

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

In the Matter of

Application of FOX Television Stations, LLC  
for Renewal of License of WTXF-TV,  
Philadelphia, Pennsylvania

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)  
) LMS File No. 0000213362  
) Facility ID 51568  
) FRN: 0005795067  
)  
)

To: Marlene H. Dortch, Secretary  
Attn. Holly Saurer, Chief Media Bureau

**REPLY TO OPPOSITION OF FOX TELEVISION STATIONS, LLC**

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## TABLE OF CONTENTS

<b>Summary</b> .....	i
<b>Introduction and Background</b> .....	2
<b>MAD has Made a Prima Facie Case that FTS is Not Qualified to Be an FCC Licensee</b> .....	6
<b>MAD has Alleged Character Policy Violations Sufficient to Require an Evidentiary Hearing</b> .....	10
<b>Holding FOX Accountable for Its Actions Would Not Violate the First Amendment</b> .....	16
<b>FOX Has Not Demonstrated That During the License Renewal Period It Has Served the Public Interest. On the Contrary, It Has Made Material Misrepresentations in Its Renewal Application. FOX is Not Qualified to Be a Commission Licensee</b> .....	19
<b>MAD has Standing to Petition to Deny Grant of the Application</b> .....	24
<b>Conclusion</b> .....	26

## Summary

The FTS Opposition purposefully avoids any discussion, or even mention, of MAD's allegations in its Petition to Deny of serious misconduct by FOX, other than to claim that FOX's programming on its cable channels is irrelevant to the license renewal application for FTS' Philadelphia TV station. The Opposition makes several other arguments, none of which address the substance of the Petition or the findings of false statements by FOX in the Delaware Court's decision in *Dominion v. FOX*. Instead it cites a lack of evidence that Fox 29 itself broadcast false statements; that *Dominion* was a defamation case, not actionable by the FCC, and also was not fully adjudicated; that the Petition does not make a prima facie case prerequisite to an FCC hearing on the application; that MAD lacks standing as a petitioner; that any FCC action on the application based on cable or broadcast content would violate the First Amendment; and that Fox 29's stellar broadcast record mandates renewal of its broadcast license.

The gravamen of the Petition is that the FOX corporate family, including the parent corporation and its non-broadcast subsidiaries, promoted knowingly false narratives of a rigged 2020 presidential election, that divided the country and contributed to the storming of the United States Capitol on January 6, 2021, causing great harm to persons, property, and our institutions and democracy. The Petition provides clear evidence that FOX leadership, the Murdochs, as well as senior management and program hosts, well knew that the narratives were false, yet continued to feature them to appease their viewers and preserve ratings and profits

MAD asks the Commission to hold FOX accountable for its well-documented misdeeds that raise substantial and material questions whether FOX has the character qualifications to hold FCC broadcast licenses in its corporate family. FOX's misconduct further warrants a finding that

renewal of the Fox 29 license would not serve the public interest. An evidentiary hearing is required to resolve these questions.

The Opposition's strategic decision to ignore the content of the offending programming and the involvement of top management, only adds weight to MAD's allegations, as FTS has not proffered any countervailing evidence. MAD's Reply disposes of the Opposition's meritless arguments by reference to long-standing FCC and Court precedent that a broadcast license is a public trust and that the FCC action requested would not violate FOX's First Amendment rights. The reply further demonstrates that MAD has standing as a petitioner; that the findings of false statements in Dominion are both relevant and compelling, despite it being a defamation case; that FTS/Fox 29 is not an exemplary broadcaster and furthermore has made material misrepresentations in its application; and, that FOX's behavior was so egregious as to shock the conscience and evoke almost universal disapprobation under the FCC's character policy, requiring an evidentiary hearing. The Petition and this Reply firmly establish the need for swift and severe FCC action to disable FOX from similar pernicious misconduct in the future.

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**REPLY TO OPPOSITION OF FOX TELEVISION STATIONS, LLC**

The Media and Democracy Project (“MAD”), by counsel, files this Reply to the Opposition of Fox Television Stations, LLC (“FTS”) to MAD’s Petition to Deny (“Petition”) the license renewal application of WTXF-TV, Philadelphia, Pennsylvania (“WTXF” or “Fox 29”).<sup>1</sup>

The ultimate parent entity of WTXF is Fox Corporation (“FOX”), a Delaware corporation headquartered in New York City. FOX is a news, sports, and entertainment company that produces and distributes content through brands such as Fox News Network, LLC (“Fox News”), Fox Sports, Fox Network, and FTS. Voting power of FOX shares is concentrated in the Murdoch Family Trust, which is controlled by Rupert Murdoch.<sup>2</sup> Rupert Murdoch is Chairman and Lachlan K. Murdoch is Executive Chair and Chief Executive Officer. Together with the

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<sup>1</sup> In its Petition to Deny, MAD stated that the Petition also served as an informal objection “[w]here the FCC has not yet acted on other FOX applications for television license renewal.” In its Opposition FOX claims that “MAD’s request is defective given that it fails to specify any particular applications or stations.” Opposition at n. 1. Why MAD was required to list all of FOX’s stations whose license renewal applications were pending is not made clear. However, to avoid any confusion, MAD requests that its Petition to Deny and this Reply act as informal objections to the following FOX stations, KTBC, Austin, Texas, KDFW, Dallas - Fort Worth, KRIV, Houston, KTTV, Los Angeles, KMSP, Minneapolis - St. Paul, WNYW, New York, KTVU, Oakland - San Francisco - San Jose, KSAZ, Phoenix, KCPQ Tacoma – Seattle.

<sup>2</sup> FOX Corp. 10k, for the fiscal year ended June 30, 2022, p.32.

board of directors, Rupert and Lachlan Murdoch control FOX and its subsidiary companies, including FTS.

### **Introduction and Background**

FTS has carefully crafted its Opposition to ignore the elephant in the room. It is not enough for the Opposition to argue that *Dominion v. Fox* (“*Dominion*”) is merely a defamation case, claiming that “[a]llegations of defamation are outside the Commission’s jurisdiction’ and thus are not taken into account in license renewal proceedings.”<sup>3</sup> The Petition is not based in defamation nor as FTS claims does it infringe on FOX’s First Amendment rights. Rather, the Petition is about FOX’s cupidity and its willingness to deceive its audience with a knowingly false narrative concerning the outcome of the 2020 election. FOX helped fuel a crisis of democracy, resulting in injury and death, while leaving a nation deeply divided. Never in the history of the Commission has the agency been confronted with a license renewal applicant whose parent was found by a court of law to have repeatedly presented false news. There is no obligation of a broadcast licensee more fundamental than the obligation to serve the public interest by truthfully informing viewers. In its Petition to Deny MAD presented evidence that FOX, including Rupert Murdoch and Lachlan Murdoch, knew at all relevant times that the allegations of “rigging the election” were false and baseless. The Opposition for all of its detail never addresses this key issue, preferring instead to “oppose” strawman defamation and First Amendment arguments.

The *Dominion* case revealed numerous private communications and statements from top executives at FOX that they were aware that Trump’s claims about a rigged election were not true. However, Murdoch was worried that fact checking those claims publicly might upset the

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<sup>3</sup> Opposition, at p. 2.

network's massive audience. As ratings for FOX competitors increased, Rupert Murdoch and FOX top management became more and more worried. Lachlan Murdoch testified that their ratings drop was concerning.<sup>4</sup> On November 9, 2020, Suzanne Scott<sup>5</sup> emailed Rupert Murdoch, noting the importance of "keep[ing] the audience who loves and trusts us...we need to make sure they know we aren't abandoning them and still champions for them."<sup>6</sup> To pander to its audience and to appease Trump, FOX, through its wholly-owned subsidiary, Fox News, began to promote news stories and guests who claimed, without any basis, that the election was rigged. Among the allegations of election fraud on FOX were false statements that two voting machine companies, Dominion Voting Systems, Inc. and Smartmatic USA Corp, manipulated the vote count and rigged the 2020 Presidential election in favor of Joe Biden.

