

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

In the Matter of)
)
Application for Renewal of)
Broadcast Station Licenses of)
)
Fox Television Stations, Inc.)
For Renewal of Station License WTTG,)
Washington, D.C.)
)
Fox Television Stations, Inc.)
For Renewal of Station License WDCA,)
Washington, D.C.)
)
Fox Television Stations, Inc.)
For Renewal of Station License WUTB,)
Baltimore, M.D.)
)

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**REPLY IN SUPPORT OF PETITION TO DENY LICENSE RENEWALS AND FOR
OTHER RELIEF OF CITIZENS FOR RESPONSIBILITY AND ETHICS IN
WASHINGTON, MELANIE SLOAN AND JEREMY MILLER**

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TABLE OF CONTENTS

SUMMARY 1

ARGUMENT 3

1. The Petition Rests On Admissible Facts That Raise Issues
The Commission Can Resolve Only Through A Hearing 3

2. CREW And The Individual Petitioners Have Met Their
Burden Of Establishing Their Standing 8

3. The Commission Has Clear Authority To Evaluate The
Character Of Licensees In Considering Their Applications
For License Renewal 12

4. The Evidence Here Of Egregious And Conscience-Shocking
Misconduct Bears Directly On Fox’s Character And Warrants
A Hearing To Consider Whether Fox Should Continue To Hold
Broadcast Licenses 13

5. Fox’s Attempts To Distant Itself From News Corp. And The Conduct
Of Other News-Corp. Owned Subsidiaries Cannot Succeed 17

CONCLUSION 18

EXHIBITS

- Exhibit A: Letter from Harbottle & Lewis LLP to John Whittingdale, OBE MP, Chairman
House of Commons Culture, Media and Sport Selection Committee, August 11,
2011
- Exhibit B: Decision Under Section 3(3) Of The Broadcasting Act of 1990 And Section
9(3) Of The Broadcasting Act 1996: Licenses Held By British Sky Broadcasting
Limited

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**REPLY IN SUPPORT OF
PETITION TO DENY LICENSE RENEWALS AND FOR OTHER RELIEF**

SUMMARY

The three Fox television stations (“Fox”) wholly owned and controlled by News Corporation (“News Corp.”) that operate in the District of Columbia and Maryland have now filed, very belatedly,¹ an opposition to the petition of Citizens for Responsibility and Ethics in Washington (“CREW”) and two individual viewers to deny Fox’s applications for renewal of

¹ Under FCC regulations, oppositions to petitions like that filed by CREW are due within 10 days, a period that is extended by three days when service is accomplished by mail. See 47 C.F.R. § § 1.4, 1.45. CREW filed and served by mail its motion on August 22, 2012, making the opposition due September 12, 2012. Here, however, Fox filed its opposition on September 21, 2012, with no acknowledgment it was out of time and no attempt to seek leave of the Commission to file out of time. It is clear from the substance of the opposition that Fox waited for a ruling by Ofcom, pursuing a strategy at odds with Commission rules. By contrast, although this reply also is late, petitioners have sought leave of the Commission to file out of time.

broadcast licenses or, alternatively, schedule them for a hearing. The opposition rests on an interpretation of the Communications Act that essentially reads out of the statute the “character” requirement for broadcast licensees, ignores the relationship between Fox and News Corp., and brushes aside the evidence of patently egregious conduct in which News Corp. entities have engaged, under the direction and guidance of James and Rupert Murdoch, despite its clear relevance to the pending applications. Fox’s procedural objections equally lack merit. The standing of CREW and the two individual viewers is based on facts the Federal Communications Commission (“Commission”) and the courts repeatedly have recognized satisfy the constitutional requirements of Article III for standing. Further, the Commission’s jurisdiction to grant the requested relief cannot seriously be questioned; the Commission’s character policy was developed in part to guide the license renewal process.

At bottom, Fox asks the Commission to turn a blind eye to misconduct by News Corp. subsidiaries that provides ample predictive evidence of what the Commission reasonably can expect from other News Corp. subsidiaries, including the three Fox licensees at issue. Rupert and James Murdoch have overseen a media network involved in a vast array of illegal conduct ranging from illegal wiretapping of British and American citizens, including athletes, movie stars, and crime victims, to apparent violations of the Foreign Corrupt Practices Act. The evidence includes testimony of witnesses under oath about the lies James Murdoch and Rupert Murdoch told government bodies in the United Kingdom, and a corporate culture James and Rupert Murdoch tolerated, indeed fostered, that uses any available tactics – including tapping the phone of a murdered young girl – to gain a competitive advantage in the news business. Time and again, the Murdochs have failed to exercise effective leadership over their media empire,

instead demonstrating a proclivity to put the financial bottom line before ethics and the law. From this the Commission can and should conclude New Corp.'s wholly owned Fox subsidiaries lack the requisite character to continue to hold broadcast licenses. At a minimum, the evidence raises factual questions that can be resolved only through a factual hearing, as CREW has requested.

ARGUMENT

1. The Petition Rests On Admissible Facts That Raise Issues The Commission Can Resolve Only Through A Hearing.

In its petition, CREW and the individual petitioners ("CREW" or "petitioners") acknowledged Commission precedent disfavors the use of newspaper articles in considering a petition to deny a license renewal. Nevertheless, as CREW explained, ignoring the wealth of reports about the illegal activities of News Corp. subsidiaries and the manner in which Rupert Murdoch has injected himself directly into the operation of Fox over a lengthy period of time would work a great miscarriage of justice on the broadcast public, especially where corroborating evidence is readily available to the Commission through an evidentiary hearing.² Fox's response essentially asks the Commission to bury its proverbial head in the sand and act as if News Corp. subsidiaries have not been under investigation for a number of years, top News Corp. officials have not been charged with illegal acts in the conduct of their media responsibilities, and James and Rupert Murdoch have not been directing their media conglomerate here and abroad. Surely Commission rules do not require it to be deaf, dumb, and blind.

Moreover, CREW's petition also rests on evidence that bears all the hallmarks of

² Petition to Deny License Renewals And For Other Relief Of Citizens For Responsibility And Ethics in Washington, Melanie Sloan And Jeremy Miller ("Pet."), p. 13.

“adjudicative facts” admissible under Rule 201 of the Federal Rules of Evidence. This evidence includes deposition testimony offered under oath as part of an inquiry into the phone-hacking scandal committed by News Corp. that was led by Lord Justice Leveson in Great Britain (“Leveson Inquiry”), and the report of an investigation conducted by the House of Commons Culture, Media and Sport Committee that also included testimony adduced under penalty of perjury (House of Commons, Culture, Media and Sport Committee, News International and Phone-hacking, 2010-11, HC 903-I) (“House of Commons Report”). The facts gathered from both of these governmental inquiries are from sources “whose accuracy cannot reasonably be questioned,”³ whether or not the Commission agrees with their conclusions. As the notes to Rule 201 explain, “[t]he usual method of establishing adjudicative facts is through the introduction of evidence, *ordinarily consisting of the testimony of witnesses.*” Fed. R. Evid. 201 advisory committee’s note (emphasis added). That is precisely what CREW has offered here.

The best Fox can muster in response is the charge that the House of Commons Report was issued by “a sharply-divided Parliamentary committee” that resulted in a “sharply-divided vote.”⁴ This division, while possibly reflecting something about the composition of the Committee, had no impact on the evidence itself.⁵ Fox argues further the Commission should

³ Fed. R. Evid. 201.

⁴ Opposition of Fox Television Stations, Inc. (“Oppos.”), pp. 6, 8.

⁵ Relying on this faulty logic, Fox points to the conclusion of Ofcom, the agency that regulates the communications industry in the United Kingdom, as support for its contention the Commission here should ignore the evidence in the Leveson Inquiry and House Commons Report. Oppos. at 8. Yet Ofcom fully considered all of this evidence, and while it “did not treat the Parliamentary committee report as an ultimate adjudication” on the merits of the claims before it, *id.*, it certainly considered the evidence the report contains in reaching its decision. That is all CREW asks this Commission to do.

not consider this evidence because it does not come from “an adjudication of any kind.”⁶ But this misapprehends Rule 201, which applies to facts that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned,”⁷ not to those arising only from a formal adjudication.

