

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Application of Fox Television Stations,)	File No. 0000213362
LLC for Renewal of License of WTXF-)	Pleading File No. 0000217493
TV, Philadelphia, Pennsylvania)	
)	

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

OPPOSITION OF FOX TELEVISION STATIONS, LLC

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OPPOSITION OF FOX TELEVISION STATIONS, LLC

Fox Television Stations, LLC (“FTS”), licensee of station WTXF-TV, Philadelphia, Pennsylvania (Fac. ID 51568) (“Fox 29 Philadelphia” or the “Station”) hereby respectfully files this Opposition to the Petition to Deny (“Petition”) the above-captioned renewal application, which was filed on July 3, 2023 by the Media and Democracy Project, Milo Vassallo, John McGinty, Peter Lems, Chenjerai Kumanyika, and Bill Hartman (collectively, “MAD” or the “Petitioners”).¹ MAD has failed to plead the *prima facie* case required under Section 309(d) of the Communications Act of 1934, as amended (“Communications Act” or “Act”), for a petition to deny a broadcast license renewal application, and the Petition should be denied.

¹See Petition to Deny of Media and Democracy Project, Milo Vassallo, John McGinty, Peter Lems, Chenjerai Kumanyika, and Bill Hartman, LMS Pleading File No. 0000217493 (July 3, 2023) (Petition). The Petition also purports to serve as an informal objection “[w]here the FCC has not yet acted on other FOX applications for television license renewal.” *Id.* at 1, n.1. MAD’s request is defective given that it fails to specify any particular applications or stations. To the extent necessary, however, this Opposition also serves as an opposition to any such informal objection and to any informal filings that reiterate or support the Petition’s claims, whether with respect to Fox 29 Philadelphia and/or other FTS-licensed stations. *See, e.g.*, Informal Objection of Sue Wilson, Media Action Center, LMS Pleading File No. 0000217895 (July 13, 2023); Informal Objection of Ervin S. Duggan and William Kristol, LMS Pleading File No. 0000218645 (July 31, 2023) (Duggan/Kristol Informal Objection).

Introduction and Summary

MAD's Petition fails under well-established Commission precedent, the Communications Act, and the First Amendment. *First*, other than unsupported and inaccurate assertions about Fox 29 Philadelphia's news reporting, the Petition fails to articulate a single claim concerning FTS or Fox 29 Philadelphia. *Second*, MAD misconstrues and misapplies the Commission's character policies for broadcast licensees and their attributable interest holders. In particular, MAD attempts to make much of an unrelated, partially adjudicated civil defamation claim that concerned a cable network under common ownership with FTS. Commission precedent is clear, however, that an unrelated civil matter has no bearing on Fox 29 Philadelphia's license renewal application. The Commission has repeatedly explained that "[a]llegations of defamation are outside the Commission's jurisdiction" and thus are not taken into account in license renewal proceedings.² Moreover, MAD's Petition relies substantially on the observations of a declarant with no actual knowledge of the operation of, or content aired on Fox 29 Philadelphia or FTS and whose declaration is, by its own admission, opinion.³ Put simply, MAD has failed to provide *any* information of the type that the Commission considers in assessing the character qualifications of a broadcast licensee or its attributable interest holders.

Given the lack of a *prima facie* case, entertaining MAD's request for an evidentiary hearing on Fox 29 Philadelphia's license renewal application would amount to an unlawful re-writing of the Commission's *Character Policy Statement*, decades of precedent implementing it, and Sections 309(d) and (k) of the Act. It also would, for the first time in history, have the

² *WKXW-FM, Trenton, NJ Facility ID No. 53458 Millennium Central New Jersey License Holdco, LLC*, Letter, 22 FCC Rcd 17302, 17304 (2007) (*WKXW-FM*).

³ *See* Petition at Exhibit 3, Declaration of Preston Padden (using the phrase "in my opinion" eight times).

Commission adjudicate a broadcast license renewal on the basis of cable network content, in violation of the First Amendment and the authority delegated to the Commission by Congress. As the Commission has long understood, its role “in overseeing program content is limited” because “[t]he First Amendment to the United States Constitution and Section 326 of the Act prohibit the Commission from censoring program material or interfering with broadcasters’ free speech rights.”⁴ And, as explained by Chairwoman Rosenworcel a few years ago, the government making editorial decisions about content in the course of a broadcast license renewal proceeding “would be an affront to our First Amendment tradition.”⁵ MAD has not set forth any facts that would justify departure from this long-held commitment to the First Amendment principles undergirding the regulation of broadcast media. Given the degree to which MAD has disregarded applicable precedent and established legal principles, together with an ongoing press campaign it and the member who served as the Petition’s declarant have built around the Petition, it is clear that MAD seeks to conscript the Commission into a public relations campaign that has no place in a broadcast license renewal proceeding.⁶ To the contrary, Congress and the Commission wisely designed the license renewal process to be impartial, focused, and subject to clear boundaries as to the scope of the Commission’s review. And amidst all of these fatal legal infirmities, MAD ignores the *actual* station at issue: Fox 29 Philadelphia, and its history of exceptional service to its viewers, airing over 60 hours of local programming every week, among

⁴ *KFMB(AM), San Diego, CA Facility ID No. 42120 Midwest Television, Inc.*, Letter, 22 FCC Rcd 6796, 6797 (2007) (*KFMB(AM)*). See also, 47 U.S.C. § 326.

⁵ Jessica Rosenworcel, *What the President Gets Wrong About Broadcast TV*, COSMOPOLITAN, Oct. 17, 2017, <https://www.cosmopolitan.com/politics/a13036422/trump-fcc-broadcast-licensing-jessica-rosenworcel/>.

⁶ See, e.g., Giulia Carbonaro, *Former Fox Executives Reveal ‘Disappointment’ in Helping Create Fox News*, NEWSWEEK, July 13, 2023, <https://www.newsweek.com/former-fox-executives-disappointment-fox-news-1812679>.

many other public service benefits. The Commission should dismiss or deny MAD's Petition and grant Fox 29 Philadelphia's license renewal without delay.

I. THE COMMUNICATIONS ACT AND FCC PRECEDENT COMPEL DISMISSAL OF THE PETITION.

While Petitioners conflate various arguments throughout their Petition, at the most basic level they raise "questions" about "whether Fox has operated its stations in the public interest, whether it has violated Commission policies, and whether it has the requisite character to remain an FCC licensee."⁷ Such insinuations, however, do not equate to facts sufficient to establish *prima facie* evidence of relevant conduct on the part of Fox 29 Philadelphia, FTS, or its parent company, nor has MAD established that such conduct would be material even if it had articulated a *prima facie* case.