Murdoch and FOX executives knew that Fox News anchors and guests were misleading viewers by making false statements. FOX leadership understood that its viewers expected it to show support for President Trump and, rather than report the truth about the election, that Trump had lost, allowed its anchors and guests to perpetuate these phony narratives in order to placate the viewership and preserve FOX's business and financial interests. Indeed, FOX ramped up the conspiracy-style stories of a stolen election after Fox News suffered viewer backlash by being the first major TV-news network to call Arizona for Joe Biden, securing his Electoral College victory. This was a conscious strategy to retain FOX's conservative viewer base, intended to

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<sup>4</sup> *Dominion v. FOX*, p.14. The judge's decision is attached to the Petition.

<sup>5</sup> Suzanne Scott is the Chief Executive Officer of FNC. As the CEO, Ms. Scott is responsible for the content of the shows and has the authority to direct shows to decline to host certain guests or broadcast certain content. *Dominion*, p. 8.

<sup>6</sup> *Dominion*, p.14-15.

reverse falling ratings and viewer migration to competing conservative-leaning networks, Newsmax and OAN.<sup>7</sup>

Court filings in the *Dominion* case reveal that FOX executives and hosts knew that Trump’s election fraud claims were “really crazy stuff,” as Rupert Murdoch put it, yet pushed them on air anyway.<sup>8</sup> FOX knew – from the Murdochs on down – that Fox News was reporting false and dangerous misinformation about the 2020 Presidential election, but FOX was more concerned about short-term ratings and market share than the long-term damage caused by its spreading disinformation.

Some members of Congress objected to FOX’s election fraud lies, directly linking FOX’s conduct to the January 6, 2021, violent attack on the United States Capitol by Trump supporters to prevent certification of the election, and its horrific consequences. Congressman Bill Pascrell, Jr. (D-NJ 9<sup>th</sup> District) wrote:

The revelation that hosts and executives at Fox News Channel knowingly spread lies about the legitimacy of the 2020 presidential election constitutes one of the largest media scandals in history. Those lies were a toxic accelerant of conspiracy theories that contributed to a violent attempt to overthrow American democracy. The embers of the fires spread by these lies can be tied directly to the January 6, 2021 attack on the United States Capitol....

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<sup>7</sup> Fox News Is Facing Ratings Battles on Multiple Fronts as the Biden Era Nears, Vanity Fair, January 12, 2021: “Now, rather than devoting more airtime to news coverage, the network appears to be going all in on the kinds of opinion programming that Trump watched on a nightly basis and consistently promoted on Twitter. The change signals that its current plan to win back the viewers lost to Newsmax and OAN over the past two months is to simply go head-to-head with the right-wing agitprop that airs on its smaller competitors throughout the prime-time hours.” <https://www.vanityfair.com/news/2021/01/fox-news-ratings-battles-as-biden-era-nears>

<sup>8</sup> *Dominion*, p.25. Email from Rupert Murdoch to News Corporation CEO Robert Thomson.



The details of Fox News' war on facts are stunning. Speaking under oath in an ongoing lawsuit against the station, Fox News' owner Rupert Murdoch acknowledged that several of his on-air hosts "endorsed at times this false notion of a stolen election" and noted that hosts including Maria Bartiromo, Jeanine Pirro, Lou Dobbs, and Sean Hannity made "endorsement[s] of a stolen election." When asked why his station kept giving airtime to a known propagator of election lies, Mr. Murdoch replied that "[i]t is not red or blue, it is green," indicating his station aired lies to make money. Similarly, legal disclosures show that primetime Fox News hosts Tucker Carlson, Laura Ingraham, and Hannity knew the content and guests promoting a so-called stolen election were lies but did little to stop them or say so publicly. In clear effect, Fox News lied repeatedly to its audience to attack American democracy.<sup>9</sup>

U.S. Senator Patty Murray (D-WA) took to the Senate floor to call out the lies being aired by Fox News.<sup>10</sup> Below are excerpts from Senator Murray's speech,

The depositions and discovery have shown, plain as day, Fox News personalities were spreading dangerous lies and promoting shameless liars, and what's more—Fox knew it. We aren't talking about a difference of opinion or an honest mistake. We are talking about fraud in prime time.

They repeatedly brought on Sidney Powell to spout baseless conspiracies about Dominion voting machines, all the while: Tucker Carlson told his producer Powell was lying; he told his colleague, Laura Ingraham, Powell was lying; Ingraham's producer texted a Fox executive that he had told her the Dominion conspiracy was 'B.S.'; Ingraham herself said Powell was a quote 'complete nut'; Senior Vice President Shah said Powell was 'clearly full of it'; Lou Dobbs' producer told him it was 'complete B.S.'—only for the show to have Powell on three days later.

Instead of putting the Big Lie under scrutiny—Fox put it in prime time. And when reporters with the network tried to be accurate, tried to tell the truth, tried to set straight the lies their own network was spreading—they were reprimanded.

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<sup>9</sup> Letter of Bill Pascrell, Jr. to Speaker of the House Kevin McCarthy, dated March 7, 2023, (footnotes omitted) available <https://pascrell.house.gov/uploadedfiles/cvcvsvafsd.pdf>

<sup>10</sup> <https://www.murray.senate.gov/senator-murray-calls-out-tucker-carlson-and-fox-news-for-spreading-lies-about-2020-election-and-january-6th-insurrection/>

FOX sold a fictitious story of election fraud to prop up its business in reckless disregard for the truth and the public interest. Sadly, many FOX viewers believed the lies and became obsessed with the notion that a corrupt election needed to be set right. Media outlets have described the most extreme cases of this phenomenon as “Foxitis,” or “Foxmania.”<sup>11</sup> After all, if FOX was correct, the election had been stolen from the American people. FOX’s repeated intentional misrepresentations to its audience fueled the January 6 riots and divided a nation. That political divide remains to this day.<sup>12</sup>

**MAD has Made a Prima Facie Case that FTS is Not Qualified to Be an FCC Licensee**

FOX’s repeated dissembling, its misrepresentations to its audience, and the real damage it caused, are all ignored in the Opposition. Instead, FTS argues that MAD failed to plead a *prima facie* case as required under Section 309 (d) of the Communications Act.<sup>13</sup> According to FTS, this is because an unrelated civil matter, i.e. a defamation suit, had no bearing on Fox 29’s license renewal application. This simply is not the case.

All Commission licensees are "granted the free and exclusive use of a limited and valuable part of the public domain...[and, upon accepting] that franchise [licensees are] burdened by enforceable public obligations."<sup>14</sup> Broadcasters are considered "public trustees" of a limited and valuable resource and are thus held to a high standard of conduct in their relationship with

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<sup>11</sup> See e.g., <https://www.washingtonpost.com/nation/2021/05/07/fox-news-anthony-antonio-capitol-riot/> Accused Capitol rioter had ‘Foxitis,’ his attorney says: He ‘started believing what was being fed to him.’

<sup>12</sup> <https://www.cnn.com/2023/08/03/politics/cnn-poll-republicans-think-2020-election-illegitimate/index.html>

<sup>13</sup> 47 U.S.C. § 309(d).