The cases Fox cites also offer no basis to reject the evidence proffered by CREW, as they stand for the unremarkable proposition that “legal arguments” are not adjudicative facts,⁸ and that cases involving “different parties and different factual situations” are not comparable.⁹

Finally, Fox’s opposition demonstrates that key facts are in dispute, requiring a factual hearing for resolution. Specifically, Fox asserts News Corp. should be excused here because it

cooperated extensively with U.K. police and other officials and has voluntarily provided to authorities a tremendous amount of information, some of which has proved critically important in the U.K. police’s investigation of wrongdoing.

Oppos. at 21. Fox ignores the conduct that led to investigations of News Corp. in the first place and instead, as further evidence of News Corp.’s purportedly acceptable character, relies on remedial steps it claims News Corp. has taken and its alleged “full cooperation with all investigations.” *Id.* at 21-22. While Fox has provided no support whatsoever for these attorney-generated claims, even if supported they reveal a factual conflict that can be resolved only through a hearing before the Commission.

⁶ Oppos. at 8.

⁷ Fed. R. Evid. 201(b)(2).

⁸ See, e.g., *In re Western Communications, Inc.*, 59 F.C.C.2d 1441, 1455 (1976), *reversed on other grounds*, 489 F.2d 594 (D.C. Cir. 1978).

⁹ *Id.*

Moreover, the evidence paints a decidedly different picture of the Murdochs than the Opposition suggests. Far from “cooperat[ing] extensively,” Rupert and James Murdoch went to great lengths initially to cover up the phone hacking scandal. Following convictions of several people involved in the scandal, News Corp. made a number of key assertions later proven to be untrue, including: (1) that “one ‘rogue reporter’” alone was responsible for the phone hacking working with a private detective; (2) that News Corp. had “thoroughly investigated” the phone hacking affair on three separate occasions and found “no further evidence of wrongdoing”; (3) that the phone hacking occurred only during the period 2005-2006; and (4) the “potentially illegal intrusion was limited to phone-hacking, and confined also to the *News of the World* among News International’s newspaper titles.” House of Commons Report, ¶ 18. Each of these assertions was decidedly false. *Id.*

Similarly, Rupert and James Murdoch relied on the supposedly “clean bill of health” provided them by an outside law firm, Harbottle & Lewis LLP, they claimed had been hired ““to find out what the hell was going on.”” *Id.*, ¶¶ 54, 55. According to the Murdochs, they relied on a letter from the firm clearing News Corp. and its subsidiary News International Limited, they characterized as ““one of the pillars of the environment around the place that led the company to believe that all of these things were a matter of the past and that new allegations could be denied.”” *Id.* These claims also were false. The letter from Harbottle & Lewis did not give the Murdochs a “clean bill of health,” and did not “draw any conclusions about the existence or otherwise, of evidence of any form of criminal activity other than phone-hacking.,” *Id.* at ¶ 55. Instead, in a “tightly worded” letter,¹⁰ Harbottle & Lewis opined only on the task to which it was

¹⁰ House of Commons Report, ¶ 55.

assigned:

look[ing] for evidence . . . suggesting either that certain named individuals knew of and supported Mr. Goodman's involvement in phone hacking activities, or that others at The News of the World were also carrying out phone hacking activities.

Letter from Harbottle & Lewis LLP to John Whittingdale, OBE MP, Chairman, House of Commons Culture, Media and Sport Select Committee, August 11, 2011, ¶ 8 (attached as Exhibit A). The firm, however, "was not retained to look for evidence of wider criminal activities and did not do so." *Id.* In short, once caught the Murdochs and News Corp. engaged in containment, not cooperation, and did everything they could to tamp down the investigation, including limiting what their lawyers could review.

Fox makes another factual assertion about the level of independence between News Corp., its foreign subsidiaries, and Fox and asks the Commission to conclude from this they are separate legal entities with individual conduct that cannot be attributed in any way to Fox. *Oppos.* at 19-21. This assertion raises critical factual issues about the extent of control News Corp. and Rupert and James Murdoch have exercised over Fox, the extent to which the corporate culture News Corp. has cultivated abroad in its other subsidiaries is present here, and the extent to which the behavior of other News Corp. subsidiaries and News Corp.'s role in that behavior is predictive of what we can expect from Fox in the United States. All of these questions can be resolved only through a factual hearing. *See* 47 U.S.C. § 309(e) (requiring Commission to designate an application for hearing where "a substantial and material question of fact is presented.").

2. CREW And The Individual Petitioners Have Met Their Burden Of Establishing Their Standing.

In their petition, CREW and the individual petitioners demonstrated standing to bring this petition as individuals within the viewing area who have watched the programming of the three challenged licensees. Declarations accompanying the petition explain how Fox's inability to meet the character requirement for its licensees means Fox cannot be expected to operate its television stations consistent with the requirements of governing communications laws, FCC rules, and policies. *See* Exhibits A and B to Pet. (Declarations of Melanie Sloan and Jeremy Miller).

In response, Fox misconstrues the nature of and basis for CREW's standing as well as that of the two individual petitioners. CREW is not a member organization, nor is it claiming standing on behalf of members. *See* Oppos. at 9 (mischaracterizing CREW as "an organization with members" and faulting CREW for not showing how its members "would be harmed by grant of the renewal applications."). CREW's standing is based on the fact that Melanie Sloan, its executive editor, has appeared on Fox's WTTG station four times on behalf of CREW,¹¹ and CREW relies on programming content of news stations like those run by Fox to keep current on events relevant to CREW's mission.¹² CREW has asserted harm from Fox's failure to meet the character requirement of all licensees because, as a direct result, CREW "cannot rely on the quality and content of Fox broadcasts or that they will comply with the law."¹³ Similarly, the two

¹¹ *See* Declaration of Melanie Sloan, ¶ 4 (Exhibit B to Pet.).

¹² *Id.* at ¶ 5. *See also* Declaration of Jeremy Miller, ¶ 2 (Appendix B to Pet.).

¹³ Declaration of Melanie Sloan at ¶ 6; Declaration of Jeremy Miller at ¶ 3.

individual petitioners claim standing as viewers of the three Washington, D.C. and Maryland Fox stations seeking license renewal based on allegations of harm flowing from” the depriv[ation] of broadcasting provided by a licensee of good character” the Communications Act guarantees.¹⁴

The Commission and the courts have long recognized viewers like the petitioners here have standing to vindicate the public interest embodied by requirements like the character requirement at issue. In explaining why representatives of the licensing public had standing to intervene in a license renewal proceeding, the D.C. Circuit stated:

These individuals and organization represent the total audience, not merely one part of it, and they assert the right of all listeners, regardless of race or religion, to hear and see balanced programming on significant public questions . . . and also their broad interest that the station be operated in the public interest in all respects.

Office of Commc'n of the United Church of Christ v. FCC, 359 F.2d 994, 999 (D.C. Cir. 1966)

(“UCC”) (emphasis added). Accordingly, these “spokesmen for the listeners” had standing to oppose the renewal application of a television statio, because granting them standing met the “need . . . to provide a means for reflection of listener appraisal of a licensee’s performance as the performance meets or fails to meet the licensee’s statutory obligation to operate the facility in the public interest.” *Id.* at 1002, 1006.

Here, too, CREW and the individual petitioners are stand-ins for the entire viewer audience, representing the public interest in having Fox comply with the character requirement the statute commands. When the Commission initiated a written character policy in 1981, it made clear it was building on “the concept of the broadcaster as a public trustee, held to a high

¹⁴ *Id.* at ¶ 4; Declaration of Melanie Sloan at ¶ 7.

standard of conduct in its fiduciary relationship with its community of license.” *In the Matter of Policy Regarding Character Qualifications in Broadcast Licensing*, 87 F.C.C.2d 826, 840 (1981) (“1981 Policy”). Consequently, CREW and the individual petitioners, who are within the “community of license” of the three Fox stations, have a fiduciary relationship with those stations that supports their standing to petition to have the license renewal applications denied. In this way, petitioners seek to vindicate the interests of the public at large, an interest that confers standing on them.

Further, in explaining its character policy as modified in 1986, the Commission expressly made the link between “the public interest standard embodied in the Communications Act” and the character requirement of that law. *In the Matter of Policy Regarding Character Qualifications in Broadcast Licensing*, 102 F.C.C.2d 1179, 1190 (1986) (“1986 Policy”). And in the 1991 revisions to its character policy, the Commission stressed “character is essentially a matter of an applicant’s basic qualifications.” *In the Matter of Policy Regarding Character Qualifications in Broadcast Licensing*, 6 F.C.C. Rcd 3448, 3450 (1991) (“1991 Policy”). As a necessary corollary, the serious questions petitioners have raised here about the character of the three Fox stations at issue strike at the core of the stations’ basic qualifications to continue to hold broadcast licenses. The public interest in this matter clearly is at an apex, reinforcing the critical role CREW and the individual petitioners are playing as stand-ins for that interest, and the harm petitioners and the public will suffer if Fox’s applications are granted, notwithstanding their failure to satisfy the character requirement.