The Commission has a well-trodden path in considering petitions to deny renewal of a broadcast license, and there is no reason to depart from that path here. As the U.S. Court of Appeals for the D.C. Circuit has observed, in the first step of its analysis of a petition to deny, the Commission performs an inquiry that is "much like that performed by a trial judge considering a motion for a directed verdict: if all the supporting facts alleged in the affidavits [sic] were true, could a reasonable factfinder conclude that the ultimate fact in dispute had been established."⁸ Only if the Commission can conclude that the petition satisfies this threshold question does it move to a second phase of inquiry, in which it considers whether "on the basis of the application, the pleadings filed, or other matters which it may officially notice[,] . . . a substantial and material question of fact is presented" as to whether grant of the application

⁷ Petition at 9.

⁸ *Gencom, Inc. v. FCC*, 832 F.2d 171, 180-181 (D.C. Cir. 1987) (citations omitted).

would be consistent with the public interest, convenience, and necessity under Section 309(k) of the Act.⁹ As the Court has further explained, “[t]his statutory standard puts a heavy burden on a party submitting a petition to deny: For a hearing on the application to be required, the party must, with statutorily required specificity and support, raise controverted factual issues that are substantial and material.”¹⁰ Petitioners have failed to meet their burden.

A. MAD’s Petition Does Not Make a *Prima Facie* Case Concerning Any Violation of Commission Rules or Policies by FTS or Fox 29 Philadelphia.

MAD fails to offer any credible support for its false claim that “FOX has not operated WTXF-TV and its other stations in a manner that served the public interest, convenience and necessity” under the Act.¹¹ MAD’s sole, tenuous attempt is to ask the Commission to assume that Fox 29 Philadelphia broadcast the content that was the subject of a civil defamation case against a commonly owned cable network, and take that content into account in adjudicating Fox 29 Philadelphia’s license renewal application. There are at least two fatal problems with this suggestion. First, the broad, content-based examination of Fox 29 Philadelphia’s news coverage that MAD seeks would be unlawful, under both the Communications Act and the First

⁹ 47 U.S.C. § 309(d). Section 309(k) provides that the Commission shall grant a broadcast station’s application for the renewal of its license “if it finds, with respect to that station during the preceding term of its license —(A) the station has served the public interest, convenience, and necessity; (B) there have been no serious violations by the licensee of this chapter or the rules and regulation of the Commission; and (C) there have been no other violations by the licensee of this chapter or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.” 47 U.S.C. § 309(k).

¹⁰ See *California Public Broadcasting Forum v. FCC*, 752 F.2d 670, 674 (D.C. Cir. 1985). See also *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392 (D.C. Cir. 1985).

¹¹ Petition at 12.

Amendment. Second, MAD has supplied no evidence whatsoever that the content about which MAD goes on at length even aired on Fox 29 Philadelphia.¹²

Petitioners' Request for Ad Hoc Assessment of Content by the Commission. Self-styled as a renewal petition, MAD is at bottom asking the Commission to conduct an *ad hoc* review of news and other content in determining whether to renew the license of a broadcast television station, in this case Fox 29 Philadelphia. MAD offers no explanation for how the Communications Act would ever permit the Commission to conduct such a broad, content-based assessment or how the Commission would do so consistent with the First Amendment. In fact, conducting an *ad hoc* scrutiny of news and other content would flatly violate the First Amendment and the explicit text of Section 326 of the Communications Act, which provides:

Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.¹³

FTS discusses the many ways in which MAD's Petition seeks relief at odds with the First Amendment in detail in Section II, *infra*. But it is worth emphasizing here the First Amendment infirmities of MAD's request that the Commission find FTS to have violated Commission rules by airing news or other content. It is sadly ironic that an organization purportedly focused on the

¹² MAD expresses many opinions concerning cable network content and coverage, principally during the period from November 2020 to January 2021. For all the reasons explained herein, an FCC broadcast license renewal proceeding is not an appropriate venue for adjudicating opinions or complaints about cable network content, and FTS accordingly will not address the substance of Petitioners' assertions here. It is not necessary to do so, particularly in light of MAD's failure to make a *prima facie* case under Section 309(d) of the Act. The fact that this Opposition declines to address any such opinions or assertions should not be construed as an admission of any type. See 47 C.F.R. § 73.3584(b) ("The failure to file an opposition or a reply will not necessarily be construed as an admission of fact or argument contained in a pleading.").

¹³ 47 U.S.C. § 326.

role of media in a healthy democracy would seek to convert a government agency that has long respected the First Amendment into a roving censor of news and other content—making broad determinations of what content can be broadcast and, by extension, what content the public can access.

False allegations regarding Fox 29 Philadelphia's news coverage. In addition to the threshold legal problem with MAD's request, the allegations on which MAD bases that request are false. There is absolutely no evidence that the content about which the Petitioners go on at length ever aired on Fox 29 Philadelphia. Thus, MAD's case also fails as a factual matter.

This bears repeating: MAD does not articulate *which* specific content allegedly was aired by Fox 29 Philadelphia that it believes would warrant an evidentiary hearing. Instead, MAD simply dwells on the fact that Fox 29 Philadelphia airs *Fox News Sunday*, a Sunday morning news/public affairs talk show presented in a similar format to those aired on the other three of the big four broadcast networks. In MAD's view, because the 60-minute, weekly program "has the words 'Fox News' in the title" and has certain other connections to that cable network, somehow Fox 29 Philadelphia "is an over-the-air extension of Fox News Channel" and the Commission should adjudicate Fox 29 Philadelphia's license renewal application as though the two entities were one and the same.¹⁴

This characterization of Fox 29 Philadelphia is remarkable in its inaccuracy. Had MAD reviewed the extensive local programs aired on Fox 29 Philadelphia in advance of filing the Petition, it would have seen that during the November 2020 to January 2021 timeframe, Fox 29 Philadelphia aired multiple segments expressing viewpoints contrary to those that are the focus

¹⁴ Petition at 6. The Petition cites not a single segment on *Fox News Sunday* to support MAD's unsupported supposition.

of the Petition.¹⁵ Moreover, the civil court decision partially granting and partially denying a third-party plaintiff’s summary judgment motion (the “Partial SJ Decision”), which was attached to MAD’s Petition, does not even reference *Fox News Sunday* or Fox 29 Philadelphia.¹⁶