<sup>14</sup> *Contemporary Media, Inc.*, 13 FCC Rcd 14437, 14460 (1998), citing *United Church of Christ*, 359 F.2d 994, 1003 (D.C. Cir. 1966).

the listening public whose needs and interests they are duty-bound to serve.<sup>15</sup> Thus a broadcast license is a public trust subject to termination for breach of duty.<sup>16</sup>

The Commission has stated that a finding regarding an applicant's character qualifications "is not an end in itself," but, rather, "a step in the process of evaluation by which the Commission determines whether the public interest would be served by grant of the application before it."<sup>17</sup> A petition to deny a license renewal application must contain specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.<sup>18</sup> This first step of the public interest analysis "is much like that performed by a trial judge considering a motion for directed verdict: if all the supporting facts alleged in the [petition] were true, could a reasonable factfinder conclude that the ultimate fact in dispute had been established."<sup>19</sup> If the petition meets the first step, the Commission will designate the application for hearing if the allegations, together with any opposing evidence before the Commission, raise a substantial and material question of fact as to whether grant of the application would serve the public interest.<sup>20</sup>

In 1986, the Commission revised its character policy, stating that it would henceforth shift its focus from a broad ranging inquiry into character to one more "narrowly focused on

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<sup>15</sup> See, e.g., *United Church of Christ*, 359 F.2d at 1003.

<sup>16</sup> *Policy Regarding Character Qualifications in Broadcast Licensing, Notice of Inquiry*, 87 FCC 2d 836, 838 (1981).

<sup>17</sup> *Policy Regarding Character Qualifications in Broadcast Licensing, Report, Order and Policy Statement*, 102 FCC 2d 1179, recon. granted in part, 1 FCC Rcd 421 (1986) ("*1986 Character Policy Statement*"), modified, 5 FCC Rcd 3252 (1990) ("*1990 Character Policy Statement*"), on reconsideration, 6 FCC Rcd 3448 (1991), modified in part, 7 FCC Rcd 6564 (1992).

<sup>18</sup> 47 U.S.C. § 309(d)(1); *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) ("*Astroline*").

<sup>19</sup> *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987).

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

specific traits which are predictive of an applicant's propensity to deal honestly with the Commission and comply with Communications Act and the Commission's rules and policies."<sup>21</sup> “The Commission acknowledges that there may be circumstances in which an applicant has engaged in non-broadcast misconduct so egregious as to shock the conscience and evoke almost universal disapprobation.... Such misconduct might, of its own nature, constitute prima facie evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee, and might be a matter of Commission concern even prior to adjudication by another body.”<sup>22</sup> As the Commission stated in *In Re Applications of RKO General, Inc.*,<sup>23</sup>

Certainly some point is reached where, no matter how superlative a licensee's broadcast record and no matter how guiltless the licensee itself may be, the non-broadcast activities of a related corporation reach such a level of criminality that they cannot effectively immunize the licensee.

In this case, the evidence is overwhelming, uncontested, and irrefutable. The *Dominion* decision makes it clear that Murdoch and FOX’s top executives were concerned about ratings and falling revenues after the 2020 election. To boost ratings, they concocted a false narrative that the election was rigged. They kept up a steady drumbeat of lies, which polarized the nation and resulted in a riot at the U.S. Capitol. In applying the test to determine if granting the Fox 29 renewal application is *prima facie* inconsistent with the public interest, the FCC must accept the facts alleged in the Petition and the findings in the *Dominion* as true.<sup>24</sup>

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<sup>21</sup> *1986 Character Policy Statement*, 102 FCC 2d at 1186.

<sup>22</sup> *1986 Character Policy Statement*, at n. 60.

<sup>23</sup> *In Re Applications of RKO General, Inc. (WNAC-TV) Boston, Massachusetts; For Renewal of Broadcasting License*, 78 F.C.C. 2d 1, 50 (1980)

<sup>24</sup> Section 309(d)(1) provides that facts “of which official notice may be taken,” need not be supported by affidavit of a person with personal knowledge. 47 U.S.C. § 309(d)(1).

The Opposition presents no evidence contrary to the allegations of the Petition.<sup>25</sup>

The evidence presented in the Petition and in the *Dominion* decision establish a substantial and material question of fact, specifically whether FOX's top management is so avaricious and dishonest that it cannot be relied on to operate a television station in the public interest? If FOX can lie to millions of viewers on its cable channels about something so fundamental to our democracy as a presidential election, what is to stop it from lying to its television viewers? More importantly, what is to stop FOX from lying to the Commission concerning its day-to-day regulatory obligations? As discussed below, FTS in the Fox 29 renewal application made a material malpresentation concerning the contents of its online public file. There is a need for a hearing to determine if FOX can be trusted to be forthcoming and truthful with the FCC and the public it is licensed to serve. The evidence clearly demonstrates that FOX is willing to put its

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<sup>25</sup> There is only one conclusion to draw from FOX's failure to submit evidence. The information and documents, if produced, would be harmful to FOX. *See, Tendler v. Jaffe*, 203 F.2d 14, 19 (D.C. Cir. 1953) ("The omission by a party to produce relevant and important evidence of which he has knowledge, and which is peculiarly within his control, raises the presumption that if produced the evidence would be unfavorable to his cause."); *International Union, UAW v. National Labor Relations Board*, 459 F.2d 1329, 1336 (D.C. Cir. 1972) ("the failure to bring before the tribunal some circumstance, document, or witness, when either the party himself or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so, and this fear is some evidence that the . . . document, if brought, would have exposed facts unfavorable to the party.") (quoting J. Wigmore, *Evidence* §284, 3<sup>rd</sup> ed. 1940); *United States v. Robinson*, 233 F.2d 517, 519 (D.C. Cir. 1956) ("[u]nquestionably the failure of a defendant in a civil case to testify or offer other evidence within his ability to produce and which would explain or rebut a case made by the other side, may, in a proper case, be considered a circumstance against him and may raise presumption that the evidence would not be favorable to his position"); *Washoe Shoshone Broadcasting*, 3 FCC Rcd 3948, 3952-53 (Rev. Bd. 1988); *Thornell Barnes v. Illinois Bell Telephone Co.*, 1 FCC 2d 1247, 1274 (Rev. Bd. 1965). The Opposition, at n. 12, cavalierly brushes off the need to respond to the Petition's substantive allegations, since it dismisses what took place on cable channels as irrelevant to the broadcast license renewal application. The fact remains that FTS has not produced any countervailing evidence.

corporate self-interest above its obligations as a public trustee. The Commission cannot abide such a licensee.

**MAD has Alleged Character Policy Violations Sufficient  
to Require an Evidentiary Hearing**

In support of its claim that the Petition fails to make a *prima facie* case the Opposition asserts that MAD misconstrues and misapplies the Commission's broadcast character policy. It contends that FOX's conduct on its cable channels is not a legitimate basis for impugning its character qualifications to hold FCC broadcast licenses and is irrelevant to the Commission's review of the WTXF renewal application. In reference to FCC-related misconduct it points out the lack of evidence that false narratives were broadcast by FTS over Fox 29, which could support a news distortion claim against the applicant under the character policy. It discounts MAD's reliance on *Dominion*, arguing that it was a partial decision on summary judgment in a defamation case, which was not fully adjudicated as the Commission requires for a character violation, and in any case, would have been subject to *de novo* review in the Delaware court system had it not settled. In the realm of non-FCC misconduct that violates the character policy, FTS points out that FOX's actions do not fall under the FCC's stated forms of actionable misconduct, namely, adjudicated findings of fraud on the government, felony convictions and other convictions for dishonesty, and certain adjudicated antitrust violations. It also cites to cases in which the Commission declined to pursue allegations of defamation.

The Opposition does acknowledge, at p. 13, that violations of the character policy may include non-adjudicated, non-FCC conduct in "circumstances in which an applicant has engaged in nonbroadcast misconduct so egregious as to shock the conscience and evoke almost universal disapprobation." It minimizes the Petition's allegations that FOX's misconduct satisfies this

standard, by suggesting the category is confined to serious criminal offenses such as child molestation and drug trafficking.