In an effort to avoid the clear impact of the judicially recognized viewer standing, Fox argues petitioners lack standing because their petition is not based on any of the stations’ “actual

broadcast performance.” Oppos. at 10. There is no support, however, for interpreting the concept of broadcast standing so narrowly. Indeed here, as in *UCC*, the nature of the interest petitioners seek to advance and the harm they seek to avoid is, unlike a complaint about a specific broadcast performance, “inherently future oriented.” *Branton v. FCC*, 993 F.2d 906, 910 (D.C. Cir. 1993) (explaining why plaintiffs in *UCC* had standing). The character requirement is a way to look at a range of conduct in the past as predictive of the ability of a licensee to comply in the future with the Communications Act and implementing FCC rules and regulations.¹⁵ Accordingly, character claims like those petitioners bring here in a petition to deny a license renewal application will differ fundamentally from a complaint that a specific broadcast performance did not comply with law. But that difference, as case law teaches, does not mean petitioners objecting to a license renewal on character grounds lack standing to sue.¹⁶

¹⁵ In a reductionist manner, Fox tries to dismiss such claims as nothing more than asserting petitioners “do not trust Fox to comply with the law.” Oppos. at 10. But that is not what petitioners have claimed as their injury. Rather, petitioners have claimed Fox cannot satisfy the character requirement’s basic qualification to be a broadcast licensee. Therefore, petitioners and the public at large are harmed by a licensee that fundamentally does not operate in the public interest. Further, because the character requirement is predictive in nature, it essentially is an inquiry about whether, lacking character, a licensee can be expected to comply with its legal obligations in providing services to the broadcast public. See, e.g., 1981 Policy at 846 (“For an existing broadcaster, the best predictor of future service is the applicant’s past service as a broadcast licensee.”).

¹⁶ *Rainbow/PUSH Coalition v. FCC*, 330 F.3d 530 (D.C. Cir. 2003), cited by Fox is inapposite. The plaintiffs there were attempting to ground their standing in harm allegedly flowing from the Commission’s failure to regulate a broadcaster in the plaintiffs’ listening area. The court found the alleged harm to be both too speculative and not sufficiently concrete. *Id.* at 545. But the court did not repudiate its holding in *UCC* that standing may be accorded to listeners seeking to vindicate the public interest. *Id.* at 543. Here, unlike *Rainbow/PUSH*, petitioners are not complaining about the Commission’s failure to take a specific enforcement action, nor do they seek to vindicate personal interests. As in *UCC*, petitioners will be injured should the Commission grant the renewal licenses because the public will be subject to a licensee that does not meet the fundamental prerequisites for holding a broadcast license, prerequisites established

3. The Commission Has Clear Authority To Evaluate The Character Of Licensees In Considering Their Applications For License Renewal.

Fox makes the extraordinary and completely unsupportable claim that the Commission cannot even evaluate claims that Fox lacks the requisite character to continue to hold broadcast licenses in the context of a petition to deny renewal. Pointing to the text of section 309(k) of the Communications Act, Fox claims the Commission is limited to considering only whether a specific station “has served the public interest through its programming and service to its community and whether there have been violations . . . of the Act or the Commission’s rules and regulations,” a limitation it claims excludes consideration of character. *Oppos.* at 12.

Nothing could be farther from the truth. First, Fox has placed a gloss on section 309(k) that the language of that provision cannot support. Moreover, the Commission’s character policy was designed, in part, to address the issue of character with respect to existing broadcasters by looking at their “past service” as “the best predictor of future service.” 1981 Policy at 846. As part of that process, where the Commission has “reason to believe an applicant cannot be expected in the future to fulfill its obligations as a broadcast licensee, its application should be denied.” *Id.* at 845. Indeed, the Commission expressly has eschewed treating “new nonlicensee applicants differently than existing broadcasters with regard to the scope of consideration given non-FCC misconduct.” 1986 Policy, p. 1206. Fox’s suggestion that character cannot even be considered as part of the renewal process simply cannot be squared with this intent. Even more significantly, the Commission “enjoys broad discretion ‘both to define the public interest and to determine what procedures best assure protection of that interest.’” 1986 Policy at 1188. That

to protect the public interest.

broad discretion clearly includes considering character in deciding whether to grant or deny Fox's license renewal applications.

At bottom, Fox seeks to read the character requirement out of the statute altogether, claiming only program-specific claims are relevant to whether its renewal petitions should be granted. But neither the statute nor Commission policies implementing the statute support such a crabbed approach, which would rob the Commission of the ability to address a requirement going to Fox's "basic qualifications." 1991 Policy at 3450.

4. The Evidence Here Of Egregious And Conscience-Shocking Misconduct Bears Directly On Fox's Character And Warrants A Hearing To Consider Whether Fox Should Continue To Hold Broadcast Licenses.

Following a strategy of ignoring the statute and current Commission policy, Fox devotes much of its opposition to arguing that the extensive allegations concerning News Corp. and its subsidiaries, as "unadjudicated non-FCC misconduct,"¹⁷ have no relevance here. As explained herein and in the Petition, character goes to the heart of an applicant's qualifications, and the evidence of misconduct here is egregious and conscience-shocking.

To be sure, Commission policy on character states it is generally "appropriate to refrain from making licensing decisions based on mere allegations of relevant non-FCC misconduct," and that the Commission "will generally await the decision by the ultimate trier of fact before taking any additional action." 1990 Policy at 3252-53. At the same time, however, the Commission has retained the discretion to consider allegations "so egregious as to shock the conscience and evoke almost universal disapprobation . . . even prior to adjudication by another

¹⁷ Oppos. at 13.

body.” 1986 Policy at 1205 n.60; *see also* 1990 Policy at 3252 n.5.¹⁸ As set forth in the petition, the misconduct here rises to the level of conscience-shocking and warrants consideration now, while Fox’s renewal petitions are pending. *See* Pet. pp. 15-33.

Thus, while Fox cites to a number of decisions refusing to consider unadjudicated claims, those decisions do not apply here where the basis for the petition rests on a pattern of egregious conduct. Moreover, many of those cases are readily distinguishable on their face. For example, in *In re Stockholders of Renaissance Comunic’n Corp.*, 12 F.C.C. Rcd 11866 (1997), cited by Fox (Oppos. at 13 n.41), the Commission noted an absence of non-FCC misconduct “that we would deem relevant to Renaissance’s qualifications.” *Id.* at 11870. Here, by contrast, CREW has presented a wealth of evidence directly relevant to Fox’s character and, therefore, its qualifications to continue to hold broadcast licenses. Similarly, in *In re Comcast Corp.*, 26 F.C.C. Rcd 4238 (2011), also cited by Fox (Oppos. at 14 n. 40), the Commission found the dispute before it did not even call into question the character qualifications of Comcast, *id.* at 4351, a markedly different situation than that presented here. And in *In re AT&T Wireless Services, Inc.*, 19 F.C.C. Rcd 21522 (2004), on which Fox relies (Oppos. at 14 n.40), the Commission confirmed the discretion it has to consider non-FCC misconduct on a case-by-case basis. *Id.* at 21549. *See also In re ACT Licensee, Inc.*, 22 F.C.C. Rcd 18535, 18539 (2007) (cited at Oppos. p. 15) (Commission refused to designate a renewal application for hearing because “[t]here is no finding that the wrongdoing had any connection with or effect on the

¹⁸ Throughout its opposition, Fox ignores this caveat, relying exclusively on the Commission’s general policy not to rely on non-FCC conduct not yet fully adjudicated. But the Commission is bound by its policy especially where, as here, the facts establish a pattern of conduct so egregious that to await full adjudications of all pending and anticipated claims would work a severe injustice on the public.

licensee.”).

Here, contrary to the claims of Fox, petitioners are not asking the Commission to interpret statutes for which it has no expertise or make value judgments about conduct having no bearing on Fox’s licensing function. *See Oppos.* at 15-16. Instead, petitioners have put before the Commission evidence of longstanding and persistent conduct that under any system – be it the United Kingdom or the United States – would be viewed as conscience-shocking. It is difficult, if not impossible, to imagine a society that would condone illegally tapping the phone of a murdered young girl, thereby fostering the notion she was still alive, to gain a competitive advantage in the newspaper business. Similarly, bribing police officers for information is just as illegal and conscience shocking in the United States as it is in England.¹⁹ News Corp. subsidiaries, under the leadership and with the participation of Rupert and James Murdoch, have crossed the line between sensational journalism and illegal and morally reprehensible conduct. It does not take an expert to conclude that journalistic misconduct of this magnitude relates directly to the broadcast licensing function of Fox, as a wholly owned subsidiary controlled by News Corp.

At the same time Fox asks the Commission to ignore News Corp.’s non-FCC misconduct, Fox also asks the Commission to adopt the findings of Ofcom that British Sky Broadcasting Limited (“BSkyB”), in which News Corp. owns approximately 40% of the issued shares, satisfies the “fit and proper person” requirement of all British licensees. *See Oppos.* at

¹⁹ In fact, Mr. Murdoch has admitted the Department of Justice is investigating whether News Corp. violated the Foreign Corrupt Practices Act. *See In the Matter of the Leveson Inquiry into the Culture, Practices, and Ethics of the Press, Witness Statement of Keith Rupert Murdoch*, ¶ 179, April 12, 2012 (Exhibit NN to Pet.).

16-17. With no support or analysis, legal or otherwise, Fox claims the “fit and proper” standard “is akin to the Commission’s ‘character’ evaluation.” *Id.* at 16. The Commission, however, cannot simply take this at face value. More to the point, as a 40% News Corp. owned subsidiary, BSkyB stands in a decidedly different relationship to its parent than does Fox, which is 100% owned by News Corp. and for which there is evidence of the substantive role Rupert Murdoch has played in Fox’s day-to-day operations, including programming decisions. *See* Pet. at pp. 11-15.

But while the Commission has no basis to conclude the “fit and proper” standard is on all fours with its character requirement, the Ofcom report is instructive here. Ofcom considered all of the evidence Fox argues the Commission should ignore, concluding it was “capable of being relevant to the fitness and propriety of a broadcaster, notwithstanding the fact that such wrongdoing was not related to the performance of broadcasting functions.” Decision Under Section 3(3) of the Broadcasting Act 1990 and Section 3(3) of the Broadcasting Act 1896: Licenses Held by British Sky Broadcasting Limited (“Ofcom Report”), ¶ 8 (Exhibit B hereto). Further, Ofcom deemed the conduct and character of Rupert and James Murdoch as relevant to the inquiry before it, given their role in BSkyB’s parent company and News Corp.’s part ownership of BSkyB. *Id.*, ¶ 11. And its conclusions were hardly a ringing endorsement of the Murdochs; Ofcom questioned the competence of James Murdoch “in the handling of these matters, and his attitude towards the possibility of wrongdoing in the companies for which he was responsible.” *Id.* at ¶ 36.

In the final analysis, while the Ofcom report has some relevance here, it does not bind this Commission. Further, it reinforces the point that without a full evidentiary hearing and

consideration of all the evidence, the Commission is not in a position to determine whether Fox possesses the requisite character to continue to hold broadcast licenses.

Finally, Fox argues drug trafficking and child molestation comprise the only “egregious” non-adjudicated conduct the Commission can consider. *Oppos.* at 18. To the contrary, the Commission has expressly refused to define the universe of egregious conduct, instead making clear it would approach this issue in the context of “a specific application involving specific misconduct.” 1986 Policy at 1205 n.60.

5. Fox’s Attempts To Distant Itself From News Corp. And The Conduct Of Other News-Corp. Owned Subsidiaries Cannot Succeed.

Throughout its opposition, Fox attempts to distance itself from News Corp., which is understandable given the egregious conduct of its parent. Commission policy, however, compels consideration of News Corp.’s conduct. *See* 1986 Policy at 1219:

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

The petition details how each of these requirements has been met. *See* *Pet.* at 11-15.

Fox offers nothing to counter this evidence beyond calling “the existence of a close relationship between Fox and News Corp.” a “total non-sequitur.” *Oppos.* at 20. Name calling cannot substitute for evidence. Equally unavailing is Fox’s suggestion, unsupported by any evidence, that Fox and News Corp. have “very different functions and purposes, notwithstanding the parent-subsidiary relationship.” *Id.* at 21 (citation omitted). Bald assertions provide the Commission no basis to reject the evidence CREW has proffered.

Moreover, as even Ofcom recognized, the conduct of News Corp. and James and Rupert Murdoch bear directly on a subsidiary like Fox, particularly where Fox is 100% owned by News Corp. and Rupert Murdoch has for years injected himself into the day-to-day operations of Fox.

Finally, Fox attempts to counter the evidence in the Petition with statements about the level of News Corp.'s cooperation with British authorities and the corrective measure News Corp. purportedly has taken. *See Oppos.* at 21-22. As discussed above, these statements not only are false, but they are no substitute for the evidence Fox must now muster to counter the wealth of evidence CREW has offered and the clear implication of that evidence, namely that News Corp. has misled, if not lied to investigators and perpetuated a culture throughout its media empire that tolerated, if not encouraged, egregious and conscience-shocking behavior.

CONCLUSION

The Commission now faces a choice: ignore the pattern of conduct News Corp. has exhibited again and again with respect to its subsidiaries, conduct that has spilled over into the United States, or look more carefully at the evidence through a hearing designed to resolve the issue of Fox's character, a fundamental prerequisite for every broadcast licensee. The Commission has reserved to itself the discretion to consider unadjudicated conduct that rises to the level of egregious and conscience-shocking. Petitioners respectfully submit this is such a case. Accordingly, the petition should be granted and the Commission should schedule a hearing at the earliest opportunity pursuant to 47 C.F.R. § 1.253.

Respectfully submitted,



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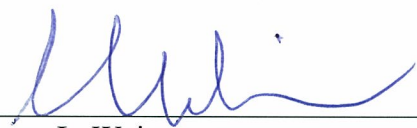
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2012, true and correct copies of the foregoing Reply in Support of Petition to Deny License Renewals were served by hand-delivery on the following:

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REPLY EXHIBIT A

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11 August 2011

Dear Sir

News International

Thank you for your letter of 29 July 2011.

As you know, we have received a limited waiver of confidentiality and legal professional privilege from News International Limited ("News International") (we were not instructed by News Corp) so as to allow us to respond to your questions and those of The Rt Hon Keith Vaz MP of the Home Affairs Committee ("HAC"). We have now also had the meeting with the Metropolitan Police Service which was foreshadowed in our letter of 28 July 2011. The purpose of that meeting was to ensure that the release of information and documentation from our file would not prejudice their ongoing criminal investigation. They have indicated that they are content for us to provide the response attached to this letter subject to the redaction of certain names.

We have been requested by the Metropolitan Police not to include any reference at all to the contents of the emails which this firm reviewed in 2007 at the present time. This is not (for the avoidance of doubt) because those emails are being kept secret: full copies of the materials which the firm preserved in 2007 have been passed by us to the Metropolitan Police. Rather, it is because we have been advised by the police that it is essential to preserve the integrity of their criminal investigation that these emails are not released into the public domain at present.

Subject to the above, we are therefore now in a position to provide you and the HAC with a response to your questions.

We have, as requested, reconsidered the letter of 29 May 2007 (not 27 May 2009) which we understand was provided to the Committee by News International in 2009.

We have set out a very full answer to your questions and those of the HAC in the attached response document. The response document sets out in detail the background to our retainer and the work carried out as well as our comments on a number of matters. This is necessary in order to give a full response to your questions and to set our answers in the proper context.

4203903-1

John Whittingdale OBE MP

11 August 2011

We set out below a brief response to the questions appended to your letter (our cross references to paragraph numbers are to paragraphs in the attached response document). However, we would urge you to consider the full detail as set out in the response document.

1. When was Harbottle & Lewis first instructed in respect of matters concerning alleged or suspected phone-hacking?

Lawrence Abramson, then a partner in the firm, was contacted by Jon Chapman, Director of Legal Affairs at News International, by telephone on 9 May 2007. There is no note of the conversation on the file, but Mr Chapman then sent instructions to Mr Abramson by email on 10 May 2007. This email and the fax which followed it on the same day are at Appendix B of the response document. The instructions were limited to assisting News International in handling an internal appeal by Clive Goodman against his dismissal (please see paragraphs 6-13 of the response document), and were not instructions to conduct the longer and more detailed exercise apparently carried out by another firm, Burton Copeland (please see paragraphs 16-18 of the response document).

2. Were these instructions given on behalf of News International Ltd, News Group Newspapers Ltd, or on behalf of both?

These instructions were given on behalf of News International Limited, of which Mr Chapman was Director of Legal Affairs.

3. Please could you provide details of the instructions, including a copy of any document in which the instructions were reduced into writing.

The email of instruction of 10 May 2007 and the fax which followed it on the same day are at Appendix B of the response document. The instructions are described in paragraphs 5h and 5i and 6 to 13 of the response document. Certain names have been redacted from both at the request of the Metropolitan Police. They were the names of other individuals at The News of the World.

4. Which individual gave the instructions on behalf of News International Ltd/News Group Newspapers Ltd, and to which individual at Harbottle & Lewis were the instructions addressed?

The instructions were given by Mr Chapman to Mr Abramson.

5. Please supply details of Harbottle & Lewis's primary point of contact at News International Ltd/News Group Newspapers Ltd. You have explained in your letter of 20 July to the Chairman that Mr Lawrence Abramson acted in this matter on a retainer from News International. Please confirm whether or not any other member of your firm was involved in preparing advice under this retainer, and please identify any such person.

The firm's primary point of contact at News International was Mr Chapman. There was also some contact with Daniel Cloke, News International's Group Human Resources Director. Mr Abramson was the primary point of contact at the firm and was the only

John Whittingdale OBE MP

11 August 2011

partner involved in the review of the emails, for which he used a team of two paralegals and a trainee solicitor (please see paragraph 5k of the response document).

6. **What description of the emails provided was supplied to Harbottle & Lewis by News International Ltd/News Group Newspapers Ltd? Please supply a copy of any relevant letter or communication from the Correspondence File mentioned in your letter of 20 July.**

The description of the emails was set out in the original instruction which we received from News International in the email of 10 May 2007 at Appendix B of the response document.

7. **Please indicate whether Harbottle & Lewis became aware at any time that the documentation supplied was incomplete and, if so, please describe in what way it was incomplete.**

For the purposes of its exercise, the firm was given remote electronic access to emails on News International's server rather than being supplied with paper copies. The firm was therefore given instructions as to how to access "the Public Folder within the News International MS Exchange email system". The emails which the firm was asked to review were contained in five sub-folders within the system. It seems that electronic access was not entirely straightforward: some emails appeared only in cut off form and there was difficulty in (for example) opening attachments to emails. Presumably for these reasons, the file shows that News International (Mr Lowndes) printed off some emails and sent them to the firm in hard copy by courier on 16 or 17 May 2007. (Even then some of the emails appeared only in cut off form.) (Please see paragraphs 5k to l of the response document.)

8. **Please indicate whether any particular type of activity was excluded from the scope of the investigation commissioned from Harbottle & Lewis.**

The firm was instructed only to look for evidence (in five sub-folders provided by News International) suggesting either that certain named individuals knew of and supported Mr Goodman's involvement in phone hacking activities, or that others at The News of the World were also carrying out phone hacking activities. It was not retained to look for evidence of wider criminal activities and did not do so.

9. **Did the investigation extend to other individuals at the newspaper, for instance Neville Thurlbeck and Ross Hindley/Hall if not, why not?**

We are not at present able to answer this question, at the request of the Metropolitan Police.

10. **Please describe any additional documentation requested by Harbottle & Lewis in connection with their investigation.**

We did not request any further documents, because the task which Mr Abramson was asked to perform was confined to a review of the emails on the five sub folders on the News International email system.

John Whittingdale OBE MP

11 August 2011

11. Please set out what advice was given orally, by whom, to whom, and when.

We cannot answer this question because any oral advice to News International was provided, during the time period 10 May – 29 May 2007, by Mr Abramson who left the firm on 30 May 2010. He is now a partner at Fladgate LLP.

12. Please set out what advice was given in writing, by whom, to whom, and when.

The only written advice was the letter of 29 May 2007, the production of which is described in the response document (please see paragraphs 5n to r of the response document).

13. Please confirm whether or not the documents provided to Harbottle & Lewis provided any grounds for reasonable suspicion that a criminal act might have been or might be committed by an employee or director of News International Ltd or of News Group Newspapers Ltd, and if so, what advice was given by Harbottle & Lewis?

As explained above, at the request of the Metropolitan Police, we are not in a position to comment on the content of the emails in question.

14. Please confirm when Mr Abramson closed his file and retained it in archived storage. Please also confirm whether or not the contents of the file retrieved from the archive earlier this year are the same as those of the file closed by Mr Abramson.

The file went into archive storage with an external storage company, Restore, on 10 November 2008. It was not until 25 March of this year when the firm was asked by News International's then solicitors, Burton Copeland, to provide papers from the file that it was retrieved from archive. We have no reason to believe that the file which went into storage in November 2008 did not contain the same documents as the file retrieved from storage in March 2011. (Please see further paragraph 22 of the response document.)

15. Please set out any matters in respect of which Harbottle & Lewis believes that this Culture, Media and Sport Select Committee or its predecessor may have been given misleading, or inaccurate information about the review undertaken by Harbottle and Lewis.

We refer the Committee to paragraphs 14 to 18 of our response document.

We trust that this letter and the enclosed response document cover in full all of your questions to this firm (within the confines of what may be said pending the criminal investigations). However, if we can assist the Committee any further, please let us know.

Yours faithfully



Harbottle & Lewis LLP

REPLY EXHIBIT B

DECISION UNDER SECTION 3(3) OF THE BROADCASTING ACT 1990 AND SECTION 3(3) OF THE BROADCASTING ACT 1996: LICENCES HELD BY BRITISH SKY BROADCASTING LIMITED

Legal framework

1. A provider of any "relevant regulated television service" must hold a licence under the Broadcasting Act 1990 (the "1990 Act") or the Broadcasting Act 1996 (the "1996 Act")¹. Depending on the type of television service in question, a provider may be licensed under either the 1990 Act or the 1996 Act. British Sky Broadcasting Limited ("Sky") holds licences of various kinds under each of these Acts.
2. Under s.3(3) of each of the 1990 Act and the 1996 Act, Ofcom:
 - (a) shall not grant a licence to any person² unless satisfied that the person is a fit and proper person to hold it; and
 - (b) shall do all that they can to secure that, if they cease to be so satisfied in the case of any person holding a licence, that person does not remain the holder of the licence.
3. Therefore, Ofcom has an ongoing duty to remain satisfied that broadcast licensees are fit and proper.
4. For its assessment of whether Sky remains fit and proper to hold broadcast licences, Ofcom has been considering the implications of information that has become available regarding unlawful activities at newspapers owned by News Group Newspapers Limited ("NGN")³. This document sets out Ofcom's findings in relation to that question, on the evidence available to date.
5. As Ofcom's duty to be satisfied that licensees remain fit and proper is ongoing, should further material evidence become available, Ofcom would need to consider that evidence in light of its duty.

Process

6. Ofcom reached a provisional decision at a board meeting held on 10 July 2012. That provisional decision was sent to Sky, Sky plc and to James Murdoch on 30 July 2012. Sky provided written submissions on the provisional decision on 22 August 2012. James Murdoch provided written submissions on 17 August 2012 and 13 September 2012. Ofcom has considered their submissions and has taken them into account in reaching its final decision.
7. Certain information has been redacted from this decision in order to avoid any prejudice to ongoing criminal proceedings. The redactions are marked.

¹Section 13(1) of the 1990 Act. A "relevant regulated television service" is a service regulated by Ofcom under s.211 of the Communications Act 2003.

² A "person" may be any legal person, which would include an individual and a corporation. In this case, the licensee is the company British Sky Broadcasting Limited.

³ NGN is a wholly-owned subsidiary of NI Group Limited, formerly known as News International. NI Group Limited is wholly controlled by News Corporation, Inc.

