

July 31, 2023

Marlene H. Dortch, Secretary  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

Re: Application for Television Station License Renewal  
FOX Television Stations, LLC  
WTFX-TV, Philadelphia, Pennsylvania  
LMS File No. 0000213362

Dear Madam Secretary:

The undersigned, Ervin S. Duggan and William Kristol, are filing this letter to urge the Federal Communications Commission (“FCC” or “Commission”) to designate for a hearing the July 3, 2023, Petition to Deny filed by The Media and Democracy Project (“Petitioner”) in the above-referenced proceeding (such petition, the “MAD Petition”).<sup>1</sup>

As set forth below, we believe that there are more than sufficient grounds alleged in the MAD Petition for the Commission to designate the pending WTFX-TV (“Fox 29”) renewal application for a hearing. Doing so would enable the Commission to develop a record as to the problematic conduct of Fox 29’s parent, Fox Corporation (“FOX”), and its various subsidiaries<sup>2</sup> and to impose appropriate conditions and/or sanctions in light of its findings – up to, but not necessarily including, denial of Fox 29’s license renewal application.

The parties submitting this letter have long histories in public service and journalism. William Kristol is a veteran political analyst and commentator. He served in senior positions in the Ronald Reagan administration and the George H. W. Bush White House. For two decades he edited *The Weekly Standard* magazine, and is now editor at large of *The Bulwark* and a director of the educational and advocacy group, *Defending Democracy Together*. And Ervin S. Duggan is a veteran of the Lyndon Johnson White House, a former Commissioner of the Federal Communications Commission, and the former President of PBS.

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<sup>1</sup> It is our understanding that this letter will be treated as an informal objection in this matter; that no leave to file this document is required; and that because this is a restricted proceeding this letter must be served upon the parties to the matter (the Petitioner and Fox 29). We have provided a copy of this letter to counsel for the Petitioner and have asked him to handle for us the service of this letter on counsel for Fox 29 and appropriate Commission staff, and electronic filing with the Commission. As a courtesy to us, Petitioner’s counsel has agreed to do so, for which we thank him.

<sup>2</sup> As discussed below, the conduct of FOX as the ultimate parent and controlling entity of Fox 29, and that of its various subsidiaries is relevant to the Commission’s Fox 29 licensing decision. *See infra*, p. 6 at n. 23.

Though we were members of different parties when we served in government, and though we have had different perspectives on many issues during our respective careers, we both strongly believe that American democracy must be grounded in open, respectful, and factual debate. Moreover, we believe that media companies who are directly or indirectly granted the privilege to serve the public through operation of FCC-licensed television stations have a corollary duty to facilitate and strengthen democracy by participating in that debate – not by hiding their opinions, nor by providing “equal time” on all issues to outside parties, nor by merely chasing ratings or corporate stock price, but by adhering to the highest journalistic standards in reporting and distributing news to ensure that the public has solid facts upon which to make the decisions that are essential to our society’s future as a democracy.<sup>3</sup>

Two of Fox 29’s corporate sisters -- Fox News Channel (“Fox News”) and Fox Business Channel (“FOX Business”) -- are engaged in telecast journalism as is Fox 29,<sup>4</sup> but unlike the station are not licensed by the FCC. Driven, it seems, principally by ratings and stock price concerns<sup>5</sup>, these two sister entities were found by a court of law in the Dominion litigation<sup>6</sup> to have failed over an extended period of time to provide the public with solid facts about a matter of supreme public concern, the 2020 election – and indeed were found by the judge to have repeatedly distributed information whose actual falsity was CRYSTAL clear.

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<sup>3</sup> The Commission’s decision not to eliminate its news distortion policy ([https://www.fcc.gov/sites/default/files/broadcasting\\_false\\_information.pdf](https://www.fcc.gov/sites/default/files/broadcasting_false_information.pdf)) as part of its 1980s “broadcast underbrush” deregulatory initiatives supports our view that journalistic integrity and honesty in delivering news to the public remains a core part of the “public interest” that television licensees must advance. That news distortion policy, of course, indirectly underlies the MAD Petition.

