its compliance with the NBCO rule. Furthermore, at the time Fox filed the WWOR-TV and WNYW(TV) license renewal applications, it was operating under a temporary NBCO waiver, granted in 2006 in the corporate restructuring proceeding, permitting the combination. In light of these facts, we conclude there

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<sup>195</sup> The *Counterpoint* decisions do not persuade us otherwise. See UCC-VNJ 2015 Consolidated Reply at 3-4 (citing *Counterpoint Communications, Inc.*, 16 FCC Rcd 15044 (2001); *id.*, 20 FCC Rcd 8582 (2005) ("*Counterpoint IP*") and arguing that Fox misinterpreted those decisions). As UCC correctly points out, in *Counterpoint*, the Commission stated that it did not "intend to continue the practice of allowing waivers to remain in force through inaction for long periods of time." *Counterpoint II*, 20 FCC Rcd at 8590. The Commission put the onus on itself to take prompt action on waiver requests. It would be unreasonable in these unique circumstances to conclude that Fox's failure to voluntarily divest a station and disrupt longstanding service to the public implicates the "serious violation" standard of section 309(k).

<sup>196</sup> See 47 CFR § 309(k)(1)(B)-(C); UCC Petition to Deny at 11-16.

<sup>197</sup> *2014 Quadrennial Recon*, 32 FCC Rcd at 9802.

<sup>198</sup> 47 U.S.C. § 309(a)("[T]he Commission shall determine, in the case of each application filed with it...[that] the public interest, convenience, and necessity would be served by the granting thereof.").

<sup>199</sup> On February 28, 2017, pursuant to the requirements of the *Bureau Order*, Fox filed a request for a new temporary waiver, which was opposed by the parties to this proceeding. In light of the repeal of the rule, that request and the oppositions thereto are dismissed as moot.

<sup>200</sup> UCC AFR at 9; see also *Murdoch Recon* at 5824-5828 (finding UCC petition to be procedurally defective due to lack of standing.).



is no substantial and material question of fact warranting further inquiry as to UCC's allegations of lack of candor.<sup>201</sup>

57. UCC alleged also that the Bureau failed to address its claims that Fox lacked candor when it failed to note in its 2005 corporate restructuring application that Free Press had opposed the Modification Petition in a separate proceeding.<sup>202</sup> The Commission considered a similar question in the *Murdoch Recon* proceeding. In that proceeding, UCC had claimed that Fox was required to serve it with a copy of the 2005 reorganization applications and waiver requests related to WWOR-TV because it had opposed the original assignment application by which Fox acquired the station in an unrelated proceeding.<sup>203</sup> The Commission rejected that argument on the basis that participation by a petitioner in one proceeding involving a station does not require the licensee to serve the petitioner with all future applications related to that station.<sup>204</sup> For the same reason, Fox was not required to inform the Commission when it filed the reorganization application that Free Press had opposed a waiver request that Fox had filed for WWOR-TV in a different proceeding, and its failure to do so does not constitute a lack of candor. We do not find that Fox had any obligation to inform the Commission of Free Press's previous opposition to the waiver request, which was on file at the Commission, nor has UCC provided any evidence suggesting that Fox intended to deceive the Commission. Therefore, we find that no substantial and material question of fact warranting further inquiry has been raised on this issue.

58. Finally, UCC claims that the Bureau failed to address allegations in its 2007 Petition to Deny that "Fox also appears to have violated the *ex parte* rules" on at least two occasions in 2006.<sup>205</sup> UCC's allegations are vague,<sup>206</sup> in that they refer to Commission staff, but do not identify individuals. Moreover, UCC did not support its allegations with an affidavit based on personal knowledge, as required by section 309(d) of the Communications Act. These allegations do not make out a *prima facie* case on which a petition to deny can be based.<sup>207</sup>

59. The UCC AFR repeats arguments raised in the Free Press petition for reconsideration of the 2009 *Murdoch Recon* order, which the Bureau properly found to be procedurally defective.<sup>208</sup> The

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<sup>201</sup> UCC claims Fox "misrepresented the circumstances in which the FCC previously granted the 24-month waiver" by "imply[ing]" that it was granted because of the pendency of proceedings reviewing the NBCO rule when "in fact, the FCC rejected that reason." UCC 2007 Petition to Deny at 15. See also UCC AFR at 9. Interpretation of Commission precedent, whether correct or incorrect, is the prerogative of a party to an adjudicatory proceeding, and not something for which we would find misrepresentation or lack of candor. The Commission orders are a matter of public record. In any case, the Fox statement quoted by UCC does not purport to interpret the Commission's order. See File No. BTCCT-20050819AAF, FCC Form 315, Ex. 18 at 8 ("At the time, the 24-month waiver seemed to [Fox] to be more than adequate in duration to permit the Commission to complete proceedings looking toward repeal of the NBCO rule.").

<sup>202</sup> UCC AFR at 9. Fox's Modification Petition was never put on public notice, and when Free Press filed its letter opposing the Modification, Fox had not yet filed its corporate restructuring application. When Fox later filed that application, it attached the Modification Petition. However, that application initiated a new proceeding, and Free Press's 2005 letter was not made a part of the restructuring proceeding.