The relevance of events at NGN to Sky's fitness and propriety

8. We consider that wrongdoing of the kind alleged to have taken place at the newspapers owned by NGN is in principle capable of being relevant to the fitness and propriety of a broadcaster, notwithstanding the fact that such wrongdoing was not related to the performance of broadcasting functions. If a broadcaster's fitness and propriety were measured only by reference to its performance or conduct as a broadcaster, this would mean that very serious wrongdoing by the licensee or those who controlled or influenced it, whatever its nature or gravity, was no impediment to the grant or retention of a licence, as long as the wrongdoing was unrelated to the licensee's broadcasting activities. We do not consider that this can be right. Ofcom is responsible for protecting public confidence in broadcasting and the public interest in there being an appropriately rigorous regulatory regime, through its powers and duties under the statutory scheme established by Parliament.
9. To date, there is no evidence that Sky was directly or indirectly involved in any of the wrongdoing either admitted or alleged to have taken place at *News of the World* ("NOTW") or *The Sun*. Sky has admitted to some instances of email hacking in two cases unrelated to the cases alleged to have taken place at NGN. Ofcom is currently considering these issues under the Broadcasting Code.
10. In contrast to some other UK regulatory regimes, Ofcom does not have any statutory responsibility for declaring individuals "fit and proper" (unless they are broadcast licensees themselves). The behaviour of persons (individuals or corporations) other than Sky can only be relevant to an assessment of Sky if such persons' relationship to Sky is such that Sky's fitness and propriety is affected by their character and conduct. Since Sky is a non-natural person, its fitness and propriety may be judged by reference to the conduct and character of any individual or individuals who exert influence over it. The conduct and character of any director, of any shareholder with a significant holding, and of any other person able to exert influence over the company are therefore relevant in principle to Ofcom's assessment.
11. Ofcom has therefore considered whether any such person, exercising a requisite degree of control over Sky, such that he, she or it exerts influence, has been implicated in, or tainted by, alleged or admitted wrongdoing or criminality at newspapers owned by NGN, in a way, or to an extent, which raises questions about Sky's ongoing fitness and propriety. For these purposes, Ofcom considers that the following individuals' and entity's character and conduct are in principle relevant, because they stand in a relationship to Sky of material influence or control such that they are able to exert influence over it:
 - (a) James Murdoch's conduct and character are relevant because:
 - (i) he is a director of the parent company, British Sky Broadcasting Group plc ("Sky plc"), which exercises complete control over Sky;
 - (ii) he is a director of News Corporation, which owns around 40% of the issued shares of Sky plc; and
 - (iii) the Murdoch family trust owns approximately 38% of the Class B stock of News Corporation, which owns around 40% of the issued shares of Sky plc.
 - (b) Rupert Murdoch's conduct and character are relevant because:
 - (i) he is Chairman and CEO of News Corporation, which owns around 40% of the issued shares of Sky plc; and

- (ii) his family trust owns approximately 38% of the Class B stock of News Corporation, which owns around 40% of the issued shares of Sky plc.
 - (c) News Corporation's corporate conduct and character are relevant, in light of News Corporation's approximate 40% shareholding in Sky plc.
12. In considering whether Sky remains fit and proper to hold broadcasting licences, Ofcom has therefore had regard to evidence relating to the conduct or character of these persons, and to the extent of influence which they exert over Sky.

Evidence

13. Ofcom has had regard to the evidence available from a variety of sources, in particular evidence that has been:
- (a) published by the Culture, Media and Sport Select Committee ("CMSC");
 - (b) published by the Leveson Inquiry; and
 - (c) disclosed to Ofcom by NGN from documents disclosed in the civil litigation⁴.

James Murdoch⁵

14. Ofcom considers on the basis of the evidence available to date and for the reasons set out in this decision that James Murdoch's conduct in relation to events at NGN repeatedly fell short of the conduct to be expected of him as a chief executive officer and chairman⁶. However, Ofcom considers that the evidence available to date does not provide a reasonable basis to conclude that James Murdoch deliberately engaged in any wrongdoing.

Background

15. James Murdoch had no role at NGN or its parent company News International⁷ until December 2007/January 2008, which was almost a year after the sentencing of Clive Goodman and Glenn Mulcaire for phone hacking. However, he became Executive Chairman (of both companies) when the previous Executive Chairman Les Hinton moved to the *Wall Street Journal* in January 2008 and he remained in that role at NGN until September 2011⁸. In addition to his role as Executive Chairman, he acted as chief executive officer of News International from Les Hinton's departure until at least the end of June 2009 (when it was announced that Rebekah Brooks would take the role). Rebekah Brooks' formal start date as chief executive officer of News International was September 2009. He remained as Executive Chairman of News International until February 2012.

⁴ In order to equip ourselves with all information relevant to our duty, Ofcom sought voluntary disclosure from NGN of certain documents disclosed in the civil proceedings in front of Mr Justice Vos. NGN provided these documents.

⁵ See paragraph 9(a) for his relevance to Sky.

⁶ James Murdoch was CEO of NGN and News International from Les Hinton's departure in January 2008 until at least the end of June 2009.

⁷ Now NI Group Limited.

⁸ The date he stood down from NGN.

The Taylor settlement

16. In June 2008, James Murdoch authorised the settlement of a claim for phone hacking brought by Gordon Taylor against NGN. There is conflicting evidence, including on oath, as to what James Murdoch was actually told at this point about the possibility that *News of the World* employees other than Clive Goodman had been involved in unlawful activity⁹.
17. There is more than one possible explanation of the inconsistency between the accounts given variously by Tom Crone, Colin Myler and James Murdoch of what James Murdoch was told at the meeting on 10 June 2008 at which he authorised settlement of the Taylor case. These three individuals may have had different understandings at the time of what was being communicated, their recollections several years after the events took place may be imperfect, or one or more of them may not be telling the truth. We do not consider that the evidence given by Tom Crone or Colin Myler is sufficient to demonstrate that James Murdoch was made fully aware of the implications of the evidence disclosed in the Taylor litigation at the time he authorised the settlement.¹⁰
18. Nor, in our view, can it reasonably be concluded on the available documentary evidence that there was an awareness on James Murdoch's part either that evidence existed indicating the involvement in unlawful activities of journalists other than Clive Goodman, or that the desire to preserve confidentiality was a key factor in the settlement¹¹. There is some documentary evidence that James Murdoch was aware of the Taylor claim prior to 10 June 2008. There is some documentary evidence that Tom Crone and Colin Myler intended to brief James Murdoch in more detail, but there is no documentary evidence showing that they actually did¹². In particular, Colin Myler forwarded to James Murdoch the email chain of 7 June 2008, which contains information that ought to have caused him significant concern¹³. However, James Murdoch's evidence is that he did not read the chain to its end and there is no evidence to contradict his account¹⁴.
19. Nevertheless, it is clear, on his own account, that James Murdoch was aware in 2008 that new evidence had emerged which meant that his lawyers considered it necessary to settle Gordon Taylor's claim and that an opinion from leading counsel was being

⁹ Transcript of oral evidence given by James Murdoch and Rupert Murdoch to Culture Media and Sport Select Committee ("CMSC"), 19 July 2011; Letter to CMSC from Tom Crone, 6 August 2011; letter to CMSC from Colin Myler, 10 August 2011; letter to CMSC from James Murdoch, 11 August 2011; transcript of oral evidence given by Tom Crone and Colin Myler to CMSC, 6 September 2011; letter to CMSC from Colin Myler, 31 October 2011; letter to CMSC from Tom Crone, 5 November 2011; transcript of oral evidence given by James Murdoch to CMSC, 10 November 2011; letter to CMSC from Tom Crone, 1 December 2011; letter to CMSC from Colin Myler, 1 December 2011; letter to CMSC from James Murdoch, 12 December 2011; transcript of oral evidence given by Tom Crone to Leveson Inquiry, 13-14 December 2011; transcript of oral evidence given by Colin Myler to Leveson Inquiry, 14-15 December 2011; letter to CMSC from James Murdoch, 12 March 2012; statement to Leveson Inquiry by James Murdoch, 16 April 2012; transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012.

¹⁰ [X].

¹¹ See documents attached to letter from Farrer & Co to the Chairman of the CMSC, 31 October 2011; written evidence submitted by Linklaters LLP to the CMSC, 12 December 2011, written evidence submitted by Linklaters LLP to the CMSC, 20 December 2011.

¹² See email from Crone to Myler 24 May 2008 at 18:10, attaching briefing note and email from Crone to Pike 24 May 2008 at 19:25, JCP1 to JCP4 of documents attached to letter from Farrer & Co to the Chairman of the CMSC, 31 October 2011; see also written evidence submitted by Linklaters LLP to the CMSC, 12 December 2011.

¹³ Written evidence submitted by Linklaters LLP to the CMSC, 12 December 2011.