<sup>4</sup> See the “Business Overview” section on page 2 of the 2022 FOX annual report (the “Annual Report”), and more detailed discussions of FOX media subsidiaries’ businesses on pages 3-11 of the Annual Report, explaining, *inter alia*, the quantity of news programming broadcast by FOX stations and Fox News and the operational interrelationships between them. The Annual Report can be found at <https://investor.foxcorporation.com/static-files/1ed7c450-e52a-4259-8631-80db9e79be32>.

<sup>5</sup> Both the record in the Dominion litigation cited below (including texts from Rupert Murdoch referencing his concern over FOX’s falling stock price, such as the text cited at page 2 of the Preston Padden declaration supporting the MAD Petition (the “Padden Declaration”)) and Lachlan Murdoch’s public statements as to how he sees Fox News’ role in the media ecosystem (including comments cited at page 2 of the Padden Declaration and comments reported in Brian Stelter, *Lachlan Murdoch finally says it out loud: Fox is the ‘loyal opposition’ to Biden*, CNN Business “Reliable Sources” (March 4, 2021), <https://www.cnn.com/2021/03/04/media/lachlan-murdoch-fox-reliable-sources/index.html>) reflect that ratings and stock price are FOX’s and the Murdochs’ main focus, sometimes at the expense of its obligations in certain of its lines of business to act as a public trustee.

<sup>6</sup> The cases comprising the Dominion litigation are *US Dominion, Inc., et al, v. Fox News Network, LLC*, C.A. No. N21C-03-257 EMD (Del. Super. Ct.), and *US Dominion, Inc., et al, v. Fox Corporation*, C.A. No. N21C-11-082 EMD (Del. Super. Ct.).

Although those two sister entities are not directly subject to the Commission’s jurisdiction, their behavior is relevant to Fox 29’s qualifications to hold an FCC license and to the terms and conditions of that license.<sup>7</sup> The FCC’s Policy Concerning Character Requirements in Broadcast Licensing adopted through policy statements in 1986 and 1990 (collectively, the “Character Policy”)<sup>8</sup> provides the framework for the Commission to look beyond the four corners of an individual station’s record in licensing proceedings and to consider affiliated entities’ conduct when appropriate. And here doing so is appropriate because, among other things, Fox News, Fox Business, and Fox 29 have a common ultimate parent, FOX, which has a de facto controlling shareholder, the Murdoch Family Trust (the “Murdoch Trust”), which in turn is controlled by individuals who were directly involved in the sister entities’ conduct.

FOX; the Murdoch Trust; Rupert Murdoch, who appoints the directors of the Murdoch Trust; and Lachlan Murdoch, the Executive Chairman and CEO of FOX, could have, but didn’t, stop the distribution of clearly false information via Fox News and Fox Business. Indeed, Rupert Murdoch acknowledged as much in his deposition in the Dominion Voting Systems litigation against FOX and Fox News. We believe that this failure, which led to consequences dangerous to American democracy that are still unfolding to this day, is so shocking to the conscience, and so inconsistent with both the public interest and good journalistic practice, that there is a clear basis under the FCC’s Character Policy for the Commission to conduct a hearing (1) to develop under penalty of perjury a full understanding of the situation, (2) to evaluate the safeguards, if any, that FOX has in place to prevent its recurrence, especially with respect to its broadcast stations, and (3) if adequate safeguards are not in place at the licensed broadcast stations, to craft and require such safeguards to protect the public interest. Further, we believe that for the Commission not to designate a hearing when it often conducts character-based hearings in simpler contexts against smaller licensees<sup>9</sup> could well be arbitrary and capricious and/or an abuse of the Commission’s discretion.

#### BACKGROUND: THE FOX CORPORATE STRUCTURE

Fox 29 is one of 29 broadcast television stations owned and operated by FOX through its 100% ownership of Fox Television Stations LLC (the “Station Group”).<sup>10</sup> The Station Group

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<sup>7</sup> Under Section 309(k)(2) of the Communications Act, in appropriate circumstances the Commission may respond to a petition to deny by renewing broadcast licenses for shorter time periods than the full statutory term, or by imposing other terms and conditions targeted to address misconduct that prevents a “clean” full-term renewal, instead of denying renewal of a station’s license.

