DEPARTMENT OF JUSTICE

Antitrust Division

Response to Public Comments on the Proposed Final Judgment in United States v. Univision Communications Inc.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes the two public comments on the proposed Final Judgment in *United States* v. *Univision Communications Inc.,* Civil No. 1:03V00758, filed in the United States District Court for the District of Colombia, together with the responses of the United States to the comments. On March 26, 2003, the United States filed a Complaint alleging that Univision Communications Inc.'s proposed acquisition of Hispanic Broadcasting Corp. would substantially lessen competition in the sale of advertising time on Spanish-language radio stations in many geographic markets, in violation of Section 7 of the Clayton Act. The proposed Final Judgment, filed at the same time as the Complaint, requires Univision to exchange its Entravision shares for a nonvoting equity interest, divest a substantial portion of its ownership in Entravision, give up its seat on Entravision's Board of Directors, eliminate certain rights Univision has to veto important Entravision actions, and restrain certain conduct that would interfere with the governance of Entravision's radio business. The proposed Final Judgment particularly requires Univision, presently owning approximately thirty percent of Entravision, to divest down to fifteen-percent ownership within three years, and ten-percent ownership within six years. Public comment was invited within the statutory 60-day comment period. The public comments and the repsonses of the United States thereto are hereby published in the **Federal Register,** and shortly thereafter these documents will be attached to a Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act and filed with the Court, together with a motion urging the Court to enter the proposed Final Judgment. Copies of the Complaint, the proposed Final Judgment, and the Competitive Impact Statement are currently available for inspection in Room 200 of the Antitrust Division, Department of Justice, 325 Seventh Street, NW., Washington, DC 20530 (telephone: 202–514–2481) and at the Clerk's Office, United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. (The United State's Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act will be made available at the same location shortly after they are filed with the Court.) Copies of any of these materials may be obtained upon request and payment of a copying fee.

J. Robert Kramer II,

Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia

Civil Action No. 1:03CV00758; Judge: Hon. Rosemary M. Collyer

United States of America, Plaintiff, v. Univision Communications Inc., and Hispanic Broadcasting Corporation, Defendants, Response to Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (''Tunney Act''), the United States hereby responds to the public comments received regarding the proposed Final Judgment in this case. After careful consideration of these comments, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comments and this Response have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

On March 26, 2003, the United States filed the Complaint in this matter alleging that the proposed acquisition of Hispanic Broadcasting Corporation (''HBC'') by Univision Communications, Inc. (''Univision'') would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

Simultaneously with the filing of the complaint, the United States filed a proposed Final Judgment and a Stipulation signed by the United States and the defendants consenting to the entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act. Pursuant to those requirements, the United States filed a Competitive Impact Statement (''CIS'') in this Court on May 7, 2003; published the proposed Final Judgment and CIS in the **Federal Register** on May 21, 2003; and published a summary of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in the Washington Post for seven days on May 23, 2003, through May 29, 2003. The 60-day period for public comments, during which two comments were received as described below, expired on July 23, 2003.[1]

I. Background

As explained more fully in the Complaint and CIS, this transaction raised competitive concerns relating to the sale of advertising time on Spanish-language radio stations in several geographic markets. HBC is the nation's largest Spanish-language radio broadcaster. Univision, the largest Spanish-language media company in the United States, owns a significant equity interest, and possesses governance rights, in Entravision Communications Corporation (''Entravision''), another Spanish-language media company that is HBC's principal competitor in Spanish-language radio in many markets. The Complaint alleges that, due to Univision's substantial equity interest and governance rights in Entravision, Univision's proposed acquisition of HBC would substantially lessen competition in provision of Spanish-language radio advertising time to a significant number of advertisers in several geographic markets in the United States.

The proposed Final Judgment, if entered, would require Univision to reduce its equity interest in Entravision to 15 percent of the outstanding shares within three years from the filing of the proposed decree and to 10 percent within six years of such filing. The proposed decree would also require Univision to convert all of its Entravision equity into a nonvoting class of stock; to relinquish its right to place directors on Entravision's Board of Directors; to eliminate certain of Univision's rights to veto important Entravision actions; and to refrain from certain conduct that would interfere with the governance of Entravision's radio business.

Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

[1] On September 22, 2003, the Federal Communications Commission announced that it granted Univision's and HBC's applications for transfer of control that were required in order for the transaction to proceed. See Memorandum Opinion and Order, FCC 03–218 (located at *http://hraunfoss.fcc.gov/edocs&_public/attachmatch/FCC–03–218A1.pdf.*). Univision and HBC closed their merger the same day.

II. Legal Standard Governing the Court's Public Interest Determination

Upon the publication of the public comments and this Response, the United States will have fully complied with the Tunney Act and will move the Court for entry of the proposed Final Judgment as being ''in the public interest.'' 15 U.S.C. 16(e). The Court, in making its public interest determination, should apply to deferential standard and should withhold its approval only under limited conditions. Specifically, the Court should review the proposed Final Judgment in light of the violations charged in the complaint and ''withhold approval only if any of the terms appear ambiguous, if the enforcement mechanism is inadequate, if third parties will be positively injured, or if the decree otherwise makes 'a mockery of judicial power.' '' *Mass. School of Law* v. *United States,* 118 F.3d 776, 783 (D.C. Cir. 1997) (quoting *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1462 (D.C. Cir. 1995)).

It is not proper during a Tunney Act review ''to reach beyond the complaint to evaluate claims that the government did not make and to inquire as to why they were not made.'' *Microsoft*, 56 F.3d at 1459; *see also United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6–7 (D.D.C. 2003) (rejecting argument that court should consider effects in markets other than those raised in the complaint); *United States* v. *Pearson PLC,* 55 F. Supp. 2d 43, 45 (D.D.C. 1999) (noting that a court should not ''base its public interest determination on antitrust concerns in markets other than those alleged in the government's complaint''). Because ''[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,''[2] it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters the United States might have but did not pursue. *Microsoft,* 56 F.3d at 1459–60; *see also United States* v. *Western Elec. Co.,* 993 F.2d 1572, 1577 (DC Cir. 1993) (noting that a Tunney Act proceeding does not permit ''*de novo* determination of facts and issues'' because ''[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General'' (citations omitted)).

Moreover, the United States is entitled to ''due respect'' concerning its ''prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.'' *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d at 6 (*citing Microsoft,* 56 F.3d at 1461).

III. Summary of Public Comments

The United States received comments from two entities, the American Antitrust Institute (''AAI,'' comment attached as Exhibit 1) and Spanish Broadcasting System, Inc. (''SBS,'' comment attached as Exhibit 2).

AAI takes the position that the United States' CIS fails to address and evaluate ''the consequences of this merger in conventional terms in an overall market consisting of Spanish-language media, examining such traditional criteria as advertising effects [and] the consumer interest in diversity of sources of political and cultural information.'' AAI cmt. at 1. AAI also states that the United States' CIS fails to explain why the proposed Final Judgment does not require the elimination of all rights Univision currently possesses in Entravision and the divestiture of all stock Univision holds in Entravision. AAI cmt. at 1 n.2. These points are similar to SBS's comments on these issues and are addressed below. Additionally, AAI argues that the Division should have considered indicia of harm to non-price competition, such as quality and innovation.

SBS, a Spanish-language radio company that competes in many markets with HBC and Entravision, states that the United States should have alleged harm in its Complaint based on purported effects of the transaction on a ''Spanish-language broadcasting market.'' SBS cmt. at 1–2. SBS further claims that the transaction will increase Univision's incentives (1) to refuse to deal with or discriminate against Spanish-language radio competitors who seek to advertise through Univision and (2) to force advertisers who wish to advertise through both radio and television to purchase time from both Univision and HBC. *Id.* at 3. In addition, SBS argues that the United States' remedy fails to solve the competitive concerns in the Spanish-language radio markets raised in the Complaint because, according to SBS, Univision will be able to exercise undue influence over Entravision. *Id.* at 1, 4–6.

IV. The United States' Response to Specific Comments

Because both comments raise the general issue of whether the effects of the merger should be analyzed in light of an ''overall'' Spanish-language media market, the United States will first respond to that issue. It will then respond to the specific points AAI and SBS raised concerning whether the remedy addresses the competitive harm raised in the Complaint.

A. Allegations Not Raised in the Compliant Are Irrelevant to Whether the Proposed Final Judgment Is in the Public Interest

1. SBS's Proposed Market and Alleged Harm Are Extraneous to the Competitive Issues Raised in the Complaint

The Complaint alleges that the relevant market consists of the provision of advertising time on Spanish-language radio stations to the significant number of advertisers that consider Spanish-language radio advertising to be a particularly effective advertising medium. *See* Complaint ¶¶12–15. SBS, however, takes the position that the complaint should have raised additional allegations of harm based on purported effects in a combined Spanish-language radio and television market. SBS cmt. at 1–2.

The Complaint's market definition does not extend to the issues raised by SBS, nor should it. The market definition analysis in the Complaint properly begins by examining how advertisers individually negotiate transactions with radio broadcasters such as Entravision and HBC. The resulting price for advertising time reflects the circumstances of these individual negotiations and the preferences of each advertiser. The Complaint's market definition reflects these individualized negotiations by looking at the options available to individual advertisers. The Complaint alleges that a significant number of advertisers exist who do not have reasonable alternatives to advertising on Spanish-language radio; in other words, these advertisers cannot effectively switch to other media in the face of a small but significant increase in the price of advertising time on Spanish-language radio. This set of advertisers forms the relevant market alleged in the Complaint.

SBS does not appear to take issue with the theoretical framework underlying the Complaint's market definition. Rather, it alleges that there is another market to consider; namely, a purported market consisting of a set of advertisers that are dependent on

[2] It is the United States' responsibility to investigate a transaction and decide what allegations to raise in any challenge it may bring. *See Heckler* v. *Chaney,* 470 U.S. 821, 831–32 (1985) (''[A]n agency's decision not to prosecute or enforce, whether through civil or criminal process, is generally committed to an agency's absolute discretion.'').

Spanish-language television and radio. The Complaint, however, makes no such factual allegation. The proposed market differs significantly from the one alleged in the Complaint and would require markedly different supporting facts to be justified. Moreover, market definition is but one step toward the ultimate goal of determining competitive effects. The Complaint alleges that the transaction would likely cause anticompetitive effects with regard to Spanish-language radio (Complaint ¶¶ 24–27); it makes no such allegations regarding a combined television and radio market. So, SBS asks not only that the court redraft the complaint to include an additional market but also that the court impose a competitive effects analysis based on that new market to find cognizable harm.

As discussed above, the United States is entitled to deference as to the case it brings, and, as *Microsoft* makes clear, it is not proper during a Tunney Act review ''to each beyond the complaint to evaluate claims that the government did not make and to inquire as to why they were not made.'' *Microsoft,* 56 F.3d at 1459. The Tunney Act does not authorize the Court to consider allegations not raised in the Complaint based on concerns raised by a member of the public. Accordingly, SBS's suggestion that the Complaint is defective for failing to allege harm in a combined Spanish-language television and radio market should be rejected as a matter of law.

The CIS Properly Addresses the Market Effects Relevant to the Allegations in the Complaint

AAI takes the position that the United States has not satisfied its requirements under the Tunney Act because the CIS fails to identify the competitive effects of the transaction in an ''overall'' Spanish-language media market and fails to justify the United States' decision not to challenge the transaction based on those purported effects. This position is not valid. Not only is the Court's review limited to the case actually brought by the United States, there is no requirement that the United States disclose its decision-making as to cases it chooses not to initiate. Rather, the Tunney Act provides that the United States must inform the public about the case it did initiate and explain how the proposed decree serves to resolve the competitive effects alleged in the Complaint.

The purpose of a CIS is to provide the public with ''basic data about the decree'' to allow for informed comment. *See generally United States* v. *Microsoft Corp.,* 215 F. Supp. 2d 1, 14–15 (D.D.C. 2002) (describing legislative history relating to CIS) (quoting 119 *Cong. Rec.* at 3452 (1973) (statement of Senator Tunney)). To that end, the Tunney Act provides that the CIS shall ''recite'' the following:

(1) The nature and purpose of the proceeding;

(2) A description of the practices or events giving rise to the alleged violation of the antitrust laws;

(3) An explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;

(4) The remedies available to potential private plaintiffs damages by the alleged violation in the event that such proposal for the consent judgment is entered in such proceeding;

(5) A description of the procedures available for modification of such proposal; and

(6) A description and evaluation of alternatives to such proposal actually considered by the United States.

15 U.S.C. 16(b). The United States' CIS has satisfied all of these requirements. More specifically, the CIS explains the nature and purpose of the proceeding (at 1–3), describes the events that gave rise to the alleged violation of the antitrust law (at 3–9), explains the proposed Final Judgment (at 9–15), explains the remedies available to potential private litigants (at 15), explains the procedures available for modifying the proposed Final Judgment (at 15–16), and describes and evaluates alternatives to the proposed Final Judgment (at 16–17). There is simply no requirement that the Government identify purported effects it did not allege in the Complaint or explain why it did not make certain allegations in the Complaint. Accordingly, AAI's challenge to the sufficiency of the CIS fails.

3. The Government's Investigation Did Not Demonstrate the Likelihood of Substantial Harm in an ''Overall'' Spanish-Language Media Market

Although the United States has no legal obligation to address matters raised in the Complaint, we note that the United States conducted an extensive inquiry into the issue of whether the combination of Univision's Spanish-language television stations with HBC's Spanish-language radio stations in geographic regions where both are located was likely to cause significant anticompetitive effects. The inquiry included numerous interviews of a wide range of advertisers and review of over a million pages of documents provided by the defendants and other entities. In the end, the evidence did not support the claims proffered by the comments.

a. *The evidence did not justify a combined media market for advertisers.* The United States has traditionally treated radio and television as separate antitrust markets. Past investigations involving general-market (English-language) media mergers revealed that few advertisers consider the two media to be close substitutes; rather, most advertisers viewed the two media as separate or complementary products given the qualitative differences between the two media.[3] In examining whether this ''separate market'' conclusion applied in this transaction, the United States recognized that Univision has a strong presence in Spanish-language television and that, in certain geographic markets, there are a limited number of other Spanish-language television stations with ratings that would be attractive to advertisers trying to reach Spanish-language viewers. Nevertheless, the evidence garnered in this investigation showed the same qualitative differences between television and radio that exist for general-market advertisers also exist for Spanish-language advertisers. In the end, the investigation did not produce sufficient evidence to support the proposition that a significant number of advertisers considered Spanish-language television and Spanish-language radio to be sufficiently interchangeable to support the ''combined'' market proposed by the comments.[4]

b. *The United States considered non price competition.* AAI also argues that the United States should examine indicia of harm other than price, such as quality and innovation. AAI cmt. at 4–5. The United States, in fact, considered such indicia during this

[3] *See, e.g.,* Complaint ¶¶ 11–14, *United States* v. *Clear Channel Communications,* No. 1:00CV02063 (D.D.C. filed Aug. 29, 2000); Complaint ¶¶ 34–41, *United States* v. *Chancellor Media Company, Inc.,* No. CV–97–496 (E.D. N.Y. filed Nov. 6, 1997); Complaint ¶ 12, *United States* v. *EZ Communications, Inc.,* No. 1:97CV00406 (D.D.C. filed Feb. 27, 1997).

