

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

In the Matter of Application of )  
NBC Telemundo License Co. )  
For Renewal of License of ) BRCT-20041001ABM  
WTVJ(TV), Miami, Florida )

To: Media Bureau

**OPPOSITION OF NBC TELEMUNDO LICENSE CO.  
TO PETITION TO DENY RENEWAL**

Margaret L. Tobey  
Cristina C. Pauzé  
Morrison & Foerster LLP  
2000 Pennsylvania Avenue, N.W.  
Suite 5500  
Washington, DC 20006

F. William LeBeau  
Assistant Secretary and Senior  
Regulatory Counsel  
NBC Telemundo License Co.  
1299 Pennsylvania Avenue, N.W.  
11<sup>th</sup> Floor West  
Washington, DC 20004

Counsel for NBC Telemundo  
License Co.

January 10, 2005

## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY .....	1
II. FACTUAL BACKGROUND .....	2
III. THE UCC HAS MISDIRECTED ITS PETITION AGAINST WTVJ, WHICH CLEARLY IS NOT THE ENTITY WHOSE ACTIONS ARE AT ISSUE .....	4
IV. CONGRESS AND THE COURTS HAVE CONSISTENTLY CONCLUDED THAT, EXCEPT FOR ADVERTISING PURCHASED BY QUALIFIED CANDIDATES FOR FEDERAL OFFICE, BROADCASTERS ARE NOT REQUIRED TO SELL AIR TIME OR OTHERWISE GRANT ACCESS TO PARTICULAR INDIVIDUALS OR GROUPS .....	6
V. THE “REMEDY” SOUGHT BY THE PETITIONER WOULD VIOLATE THE FREE SPEECH AND ESTABLISHMENT CLAUSES OF THE FIRST AMENDMENT .....	11
VI. CONCLUSION .....	14

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

In the Matter of Application of )  
NBC Telemundo License Co. )  
For Renewal of License of ) BRCT-20041001ABM  
WTVJ(TV), Miami, Florida )

To: Media Bureau

**OPPOSITION OF NBC TELEMUNDO LICENSE CO.  
TO PETITION TO DENY RENEWAL**

**I. INTRODUCTION AND SUMMARY**

The Petition to Deny filed by the United Church of Christ (“UCC” or “Petitioner”)<sup>1</sup> against the application of NBC Telemundo License Co. (“NBC Telemundo”) for renewal of the license of Station WTVJ(TV) (“WTVJ” or the “Station”) contends that the Station’s license should be taken away because the NBC Television Network (“NBC” or the “Network”) – an entity under common control with NBC Telemundo – declined to accept a paid commercial announcement for the UCC that violated the Network’s internal policies on broadcast content. The Petition is unsupported by facts or law, is contrary to public policy, and should be summarily dismissed.

The UCC concedes in the Petition that the commercial in question was never even offered to the Station.<sup>2</sup> Indeed, a spokeswoman for the UCC has publicly acknowledged that the Station was targeted solely because it is commonly owned with the Network and the timing on its renewal application was conducive to the filing of the Petition – in her words, targeting

---

<sup>1</sup> United Church of Christ Petition to Deny Renewal, File No. BRCT-20041001ABM (Dec. 9, 2004) (“Petition”).

<sup>2</sup> *Id.* at 3 n.2.

WTVJ was simply “the luck of the draw.”<sup>3</sup> These facts alone support summary dismissal. But even if the ad *had* been offered to the Station and the Station had declined to air it, the Petition would be subject to summary dismissal because the Petitioner itself concedes there is no law to support it.<sup>4</sup> Petitioner’s suggested remedy for this fatal defect – that the Federal Communications Commission (“FCC” or “Commission”) adopt regulations *obligating* broadcasters to accept paid commercial announcements, including those espousing particular religious beliefs<sup>5</sup> – is even more flawed because such a “remedy” clearly would violate both the free speech and establishment clauses of the First Amendment and would be antithetical to the obligation of broadcasters to exercise editorial judgment in choosing programming for the audiences they serve.