What is astounding is the Opposition's utter failure to reckon with the findings of false statements in *Dominion* that raise substantial and material questions of FOX's character qualifications to be an FCC licensee. According to FTS, MAD's claim that FOX promoted false election narratives on its cable channels has nothing to do with the renewal application and need not be addressed in the Opposition. Instead, FTS faults the Petition for failing to present evidence that Fox 29 actually broadcast false reporting. Even so, it does not outright deny that the station broadcast false news or that the national and world news it carried was developed in collaboration with senior cable channel or corporate personnel, who themselves sanctioned false narratives. In fact, FTS admits, at p. 7, that Fox News Sunday, which airs on Fox 29, "...has certain other connections to that cable channel..." which it does not specify. The Opposition dismisses *Dominion* as irrelevant on account of it being a defamation case, completely ignoring the fact that defamation is not the basis for MAD's Petition. Rather, it is the findings in that decision on summary judgment that are very relevant to FOX's character qualifications.

The Opposition characterizes the Petition as seeking to impose a broadcast policy on a cable network and its parent, which the Commission has no authority to do. It implies that this would amount to unlawful regulation of cable content. As will be shown, misconduct on an affiliated cable channel may be so serious as to invoke the Commission's character policy. Designating a hearing on this basis would not be regulation of cable content any more than revoking a convicted felon's broadcast license would be an intrusion into law enforcement and the judicial system. The Commission routinely designates the licenses of felons for hearing under

the character policy. Felonies are serious matters, yet the harm to victims generally is localized. FOX's misdeeds, on the other hand, worked great harm on the entire country.<sup>26</sup>

In objecting to the Petition's allegations of corporate control over FOX's broadcast and cable subsidiaries by Rupert and Lachlan Murdoch, based in part on the Padden Declaration, the Opposition, at n. 46, discounts Padden on this matter, since he left the organization 25 years ago. Mr. Padden, however, has remained in close contact with the organization, and Rupert Murdoch in particular, and is in a good position to know that Murdoch's pervasive controlling behavior of the past persists to this day.<sup>27</sup>

The Opposition's gambit to limit the Commission's consideration of the Petition to the four corners of the renewal application must fail. The Commission's character policy deals exhaustively with its applicability to corporate structures, adopting the general principle of treating applicants consistently for character qualifications with minimal regard to the legal form in which it does business.<sup>28</sup> The policy provides that under certain circumstances the misconduct of a parent corporation or its non-broadcast subsidiary reflects on the character of its broadcast subsidiary:

...if a close ongoing relationship between the parent and the subsidiary can be found, if the two have common principals, and if the common principals are actively involved in the day-to-day operations of the broadcast subsidiary, we will then consider the significance of the non-FCC misconduct to the operation of the broadcast subsidiary. ...This standard will also be employed where

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<sup>26</sup> See, *Contemporary Media, Inc.*, 13 FCC Rcd 14,437, 14,444 (1998) "There is no question but that the crimes at issue here are, as the FCC found, "characterized by moral turpitude" to such an extent that they "fall[] in the category of those that 'shock the conscience' and summon almost universal disapproval," *aff Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C, Cir. 2000);

<sup>27</sup> See, Exhibit 1: [The Washington Post: An architect of Fox picks a new target: Fox](#)

<sup>28</sup> *1986 Character Policy Statement*, 102 FCC 2d 1179, 1217



the non-FCC misconduct of a non-broadcast subsidiary is being imputed to the parent corporation.<sup>29</sup>

MAD submits that the Petition and the *Dominion* decision are ample evidence to satisfy this standard. The undisputed false narratives promoted on FOX's non-broadcast subsidiary and the knowing participation by the Murdoch's and other senior management and hosts implicates the FOX corporate family to a degree that raises substantial and material questions of fact, requiring an evidentiary into the renewal application and FOX's character qualifications as parent of FTS.

The Commission's policy against news distortion generally concerns broadcast misconduct, which FTS asserts is lacking in evidence. The Petition and *Dominion*, however, document a wealth of news distortion on FOX's cable channels, overseen by corporate leadership and senior news management. The character policy also extends news distortion character violations to non-broadcast misconduct:

To the extent such programing is used in a manner inconsistent with these policies regarding news distortion, news staging or fraudulent advertising, we could consider such activity as FCC misconduct. Alternatively, if such activity were not used in a manner inconsistent with these stated policies, but resulted in an adjudicated violation of the type previously discussed under non-FCC misconduct, then the behavior could be considered relevant to an applicant's character.<sup>30</sup>

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<sup>29</sup> *Id.*, at 1219; *See also, General Motors Corporation, Hughes Electronics Corporation and The News Corporation Ltd*, Memorandum Opinion and Order, 19 FCC Rcd 473 (1) (2004), at para. 23: "The Commission has also stated that it will consider non-FCC related misconduct of the licensee's or applicant's parent or related subsidiary where there is a sufficient nexus between the licensee or applicant and the parent corporation or a related subsidiary. Further, the Commission has used its character policy in the broadcast area as guidance in resolving similar questions in transfer of common carrier authorizations and other license transfer proceedings." (footnotes omitted)

<sup>30</sup> *Id.*, at 1213-14.

The foregoing supports MAD's news distortion claim based on *Dominion's* adjudicated findings that FOX made false statements that the 2020 election was rigged.<sup>31</sup> These findings coupled with other evidence in *Dominion* and the Petition that FOX upper management and hosts, who controlled operations, knew that the statements were false, is enough to require a hearing into FOX's character qualifications.<sup>32</sup>

The D.C. Circuit has extensively reviewed and upheld relevant provisions of the Commission's character policy.<sup>33</sup> The Court referenced the FCC's determination in 1990 that its 1986 policy had taken "an overly narrow view of the range of misconduct that should be relevant in licensing decisions." It goes on to sustain the FCC's determination that "...where an applicant has allegedly engaged in nonbroadcast misconduct `so egregious as to shock the conscience and evoke almost universal disapprobation,' such conduct `might be a matter of Commission concern even prior to adjudication by another body.'" *Id.*, at 192. The Court rejected a challenge to the policy as arbitrary and capricious due to its failure to specify the types of misconduct that might "shock the conscience," and warrant action against the license. *Id.*, at 193.

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<sup>31</sup> The Opposition relies on the Commission's preference for entertaining adjudicated claims regarding character, pointing out that *Dominion* was only a partial adjudication, subject to *de novo* review. The issues left for trial in that case, had it not settled, go to the elements of a defamation claim, notable actual malice. In setting the FTS application and FOX's character for hearing, the Commission would officially notice *Dominion's* findings of falsity, as well as credit evidence in the record that FOX made these false statements intentionally. The Presiding Officer could then conduct the hearing economically and efficiently.

<sup>32</sup> The Opposition, at p. 14, reproduces a passage from *Serafyn v. FCC*, 149 F.3d 1213, 1216 (D.C. Cir. 1998), to emphasize that a news distortion claim must involve the licensee itself. The following paragraph in the decision, however, which FTS does not reproduce, makes clear that the Court was simply drawing a distinction between an individual station employee's conduct and that of station management or the licensee.

<sup>33</sup> *Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000).

The Petition alleges and presents substantial evidence to the effect that FOX's false election narratives, made with the active involvement of FOX leadership, management and hosts, was so egregious as to shock the conscience and evoke almost universal disapprobation. The Commission can take official notice that FOX's false statements were a contributing factor to the storming of the U.S. Capitol on January 6, 2021 and its terrible consequences for individuals and the nation. Rather than dispute these allegations or offer contrary evidence, the Opposition's strategy is to take the "high road," avoiding any discussion of the substance and limiting its arguments to ill-founded technicalities.

