

January 6, 1994

**Press Statement of  
Commissioner James H. Quello**

On January 3, 1995, I sent a letter to the Honorable Larry Pressler, Chairman of the Senate Commerce, Science & Transportation Committee, expressing in some detail my concerns about certain aspects of the procedures the Commission staff was then using to pursue its investigation into the ownership structure of the Fox Broadcasting Company. My principal concern in this regard centered on the public impression of bias and prejudgement these procedures had inadvertently created.

Yesterday, I joined in a unanimous vote of the Commission adopting a letter to Fox indicating that, after reviewing the current procedures for the conduct of this inquiry, we are confident that the proceeding is being handled by the staff in a "fair, objective and impartial manner, consistent with the handling of all Commission investigations."

I added my vote to those of my colleagues in light of the good faith efforts the staff has now taken to correct the unfortunate misimpression previously created regarding the conduct of the investigation. Specifically, these steps are: (1) the original overbroad confidentiality order has been significantly narrowed in scope; (2) in response to my concern that the attorney-client privilege not be invoked by the staff to bar relevant testimony of current and previous Commission officers and employees, I have been assured by the staff that the privilege will not be invoked to prevent the parties from interviewing such individuals; and (3) perhaps most importantly, I am now being provided with copies of documents related to the investigation upon request, including the December 7, 1994 letter to Fox posing additional questions. In light of these steps, I now feel confident that the inquiry is being conducted in a fair and impartial manner.

It is now time to move forward, and to bring this investigation to a conclusion as quickly as possible. Both the Commission investigators and the parties should cooperate in working toward this goal. I will, as before, continue to monitor closely the conduct of this proceeding to ensure that there are no missteps, by any of those involved, that would prejudice or delay this proceeding.

**FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D.C. 20554

OFFICE OF COMMISSIONER  
JAMES H. QUELLO

January 3, 1995

The Honorable Larry Pressler  
Chairman  
Senate Commerce, Science &  
Transportation Committee  
Washington, DC 20510

Dear Chairman Pressler,

I have carefully reviewed your timely December 23 letter to Chairman Hundt expressing concern over certain procedural aspects of the pending investigation into Fox Broadcasting's ownership structure, as well as Chairman Hundt's December 29 response. Because my own concerns on these procedural issues have been referenced in the press on several previous occasions, I thought it advisable to inform you directly of my own views on these procedural matters. In so doing, of course, I express no views on the merits of the pending issues raised in the Fox proceedings.

It seems to me that the one overriding goal the Commission should pursue in this matter is a fast, fair, and open delineation of the facts surrounding Fox's representations, and the Commission's understanding of them, in the context of the Commission's 1985 decision. The procedures we employ should be calculated to achieve this goal, not frustrate it. I'm afraid a series of unusual staff decisions has raised troublesome questions about our procedures.

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I have expressed my views opposing the original staff-issued confidentiality order. It was labeled a "gag" order by the press and resulted in adverse articles and editorials, as well as opposition from the American Society of Newspaper Editors. In the most basic terms, an order this extraordinary should never have been issued under the pretext of routine delegated authority but rather should have been carefully considered and specifically voted by the full Commission. Had it been referred to the Commission, I would not have voted for it. Its overbroad attempt to constrain "communications," in my view, undermined the confidence of both the parties and the public in the Commission's supposedly open and unbiased processes. In this regard, I am particularly concerned that this apparent wish to avoid public scrutiny may have found expression in alleged staff efforts warning Fox not to place an anticipated advertisement about the matter in the Washington Post.

After the initial criticism, the staff revised the confidentiality order. It corrects the overbroad approach of the initial order and now better reflects its intended objective. I remain concerned, however, that the impression of bias generated by its predecessor and by the other alleged staff actions may be more difficult to dispel. Similarly, I also believe that the General Counsel's advice allowing FCC personnel to attend a widely-attended annual NBC Christmas party while at the same time advising against attending a widely-attended Fox Christmas party, although in and of itself a relatively minor matter and well-intentioned, added to questions about the overall impartiality of our procedures.

Perhaps my concern about staff misjudgment of public perception would be less pronounced if another unprecedented procedural mishap had not occurred. When I requested a copy of the questions the staff prepared for Fox, I was told they would not be made available to me. As a senior Commissioner, past interim Chairman and the only Commissioner present during the 1985 Fox decision, I found this most irregular. It has always been my view that any Commissioner has an absolute right to request and receive any work-related papers produced by the staff. I have discussed my opinions with Chairman Hundt, stressing my wish to be fully informed of the progress of this proceeding as it unfolds.