## II. FACTUAL BACKGROUND

As the UCC admits, it never requested the Station to air the advertisement at issue, called “Night Club.”<sup>6</sup> Instead, in February 2004, the UCC, through its advertising agency, approached the Network with the ad, which portrayed other churches and religions as discriminatory in their refusal to accept people who are African-American, Hispanic, disabled, or gay.<sup>7</sup> The Network concluded that the “Night Club” ad inappropriately suggested that churches other than the UCC are not open to people of diverse races and backgrounds and therefore violated the Network’s

---

<sup>3</sup> See John Eggerton, *UCC Challenges Miami Licenses*, *Broadcasting & Cable*, Dec. 9, 2004 (quoting the Managing Director of the UCC Office of Communication).

<sup>4</sup> See Petition at 4-5.

<sup>5</sup> See *id.* at 7-8.

<sup>6</sup> *Id.* at 3 n.2.

<sup>7</sup> The ad featured a night club “bouncer” who refused to allow certain would-be congregants admission to the church, including two men holding hands, an African-American man, a Latina, and a man in a wheelchair, while clearing the way for Anglo-American families to enter the church. NBC Telemundo notes that the Petitioner did not include a description of the ad in its Petition. The ad may be viewed online at <http://www.stillspeaking.com/default.htm>.

policy against addressing issues of public controversy through paid commercial advertisements. Accordingly, the Network refused to air the ad.

In November 2004, the UCC approached the Network a second time with the “Night Club” ad and also offered another commercial announcement. The other commercial, which the Network accepted, contained a positive message asserting only that UCC churches are welcoming and inclusive. The Network again rejected the “Night Club” ad as unacceptable under Network policy, however, and offered suggestions to the UCC for modifying the “Night Club” ad to address the Network’s objections. The UCC responded to these offers *not* by telling the Network to run the acceptable ad or modifying the objectionable ad, but rather by filing the Petition – more than 10 months after the objectionable ad was first presented – against a station to which the ad had not even been offered.

Contrary to the suggestion in the Petition,<sup>8</sup> the Network has accepted and continues to accept advertisements from religious or faith-based organizations and, as noted above, accepted one of the two ads offered by the UCC. With respect to each ad offered to it, regardless of the source, the Network makes an individual determination whether the ad in question is consistent with its program content policies before it will agree to run the ad as part of the NBC network programming supplied to the owned-and-operated stations and the non-owned affiliates.<sup>9</sup> These programming policies include a long-standing policy of declining to accept paid commercials that address issues of public controversy except for paid political ads required to be aired under

---

<sup>8</sup> See Petition at 1.

<sup>9</sup> Similarly, the NBC Television Station Group and its stations sell advertising time locally and ultimately make their own judgments as to the acceptability of local spots. But the Petitioner acknowledges that it never even offered the ad to WTVJ.

the Communications Act of 1934, as amended, and the Commission’s political broadcasting rules.

The Network’s policy, which is applied uniformly to *all* entities seeking to buy time on the Network, including religious groups, political organizations, and commercial enterprises, is rooted in the Network’s concern that dealing with issues of public controversy through paid commercials could allow only the wealthiest organizations to dominate the public debate on such issues, resulting in imbalanced and unfair presentations of viewpoints. For this reason, the Network believes it is more appropriate for issues of public controversy to be addressed through the Network’s news programming, where all sides of the issue can be fairly presented and analyzed. In this case, the core message of the rejected ad – that churches other than UCC churches do not welcome African-Americans, Latinos, gays, and people in wheelchairs – presents the kind of controversial public issue that, in the Network’s view, should not be addressed through paid commercials. In making this determination, the Network exercised precisely the type of responsible editorial judgment that the Commission expects of independent media entities. Accordingly, the Network should be commended, not criticized or penalized, for this conduct. And WTVJ, which did not even receive a request to air the ad at issue, most certainly should not be penalized.

### **III. THE UCC HAS MISDIRECTED ITS PETITION AGAINST WTVJ, WHICH CLEARLY IS NOT THE ENTITY WHOSE ACTIONS ARE AT ISSUE**

In the Petition, the UCC urges the FCC to deny WTVJ’s renewal application even though it admits several times that the Network’s actions – not WTVJ’s – are at issue. As conceded by the UCC, “[t]he incident which has triggered this petition to deny is the *NBC Television Network’s* refusal to carry an advertisement for which the UCC has agreed to purchase time on

the NBC network.”<sup>10</sup> The UCC’s complaint clearly is against the Network. NBC Telemundo (licensee of the Station) and the Network are not the same entity. Furthermore, although NBC Telemundo and the Network are under common control, their ownership is not identical.<sup>11</sup> It is patently ridiculous for the UCC to ask the FCC to deny WTVJ’s license renewal because of a decision by the Network with respect to a commercial advertisement that was never even presented to the Station. The “luck of the draw” does not constitute a factual or legal basis for challenging WTVJ’s license renewal application.

In a transparent attempt to link somehow the actions of the Network to the Station, the UCC accuses WTVJ of a “failure to present perspectives on the variety of ethically and value based expression in the United States and in the Miami market.” The Petition contains no facts supporting this frivolous assertion, and no such facts exist. To the contrary, WTVJ has a long and distinguished record of serving the culturally rich and diverse Miami audience. In addition to its network programming, the Station serves the Miami market by producing local news, public affairs, and entertainment programming that focuses on issues of importance to the local community, both religious and secular. For example, the Station airs four hours of local news on weekdays, including stories that address religious issues when newsworthy.<sup>12</sup> The local newscasts include features covering issues of particular interest to the Miami area, such as a poll of Cuban-Americans in South Florida regarding issues such as language and Fidel Castro.

---

<sup>10</sup> Petition, at 1 (emphasis added).

<sup>11</sup> See FCC File No. BOS-20040601BBY, Attachment A-4.

<sup>12</sup> For example, WTVJ recently has covered stories regarding the role religious leaders played during the Presidential election; the emphasis placed on Americans’ moral values by President Bush’s re-election campaign; various newsworthy religious or memorial services; the sexual abuse scandal in the U.S. Catholic Church; and the request of a citizen of Bal Harbour, Florida, a predominantly Jewish area, for the right to display a Christian Nativity scene next to the Menorah displayed at the city entrance. The Station’s quarterly issues lists compiled during its most recent term likewise notes many other stories relevant to such issues and are available upon Commission request. In addition, WTVJ’s sister station, WSCV(TV), Fort Lauderdale, which is a Telemundo affiliate and is also owned by NBC Telemundo, airs a Catholic Mass each week.

WTVJ also produces “South Florida Today,” an hour-long program that airs at 10 a.m. on weekdays and covers news, life and trends in South Florida. Including “South Florida Today,” the Station airs 30.5 hours of local news per week. The “NBC 6 Year in Review” is a year-end special focusing on local and national stories that had an impact on South Florida's viewers. Additionally, in preparation for the 2004 elections, the Station aired much locally focused programming, including a locally produced pre-debate special on the Presidential candidates, a locally produced Mayoral Debate, and over two hours of Decision 2004 segments that provided viewers with information about South Florida's issues and candidates. WTVJ is committed to listening to its viewers and serving their needs. The UCC’s unsupported and baseless accusations to the contrary are without merit.

**IV. CONGRESS AND THE COURTS HAVE CONSISTENTLY CONCLUDED THAT, EXCEPT FOR ADVERTISING PURCHASED BY QUALIFIED CANDIDATES FOR FEDERAL OFFICE, BROADCASTERS ARE NOT REQUIRED TO SELL AIR TIME OR OTHERWISE GRANT ACCESS TO PARTICULAR INDIVIDUALS OR GROUPS**

The UCC’s entire legal argument is based on the following unsupported, and unsupportable, assertion: that “WTVJ improperly failed to recognize that the UCC had a limited right of access for the purchase of time.”<sup>13</sup> As noted above, as a threshold matter, WTVJ is not the entity whose actions are at issue. Furthermore, the UCC acknowledges that this assertion is not based on the Fairness Doctrine, which has been eliminated,<sup>14</sup> or any other express rule or

---

<sup>13</sup> Petition at 4.