[4] SBS's submission does not provide a basis to establish a combined Spanish-language television and radio market. The letters that SBS attached to its comment as Exhibit A for the most part discuss how certain advertisers depend on Spanish-language media (a point with which the United States does not disagree). Only two of the letters, however, discuss the interchangeability of Spanish-language television and radio (May 27, 2003 letter from Castor A. Fernandez; May 27, 2003 letter from Caballero TV & Cable sales); the rest are silent on the issue.

investigation. In this case, the market is comprised of the competitive alternatives for certain advertisers seeking to purchase commercial time on Spanish-language radio stations. Market participants compete on the basis of both price and service (or ''quality'' or ''innovation''). *See, e.g.,* Complaint ¶ 14 (relevant product market defined in terms of options available to certain advertisers facing ''a small but significant increase in the price of advertising time on Spanish-language radio, *or a reduction in the value of services provided'')* (emphasis added). As the Complaint and CIS state, Entravision and HBC heavily promote their stations against each other in an effort to gain high ratings; they program and format their stations in an effort to attract listeners away from each other; they aggressively seek to acquire stations; and they closely monitor each other's competitive positions. Complaint ¶ 19; CIS at 6. As explained in the CIS, the goal of the proposed Final Judgment is to protect such vigorous price and nonprice competition between Entravision and HBC by foreclosing the ability of a combined Univision/HBC to improperly influence Entravision's strategic decision making with regard to its radio business. *See* CIS at 9–11. Contrary to AAI's assumption, the United States considered the many ways in which advertisers benefit from competition—not just price competition—in crafting its remedy.

c. *The consideration of political and cultural viewpoints are extraneous to antitrust enforcement.* AAI also asserts that the United States should take into account under its antitrust analysis ''consumer interest in diversity of sources of political and cultural information'' within a combined Spanish-language television and radio market. AAI cmt. at 1, 3–4. It is not the role of the United States to use the antitrust laws to regulate actual content or to establish quotas for the types of programming that media stations must broadcast. Accordingly, we do not seek to ensure in the context of a merger review that media companies provide a balance of political views or a proper mix of cultural issues as part of their programming. The United States does seek to ensure that content is determined in a competitive marketplace, however. The relevant product identified in the Complaint is the provision of advertising time on Spanish-language radio stations; the customer is an advertiser purchasing that time. In order to supply this product, media stations compete to gain audience ratings, as it is audience access that is being sold to the advertisers. That competition benefits advertisers as discussed above. It also benefits individual audience members (listeners of radio stations) because stations will compete for their attention by offering high quality content. In this way, the relief in the Final Judgment that protects advertising competition also serves to protect individual audience members by maintaining vigorous competition between the Spanish-language radio stations owned by Univision/HBC and those owned by Entravision.

d. *The allegation that Univision may refuse to deal with certain advertisers or impose tying arrangements does not warrant condemning the transaction.* SBS alleges that the merger will provide Univision an enhanced incentive to refuse to deal with or discriminate against Spanish-language radio competitors who seek to advertise on Univision and will also provide Univision the ability to ''tie'' radio and television advertising time for advertisers who seek to use both mediums. (SBS Cmt. at 3). The United States did not find evidence upon which to base a cause of action pursuant to SBS's theory. If Univision engages in the alleged conduct in the future, and if the conduct satisfies the requirements of an antitrust violation, then the United States (or a private plaintiff with standing) could challenge the conduct at that time. The mere speculation that Univision will violate the antitrust laws, however, does not justify enjoining this transaction.

B. SBS's Assertions That the Proposed Final Judgment Will Not Remedy the Competitive Concerns Raised in the Complaint Are Unfounded

SBS asserts that the remedy will not address the competitive harms raised in the Complaint because Univision will still have the ability to improperly influence Entravision's actions to the detriment of radio competition between Entravision and Univision/HBC. Specifically, SBS contends that (1) the existence of the television affiliation agreement between Univision and Entravision will cause Entravision to mitigate its radio competition with a combined Univision/HBC; (2) Univision's continued retention of limited shareholder ''veto'' rights in Entravision might foreclose competition-enhancing transactions; (3) the time period to complete the stock divestitures called for in the proposed Final Judgment is too long; and (4) Univision's ability to hold 10 percent of Entravision's stock will cause Univision/HBC to compete less aggressively against Entravision. SBS cmt. at 1, 4–6.[5]

Contrary to SBS's assertions, the proposed Final Judgment will preserve competition between Entravision and HBC by restricting Univision's ability to control or influence Entravision's radio business and by significantly reducing Univision's equity stake in Entravision. *See* CIS at 9–13 (describing specific means by which the proposed Final Judgment will preserve competition).

Addressing SBS's first contention, as stated in the CIS, Univision and Entravision have a long-standing television relationship in which Entravision broadcasts Univision programming on television stations owned by Entravision. This relationship is embodied in a pre-existing, long-term affiliation agreement that assigns rights and responsibilities to both parties and also provides for Univision to act as Entravision's national sales representative for television advertising. In addition to the fact that this vertical integration may yield certain efficiencies and consumer benefits, there is nothing in this affiliation agreement that allows Univision to control any Entravision radio decision, including decisions regarding the acquisition of radio stations. Moreover, the decree itself mandates that the two companies act as independent entities and there s no reason to believe that Univision will violate the terms of the decree (and thereby subject itself to contempt of court proceedings) by using its television relationship to influence any Entravision strategic decision. The Division found no evidence to suggest that the mere fact that a television affiliation agreement exists between them enables Univision to unduly influence Entravision's decisions with respect to its radio business, the only area in which the combined Univision/HBC will compete with Entravision. Finally, Entravision has every incentive to operate its radio stations in a fully competitive manner.

As to SBS's second contention, although Univision will maintain a few limited governance rights in Entravision that it held prior to the contemplation of this merger, the proposed Final Judgment eliminates Univision's ability to exercise these rights over Entravision radio decisions. The rights that are retained relate to the two entities' television relationship, which is not a basis of concern alleged in the

[5] As noted above, AAI asserts that the CIS fails to explain why Univision was not forced to relinquish all its shareholder ''veto'' rights in Entravision and to divest all its Entravision equity. AAI cmt. at 1 n.2. These points are addressed in this response to SBS's comments.

Complaint. Univision will retain a modified right to veto a merger or transfer of ownership of Entravision. Although this right does impact ultimate ownership of Entravision, it cannot be used to veto or influence day-to-day decisions relating to radio competition or strategic decisions such as the buying or selling of individual radio stations.

With respect to SBS's third contention, while the United States traditionally requires defendants to divest business assets as expeditiously as possible to maintain their value and ongoing capabilities, the relief sought here is for divestiture of stock, the retention of which does not raise the same spoliation concerns as the retention of business assets raises. Moreover, based on our investigation, we concluded that a forced divestiture of equity within a short amount of time could cause material hardship to Entravision's vitality as a significant competitor (for example, a ''fire-sale'' of Univision's stock holdings in Entravision could depress Entravision's stock price to the point that it would not be able to issue equity to fund potential acquisitions). Such hardship should be avoided or minimized if at all possible so as to maintain Entravision as a strong competitor to the unified Univision/HBC. The time period relfects a balancing designed to minimize the potential harms to competition that might arise from a divestiture that proceeds either too slowly or too rapidly.

Finally, responding to SBS's fourth contention, under the circumstances of this case, Univision's ability to hold no more than 10 percent of Entravision's equity will not give it control or even significant influence over Entravision's business decisions. The decree significantly restrains Univision's ability to participate in Entravision's governance. For example, Univision will not be allowed: To suggest or nominate any candidate for Entravision's board of directors; to have Univision employees serve as Entravision employees; to participate in any Entravision board of directors meeting ; to vote its equity; and to have access to any of Entravision's competitively sensitive information. *See* Final Judgment, Section VI. Moreover, Univision's reduced equity stake in Entravision is not sufficiently large to affect competition between them given the market structure of the relevant geographic markets at issue.[6]

V. Conclusion

After careful consideration of these public comments, the United States has concluded that entry of the Proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is, therefore, in the public interest. Pursuant to Section 16(d) of the Tunney Act, the United States is submitting these public comments and this Response to the **Federal Register** for publication. After these comments and this Response are published in the **Federal Register**, the United States will move this Court to enter the Proposed Final Judgment.

Dated this 31st day of October, 2003.

Respectfully submitted,

_____/s/____

William H. Stallings,

Litigation III Section, Antitrust Division, United States Department of Justice, 325 7th Street, NW., Suite 300, Washington, DC 20530.

Certificate of Service

The undersigned certifies that a copy of the foregoing Response to Public Comments was served on the following counsel, by electronic mail in PDF format, this 31st day of October, 2003:

John M. Taladay, Howerey, Simon, Arnold & White L.L.P., 1299 Pennsylvania Avenue, NW., Washington, DC 20004–2402;

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and on the following entities by facsimile and U.S. Mail, on this same date:

Albert A. Foer, The American Antitrust Institute, 219 Ellicott Street, NW., Washington, DC 20008, (202) 276–6002 (phone), (202) 966–8711 (facsimile);

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_____/s/_____

William H. Stallings

June 12, 2003

James R. Wade

Chief, Litigation III Section, Antitrust Division, United States Dept. of Justice, 325 7th Street, N.W., Suite 300, Washington, DC 20530

Ce: Chairman Michael Powell, Federal Communications Commission

Re: U.S. v. Univision Communications, Civ. Action No. 1:03CV00758

Dear Mr. Wade: These constitute the Tunney Act comments of the American Antitrust Institute (''AAI'') in regard to the acquisition of Hispanic Broadcasting Corporation (''HBC'') by Univision Communications Inc. (''Univision'').[1]

The Competitive Impact Statement (''CIS'') in this case appears to reflect an unduly narrow interpretation of the Clayton Act. We have only minor quarrels with the standard analysis embodied in the CIS insofar as it identifies horizontal overlaps in the Spanish-language radio industry and seeks to eliminate these overlaps through divestitures.[2] Our principal concern is with what the CIS fails to address. It should evaluate the consequences of this merger in conventional terms in an overall market consisting of Spanish-language media, examining such traditional criteria as advertising effects. In addition, it should evaluate the consumer interest in diversity of sources of political and cultural information within this more general market.

I. The CIS Ignores the Elephant in the Room

The CIS states that HBC is the nation's largest Spanish-language radio broadcaster and that Univision is the largest Spanish-language media company in the U.S.

Univision is described as having two Spanish-language broadcast networks, Univision and Telefutura, one cable channel, Galavision, and several other Spanish-language media operations, including Internet sites and services, music recording, distribution, and publishing. Univision also has a 30-percent equity share in Entravision, which owns or operates 55 mostly-Spanish radio stations and 49 television stations that broadcast Univision programming. We are not informed of Univision's market share in Spanish-language television.

HBC owns or operates more than 60 radio stations, virtually all broadcasting in Spanish. We are not informed of HBC's market share in Spanish-language radio. And, of course, we are not informed of market shares in any combined Spanish-language media market.

The Complaint is limited to the provision of advertising time on Spanish-language radio stations to advertisers that consider Spanish-language radio to be a particularly effective medium. This is the only product market deemed relevant. Six metropolitan areas are designated as the relevant geographic markets.

The ''elephant in the room'' whose presence has been mentioned in the CIS but given no antitrust importance, is television. We recognize that the Antitrust Division has traditionally treated radio and television as

[6] *Cf. Archer-Daniels-Midland,* 272 F. Supp. 2d at 8 (crediting the Government's statement in Tunney Act proceeding that factual investigation showed that two companies operated as independent competitors notwithstanding one company's partial equity ownership in the other).

[1] The AAI is an independent 501(c)(3) research, education, and advocacy organization described at *www.antitrustinstitute.org.*

[2] For example, we are puzzled by the CIS's failure to explain why the Proposed Final Judgment does not require elimination of all shareholder rights that Univision currently possesses in Entravision and for failing to explain why it allows Univision to retain any stock in Entravision. If these are simply the best compromises the Division could get, why not say so?

separate markets, in that there are so many sources of information for English-speakers that diversity of sources has not appeared to rise to an antitrust concern. But here we are potentially face with a different situation. Should television and radio directed at a Spanish-speaking audience be deemed a relevant market, not on the basis of competition for advertising but on the basis of competition for the consumer's attention? Even though the merger, after the divestiture of overlap radio markets, will arguably not increase concentration in either the television or the radio market, will it reduce in a significant way the diversity of sources of political and cultural information available to the Spanish-speaking consumer? This also raises the question of the role of other aspects of Spanish-language media, such as newspaper publishing and the Internet, which are not discussed in the CIS. An appropriate larger Spanish-language market should be analyzed not only in traditional (advertising) terms but also in terms of diversity of content sources.[3]

II. The Hypothetical of the Dominating Voice

Consider the following hypothetical. There is a substantial group of Americans who only speak Spanish and whose sources of information are limited to Spanish-speaking TV, Spanish-speaking radio, and Spanish-speaking newspapers. A single corporation by acquisition gains control over all three media. The head of that corporation would be in the position to wield enormous political and economic influence by determining what the Spanish-speaking community will know and believe. He or she could determine what political candidates will gain exposure to the Spanish-speaking electorate and whether that exposure will be positive, negative, or neutral. Being able to sway a substantial part of the Hispanic vote could determine the outcome of local, state, and national elections and the owner of this political power would be in position to make deals with a political party and with an Administration. The same corporation could dramatically influence within the Spanish-speaking community which cultural trends, products and services will be ignored, denigrated or positively portrayed, thereby having a significant impact on the economy. This is the Hypothetical of a Dominating Voice.

Are the assumptions of this hypothetical far removed from the reality of the present acquisition?[4] Aside from the distinction that the present merger does not involve newspapers, one can not tell from the CIS because the implications of putting the leading Hispanic radio and TV stations under the same corporate control is not addressed. In the section on Alternatives to the Proposed Final Judgment, we are only told that the Department considered a full trial on the merits and a proposal by the defendants for placing Entravision stock into a long-term trust.

Having advised the public that the leading Spanish-language TV conglomerate was acquiring the leading Spanish-language radio company, the DOJ has the Tunney Act obligation to explain why it has made the determination that this highly suggestive scenario is of no antitrust concern. The fact that there are relevant antitrust markets for Hispanic radio and Hispanic TV does not perclude the possibility that in certain circumstances there may also be a larger relevant antitrust market, depending on what types of anticompetitive effects one is concerned about. There is no inconsistency in being concerned both with advertising rates in radio markets and diversity of producers/editors of content in a more general market for information or specifics categories of information.

Let us be more precise about what information is lacking.

1. What proportion of Spanish-speaking consumers in the U.S. are completely or highly dependent upon Spanish-language sources of information? (Call this the ''highly dependent consumer market.'')

2. What proportion of the highly dependent consumer market pre- and post-merger depend on the merging parties as a principal source of information?

3. What options apart from Univision and HBC are available to the highly dependent consumer market, pre- and post-merger?

4. Using a variety of measures (e.g., advertising dollars, number of message recipients, contact hours), how substantial are these options in comparison to Univision and HBC? What are the relevant market shares and HHI's?

We recognize that these are not easy questions to answer, and that the answers will depend on the assumptions made about such matters as the definition of 'highly dependent'. Nevertheless, with answers to these questions and explicitness about the assumptions used, one can begin to evaluate whether the Hypothesis of a Dominating Voice represents a realistic threat.