Of note, in the civil matter on which Petitioners rely, the state court dismissed Fox Broadcasting, LLC—the operator of the FOX Broadcast Network and certain online properties, such as fox.com—early on in the case.¹⁷ In granting the motion to dismiss of Fox Broadcasting, LLC, the court found that the complaint offered “no factual support for [the] allegations” that Fox Broadcasting, LLC had republished the statements that were the subject of that litigation on fox.com.¹⁸ Instead, the court determined that the complaint had relied upon “conclusory assertions and speculation” with respect to that entity, just as Petitioners have done here with respect to FTS and Fox 29 Philadelphia.¹⁹ FTS mentions this parallel to emphasize that MAD

¹⁵ See, e.g., *President-Elect Joe Biden Begins Transition Process as President Trump Has Yet to Concede*, Fox 29 Philadelphia (Nov. 9, 2020), <https://www.fox29.com/video/868938>; *President Trump Accuses Philadelphia Commissioner Al Schmidt of Not Looking Into Voter Fraud Claims*, Fox 29 Philadelphia (Nov. 12, 2020), <https://www.fox29.com/video/870184>; *Philadelphia Commissioners Gives [sic] Final Vote Results for 2020 Presidential Election*, Fox 29 Philadelphia (Nov. 18, 2020), <https://www.fox29.com/video/872092>; *President-Elect Joe Biden and His Administration Can Begin Transition to Power*, Fox 29 Philadelphia (Nov. 24, 2020), <https://www.fox29.com/video/874082>; *Gordon: This is Stunning and Disgraceful, but It’s Frankly Not Surprising*, Fox 29 Philadelphia (Jan. 6, 2021), <https://www.fox29.com/video/887463>; *Congress Certifies President-Elect Biden’s Victory After Capitol Breach*, Fox 29 Philadelphia (Jan. 7, 2021), <https://www.fox29.com/video/887675>.

¹⁶ Again, even if such content had in fact aired on Fox 29 Philadelphia, the broad, content-based assessment that Petitioners seek would fall outside the bounds of the First Amendment and Commission policy. See *infra* Sections I.B.2, II. To the extent that the Duggan/Kristol Informal Objection refers to conduct that allegedly was “in arguable violation of FEC policies,” such non-adjudicated, non-FCC topics are properly outside of the scope of the FCC’s review of broadcast station compliance with the Communications Act and FCC rules and policies in the course license renewal proceedings. See Duggan/Kristol Informal Objection at 8.

¹⁷ *US Dominion, Inc. v. Fox News Network, LLC*, 2022 WL 2229781 (Del. Super. Ct. June 21, 2022). FTS emphasizes that it was not at any time named as a defendant in this civil lawsuit.

¹⁸ *Id.* at *11-12. The complaint did not allege that any statements were republished on FOX Broadcast Network.

¹⁹ *Id.*

has fallen far short of making a *prima facie* claim as to FTS and Fox 29 Philadelphia. To the contrary, and as discussed in Section III, *infra*, FTS has operated the Station fully in the public interest, and the Station has served viewers throughout the Philadelphia Designated Market Area (“DMA”) exceptionally well for decades.

B. In Attempting to Question the Qualifications of FTS and Its Parent Company, MAD’s Petition Misconstrues and Misapplies the Commission’s Broadcaster Character Policies.

Because there is no credible basis to question whether FTS has operated Fox 29 Philadelphia in the public interest, MAD’s Petition turns to another specious argument: that a licensee and/or its parent company can be found to lack necessary character qualifications to hold a broadcast license if statements aired on a commonly owned cable network are found to meet certain (but not all) elements of a civil defamation claim. A simple and straightforward application of the Commission’s actual, adopted character policies makes clear that this argument has no merit and cannot form the basis of a *prima facie* case under Sections 309(d) and (k) of the Act.

1. No Claim Plead as to FCC-related Misconduct.

MAD does not plead a *prima facie* case of “FCC-related misconduct.” In terms of FCC misconduct, the Commission has specifically identified the following as conduct it will consider: violations of the Communications Act, Commission rules or Commission policies;²⁰ misrepresentation and lack of candor in an applicant’s dealings with the Commission;²¹ abuse of Commission processes;²² and deceptive or fraudulent broadcast programming, specifically

²⁰ *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 F.C.C.2d 1179, 1209 ¶ 56 (1986) (*1986 Character Policy Statement*).

²¹ *Id.* at 1211 ¶ 61.

²² *Id.* at 1211 ¶ 62.

programming prohibited by the Commission’s policies prohibiting fraudulent contests, news staging, and news distortion on broadcast stations.²³ For all the reasons described above in Section I.A, MAD has not made a *prima facie* case of any violation of an FCC rule, whether adjudicated or not.

2. No Claim Plead as to non-FCC Misconduct.

MAD also fails to plead a *prima facie* case of relevant “non-FCC misconduct,” given that the only information put forth on this topic concerns a partially adjudicated civil defamation matter. In terms of non-FCC misconduct, the Commission considers a particular range of adjudicated conduct that it has determined bears on an applicant’s propensity to deal truthfully with the Commission and abide by its rules and policies.²⁴ This conduct includes the following, none of which bears *any* relationship to a civil defamation claim:

- “[A]djudications of both criminal and civil violations of law . . . in which a specific finding of fraudulent representation to another governmental unit is made;”²⁵
- “[C]riminal convictions involving false statement or dishonesty”²⁶
- “[A]ny conviction for misconduct constituting a felony;”²⁷ and

²³ *Id.* at 1212 ¶ 65.

²⁴ *Id.* at 1190-91 ¶ 23.

²⁵ *Id.* at 1196 ¶ 36.

²⁶ *Id.* at 1196 ¶ 37.

