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Federal Communications Commission
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
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Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992	)	**MM Docket No. 93-25**
	)	
Direct Broadcast Satellite Public Service Obligations	)	

Reply Comments of the
United States Catholic Conference

The United States Catholic Conference ("USCC") respectfully submits these reply comments to the Federal Communications Commission's ("FCC") Public Notice, released January 31, 1997 in the above referenced docket. By that Notice, the FCC sought public comment on appropriate regulations effectuating the public interest mandate and noncommercial programming set-aside provisions of Section 25 of the Cable Television Consumer Act of 1992. Pub. L. No. 102-385, 106 Stat. 1460 (*codified at* 47 U.S.C. § 335 (1992)) ("the Cable Act"). The USCC files these reply comments to supplement the Comments of the Denver Area Educational Telecommunications Consortium, Inc., et al. ("DAETC") in this proceeding, and urges the FCC to pay particular attention to DAETC's analysis of the two separate but complimentary public interest obligations of section 25. The USCC also supports the Comments of the Center for Media Education advocating specific regulations requiring educational and informational children's programming under section 25(a) of the Cable Act.

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The USCC is a nonprofit corporation organized under the laws of the District of Columbia.

Its members are the active Roman Catholic Bishops in the United States. The USCC advocates and promotes the pastoral teachings of the Bishops in such diverse areas as education, health care, social welfare, immigration, the economy and telecommunications. Protection of the rights of all persons to receive information and views from diverse sources, particularly from nonprofit organizations, including churches, is a matter of great importance to the USCC.

By these reply comments, the USCC seeks to add to the record an explanation of how its experience (and the experiences of Catholic dioceses) in producing and distributing noncommercial television programming with religious, moral and social justice themes demonstrates the need for regulations establishing both the public interest obligation of section 25(a) of the Cable Act and the section 25(b) requirement of a set-aside of time for noncommercial programs without editorial discretion by DBS licensees.

Congress' purpose in enacting sections 25(a) and (b) was plain -- to create a venue for diverse views on the new medium, DBS, which offered the potential to compete with the highly concentrated cable industry. Congress declared in its findings in the Cable Act, "There is substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media." House Conf. Rep. No. 102-862, 102d Cong., 2d Sess. (1992), *reprinted in* 4 U.S. Code Cong. & Adm. News 1133, 1233, 1240. USCC agrees with DAETC that Congress determined that to guarantee the diversity of voices on DBS, two separate means of access are necessary.

In section 25(a), Congress mandated that DBS licensees serve the public interest, and specified that at a minimum, DBS licensees offer political candidates access under existing sections 312(a)(7) and 315 of the Communications Act. As DAETC correctly states in its Comments, this public interest obligation is similar to the familiar "public interest-public trustee" model of regulation applicable to television and radio broadcasting. That public interest framework is well-established, and represents a balance between the rights of viewers to receive diverse views, and the rights of broadcasters (and DBS licensees). Further, that balance favors viewers, as the Court of Appeals for the District of Columbia recognized in upholding sections 25(a) and (b): "It is the right of viewers and listeners, not the right of broadcasters, which is paramount . . . . It is the right of the public to receive suitable access to social, political, esthetic, moral and other ideas and experiences with is crucial here." *Time Warner Entertainment Co., L.P. v. FCC*, 93 F.3d 957, 975 (D.C. Cir. 1996) (quoting *Red Lion Broadcasting Co., Inc. v. FCC*, 395 U.S. 367, 390 (1969)).

DAETC's and CME's Comments highlight community interest and children's educational programming as filling this public interest mandate. We agree and add that religious programming must be an integral part of the mandate as well. Religious programs can fulfill a terrestrial broadcasters' public interest service mandate. See *1960 Programming Statement*, 20 R.R. 2d 1901 (1960). These programming guidelines included, as one of the "major elements usually necessary to meet the public interest, needs and desires of the community in which the station is located . . . Religious Programs." *Id.* at 1913. In 1971, the FCC further clarified that licensees could satisfy their fundamental obligation to serve local needs and interests by asking community leaders, and specifically included religious leaders. *Primer on Ascertainment of Community Problems*, 21 R.R.