<sup>203</sup> *Id.*

<sup>204</sup> *Murdoch Recon* at 5827.

<sup>205</sup> UCC Petition at 16; UCC AFR at 9.

<sup>206</sup> UCC "believes" that Mr. Murdoch "met with several FCC commissioners and discussed the waiver of the NBCO rule" on or about May 30, 2006, and UCC alleges that counsel for Fox communicated with staff from at least one Commissioner's office regarding the substance of the waiver request and the need for prompt action in the summer of 2006. UCC Petition at 16; UCC AFR at 9-10.

<sup>207</sup> See 47 U.S.C. § 309(d)(1).

<sup>208</sup> UCC AFR at 18 fn. 71. UCC claims in its AFR that Free Press filed an informal objection to Fox's Petition for Modification of Permanent Waiver before the Commission's original decision in *K. Rupert Murdoch*. UCC AFR at 18, fn. 71. There is no such named document in the Modification Application proceeding. We presume UCC is

parties ask again that we treat Free Press's objection to the Modification Application as a petition to deny the separate corporate reorganization applications,<sup>209</sup> and argue that Fox was obligated to serve its application on Free Press, UCC or any theoretically interested other party.<sup>210</sup> They also argue that the Commission was required to disclose in its Public Notice of the 2005 reorganization applications that a new WWOR-TV waiver was sought.<sup>211</sup> The Commission previously rejected the first two arguments for the reasons discussed above.<sup>212</sup> Furthermore, UCC has failed to cite to any precedent or support in our Rules for its argument that the Commission was required to provide specific public notice that Fox was seeking an NBCO waiver in 2005. Finally, the Bureau correctly dismissed Free Press's petition for reconsideration of the *Murdoch Recon* order as untimely.<sup>213</sup> UCC has not demonstrated that the Bureau erred, and accordingly we deny this aspect of its application for review.

## VII. CONCLUSION

60. We have reviewed the *Bureau Order*, the Applications for Review, petitions to deny, and associated pleadings, as well as other filings comprising the record. We uphold the *Bureau Order*, except to the extent that it is moot as stated in paragraph 53, and find that during the relevant periods the stations served the public interest, convenience, and necessity; that there were no serious violations by the licensee of the Communications Act or the rules and regulations of the Commission; and that there were no other violations by the licensee of the Communications Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.<sup>214</sup> Because the Commission repealed the NBCO rule subsequent to the *Bureau Order*, there is no need to consider arguments that the Bureau should not have granted the temporary waiver.

## VIII. ORDERING CLAUSES

61. ACCORDINGLY, pursuant to section 5(c)(5) of the Communications Act of 1934, 47 U.S.C. § 155(c)(5), and section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, IT IS ORDERED That the Applications for Review filed by the Voice for New Jersey and by the Office of Communication, Inc. of the United Church of Christ and Rainbow/PUSH Coalition in *Application for Renewal of License of WWOR-TV*, Memorandum Opinion and Order, 29 FCC Rcd 9564 (Med. Bur. 2014) are DENIED.

62. IT IS FURTHER ORDERED That, the petition to deny filed by the Voice for New Jersey against the application for renewal of license of WWOR-TV, Secaucus, New Jersey, File No. BRC DT-20150202ACT IS DENIED.

63. IT IS FURTHER ORDERED That, the petition to deny filed by the Office of Communication, Inc. of the United Church of Christ, Rainbow/PUSH Coalition, and Free Press against the applications for renewal of license of WWOR-TV, Secaucus, New Jersey, File No. a BRC DT-20150202ACT and WNYW(TV), New York, New York, File No. BRC DT-20150202AJP IS DENIED.

64. IT IS FURTHER ORDERED That the applications for renewal of license of WWOR-TV, Secaucus, New Jersey, File No. BRC DT-20150202ACT and WNYW(TV), New York, New York, File No.

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referring to the Free Press Letter, which was resolved on the merits in the *Murdoch Recon* order and the *Bureau Order*. *Murdoch Recon* at 5828-29, *Bureau Order* at 9579-9582.

<sup>209</sup> *Bureau Order* at 9581 (stating that Free Press's opposition was not a petition to deny because it was grossly untimely, unjustified and not supported by an affidavit as required by Section 309(d); and noting that the only affidavit submitted by Free Press was untimely, executed four years after petitions were due and four years after the opposition was prepared, as well as after both the original order and the *Murdoch Recon* were released).

<sup>210</sup> *Id.* at 9580. See *Murdoch Recon* at 5827.

<sup>211</sup> *Murdoch Recon* at 5825; *Bureau Order* at 9580.

<sup>212</sup> See *para.* 56.

<sup>213</sup> *Bureau Order*, 29 FCC Rcd at 9579-9582.

<sup>214</sup> 47 U.S.C. § 309(a), (k).

BRCT-20070201AJS and File No. BRC DT-20150202AJP ARE GRANTED.

65. IT IS FURTHER ORDERED That the *Bureau Order* is AFFIRMED except to the extent it is VACATED AS MOOT as described in paragraph 53, and that the request for waiver of the former newspaper/broadcast cross-ownership rule requested by Fox Television Stations, LLC, pursuant to the *Bureau Order*, and the oppositions, thereto, is DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary