RECEIVED

NOV 21 1991

Federal Communications Commission
Office of the Secretary

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

| | | |
|---|---|---|
| In re | ) | |
| | ) | |
| Review of the Policy Implications of the Changing Video Marketplace | ) | MM Dkt. No. 91-221 |
| | ) | |

## Comments of the United States Catholic Conference

The United States Catholic Conference ("USCC") submits the following comments in the above-captioned Notice of Inquiry ("Notice"), released August 7, 1991 by the Federal Communications Commission ("FCC" or "the Commission").

## Interest of the United States Catholic Conference

The USCC is a nonprofit organization organized under the laws of the District of Columbia. All active Catholic Bishops in the United States are members of the USCC. The USCC advocates and promotes the pastoral teachings of the Bishops in such diverse areas as education, social welfare, immigration, civil rights, the economy, housing, health care and family life, and communications. When permitted by Commission rules and practice, the USCC files comments in agency proceedings of importance to the Catholic Church and its people throughout the United States. The USCC has participated in proceedings before the Commission involving multiple ownership rules for broadcast licensees, cable television, Instructional Television Fixed Service, the Fairness Doctrine and other matters that affect the rights of the public, particularly those with no economic power in the commercial marketplace, to receive diverse viewpoints over the scarce public resource of the airwaves. This Notice requests public comment on the general principles which should govern the regulation of television broadcast licensees, and therefore involves the First Amendment rights of the public to receive, over their local television stations, diverse views on local issues of importance to them.

## Response to Notice of Inquiry

The FCC is seeking comments on the nature of the "video marketplace" and any resulting conclusions to be drawn in evaluating current regulations of television licensees. It has asked the public to offer observations on the nature and extent of competition to television licensees so that it may develop a record on which to decide whether changes to existing regulations on ownership and programming obligations of television stations are justified. The USCC believes that in this Inquiry, the FCC must seriously consider basic principles of public trusteeship inherent in television broadcasting which requires the use of the public airwaves. When the FCC examines the record developed from this Inquiry to decide whether and how regulations should be redrafted, the USCC urges that it adhere to these principles, and therefore conclude that more, rather than less, government regulation of the operations of television licensees is necessary to serve the public interest.

The USCC urges the FCC to give great weight to the unique characteristics of television licensees -- that they necessarily use publicly-owned frequencies with attendant public interest responsibilities. Chief among these, and a hallmark of the unique operations of television licensees, is the broadcast of local news and public affairs programming. Consistent Congressional, judicial and (until recently) Commission policy has required television licensees to develop news and public affairs programs responsive to local community needs and interests. Responsiveness to local concerns was written into the Communications Act of 1934 and repeatedly affirmed by Congress. It has been consistently applied by the FCC for decades, and is confirmed by the courts as a constitutionally sound method of ensuring that Americans receive the information they need. The requirement that television licensees provide local news and public affairs programming creates a necessary link between the community and its television licensee which vindicate the public's First Amendment rights in the frequency occupied by a television licensee to the exclusion of all others.

No other "video" medium provides this essential service to the community, and no other video medium has the same public interest obligations attendant to the use of public resources as television licensees. While video cassettes and cable systems can provide nationally-based entertainment and other programming, they do not compete with local television licensees to offer local news and public affairs programming. Given the essential uniqueness of television licensees' responsibility to offer local news and public affairs programming, the FCC should use caution before changing regulations because of broad generalizations

about competition to television licensees. It is overly simplistic to assume that merely because there are some electronic media which offer pictures that move, they compete with television licensees.

In fact, one might assume that if there existed competition to television licensee's requirement to offer local news and public affairs, then television licensees would have been compelled to offer more of that vital programming in past years. The USCC's survey of dioceses, which includes responses from 136 dioceses throughout the United States, indicates that is not the case. Rather, more than half of the respondents stated that television licensees offer only a small amount of public affairs programming. Nearly forty percent responded that only a moderate amount of such programming was offered by local television licensees. Forty eight percent stated that no minority oriented programming is offered by any local television stations. The level of discontent at the paucity of local news and public affairs programming offered by local television licensees is reflected in the attached listing of comments, arranged by category.

As the USCC stated in its comments (also attached hereto) in the Commission's related Notice of Inquiry in MM Docket No. 91-140 (Revision of Radio Rules) which proposed sweeping revisions of rules protecting local ownership and control of radio licensees, few regulatory tools remain available to community-based groups to demand community-responsive programming from their radio stations. In those comments, USCC set forth the results of its nation-wide survey which showed that the effect of broadcast deregulation to date has been declining community affairs programming and a greater need for improved public access. The USCC's latest survey regarding television licensees yields similarly discouraging results.