The Opposition conflates MAD's news distortion claim with its separate, additional claim that FOX's promotion of false election rigging narratives with upper management complicity, was so egregious as to shock the conscience, warranting FCC action on its character qualifications, whether or not the matter was fully adjudicated and whether it was considered broadcast or non-broadcast misconduct. FTS offers no support for its innuendo that this doctrine is applicable only to serious criminal offenses, and the unambiguous language of the policy statement belies this assertion. The argument that the FCC will not entertain a defamation claim is a "red herring," calculated to divert the Commission's attention from *Dominion's* findings that FOX made numerous false statements, which it declines to address. The Commission in its character policy statement acknowledged that it could not anticipate all kinds of misconduct that would call into serious question the character of a licensee or its corporate parent. Were the Commission to accept the Opposition's line drawing, it would unreasonably circumscribe the agency's statutory obligation to determine whether grant of the renewal application would be in the public interest and whether FOX's character qualifies it to own broadcast licensees in its corporate family.

## **Holding FOX Accountable for Its Actions Would Not Violate the First Amendment**

This is not a First Amendment case. Rather the issue here concerns a corporation that with the full knowledge and approval of its management lied to millions of Americans. The question before the Commission is not whether FOX had a right to lie, rather it is about the consequences of those lies and the impact on FOX's qualifications to remain an FCC licensee. FTS's contention that FOX's conduct is protected by the First Amendment is yet another fallacious strawman. The Opposition cites *Hunger in America*,<sup>34</sup> "the Commission is not the national arbiter of the truth," But MAD is not asking the FCC to be an arbiter of the truth. In this case there are definitive documents and emails, the authenticity and accuracy of which FOX does not dispute. These numerous communications speak for themselves.

FOX also argues that the FCC has no authority to punish it for its repeated misrepresentations, which, had it succeeded, would have overthrown an election and dealt a critical blow to this country's democratic process and institutions. To support its contention, the Opposition cites Section 326 of the Communications Act, which states, "Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications..."<sup>35</sup> This is yet another strawman argument. MAD in no way suggested that the FCC should act as a censor of FOX programming. Rather, MAD's Petition is based on the FCC's power to hold FOX accountable for the lies it told and the damage it has done. The FCC has ample authority to punish a television station licensee for the actions taken by its owners and parent corporation.

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<sup>34</sup> *Complaints Covering CBS Program 'Hunger in America'*, Memorandum Opinion, 20 F.C.C.2d 143, 151 ¶¶ 21-22 (1969).

<sup>35</sup> 47 USC § 326

A licensee's first and foremost responsibility is to serve the public.

The FCC's oversight responsibilities do not grant it the power to ordain any particular type of programming that must be offered by broadcast stations; for although the Commission may inquire of licensees what they have done to determine the needs of the community they propose to serve, the Commission may not impose upon them its private notions of what the public ought to hear.<sup>36</sup>

Likewise, the Section 326 prohibition against "censorship" regarding radio communications denies the FCC the power to edit proposed broadcasts in advance and to excise materials considered inappropriate for airwaves, but it does not deprive the Commission of the authority to review the content of completed broadcasts.<sup>37</sup> As the Supreme Court stated in *Red Lion*<sup>38</sup> "to deny a station license because 'the public interest' requires it 'is not a denial of free speech.'" To serve the public interest it is the duty of the licensee to be honest and trustworthy, both with its audience and in its dealings with the FCC. This responsibility extends to the licensee's owners and parent corporation.

As the Supreme Court stated in *Sanders Radio Station*: "An important element of public interest and convenience affecting the issue of a license is the ability of the licensee to render the best practicable service to the community reached by his broadcasts."<sup>39</sup> Certainly, the best practicable service that the owners of Fox 29 could have provided does not include a barrage of lies and knowingly false statements concerning the presidential election, culminating in a deadly riot at the U.S. Capitol. The Opposition does not deny FOX's actions contribution to the events

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<sup>36</sup> *Turner B'casting System, Inc. v. FCC*, 512 U.S. 622, 650, 114 S. Ct. 2445, 129 L. Ed. 2d 497 (1994). (internal quotations and cites omitted).

<sup>37</sup> *FCC v. Pacifica Foundation*, 438 U.S. 726, 98 S. Ct. 3026, (1978).

<sup>38</sup> *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 389 (1969).

<sup>39</sup> *See, FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 475 (1940).

of January 6, nor does it take responsibility for its conduct. FOX makes no mea culpa, no apology to the American people.<sup>40</sup>

The fact that Congress elected to retain public ownership of the broadcast spectrum and to lease it to private licensees for limited periods carries significant responsibilities. As the Supreme Court observed in *CBS, Inc. v. FCC*, 453 U.S. 367 (1981), "a licensed broadcaster is 'granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations.'" Broadcasters have numerous responsibilities restricting their right to broadcast what they choose. These restrictions have been consistently upheld by the Courts. For example, in *CBS, Inc. v. FCC*, 453 U.S. 367 (1981), the court upheld legislation that requires broadcasters to provide reasonable access to individual candidates seeking federal elective office. Similarly, broadcasters are required to serve the educational and informational needs of children through programming specifically designed for those needs.<sup>41</sup> Such requirements are not deemed by courts either to censor or compel speech in violation of the First Amendment. Sponsorship disclosure requirements comport with the First Amendment, because the public interest demands accurate sponsorship identification.<sup>42</sup> The rule governing the broadcasting of telephone calls does not violate the First Amendment and Section

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<sup>40</sup> See, e.g., Fox isn't in the apology business. That could cost it a ton of money, NPR, May 9, 2023. <https://www.npr.org/2023/05/09/1171642501/fox-news-lachlan-murdoch-investors-no-apology>

<sup>41</sup> *In the Matter of Policies and Rules Concerning Children's Television Programming Revision of Programming Policies for Television Broadcast Stations*, 11 FCC Rcd 10660, 10660 (1996)

<sup>42</sup> *In re Sponsorship Identification Requirements for Foreign Government-Provided Programming*, 35 FCC Rcd 12099, 12127 (2020). See also, *In re Sponsorship Identification Requirements for Foreign Government-Provided Programming*, 35 FCC Rcd 12099, 12128 (2020); *Meese v. Keene*, 481 U.S. 465, 467-68, 107 S. Ct. 1862, 95 L. Ed. 2d 415 (1987) (upholding FARA's requirement to label certain foreign materials as "political propaganda").

326 of the Act.<sup>43</sup> Prohibiting licensees from causing willful or malicious interference does not violate the First Amendment.<sup>44</sup> Neither does prohibiting the broadcast of dangerous hoaxes.<sup>45</sup> These are just a few examples, that make it clear that seeking and maintaining an FCC license comes with responsibilities to use that license for the benefit of the public interest. This FOX has not done.

The Communications Act vests the FCC with the job of granting broadcast licenses. In the process of carrying out this responsibility, the Commission is required to find that grant of an application would serve the public interest, convenience and necessity. The Petition maintains that FOX has committed such misconduct as to call into serious question its fitness to continue as an FCC licensee in the public interest. A Commission hearing on FOX's character qualifications, is not content regulation, as the Opposition claims, and does not violate the company's First Amendment rights.

**FOX Has Not Demonstrated That During the License Renewal Period It Has Served the Public Interest. On the Contrary, It Has Made Material Misrepresentations in Its Renewal Application. FOX is Not Qualified to Be a Commission Licensee.**

FTS lauds Fox 29 as broadcasting in the public interest. It does so in furtherance of its argument that any misconduct on FOX cable channels is irrelevant to the renewal application. Although the Petition's focus is on the totality of FOX's misconduct, this reply will address the flaws in FTS' portrayal of Fox 29 as an exemplary broadcaster.

FTS makes much of the fact that the station broadcasts 60 hours per week of local news and programming. Fox 29 news coverage, however, can be best described as falling in the

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<sup>43</sup> *In re Rejoynetwork, LLC*, 26 FCC Rcd 980, 981 (2011).

<sup>44</sup> *In re William F. Crowell*, 31 FCC Rcd 8700, 8704 (F.C.C. August 2, 2016).