<sup>8</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>9</sup> See e.g., *Arm & Rage, LLC*, Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing, MB Docket No. 22-122, DA 22-285, 2022 FCC LEXIS 934 (MB Mar. 21, 2022) (“*Arm & Rage HDO*”).

<sup>10</sup> For a full discussion of FOX’s holdings and lines of business, see the Annual Report, *supra* n. 4, from which the discussion of those matters in this letter is extracted.

owns, operates, and controls stations in 14 of the 15 largest television markets in the United States.<sup>11</sup> 18 of its 29 stations – including Fox 29 – are affiliates of the Fox television network (the “Fox Network”), one of the “big four” over the air networks that are the most-viewed television properties in the United States. As is true for all over the air television stations, FOX’s stations are licensed to operate in the “public interest, convenience, and necessity” under Section 309(a) of the Communications Act. This implies that they are to behave as “public trustees” as the Commission’s published form for station license renewal announcements states.<sup>12</sup>

FOX also owns a number of unregulated domestic media outlets – cable television channels and streaming services -- through the Station Group’s sister subsidiaries, including principally Fox News Media (“FNM”) and Fox Sports, which both operates the FS1 and FS2 cable sports channels and produces sports programming to be aired on the Fox Network.

It is through FNM that FOX operates the fifth most popular television network in the United States, Fox News (which trails only the four over the air broadcast networks in viewership)<sup>13</sup> as well as Fox Business and the streaming service Fox Nation.

All of these networks, stations, channels, and services are under the ultimate ownership and control of FOX. And FOX itself is under the ultimate de facto control of the Murdoch Trust; the man who votes the Trust’s 39.4% stockholding in FOX, Rupert Murdoch; and to the extent allowed by his father, FOX’s Executive Chairman and CEO Lachlan Murdoch.<sup>14</sup> Further,

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<sup>11</sup> FOX owns two stations – a duopoly – in 11 markets, including the three largest markets in the United States (New York, Los Angeles, and Chicago).

<sup>12</sup> See *Sample POST-filing Announcement*, found at <https://www.fcc.gov/media/television/broadcast-television-license-renewal#PREFILING>. See also, *Nat’l Broad. Co. v. United States*, 319 U.S. 190, 216, 63 S. Ct. 997, 1009 (1943). The touchstone provided by Congress was the “public interest, convenience, or necessity,” a criterion which “is as concrete as the complicated factors for judgment in such a field of delegated authority permit.” Citing *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1940).

<sup>13</sup> See Michael Schneider, *Most-Watched Channels of 2022: TV Network Ratings Winners & Losers*, Variety.com (Dec.29, 2022), <https://variety.com/2022/tv/news/most-watched-channels-2022-tv-network-ratings-1235475170/>.

<sup>14</sup> As stated in FOX’s 2019 registration statement for its publicly traded stock, at Exhibit 4.3: “As a result of his ability to appoint certain members of the board of directors of the corporate trustee of the Murdoch Family Trust, which beneficially owns less than one percent of the outstanding Class A Common Stock and 38.4% of Class B Common Stock, K. Rupert Murdoch may be deemed to be a beneficial owner of the shares beneficially owned by the Murdoch Family Trust. ... K. Rupert Murdoch may be deemed to beneficially own in the aggregate approximately one percent of Class A Common Stock and 38.9% of Class B Common Stock. This concentration of voting power could discourage third parties from making proposals involving an acquisition of FOX. Additionally, the ownership concentration of Class B Common Stock by the Murdoch Family Trust increases the likelihood that proposals submitted for stockholder approval that are supported by the Murdoch Family Trust will be adopted and proposals that the