The FCC should not use this inquiry to bolster a rejection of sensible regulations of television licensees based on a simplistic, generalized concept of "competition" among all video media. Rather, it should focus its inquiry on the more specific issues of the nature of television licensees, particularly their obligation to serve the First Amendment rights of their community to receive local news and public affairs, and whether the notion of competition is valid in light of the fact that among all video media, television is unique in that it relies on the public airwaves.

## Conclusion

We look forward to reviewing and commenting upon any proposals forthcoming in this Inquiry by the Commission. We believe that regulatory proposals constructed around the above core principles will best serve the public interest.

Respectfully submitted,

UNITED STATES CATHOLIC CONFERENCE

Mark E. Chopko
General Counsel

Katherine G. Grincewich
Assistant General Counsel

3211 Fourth Street, N.E.
Washington, D.C. 20017
202/541-3300

November 21, 1991

Diocese Comments on Local Broadcast Survey

Public Affairs:

-Green Bay, Wisconsin: Local CBS and PBS affiliates no longer produce public affairs programs.

-Fargo, North Dakota: Perhaps 5% of programming is local.

-St. Cloud, Minnesota: In general, it appears that with the mechanization of stations, staff and live productions have diminished. Local productions on TV are minimal.

-Cincinnati, Ohio: Local programming consists primarily of 1/2 hour programs on Sunday AM. Locally produced programming, when it airs, is relegated to unreasonable broadcast hours.

-New Orleans, Louisiana: All stations are cutting back on locally-produced programs because of loss of revenues due to reduced advertising.

-Buffalo, New York: ABC has reduced the number of times in airs "Real to Reel", a Catholic public affairs program, from twice a month to once a month.

-Harrisburg, Pennsylvania: "Real to Reel" continues to air on "free time", however it has been moved from 10 AM time slot to 7 AM.

-Greensburg, Pennsylvania: Shows cancelled were "Shalom Pittsburgh", because studio production time and broadcast time not available; and "To Teach As Jesus Did", because the station temporarily cut back their 24 hour programming schedule.

-Passaic, New Jersey: Many locally produced shows cancelled.

-Providence, Rhode Island: Most local programming on Sunday mornings.

-Scranton, Pennsylvania: Local stations have pretty much dropped their "talk" format shows, or relegated them to air times very early Sunday morning.

-Richmond, Virginia: Besides local segment of 2-3 minutes on the news, most local programming is Sunday AM ghetto. "Catholic Perspective" cancelled.

-New York, New York: Most public affairs shows have been dropped. Cancelled shows include "That's the Spirit" and "Contemporary Catholic".

-Seattle, Washington: Shows cancelled: "Northwest Encounter" a religious show aired for 12 years, was cancelled this summer and "Seattle Today", a local talk show.

-Sacramento, California: Cancelled: "Capitol" and the "Clergy and Spectrum".

-Phoenix, Arizona: Religious and public affairs programming has gone down to dangerously low levels. Stations need to reflect the needs of the community.

-Indiannapolis, Indiana: Public affairs shows cancelled: "TV Mass" on NBC affiliate; "TV Church" on CBS; "Focus on Faith" on ABC.

-Bismarck, North Dakota: There is very little of local origination.

-Des Moines, Iowa: Not so much a decline, as a movement to poorer timeslots. One station has a 1/2 hour worship service (rotated among denominations) that was moved from 10 AM to 6:30 AM on Sunday.

-Columbus, Ohio: All religious sustaining programs are on between 3 AM and 6 AM. A religious call in show was cancelled on WTVN by the station manager.

-Baton Rouge, Louisiana: TV carries local affairs in poor time periods with small viewership. One station refuses to carry any paid religious time.

-Cleveland, Ohio: WKYC sold by NBC to Multimedia who dumped "Feagler", winner of 1990 Peabody for public affairs. Same station buried its one PA show at 6:30 AM.

-Portland, Oregon: Several stations have had reductions in personnel particularly in news and public affairs departments.

-Burlington, Vermont: "Sunday Notebook", a diocesan produced ecumenical news program was on 28 stations and is now on 10.

-Gaylord, Michigan: Never had much local public affairs programming to begin with, and only stuff that comes from Central Michigan, but that is of a state nature.

-Erie, Pennsylvania: Ever since 1983 deregulation, a lot of shows have been cancelled. One station outright dropped public affairs department.

-Albany, New York: Cancelled: Inside Albany, a state issues program on PBS affiliate.

-Trenton, New Jersey: Split in market between New York and Philadelphia often leaves Trenton issues untouched.