²⁷ *Policy Regarding Character Qualifications in Broadcast Licensing*, Policy Statement and Order, 5 FCC Rcd 3252, 3252 ¶ 4 (1990) (*1990 Character Policy Statement*). FTS observes that the Duggan/Kristol Informal Objection repeatedly refers to a hearing designation order involving the licensee of a single AM radio station to suggest that given the relatively complexity of the renewals it would be “arbitrary and capricious and/or an abuse of the Commission’s discretion” to not commence a hearing here. *See* Duggan/Kristol Informal Objection at 3, 7, 9. However, that hearing designation order was adopted by the FCC because the licensee’s sole member was convicted by a jury of “one felony count of fraud and false statements under 26 U.S.C. section 7206(1) for filing a false federal income tax return.” *See Arm & Rage, LLC*, Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing, DA 22-285,

- “[B]roadcast related business misconduct [that] rises to the level of an adjudicated violation of either anticompetitive or antitrust laws.”²⁸

The Commission has left *no doubt* as to its policy concerning civil defamation claims, even those that have been adjudicated: “Allegations of defamation are outside the Commission’s jurisdiction. Such allegations are properly the subject of private defamation actions under state law, not of Commission licensing proceedings.”²⁹ Petitioners have simply ignored this clear precedent.³⁰

Moreover, the Partial SJ Decision on which MAD rests its claim of non-FCC related misconduct is not even an adjudicated finding as to liability for a civil defamation claim. The Commission has stated that “there must be an ultimate adjudication by an appropriate trier of fact, either by a government agency or court, before we will consider the activity in our character determinations.”³¹ MAD, however, has put forth only the Partial SJ Decision, which did not

2022 WL 1077874, at *1 ¶ 2 (MB Mar. 21, 2022). As explained above, the Commission has stated that it will consider “any conviction for misconduct constituting a felony” as relevant non-FCC misconduct in license renewal proceedings. *See 1990 Character Policy Statement*, 5 FCC Rcd at 3252 ¶ 4. There are, however, no such matters at issue here. Thus, this analogy is inapt, and it would in fact be arbitrary and capricious for the FCC to consider conduct outside of the scope it has previously set forth in its well-established character policies for broadcast licensees and their attributable interest holders.

²⁸ *1986 Character Policy Statement*, 102 F.C.C.2d at 1201 ¶ 43.

²⁹ *WKXW-FM*, 22 FCC Rcd at 17304; *see also KFMB(AM)*, 22 FCC Rcd at 6797 (“The role of the Commission in overseeing program content is limited . . . as to her claim to have been defamed by these events, such allegations are outside of the Commission’s jurisdiction.”); *KGEZ(AM), Kalispell, MT Facility ID No. 60575 Skyline Broadcasters, Inc.*, Letter, 22 FCC Rcd 8395, 8397 (2007) (“As to claims by Objectors that Licensee has broadcast false statements or personal information about them, such as their home addresses, such allegations are outside of the Commission’s jurisdiction. Such allegations are properly the subject of private defamation or invasion of privacy actions under state law, not of Commission licensing proceedings.”).

³⁰ Were the Commission to have interest in revisiting its precedent on character qualifications, the appropriate forum for doing so would be via a proceeding of general applicability, with ample notice and opportunity to comment prior to any change in policy.

³¹ *1986 Character Policy Statement*, 102 F.C.C.2d at 1205 ¶ 48.

fully adjudicate the civil defamation claim in question.³² For example, that Partial SJ Decision did not grant the motion for summary judgment as to either Fox News Channel, LLC (“FNC LLC”) or Fox Corporation concerning the element of “actual malice,”³³ and it additionally did not grant the motion for summary judgment as to Fox Corporation concerning the element of “publication.”³⁴ Thus, even if an adjudicated finding of civil defamation were relevant to the character qualifications of a licensee or its parent company (which it is not), there is no such adjudicated finding here.³⁵ The Partial SJ Decision accordingly is not relevant to this proceeding.

³² *US Dominion, Inc. v. Fox News Network, LLC*, 2023 WL 2730567 (Del. Super. Ct. Mar. 31, 2023) (hereinafter, the “Partial SJ Decision”). While the Duggan/Kristol Informal Objection raises allegations of “misconduct in the litigation itself,” this too is an instance of alleged non-adjudicated, non-FCC conduct outside of the scope of what the FCC reviews in license renewal proceedings. Indeed, the judge in that case indicated by letter sent to counsel on April 17, 2023 that the court considered “the disclosure matter regarding officers of Fox News Network, LLC and/or Rupert Murdoch to be closed.” See Letter from Eric. M. Davis, Judge, Superior Court of the State of Delaware to Blake Rohrbacher, Esquire, C.A. Nos. N21C-03-257 EMD, N21C-11-082 EMD (Apr. 17, 2023). While certain questions concerning compliance with discovery obligations were referred to the existing Special Master on April 18, the judge rescinded that referral the next day. See *US Dominion, Inc. v. Fox News Network, LLC*, Order of Reference to Special Master, C.A. Nos. N21C-03-257 EMD, N21C-11-082 EMD (Del. Super. Ct. Apr. 18, 2023); *US Dominion, Inc. v. Fox News Network, LLC*, Order Vacating Order of Reference to Special Master, C.A. Nos. N21C-03-257 EMD, N21C-11-082 EMD (Del. Super. Ct. Apr. 19, 2023). Particularly in light of the judge’s statement that the court considered “the disclosure matter” to be closed, mere questions or allegations concerning compliance with civil discovery obligations fall far short of the high bar for consideration of non-adjudicated conduct under the FCC’s well-established character qualification policies.

³³ Partial SJ Decision at 64.

³⁴ *Id.* at 48. The Duggan/Kristol Informal Objection oddly characterizes this *lack* of a factual determination by the court as a “fact” that it argues the FCC should consider in the context of non-FCC misconduct, despite the FCC’s clear statement that “there must be an ultimate adjudication.” See Duggan/Kristol Informal Objection at 5-6; *1986 Character Policy Statement*, 102 F.C.C.2d at 1205 ¶ 48.

³⁵ In finding that it would be “appropriate to consider only those adjudications made by an ultimate trier of fact,” the Commission added that “[t]ribunals whose factual determinations may be reviewed *de novo* will not be considered unless the time for taking such review has expired under the relevant procedural rules.” *1986 Character Policy Statement*, 102 F.C.C.2d at 1205 ¶ 48, n.62. Under Delaware law, an appeal of the Superior Court’s decision on summary

MAD also fails in the attempt to rescue its argument by invoking a rare doctrine under which “non-adjudicated” conduct may be considered. The Commission has explained that it may consider non-adjudicated, non-FCC conduct to be relevant in “circumstances in which an applicant has engaged in nonbroadcast misconduct so egregious as to shock the conscience and evoke almost universal disapprobation.”³⁶ In defining what conduct would be “so egregious” as to justify consideration of non-adjudicated, non-FCC conduct, the Commission has identified child molestation and drug trafficking, but even in those cases there was ultimately a criminal conviction before Commission action.³⁷ In each of these cases, the non-adjudicated misconduct also concerned an alleged violation of a serious criminal offense. MAD’s Petition does not suggest any criminal violation occurred, nor could it.³⁸ It instead asserts that the cable programming that was the subject of the civil defamation claim qualifies as broadcast “news distortion,” which of course is an FCC policy concerning *broadcast* content. This policy does

judgment is reviewed *de novo*. See, e.g., *Paul v. Deloitte & Touche, LLP*, 974 A.2d 140, 145 (Del. 2009) (“We review the Superior Court’s decision on a motion for summary judgment *de novo*, applying the same standard as the trial court.”). Of course, the Partial SJ Decision did not fully adjudicate the case and thus there was no entry of a judgment. See Del. R. Sup. Ct. 56(d). As a result, the time for seeking review had not even begun to run. See Del. R. Sup. Ct. 6 (specifying the timeline for filing of a civil appeal).