III. Protecting the Public Interest Requires Analysis of the Impact of This Acquisition on Consumer Choice

Based on what is said in the CIS, there is no evidence that the DOJ has considered anything other than the probability of short-term price increases. Why no discussion of such other traditional antitrust concerns as the effect on consumer choice?[5] There have been many antitrust cases in which non-price factors were considered.[6] As one example, in *United States* v. *Philadelphia National Bank,* the Court expressed a concern with possible adverse effects of a bank merger on ''price, variety of credit arrangements, convenience of location, attractiveness of physical surroundings, credit information, investment advice, service charges, personal accommodations, advertising, miscellaneous special and extra services* * *''[7]

Theories of possible antitrust liability in First Amendment-related cases come from many reputable sources. For example, Robert H. Lande and Neil W. Averitt have argued that consumer choice is no less a goal of antitrust than competitive pricing.[8] Maurice E. Stucke and Allen P. Grunes, two DOJ attorneys, have argued that it is proper to look beyond price effects to ''the marketplace of ideas'' in order to consider non-price dimensions of economic competition, such as diminished quality and choice.[9] Joseph Farrell, a former Chief Economist for the Antitrust Division, argued that price is merely a synecdoche (a part representing the whole) for what we desire from competition (i.e., innovation, quality, and price), and that it does not always adequately represent the package of desirables.[10] Robert Pitofsky has argued that non-economic political values such as the First Amendment can be relevant and may justify a higher degree of scrutiny in certain cases.[11] FTC Commissioner Thomas Leary has argued that diversity is an appropriate goal of antitrust.[12]

[3] It is true that for much of radio and TV, the consumer is not directly charged for consuming the product, although higher advertising costs may be passed on to the consumer in product prices and the consumer has opportunity costs that represent a kind of price to be paid for consumption. Nonetheless, producers of, *e.g.,* news, are in competition with one another not only to gain advertisers, but to gain the consumer's business. Compare this with doctors who compete with one another for their patient's business, even though the medical bill may be paid by a third party. Would not the importance of consumer choice in medical care justify an antitrust case if the only two medical practices in a community were to merge, even if the merger would be guaranteed by the doctors not to affect the fees charged to health insurers?

[4] According to various sources, at least 9% of Hispanics do not speak English at all, and at least 15% do not speak the language well. Spanish is said to be the language most frequently spoken by nearly 75% of adults in the top ten Hispanic metropolitan areas. If these figures are approximately correct, there appears to be reason to believe that at least a significant section of the Spanish-speaking community in the U.S. is highly dependent on information it receives in Spanish and that English is in these situations an inadequate substitute. There are also studies demonstrating that commercial information conveyed in Spanish is far more persuasive to this group than information conveyed in English, even among those who are bilingual. Arguably, the same would be true of political information.

[5] Although the Federal Communications Commission has the opportunity to stop this merger on ''public interest'' grounds, this possibility would not relieve the Department of Justice from fully considering legitimate antitrust theories of competitive harm that coincidentally have the benefit of protecting First Amendment values.

[6] *See* Robert H. Lande, ''Consumer Choice and Antitrust,'' 62 U. Pitt. L. Rev. 503, 508–512, and cases cited therein.

[7] 374 U.S. 363, 368 (1968).

[8] ''Consumer Sovereignty: A Unified Theory of Antitrust and Consumer Protection Law,'' 65 Antitrust L.J. 713, 715 (1997).

[9] ''Antitrust and the Marketplace of Ideas,'' 69 Antitrust L.J. 249 at 297 (2001).

[10] ''Thoughts on Antitrust and Innovation,'' Speech to the National Economists Club, Washington, DC (Jan. 25, 2001), at *http://www.usdoj.gov/atr/public/speeches/7402.pdf.*

[11] Robert Pitofsky, The Political Content of Antitrust, 127 U. PA. L. REV. 1051 (1979).

[12] See Thomas B. Leary, ''The Significance of Variety in Antitrust Analysis,'' based on a speech delivered at the Steptoe & Johnson 2000 Antitrust Conference, on May 18, 2000, and available at *http://www.ftc.gov/speeches/leary/atljva4.htm:*

''It does not make sense to simply ignore the issue, however, because for many consumers variety may be a more significant issue than price. Consider the example of two chains of bookstores

Continued

We are told in the CIS that the Court may only review the remedy in relation to the violations that the U.S. has alleged in its Complaint. It might be argued that the DOJ decision not to include a general Spanish-language media market in its complaint is the end of the story. But, as the CIS quotes the Ninth Circuit, ''The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1981).'' Because in practice a complaint is drawn up by the DOJ at the same time as a settlement order is drafted, the complaint is to some degree, in reality, not merely the cause of the settlement, but the result of the settlement. Although we do not want courts to displace the DOJ role of determining what goes into a complaint, a settlement that does not deal with obvious antitrust issues should not be approved until the CIS adequately explains what is going on.

In this acquisition, the Complaint includes facts about the two companies that would suggest to many observers that there may be critically important competitive issues that go beyond the radio market. If the Tunney Act is to protect the public interest, including the perception that antitrust settlements are not based on political considerations, both the public and the court must be provided with sufficient information to determine whether the complaint itself was unreasonably limited.

The legislative genesis of the Tunney Act was concern that settlements might be made on the basis of political rather than strictly professional analysis. To expand the Hypothetical of a Dominating Voice, if the ownership of the merging parties happened to be of the same political party as a particular national Administration, allowing the merger to proceed, subject only to a mild radio divestiture, with the potential of political gain for the political party, this would be the type of politicization of antitrust that the Tunney Act was intended to remove.

We certainly do not charge that this specific merger is being approved for political gain, but are trying to make a larger point. In order to protect antitrust from perceptions of political influence, it is essential that the Tunney Act's public interest oversight be fully informed, with all relevant major antitrust theories fully ventilated in the CIS.

Sincerely,

Albert A. Foer
President.

(or video rental stores) that compete in myriad neighborhoods, with a largely local clientele. One of the chains features best sellers or the most popular films, the other chain has a more eclectic offering; including a wider range of special interest and ''artistic'' selections. If the first chain were to acquire the second, there might well be some local price effects, but the most important effect on most consumers (but, not all) is likely to be the effect on variety if the combined store adopts the buyer's business model.

''This reality does not mean that the merger should be attacked on that account. It might well be, for example, that it is a lot easier for a potential new entrant to provide variety competition for the merged enterprise than it would be to provide price competition. What it does mean is that an initial focus on a hypothetical price effect, according to traditional Guidelines analysis, might miss the most important questions.''

July 18, 2003

James R. Wade
Chief, Litigation III Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, NW., Suite 300, Washington, DC. 20530

Re: *United States* v. *Univision Communications Inc.*, Civ. Action No. 1:03CV00758

Dear Mr. Wade: Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)–(h), Spanish Broadcasting System, Inc. (''SBS'') respectfully submits its comments on the proposed Final Judgment filed on March 26, 2003, by the Antitrust Division of the U.S. Department of Justice (''Department'') in connection with the proposed acquisition of Hispanic Broadcasting Corporation (''HBC'') by Univision Communications Inc. (''Univision'').

A Univision and HBC combination raises serious antitrust issues that the Department's proposed Final Judgment fails to address. The draft decree leaves unremedied significant harm to competition and consumers that surely will result from the combination of the dominant firm in Spanish-language radio (HBC) with the dominant firm in Spanish-language television (Univision). Even if, as the Department of Complaint posits, Spanish-language radio and television belong in separate markets, the remedy the Department selected fails to solve the competitive problem it identified: Univision's significant influence over one of HBC's closest competitors in Spanish-language radio, Entravision Communications Corporation (''Entravision''). The settlement only partially and incompletely disentangles Univision and Entravision. Moreover, the inadequate remedy the Department selected requires six years to implement, a period during which the transaction will continue to harm competition and consumers. Accordingly, the Court should reject the proposed Final Judgment as not within the reaches of the public interest.

1. SBS initially notes its disagreement with the Department's decision to confine its analysis to the product market for the ''provision of advertising time on Spanish-language radio'' (Compl. ¶ 14). The Department defined this market because ''[m]any local and national advertises'' would ''not turn to other media, including radio that is not broadcast in Spanish, if faced with a small but significant increase in the price of advertising time on Spanish-language radio'' or its equivalent (*Id.* emphasis added. The Department, however, provides no justification for ignoring the *many other* advertisers for whom Spanish-language radio and television *are* good substitutes.[1] From the perspective of these advertisers, an HBC/Univision combination is effectively a merger to monopoly, for it combines the dominant Spanish-language radio broadcaster (HBC) with the dominant Spanish-language television broadcaster (Univision).[2] This Spanish-language broadcasting market (defined from the perspective of advertisers for which Spanish-language television and radio are good substitutes) easily coexists with a Spanish-language radio-only market (defined form the perspective of other advertisers). The Department's Complaint and Competitive Impact Statement are entirely silent on why the Department has chosen to ignore the interests of advertisers who are vulnerable to the enhanced market power HBC and Univision will enjoy as a result of their combination.

Even accepting that Spanish-language radio and Spanish-language television belong in separate markets, SBS disagrees with the Department's conclusion that the only competitive harm from this acquisition flows from Univision's ownership of a significant stake in both Entravision and HBC. Specifically, Univision's acquisition of the dominant Spanish-language radio broadcaster, HBC, will give Univision, the dominant Spanish-language television broadcaster, an enhanced inventive to refuse to deal with or discriminate against Spanish-language radio competitors (such as SBS) who seek to advertise through Univision. Advertising on television is important for promoting Spanish-language radio stations and thus for surmounting the high entry barriers in Spanish-radio language that the Complaint identifies (Compl. ¶27).

Moreover, after the merger, Univision/HBC will have the power to insist that Spanish-

[1] Letters expressing the views of such advertisers can be found in a number of letters filed with the Federal Communications Commission. *See, e.g.*, Letter from Phillip L. Verveer *et al.*, Attorneys Willkie Farr & Gallagher to Marlene H. Dortch, Secretary, Federal Communications Commission (June 2, 2003) (attachments), *available at http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi* (proceeding No. MB02–235) (attached hereto as Exhibit A). These letters demonstrate that there are many advertisers for whom the relevant market for analyzing this transaction is not properly confined to Spanish-language radio.

[2] HBC's 2003 10–K explains that it ''is the largest Spanish-language radio broadcasting company.'' Hispanics Broadcasting Corp. Form 10–K (Mar. 31, 2003), *available at http://www.sec.gov/Archives/edgar/data922503/000104746903011344/a2107188z10-k.htm.* Univision ''is the dominant broadcaster of Spanish-language television in the United States, capturing an approximate 81% audience share.'' Entravision Communications Corporation Annual Report for 2001, at 25, *available at www.entravision.com.* HBC's and Univision's combined dominance is illustrated by letters and charts filed with the Federal Communications Commission. *See* Letter from Phillip L. Verveer *et al.*, Attorneys Willkie Farr & Gallagher to Marlene H. Dortch, Secretary, Federal Communications Commission (June 11, 2003) (attached as Exhibit B) and Letter from Andres Jay Schwartzman, President and CEO, Media Access Project to Marlene H. Dortch, Secretary, Federal Communications Commission (June 9, 2003) *available at http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi* (proceeding No. MB02–235) (attached as Exhibit C).

language advertisers who wish to advertise through both radio and television purchase time from both Univision and HBC rather than from the merged firm's rivals, including SBS. Such difficult-to-detect and subtle tying arrangements or refusals to deal—realistic possibilities here—impair competition. *See, e.g., Lorain Journal Co.* v. *United States,* 342 U.S. 143 (1951). It is unrealistic to expect that, following the acquisition, advertisers will stand up to the HBC/Univision colossus and challenge such practices themselves. The Clayton Act properly is invoked to restrain these restraints in their incipiency.

The Department's failure to grapple with *any* of the competitive problems posed by combining the dominant Spanish-language radio broadcaster with the dominant Spanish-language television broadcaster should cause this Court to conduct an especially careful Tunney Act review. To be sure, that review is largely confined to determining whether the remedy the Department selected is a reasonable one for the competitive problem identified in the Department's Complaint. *See United States v. Microsoft Corp.,* 56 F.3d 1448, 1461–62 (D.C. Cir. 1995). But when as here, the Department has exercised its prosecutorial discretion to tailor its Complaint narrowly to the remedy selected, the Court must pay special attention to ensure that the fit between remedy and Complaint is indeed within the reaches of the public interest. As explained below, the fit here is very poor indeed.

2. The competitive problem the Compliant identifies is that Univision's significant control over, and its equity stake in, Entravision will cause HBC and Entravision to pull their competitive punches once HBC falls under Univision's control. The proposed Final Judgment seeks to preserve HBC/Entravision competition by requiring Univision to reduce its equity stake in Entravision and to relinquish certain rights Univision holds to control or influence Entravision's competitive activities. For a number of reasons, the proposed Final Judgment will not adequately protect purchasers of radio advertising from the adverse consequences of Univision's proposed acquisition of HBC.

First, the Department's requirement that Univision surrender certain rights and dilute its stock holding in Entravision fails to address the most significant way in which Univision influences Entravision: through the Univision/Entravision affiliate agreement. As the Department's Complaint explains, pursuant to this ''long-term'' agreement, ''Extravision broadcasts Univision programming from Univision's two networks on 49 television stations. As part of this affiliation agreement, Univision serves as Entravision's sole representative for the sale of television advertisements sold on a national basis'' (Compl. ¶ 23). This agreement is Entravision's lifeblood. From it, Entravision obtains key programming and significant advertising revenue. As Entravision's 2001 Annual Report explains, ''Entravision has benefited enormously from a close relationship with Univision'' which is ''the dominant broadcaster of Spanish-language television in the United States.''[3] A recent Entravision securities filing also strikingly illustrates the importance of the affiliate agreement: Of an overall increase of $1.5 million in revenue for Entravision over the prior year, ''$1.4 million was attributable to our Univision stations and 0.1 million was attributable to our Telfutura stations [a Univision network].''[4]

The affiliate agreement plainly will give Entravision significant reason to pull its competitive punches against HBC once HBC is acquired by Univision. The Department recognizes this; for the proposed Final Judgment prohibits Univision from ''using or attempting to use any rights or duties'' under the affiliate agreement ''to influence Entravision in the conduct of Entravision's radio business'' (Proposed Final Judgment § VI.A.5). This remedy, however, is a mirage. Univision need not *actually* use the affiliate agreement to influence Entravision's behavior. The mere fact that Univision *might* deny Entravision rights under the agreement, or even create disputes under the agreement, will cause Entravision to compete less vigorously with HBC.[5] Strikingly, the Department has rejected such ''behavioral'' remedies in other circumstances, even when punishable by contempt if violated.[6] The Competitive Impact Statement provides no basis for believing that a ''behavioral'' remedy relating to the affiliate agreement will be effective here. By contrast, blocking Univision's acquisition of HBC will preserve competition.

Second, the proposed Final Judgment would allow Univision to retain shareholder rights to veto major strategic decisions of Entravision, including any plans i) to merge, consolidate or reorganize all or substantially all of its assets; ii) to transfer a majority of its voting power; iii) to dissolve, liquidate or terminate itself; as well as iv) to dispose of any interest in any FCC licenses relating to television stations that are Univision affiliates (Competitive Impact Statement (''CIS'') at 11). Each of these actions that Univision can veto may have significant competitive impact. If, for example, Entravision wanted to sell a radio station to, or merge with, a rival, the proposed Final Judgment leaves Univision with the power to prevent possible competition-enhancing transactions. It plainly harms rather than benefits competition to require Entravision to obtain its rival's approval to undertake such actions. The Department should not hinder the competitive activities of third parties through consent judgments.

Third, the proposed Final Judgment would require Univision to reduce its equity stake in Entravision over a very lengthy period: to no more than 15 percent by March 2006 and to no more than 10 percent by March 2009. The Department acknowledges that this divestiture is necessary to preserve competition; for Univision's significant stake in Entravision means that Univision/HBC ''would receive some significant benefit even on sales it loses to Entravision'' (CIS at 12). The Department nonetheless is willing to tolerate the lessened competition and consumer harm for as long as six years. Although the rapid sale of stock may be difficult to accomplish and impose costs upon Univision, the costs of accomplishing the transaction should not be borne by consumers. If owning the stock is competitively harmful, Univision should be required to sell the stock as expeditiously as possible. The Department's explanation for its unprecedented six-year divestiture period—that requiring a faster sale by Univision protects against ''adversely affecting Entravision's ability to raise capital'' (CIS at 12)—fails to persuade. If the Department's reasoning were valid, it would always permit divestitures to be made over the course of several years; but that is obviously not the Division's policy. And with good reason: The longer the merging parties hold assets that must be divested to preserve competition, the longer the period during which competition and consumers suffer. The speculative fear that Entravision's ability to raise capital will be harmed by requiring a shorter divestiture period is no warrant for inflicting competitive harm on advertisers and others.