<sup>45</sup> *In re Amendment of Part 73 Regarding Broadcast Hoaxes*, 7 FCC Rcd 4106 (1992).

category of “if it bleeds it leads.”<sup>46</sup> It would be unproductive to debate the quality of Fox 29 broadcasts, since whatever the outcome, it would not mitigate FOX’s repeated intentional falsehoods and the damage Murdoch and his company have done to this country.

The Petition exposes a greedy, dishonest company that is willing to lie to the American people, fueling an effort to overturn a presidential election. Is it any surprise, then, that FTS has made material misrepresentations in the renewal application itself? The application form asks Fox 29 in the section titled “Online Public Inspection File,” to certify “that the documentation required by 47 CFR Sections 73.3526 and 73.3527, as applicable, has been uploaded to the station’s public inspection file when required.” Fox 29 did in fact certify that it uploaded all required files in a timely manner. This is not the case. The Commission takes false certifications in license applications very seriously.

Fox 29 did not timely upload its issues and program lists to its Online Public Inspection File (“OPIF”). For example, the fourth quarter reports for 2022 and 2018 were uploaded significantly later than required.

Fox 29’s political file, an important component of the OPIF, has too many errors for MAD to document. The table below displays the results of a search of approximately 10 percent of the more than 2,000 political files Fox 29 uploaded to its OPIF.

WTFX Political Advertising Table						
Candidate / Group	Contract #	Contract Date	Revision Date	Revision #	Date Filed	Days Late
Trump	977940	6/5/20			No	Not filed
Trump	977940	6/5/20	6/8/20		6/9/20	0
Trump	978948	6/12/20			6/18/20	5

<sup>46</sup> “If It Bleeds It Leads” Is Alive and Well at Fox 29

<https://www.phillymag.com/news/2023/03/09/fox-29-steve-keeley-philadelphia-crime/>



Trump	980614	6/19/20			6/30/20	10
Trump	980758	6/19/20			6/30/20	10
Trump	989523	7/2/20			7/6/20	3
Trump	991864	7/14/20			No	Not filed
Trump	991864	7/14/20		1	No	Not filed
Trump	991864	7/14/20	10/9/20	2	10/13/20	3
Trump	991883	7/14/20		0	No	Not filed
Trump	991883	7/14/20	?	1	No	Not filed
Trump	991883	7/14/20	?	2	No	Not filed
Trump	991883	7/14/20	9/28/20	3	10/2/20	3
Trump	992260	7/15/20	7/16/20		7/20/20	3
Biden	994662	7/27/20			8/4/20	7
Biden	994679	7/27/20			8/4/20	7
Biden	994683	7/27/20			8/4/20	7
Biden	995877	7/31/20			8/4/20	3
Biden	995883	7/31/20			8/4/20	3
Biden	1007178	9/23/20			No	Not Filed
Biden	1007178	9/23/20	9/25/20	1	10/2/20	6
Biden	1012588	9/29/20			10/13/20	13
Biden	1013163	9/30/20			10/2/20	1
Biden	1015466				No	Not Filed
Biden	1015466	10/6/20	10/9/20		10/13/20	3
Allan Domb	1238591	1/3/23			1/25/23	21
Allan Domb	1239212	1/5/23	1/6/23		1/24/23	18
Allan Domb	1239212	1/5/23	1/17/23	1	1/24/23	6
Allan Domb	1241347	1/13/23			NO	Not filed
Allan Domb	1241347	1/13/23	1/17/23		1/24/23	6
Allan Domb	1242437	1/20/23			2/7/23	17
Allan Domb	1244349	1/30/23			2/7/23	7
American Crossroads	1215111	10/12/22			10/14/22	1
American Crossroads	1215111	10/12/22	10/21/22	1	10/26/22	4
American Crossroads	1215111	10/12/22	?	2	NO	Not filed
American Crossroads	1215111	10/12/22	11/3/22	3	11/8/22	4
American Crossroads	1215135	10/12/22		0	No	Not filed
American Crossroads	1215135	10/12/22	10/17/22	none	10/19/22	1
American Crossroads	1215135	10/12/22	10/21/22	1	10/26/22	4
American Crossroads	1215135	10/12/22	?		No	Not filed
American Crossroads	1215135	10/12/22	11/3/22	3	11/8/22	4
American Crossroads	1215140	10/12/22			No	Not filed
American Crossroads	1215140	10/12/22	10/17/22	?	10/19/22	1
American Crossroads	1215140	10/12/22	10/26/22	2	10/28/22	1
American Crossroads	1215140	10/12/22	10/27/22	2	10/29/22	1
American Crossroads	1215140	10/12/22	10/28/22	3	10/30/22	1
American Crossroads	1216831	10/21/22			10/26/22	4

American Crossroads	1216831	10/21/22	?	1	No	Not filed
American Crossroads	1216831	10/21/22	11/3/22	2	11/8/22	4
American Crossroads	1216847	10/21/22			10/26/22	4
American Crossroads	1216847	10/21/22	11/3/22	2	11/8/22	4
American Crossroads	1216847	10/21/22	11/4/22	3	11/7/22	2
Josh Shapiro	1170334	4/18/22			No	Not filed
Josh Shapiro	1170334	4/18/22	5/2/22		5/3/22	0
Josh Shapiro	1170334	4/18/22	5/4/22	1	5/5/22	0

Section 315(e)(1) of the Communications Act requires station licensees to maintain and make available for public inspection information about each request for the purchase of political broadcast time. Section 315(e)(3) requires stations to place information about such requests into their political files “as soon as possible,” generally within 24 hours.<sup>47</sup> A review of Fox 29 OPIF shows numerous instances where Fox 29 failed to timely upload a request for political advertising. One such contract will serve as an example. The 2020 contract for Donald J. Trump for President number 991864 states that the request was made on July 14, 2020 for advertising to run from October 6, 2020 until October 12, 2020. The contract was not placed in the station’s OPIF until October 13, 2020, the day after the advertising schedule aired. This is just one example; the file is full of such untimely contracts. The file also contains references to requests and agreements that were not uploaded to the public file. For example, the above-mentioned Trump for President contract is identified as “revised.” The original agreement, presumably entered on July 14, 2020 was never posted to the OPIF. The above table also contains examples of contracts identified but never filed in the OPIF.

The file also contains numerous examples of contracts filed without an accompanying disposition of when the spots ran or if any were preempted. Section 73.1943(a) states that a licensee shall maintain, and make available for public inspection, a complete record of a request

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<sup>47</sup> 47 USC § 315 (e)(1) and (3).

to purchase broadcast time. Section 73.1943(b) lists the types of information about the disposition of requests for political advertising that section 73.1943(d) requires to be uploaded to the OPIF as soon as possible. The "disposition" includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased. Numerous Fox 29 dispositions do not comply with these requirements. For example, in 2022 in the folder Josh Shapiro for Governor, Fox 29 uploaded the contracts but not the invoices.

It is worth noting that FOX has recently come under scrutiny for sharing Biden campaign advertising with the Trump campaign before it was broadcast. As a recently filed complaint with the Federal Election Commission alleges:

During the 2020 campaign, Murdoch allegedly provided Trump's campaign with confidential information about advertisements sent to Fox News Media from Joe Biden's 2020 campaign. Specifically, recent court filings disclose that "During Trump's campaign, Rupert [Murdoch] provided Trump's son-in-law and senior advisor, Jared Kushner, with Fox confidential information about Biden's ads, along with debate strategy." Murdoch shared the confidential information about Biden's advertisements before the advertisements were aired.<sup>48</sup> (footnotes omitted)

FOX's desire to help the Trump campaign may explain, in part, why FTS failed to file or filed late certain political contracts.