³⁶ *1986 Character Policy Statement*, 102 F.C.C.2d at 1205 n.60.

³⁷ *Anne L. Weismann, Melanie Sloan, Antoinette Cook Bush, Joshua Gruenspecht*, Public Notice, 28 FCC Rcd 6312, 6318 (MB 2013) (citations omitted). In the foregoing 2013 case, the Media Bureau denied petitions to deny filed by the Citizens for Responsibility and Ethics in Washington, which as in the instant case premised a character qualifications challenge on alleged non-adjudicated, non-FCC misconduct. *Id.* The Duggan/Kristol Informal Objection attempts to distinguish this 2013 precedent by claiming that here “there is an adjudicative finding.” Duggan/Kristol Informal Objection at 7. In fact, as described above, the partial adjudication to which the Objection points concerned only a civil defamation matter and thus is not among the enumerated list of non-FCC matters that the Commission will consider in a license renewal proceeding.

³⁸ Petitioners express the opinion that the settlement in the civil defamation matter was “tantamount to a guilty conviction,” but by definition there is no “conviction” in a *civil* defamation matter, even one that is adjudicated at trial. See Petition at 3.

not consider content distributed by anyone other than the licensee (here, FTS). As explained by the U.S. Court of Appeals for the D.C. Circuit:

In determining whether an allegation of news distortion raises a question about the licensee’s ability to serve the public interest, the Commission analyzes both the substantiality and the materiality of the allegation. The Commission regards an allegation as material *only if the licensee itself* is said to have participated in, directed, or at least acquiesced in a pattern of news distortion.³⁹

As discussed, MAD offers no evidence that FTS or Fox 29 Philadelphia aired the content of which they disapprove, nor does MAD contend with the obvious First Amendment problems of conducting the broad, content-based inquiry that it seeks.⁴⁰ Given that MAD had failed to even allege any relevant evidence concerning the station or its licensee, it has failed to plead a *prima facie* case of broadcast news distortion. The Commission has long held that allegations of news distortion must be supported by “extrinsic evidence” of deliberate distortion by the licensee.⁴¹ In this instance, MAD provides no evidence of any particular material broadcast by Fox 29 Philadelphia, let alone any evidence of deliberate distortion on the Station by FTS. The only “evidence” supplied by MAD is the Partial SJ Decision—which, as noted above, did not involve FTS as a party and includes no mention of Fox 29 Philadelphia, *Fox News Sunday*, or any other programming on the Station—and the declaration of an individual with no direct knowledge of Fox 29 Philadelphia’s operations at the time in question.

MAD likewise cannot rely on content distributed by FNC LLC to plead its case. MAD essentially calls for a new FCC doctrine in which the Commission would apply a broadcast

³⁹ *Serafyn v. FCC*, 149 F.3d 1213, 1216 (D.C. Cir. 1998) (emphasis added).

⁴⁰ *See infra* Section II.

⁴¹ *See Galloway v. FCC*, 778 F.2d 16, 20 (D.C. Cir. 1985).

policy—specifically, a policy that has been applied to broadcast licensees carefully and with “an extremely limited scope”⁴²—to a cable network and its parent company, where that network is under common ownership or control with the broadcast licensee.⁴³ But this simply is not the law, nor would such a policy comport with the First Amendment.⁴⁴ Accordingly, MAD has not articulated a *prima facie* case of non-adjudicated conduct that would be relevant under the Commission’s character policies for broadcast licensees or their attributable owners.

C. Standing and Other Issues.

Although the Petition fails on numerous substantive grounds, it suffers from other significant defects, including basic standing and service of process problems. Certain of the MAD Petitioners lack standing to bring this Petition, a sufficient basis in its own right to dismiss the Petition or otherwise decline to accord party-in-interest status here. Section 309(d) of the Act provides that “any party in interest may file . . . a petition to deny” a pending license renewal

⁴² *Id.* at 21.

⁴³ The Duggan/Kristol Informal Objection emphasizes the extraordinary nature of MAD’s request by repeatedly referring to the conduct of “an ‘*unregulated*’ FOX subsidiary” in asking that the Commission designate this license renewal application for hearing. *See* Duggan/Kristol Informal Objection at 8 (emphasis added).

⁴⁴ Petitioners underscored that they seek to use this license renewal proceeding as a vehicle to debate and alter broader Commission policy when they asked that it be accorded the “permit-but-disclose” *ex parte* status used in rulemakings and other proceedings of general applicability. *See* Letter from Arthur V. Belendiuk, Counsel for MAD to Holly Saurer, Chief, Media Bureau, FCC, LMS Pleading File No. 0000218055 (July 18, 2023). As FTS has explained, the Commission should deny that request, given that this proceeding—like all license renewal proceedings— inherently “involves a determination of the rights and responsibilities of particular parties under existing policy, rather than revisiting an applicable policy ruling.” *See* Letter from Joseph M. Di Scipio, SVP, FCC Legal & Business Affairs, and Assistant General Counsel, Fox Corporation to Marlene H. Dortch, Secretary, FCC, LMS Pleading File No. 0000218151 (July 19, 2023) (quoting *Application for Renewal of License for Common Carrier Fixed Point to Point Microwave Station KGC79 Verizon New York, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 13511, 13517 ¶ 12 (WTB 2011)).

application.⁴⁵ “Under the Commission’s long-established case law on standing, a petitioner to deny a broadcast radio application may be granted standing if: (1) petitioner is a competitor in the market suffering signal interference; (2) petitioner is a competitor in the market suffering economic harm; or (3) petitioner is a resident of the station’s service area or listens to the station regularly and such listening is not the result of transient contacts with the station.”⁴⁶

Under this 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.⁴⁷ Indeed, many basic facts about the Media and Democracy Project’s status as a legal entity are unclear. The group describes itself as an “all-volunteer grassroots civic organization.”⁴⁸ It further states that “membership is defined as participation in [its] civic actions.”⁴⁹ However, the website of the Media and Democracy Project does not have any contact

⁴⁵ 47 U.S.C. § 309(d).