Fourth, the divestiture the Department negotiated is insufficient to preserve competition. If the proposed Final Judgment is approved, Univision will continue to hold a ten percent stake in Entravision. Moreover, the Complaint alleges that Entravision and HBC have combined market shares ranging from 70 percent to as much as 95 percent in the several geographic markets (Compl. ¶ 21). It is plain that Univision will still financially benefit from every advertising dollar HBC loses to Entravision and, therefore, that Univision/HBC will compete less vigorously than if Univision's equity interest were divested completely. The Competitive Impact Statement fails to explain why a complete divestiture is inappropriate here.

Thus, for several reasons, the proposed Final Judgment leaves Entravision entangled with Univision in ways that will seriously harm competition. The Court accordingly should find that the Department's proposed Final Judgment is not within the reaches of the public interest.

Respectfully submitted,

Claudia R. Higgins
Kaye Scholer LLP
901 15th Street, NW., Suite 1100, Washington, DC 20005, (202) 682–3653, Counsel for Spanish Broadcasting System, Inc.

[3] Entravision Communications Corporation Annual Report for 2001, at 25, *available at www.entravision.com.*

[4] Entravision Communications Corporation 10–Q, at 7 (May 12, 2003), *available at www.entravision.com.*

[5] *See, e.g.,* Letter from Arthur V. Belendiuk, Counsel to National Hispanic Policy Institute, Inc., to W. Kenneth Ferree, Esq., Chief, Media Bureau, Federal Communication Commission (July 11, 2003) (attached as Exhibit D).

[6] For instance, the Department rejected Northwest Airline's suggestion that creating a voting trust for the stock it acquired in Continental Airlines would prevent a diminution of competition between the two airlines. The Department explained: ''Courts are understandably loathe to rely on 'behavioral rules' as a substitute for divestiture, *even where the rules are court-ordered.''* Trial Br. of the United States at 18, *United States* v. *Northwest Airlines Corp.* (No. 98–74611, filed Oct. 24, 2000) (emphasis added), *available at www.usdoj.gov/atr/cases/f7200/7288.htm.*

Dated: July 18, 2003.

Exhibits Attached.

United States v. Univision Communications, Inc., Civ. Action No. 1:03CV00758, Comments on Behalf of Spanish Broadcasting Inc., July 18, 2003, Exhibits A–D

Exhibit A

June 2, 2003

Marlene H. Dortch

Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, D.C. 20554

Re: *Applications for Transfer of Control of Hispanic Broadcasting Corp., and Certain Subsidiaries, Licensees of KGBT (AM, Harlingen, Texas et al. (Docket No. MB 02–235, FCC File Nos. BTC–20020723ABL, et al.)*

Dear Ms. Dortch: Spanish Broadcasting System, Inc. (''SBS'') has asked more than twenty advertising agencies and advertisers with special knowledge of the Hispanic community to address the nature and extent of the media marketplace in which they conduct their business. Their responses are attached.

All of the responses indicate that English-language broadcasting and Spanish-language (Hispanic) broadcasting constitute separate markets. Many of them observe that the Spanish-language broadcasting market includes both radio and television.

These propositions are fundamental to the Commission's analysis of the proposed Univision Communications, Inc.—Hispanic Broadcasting Corp. merger. The agency and advertiser perspectives on the market address both competition and diversity, just as the Commission must in connection with its public interest determination on the permissibility of requested transfers.

The conclusions of the agency and advertiser executives conform with those the Commission has reached in other contexts. The Commission often and recently has recognized the existence of a separate Spanish language broadcasting market. It also has recognized that television and radio are part of the same product market for fundamental Communications Act purposes.

The separate nature of the Hispanic broadcasting market means that the FCC may not rely exclusively on its cross-ownership and multiple ownership rules in making its public interest determination. These heuristic devices may be a sufficiently reliable basis for decision where transfers implicate majority-language broadcasting. Their reliability cannot be assumed where minority-language broadcasting is concerned. In this case, the proposed merger moves the Hispanic market very decidedly in the direction of monopoly. Both the statute and ordinary prudence require that the decision in this matter be the product of careful analysis of record evidence and that it be reflected in a reasoned explanation.

In this regard, SBS will respond to the many factual assertions contained in the May 14, 2003, Univision submission shortly. Unsurprisingly, we do not find Univision's propositions probative of the substantive issues nor do we find Univision's legal and policy points relevant to the resolution of this important matter. (We note that the submission, inexplicably, is not posted on the ECFS site and thus remains unavailable to anyone seeking to follow the proposed transaction through the Commission's Web site).

Finally, we note the unusual circumstance presented by today's Commission vote fundamentally changing its principal media ownership regulations (following the most exhaustive and comprehensive review of [the] broadcast rules ever undertaken'') and the pendency of this major broadcasting transfer application. As we are able to learn the details of the new ownership rules, we will submit our analysis of their significance for the Univision proposal.

Respectfully submitted,

/s/ Philip L. Verveer

Philip L. Verveer

Sue D. Blumenfeld

Michael G. Jones

David M. Don

WILLKIE FARR & GALLAGHER, 1875 K Street NW, Washington, DC 20006, Telephone: (202) 303–1000, Facsimile: (202) 303–2000

and

Bruce A. Eisen

Allan G. Moskowitz

KAYE SCHOLER FIERMAN HAYS & HANDLER, LLP, 901 15th Street NW, Suite 1100, Washington, DC 20005

Attorneys for Spanish Broadcasting System, Inc.

cc: Chairman Powell, Commissioner Abernathy, Commissioner Copps, Commissioner Martin, Commissioner Adelstein, Susan Eid, Stacy Robinson, Jordan Goldstein, Catherine Crutcher Bohigian, Johanna Mikes, Ken Ferree, David Brown, Scott R. Flick, Counsel for Univision Communications, Inc., Roy R. Russo, Counsel for Hispanic Broadcasting Corp.

May 27, 2003

To Whom It May Concern

Dear Sir or Madam: I have been involved in the Hispanic Market USA since 1966 and have owned my own firm for over 31 years.

During that time, I have placed national and local ads for a very wide variety of companies, government agencies, and other public and private institutions, large and small including Coca Cola, McDonald's, Procter & Gamble, General Motors, Anheuser Busch, Castrol, Pizza Hut, Burger King to mention just a few. I am also the single largest individual receiver of Creative Awards in the industry, and was placed in the Hispanic Market Hall of Fame (only 4 recipients so far), in 2002.

I have been asked to address two issues:

First: Is there a separate advertising product market defined by the Spanish language? In other words, are Spanish language media and English language media substitutable for one another?

The answer is an unequivocal: NO! English language media and Spanish language media are NOT substitutable. There definitely is a separate advertising product market defined by the Spanish language.

Let Me explain: One could safety say that for the first time in U.S. History, there has been a CATERING to Spanish language, not so much out of a sociological sense of responsibility, but out of the dire necessity of the large and small American corporations to open new markets to replace maturing ones in the U.S. They do this by attracting an ever growing group of people (the largest single minority in the U.S.) which could not be otherwise addressed. There are 27 Latin American countries with endless political and economic travails, which only serve to increase the CONTINUOUS, NON-STOPPING Immigration WAVE to the LAND of opportunity.

Second: Are Spanish language video (television and cable) and radio substitutes for one another?

I have no doubt that Spanish and English language media are in different markets from the perspective of advertising buys. A small, but significant non-transitory increase in price in English language media will not induce the advertisers with whom I am familiar to shift their advertising to Spanish language media. Instead, they will absorb the price increase.

The reverse also is true. The reason is that for many products the target audience simply cannot be reached unless it is addressed in their familiar language. Among other obvious bits of evidence, the major television networks virtually never present a commercial in Spanish (or any language other than English, for that matter).

Spanish language video and radio are substitutes for many advertisers. Many advertise on both. Many sponsors are quite willing to allocate and reallocate percentages of their ad budgets to video or to radio depending upon shifts in the price and ratings of one or the other. A small, but significant increase in price in one will shift purchases to the other for many products.

It is very common in negotiations over advertising rates, for agencies and clients to make the claim, for example, that if concessions in price are not made, the advertising will be placed on the other medium, video or radio as the case may be.

I hope that you find this information helpful. I would be happy to discuss it at greater length if you would find it useful.

Sincerely,

Castor A. Fernandez,

President/Creative Director, Castor

May 27, 2003

The Honorable Michael K. Powell

Chairman, Federal Communications Commission, Washington, DC 20554

Dear Mr. Chairman, My name is Eduardo Caballero, President/CEO of Caballero TV & Cable Sales, an independent-Spanish TV stations sales representative.

I started selling Spanish Media in February of 1962, as a local salesman for Radio Station WBNX, New York City. I became its General Sales Manager that same year.

I resigned in March of 1968 to become General Sales Manager of Spanish TV Station WXTV, Channel 41, New York Market (licensed to Paterson, NJ).

Also in 1968, I became a VP and Director of National Sales for Spanish International

Network (S.I.N., the predecessor of Univision), with affiliate stations in San Antonio, Los Angeles, Fresno, New York, Miami, San Francisco and Chicago.

In 1973 I resigned that position, as the first—and only—Hispanic to be in charge of national sales for any ''national network'' in U.S., to start the first Spanish Radio National Sales Representative in this Country (Caballero Spanish Media, Inc.), representing over 140 Spanish radio stations.

Amongst stations represented by CSM were those owned and operated by Heftel Broadcasting, Tichenor Broadcasting Co. (both of these Companies were the predecessors of the actual Hispanic Broadcasting Company—HBC), Spanish Broadcasting System, Liberman Broadcasting, Excel Broadcasting, the Z Network, etc.

CSM was sold in 1995 to the Interep Company (a General Market—English language—radio representative). Interep has kept CSM, to this day, as a separate Spanish division.

I remained with the Company until 1998, when I undertook the creation of a TV (low power stations) Network—MasMusica TeVe—to broadcast Spanish music, 24/7. At the present moment this programming is broadcast over 21 Spanish TV stations within the U.S.

Most recently, since there is no any advertising sales organization representing independent TV stations—including mine and others—I have started a new—and only—independent Spanish TV representative sales organization, Caballero TV & Cable Sales.

I have been selling time for Spanish Media in United States (both radio and TV), for the last 42 years, uninterruptedly. I can say, unequivocally and based on my professional experience, the following:

Unless an advertiser makes the decision to promote its products or services to the Hispanic consumer, in Spanish and, subsequently, creates a ''Hispanic Budget'', there will not be schedules placed on any Spanish Media.

Unfortunately, that ''Hispanic Budget'', when it does exist, amounts, at best, to a 1 to 3% of the ''general market budget'' (although Hispanic consumers represent about 14% of the total U.S. population, according to the Census Bureau). That brings, as a result, the situation where many of those advertisers' Hispanic budgets cannot afford both television and radio schedules.

Many of those advertisers are willing to allocated and reallocate parts of their Hispanic budgets to TV or to radio, depending on changes of rates and the ability of a particular medium to negotiate those rates. The fact is that Spanish language TV and radio are substitutes for many advertisers.

Every advertiser in the U.S. considers this to be a SEPARATE AND DISTINCTIVE MARKET. In fact, most, if not all, of the still very few advertisers who have decided to advertise in the Spanish language have, first, funded a SPANISH ADVERTISING BUDGETS, then created a SPANISH MARKETING DEPARTMENT and, lastly, chosen a SPANISH ADVERTISING AGENCY. Without those three elements, the Spanish speaking consumer does not play any role in the marketing plans of ANY of the hundred of national advertisers who are NOT advertising in the Spanish language, simply because the Spanish market is not integrated in their general market strategy, and as they say, ''it has to be treated differently'', language and otherwise.

Many times we were confronted with situations when general market agencies placed schedules on some of our represented stations; when they found out that we were broadcasting in Spanish, they canceled that schedule because, according to them, they were buying ''radio'' not ''Spanish radio'' or they were buying ''television'' not ''Spanish television''.

Still, today, we confront many situations where most national (or general market) advertisers do not buy any Spanish language media because they (the advertisers) are not ''prepared'' to go into the Spanish market.

Another point I want to make is the following. A General Market Network (radio or television), to be considered as such, has to guarantee advertisers to cover about 80% of the total U.S. population. In the case of Spanish Networks, they are required to cover ONLY ABOUT 80% OF THE HISPANIC POPULATION. Certainly, those Hispanic ADIs where about 80% of the National Hispanic population resides do not even get close to cover 80% of the General Population of the U.S. This marks another very clear separation between the General and the Spanish Markets.

If I can be of any help to this Commission, please, do not hesitate to have any of your associates to contact me.

Sinceramente,

Eduardo Caballero, Personal Bio

Eduardo Caballero was born in the Oriente Province, Cuba. Went to school in Sagua de Tánamo and Havana, where he obtained a Degree as Doctor in Law from the Jose Marti University.

Started his own law firm with his wife, Raquel Miller-Caballero, also a lawyer, and practiced that profession in Havana, until the end of 1961, when, in view of the political situation in his country, decided to come to the United States as a political refugee.

Under a program of relocation sponsored by the U.S. Government, he and Raquel went, first, to Dallas where he worked, simultaneously, at a restaurant, as a host, and at a department store, as a salesman; later on, they went to New York where, in 1962, Eduardo started his career in broadcasting, landing a job as a salesman for a local Spanish radio station (WBNX), through the offices of a client of his former law firm in Cuba.

Soon he became the first Hispanic in USA to hold the position of General Sales Manager of a radio station.

In 1968 he helped to create what was known as Spanish International Network (SIN), today Univision. He was appointed first General Sales Manager for WXTV, Channel 41, New York and soon after that, in 1969, he became an Executive VP and Director of National Sales for the Network.

In March of 1973 he resigned his position, and, again, together with wife Raquel, started Caballero Spanish Media Inc., the Spanish media sales representative in this country.

His company started representing four Spanish TV stations (all of the independent Spanish stations existing at that time), and fourteen Spanish radio stations (out of less than 35 existing stations). Eduardo also syndicated a weekly Spanish movie, which ran in twenty-nine television stations, almost all of them general market stations, using Ricardo Montalban as the presenter, and with the sponsorship of the Bristol Myers company.

In 1976 Eduardo decided that he should be involved exclusively in radio, where he saw the greatest potential for C.S.M. His company grew to represent over 140 Spanish radio stations from coast to coast, covering over 95% of the Hispanic consumers in the country, opening opportunities for new radio operators and hundreds of jobs for both, Hispanics and non-Hispanics.

In 1995, Eduardo sold C.S.M. to Interep, and remained with the Company until the beginning of 1999, when he left work on his new project, Caballero Television, owner and operator of twelve LP television stations, all of them located in Central California and Texas. He created his own network—Mas Música Teve-broadcasting 24 hours of music videos. Caballero Television has offices in Dallas, New York Miami and Bakersfield, CA. Recently, the Broadcasters' Foundation presented to Eduardo, The American Broadcast Pioneer Award, as the first Hispanic to receive this award.

In September 2002, Eduardo was honored by the American Advertising Federation with the Mosaic Award.

Eduardo lives with his wife of 41 years, Raquel, in Miami, Florida. They have a daughter, Rosamaria, also a lawyer, who graduated from Georgetown Law School. Married, with two daughters, Sofia and Paloma, she lives, with husband P.J. Stafford, in New York City.

Eduardo is, or has been, involved in the following organizations:

Chairman-founder of the Hispanic arm of the Media Partnership for a Drug Free America.

Member of the U.S. Postal Service Marketing Advisory Board.

Founder of the Spanish Radio Association of America.