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I am also very troubled by the treatment to date of the issue of attorney-client privilege insofar as it could be invoked by the staff to prevent former Commission officers and employees from testifying when they would otherwise be willing to do so. I quite understand why the privilege is invoked to protect the Commission's interests when its decisions are being collaterally attacked by an aggrieved party. But that is not the posture of the pending Fox investigation, which is, or should be, a dispassionate attempt by the Commission to ascertain factually what Fox represented to the Commission in 1985 and what the Commission did or did not understand at that time. In this light, I cannot imagine that the testimony of individuals who were officers or employees of the Commission at that time would not be of the utmost relevance and significance. I have been recently assured by the General Counsel that the attorney-client privilege will not in fact be used to bar the testimony of otherwise-willing former FCC officers and employees. I would only hope the atmosphere of suppression that has unfortunately pervaded this proceeding will not in itself serve to discourage such individuals from openly testifying.

I must admit that, both before and during my interim chairmanship, I was particularly vocal condemning Hollywood producers and networks, including Fox, for airing programs with excessive brutal violence and glamorized sex to audiences that include children. The general press is also aware that the Murdoch-owned New York Post has an editorial policy extremely critical of the current Administration. In my view, neither of these contentious issues have a bearing on the Commission procedures or on the merits of the petitions now pending against Fox. They merely give rise to further unwarranted speculations. As a Democrat I believe this is an appropriate time to invoke the Voltaire free speech principle regarding political criticism -- I paraphrase: "I may disagree with what you say, but I will fight to the death for your right to say it."

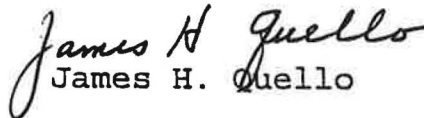
In sum, Mr. Chairman, I regret the unfortunate and, what some have termed, the "star-chamber" public impression caused by unfortunate or unusual FCC procedural steps. I trust the staff will bring an unimpeachable degree of openness and fairness to what has been an uncommon procedure for the Commission. Above all, I trust that the faith of the parties and the public in our ability to follow reasonable due process and render a correct, dispassionate decision has not been damaged by the unintended consequences of initial misguided staff actions.

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In the spirit of truth and openness, and as my criticism of initial procedures was quoted in the press, I am sending copies of this letter to the press where I was originally quoted.

In any event, I offer my personal commitment to ensure that fundamental fairness is observed. I look forward to working with Chairman Hundt in implementing his pledge to you to resolve the pending Fox proceedings fairly, correctly and quickly.

Sincerely,

  
James H. Quello

cc: Chairman Hundt, Commissioner Barrett, Commissioner  
Ness, Commissioner Chong, Bill Kennard, Renee Licht



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

December 29, 1994

The Honorable Larry Pressler  
United States Senate  
SR-283 Russell Senate Office Building  
Washington, D.C. 20510-4101

Dear Senator Pressler:

Thank you very much for your thoughtful letter of December 23, 1994. I value highly the sentiment pervading your communication that you do not wish to influence in any way the outcome of the staff's investigation or the Commission's deliberations in the pending restricted license renewal proceeding involving Fox Television Stations, Inc.

We all recognize that it is very important that the Commission staff be permitted to investigate the various allegations concerning Fox in an impartial and non-political atmosphere. Similarly, it will be important for the Commissioners to exercise their independent authority impartially. Mindful of these precepts, I will be brief in my responses to the items mentioned in your letter.

1. The purpose of the confidentiality order entered in this case was to protect the integrity of the staff's investigation and to permit the parties and third-party witnesses to share information without concern that their disclosures would result in the sort of litigation in the press that is the bane of every fair-minded investigator. Indeed, in appropriate cases, the Commission and other independent agencies typically conduct nonpublic investigations to protect the integrity of the adjudicatory process. However, in order to dispel any possible misunderstanding of the scope of the original confidentiality order, the staff has modified that order. I understand that you find the current order satisfactory.

2. With respect to newspaper advertisements by the parties regarding the case, I am not aware that the parties believe that they are constrained in exercising their First Amendment rights in this regard, but, of course, if they have that view they are welcome to assert it at the Commission or elsewhere.

3. Current and former Commission officials are sometimes asked by private parties to testify or otherwise to provide evidence concerning matters in which they participated while serving at the Commission. I am informed by our general counsel that any such testimony is protected by various institutional privileges designed to protect the integrity of the independent agency's decisionmaking process. These are variously labelled the deliberative process privilege, the governmental privilege and, under some circumstances, the attorney-client privilege. As a matter of general practice, these institutional privileges should not be waived by the agency.