-Victoria, Texas: Previously, the TV station KAVU aired a local commentary hour.

-Dallas, Texas: All free programming on KDFW-TV has been cancelled as of Jan.1,1992. Programs cancelled include "Texas Catholic Magazine" and "Christopher Closeup".

-Chicago, Illinois: Until 1990, WMAQ -TV allotted 1/2 hour each Sunday to each of the major faith groups. That was reduced to one hour interfaith program in early 1991. This might be reduced to one 1/2 hour program rotating among the three major faiths.

-Saginaw, Michigan: Cancelled: "Impressions", co-sponsored by Saginaw Diocese and WJRT (ABC) in Flint. It was replaced by a tie-in to national education programming campaign.

Minority Programming:

-Harrisburg, Pennsylvania: "Black Perspective" used to be weekly, and now airs only a few times a year. An Hispanic program was taken off the air.

-Seattle, Washington: "Celebrate the Differences", a minority affairs program was cancelled.

-Savannah, Georgia: Local owned ABC affiliate formerly had a black interview show, that was cancelled a few years ago.

Local News Programs:

-Marquette, Michigan: Shows cancelled include: "Camera 6"- a talk/interview show on news topics; "First Monday"- a monthly news magazine program.

-Norwich, Connecticut; This month the only local TV station (WTWS- New London) eliminated its entire local news program for economic reasons. Hartford and Providence based TV stations generally ignore Eastern Connecticut even though their signals are received here (Norwich).

-Orange, California: Stations located in Los Angeles provide very little local news for Orange County market. ABC is a bit better than others.

-Indiannapolis, Indiana: Local newscasts were cancelled by WTTV Independent in 1990.

-Raleigh, North Carolina: WPTF cancelled newscasts, whose new absentee owner cited money as the reason.

-St. Paul, Minnesota: In general the news is less "newsy" and more entertainment oriented. WCCO cancelled "Newsday" and shifted a prominent Sunday religion program to 6 AM. Offered many story ideas that have been igonred and also hosted unattended press conferences.

-Portland, Oregon: Several stations have had reductions in personnel particularly in news and public affairs departments.

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

| | | |
|---|---|---|
| In re | ) | |
| | ) | |
| Revision of | ) | MM Docket No. 91-140 |
| Radio Rules and Policies | ) | |
| | ) | |
| | ) | |

## Comments of the United States Catholic Conference

The United States Catholic Conference ("USCC") submits the following comments in the above-captioned Notice of Inquiry ("Notice"), released May 30, 1991 by the Federal Communications Commission ("FCC" or "the Commission").

## Interest of the United States Catholic Conference

The USCC is a nonprofit organization organized under the laws of the District of Columbia. All active Catholic Bishops in the United States are members of the USCC. The USCC advocates and promotes the pastoral teachings of the Bishops in such diverse areas as education, social welfare, immigration, civil rights, the economony, housing, health care and family life, and communications. When permitted by Commission rules and practice, the USCC files comments in agency proceedings of importance to the Catholic Church and its people throughout the United States. The USCC has participated in proceedings before the Commission involving multiple ownership rules for broadcast licensees, cable television, Instructional Television Fixed Service, the Fairness Doctrine and other matters that affect the rights of the public, paricularly those with no economic power in the commercial marketplace, to receive diverse viewpoints over the scarce public resource of the airwaves. This Notice proposes to undermine current rules limiting concentration of control over broadcast facilities and therefore threatens the First Amendment rights of the public to hear, over their local radio stations, diverse views on local issues of importance to them. Citizens with no economic power to own their own stations or even to purchase air time are particularly threatened by the Commission's proposals in this Notice.

## Summary

The Commission proposes to change its multiple ownership rules for radio to permit a single entity to own and control more than the current limit of 12 radio stations. Weakening the multiple ownership rules would allow greater numbers of radio stations to be owned and controlled by entities with no ties to a radio station's community of license. The Commission also proposes to permit radio licensees to cede control of up to 24 hours per day of broadcast time (through "time brokerage") to entities other than the station owner, further opening the door to control of local stations by non-local entities. These Commission proposals would create a new system of absentee ownership which threatens a policy at at the heart of broadcasting regulation.

The long-standing policy of the FCC is that broadcast stations be owned and operated by a local entity familiar enough with the community to develop programs responsive to local community needs and interests. The threat to this policy favoring localism invited by this Notice, if adopted, would violate decades of consistent Congressional, judicial and (until recently) Commission policy. Localism was written into the Communications Act of 1934 ("the Act")[1/] and repeatedly affirmed by Congress. It has been consistently applied by the FCC for decades, and is confirmed by the courts as a constitutionally sound method of ensuring the diversity of voices over the nation's airwaves protected by the First Amendment.