⁴⁶ *Melodie Virtue, Esq.*, Letter, 30 FCC Rcd 6045, 6049 (MB 2015). FTS and the Petitioners apparently are in agreement that the former employee who authored the declaration appended to the Petition is *not* a party to this proceeding. The Petition does not assert that this individual is a Petitioner, nor that he would have standing if he wished to join this proceeding as a party in interest. Moreover, like the Petition itself, the former employee’s declaration does not make any specific factual allegations concerning Fox 29 Philadelphia other than the observation that the Station airs *Fox News Sunday*. The only other reference to either Fox 29 Philadelphia or FTS comes in the context of this individual’s opinions concerning senior management of a parent entity from over 25 years ago. The observations and self-described opinions of an individual who ceased working for a different corporate entity over 25 years ago are hearsay as applied to the facts at issue in this license renewal and should have no bearing on the outcome of this proceeding.

⁴⁷ Consistent with judicial standing principles, the FCC has established that “[e]ven in the absence of injury to itself . . . an association may establish standing as the representative of its members.” *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to a Petition to Deny a Broadcast Application*, Memorandum Opinion and Order, 82 F.C.C.2d 89, 96 ¶ 20 (1980). Mr. Vassallo does not contend that he would have standing in the absence of the Media and Democracy Project having associational standing. *See* Petition at 3. Thus, this analysis focuses on the group’s associational standing.

⁴⁸ Vassallo Declaration.

⁴⁹ *Id.*

information, or provide any specific information about where it is organized. Although the website represents that the entity is a 501(c)(4), FTS has been unable to locate any records documenting the group as an established legal entity. FTS respectfully submits that parties to proceedings before the FCC must be legal entities with the capacity to sue or be sued, consistent with judicial standing principles.⁵⁰ Otherwise, any “organization” could be formed to manufacture party-in-interest status and permit parties to abuse Commission processes without any recourse. Absent a demonstration that MAD is and was, in fact, a legal entity at the time it filed the Petition, the Commission should find that Media and Democracy Project and its out-of-market representative, Mr. Vassallo, do not have standing to file the Petition to Deny and should dismiss or consider the Petition to be no more than an informal objection that does not confer party-in-interest status.⁵¹

FTS also preserves for the record that MAD did not perfect service of this Petition to Deny. The Certificate of Service attached to the Petition indicates that it was sent via email to an incorrect and invalid email address for Fox 29 Philadelphia’s license renewal application contact, and the Petition was not otherwise delivered to FTS or Fox Corporation via email.⁵² Moreover, while the Certificate of Service certifies that a hard copy of the Petition was sent via first-class mail to the Washington, D.C. office of Fox Corporation, FTS and Fox Corporation have no

⁵⁰ *Cf.* Fed. R. Civ. P. 17(b).

⁵¹ Per the Certificate appended to this Opposition, FTS has sent copies of this Opposition to MAD, as well as to the Media Access Center and Messrs. Duggan and Kristol (via their representative) who filed Informal Objections. FTS does so in the interest of transparency. This fact should not be construed as an agreement that MAD, Media Access Center, or Messrs. Duggan and Kristol have standing or party-in-interest status.

⁵² *See* Petition, Certificate of Service (listing email address for FTS representative as “bobeck@fox.com”). Per the license renewal application (LMS File No. 0000213362), Ms. Bobeck’s email is ann.bobeck@fox.com. FTS observes that the certificate of service also contains an incorrect email address for the Chief of the Media Bureau.

record of it having been received.⁵³ This failure of proper service provides an additional ground for dismissing MAD's Petition or, at a minimum, not according party-in-interest status to the Petitioners.⁵⁴

II. THE RELIEF SOUGHT BY MAD WOULD VIOLATE THE COMMISSION'S COMMITMENT TO THE FIRST AMENDMENT.

"The Commission is not the national arbiter of the truth. . . . [I]n this democracy, no Government agency can authenticate the news, or should try to do so. We will therefore eschew the censor's role. . . ." ⁵⁵ The principle embodied in this statement remains as true today as it was over fifty years ago when the Commission articulated it, and as true as it was forty years before that when Congress provided in the Communications Act that "[n]othing in this chapter shall be understood or construed to give the Commission the power of censorship over" broadcast communications.⁵⁶ And for good reason. As Chairwoman Rosenworcel stated previously in response to threats to another network's broadcast television licenses: "the First Amendment ensures that what we see on television, hear on the radio, read in print, and interact with on the Internet is free from interference. No government official has the right to use their power to

⁵³ See 47 C.F.R. § 1.47.

⁵⁴ MAD continued to use an inaccurate email address for FTS' representative in at least two communications of which FTS has become aware. This included MAD's July 18, 2023 request to alter the restricted status of this pending license renewal application (LMS Pleading File No. 0000218055) and a July 20 e-mail communication to Media Bureau staff which in part reiterated that request. FTS is grateful to Media Bureau staff for noticing MAD's failure to use appropriate contact information in its correspondence and advising MAD to use the correct address for FTS' representative going forward. MAD did not begin using the correct email address for FTS' representative until July 31, 2023 when it served a copy of another third party's informal objection that principally reiterates the arguments set forth in MAD's Petition. See Duggan/Kristol Informal Objection at 12.

⁵⁵ *Complaints Covering CBS Program 'Hunger in America'*, Memorandum Opinion, 20 F.C.C.2d 143, 151 ¶¶ 21-22 (1969).

⁵⁶ 47 U.S.C. § 326.

dictate what news organizations can say.”⁵⁷ By dismissing MAD’s Petition promptly, the Commission would reaffirm its longstanding position and send an important signal: discouraging future attempts—whether from the political right, left, or anywhere in between—to have it use its authority over the broadcast airwaves in a manner contrary to the First Amendment.

It is true that as applied to broadcast media, the Supreme Court has adopted a lesser standard of review for First Amendment concerns than the strict scrutiny that would typically be applied to content regulation.⁵⁸ But even a lesser standard of scrutiny still demands meaningful scrutiny. And in the context of license renewal proceedings, the Commission has made clear that it will tread very lightly on content regulation.⁵⁹ Petitioners show no respect for this precedent or principle.