<sup>14</sup> Prior to 1987, the FCC enforced the agency-developed Fairness Doctrine, which imposed a two-part obligation on broadcasters, who were obliged, first, “to cover vitally important controversial issues of interest in their communities” and, second, “to provide a reasonable opportunity for the presentation of contrasting viewpoints.” *Syracuse Peace Council Against Television Station WTVH Syracuse, New York*, 2 FCC Rcd 5043, 5043 n.2 (1987) (“*Syracuse Peace Council*”), *recon. denied*, 3 FCC Rcd 2035 (1988). In 1985, the FCC released an exhaustive “Fairness Report” declaring the doctrine obsolete, “no longer [in] ... the public interest,” and of questionable constitutional validity. *Inquiry into Section 73.1910 of the Commission's Rules and Regulations Concerning the General Fairness Doctrine Obligations of Broadcast Licensees*, 102 F.C.C.2d 145, 246 (1985) (“Fairness Report”). The report concluded that new media technologies and outlets ensured dissemination of diverse viewpoints without

policy currently in force, but rather on “the policies inherent in the public interest standard of the Communications Act.”<sup>15</sup> The UCC’s argument ignores, however, that in adopting the Radio Act of 1927 (the predecessor to the Communications Act of 1934), “Congress specifically dealt with – and firmly rejected – the argument that the broadcast facilities should be open on a nonselective basis to all persons wishing to talk about public issues.”<sup>16</sup> Thus, the drafters rejected a common carrier model for broadcasters in favor of a system of private broadcasting in which broadcast licensees enjoy “the widest journalistic freedom consistent with [their] public obligations.”<sup>17</sup> This principle was deemed sufficiently important to require an express disclaimer in what became the Communications Act of 1934, which currently provides in Section 3(10) (formerly Section 3(h)) that “a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.”<sup>18</sup>

Based on this history, the U.S. Supreme Court ruled in *CBS v. DNC* that, despite the existence of the Fairness Doctrine and the obligation it imposed on broadcasters to address both sides of controversial issues of public importance, no private individual or group has a right to command the use of broadcast facilities.<sup>19</sup> Accordingly, in overruling a decision to the contrary

---

the need for federal regulation, that the Fairness Doctrine chilled speech on controversial subjects, and that the doctrine interfered too greatly with journalistic freedom. *See id.* at 147. Less than a year later, the D.C. Circuit held that the fairness doctrine derived from the FCC's mandate to serve the public interest, subject to changing agency interpretation, and was not compelled by statute. *See Telecommunications Research & Action Ctr. v. FCC*, 801 F.2d 501, 517-18 (D.C. Cir. 1986), *cert. denied* 482 U.S. 918 (1987). The following year, the Commission announced that it would no longer enforce the Fairness Doctrine. *Syracuse Peace Council*, 2 FCC Rcd at 5043.

<sup>15</sup> Petition at 4-5.

<sup>16</sup> *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 105 (1973) (“*CBS v. DNC*”).

<sup>17</sup> *Id.* at 109-110, 118-119.

<sup>18</sup> 47 U.S.C. § 153(10); *see also CBS v. DNC* at 109; *FCC v. Sanders Brothers*, 309 U.S. 470, 474 (1940) (“the Act recognizes that broadcasters are not common carriers and are not to be dealt with as such”).

<sup>19</sup> *CBS v. DNC* at 113.

by the Court of Appeals, the Supreme Court held that CBS could not be compelled to sell airtime to particular persons or groups for the purpose of airing differing viewpoints in editorial advertisements addressing the Vietnam War.<sup>20</sup> In so ruling, the Supreme Court expressly validated the concern underlying NBC's policy that a government-mandated right of access to the public airwaves would be too heavily weighted in favor of the viewpoints espoused by those with the most money to spend on airtime:

The Commission was justified in concluding that the public interest in providing access to the marketplace of "ideas and experiences" would scarcely be served by a system so heavily weighted in favor of the financially affluent, or those with access to wealth. . . . In the delicate balancing historically followed in the regulation of broadcasting Congress and the Commission could appropriately conclude that the allocation of journalistic priorities should be concentrated in the licensee rather than diffused among many. This policy gives the public some assurance that the broadcaster will be answerable if he fails to meet its legitimate needs. No such accountability attaches to the private individual, whose only qualifications for using the broadcast facility may be abundant funds and a point of view.<sup>21</sup>

Since the Supreme Court's ruling in *CBS v. DNC*, the Commission and the courts have consistently upheld the principle enunciated therein that private individuals, with the very limited exception of qualified candidates for federal office, do not have the right to demand access to broadcast time.<sup>22</sup> For example, in *J. Curtis Herge*, the National Conservative Political Action Committee asked the Commission to re-examine whether an independent political action committee should have a right of access to broadcast facilities. Commission staff, acting under delegated authority, rejected the request based on "clear statutory intent, Commission policy and

---

<sup>20</sup> *Id.* at 98, 153.

<sup>21</sup> *Id.* at 123, 125.

<sup>22</sup> See *Johnson v. FCC*, 829 F.2d 157, 161-62 (D.C.Cir. 1987) (ruling that candidates for political office do not have an absolute right to participate in televised debates); *Rokus v. American Broadcasting Company, Inc.*, 616 F.Supp. 110, 113-14 (S.D.N.Y. 1984) ("Neither the Act nor the First Amendment requires ABC to sell commercial time to persons wishing to discuss controversial issues"); *J. Curtis Herge*, 88 F.C.C.2d 626 (Broadcast Bureau 1981).

precedent, and the Supreme Court’s affirmance of our determinations with respect to a private right of access.”<sup>23</sup> Citing Section 3(h) of the Communications Act, the ruling reiterated that Congress had declined to treat broadcasters as common carriers:

[W]ith certain statutory exceptions such as “reasonable access” for federal candidates and “equal time” for political candidates generally, each broadcaster is free to carry or reject any program it chooses. Within this framework, it is well established that a broadcaster is not a common carrier with the obligation to afford a right of access for all persons desiring to speak out on public issues. [citation omitted] In addition to the statutory mandate [in Section 3(h)], the Commission has consistently adhered to the policy that private individuals do not have a right to demand access to broadcast time. Moreover, the Supreme Court has affirmed the Commission’s determinations that the “public interest” standard of the Communications Act, which incorporates First Amendment principles, does not require broadcasters to accept every announcement offered for broadcast [citing *CBS v. DNC*].<sup>24</sup>

The UCC attempts to distinguish this clear line of unbroken authority by arguing that while the Fairness Doctrine was being enforced, there was no need to mandate the sale of broadcast time to particular individuals or groups because the Fairness Doctrine required broadcasters to fully address issues of public importance. Therefore, in the UCC’s view, these decisions, which were rendered prior to the elimination of the Fairness Doctrine, should not be accorded weight in the post-Fairness Doctrine environment. In urging the Commission to mandate such a right of access, the UCC further contends that “[t]here is no FCC or judicial case which has determined the scope of viewers’ rights to purchase time for the carriage [of] controversial issues under the public interest standard in the absence of the Fairness Doctrine.”<sup>25</sup>

---

<sup>23</sup> *J. Curtis Herge*, 88 F.C.C.2d at 628.

<sup>24</sup> *Id.* at 627.

<sup>25</sup> Petition at 5.

The Commission and the courts have not examined extensively whether particular individuals or groups should have a right to purchase airtime in the post-Fairness Doctrine environment. But there is a sound reason for this – such an examination would be wholly unwarranted because even when the Fairness Doctrine *was* in effect, the law was clear that broadcast stations were responsible for determining which issues were deserving of coverage in their programming *and* which speakers were best suited to present those issues. Neither the Commission nor a particular advertiser had the right to compel a station to accept a specific issue-oriented ad or to grant access to a particular speaker. To the contrary, it was the station’s responsibility, in the exercise of its “significant journalistic discretion,”<sup>26</sup> to identify the issues to be addressed on the public airwaves and to select the speakers to present both sides of controversial issues.<sup>27</sup> Thus, the right of access the UCC seeks to create through its Petition did not exist during the era of the Fairness Doctrine and indeed would be contrary to all established precedent, including judicial decisions rendered after the Fairness Doctrine was eliminated.

