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January 22, 1996

William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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In the Matter of Advanced Television
Systems and Their Impact Upon the
Existing Television Broadcast Service
MM Docket No. 87-268

Dear Mr. Caton:

The United States Catholic Conference ("USCC") submits these reply comments to the comments of Media Access Project, Citizens Communication Center Project and Minority Media and Telecommunications Council ("MAP et. al.") in the above captioned *Notice of Proposed Rulemaking* ("*Notice*"), released August 9, 1995, by the Federal Communications Commission ("Commission").

The USCC is a nonprofit corporation organized under the laws of the District of Columbia whose members are the active Catholic Bishops in the United States. The USCC advocates and promotes the pastoral teachings of the Bishops in such diverse areas as education, family life, health care, social welfare, immigration, civil rights, the economy, housing, and communications. In its *Notice*, the Commission requests public comment on whether and how broadcasters may use an additional 6 MHz of spectrum. Protection of the public's First Amendment right to disseminate and receive information on the scarce public resource of the airwaves is at issue in the rulemaking and is a matter of particular concern to the USCC.

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The Conference supports the comments of MAP et. al. particularly as they set forth the legal and policy framework for broadcasters' use of an additional 6 MHz of spectrum. Applying fundamental principles of broadcast law to the FCC's request for comment in this Notice, MAP et. al. urge the Commission not to restrict licensing this additional 6 MHz to incumbent broadcast licensees, to require that the additional spectrum be used primarily for the transmission of free over-the-air broadcasting, to condition use of the additional spectrum on enhanced service to the public, to include in must-carry requirements only those uses of the additional spectrum which include public interest obligations, and to impose a time limit on the use of the additional spectrum. These proposals correctly steer the Commission away from a tendency in this Notice to allow broadcasters to determine the most profitable and currently expedient use of the additional spectrum. The Commission agrees with MAP et. al. that the Commission must apply basic principals of broadcasting when developing the parameters of the use of additional spectrum by broadcasters. For the Commission to fail to do is to exceed its statutory authority.

The Commission's decisions in this rulemaking must be guided by the bedrock principle that broadcast licensees operate on spectrum owned by the public, and their use of this valuable public resource is conditioned on service in the public interest, convenience and necessity. Turner Broadcasting System, Inc. v. FCC, 114 S. Ct, 2445, 2456-57 (1994); Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969). "[T]he people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purpose of the First Amendment ... It is the right of the public to receive suitable access to social, political, aesthetic, moral, and other ideas and experience which is crucial here." Red Lion, 395 U.S. at 390-91. This "distinct approach to broadcast regulation" has been confirmed by the Supreme Court in Turner, in

which it cited with approval not only Red Lion but also FCC v. League of Women Voters of Cal., 468 U.S. 364 (1984) and Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94 (1973).

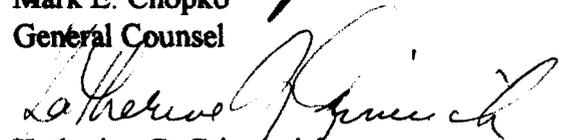
These fundamental principles which derive from the (still viable) Communications Act of 1934, and which are articulated in detail in MAP's comments, have not been rendered inapplicable by any Congressional action or judicial pronouncement. In fact, Congress has not reported the telecommunications bill out of the Conference Committee, having not yet reached consensus on a variety of issues, including the manner by which the additional 6 MHz may be apportioned and used. Additionally, as MAP notes in its comments, the pending Budget Reconciliation Bill requires further FCC study of the proposal to open the spectrum for auction and prohibits the grant of any license of that spectrum until after November of this year.

This rulemaking opens the possibility of preserving free over-the-air broadcasting at a time when information dissemination is increasingly for sale only. At risk is the public's First Amendment right to receive and disseminate speech over the public airwaves. The Commission must refer to the bedrock principles of broadcasting as it considers how additional spectrum can be used consistently with the First Amendment rights of the public.

Respectfully submitted,



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