¹⁴ Letter to CMSC from James Murdoch, 12 December 2011.

sought¹⁵. The sum he approved in settlement was at least £425,000 in damages, plus costs of around £200,000¹⁶ - i.e. damages 70% higher than the highest "likely" figure that leading counsel had put on Taylor's claim in his Opinion¹⁷. On James Murdoch's own account, the sum represented a very significant proportion of the annual budget for such settlements¹⁸. Yet he did not ask to see the opinion from leading counsel¹⁹ or to have sight of, or a full description of, the range of evidence on which the advice to settle was based²⁰. In relation to the Taylor settlement, on the evidence available to Ofcom, we consider that James Murdoch's exercise of responsibility was less than we would expect to see exhibited by a competent Chief Executive Officer.

The response to the Guardian article

20. In July 2009, the *Guardian* published an article about the Taylor settlement, entitled "*Murdoch papers paid £1m to gag phone hacking victims*", which described "suppressed evidence" showing that "Mulcaire had provided a recording of the messages on Taylor's phone to a NOTW journalist who had transcribed them and emailed them to a senior reporter, and that a NOTW executive had offered Mulcaire a substantial bonus for a story specifically related to the intercepted messages."²¹ Within 2 days, News International issued a statement saying that it had carried out "a thorough investigation" since the story broke, that various allegations were unsupported by any evidence, including the allegations that NOTW journalists either hacked any individuals' phones themselves or instructed third parties to do so, and that the *Guardian* had made "irresponsible and unsubstantiated allegations"²². In a letter the same day to the CMSC, News International said that the *Guardian* had "substantially and likely deliberately misled the British public".²³
21. James Murdoch's evidence is that he received a copy of the article²⁴ (and later read the "for Neville" email itself²⁵), but that he was overseas at the time the article was published²⁶ and that the response to it was handled by Rebekah Brooks²⁷. He has said

¹⁵ Transcript of oral evidence given by James Murdoch to CMSC, 10 November 2011, Q1464; transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012, p.37 lines 4 and 12-13.

¹⁶ Letter from Farrer & Co to CMSC, 2 September 2011; email chain ending Colin Myler to James Murdoch on 7 June 2008, attached to written evidence submitted by Linklaters LLP to the CMSC, 12 December 2011.

¹⁷ §17 of the Opinion of Michael Silverleaf QC, 3 June 2008, JCP20 to JCP26 of documents attached to letter from Farrer & Co to the Chairman of the CMSC, 31 October 2011.

¹⁸ Transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012, p.41 lines 6 to 9.

¹⁹ Transcript of oral evidence given by James Murdoch to CMSC, 10 November 2011, Q1514; letter from James Murdoch to CMSC, 12 March 2012; Transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012, p.37 lines 12-13.

²⁰ Transcript of oral evidence given by James Murdoch to CMSC, 10 November 2011, Q1514; letter from James Murdoch to CMSC, 12 March 2012.

²¹ This is a description of two documents: first, an email which became known as the "for Neville email", which is reproduced in full at Ev 295 to Ev 302 of Volume II of the CMSC's Second Report of Session 2009-10, *Press standards, privacy and libel* of 2010, and second a contract between NOTW and Paul Williams (an alias), reproduced at Ev 303.

²² News International Statement on Guardian article, 10 July 2009.

²³ Letter from Rebekah Wade to John Whittingdale MP, 10 July 2009, reproduced by the Guardian, 6 July 2011, <http://www.guardian.co.uk/media/interactive/2011/jul/06/rebekah-brooks-email>.

²⁴ Transcript of oral evidence given by James Murdoch to CMSC, 10 November 2011, Q1632.

²⁵ Transcript of oral evidence given by James Murdoch to CMSC, 10 November 2011, Q1539, Q1629.

²⁶ Transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012 p.49 lines 20-21.

that he asked questions and was assured that a full investigation had been carried out previously. He has said that he relied on a police statement, issued in response to the article, to the effect no further investigation was required²⁸.

22. From the evidence available, it is not possible to reach a view as to whether James Murdoch authorised or was involved in News International's press statement of July 2009. However, we note that on his own account, James Murdoch (who was chief executive officer of News International at the time) entrusted the handling of the response to the *Guardian* article to an incoming and not yet formally appointed chief executive officer who (as far as we are aware) had no personal knowledge of the Taylor settlement. James Murdoch continued to rely upon subordinates who had between them obtained his consent to settle the Taylor case without querying why they had not provided him (as should have been apparent when James Murdoch read the *Guardian* article) with the information referred to in that article, namely, that evidence in Taylor's case related not simply to one previously convicted journalist, but to "a NOTW journalist", a "senior reporter" and a "NOTW executive".
23. There is no evidence that James Murdoch took the necessary steps to apprise himself of the information he needed (some of which he knew existed) to carry out his duties responsibly following publication in a national newspaper of such nature and detail about the settlement he had personally authorised the previous year. We consider that James Murdoch's failure to apprise himself of this information, given the information which he accepts he knew, fell short of the exercise of responsibility to be expected of the chief executive officer and the chairman.

Events in 2009-2010

24. In July 2009, Max Clifford issued proceedings against NGN in which he alleged that his phone had been hacked by NGN journalists. NGN settled those proceedings in February or March 2010. In February 2010, information became publicly available which made clear that the number of hacking victims was likely to be far in excess of what had previously been acknowledged²⁹.
25. By his own account, despite what he had by then learned of the Taylor case and the subsequent concerns raised publicly about its settlement, James Murdoch (who was by then Executive Chairman of NGN and News International) asked no questions about who Max Clifford's case implicated³⁰ and took no role in its settlement³¹.
26. Also in February 2010, the CMSC published its report which accused the newspaper group of "collective amnesia", stated that it was "inconceivable" that no one but Clive Goodman was aware of the activity, noted that the idea that Clive Goodman was a "rogue reporter" acting alone had been directly contradicted by the summing up of Mr Justice Gross on sentencing Glenn Mulcaire, and observed that there had been no evidence of systematic questioning of relevant individuals, no full review of their emails, no investigation of who the "others" might be to whom Mr Justice Gross had referred, and that the newspaper's enquiries had been far from "full" or "rigorous", as the CMSC

²⁷ Transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012, p.77 line 25 to p.78 line 4.

²⁸ Transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012, p.50 lines 5 to 13.

²⁹ *The Guardian News of the World pair hacked into 100 mobile accounts* 1 February 2010.

³⁰ Letter from James Murdoch to CMSC, 1 December 2011.

³¹ Statement to Leveson Inquiry by James Murdoch, 16 April 2012, §16.22.

and the PCC had previously been assured³². News International issued a statement accusing the CMSC of pursuing “a party political agenda” and stating that certain of its members had “repeatedly violated the public trust”³³.

27. By his own account, James Murdoch read the CMSC report³⁴, but did not regard the response to the Select Committee as his direct responsibility³⁵, and therefore relied on what he was told about it³⁶. We consider this lack of action by the chairman of News International in response to a widely publicised highly critical Select Committee report to be both difficult to comprehend and ill-judged. He has said, in relation to it, “I regret that the company moved into an aggressive defence so quickly...if I could do it again, I would direct the management of the company to do things differently”³⁷.
28. Over the following months, proceedings were issued against NGN by a number of persons who thought their phones had been hacked³⁸. [X]³⁹. James Murdoch has given evidence to the Leveson Inquiry that he assumed that information relevant to the litigation was being preserved⁴⁰. We have no evidence that this is not the case.
29. On 1 September 2010, the *New York Times* published an article which said “a dozen” reporters had said that hacking was pervasive at NOTW [X]⁴¹. On 3 September 2010 a former NOTW reporter gave an interview to BBC Radio 4 in which he claimed that the practice was “endemic” [X]. James Murdoch’s evidence to the Leveson Inquiry is that the police had reiterated that the original investigation “had been a success”, and he was told by executives at NOTW both that the *New York Times* article contained “little that was new” and that there was “no basis for the allegations that were being made”⁴².
30. In November 2010, Sienna Miller served Particulars of Claim on NGN⁴³. Her allegations were described in detail in a *Guardian* article entitled “*Phone hacking approved by top News of the World executive – new files*” on 15 December 2010. [X]^{44 45}.
31. Evidence is not available as to the precise date on which James Murdoch was made aware of Sienna Miller’s claim or the evidence she relied on. James Murdoch has given evidence to the Leveson Inquiry to the effect that he insisted that NGN should move quickly to reopen an internal investigation into the issues arising out of evidence in Sienna Miller’s claim, to take action against any employees that were implicated in wrongdoing, and immediately to suspend them, and to bring in new counsel to get to the

³² House of Commons: Culture Media and Sport Committee, *Press standards, privacy and libel* Second Report of Session 2009-10 summary, paragraphs 437, 440, 441, 442.