Former Member of the Board of the Stations Representative Association (S.R.A.).

Former Member of the Board of Directors of the Advertising Counsel.

Former Member of the Arbitron Bi-lingual Advisory Committee.

Founder of the Association of Hispanic Advertising Agencies (A.H.A.A.).

Former Member of the Board of Trustees of the National Hispanic University (San Jose, CA).

Former Member of the Board of the National Drop-out Prevention Foundation.

He is also a proud member of the N.A.B. and of the Pioneer Broadcasters, among many other organizations.

Hi Albert, as per your request, following are my thoughts on why the Hispanic market should be treated separately from the general market. As you know, I have over 15 years in the industry. Most of these years have

been with agencies specializing in Hispanic marketing and advertising. I am currently with Diario Las Americas, South Florida's first Hispanic daily newspaper.

The U.S. Hispanic media market should be treated separately from the non-Hispanic media market. Hispanics differ in many ways from non-Hispanics:

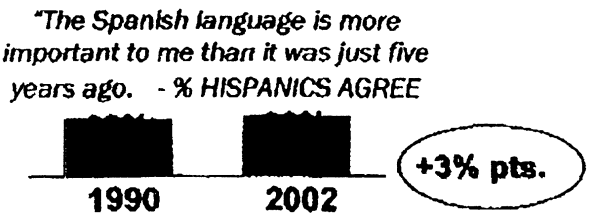
- Larger households 3.4 vs. 2.5.
- Hispanics are younger 27.6 vs. 37.2.
- More HH with children 18 58% vs. 34%.
- Religion is more important in their lives, 80% vs. 46%.
- Language preference—over 90% of Hispanics speak some Spanish, over 70% prefer to speak Spanish at home and over 50% prefer to speak Spanish on social occasions.

Sources: Nielsen Universe Estimates 2002, Strategy Research, Yankelovich 2000, Center for Media Research 10/7/02.

Advertising in Spanish-language is proven to be far more effective with Hispanics. According to the Roslow 2000 study on advertising effectiveness among U.S. Hispanics: ad recall rises 61% for those viewing in Spanish, communication is 57% more effective and persuasion is 5 times greater.

Marketing to Hispanics should not only be in Spanish-language but should also be culturally relevant. Translation of general market copy is not an effective or efficient approach for delivering the target. Advertising should be culturally relevant and dialect sensitive. Agencies specializing in Hispanic advertising and marketing understand that accents and terminologies differ based on country of origin. They exercise sensitivities to these differences when creating an advertising message. Important, as well, is not to stereotype this market.

Spanish language preference has not decreased throughout the years as many had predicted. It has actually increased. One contributor to the increase could be the increasing acceptance of Spanish-language, as well as, what many are calling 'retro-acculturation.' Latinos are feeling more comfortable with their culture and the use of Spanish-language. Great contributions by Latinos in the areas of sports, entertainment, and business have laid out a new dynamic for Latino youths. They are more proud to be a part of the Hispanic community and to be considered Latinos.



Source: Yankelovich Partners 1990 & 2002 Hispanic Monitor Study

The Hispanic market is **separated from general market by language and culture.** Hispanics have different viewing and listening patterns. That is why the top rated programs (overall—Hispanic & general market—source Nielsen Hispanic Station Index) on television for Hispanics are 'novelas' on Univision; and why the top radio stations in major Hispanic markets are Hispanic stations. Some Hispanics can be reached through general market advertising efforts (spill), but the effectiveness and impact of the message is not the same (per Roslow 2000). Hispanics are more likely to buy brands that advertise to them in Spanish-language. Many advertisers have become saver to the fact. In November Burger King Inc. set aside swathes of aisle space in nearly 1,000 of its stores for videos dubbed in Spanish. In December, Kmart Corp. announced the launch of an apparel line named after Mexican pop star Thalia. P&G created a magazine-style direct mail piece specific to Hispanics.

Some companies early to see the potential are cashing in Sales of Ford brand cars and light trucks to the Hispanic market grew 40% in the past five years. After the company started using Mexican bombshell Salma Hayek to market its Lincoln brand last year, Hispanic purchases of Lincoln Navigators grew 12%, while sales to non-Hispanics were flat, says a Ford Motor Co. spokeswoman. At Honda Motor Co.'s American arm, Latino purchases grew to 8.4% of all vehicles sold last year from about 7% five years ago.

With the nation's economy as a whole stagnating, the U.S. Hispanic population is emerging as one of the most promising motors for growth. Driving the growth is the population's higher-than-average birth rate and immigration. Additionally, Hispanic household incomes are starting to catch up with national averages. The Global Insight report estimates that Hispanic household incomes should grow from 77% of the national average in 2000 to 82% by 2020. The Selig Center for Economic Growth at the University of Georgia says Hispanic disposable income will reach $926 billion in 2007, up some 60% from $580.5 billion last year. Meanwhile, non-Hispanic buying power will grow less than 28%, to $8.9 trillion. The Selig Center estimates that in five years Hispanics will account for 9.4% of the nation's disposable income, up from 5.2% in 1990.

Both television and radio have seen the growth. Advertising on Spanish-language TV grew 16.5% last year, over twice the 7.6% growth by all broadcast TV, estimates Gordon Hodge of investment bank Thomas Weisel Partners. Today there are 8 times the number of Hispanic radio stations than there were 20 years ago.

1980: 67 Hispanic Radio Stations
2002: 600 Hispanic Radio Stations

Get the picture? It seems some major companies have, and it sell $$$. They understand the importance of the Hispanic market. They see it as a **separate market,** and so should we.

Sincerely,
Leticla R. Pelaez
Director of Advertising

May 22, 2003

Federal Communications Commission
445 Twelfth Street South, Washington, DC. 20554

To Whom It May Concern, My name is Raquel Tomasino, I am Media Director of Castells & Associados and have been asked to comment on whether the U.S. Hispanic media market is a separate market for the purpose of assisting the FCC in its ongoing review and analysis of the pending merger of Univision Communications and Hispanic Broadcasting Corporation.

From a marketing standpoint the US Hispanic market is a separate marketplace. Marketing to Hispanics requires understanding of the cultural differences that exist versus the General Consumer, understanding that creatively Spanish-language commercials need to reflect Latino cultural nuances and queues to be fully effective in producing similar results versus the General English-language commercials.

More than 50% of the US Hispanics are Spanish-dominant. In the West Coast that number is closer to 60%. While long time residents and US born Latinos speak English so that they can function in mainstream America, various factors which include, the growing population, strong Hispanic communities, and immigration keep fueling the desire for Hispanics to hang on to their culture, their language and entertainment preferences.

The Hispanic market is not one Monolithic segment of the population, it is a complex group comprised of many segments with different cultural nuances and origins, united by one language.

Spanish-language media plays a very big part in reaching out to the different segments of the population by continuing to supply programming that feature relevant content that speak to the Latino preferences.

In the case of Spanish-language TV, Experience has shown that original productions with familiar content such as Latino entertainers, International dramas and Futbol/Soccer is a formula for success. The English-TV programming, such as ''Charlie's

Angels'' and ''Reyes Y Ray'' (Starsky & Hutch) remakes in Spanish that some networks tried to reproduce and run on Spanish-TV proved to be unsuccessful.

Radio has become the optional source of information and news not only about our homeland but our communities, with commercials that we can actually understand and follow in our language. Radio also offers the variety in programming needed to finely target the different segments of the Hispanic communities.

Like the Central American who listen to Cumbias, the Caribbean's who prefer Salsa, the South American's like Spanish-Rock and the Mexican Community who love their Rancheras and traditional sounds of Mexico.

As an agency it is important for us to educate our clients on the most effective way to reach the Hispanic consumer. We are responsible for creating advertising that is compelling, that builds awareness and consumer loyalty and at the end of the day we need to deliver these through the various, relevant forms of media vehicles.

That's why we have a list of ten things to avoid when marketing to Hispanics. Below is a top line of the top ten things not to do by Liz Castell-Heard, President of Castells & Asoicado:

10. Approaching the Market as if It Were a Monolithic Segment

''One-Size Fits All'' Approach No Longer Works, Unless It's just the Start. Hispanic marketing has evolved from the '70's ''orphan'' to the ''childish'' '80's regional efforts; the post-pubescent 90's of homogenization; and now to bicultural segmentation, as ''Hispanic'' grows up as an adult rich with complexities. It's beyond country of origin—one generic ''broadcast'' Spanish can be effective. It's knowing what makes us tick; foreign-born (58%) or US born; Spanish-dominants (58%) or reaching bilinguals/English-dominants with culturally-relevant English ads (like African-American). It's targeting various age targets and influencers. Companies like McDonald's who do this well, have very strong Hispanic positions.

9. Not Understanding Your ''Hispanic'' Category

Category Dynamics Don't Automatically Apply. Know & Embrace The Differences. Your ''Hispanic'' category is not at the same point of its lifecycle development; and Latinos are often behind on the learning curve. Cultural and lifestyle differences affect perceptions, needs, motivations and advertising. Demographic barriers may not exist; but perceptual barriers need to be addressed, like in cable or banking.

8. Not Having a Long-Term Hispanic Market Plan

Have a Consistent & Integrated Hispanic Strategic Branding and Retail Plan. You need to have bilingual training, people, operations; multi-media advertising, promotions and PR. Some believe you don't need a Hispanic branding campaign due to the *myth* of Hispanic brand loyalty. Hispanics will respond and brand-switch. You can't assume your established General Market or Latin American efforts will bleed over. Classic examples are Colgate-Palmolive left behind by P&G, or Toyota topping Chevrolet. Continual short-term messages lead to poor brand perception, discounting and brand erosion. You need a branding campaign with ''legs'' and a multi-media mix, beyond TV to radio, OOH, DR, on-line, print, etc.

7. Consistently Opting for General Market ''Transactions''

Stay True To The Brand, Seek Synergies With Hispanic Consumer Relevance. Look for synergies and commonalities between General and Hispanic consumer segments, but don't force-fit. Transcreating GM strategies or creative may work when the concept transcends ethnicities or for short-term promotions, but *consistently* employing this approach becomes ineffective. Just think about all the GM money you spend to identify that key consumer nugget, or that breakthrough ad. Know the cultural nuances that affect your direction and define ad relevance.

6. Oversimplifying and Underestimating the Potential of the HCM

Quantify the Hispanic Business Potential With Sound Research and Analysis. Put the stats to work and figure out the actual potential, by market, by account. Once you assess the huge potential, ''package'' it internally. Call it a profitable ''division'' or establish a multi-discipline Hispanic committee to facilitate its viability.

5. Inadequate Allocation of Company Resources to ''Hispanic''

Proper Allocation of Hispanic Marketing Budgets and Resources Is Key. Inadequate pre-planning, sub-standard concepts, limited ''test efforts,'' poor tactical executions and lack of performance metrics devalue Hispanic potential. Don't say, ''This is all we have for Hispanic this year.'' Hispanic should be an integral part of the budget pre-planning process. Assess Hispanic share vs. the GM; and weigh the trade-offs of where you spend. The $2.4 Billion spent in Spanish is still less than 4% of all ad dollars—But it's changing quickly as companies spend more; traditional categories *like packaged goods,* newer categories like telecomm, health, travel, entertainment, or high-tech.

4. Thinking Hispanics Are Effectively Reached Via English Media

Spanish Ads are Critical; English-language Spillover Is Not Necessarily Effective. Don't say, ''Half of Hispanics see our spots, they're the ones with the money.'' Spanish media continues to grow; 70% of Hispanic TV viewing goes to Spanish, up from 45% in 1995. Spanish broadcast gets the majority of share even among bilinguals. To know what to spend, apply a systematic budget formula that accounts for Nielsen spill, Roslow comprehension, population and CPP's. Nationally, 10% of total dollars should go to Spanish, 4% to English-Hispanic; in L.A., 30% to Spanish, 11–18% to English-Hispanic. Hispanic median income is $49K (85 index vs. GM), so it's highly likely Hispanics can afford your product.

3. Recruiting a Native Spanish Speaker To Critique Your Agency's Creative

Just Like the General Market, Let the Hispanic Consumers Be The Judge. Please don't say, ''Juanita Garcia says the words are not right.'' Regis & Kelly are not asking you to write their monologue, so don't rely on your housekeeper to critique the work done by a creative with a Masters and 15 years experience. Do the same type of copy research as the GM, qualitative or quantitative, it all exists. Assure your Hispanic ads deliver the strategic and communication goals.

2. Hispanic Programs Must Pay Out in Incremental Volume

Have a Measurable, Realistic and Agreed-Upon Hispanic ROI and Report Card. There is a base cost for customer retention and maintaining brand share, and the Hispanic program should not payout solely on incremental sales. The reprt card should be based on cumulative measures; Hispanic sales tracking, field surveys and pre/post quantitive tracking studies. Don'trelegate Hispanic research to the back shelf. Employ the proper research size and methodology to ensure the Hispanic sub-segments are well defined and represented.

1. Not Allowing Your Hispanic Agency To Challenge Status Quo

Demand High Performance From Your Hispanic Agency. Demand the same level of excellence as your General Market agencies. Be inclusive with your agency and set clear goals and expectations. Think of your agency as a marketing partner, as the more knowledge shared, the better the work. Allow Hispanic programs to evolve, flourish and increase. Hire a true Hispanic agency, not a Hispanic ''division,'' or one—**like Castells & Asociados.**

Sincerely,

Raquael Tomasino,

EVP, Director of Media Services

The Honorable Michael Powell, Chairman

Federal Communications Commission, 445 12th Street, Southwest, Washington, D.C. 20554

Dear Chairman Powell: My name is Linda Lane González, president of The VIVA Partnership, Inc., a Miami-based advertising agency specializing in the U.S. Hispanic market. My professional experience over the past 15 years has been almost exclusively in the U.S. Hispanic market, having worked with some of the greatest pioneers of our field, Lionel Sosa, Carlos Montemayor, Paul Castillo and others over the years on a variety of accounts including Chrysler, Builder's Square, Cuervo, CBS, Verizon Wireless, Uniroyal, Meow Mix, and Entenmann's.

I have been asked to comment on whether or not I believe the U.S. Hispanic media market is actually a separate market. My answer is an emphatic yes. To which could be added an emphatic of course! Hispanics are different in many ways: be it culture, language, or the numerous customs and traditions. Research shows that in-language programming is more impactful to the Hispanic target when it connects on a deeper level, in language and culturally relevant.

The Hispanic media market and its numerous vehicles are a separate, relevant entity. From Nielsen to Arbitron—media is adapting and adjusting to the ever-growing Hispanic population. Nielsen has adjusted the way it measures audience levels due to the exploding Hispanic numbers. Arbitron continues to be challenged and is currently modifying their methodology on how to accurately measure Hispanic audience levels.

I hope my comments will be useful in the commission's consideration of the U.S. Hispanic media market as a separate and relevant entity and in its review of the Univision/HBC merger.

Very sincerely yours,

Linda Land González,

President, The VIVA Partnership, Inc., 4141 N.E. 2nd Avenue, Suite 203E, Miami, FL 33137

May 27, 2003

The Honorable Michael K. Powell

Federal Communications Commission, 445 12th Street, SW, Washington, 20024

Dear Chairman Powell: My name is Tere Zubizarreta, President & CEO of Zubi Advertising.

I have been asked to comment on whether the U.S. Hispanic media market is a separate market. There's no doubt that the Hispanic media market is an entity completely separate from the ''general market''.

As will be shown below, there is ample evidence and factual corroboration to conclude that the U.S. Hispanic media market is a separate market.

The Hispanic media market stands alone since it caters strictly to those U.S. residents (33 million by 2000 census). In their native language, taking into account cultural idiosyncrasies and family values.

The media availability to address this market is professional in its programming and formats are according to the demographics in each of the major Hispanic markets.