For example, following the FCC’s decision to eliminate the Fairness Doctrine, at least one court has reiterated that the Supreme Court’s decision in *CBS v. DNC* is controlling on the question whether individuals or groups can demand a right of access to the public airwaves. In *Amiri v. WUSA-TV Channel Nine*,<sup>28</sup> the U.S. District Court for the District of Columbia ruled that the plaintiff, who sued WUSA-TV for refusing to air stories he deemed newsworthy

---

<sup>26</sup> *CBS v. DNC*, 412 U.S. at 111.

<sup>27</sup> *Id.* at 111-14. The FCC has described this duty as follows: “In determining whether to honor specific requests for time, the station will inevitably be confronted with such questions as whether the subject is worth considering, whether the viewpoint of the requesting party has already received a sufficient amount of broadcast time, *or whether there may or may not be other available groups or individuals who might be more appropriate spokesmen for the particular point of view than the person [or group] making the request.*” *Id.* at 112 (quoting *Report on Editorializing by Broadcast Licensees*, 13 F.C.C. 1246, 1251-52 (1949) (emphasis added).

<sup>28</sup> 751 F. Supp. 211 (U.S.D.C. 1990).

concerning alleged misconduct by federal district court judges, did not have a right of access to broadcast time on WUSA-TV:

Channel Nine's right to decide what news it broadcasts is indisputable. The First Amendment guarantees each individual freedom from being coerced into unwanted expression. This right applies with equal, if not greater force, to newspapers and, in somewhat attenuated form, to the broadcast media. Because Channel Nine seeks to dismiss Amiri's complaint, Amiri's contention [that] the effectiveness of one's speech is limited without the economic and technological resources to reach a broader audience must be treated as true. However, our Court of Appeals has expressly determined that this consideration does not warrant a limitation upon a broadcaster's right to determine what to broadcast.<sup>29</sup>

In denying the plaintiff's motion for reconsideration, the court emphasized that the plaintiff had failed to respond to WUSA-TV's contention, "which this Court found to be indisputable, that as a matter of law no individual may compel a television station to broadcast that person's views, no matter how true and important they may be."<sup>30</sup>

#### **V. THE "REMEDY" SOUGHT BY THE PETITIONER WOULD VIOLATE THE FREE SPEECH AND ESTABLISHMENT CLAUSES OF THE FIRST AMENDMENT**

The UCC contends, with no factual support whatsoever, that WTVJ has failed "to present perspectives on the variety of ethically and value based expression[s] in the United States and in the Miami market."<sup>31</sup> The UCC urges the Commission to remedy this alleged failure by using WTVJ's license renewal application as the vehicle for adopting a government-mandated right of

---

<sup>29</sup> *Id.* at 212 (citations omitted).

<sup>30</sup> *Id.*

<sup>31</sup> Petition at 4. The viewer affidavits attached to the Petition each contain a verbatim recitation that "It is my impression that, individually and collectively, the Miami area over the air television stations available to me do not portray the full range of religious expression in this country and in this area and that, in particular, they do not carry programming which indicates that there are denominations such as the United Church of Christ which invite all people to worship in their churches." This statement of the affiant's "impression" is the extent of the "evidence" with respect to WTVJ's coverage of religious diversity. Even if this statement were accurate, which, as demonstrated in Part III above, it is not, it falls far short of the threshold of *prima facie* evidence needed to demonstrate that a licensee has failed to serve the public interest during the preceding license term. *See* 47 U.S.C. § 309(d)(1).

access so that the UCC’s “viewpoints on religious expression will be carried” on WTVJ and other stations.<sup>32</sup> Apart from being wholly unwarranted as a factual and legal matter, this recommended “remedy” will impermissibly involve the Commission in the direct regulation of the content of broadcast speech *and* in the promotion of particular religious beliefs, all in violation of the First Amendment.