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I am aware that in the instant matter at least one former FCC official voluntarily decided not to honor the privilege, at least to a degree. This was done without consultation with the FCC, as far as I know. To the extent that any former Commission officials may provide information that is necessary or helpful to the staff's pending investigation, I am confident that the staff will obtain this information confidentially at the appropriate time. I am not aware of any statement of anyone at the FCC to any former FCC official concerning the possibility of a bar association complaint. If you have any more detailed information on this matter I respectfully urge you to share it with me.

4. With respect to your intent to revise our current foreign ownership laws, you are very welcome to any expertise available at the Commission that may be helpful in your considerations. Of course we will, as you suggest, apply existing law to the various Fox matters.

5. To my knowledge, no one at the FCC has made any allegations directed at Fox. Nor am I aware of any participation by the FCC in any allegations made by others. I personally have not discussed any such Fox matters with anyone at the White House or with any Democrats in the House or the Senate. Any member is, however, welcome to inquire with me about such matters consistent with the agency's ex parte rules. In addition, I am not aware of any communication by any other Commissioner on such matters with Democrats in Congress or with employees of the White House.

6. I could not agree with you more that this country would benefit greatly from the application of a policy of competition to all communications markets, according to the threefold tenets of creating choice for suppliers and consumers, generating greater opportunity to participate in the communications revolution by all Americans, and establishing fair rules of competition that are aimed at guaranteeing the maximum efficiencies for our economy, our consumers and our businesses.

Thank you again for your interest in the Fox proceeding. I wish you the very best Seasons Greetings and a Happy New Year.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'Reed E. Hundt', with a long, sweeping horizontal stroke extending to the right.

Reed E. Hundt  
Chairman

REH: jmm

cc: Commissioner James Quello  
Commissioner Andrew Barrett  
Commissioner Susan Ness  
Commissioner Rachelle Chong



United States Senate  
WASHINGTON, DC 20510-4101

COMMITTEES:  
FOREIGN RELATIONS  
COMMERCE, SCIENCE, AND  
TRANSPORTATION  
SELECT COMMITTEE  
ON AGING  
SMALL BUSINESS  
JUDICIARY

OLA  
FOX  
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December 23, 1994

The Honorable Reed Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

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LEGISLATIVE AFFAIRS  
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Dear Chairman Hundt:

I write to express my growing distress and dissatisfaction over the highly unusual and unprecedented procedures employed by the Commission in connection with complaints against Fox Broadcasting's ownership structure. I want to make perfectly clear from the start, as I have in all other comments I have made in any way related to this matter, that my comments go not to the merits of this restricted proceeding, but to the Commission's procedures, alone.

I am deeply disturbed at what appears to be unprecedented and questionable procedural maneuvering -- most especially, the Commission imposed "gag order." First, the Commission presented no compelling rationale for arbitrarily slapping such an egregious limitation on free speech. Secondly, I have yet to be informed of a precedent for imposing such a draconian measure in any similarly situated context in the agency's history. Thirdly, you are the head of the regulatory body charged most directly with sensitivity to First Amendment and censorship concerns. Finally, given the highly unusual nature of this so-called "gag order", I would have expected that the duly appointed and confirmed Commissioners would have voted on this matter. Instead, the "gag order" was imposed on delegated authority by the staff of the Commission.

This action demonstrated to me a serious lack of forethought and sensitivity to First Amendment rights. Additionally, I view this episode as an almost paranoid-level of concern over Commission matters being examined and covered by the press and others. I commend you for seeing my perspective on this issue and for taking steps to reverse the gag order. While I am glad to see the "gag order" go, it leaves a bad taste in my mouth which is most troubling.





OFFICE OF  
THE SECRETARY

**Federal Communications Commission**

Washington, D.C. 20554

January 5, 1995

FCC 95-9

Released: January 5, 1995

Mr. Preston R. Padden  
Fox Broadcasting Company  
5151 Wisconsin Ave., N.W.  
Washington, D.C. 20036

Re: Fox Television Stations, Inc.; Application for Renewal of License for  
Stations WNYW, New York, New York (File No. BRCT-940201KZ)

Dear Mr. Padden:

This letter is in response to your letter to the Commission's general counsel dated January 3, 1995. We write to address certain allegations in your letter concerning the Commission staff's handling of the investigation in the above-referenced license renewal proceeding. Your letter makes several arguments directed to the merits of the proceeding, which will not be addressed herein. We await the Mass Media Bureau's recommendation in this case and will address the parties' arguments on the merits at that time. We respond solely to address the allegations in your letter that the current investigation is "inappropriate" and that the investigation is being conducted without "fundamental fairness and objectivity."