2d 1507, 1518 (1971). Even when the FCC changed its method of ensuring that each licensee serve its community of license, it confirmed that a major goal of the Communications Act is ". . . the presentation of programming to meet community needs and interests." *Revision of Application for Renewal of License*, 49 R.R. 2d 740, 748 (1981). Section 25(a)'s public interest mandate follows this tradition and must therefore include religious programming.

Congress went even further to ensure access by all to diverse sources of programming. In section 25(b), it explicitly required each DBS licensee to "reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent, exclusively for noncommercial programming of an educational or information nature" and to "not exercise any editorial control over any video programming provided pursuant to this subsection." 47 U.S.C. § 335(b)(1) and (3). By including in the Cable Act <u>both</u> section 25(b) and the general public interest mandate of section 25(a), Congress made doubly sure that DBS licensees would promote information diversity and protect consumers and programmers from undue market power.

The need for Congress' two-pronged solution to the problem of ensuring that noncommercial programming is aired by FCC licensees is illustrated by the broadcasting and cable experiences of USCC and Catholic dioceses. Although broadcasters' service in the public interest has traditionally been interpreted to include programs which meet each community's religious needs, the experience of USCC and Catholic dioceses is that television and radio licensees increasingly avoid noncommercial programs with religious and moral themes.

If, as DAETC states in its comments, there may be a "dearth" of non-commercial educational and informational programming, the lack of access to broadcast and cable outlets is a major cause. Program producers such as USCC and dioceses face an impossible task - spend money to produce programs rarely seen or heard on radio, television and cable, and then ask donors who often have not seen or heard the programs to continue to support the production of more programs. Over the years, in spite of dwindling opportunities for carriage, USCC, dioceses, and independent Catholic producers have produced considerable libraries of programs. To continue to produce this programming, however, outlets such as section 25(b) programming are critical. Diocesan directors of communications report that television licensees in their communities have simply told them "we don't accept religious programs." Others have been informed by their local television licensee that, unless the station is paid, it will not carry religious programming. An independent Catholic radio producer reports that he is frequently told by radio station managers that, although his programs had been carried for free as part of the licensee's public interest programming, these same programs will now only be carried for a price. In all of these instances, the prices suggested are market-driven, forcing Catholic programmers to compete for carriage with infomercials and other commercial programs. The most recent success (albeit modest) USCC has had in placing programming has been with extremely short (10 to 30 second) public service announcements. In an industry where religious programming lacks broad support, we attribute this limited success to the PSA's emphasis on secular, socially beneficial moral themes and minimization of reference to religious beliefs.[1]

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[1]Several diocesan directors of communications have raised fears that the public access channels available to them on a cable system will disappear when the cable franchise is renegotiated. In any event, such access channels are available to only a handful of dioceses out of a total of 189 dioceses in the United States.

As the National Telecommunications and Information Agency has stated in its letter to Chairman Hundt, the potential relaxation of the ownership and attribution rules for radio, television and cable under consideration by the FCC inevitably will increase concentration of control of these outlets. USCC expects that the difficulty in placing religious programs currently faced by itself and dioceses will only increase as fewer owners control more outlets. Therefore, to protect the rights of viewers to receive noncommercial programs, it is critical that the FCC issue regulations effectuating both the public interest mandate of section 25(a) and especially the set-aside provisions of section 25(b)

Conclusion

The FCC should issue regulations which effectuate both the public interest mandate of section 25(a) of the Cable Act and the section 25(b) requirement of a set-aside of 4 to 7 percent of DBS capacity for noncommercial programming with editorial discretion by DBS licensees.

Respectfully submitted,

Mark E. Chopko
General Counsel

Katherine G. Grincewich
Assistant General Counsel

May 30, 1997