This fact is particularly important when looking at the radio and TV networks as the primary source of communication with this fast growing market.

I hope the information provided will be useful in the consideration of the U.S. Hispanic media market as a separate relevant market.

Sincerely,

Tere A. Zubizarreta

May 21, 2003

To Whom It May Concern, I'm Richard Cotter, Senior Partner and Director of Local Broadcast for Mindshare. We're one of the largest buyers of time on radio and television stations in America.

I've been asked to weigh in on the question if Hispanics in the United States represent a discreet market. The question is important because it's being used in the analysis by the F.C.C. concerning the proposed merger of Univision Communications and Hispanic Broadcasting Corporation. There's ample evidence and factual corroboration to conclude that the U.S. Hispanic media market is a separate market.

First, the Hispanic media market is separated from the rest by it's own radio and television stations broadcasting in their own language. The Spanish language radio and TV stations serve a distinct consumer base with different brand awareness, tastes and preferences. To be sure it's a separate population with different growth rates.

As the F.C.C. reviews the Univision/HBC merger I hope the information highlighted here will help provide direction and the right decision to this important question.

Sincerely.

Richard Cotter

Senior Partner, USA Director of Local Broadcast

May 2003

As a media executive, I've been asked to comment on whether the US Hispanic media market is a separate market from the general market. There is no question that the Hispanic market is indeed separate and should always be considered as such.

There is ample evidence and factual corroboration to conclude that this to be true. The language of preference for many Hispanics, whether they are recent arrivals or US born, is Spanish. The importance of the culture to Hispanics is such that parents instill pride in language, customs, music and dance to their children. In the mid seventies, the US had about 50 Spanish-language radio stations in the entire country. Today over 600 radio stations dot the landscape with stations cropping up in markets where just 10 years ago no one would have guessed the need for Spanish formats would be.

The same holds true for Spanish-language TV. We've seen the growth in the number of networks and independent stations everywhere. Some markets, such as Chicago, Miami and Los Angeles have at least five Spanish-language TV options.

The bottom line is, if you don't speak Spanish, chances are you ignore Spanish-language media. Similarly, if you don't speak English, or just simply prefer Spanish, chances are you ignore English-language media. So if you're not speaking to me in the language I prefer, I'm not listening to your message. Few advertisers can afford to ignore this market.

There is no question as to the relevance of this market, and ample evidence exists that it reached through Spanish-language media.

Emma Moya

VP/Client Services, Amistad Media Group, 815 Brazos Street, Austin, Texas 78701

May 21, 2003

Ladies and Gentlemen: I am the Marketing Director for the Historical Museum of Southern Florida. My career in marketing and advertising expands more than twenty years of experience in TV, radio and major publications in the Caribbean and United States.

I have been asked to offer some observations about whether Hispanic media in the United States should be considered a separate market venue from that of the general market. My answer is a definite, *si, por surpuesto.*

For the last two decades, major U.S. corporations have debated whether or not to consider Hispanics just a minority group who will, in time, assimilate to the American culture or a growing consumer powerhouse loyal to their ethinicity. Time has proven that the latter is the correct assessment of this market. Almost everyday, articles are published in major newspapers throughout the United States confirming the importance of reaching Hispanics in their own language, showing sensitivity to their particular customs.

The Hispanic market has evolved into a rich mosaic of cultures. Each segment with its own set of goals, music preferences and interests. There are two common denominators: Language and pride of culture.

Endless research has shown time and time again that Hispanics respond better when approached in *español.* The message is even more effective if it is tailored to their particular cultural background. Hispanic media, particularly radio and TV play a key role in the success of any promotional effort targeted to this important market. Hispanics depend on radio and TV for their news, entertainment and lifestyle trends. Hispanic radio and TV are their emotional link to their roots.

Hispanic media, in particular radio and TV, has evolved into a market in itself. Using the most efficient technology and combing it with the characteristics of the Hispanics' *simpatía,* makes it stand out and be different from any other mass communication venue.

I trust that the views offered here may be useful in the consideration of the U.S. Hispanic media market as a separate and relevant venue.

May 27, 2003

To Whom it May Concern: My name is Pat Delaney. I am President of DMA and have been in the advertising industry for over 27 years. I have planned and purchased all mediums throughout the US for clients such as: Reebok, Wendy's International, BMW, AutoNation, Terminix, Rite Aid Drugs, Toys R Us, just to name a few.

I have been asked to comment on whether the US Hispanic media market is a separate market. Also, whether there is ample evidence and factual corroboration to conclude that the US Hispanic media market is a separate market:

The US Hispanic market is a separate market. Hispanics listen and watch various mediums differently than Anglos. With the available research on Hispanics, it clearly shows that while many Hispanics are bilingual, they still speak Spanish at home and do listen or watch Hispanic radio or TV. It's also substantiated by research that the number one radio or tv station in a given market (eg. Los Angeles, Miami, etc.) is Hispanic. This reflects all stations in a market, not just Hispanic and indicates to an advertiser that a large percentage of their potential customers are being missed if Hispanic media is not being purchased. In many markets, Hispanics account for over 50% of the market.

Over the years I have found that with the available research an advertiser can effectively reach their potential customers by using both Hispanic and Anglo mediums. The research provides duplicated and unduplicated listenership/viewership of the media purchased to assure full coverage of

both Hispanics and Anglos. Without this research it would be a shot in the dark.

I hope this information provided will be useful in the consideration of the US Hispanic media market as a separate relevant market.

Sincerely,
Pat Delaney

May 23, 2003

To: Federal Communications Commission, Honorable Michael Powel

I am Mike Herrera. My experience is Florida Distributor Coordinator. I have worked in the Florida Market for 17 years in the beer Industry. Fourteen years with Anheuser Busch and the last three with Presidente U.S.A. Presidente Beer is one of the leading beers in the U.S. that markets to Hispanic consumers across the country.

I have been asked to comment on whether the U.S. Hispanic media market is a separate market.

There is ample evidence and factual corroboration to conclude that the U.S. Hispanic media market is a separate market. Research companies such as Simmons measures media habits, product and service usage, demographics and psychographics of Hispanic consumers across the country.

In addition to the Nielsen media research is one of the market leaders in terms of providing quality measurement of Hispanic TV audiences.

When Presidente Beer commences its marketing planning and forecast our strategic approach is to identify the key markets within our Demographic group and separate within each market the hispanic and general market. This strategic marketing approach is used in all of our key markets across the United States.

I hope the information provided will be useful in the consideration of the U.S. Hispanic media market as a separate relevant market.

Sincerely,
Mike Herrera
Presidente U.S.A.

To: Ana Figueroa
From: Nelson Quintero
Date: May 22, 2003
Re: Hispanic Survey

In reference to your questions regarding the Hispanic media survey my personal opinion is that Hispanic media should be maintained separate from the general market. The Hispanic market is a different segment and should be targetted differently. In the beer industry we face these challenges everyday trying to cross over to a complex ethnic market with such a Latin American influx and diversity. We are struggling trying to convey the same message.

In reference to Radio, the audience of most listeners are probably working people or traveling in vehicles. During the most busy traffic hours and lunch time most people are listening to the radio. This is a key time for messages and commercials to get across. For example; lunch hour at any restaurant, bar or café usually has a radio station playing. I think today's TV viewer's are looking for specific shows, movies or the nightly news.

Ana, I hope this information helps you with your survey and please understand this is my opinion and not of Labatt USA.

Sincerely Yours,
Nelson Quintero
District Manager Southeast Florida

May 21, 2003

Federal Communications Commission
445 Twelfth St. South, Washington, DC 20554

To Whom It May Concern: My name is Marci Neill I am the advertising coordinator for Glendale Nissan/Infiniti.

I have been asked to comment on whether the U.S. Hispanic media market is a separate market, for the purpose of assisting the FCC in its ongoing review and analysis of the pending merger of Univision Communications and Hispanic Broadcasting Corporation.

The first and most obvious example would be separate languages. From there the list goes on and on to include the following, separate location, population, growth rate, income level, brand preferences, and cost basis, to name just a few of the reasons why as an advertiser it is critical to able to target Hispanic media, both TV and Radio as a separate market.

I hope the Commission will take these factors into consideration when reviewing the Univision/HBC merger.

Sincerely,
Maric Neill
Advertising Coordinator.

To Whom It May Concern, my name is Jaime Amoroso, general manager of Toyota of Manhattan. I've been in automotive sales for over 15 years.

I've been asked to give my opinion on the question, ''Do Hispanics in United States represent a unique market?'' The question is been used in the consideration of the pending merged between Univion Communications and Hispanic Broadcasting.

The answer is clearly ''YES''. While we are Americans we are also Hispanics with so many different things that make us unique such as the foods we eat, our traditions, our culture and so much more. We have our own separate language with our own tastes, preferences and brand awareness. We have our own population with it's own unique growth rate.

We have distinct radio, television stations, and programs that appeal specifically to us. These stations and programs broadcast directly to our community in our language with it's own cost base, discreet demographics and targets. It is unique and separate.

As the F.C.C. reviews the Univision/HBC merger I hope the information highlighted here will help provide direction and the right decision to this most important question.

Sincerely,
Jaime Amoroso

June 2, 2003

To Whom It May Concern: I've owned and operated a radio and TV buying service in New York City for many years.

I'd like to share my thoughts with you concerning the Hispanic market in the hopes my comments will be useful in the Commissions consideration as it reviews the Univision/HBC merger. The central point is the US Hispanic media market is a separate entity. First, the radio and TV stations which make up this market deal a separate consumer base and communicate to it in a different language. Secondly, the markets population base differs as does its brand awareness and cost structure.

Turn the channel-tune your radio. Your eyes and ears should convince your mind and heart this truly is a distinct market.

Sid Paterson

Miami, May 21, 2003

To Whom it may concern: I am Gonzalo J. Gonzalez, Managing Officer at BVK/Meka in Miami. My experience in the advertising industry includes over 15 years working with most product categories in the United States, Spain and Latin America.

BVK MEKA is one the leading Hispanic advertising and Public Relations marketing firms, and the Hispanic Division of BVK in Milwaukee, ranked among the top 50 Advertising Agencies in the United States.

Our current client list for the US Hispanic market include SouthWest Airlines, Sprint PCS, Pfizer, South East Toyota, Samsonite, Samsung and the Florida Anti-Tobacco campaign among others.

I have been asked to comment on whether the U.S. Hispanic media Market should be considered as a separate market. Not only for the proven effectiveness of the Spanish Language in communicating messages, but also because of the different media habits and cultural relevance of programming, the Hispanic media is and should be considered separate when planning, buying and evaluating broadcast media.

This fact has been proven by numerous research developed by the most prestigious research companies, such as Nielsen, Roslow Institute, Scarborough, Strategy research, among others.

As a result of this, companies that measure and monitor broadcast media, such as Nielsen and Arbitron, has adapted their methodology in term of measuring Hispanics across the country, publishing separate Hispanic books with the results of their surveys.

I hope the Point of View will be useful in the consideration of the U.S. Hispanic media market as a separate relevant market, and feel free to contact me should you need to further discuss this matter.

Sincerely,
Gonzalo J. Gonzalez,
Managing Officer.

May 21, 2003

Federal Communications Commission
445 12th Street, SW., Washington, DC 20554

To Whom It May Concern: It is with great concern that our firm has approached you regarding the proposed merger between HBC and Univision.

As a boutique firm in Coral Gables providing counsel in the areas of Advertising, event marketing and public relations, we foresee the ramifications of this proposed merger. We are a young firm, comprised of individuals who have been active in the advertising industry in the South Florida

marketplace for over a decade, particularly in Hispanic media. We live in this market, and understand the unique elements it's comprised of including how cyclical it is. The South Florida market will severely suffer if this merger happens.

Our philosophy rests on the shoulders of innovation and we stand strong in our focus on providing unique and cost effective methods for our clients to achieve their marketing goals. However, we believe that the uniting of the nation's number-one Spanish-language television operator and the number-one Spanish-language radio owner resembles the Clear Channel model. Formulas such as this have truly made it difficult for agencies and local businesses such as ours to thrive in a marketplace where as it relates to placing media, there are very few competitors.

We are convinced that with such a merger taking effect, many areas of our industry will be directly affected. Our concerns are the strong negative effects on both the general as well as the Hispanic market. We are specifically concerned about the business practices and methodology that will ultimately impact the consumer.

We would also like to comment on the issue of whether the Hispanic media market is a separate one. Our firm firmly believes it is. Just to begin, this is a market that has its own consumer base that possess their own tastes, brand awareness, brand preferences, media, cost basis, population and language. How can one ignore the facts listed above? Including both television and radio, it is evident that this market has its own unique set of *separate* characteristics, its own buying power, and its own consumer psychographics.

We implore the Commission to consider the ample evidence aforementioned. My firm could not feel more strongly about this matter. We respectfully seek your assistance in protecting the industry comprised of agencies and advertisers alike who realize how critical this matter is and how this proposed merger will affect the future of our industry. We trust in the judgment of the Commission and rely on its plight to protect the overall public's interest. Please take our plea into consideration. If need be, our firm is at your disposition as it relates to the Commission's consideration of the U.S. Hispanic media market as a autonomous market and its review of the Univision/HBC merger.

Sincerely,

Liza M. Santana,

President, Creativas Group Inc.

May 22, 2003

To Whom It May Concern: As an advertising agency in the South Florida market for over 7 years, and as an advertising professional for over 13 years, I am always asked the same question from many of my advertisers: ''How can I reach the Hispanic market?''

The question would seem to have a simple answer: ''Just through some budget dollars to a couple of Hispanic stations, translate our current spot (some advertisers actually use their English spot in Spanish language stations), and go with it!''

The more I see the situations occur, the more I realize that there are still many people in South Florida and the U.S. that still *don't get it.*

The Hispanic market is more than just a true and separate market from the general market. It has several ''sub-markets'' within itself. It is more suffice to think that with just one campaign, or one spot, or one theory, we can reach the entire Hispanic market. Hispanics in the U.S. are truly diverse. South Florida alone has possibly the most diverse Hispanic market in the country, comprised mostly of people from the Caribbean, Central and South America.

Unquestionably, the same applies to all the Hispanic markets across the U.S. Hispanics have become an important part of our population with their rapid growth, as well as their increasing buying power as consumers. This is a market with different cultures, ideas, values and customs.

Therefore, it is critical that Hispanics be considered as a separate market in order to reach them effectively and allow prospective advertisers to communicate with their powerful and evolving segment of our country.

Thank you

Tony Garcia

President, The Menda Group

To Whom It May Concern, I'm Helane Naiman. I have worked in media in New York City for over twenty five years and have for the past five years owned my own ad agency/buying service, HN Media & Marketing, Inc.

I've been asked to comment on whether the U.S. Hispanic media market is a separate market for the purpose of assisting the F.C.C. in its ongoing review and analysis of the pending merger between Univision Communications and Hispanic Broadcasting Corporation. In my opinion it certainly is. Here are just a few reasons why. The Hispanic population has separate tastes. It differs in brand awareness with a uniquely different consumer base. Hispanics in the United States have their own media. The market includes both radio and television stations that broadcast in the Spanish language.

I hope this information is useful to the Commission in their consideration of this issue. As the FCC reviews the question of whether Hispanics in the United States are a separate market the answer is clearly-yes.

Yours Truly,

Helane Naiman,

President

Note: The letter dated May 27, 2003 from Accentmarketing was not able to be published in the **Federal Register** but a copy can be obtained from the U.S. Department of Justice, 601 D Street, NW., Room 10–013, Washington, D.C. 20530 or you may call and request a copy at (202) 514–2558.

May 23, 2003.

Mr. Raul Alarcon Jr.