MAD’s attempt to transform a civil defamation case into a license revocation action likewise would put the Commission on a collision course with the First Amendment. Independent of the FCC regulations governing broadcast television, civil defamation claims in the United States must satisfy a heightened standard—actual malice—on matters of public importance, a legal principle that acknowledges the potential chilling effect of even just bringing

⁵⁷ Rosenworcel, *supra* note 5. See also, David Shepardson, *FCC Chairman Rejects Trump Suggestion on Broadcast Licenses*, REUTERS, Oct. 17, 2017, <https://www.reuters.com/article/us-usa-trump-nbc-pai/fcc-chairman-rejects-trump-suggestion-on-broadcast-licenses-idUSKBN1CM28W> (quoting former FCC Chairman Pai that “[u]nder the law, the FCC does not have the authority to revoke a license of a broadcast station based on the content”).

⁵⁸ *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969).

⁵⁹ *KGEZ(AM)*, 22 FCC Rcd at 8397 (“The role of the Commission in overseeing program content is limited. . . . the Commission will not take adverse action on a license renewal application based upon the subjective determination of a listener or group of listeners as to what constitutes appropriate programming.”). Also of relevance here, the Supreme Court has stated that “the rationale for applying a less rigorous standard of First Amendment scrutiny to broadcast regulation, whatever its validity in the cases elaborating it, does not apply in the context of cable regulation.” *Turner Broadcasting Systems, Inc. v. FCC*, 512 U.S. 622, 637 (1994).

a defamation claim.⁶⁰ This standard recognizes the “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”⁶¹ Moreover, this heightened standard concerns circumstances in which a party may be held liable in a civil court merely for monetary damages. MAD, however, seeks to silence Fox 29 Philadelphia altogether via a license revocation action, a far harsher penalty for First Amendment purposes than a monetary judgment, and one that should require even greater Constitutional scrutiny. Such an action would severely chill speech on both broadcast and other media outlets, contrary to the Commission’s clear, staunch, and proper bipartisan support for the First Amendment.

III. FOX 29 PHILADELPHIA SERVES THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY.

The Communications Act directs the FCC to grant a license renewal if the station in question has served the public interest, convenience, and necessity; there have been no serious violations of the Communications Act or the FCC’s rules and regulations; and there have been no other violations of the same which taken together would constitute a pattern of abuse.⁶² As explained above, MAD has not alleged a *prima facie* case of any violations of FCC rules or a *prima facie* case sufficient to raise questions about the character eligibility of FTS or its parent company. Thus, so long as Fox 29 Philadelphia has served the public interest, convenience, and necessity—as it has done—the Commission should grant its license renewal application promptly.

⁶⁰ *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964); *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 155 (1967).

⁶¹ *New York Times v. Sullivan*, 376 U.S. at 270.

⁶² 47 U.S.C. § 309(k).

Lost amidst the MAD Petition’s rhetoric and its efforts at press attention is a basic, critical fact: Fox 29 Philadelphia has long served its community in an exemplary manner. Fox 29 Philadelphia airs over 60 hours a week of local news and programming, including, but not limited to:

- *Good Day Philadelphia*, weekdays from 4:00 AM to 10:00 AM (and the area’s first live, locally produced morning show when it first began in 1996);
- *FOX 29 News at Five*, weekdays from 5:00 PM to 6:00 PM;
- *FOX 29 “The Six”*, weekdays from 6:00 PM to 6:30 PM;
- *FOX 29 Ten O’Clock News*, daily from 10:00 PM to 11:00 PM;
- *FOX 29 News at Eleven*, weekdays from 11:00 PM to 11:30 PM;
- *The Pulse*, Mondays from 6:30 PM to 7:00 PM;
- *The 215*, Tuesdays from 6:30 PM to 7:00 PM; and
- *Kelly Drives*, Thursdays from 6:30 PM to 7:00 PM.⁶³

These Fox 29 Philadelphia programs cover important local news, events, sports, traffic, weather, and more, and are widely viewed in the Philadelphia DMA.⁶⁴ MAD fails to acknowledge a single one of these regularly scheduled locally produced programs, not to

⁶³ See 2023 WTXF (Phila., PA) Quarter Issues/Programs List for the Quarter April 1, 2023 through June 30, 2023 (July 10, 2023), available at <https://publicfiles.fcc.gov/api/manager/download/09bdd06f-a996-7f8f-c797-54f6bf1a46b9/ccb98750-3168-4037-a05c-5528f6d53690.pdf>.

⁶⁴ According to Nielsen data, Fox 29 Philadelphia’s local newscasts are highly popular in the market with adults between the ages of 25 and 54, a sizable proportion of the viewing public. For example, during the most recent sweeps period in June 2023, Fox 29 Philadelphia’s *Good Day Philadelphia* was ranked first at 6:00 AM-7:00 AM, 7:00 AM-9:00 AM, and 9:00 AM-10:00 AM across broadcast stations among Adults 25-54. Overall, in the second quarter of 2023, *Good Day Philadelphia* was ranked second at 5:00 AM-6:00 AM, 6:00 AM-7:00 AM, 7:00 AM-9:00 AM, and 9:00 AM-10:00 AM across broadcast stations in the same key demographic. Among late newscasts, in the second quarter 2023, FOX 29 Philadelphia’s *The Ten O’Clock News* ranked first at 10:00 PM and ranked second for all late newscasts in the market among the Adults 25-54 demographic.

mention the extensive series of community-centered franchises, specials, and shows produced by the Station. These initiatives are made up of long-form stories that air across all dayparts, 30-minute specials that air multiple times throughout the day, and unique weekly shows that spotlight issues and create a platform to provide in-depth, hyper-local, and solutions-based coverage for important community issues that are too often overlooked.

Fox 29 Philadelphia's community-centered franchises, specials, and shows cover challenges faced by local communities, provide visibility and economic support to local entrepreneurs, create opportunities to enhance local education, promote local political engagement, celebrate observances for historically marginalized communities, recognize the dedication and sacrifices of the men and women of our military, and provide a daily voice to the stories and people throughout the Philadelphia DMA who deserve exposure and support for making the region's communities better. While an exhaustive list of Fox 29 Philadelphia's coverage of and contribution to the communities in the Philadelphia DMA would be far longer, here are a few recent examples of this programming:

- Since 2018, Fox 29 Philadelphia has produced a unique local game show called "The ClassH-Room." The Station invites students and teachers from the 18 counties in the DMA into the Fox 29 Philadelphia studios to "clash" in a fun, school-type setting. The students and their teachers compete against each other, answering questions on topics taught in school, including science, math, history, and pop culture for a chance to win a cash donation for their school.
- Through an initiative called "Save Our Streets," ("SOS") Fox 29 Philadelphia has taken on the challenge of addressing the crime and violence issues that the region faces. Stories and specials have included "Shoot Basketballs Not People," "Smart on Crime," "A New Generation of Faith," "What Will You Do?," and more. SOS has featured sit-down interviews with officials ranging from Philadelphia District Attorney Larry Krasner to Pennsylvania Governor Josh Shapiro, and Fox 29 Philadelphia has used the platform to press these public officials on the specific questions presented to the Station by members of local communities. SOS has also featured interviews with ex-offenders, innovative law enforcement leaders, and underfunded community groups making the most with what little they have to

ensure that all potential solutions to address crime and violence in the Philadelphia region are appropriately explored.