The core concept of localism underlying these rules has been in existence for more than 50 years. It has helped ensure that a licensee serve as a medium of a community's self expression, thereby affirming a fundamental element of the public interest mandate of the FCC -- to promote local broadcasting. In the wake of the steady elimination of other regulations aimed at ensuring responsiveness to the community by its licensee, localism provides a necessary link between the community and its broadcast licensee. The Conference favors ownership rules which encourage and reward broadcasters with express ties to communities of license, rules which serve the vital function of safeguarding the rights of the public to receive programming responsive to their community needs and interests.

---

1/ 47 U.S.C. § 1 et seq. (1934).

## Local Ownership is an Essential Element of the First Amendment Mandate That Broadcast Licensees Air Diverse Views On Local Issues

To justify the elimination of a long-standing regulation, the Commission must provide a reasoned analysis which takes into account all relevant factors. Office of Communications of United Church of Christ v. FCC, 707 F.2d 1413, 1426 (D.C. Cir. 1983); Greater Boston Television Corp. v. FCC, 444 F.2d 841, 851 (D.C. Cir. 1970). Further, "...the agency cannot employ means that actually undercut its own purported goals." Office of Communications of United Church of Christ v. FCC, 779 F.2d 702, 707 (D.C. Cir. 1985).

Weakening the ownership rules and permitting wholesale leasing out of blocks of radio time indeed would undercut a fundamental goal of the Act to promote local, community-responsive programming. "It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will untimately prevail, rather than to countenance monopolization of that market .... To condition the granting or renewal of [broadcast] licenses on a willingness to present representative community views on controversial issues is consistent with the ends and purposes of those constitutional provisions forbidding the abridgment of freedom of speech and freedom of the press." Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 390, 394 (1969). Without reasonable limits on the amount of radio stations a single entity may own and on the leasing of blocks of radio time, single companies may control radio stations in communities those companies have never seen and about which they know nothing. Greater blocks of radio time on scores of radio stations can be given over to identical, nationally-produced formats, squeezing out local, independent productions and coverage of local issues and concerns. If enacted, this proposal would accelerate the current trend towards mass-produced programming. Edith Hilliard, vice president-general manager at Broadcast Programming in Seattle, which currently distributes 35 music formats to more than 800 stations estimates that half of all commercial stations in the United States rely to some degree on syndicated programming, from overnight filler to full 24-hour turnkey operations. "Format Suppliers' Future in Fragmentation," Broadcasting, July 9, 1991, p.40.

Regulation of ownership policies has been held by the Supreme Court as recently as last Term to be an important and necessary means of fulfilling the First Amendment mandate of diversity of voices over the airwaves. Metro Broadcasting, Inc. v. FCC, 110 S.Ct. 2997 (1990) ("Metro"). In Metro, the Court held that benign race-based ownership preferences, approved by

the FCC and Congress, are an appropriate and constitutionally permissible means of achieving diverse views and information over the airwaves. Regulations favoring local ownership of broadcast stations, which do not involve such constitutionally sensitive issues, clearly pass constitutional muster.

The Court's acceptance in Metro of FCC policies linking broadcast station ownership with the First Amendment goal of diversity is based on an unbroken line of judicial, Congressional and (until recently) Commission decisions affirming that fundamental link, particularly as it applies to local ownership. "[T]he Commission historically has followed a policy of 'localism' as a sound means of promoting the statutory goal of efficient public service." National Association of Broadcasters v. FCC, 740 F.2d 1190, 1198 (D.C. Cir. 1984). As early as 1941, the Commission recognized the need to protect localism through regulation when it limited the control national networks could exert over local licensees, including limits on ownership by national networks. Chain Broadcasting Rules, (1941), aff'd NBC v. United States, 319 U.S. 190 (1943). In 1953, it placed ownership limits on broadcast stations, again recognizing that diversity of ownership and diversity of programming are inextricably entwined. Amendment of Sections 3.35, 3.240, and 3.636 of Rules and Regulations Relating to Multiple Ownership of AM, FM, and Television Broadcast Stations, Report and Order, 18 F.C.C. 288 (1953), aff'd United States v. Storer, 351 U.S. 192 (1956). It determined in its 1965 Policy Statement on Comparative Broadcast Hearings that ownership and management by a individual living in the community of license would be given great weight in licensing decisions because it "indicates a likelihood of continuing knowlege of changing local interests and needs." Policy Statement on Comparative Broadcast Hearings, 5 RR2d 1901 (1965). Local residence is a fundamental consideration in choosing a broadcast licensee, the FCC declared in 1985, in contrast to mere familiarity with an area, which carries much less weight than actual residence when comparing applicants' potential to serve the public interest. Radio Jonesboro, Inc., 57 RR2d 1564, 1566, 1567 (1985).