although the FOX corporate structure preserves a formal separation of regulated (FCC-licensed) and unregulated (cable channel, streaming, and sports- and gambling-related) activities, as a practical matter all of the branches of FOX are in the same business – delivery of content to media consumers – and work together to create value under the control of Rupert Murdoch and the Murdoch Trust. For example, cable carriage deals for broadcast stations and cable channels including Fox News are negotiated on an integrated basis to maximize both aggregate corporate revenue and viewership (and ratings) opportunities, as is standard industry practice;<sup>15</sup> Fox News’s flagship Sunday news and information show Fox News Sunday is cleared nationally on the Fox Network’s affiliates (including Fox 29), and FNM provides news content to Fox Network affiliates through Fox News Edge;<sup>16</sup> and sports programming is shifted between Fox Sports’ cable channels and the Fox Network depending on viewer interest and revenue potential.<sup>17</sup>

### THE DOMINION LITIGATION AND PAST CHARACTER CONCERNS RELATED TO FOX

The MAD Petition arises out of the Dominion Voting Systems litigation against Fox and Fox News, which was settled in late April 2023.<sup>18</sup>

As is well known, that litigation involved the telecast, over an extended period of time, of false allegations that Dominion was involved in “rigging” the 2020 election, despite FOX personnel’s behind-the-scenes acknowledgements (reflected in numerous emails and other materials) that the allegations were far-fetched and in fact false. The evidence in the Dominion case led the judge to find on summary judgment that it was “CRYSTAL clear that none of the Statements {broadcast by Fox News} relating to Dominion about the 2020 election are true” (italics and bold in original)<sup>19</sup> and to find that parent FOX, through the Murdochs, was sufficiently involved in Fox News’s debates and decisions about distributing these falsehoods to

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Murdoch Family Trust does not support will not be adopted, whether or not such proposals to stockholders are also supported by the other holders of Class B Common Stock.”

(available at [https://www.sec.gov/Archives/edgar/data/1754301/000156459019031285/fox-ex43\\_573.htm](https://www.sec.gov/Archives/edgar/data/1754301/000156459019031285/fox-ex43_573.htm))

<sup>15</sup> See, e.g., *Brantley v. NBC Universal, et al.*, 675 F.3d 1192 (9<sup>th</sup> Cir. 2012), a case in which Murdoch Trust-controlled 21<sup>st</sup> Century Fox, FOX’s predecessor as owner of FOX’s current assets, was a party.

<sup>16</sup> See Fox News Media discussion at page 11 of the Annual Report.

<sup>17</sup> See, e.g., John Ourand, *Fox pushes broadcast-heavy strategy with Women’s World Cup*, Sports Business Journal (July 17, 2023), <https://www.sportsbusinessjournal.com/SB-Blogs/Newsletter-Media/2023/07/17.aspx>

<sup>18</sup> By the time the Dominion litigation reached the stage where a factual decision was rendered by the ultimate trier of fact – which the Commission generally views as a prerequisite for it to take action under the Character Policy – it was too late as a practical matter to challenge the license renewal of any FOX station other than Fox 29 in this television license renewal cycle. The next opportunity will not arise until the renewal cycle beginning in 2028.

<sup>19</sup> *US Dominion, Inc., v. Fox News Network, LLC*, Del. Super. C.A.No. N21 C-03-257 EMD, Davis, J. (Mar. 31, 2023)(Op. and Order) (hereinafter “Summary Judgment Order”) at 43.



prevent him from finding that parent FOX was not itself a “publisher” of the falsehoods.<sup>20</sup> FOX and Fox News executives repeatedly acknowledged under oath in depositions that broadcast of false material was inconsistent with good journalistic practice<sup>21</sup> -- the same judgment reflected in the Commission’s promulgation of the “news distortion” policy discussed above at Note 3. Thus, the Dominion litigation presents a number of issues that are relevant to FOX’s licensing qualifications under the Character Policy.