- Fox 29 Philadelphia is a community partner with the Lenfest Institute for Journalism's "Every Voice, Every Vote" initiative, a city-wide coalition of community organizations and media "working to put Philadelphia voters and key issues at the center of 2023 elections for mayor and city council." As a part of this partnership, Fox 29 Philadelphia has amplified the "Every Voice, Every Vote" mission through a series of half-hour special presentations spotlighting the issues of importance to voters ahead of the 2023 primary and general election. In addition to this partnership, Fox 29 Philadelphia was the first local television station to produce a 2023 Philadelphia Democratic Mayoral Primary debate in partnership with Temple University, which gathered members of various community groups and took questions from not only Temple University students and faculty, but also a local North Philadelphia block captain.⁶⁵ No other local debate included live questions from candidates' potential future constituents.
- For ten years, Fox 29 Philadelphia has hosted "Fox 29 Salutes the Military" to honor the men and women of our military representing the Army, Air Force, Marines, Navy, and Coast Guard. This event is held annually outside the Fox 29 Philadelphia studios and has featured the Secretary of the Navy and the Undersecretary of the Army swearing in new cadets, displays of military equipment and a flyover from the 514th Air Force Reserve Command out of Joint Base McGuire-Dix-Lakehurst in New Jersey, and engagement opportunities with volunteer organizations serving our troops and veterans, such as Warriors Watch, Operation Homefront, Alpha Bravo Canine, Project Hero, Team Foster, the Travis Manion Foundation, the USO, as well as the U.S. Department of Veterans Affairs. "Fox 29 Salutes the Military" has received awards and recognition from a variety of organizations, including: an "Above and Beyond" award from the Employer Support of the Guard and Reserve; a certificate of appreciation from the Air Force Recruiting Service; a Seven Seals Award; and a Pennsylvania Commendation Medal by the Department of Military Affairs for support and exposure given to the Men and Women of the Pennsylvania National Guard.

Again, these are just a few examples of the numerous community-centered franchises, specials, and shows produced by Fox 29 Philadelphia that indisputably serve the public interest, convenience, and necessity. These programs are made possible by the talents of the over 170 full- and part-time employees at Fox 29 Philadelphia, who in addition to producing high-quality,

⁶⁵ In Philadelphia, "block captains work to make their block safe and beautiful," by coordinating various events and cleanup initiatives. See "Become a Block Captain," City of Philadelphia, <https://www.phila.gov/services/trash-recycling-city-upkeep/become-a-block-captain/>.

award-winning local programming, are active members of the community. These personnel leverage Fox 29 Philadelphia's profile to contribute to local educational and charitable opportunities in the community.⁶⁶ MAD ignores these talented station employees and the service they provide throughout the Philadelphia market. Fox 29 Philadelphia also works to create opportunities for the next generation of broadcast journalists through its work with the Emma Bowen Foundation, a talent pipeline focused on building a more diverse media ecosystem. Fox 29 Philadelphia both hosts Emma Bowen interns and attends Emma Bowen Foundation career fairs, as well as other career fairs held in partnership with the National Association of Black Journalists, the Asian American Journalists Association, and the National Association of Hispanic Journalists.

In sum, the Commission should not allow the Petition to distract from the inescapable conclusion that Fox 29 Philadelphia serves the public interest, convenience, and necessity in an exemplary manner. Granting MAD's request for the extraordinary relief its Petition seeks would deprive the communities in the Philadelphia DMA of the valuable public service that Fox 29 Philadelphia provides. This service should be recognized, and Fox 29 Philadelphia's license renewal application should be granted promptly.

⁶⁶ For instance, FOX 29 Philadelphia has built unique, long-standing relationships with non-profit organizations like the Alzheimer's Association. Partnering since 2001, Fox 29 Philadelphia is the proud local television sponsor for all the "Walk to End Alzheimer's" events in the area. *Good Day Philadelphia* weather anchor Sue Serio is the Honorary Chairperson for the Walk to End Alzheimer's events for the Delaware Valley Chapter of the Alzheimer's Association. Fox 29 Philadelphia's partners at the Alzheimer's Association credit the Station's PSAs, news segments, 30-minute specials, and Walk event coverage with generating volunteers to participate in and/or make donations to the annual Walk, contributing to the Association's growth.

CONCLUSION

As shown in this Opposition, granting MAD's request to order an evidentiary hearing into Fox 29 Philadelphia's license renewal application would upend decades of established Commission precedent, put the Commission in a position fundamentally incompatible with the First Amendment, and threaten to deprive viewers in Philadelphia of a station that serves its community exceptionally well. For all these reasons, the Commission should dismiss the Petition to Deny and grant Fox 29 Philadelphia's application for license renewal without delay.

Respectfully submitted,

/s/ Matthew S. DelNero

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Counsel to Fox Television Stations, LLC

August 2, 2023

DECLARATION OF JOSEPH M. DI SCIPIO

I, Joseph M. Di Scipio, hereby state as follows:

1. I am Senior Vice President, FCC Legal and Business Affairs, and Assistant General Counsel of Fox Television Stations, LLC, licensee of station WTXF-TV, Philadelphia, Pennsylvania.
2. I have read the foregoing Opposition of Fox Television Stations, LLC to the Petition to Deny filed by the Media and Democracy Project, Milo Vassallo, John McGinty, Peter Lems, Chenjerai Kumanyika, and Bill Hartman on July 3, 2023 (the "Opposition").
3. I have personal knowledge of the facts contained in the Opposition and declare that such facts are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 2, 2023.



Joseph M. Di Scipio
Senior Vice President
FCC Legal and Business Affairs,
and Assistant General Counsel

CERTIFICATE OF SERVICE

I, John Cobb, do hereby certify that on this 2nd day of August 2023, I caused a true and correct copy of the foregoing Opposition to the Petition to Deny filed by the Media and Democracy Project, Milo Vassallo, John McGinty, Peter Lems, Chenjerai Kumanyika, and Bill Hartman (“Petitioners”) on July 3, 2023 to be served in the delivery manner specified below upon:

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Dated: August 2, 2023