Congress wove the concept of localism throughout the Act. The requirement that local broadcast outlets serve local needs is made explicit in section 309(b) of the Act. Even as new amendments to the Act were added, the enduring concept of localism was included. Section 309(i), permitting the use of lotteries in some circumstances, specifically requires the FCC to give preference to applicants with local residency and few or no interests in other media outlets; "the Conferees strongly believe that the avoidance of local ownership concentration should continue to be a factor of major significance in promoting diversity in the licensing process." H.R. Conf. Rep. No. 97-765,

97th Cong., 2d Sess., reprinted in 1982 U.S. Code Cong. & Ad. News 2261, 2281. When it passed the then-revolutionary Public Broadcasting Act of 1967, Congress emphasized the traditional concept of localism by requiring that the newly available federal funds be provided to local communities' broadcast outlets so that programs could be produced by and for local stations; "the town meeting may have disappeared, but nevertheless the success of our democratic institutions still depends ultimately upon the informed judgements of the citizens of our cities, towns, and local communities." H.R. Rep. No. 572, 90th Cong., 1st Sess., reprinted in 1967 U.S.Code Cong. & Adm. News 1799, 1801. Congress stressed the "fundamental concept which runs through title II [of the Public Broadcasting Act] -- localism: local stations shall retain both the opportunity and resonsibility for broadcasting programs they feel best serve their communities." Id. at 1808. Twenty years later, the House described the framework for the Public Broadcasting Act of 1967 as localism. H.R. Rep. No. 100-825, 100th Cong., 2d Sess., reprinted in 1988 U.S.Code & Adm. News 4357, 4359. Congress continues to affirm localism; "public television and radio stations constitute valuable local resources for utilizing electronic media to ... solve local problems through community programs and outreach programs." S.1504, 102d Cong., 1st Sess., §3, 137 Cong. Rec. S10506 (1991).

## Locally Owned Radio Outlets are an Indispensable Means of Distributing Programs Discussing Community Needs and Interests

Locally-based nonprofit Catholic organizations have found local radio stations to be an essential means of getting their messages to the public. The Catholic Communication Campaign (CCC), a program which takes a collection in Catholic churches nationwide to support communications projects, funds numerous radio programs and public service announcements. Many of these projects target issues of importance to individual communities, including ethnic and racial groups within those communities such as African-Americans and Hispanics, or other special audiences such as immigrants and refugees. Many Catholic dioceses also produce material for radio use on a local level. Placement of these locally-based programs on community radio stations would be jeapordized by absentee ownership and wholesale leasing rules.

The Commission's proposals are of special concern in light of the few remaining regulatory tools available to community-based groups to demand community-responsive programming from their radio stations. Responses from a survey of dioceses on the effects of broadcast deregulation attest to the decline of community affairs programming and the need for improved public access, even without the proposed rule changes. Diocesan

communications directors specifically complain that quality public affairs programming which provides a real community service is relegated to pre-dawn hours to make way for paid programming. "The situation is already poor and looks to be getting worse," states the Director of Media Operations in the Diocese of Albany.

The Director of Communications from the Diocese of Wilmington, Delaware states that "One of the problems in recent years is the increase in satellite services used by stations. More automation means less people and less local programming." The Communications Director from the Diocese of Burlington explains, "Another apparent reason why we are losing airtime on some of the radio stations is the increasing out-of-state ownership with their inclination toward block/satellite programming instead of local origination." This is echoed by the Director of Communications of the Archdiocese of Cincinnati, "The number of out-of-state and corporate ownerships of once locally owned stations, has created an attitude of not really caring for the home community."

## Conclusion

Policies promoting local ownership and control of radio stations are essential to protecting the fundamental right of citizens to hear information and viewpoints on issues of public concern in their community. Those without economic power especially need regulations which protect their First Amendment rights because they necessarily rely for information on media outlets owned by others. The proposals contained in the Notice threaten rather than protect these fundamental rights and the USCC urges, therefore, that the proposals be rejected.

Respectfully submitted,

UNITED STATES CATHOLIC CONFERENCE

/s/
Mark E. Chopko
General Counsel

/s/
Katherine G. Grincewich
Assistant General Counsel

3211 Fourth Street, N.E.
Washington, D.C. 20017
202/541-3300

August 5, 1991