In certifying its renewal application, FTS and by extension FOX, has made numerous material misrepresentations. A licensee's duty of candor to the FCC is absolute. As the United States Court of Appeals has said:

The FCC has an affirmative obligation to license more than 10,000 radio and television stations in the public interest . . . As a result the Commission must rely heavily on the completeness and accuracy of the submissions made to it, and its applicants have an

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<sup>48</sup> *Media Matters for America V. FOX*, <https://www.scribd.com/document/629221690/Fox-News-Biden-Ad-Info-FEC-Complaint-Mar-2023-1>

affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate.<sup>49</sup>

See also, *SBC Communications*, 16 FCC Rcd 19091 (2001) “We consider misrepresentation to be a serious violation, as our entire regulatory scheme rests upon the assumption that applicants will supply [the Commission] with accurate information.” Where the FCC has found that a licensee has deceived the Commission or recklessly disregarded the truth, it has disqualified the licensee and revoked its licenses.<sup>50</sup> Fox 29’s certification is undeniably false. Accordingly, the FCC should designate appropriate issues to determine if Fox 29 in its renewal application intentionally misrepresented the status of its OPIF.

### **MAD has Standing to Petition to Deny Grant of the Application**

The Opposition argues that MAD and Milo Vassallo do not have standing and asks the Commission to dismiss the Petition to Deny or consider it to be no more than an informal objection that does not confer party-in-interest status. First, it says that the FCC can dismiss the Petition because certain of MAD’s members lack individual standing. In particular it claims that under Commission precedent “it is doubtful that Media and Democracy Project and its founding member and representative, Milo Vassallo, who resides outside the Station’s viewing area, have organizational standing.”<sup>51</sup> After questioning MAD’s bona fides as an organization, it goes on to

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<sup>49</sup> *RKO General, Inc. v FCC*, 670 F.2d 215, 232 (D.C. Cir. 1981).

<sup>50</sup> See, e.g. *WOKO v. FCC*, 329 U.S. 223, 226-227 (1946). “The fact of concealment may be more significant than the facts concealed. The willingness to deceive a regulatory body may be disclosed by immaterial and useless deceptions as well as by material and persuasive ones.”

<sup>51</sup> Opposition, p. 16. n. 47 acknowledges, however, that Mr. Vassallo does not claim standing as an individual. Oddly, it also cites Commission precedent that “even in the absence of injury to itself... an association may establish standing as the representative of its members.”

argue that “parties to proceedings before the FCC must be legal entities with the capacity to sue or be sued, consistent with judicial standing principles.”<sup>52</sup>

The Opposition’s standing argument is confused, unclear and lacking in relevant authority. It offers no support for its apparent contention that because a MAD founder is not a viewer of WTXF-TV, MAD itself lacks standing. It avoids mention of the four MAD members whose declarations attest that they are regular viewers of the station. To establish associational standing at the Commission, an organization has the burden of showing (a) that it is a membership organization, (b) that certain named individuals are members, and (c) that those members themselves would have standing.<sup>53</sup> Contrary to the Opposition’s muddled argument, MAD easily qualifies for associational standing. The Declaration of Milo Vassallo attests that MAD is a membership organization; that membership in MAD is defined as participation in its civic actions; and that the four declarant viewers of WTXF-TV are MAD members. The Opposition does not dispute that the four declarant viewers themselves have standing to file against the application. These members have chosen to pursue their interests collectively through MAD rather than individually.

The Opposition’s argument that standing is conferred only on an organization that can sue or be sued likewise fails. Rather than provide any Commission precedent for this claim, it offers only a comparison with Fed. R. Civ. P. 17(b), on capacity to sue or be sued. Even that is misplaced. Rule 17(b)(3) states that capacity to sue or be sued will be determined for all parties other than an individual who is not acting in a representative capacity or a corporation, “by the

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<sup>52</sup> *Id.*, at 17. “*Cf.* Fed. R. Civ. P. 17(b),” n. 50, is the Opposition’s sole authority for this proposition.

<sup>53</sup> *Applications of Charter Communications, Inc., Et al. for Consent to Assign or Transfer Control of Licenses and Authorizations, Order on Reconsideration*, 33 FCC Rcd 8915, (2018).

law of the state where the court is located.”<sup>54</sup> In sum, the Opposition’s standing section reads like a makeweight and may not be credited.<sup>55</sup>

### **Conclusion**

FOX has demonstrated a willingness to lie to preserve its corporate profits. FOX’s lies concerning the outcome of the 2020 election caused a great injury to the American people and the institutions of our democracy. FOX’s willingness to lie demonstrates a fatal character flaw. Additionally, FTS has falsely certified as to the currency and completeness of its Online Public Inspection File in the Fox 29 renewal application, further evidencing its propensity for untruthfulness and FOX’s poor character. When considering the character qualifications of licensees, the Commission concerns itself with “misconduct which demonstrates the proclivity of an applicant or licensee to deal truthfully with the Commission and to comply with [its] rules and policies.”<sup>56</sup> FOX has repeatedly demonstrated that it cannot be relied upon to deal truthfully with the public it is licensed to serve or with the Commission. MAD has established a *prima facie* case and raises substantial and material questions of fact as to whether grant of the Fox 29

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<sup>54</sup> Even assuming that Rule 17(b) is somehow relevant to organizational standing at the Commission, it would be necessary to evaluate state laws to determine whether an unincorporated association would have standing under that rule. For example, NY CPLR §1025. Partnerships and unincorporated associations, provides that ... actions may be brought by or against the president or treasurer of an unincorporated association on behalf of the association in accordance with the provisions of the general associations law. On July 3, 2023, the date MAD filed the Petition, it was unincorporated. On July 13, 2023, MAD incorporated in the State of Delaware. On July 17, 2023, MAD filed Form 8976 with the Internal Revenue Service, Notice of Intent to Operate under 501(c)(4).

<sup>55</sup> The Opposition argues that MAD used an inaccurate email address for an FTS representative. MAD emailed the Petition and other communications to Fox.com and the email did not bounce back. Presumably, FTS was served. Nor did FTS take the time to notify MAD of an incorrect address. In any event, MAD timely filed the Petition in the FCC’s LMS system and FTS had notice and was able to timely reply to the Petition.

<sup>56</sup> *1986 Character Policy Statement*, pp. 1190-91.

license renewal application would serve the public interest, convenience, and necessity and whether FOX possesses the character qualifications to hold FCC broadcast licenses in its corporate family. As such, the Communications Act obligates the Commission to designate these vital questions to be answered in an evidentiary hearing.

Respectfully Submitted,

/s/Arthur V. Belendiuk  
Arthur V. Belendiuk

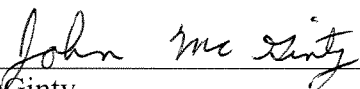
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August 22, 2023

### **Declaration of John McGinty**

I, John McGinty, declare under penalty of perjury, that the following information is true and correct:

I declare that I have personal knowledge of the factual allegations I make in the Reply to Opposition to Petition to Deny the license renewal application of WTXF-TV and that these allegations are true and correct. These allegations are the direct cause of the injury I suffer as a regular viewer of WTXF-TV.

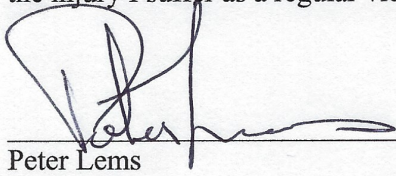
  
\_\_\_\_\_  
John McGinty



**Declaration of Peter Lems**

I, Peter Lems, declare under penalty of perjury, that the following information is true and correct:

I declare that I have personal knowledge of the factual allegations I make in the Reply to Opposition to Petition to Deny the license renewal application of WTXF-TV and that these allegations are true and correct. These allegations are the direct cause of the injury I suffer as a regular viewer of WTXF-TV.



\_\_\_\_\_

Peter Lems

### **Declaration of Chenjerai Kumanyika**

I, Chenjerai Kumanyika, declare under penalty of perjury, that the following information is true and correct:

I declare that I have personal knowledge of the factual allegations I make in the Reply to Opposition to Petition to Deny the license renewal application of WTXF-TV and that these allegations are true and correct. These allegations are the direct cause of the injury I suffer as a regular viewer of WTXF-TV.