The Commission is committed to ensuring the integrity of its decisionmaking and maintaining a high level of public confidence in the fairness of its proceedings. Having reviewed the current procedures, the Commission is confident that this proceeding is being handled by the Commission's staff in a fair, objective and impartial manner, consistent with the handling of all Commission investigations. We are confident that the actions of and procedures employed by the Commission staff have not been designed to, and will not in fact, prejudice the outcome of this proceeding or any particular party. We fully support the staff's current plans for completing the investigation.

This letter was adopted by the Commission on January 5, 1995.

**BY DIRECTION OF THE COMMISSION**

William F. Caton  
Acting Secretary

The Honorable Reed Hundt  
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As if this were not enough, I find incredulous press reports that Commission employees contacted Fox officials and "requested" that Fox withdraw an advertisement planned for the Washington Post and the Washington Times. A federal agency's admonition to a party with a case pending before that agency to refrain from exercising its First Amendment rights can hardly be deemed a "request." I question whether the Commission has engaged in a serious abuse of power.

Moreover, and equally troubling, according to press reports, the Commission is asserting attorney-client privilege to prevent former FCC officials involved in the 1985 Fox license application from cooperating with Fox in bringing forth the facts of the original decision. I understand that at least one former FCC official was even threatened with a bar association complaint if he were to sign a statement on behalf of Fox. What possible legitimate purpose could be served by preventing such statements? Is the Commission engaged in an honest, objective search for the truth or serving as judge and prosecutor. More anomalies are being brought to light seemingly every day.

As you are well aware, I have previously indicated a strong desire for the Commerce Committee and the Senate to act early next year to revise our current foreign ownership laws on a reciprocal basis as part of a new telecommunications reform bill. Our current foreign ownership law and rules are in many cases more stringent than our trading partners so that American companies are limited in competing more vigorously and successfully in the global information economy. While the Fox matter raises the foreign ownership issue, the review I plan on foreign ownership policy is unrelated to Fox. The Fox license, after all, was approved by the Commission under existing law.

Based on recent pronouncements by some in the House Democrat leadership, I believe there is an effort to politicize this issue and to tie it to wholly unrelated issues. I trust that the FCC has played no role in the development of scurrilous accusations which have absolutely nothing to do with the current Fox proceeding. It appears, on the surface, that there was an orchestrated, partisan campaign that had nothing to do with the real issue facing U.S. businesses competing overseas who are facing barriers because of our outdated foreign ownership restrictions. Let's face facts. The recently-approved GATT agreement will require us to repeal or reform the existing foreign ownership provisions of the Communications Act. I want your assurances that the FCC had no such conversations or contacts with the White House or the Democrat leadership in the House or the Senate.

The Honorable Reed Hundt  
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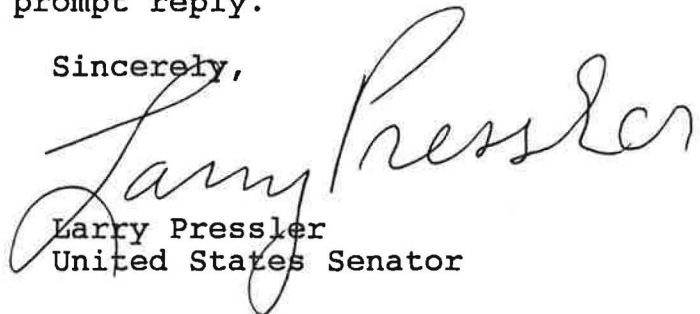
I continue to be concerned that if Americans are to fully benefit from the tremendous opportunities of the new information economy, we must pursue a principled policy approach which permits all telecommunications and media players to compete vigorously in the marketplace. I will not stand by and allow, as we have seen many times before, competitors "gaming" the political process in Washington to win from the Beltway bureaucrats what they cannot win in the market.

The Fox case has been pending before the Commission for well over a year already. The Commission's delay in making a decision may well itself be determinative in promoting or hampering competition.

In conclusion, I want to reiterate that my comments do not and will not address the merits of the restricted proceeding before the Commission. What I am stressing to you, Mr. Chairman, is that the Commission has a duty to act openly, fairly and expeditiously in rendering a decision in this matter.

I look forward to your prompt reply.

Sincerely,

A handwritten signature in cursive script that reads "Larry Pressler". The signature is written in dark ink and is positioned above the printed name and title.

Larry Pressler  
United States Senator

LP/dwm

cc: Commissioner James Quello  
Commissioner Andrew Barrett  
Commissioner Susan Ness  
Commissioner Rachelle Chong  
William Kennard  
Rene Licht  
William Reyner  
Mace J. Rosenstein  
David Honig