³³ Statement by News International, 24 February 2010.

³⁴ Transcript of oral evidence given by James Murdoch to CMSC, 10 November 2011 Q1541.

³⁵ Transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012, p.51 lines 1 to 5.

³⁶ Transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012, p.51 lines 5 to 9.

³⁷ Statement to Leveson Inquiry by James Murdoch, 16 April 2012, §15.2.

³⁸ Skylet Andrew, 23 April 2010, Nicola Phillips, 10 May 2010, Andy Gray, 8 June 2010, Ciara Parkes, 13 June 2010, George Galloway, 9 July 2010, Kelly Hoppen 23 July 2010 (Source: *Mulcaire v NGN* [2011] EWHC 3469 (Ch); Kelly Hoppen statement made via solicitors: 27 January 2011; Parkes statement in open court, 19 January 2012).

³⁹ [X]

⁴⁰ Statement to Leveson Inquiry by James Murdoch, 16 April 2012, §22.1.

⁴¹ “*Tabloid Hack Attack on Royals, and Beyond*”, *New York Times*, 1 September 2010.

⁴² Statement to Leveson Inquiry by James Murdoch, 16 April 2012, §§14.2 and 14.3.

⁴³ *Miller v NGN* Statement in open court 7 June 2011.

⁴⁴ [X]

⁴⁵ [X]

bottom of what was really going on⁴⁶. Having reviewed the relevant evidence relating to this period as a whole, we note that the only one of these steps taken in 2010, (and that only after the publication of the *Guardian* article of 15 December 2010), was the suspension of a journalist. In light of the events which occurred in 2009 to 2010, in particular the publication of the CMSC report, the growing civil litigation and the *New York Times* article, we find it difficult to comprehend James Murdoch's lack of action, given his responsibility as chairman.

Corruption

32. Ofcom has not seen any evidence suggesting any involvement by James Murdoch in alleged corruption at *The Sun*, involving the bribery of public officials.

Ofcom's conclusions

33. In our view, the evidence available to date does not provide a reasonable basis to find that James Murdoch knew of widespread wrongdoing or criminality at NOTW or that, by allowing litigation to be settled and by allowing NGN and News International executives to make the representations they did, he was complicit in a cover up.
34. However, a company director is required to exercise reasonable care, skill and diligence in the exercise of his functions⁴⁷. He may delegate, but has a duty to supervise appropriately. We consider James Murdoch's conduct, including his failure to initiate action on his own account on a number of occasions, to be both difficult to comprehend and ill-judged. In respect of the matters set out above, in our view, James Murdoch's conduct in relation to events at NGN repeatedly fell short of the exercise of responsibility to be expected of him as CEO and chairman.
35. James Murdoch has apologised for his conduct. He has acknowledged in a letter of 12 March 2012 to the CMSC that "wrongdoing should have been uncovered earlier. I could have asked more questions, requested more documents and taken a more challenging and sceptical view of what I was told, and I will do so in the future"⁴⁸. He has said that "I do think - and I share responsibility for this and I am sorry for it - the company took too long to come to grips with these issues"⁴⁹. We agree.
36. We consider that the events set out above raise questions regarding James Murdoch's competence in the handling of these matters, and his attitude towards the possibility of wrongdoing in the companies for which he was responsible.

Rupert Murdoch

37. Rupert Murdoch⁵⁰ was a director of NGN throughout the period during which NGN has admitted hacking. He stood down from NGN in September 2008. He was a director of News International from before 1995 to July 2012.
38. We do not consider that the evidence currently available to Ofcom provides a reasonable basis on which to conclude that Rupert Murdoch acted in a way that was inappropriate in relation to phone hacking, concealment or corruption by employees of NGN or News International.

⁴⁶ Transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012, p.53 lines 4 to 10.

⁴⁷ Section 174 Companies Act 2006.

⁴⁸ Letter from James Murdoch to CMSC, 12 March 2012.

⁴⁹ Transcript of oral evidence given by James Murdoch to CMSC, 10 November 2011 Q1643.

⁵⁰ See paragraph 9(b) for his relevance to Sky.

News Corporation⁵¹

39. We are conscious that there are other ongoing investigations by other public agencies. However, we consider that the evidence currently available to Ofcom does not provide a reasonable basis for Ofcom to reach any conclusion that News Corporation acted in a way that was inappropriate in relation to phone hacking, concealment, or corruption by employees of NGN or News International.
40. However, we would be concerned if statements, which have surfaced from time to time in the course of the Leveson Inquiry and the work of the CMSC, that News Corporation and its subsidiaries have exerted pressure over politicians and others in support of News Corporation's commercial interests, went beyond the legitimate area of political debate and transgressed into inappropriate pressure or behaviour related to furthering News Corporation's commercial interests. News Corporation has a large shareholding in Sky plc and has made assertions in other contexts about the degree of control it exercises over it⁵². Should further material evidence or findings become available we will take them into account in relation to our continuing duty.

Conclusion

41. As set out in paragraph 9 above, there is no evidence that Sky was directly or indirectly involved in any of the wrongdoing either admitted or alleged to have taken place at *NOTW* or *The Sun*.
42. James Murdoch has ceased to be Chairman of Sky plc, but remains a non-executive director. He is also an executive director of News Corporation, which owns around 40% of the issued shares of Sky plc; and the Murdoch family trust owns approximately 38% of the Class B stock of News Corporation. We have therefore considered the implications of our views about his conduct for our assessment of the ongoing fitness and propriety of Sky to hold a broadcast licence.
43. While we consider that any director or large minority shareholder will count as exerting influence for these purposes, his or her influence may be limited, or may be moderated by other directors or shareholders, in such a way that conduct on the part of that individual is not in fact sufficient to render the company as a whole unfit or improper. The extent to which such conduct impugns a company's fitness and propriety will depend on the degree of influence that individual has, the individual's position, the nature of the conduct in question and other circumstances.
44. Ofcom has reviewed the compliance history of Sky channels over the period 2006-2012. Our view is that (without prejudice to the outcome of any current investigations⁵³) Sky's compliance record in broadcasting matters has been good. We recognise that this period includes James Murdoch's tenure as chief executive officer (November 2003 to December 2007) and later as non-executive chairman (December 2007 to April 2012) of Sky and he must be given credit in this regard. We recognise that during James Murdoch's tenure Sky continued to be a successful company.

⁵¹ See paragraph 9(c) for its relevance to Sky.

⁵² §§2.4, 4.8, 4.11 Preliminary briefing by News Corporation to the Department of Business, Innovation and Skills and the Office of Communications, 20 July 2010; p.2 Further submission to the Secretary of State – Public interest: News Corporation – British Sky Broadcasting, 29 September 2010; §4.4 News Corporation/British Sky Broadcasting Group Plc: Submission to Ofcom (non-confidential version), 23 November 2010.

⁵³ Ofcom is currently considering Sky's admitted instances of computer hacking under the Broadcasting Code.

45. Sky plc's board has been subject to several recent changes. In addition to James Murdoch, it comprises 11 non-executive and two executive directors. James Murdoch is no longer the chairman; that role is now held by Nicholas Ferguson. The other non-executives are experienced individuals who would be expected to be capable of exercising effective independent oversight. Only three board members besides James Murdoch hold roles outside Sky plc which are linked to News Corporation. We have obtained an account from Sky plc of its governance structure, including the arrangements for board oversight of risk management and other controls within the business.
46. In the circumstances, and notwithstanding our views in relation to James Murdoch's conduct, we do not consider, having taken into account all the relevant factors, that on the evidence available to date Sky is no longer fit and proper to hold broadcast licences. Whilst we consider that James Murdoch's conduct in various instances fell short of the standard to be expected of the chief executive officer and chairman, we do not find that James Murdoch's retention as a non-executive director of Sky means that Sky is not fit and proper to hold broadcast licences. We recognise that whether it is appropriate for James Murdoch to be a director in light of the events is a matter for the Board and shareholders of Sky.
47. Our duty to be satisfied that a licensee is fit and proper is ongoing. Further evidence may become available in the future, which Ofcom would be obliged to consider in order to fulfil its duty. In particular, Ofcom considers that the findings of the Leveson Inquiry and the results of pending criminal proceedings (including evidence given in such proceedings) could be relevant to its performance of its duty under section 3(3).