08/15/2023


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Chenjerai Kumanyika

**Declaration of Bill Hartman**

I, Bill Hartman, declare under penalty of perjury, that the following information is true and correct:

I declare that I have personal knowledge of the factual allegations I make in the Reply to Opposition to Petition to Deny the license renewal application of WTXF-TV and that these allegations are true and correct. These allegations are the direct cause of the injury I suffer as a regular viewer of WTXF-TV.

  
Bill Hartman

8/13/23

## EXHIBIT 1

MEDIA

# An architect of Fox's success picks a new target: Fox

Preston Padden, who once worked for Rupert Murdoch, argues that Fox News 'undermined our democracy'



By [Paul Farhi](#)

Updated August 9, 2023 at 3:54 p.m. EDT | Published August 9, 2023 at 6:00 a.m. EDT

Rupert Murdoch never had a more loyal ally in Washington than Preston Padden.

When Murdoch was building his Fox broadcast network in the early 1990s, Padden served as both his chief lobbyist and the organizer of Fox's affiliated stations. As an executive, Padden helped secure the regulatory waivers that enabled Fox to grow into a full-fledged competitor to ABC, CBS and NBC. He was also instrumental in saving the network itself, by beating back an effort by Democrats to strip Murdoch of control of Fox's largest stations.

Those victories helped build Fox and set the stage for Murdoch's next start-up: the Fox News Channel.

Long after he left Fox in 1997, Padden and Murdoch remained friends, and regularly exchanged emails.

"I've always admired Rupert's vision and guts," Padden said in an interview, describing the 92-year-old mogul as "a father figure."

So Padden's latest project comes freighted with irony: He hopes to persuade federal regulators to pull Fox Corp.'s licenses to operate its TV stations — the very ones he helped Murdoch maintain nearly 30 years ago.

Last month, Padden, now 74 and retired, joined with a nonprofit group called the Media and Democracy Project (MAD) to urge the Federal Communications Commission to deny Fox’s renewal of its license to operate one of its largest stations, WTXF in Philadelphia, known as Fox 29. Padden and MAD argue that Fox lacks the “character” required by the FCC to be a license holder, because of post-election misinformation spread by another company entity: Fox News.

“Fox has undermined our democracy and has radicalized a segment of our population by presenting knowingly false narratives about the legitimacy of the 2020 election,” Padden wrote in a statement supporting MAD’s petition, which accuses Fox of “intentional, knowing news distortion.”

Padden has also gone public, writing anti-Fox commentaries for the Daily Beast, a publication owned by a company founded and run by Barry Diller, the co-founder of the Fox broadcast network. “Is It Time for the FCC to Take a Close Look at Rupert Murdoch’s Licenses?” asked the headline on one of Padden’s columns in June.

Fox Corp. called MAD’s petition “frivolous” and “completely without merit,” in a statement last month. It said MAD’s petition “asks the FCC to upend the First Amendment and long-standing FCC precedent” by tying the station’s license to the behavior of a cable network. A company spokesman declined to comment further to The Washington Post about the petition and about Padden.

Padden has no particular beef with WTXF itself; it was merely the first Fox station to come up for renewal since Fox News settled a defamation lawsuit with Dominion Voting Systems in April. Padden thinks the cable network’s conduct following the 2020 election was so egregious that the government should, at minimum, hold public hearings on Fox 29’s renewal and consider sanctions against its parent company.

Fox News amplified Donald Trump’s claims by repeatedly and baselessly suggesting that Dominion, a voting-machine company, conspired to thwart Trump’s reelection. The statements prompted Dominion to sue Fox for defamation. Fox paid Dominion \$787.5 million to settle the lawsuit after the judge in the case ruled that it was “CRYSTAL clear” that on-air statements made on Fox about Dominion and the 2020 election were false.

Padden himself had a cameo role in the Dominion lawsuit. One of his email exchanges with Murdoch — which was included in documents released by Dominion before trial — indicated that Murdoch was aware that Fox was broadcasting lies about the election but that he did little to intervene.

On Jan. 5, 2021, for example, Padden urged Murdoch to direct Fox’s most popular hosts — Tucker Carlson, Sean Hannity, Laura Ingraham — to tell viewers that Trump had lost the election. According to the trial documents, Murdoch discussed the idea with Fox News’s chief executive, Suzanne Scott. But Scott responded that Fox had to be careful about reporting such facts, to avoid “pissing off” its viewers. No such on-air statements were ever issued. The next day, Trump’s supporters stormed the U.S. Capitol in an attempt to disrupt the certification of electoral votes.

Padden, who grew up in Washington, is a lifelong Republican who spent most of his career employed by big media companies, including Murdoch's. He put himself through college and law school by working as a switchboard operator at Washington's WTTG-TV, then owned by billionaire John Kluge's Metromedia Corp. Kluge later sold the station and six others to Murdoch, who formed Fox.

Padden headed a trade association of independent TV stations when Murdoch plucked him to head Fox's Washington office. He later directed the Walt Disney Co.'s lobbying efforts, then retired in 2011 to Boulder, Colo., so he and his wife could be near their children and grandchildren.

Padden said he bears no animus toward Murdoch, but he says Fox has done "grievous harm" to the country and should be held accountable.

"Never in the history of the FCC have they been confronted with an applicant who was found to have repeatedly presented false news by a judge," Padden said. "If [the FCC's] character standard means anything, it means you can't be guilty of presenting false news."

There is a personal element to Padden's advocacy. A close family member and a longtime family friend, he said, have succumbed to "Fox-itis," which is critics' shorthand for a distorted worldview allegedly fed by the network's misrepresentations. Padden declined to identify the individuals.

In addition to supporting MAD, a nonprofit organization that claims 4,000 members, Padden's allies include political commentator Bill Kristol and Ervin S. Duggan, a former FCC commissioner and president of PBS. Kristol and Duggan have also filed statements in support of an FCC proceeding against Fox.

Kristol, in an interview, said Fox should pay "a civic price" for its post-election behavior by facing a public hearing. After the Dominion revelations, Kristol said, "the FCC can't act as if nothing happened." (Kristol has his own ties to Murdoch's world: He was formerly employed by Fox News as an analyst, and a commentary magazine he founded, the Weekly Standard, was funded by Murdoch.)

It's rare, however, for the FCC to require a hearing for a licensee, let alone to rescind a license, said Andrew Jay Schwartzman, a veteran communications lawyer. It is rarer still, he said, for the FCC to yank a license based on "character" issues.

"The short answer is it almost never happens," Schwartzman said. "It's a torturous process." Schwartzman filed a petition against one of Fox's TV station licenses in New York in 2007, alleging that it had failed to live up to a commitment to provide programming to viewers in northern New Jersey. Fox ultimately prevailed — after 10 years of regulatory filings and court appeals.

As an old Washington hand, Padden knows the politics aren't in his favor. Republicans control the House, and therefore have a grip on the FCC's budget, giving leverage to Fox's allies. And Murdoch and Fox News have a powerful public defender: Sen. Ted Cruz (R-Tex.), the ranking Republican on the Senate Commerce Committee. Cruz tweeted last month that it's "unconstitutional, un-American, and quite simply, mad" for the FCC to hold hearings on Fox 29's license, because Fox News allegedly aired "election misinformation."

In the meantime, Padden wonders about his long friendship with Murdoch. During the height of the pandemic, they were frequent correspondents, exchanging bantering emails. Murdoch at one point urged his former lieutenant to wear a mask and get vaccinated, Padden said. He also sent Padden a case of wine from his vineyard in Southern California.

But that was then. Since his public opposition to Fox began, Padden says he hasn't heard from his former boss.

#### **CLARIFICATION**

A previous version of this article was not broad enough in its attribution of false statements on Fox. This version has been updated.



## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via email to the following:

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