The Fox 29 Petition is not the first time that character issues arising out of journalistic standards and practices at Murdoch-controlled entities have been raised with the FCC. In 2012, CREW filed a Petition to Deny the renewal of Murdoch-controlled stations in Washington, DC, and Baltimore, Maryland, based on the results of a British parliamentary inquiry into the conduct of Murdoch-controlled News Corporation in connection with the News of the World hacking scandal. That petition was rejected in 2013, in large part because there was no adjudicative finding of News Corp misconduct (the Parliamentary conclusions being akin to a Congressional report rather than a judicial finding), while the Character Policy requires such an adjudicative finding, or adjudicative facts, establishing misconduct for the FCC to consider it in a license renewal proceeding.<sup>22</sup>

In so deciding, however, the Chief of the Commission’s Video Division expressly declined to accept the Murdoch entities’ “position that ... actions of a licensee's parent or of affiliated companies ... not directly connected to a station, even though these actions transgress the standards set out in the 1986 Policy Statement or the 1990 Policy Statement[,] cannot implicate a station's renewal application.”<sup>23</sup> And the Division further stated that if it were presented with adjudicative facts adverse to a licensee (or its parent or affiliates) reflecting, “determinations of entities that hold primary responsibility for addressing non-communications related misconduct... {it would} incorporate the result of those entities' conclusions into its own {} decisions.”<sup>24</sup>

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<sup>20</sup> Summary Judgment Order at 46-48

<sup>21</sup> See, e.g., deposition quotations from Rupert Murdoch, Viet Dinh, and Jay Wallace, found in *Dominion’s Combined Opposition to Fox News Network, LLC’s and Fox Corporation’s Rule 56 Motions for Summary Judgment* (Public Version filed February 27, 2023), <https://int.nyt.com/data/documenttools/dominion-fox-news/54e33f20f7fb6e8d/full.pdf> at 1.

<sup>22</sup> In the Video Division’s decision denying the CREW Petition (*Re: Application for Renewal of License of WUTB, Baltimore, ID No.605552, File No. BRC DT-20120531AJL, et al*, DA 13-1007 (Video Division May 6, 2013), <https://docs.fcc.gov/public/attachments/DA-13-1007A1.pdf>) (the “CREW Decision”) at pages 6-7, the Chief of the Division notes “Whether the Commission is reviewing non-FCC misconduct of an applicant, its parent company, or its principals, it looks for adjudicated misconduct. In the 1986 Policy Statement, the Commission stated, “[T]here 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.”

<sup>23</sup> at 7, n. 65.

<sup>24</sup> *Id.* at 8. In Dominion, there was such a determination by the entity holding primary responsibility for addressing the non-FCC misconduct involved – a state court, in the context of a civil defamation case. This is the forum in which primary fact-finding on such issues must occur given that defamation is not a criminal matter. Further, because a pattern of defamatory false

One television license renewal cycle later, the Dominion litigation has raised a new set of journalistic practice issues that -- at least for the moment -- seem not to be directly connected to Fox 29 itself, but rather related to Fox 29's corporate affiliates, its controlling parent FOX, and the Murdochs. But there are major differences. This cycle, there is an adjudicative finding: the Dominion judge's summary judgment decisions that Fox News repeatedly telecast false statements concerning Dominion and the 2020 election, which distorted the information provided to Fox News viewers; and that FOX and the Murdochs may have been sufficiently involved in this conduct to be a "publisher" of the falsehoods.

It should be noted that that the Dominion litigation also raises another type of misconduct that is relevant under the Character Policy: misconduct in the litigation itself. FOX and Fox News made representations to the court as to possible withholding of materials in discovery, and as to Rupert Murdoch's individual role in at Fox News, that were sufficiently material and questionable to lead the judge to deem them "very serious" and to appoint a special master to investigate them.<sup>25</sup> Under the Character Policy, the truthfulness and reliability of its licensees is a special concern of the FCC, and behavior that may indicate a lack of candor in either a civil or criminal law context is to be considered by the FCC in its licensing decisions.<sup>26</sup>

Overall, the Dominion situation presents the Commission with the opportunity to take a different tack with FOX stations than it has in the past – one more consistent with the approach it frequently takes against smaller stations in less complex license renewal contexts.<sup>27</sup> We are confident that the Commission does not want to be perceived as treating any licensees as too big – or too politically connected – to regulate, so Instead of finding grounds to avoid considering questions of misconduct by the Murdochs and the entities they control, it can and should hold a hearing to flesh out relevant factual matters and then incorporate the Dominion judge's conclusions into its own decisions on FOX's fitness to be an FCC licensee, and/or any conditions that should be imposed on FOX's licenses to ensure FOX operates its stations in the public interest.