The Supreme Court’s ruling in *CBS v. DNC* underscored that implementing a mandated right of access to the public airwaves, as had been suggested by the Court of Appeals in the decision under review, would create a “problem of critical importance to broadcast regulation and the First Amendment – the risk of an enlargement of Government control over the content of broadcast discussions of public issues.”<sup>33</sup> Although the Court stated that the use of a public resource by the broadcast media permits a limited degree of governmental oversight over broadcast licensees, it also observed that the government’s power over broadcasters “is by no means absolute and is carefully circumscribed.”<sup>34</sup> The Court recognized that the type of government-mandated and supervised right of access advocated by the respondents – just like the right of access sought by the UCC in this case – would be inimical to the constitutionally prescribed limits on the government’s oversight role with respect to broadcast content:

The Commission’s responsibilities under a right-of-access system would tend to draw it into a continuing case-by-case determination of who should be heard and when. *Indeed, the likelihood of Government involvement is so great that it has been suggested that the accepted constitutional principles against control of speech content would need to be relaxed with respect to editorial advertisements. To sacrifice First Amendment protections for so speculative a gain is not*

---

<sup>32</sup> Petition at 8.

<sup>33</sup> *CBS v. DNC* at 126.

<sup>34</sup> *Id.*

*warranted*, and it was well within the Commission’s discretion to construe the Act so as to avoid such a result.<sup>35</sup>

The “remedy” sought by the UCC here presents the very same threat to the First Amendment protections that were recognized and preserved by the Supreme Court in *CBS v. DNC* when it rejected a government-mandated right of access to the public airwaves. In this case, moreover, the UCC’s requested remedy presents an *additional* constitutional infirmity not present in *CBS v. DNC* – the FCC would not only be embroiled in the direct regulation of broadcast content, but would also mandate that the UCC’s specific “viewpoints on religious expression” be carried by the broadcasters on whose stations the UCC bought time. The establishment clause of the First Amendment does not permit the government to use broadcast stations to espouse particular religious beliefs, whether directly or indirectly through a government-mandated right of access by religious organizations.<sup>36</sup>

---

<sup>35</sup> *Id.* at 127 (emphasis added) (citation omitted).

<sup>36</sup> To pass constitutional muster under establishment clause jurisprudence, a governmental action must have a secular purpose, its principal or primary effect must neither advance nor inhibit religion, and it must not foster an excessive government entanglement with religion. *Mueller v. Allen*, 463 U.S. 388, 394 (1983); *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). Granting the UCC’s requested remedy clearly would be unconstitutional under this test.

## **VI. CONCLUSION**

The UCC's Petition should be summarily dismissed because (1) the UCC concedes that it never even offered the "Night Club" ad to the station whose license it now seeks to strip away for failing to air the ad; (2) UCC's attack, even if it had merit, is directed against the Network, not the Station; (3) the law is clear that particular individuals and organizations have no right of access to broadcast stations to espouse their viewpoints; and (4) the "remedy" requested by the UCC – a government-mandated right of access – would violate the free speech and establishment clauses of the First Amendment.

Respectfully submitted,

**NBC TELEMUNDO LICENSE CO.**

By: \_\_\_\_\_

Margaret L. Tobey  
Cristina C. Pauzé  
Morrison & Foerster LLP  
2000 Pennsylvania Avenue, N.W.  
Suite 5500  
Washington, D.C. 20006-1888  
(202) 887-1500

F. William LeBeau  
Assistant Secretary and Senior Regulatory Counsel  
NBC Telemundo License Co.  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Dated: January 10, 2005

## **CERTIFICATE OF SERVICE**

I, Theresa L. Rollins, do hereby certify that a copy of the foregoing “Opposition of NBC Telemundo License Co. to Petition to Deny Renewal” was served by U.S. mail, postage prepaid on this 10th day of January, 2005, on the following:

Angela J. Campbell  
Institute for Public Representation  
Georgetown University Law Center  
Suite 312  
600 New Jersey Avenue, NW  
Washington, DC 20001

Andrew Jay Schwartzman  
Media Access Project  
Suite 1000  
1625 K Street, NW  
Washington, DC 20006

---

Theresa L. Rollins