Chairman, Spanish Broadcasting System, 2601 South Bayshore Drive, Penthouse II, Coconut Grove, FL 33133

Dear Raul, enclosed is a synopsis of my position paper on the U.S. Hispanic market. I have delivered this or very similar presentations on numerous occasions to a broad spectrum of general business and Hispanic marketing audiences. The most recent was at the Central Florida Hispanic Chamber of Commerce.

I have edited out only my personal (humorous) anecdotes; actually, they were the best part.

Best regards,

A COUNTRY WITHIN A COUNTRY

The U.S. Hispanic market is frequently referred to as ''a country within a country * * * larger than Canada * * * the fourth largest Spanish speaking country in the hemisphere larger than Peru, Venezuela, Chile or Ecuador.''. 42.6 million strong (including Puerto Rico), the population is expected to grow by more than 1.7 million per year. That's 100,000 people every three weeks or 5,000 every day.

Hispanic purchasing power exceeded $630 billion in 2002. In and of itself, it represents the 9th largest economy in the world, larger than the GDP of Brazil, Spain and even Mexico. All indices and economic measurement standards reflect growth and increased prosperity. In the decade between 1979 and 1999, the number of Hispanic families reaching the middle class (defined as those earning between $40,000 and $140,000) increased 71.3% to 2.5 million, fully one-third of the total.

The numbers get even more interesting in terms of business ownership. According to American Demographics Magazine, Hispanics now account for the largest share of minority entrepreneurs in the United States, owning 40% of all such businesses. The Census Bureau's last economic census reported 1.2 million Hispanic owned businesses with aggregate revenue in excess of $1.86 billion. The 2002 estimate put the figure at 2.3 million with $380 billion in sales. In 2001, the census also reported Hispanic labor-force participation at 80.4% (FYE 2000), higher than non-Hispanic white males as a whole

It is evident that even official agencies consider this market a discrete entity within the larger marketplace measured and reported accordingly. And while other minority markets are similarly measured in a number of areas, the Hispanic market stands alone as a self-contained, differentiated, ''country-like'' entity within U.S. borders; one from which specialized disciplines, professions, governmental institutions, NGOs and even foreign policy initiatives, have arisen and will continue to arise well into the foreseeable future. This is not a matter of opinion. It is a matter of fact extremely well grounded in logic, as we shall see:

1. Let's consider the other two large minority segments in the United States, African-Americans (excluding Haitian-Americans) and Asian Americans. African-Americans speak English almost exclusively. There are few direct linkages to African countries of origin. Non-African Americans may easily communicate and participate in this sub-segment at will. They are tied to the mainstream culture by language if not by color.

2. The Asian-American segment is composed by a multiplicity of cultures

divided by language—Chinese (Mandarin and Cantonese), Japanese, Korean, Vietnamese, Hindi, Bengali, Urdu, Malay, Punjabi—the influence and economic advantages (cost-effectiveness) that spring from critical mass are elusive if not impossible. Therefore, other than grassroots marketing or media outlets serving small enclaves, any Pan-Asian network or national print vehicle would be either highly fragmented in a multiplicity of languages or require English as the common denominator.

3. Language is the single most important characteristic of culture and Hispanics in the United States are united by a common language traced to Spanish colonizers regardless of whether these are viewed as ruthless conquistadors (Mexico) or brothers from the mother country (Cubans). If this were not the case, neither national broadcast networks nor national print media would be viable business models. This isn't to say that there aren't English dominant Latinos, but rather that for marketing and communications purposes we include them in the mainstream universe just as we exclude non-Spanish speakers from the Hispanic consumer pool. Spanish dominant Latinos then, by necessity, must rely on Spanish language media even to exercise their right to vote; bilingual Latinos may choose either language based on content or self-identification. Considering that Latinos are basically absent from general market media, being depicted as less than 2% of all characters (while more than 12% of the population) and often in the most negative roles, bilingual Hispanics are practically compelled to turn to Spanish language media to see and/or hear themselves.

4. This cultural phenomenon known as Hispanic-America, and its need for in-language communications that respects and embraces our multiracial identities, musical preferences and folkloric richness created the Hispanic advertising industry. The Association of Hispanic Advertising Agencies was organized in recognition that ours is a marketing sector that could not and would not be well served by general market entities; the very same who for more than 30 years had been predicting with almost evangelical fervor our assimilation and demise. The truth is that Hispanic advertising and media professionals constitute a unique business specialty. As managers, we must have as thorough an understanding of the disciplines as our monolingual, general market counterparts and communicate in English with our clients, bankers, the IRS and the 21 year old brand manager who has never traveled outside of Indiana, yet transcreate, transform, interpret and connect with our consumers in Spanish, the language most likely to produce the sales and economic benefits sought by our clients. ''Compre nuestro auto, nuestro jugo y traiga su dinero a nuestro banco.'' It's the American way. Consumer spending is the backbone of our economy. And let's be realistic, the mainstream population base is experiencing negative birth rates. All U.S. population growth is directly attributable to minority and immigrant sub-segments. The Census says so.

5. The wave of Hispanic agency acquisitions by general market firms shows that they were wrong about assimilation (which did not and will not take place), were wrong to remain intransigently monolingual as if it were a badge of honor and thus, with very few exceptions and these only in the multi-national arena, incapable of creating Hispanic divisions organically. Ultimately, they had to buy the agencies. Most were motivated by profit potential others to keep the market in check and under control.

6. The increasing acceptance of Mexican Matriculas, the strengthening of Radio Marti's signal, NAFTA and the proposed FTAA, point to Hispanic interests influencing the national agenda well beyond the Congressional Hispanic Caucus. This is understandable as Hispanics represent the country's largest pool of bilingual, transnational citizens. It may be a small percentage of the vast United States of America, but a critical component of the country's hemispheric—perhaps global—aspirations. A country within a country indeed.

Exhibit B

May 20, 2003

To Whom it May Concern: I am Julio Amparo. I have worked in the Hispanic market as an owner of an independent advertising agency for over 15 years.

I have been asked to comment on the pending merger between Univision Communications and Hispanic Broadcasting Corporation. An important question the F.C.C. is facing is whether or not the U.S. Hispanic market is separate market.

First, we speak a different language. We have our own consumer base, our own and separate tastes. As an owner of an ad agency I can tell you Hispanics have their own brand awareness for our own products. Our population growth is different, the cost structure of media is separate—we are a separate consumer base.

The Hispanic Media market—radio and TV combined—is a separate and distinct market. Listen and you will hear with your ears we are a separate market.

I hope my comments will be useful in the Commission's consideration of the U.S. Hispanic media market as a separate relevant entity and in it review of the Univision/HBC merger.

Julio Ampara,
President.

June 11, 2003

Marlene H. Dortch
Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554

Re: *Applications for Transfer of Control of Hispanic Broadcasting Corp., and Certain Subsidiaries, Licensees of KGBT (AM, Harlingen, Texas et al. (Docket No. MB 02–235, FCC File Nos. BTC–20020723ABL, et al.)*

Dear Ms. Dortch: Spanish Broadcasting System, Inc. (''SBS'') has submitted several filings for the record of this proceeding demonstrating that Spanish-language media does not compete with English-language media. In other words, Enligh-language and Spanish-language broadcasting constitute separate markets for competition and diversity purposes. The proposed Univision/HBC merger threatens to create substantial market power in numerous geographic markets for Spanish-language broadcasting to the detriment of advertisers, consumers, competition, and diversity. This letter submits data demonstrating the severity of that threat in the ten metropolitan areas with the largest Hispanic populations.

Attached hereto is a chart for each of the top ten Spanish-language broadcast markets displaying the market share of each participant in terms of combined television and radio advertising revenues for 2002.[1] In seven of the top ten markets, the combined entity's (Univision + HBC) post-merger market share will equal or exceed 60%, and in two of the top ten markets the combined entity's market share will exceed 70%. Indeed, in San Antionio, the combined entity will control a striking 80% of the market. Only in Brownsville/McAllen (13%) and New York (48%) will the combined entity have a market share below 50%. When Entravision's market share is included (Univision + HBC + Entravision), the combined entity's market share ranges from 48% in new York to 84% in Phoenix. For convenience, the table below summarized the distribution of revenue shares for the combined entity, with and without Entravision. As illustrated by the data in this table, the combined entity would account for a large majority of advertising revenues in 8 (or 9) of the top ten markets.

[1] The charts were prepared using the following methodology: The advertising data for both broadcast radio and broadcast television were obtained from BIA, In., through its *Media Access Pro* software (current as of June 5, 2003). BIA provides station-level revenue and ownership data for more than 13,000 radio stations and nearly 2,000 commercial television stations in the United States. Revenues from BIA are estimated using data from its proprietary survey of station managers and owners. For radio stations, BIA reports information on station format. These data were supplemented with information from the *2002 Television and Cable Factbook, 2002 U.S. Hispanic Market* (a publication of Strategy Research Corporation), and various internet websites, including *www.100000watts.com.*

First, all of the radio and television stations broadcasting to the ten metropolitan areas with the largest Hispanic populations were identified. Using information from BIA as well as internet-based research, each station's language format was determined. A radio station was classified as a Spanish-language station if a portion of the BIA format description was Spanish)BIA reports the current format, which may not necessarily correspond to the station's format in 2002, although we believe relevant changes, if any, to be minimal) or, alternatively, if it could be determined that a portion of the station's programming was in Spanish. Similarly, for television stations, a station was classified as Spanish-language if a portion of the station's programming was in Spanish. Because all Univision television stations broadcast in Spanish, this decision rule provides a conservative estimate of Univision's revenue share.

CUMULATIVE DISTRIBUTION OF 2002 BROADCAST ADVERTISING REVENUE SHARES*

Share	Univision + HBC	Univision + HBC + Entravision
>80%	.....	1
>70%	2	5
≥60%	7	7
>50%	8	9
>40%	9	10

*Numbers may differ from those obtained from the charts due to rounding.

These high market shares—including above 70% in several markets—demonstrate that the merger will enable the new Univision/HBC to exercise substantial market or monopoly power to the detriment of both Spanish-speaking consumers and advertisers who seek to reach that audience. For ''a share above 70% is usually strong evidence of monopoly power'' and ''a share between 50% and 70% can occasionally show monopoly power.'' *Broadway Delivery Corp.* v. *United Parcel Service of Am., Inc.,* 651 F.2d 122, 129 (2nd Cir. 1981). Even a share below 50% can support a finding of monopoly power when other indicia of such power—such as the high entry barriers present here—exist. *See id.* The consequences of a monopoly in Spanish-language broadcasting is not only higher rates for advertisers, but also a substantial loss in diversity of voices. Moreover, where, as here, the combined entity will control over 40% in all or virtually all of the major relevant markets, diminished economic performance is likely. *See FTC* v. *Swedish match,* 131 F. Supp. 2d 151, 166 (D.D.C. 2000) (''Without attempting to specify the smallest market share which would still be considered to threaten undue concentration, we are clear that 30% presents a threat.'' *quoting United States* v. *Philadelphia National Bank,* 374 U.S. 321, 364 (1963)). In sum, the market shares shown here present a real risk of anticompetitive harm to Spanish-language advertisers, as well as a critical loss of diversity to Spanish-speaking Americans in these markets.

Moreover, the merger threatens both competition and diversity whether or not Spanish-language television and radio compete in the same market. The reason is that the merger gives Univision/HBC the power to exclude competition even if Spanish-language TV and radio belong in different markets. First, the Univision/HBC merger would raise already high entry barriers into Spanish-language radio. Advertising on Spanish-language TV is important to a Spanish-language radio station's ability to obtain significant audience. Indeed, several of SBS's stations only succeeded because of risky and expensive television advertising campaigns. However, after its acquisition of HBC, Univision—which dominates Spanish-language television—will have an incentive to refuse to deal with, or discriminate against, Spanish-language radio competitors (including SBS) who seek to advertise through Univision (and other properties) in order to advantage HBC. Second, after the merger, the combined entity will have the power to insist that Spanish-language advertisers who wish to advertise through both radio and television purchase time from both Univision and HBC rather than from the combined entity's rivals. Such difficult-to-detect and subtle tying arrangements or refusals to deal—realistic possibilities here—impair competition. *See, e.g., Lorain Journal Co.* v. *U.S.,* 342 U.S. 143 (1951). The resulting harm to competitors, including SBS, that is sure to follow will not only harm advertisers, but also will impair diversity.

To meet its obligations under the Communications Act, the FCC must undertake a detailed analysis of diversity and competition specific to a Spanish-language media markets implicated by this merger. In addition to the materials submitted last week and filed today, SBS intends to file shortly with the Commission further information demonstrating the severity of the threat to competition and diversity presented by the proposed merger.

Respectfully submitted,

/ s / Philip L. Verveer
Philip L. Verveer
Sue D. Blumenfeld
Michael G. Jones
David M. Don
WILLKIE FARR & GALLAGHER, 1875 K Street, NW., Washington, DC 20006, Telephone: (202) 303–1000

and

Bruce A. Eisen
Allan G. Moskowitz
KAYE SCHOLER, LLP, 901 15th Street, NW., Suite 1100, Washington, DC 20005
Attorneys for Spanish Broadcasting System Inc.

cc: Chairman Michael K. Powell, Commissioner Kathleen Q. Abernathy, Commissioner Michael J. Copps, Commissioner Kevin J. Martin, Commissioner Jonathan S. Adelstein, Susan M. Eid, Stacy R. Robinson, Jordan B. Goldstein, Catherine Crutcher Bohigian, Johanna Mikes, W. Kenneth Ferree, David Brown, Scott R. Flick, Counsel for Univision Communications, Inc., Roy R. Russo, Counsel for Hispanic Broadcasting Corp., Harry F. Cole, Counsel for Elgin FM Limited Partnership

SPANISH-LANGUAGE BROADCAST ADVERTISING REVENUES, 2002

[Los Angeles: Hispanic Population of 7.0 million]

	Percent
Univision	41
HBC	19
Entravision	5
SBS	6
Telemundo	13
Other	15

Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America and Viva Television Network.

Sources: 2002 BIA, Inc.; *2002 Television and cable Factbook; 2002 U.S. Hispanic Market, Strategy Research Corporation.*

SPANISH-LANGUAGE BROADCAST ADVERTISING REVENUES, 2002

[New York: Hispanic Population of 4.0 million]

	Percent
Univision	41
SBS	28
Telemundo	18
HBC	7
Other	6

Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America and Viva Television Network.

Sources: 2002 BIA, Inc.; *2002 Television and cable Factbook; 2002 U.S. Hispanic Market, Strategy Research Corporation.*

SPANISH-LANGUAGE BROADCAST ADVERTISING REVENUES, 2002

[*Miami:* Hispanic Population of 1.7 million]

	Percent
Univision	35
Telemundo	20
HBC	20
SBS	15
Other	9
Entravision	0.20

Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America and Viva Television Network.

Sources: 2002 BIA, Inc.; *2002 Television and cable Factbook; 2002 U.S. Hispanic Market, Strategy Research Corporation.*

SPANISH-LANGUAGE BROADCAST ADVERTISING REVENUES, 2002

[Chicago: Hispanic Population of 1.6 million]

	Percent
Univision	33
HBC	30
SBS	22
Telemundo	8
Entravision	4
Other	4

Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America and Viva Television Network.

Sources: 2002 BIA, Inc.; *2002 Television and cable Factbook; 2002 U.S. Hispanic Market,* Strategy Research Corporation.

SPANISH-LANGUAGE BROADCAST ADVERTISING REVENUES, 2002

[Houston: Hispanic Population of 1.6 million]

	Percent
Univision	32
HBC	42
Other	19

SPANISH-LANGUAGE BROADCAST ADVERTISING REVENUES, 2002—Continued

[Houston: Hispanic Population of 1.6 million]

	Percent
Telemundo	6

Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America and Viva Television Network.

Sources: 2002 BIA, Inc.; *2002 Television and cable Factbook; 2002 U.S. Hispanic Market,* Strategy Research Corporation.