### SUGGESTED HEARING ISSUES

The Dominion judge, as finder of fact on summary judgment, found sufficient FOX misconduct to trigger FCC scrutiny under the Character Policy. But FOX's settlement of the Dominion litigation also short-circuited portions of the litigation that would have produced further fact-finding directly relevant to FOX's FCC character qualifications. For example, the Dominion settlement resulted in termination of the special master inquiry into FOX's conduct of discovery and related misrepresentations to the court; the results of that inquiry would bear

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statements by a licensee rising to the level of news distortion would be of concern to the FCC under published policies, a civil court determination finding just such a pattern in a case involving a licensee's unregulated sister media companies is exactly the sort of primary fact-finding of which the Commission must take notice when raised in a licensing context.

<sup>25</sup> <https://www.cnn.com/2023/04/12/media/fox-news-dominion-special-master/index.html>

<sup>26</sup> *1986 Character Policy Statement* at 1196, para. 36.

<sup>27</sup> *See, e.g., Arm & Rage HDO.*

directly on core Commission concerns of licensee truthfulness, reliability, and candor. And the lack of final fact-finding on “actual malice”<sup>28</sup> – whether Fox News’ repeated telecast of falsehoods, unconstrained by FOX, represented merely negligent fact-checking or crossed over into reckless disregard of falsity or even knowing falsity – also leaves unanswered certain questions directly related to licensee character. As a result, even though the FCC for good reason would prefer not to be the fact-finder of first instance on non-broadcast issues, a full and careful evaluation of issues posed by FOX’s conduct may require initial fact-finding in a hearing.

The FCC should not shy away from a fact-finding hearing in this case for four reasons.

- First, the misconduct that needs to be explored is directly media-related and in fact tied to an existing, express, and long-standing Commission policy for broadcast licensees. So even though as a technical matter the misconduct that was litigated in *Dominion* involves an “unregulated” FOX subsidiary, the relationship of the conduct to an issue area in which the FCC has expertise should give the Commission confidence that it is not wading into true “non-FCC misconduct” waters without staff experience or judicial guidance.
- Second, the *Dominion* record reveals that questionable Rupert Murdoch conduct extended to the broadcast side of FOX, not just the unregulated side – e.g., the Biden ads that Murdoch shared with Jared Kushner in arguable violation of FEC policies were to air on FOX 29 and other Fox Network stations in early afternoon NFL games, as Rupert Murdoch specified to Kushner when offering to get him a copy of the Biden ad.<sup>29</sup> This entire incident – knowing and sharing the creative, and knowing and sharing when it would air – involves Rupert Murdoch and FCC-regulated entities, necessitating fact-finding as to the scope and context of regular interactions between the Murdochs and the FOX stations.
- Third, the FCC itself acknowledged in its Character Policy that there may be cases in which conduct outside the broadcast sphere may so shock the conscience that the FCC might have to consider the conduct even before it is fully adjudicated by another body.<sup>30</sup> The breadth and duration of the conduct reflected in the *Dominion* litigation, and the consequences of that conduct that reverberate to this day, in our view are at or near that conscience-shocking level. In addition, to use the limits of the fact-finding in *Dominion* as an excuse to decline to hold a hearing on the FCC implications of that conduct after failing fully to probe prior

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<sup>28</sup> See Summary Judgment Order at 49-64.

<sup>29</sup> See Rupert Murdoch email embedded at

<https://twitter.com/isaacstanbecker/status/1633250103581351939> (March 7, 2023).

<sup>30</sup> 1986 *Character Policy Statement*, 1205, n. 60 (“The Commission acknowledges that there may be circumstances in which an applicant has engaged in nonbroadcast 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.”)



FOX journalistic misconduct would create perverse incentives for licensees: it would tell them that by settling cases before full final fact-finding they could create a situation in which misconduct that the FCC should consider is capable of repetition while evading FCC review – an arbitrary and capricious result.

- Fourth, the FCC has an obligation to treat like cases alike, regardless of the counterparty involved. In fact, in many ways it was the perceived need to formulate standards defining how it would exercise its discretion in order to treat like cases alike that led to the Character Policy in 1986. Now, the FCC designates license revocation hearings against small broadcast licensees for misconduct that is not as germane to core broadcast and journalism functions as FOX's misconduct in this case, and conducts fact-finding on at least some issues in connection with such hearing. For the Commission once again to shy away from examining Fox's conduct while threatening the licenses of smaller licensees may well raise substantial issues as to the Commission's exercise of discretion.

If the FCC decides to designate a hearing in this matter, we would respectfully suggest that the issues specified should include the following:

1. Whether the conduct of Fox 29's ultimate parent, FOX, and its controlling shareholders and executives Rupert and Lachlan Murdoch, in allowing Fox News to telecast repeated falsehoods over an extended period reflected negligence; a focus on ratings and profits rather than serving the public interest; reckless conduct; or knowledge of falsity in relevant telecasts;
2. Whether the misrepresentations to the Dominion court that were to have been investigated by a special master reflect adversely on the truthfulness or reliability of FOX, or reflect a lack of candor in dealing with the court in that case;
3. In light of the findings on Issues 1 and 2, whether FOX and the Murdochs lack the requisite character qualifications to control FCC broadcast licensees;
4. Whether, if the findings on Issue 3 are that the conduct of FOX and the Murdochs do not warrant license revocation or a required divestiture of FOX 29, any prophylactic conditions are required to protect Fox 29 against pressure from FOX or the Murdochs to act in ways inconsistent with the station's duty to serve the public interest, convenience, and necessity (e.g., periodic reporting to the Commission of interactions between station management and the Murdochs, limitations on such contact, a short-term license renewal, or requirements of functional or structural separation between the regulated Station Group and the unregulated FNM and Fox Sports entities); and

5. Whether, if there are adverse findings as to FOX and/or the Murdochs, any action should be taken with respect to imposition of conditions upon, or changes in the status of, FCC licenses for other FOX stations whose licenses were renewed earlier in the current renewal cycle, before the Dominion summary judgment order was entered on March 31, 2023.

## CONCLUSION

As media veterans, we are acutely aware of the power afforded to those who control the information broadcast on our nation's airwaves. The evidence presented in the Dominion case, considered in the light of the Commission's Character Policy, leaves no room for doubt: Rupert and Lachlan Murdoch's role in failing to stop, and indeed in perpetuating, election falsehoods broadcast on the FNM channels in connection with the 2020 election stands as a blatant violation of the character requirements expected from public trustees controlling broadcast licensees.

The MAD Petition filed against Fox 29 presents an unprecedented opportunity for the Commission to uphold its duty to ensure that those who control Fox 29 and all the other FOX stations ensure they are operated with an unwavering commitment to the public interest, convenience, and necessity first and foremost in mind. This moment also calls for the Commission to confirm the public interest standard for all FCC licensees, guided by a clear, thoughtful, and reasoned decision, alongside well-crafted conditions and remedies to address FOX's proven misconduct in the Dominion case and ensure it never happens on any FOX broadcast stations.

The truth remains inescapable for FOX:

- First, Rupert and Lachlan Murdoch hold the authority for decision-making over both Fox News and FOX's Station Group.
- Second, the Dominion Court unequivocally established that Fox News repeatedly disseminated false news, a finding that FOX itself acknowledged.
- Third, the Dominion Judge expressed his belief that FOX had made very serious misrepresentations to the Court, for which the FOX lawyers apologized.

These three simple facts compel the Commission to conduct a hearing, delving deep into the fitness of FOX and the Murdochs to continue as licensees of the public airwaves, and into what safeguards may be needed to ensure FOX uses those airwaves in ways that predominately serve the public interest. This needs to be done regardless of how politically fraught that course of action might be.



## CERTIFICATE OF SERVICE

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

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