SPANISH-LANGUAGE BROADCAST ADVERTISING REVENUES, 2002

[San Francisco/San Jose: Hispanic Population of 1.4 million]

	Percent
Univision	48
Other	19
Entravision	17
HBC	14
Telemundo	2

Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America and Viva Television Network.

Sources: 2002 BIA, Inc.; *2002 Television and cable Factbook; 2002 U.S. Hispanic Market,* Strategy Research Corporation.

SPANISH-LANGUAGE BROADCAST ADVERTISING REVENUES, 2002

[Dallas/Ft. Worth: Hispanic Population of 1.3 million]

	Percent
Univision	47
HBC	22
Telemundo	20
Entravision	8
Other	3

Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America and Viva Television Network.

Sources: 2002 BIA, Inc.; *2002 Television and cable Factbook; 2002 U.S. Hispanic Market,* Strategy Research Corporation.

SPANISH-LANGUAGE BROADCAST ADVERTISING REVENUES, 2002

[San Antonio: Hispanic Population of 1.2 million]

	Percent
Univision	43
HBC	37
SBS	10
Telemundo	7

SPANISH-LANGUAGE BROADCAST ADVERTISING REVENUES, 2002—Continued

[San Antonio: Hispanic Population of 1.2 million]

	Percent
Other	3

Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America and Viva Television Network.

Sources: 2002 BIA, Inc.; *2002 Television and cable Factbook; 2002 U.S. Hispanic Market,* Strategy Research Corporation.

SPANISH-LANGUAGE BROADCAST ADVERTISING REVENUES, 2002

[Phoenix: Hispanic Population of 1.0 million]

	Percent
Univision	47
HBC	22
Entravision	15
Telemundo	9
Other	7

Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America and Viva Television Network.

Sources: 2002 BIA, Inc.; *2002 Television and cable Factbook; 2002 U.S. Hispanic Market,* Strategy Research Corporation.

SPANISH-LANGUAGE BROADCAST ADVERTISING REVENUES, 2002

[Brownsville/McAllen: Hispanic Population of 1.0 million]

	Percent
Entravision	45
Other	30
HBC	13
Telemundo	12

Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America and Viva Television Network.

Sources: 2002 BIA, Incl; *2002 Television and cable Factbook; 2002 U.S. Hispanic Market,* Strategy Research Corporation.

July 9, 2003

Marlene H. Dortch
Secretary, Federal Communications Commission, TW–A325, 445 12th Street, SW., Washington, DC 20554

Re: Notice of *Ex parte* Presentation, MB 02–235

Dear Ms. Dortch: On July 8, Andrew Jay Schwartzman of the Media Access Project met with Susan Eid, Legal Advisor to the Chairman to discuss the proposed transfer of control of Hispanic Broadcasting Corporation.

Mr. Schwartzman took the position that the Commission should treat Spanish language radio as a separate market for purposes of this case, and that leads to the conclusion that the transaction is contrary to the public interest. He made two specific points.

First, Mr. Schwartzman discussed the extraordinary and insuperable barriers that any new entrant would face in trying to compete with the combined Univision/HBC entity. Unlike English language markets, a competitor would face great difficulty in making the audience aware of its service, as Univision would control the principal means of promoting and advertising a new radio station, *i.e.,* Spanish language broadcasting. Moreover, Clear Channel, which would be one of the largest shareholders of the combined companies, is the largest owner of outdoor advertising, which is the second most important advertising medium used for this purpose.

Mr. Schwartzman then turned to how the Spanish language market should be treated from a diversity perspective. He noted that under the FCC's 1981 radio deregulation decision, broadcasters were freed from the obligation to serve every enumerated audience segment in their community. They were, however, expected to demonstrate that they have met the problems needs and interests of whatever niche audience segment they might have chosen to serve. Plainly then, the Commission treated Hispanic other minority communities as distinct for this purpose as well.

In response to questioning from Ms. Eid, Mr. Schwartzman explained that he thought it was entirely logical for the Commission to conduct an analysis of the impact of a transaction on particular segments of the community while still including the same stations in voice counts and other analyses of the entire market. Thus, the question of how many stations a particular broadcaster might own in a market would be a separate issue from whether it held excessive power within the Spanish language submarket.

Sincerely,
Andrew Jay Schwartzman
President and CEO

cc. Susan Eid

July 11, 2003

W. Kenneth Ferree, Esquire
Chief, Media Bureau, Federal Communications Commission, 445 12th Street, NW., Room 3–C740, Washington, DC 20554

Re: Applications for Transfer of Control of Hispanic Broadcasting Corp., and Certain Subsidiaries, Licensees of KGBT(AM), Harlingen, Texas *et al.* (Docket No. MB 02–235, FCC File Nos. BTC–20020723ABL *et al.*).

Dear Ms. Dortch: The National Hispanic Policy Institute, Inc. (''NHPI'') hereby replies to the June 25, 2003 letter filed by Univision Communications, Inc. (''Univision''). In its letter Univision again restates its contention that, if the proposed merger with Hispanic Broadcasting Corporation (''HBC'') is granted, Univision's interest in Entravision Communications Corporation (''Entravision'') will be non-attributable.

In arguing for a ''bright-line'' attribution test, Univision claims that it demonstrated in a December 9, 2002 letter to the Media

Bureau that its interest in Entravision is below the 33% threshold equity/debt plus (''EDP'') ratio. In fact, Univision failed to make any such showing.

Univision's December 9, 2002 letter was filed in response to a November 29, 2002 Commission request for further information. The Commission was responding to a NHPI showing, that Entravision had outstanding debts owed to Univision. Univision had previously represented to the Commission that ''Univision has no debt interest in Entravision.'' [1] The Commission ordered Univision to ''explain the origin and nature of such accounts.'' It further ordered Univision to, ''[p]rovide an audited financial statement to support any factual assertion, and a detailed showing demonstrating compliance with the Equity/Debt Plus Rule.'' [2]

In response to the Commission's letter, Univision submitted certain documentation, which it claimed showed that it was in compliance with the Commission's EDP rule. However, the evidence Univision provided was incomplete and not audited.[3] As NHPI stated in its December 16, 2002 letter:

''Univision has again misled the Commission and has failed to be forthcoming and candid in its representations to the Commission. * * * Entravision's DEF 14A shows that ''Andrew Hobson, Executive Vice President of Univision, holds 211,136 Class A shares of Entravision. The DEF 14A also shows that Michael D. Wortsman, Co-President of Univision Television Group, Inc., holds 56,136 Class A shares of Entravision.

''Entravision's DEF 14A reports stock ownership of (1) persons or entities known to be the beneficial owners of more than 5% of the outstanding shares of stock, (2) each of its directors, and (3) certain key executives of the company. Mr. Hobson and Mr. Wortsman's share holdings were reported because, at the time, they were members of Entravision's board of directors. Entravision's DEF 14A does not require it to report shares held by Univision insiders unless their individual holdings exceed 5% of the outstanding shares. Thus, in addition to Mr. Hobson and Mr. Wortsman, it is quite possible that other Univision officers and directors hold Entravision shares. There may also be other Entravision debts owed to Univision that are not reported in SEC filings. Had an independent audit been conducted, an honest and complete answer could have been provided.''

For the Commission to make a bright-line determination concerning compliance with the EPD rule, it must know the percentage of equity and debt a party holds. In this case, the commission knows that Entravision has outstanding debts owed to Univision. What the Commission does not know, is the amount and percentage of Entravision's debt owed to Univision. Also unknown, is how many shares of Entravision's stock are held by Univision's officers and directors. See, Section 73.3555, note 2. Here again Univision has refused to provide this information. Without knowing the extent of equity, and the extent of debt Univision, its officers and directors hold in Extravision, the FCC cannot determine whether Univision complies with the EDP rule.

Univision's failure to produce information, which is easily obtained and uniquely within its control, permits the Commission to draw the negative conclusion that if the information were produced it would show that Univision, post-merger, will still have an attributable interest in Entravision. *Tendler* v. *Jaffe,* 203 F.2d 14, 19 (D.C. Cir. 1953) (''The omission by a party to produce relevant and important evidence of which he has knowledge, and which is peculiarly within his control, raises the presumption that if produced the evidence would be unfavorable to his cause.''); *International Union, UAW* v. *National Labor Relations Board,* 459 F.2d 1329, 1336 (D.C. Cir. 1972) (''the failure to bring before the tribunal some circumstance, document, or witness, when either the party himself or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so, and this fear is some evidence that the * * * document, if brought, would have exposed facts unfavorable to the party.'') (quoting J. Wigmore, Evidence § 284, 3rd ed. 1940); *United States* v. *Robinson,* 233 F.2d 517, 519 (D.C. Cir. 1956) (''[u]nquestionably the failure of a defendant in a civil case to testify or offer other evidence within his ability to produce and which would explain or rebut a case made by the other side, may, in a proper case, be considered a circumstance against him and may raise presumption that the evidence would not be favorable to his position''); *Washoe Shoshone Broadcasting,* 3 FCC Rcd 3948, 3952–53 (Rev. Bd. 1988); *Thornell Barnes* v. *Illinois Bell Telephone Co.,* 1 FCC 2d 1247, 1274 (Rev. Bd. 1965). Univision's failure to produce evidence permits the Commission to include that Univision's interest in Entravision is attributable as a matter of law.

Univision does not meet the FCC's bright-line EDP test. Even if Univision could demonstrate that its interest in Entravision is below the 33% debt/equity threshold, its relationship with Entravision is such that it would still be able to continue to exert significant influence over key licensee deicsions. As the Commission has said:

''In adopting the EDP rule, we affirm our tentative conclusion * * * that there is the potential for certain substantial investors or creditors to exert significant influence over key licensee decisions, even through they do not hold a direct voting interest * * * which may undermine the diversity of voices we seek to promote. They may, through their contractual rights and their ongoing right to communicate freely with the licensee, exert as much, if not more, influence or control over some corporate decisions as voting equity holders whose interests are attributable.[4]''

Univision's relationship with Entravision is significantly different from previous relationships that the FCC has found to be non-attributable. For this reason, the cases Univision cites in support of its claim that its interest in Entravision, will be nonattributable are inapposite.

Univision debt and equity interests in Entravision have historically been attributable interest. Univision has a long relationship with Entravision as a business partner, program supplier, creditor and financial backer. In return for Univision's support, Entravision has granted Univision significant rights, including the right to appoint two directors to its board and the right to influence its core operations. As Entravision's SEC 10K acknowledges, ''*Univision has significant influence over our business.*'' Univision proposes to convert its voting shares into non-voting shares and to give up its rights to appoint directors, to Entravision's board. This, however, will not change the fundamental well-established relationship between Univision and Entravision.

In none of the case Univision sites, did the Commission permitted an applicant to convert a long-standing attributable relationship with another party into a non-attributable interest. For example, General Electric's purchase of Telemundo fully complied with the multiple ownership rules without the need to convert previously held attributable interests into non-voting, non-attributable interests.[5] If, for example, General Electric's proposed purchase of Telemundo did not comply with the FCC's multiple ownership rules and General Electric proposed to convert its attributable interest in NBC into a non-voting interest, and further, if the FCC had permitted such a transaction, then Univision would have a case on point.

Univision's letter has little to say about its plan to retain the exclusive right to make national sales on behalf Entravision. Section 73.658(i) prohibits a television network from representing individual stations, affiliated with the network, for the sale of non-network time. In the 1970s, Univision's predecessor entity argued that, as fledgling network, a waiver of this rule was required to enhance the development of Spanish language television.[6] Univision's letter merely states that Telemundo was given the ''exact same waiver.'' Here again the situation is quite different. In *Telemundo II,* there was no issue concerning Telemundo's inappropriate exercise of control over its affiliates. In this case, the central question is, will Univision's exclusive right to make national sales on behalf of Entravision give Univision the right to influence Entravision's core operations, especially its radio station holdings?

Univision's letter cites, with approval, the Commission's statement, ''[t]he mass media attribution rules seek to identify those interests in or relationships to licensees that confer on their holders a degree of influence or control such that the holders have a

[1] Univision Opposition to Petition to Deny, at p. 11.

[2] FCC letter dated November 29, 2002.

[3] Univision letter dated December 9, 2003.

[4] *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Report and Order,* 14 FCC Red 12559, 12582–3 (1999) (''*Attribution Order*'').

[5] *Telemundo Communications, Group, Inc.,* 17 FCC Rcd 6958 (2002). *Telemundo II).*

[6] *Amendment of § 73.658(i) of the commission's Rules,* 5 FCC Rcd 7280 (1990).

realistic potential *to affect the programming decisions of licensees* or other core operating functions.'' [7] The FCC, while granting a waiver of the national spot sales rule to Univision and Telemundo, maintained the rule for other, non-Spanish language television networks. The FCC reasoned that without the rule networks would be able to exert undue influence over affiliate programming decisions. The right to sell national spot advertising gives Univision significant rights to influence Entravision, including, as the Commission has stated, the power to influence programming decisions. At a minimum, the FCC should forbid Univision from making national spot sales on behalf of Entravision, if the proposed merger is approved.

Converting Univision's voting shares in Entravision into non-voting shares will not fundamentally change the existing relationship. Entravision has been and will continue to be dependent on Univision for it continued survival. Univision, through its control of national sales and it absolute right to grant or deny new network affiliations, will be able to control financial decisions, programming and personnel at Entravision owned radio stations, thus ensuring that Entravision's radio stations will not compete with HBC's radio stations. Such influence will diminish diversity and stifle competition, two key aspects of the FCC local ownership rules.

Sincerely,

Arthur, Belendiuk

Counsel to National Hispanic Policy Institute, Inc.

cc: Chairman Michael K. Powell, Commissioner Kathleen Q. Abemathy, Commissioner Michael J. Copps, Commissioner Kevin J. Martin, Commissioner Jonathan S. Adelstein, David Brown, Esquire (Media Bureau, FCC), Barbara Kreisman, Esquire (Video Division, Media Bureau, FCC), Lawrence N. Cohn, Esquire, (Counsel for The Shareholders of Hispanic Broadcasting Corp.), Scott R. Flick, Esquire (Counsel for Univision Communications, Inc.), Harry F. Cole, Esquire (Counsel to Elgin FM Limited Partnership)

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DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 8, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 8, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 17th day of November 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 11/03/2003 and 11/07/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
53,405	Authentic Fitness Corp. (Wkrs)	Los Angeles, CA	11/03/2003	10/16/2003
53,406	F/V Patricia Diann (Comp)	Cordova, AK	11/03/2003	10/13/2003
53,407	Alice Manufacturing (Wkrs)	Easley, SC	11/03/2003	10/28/2003
53,408	Elastic Corp. of America (Comp)	Woolwine, VA	11/03/2003	10/21/2003
53,409	Delta International Machinery (Comp)	Tupelo, MS	11/03/2003	10/11/2003
53,410	Nidec America Corporation (MA)	Canton, MA	11/03/2003	10/28/2003
53,411	Cognati Industries (GMP)	Bluffton, IN	11/03/2003	10/08/2003
53,412	Fort Payne Socks, Inc. (Comp)	Fort Payne, AL	11/03/2003	10/29/2003
53,413	MTD Southwest, Inc. (Comp)	Chandler, AZ	11/03/2003	10/31/2003
53,414	DuPont Photomasks, Inc. (Wkrs)	Danbury, CT	11/03/2003	10/31/2003
53,415	Elementis Chromium LP (Wkrs)	Corpus Christi, TX	11/03/2003	05/02/2003
53,416	Wolverine Pattern and Machine (IAM)	Saginaw, MI	11/03/2003	10/31/2003
53,417	National Pattern, Inc. (IAM)	Saginaw, MI	11/03/2003	10/31/2003
53,418	Springfield LLC (Comp)	Gaffney, SC	11/03/2003	10/27/2003
53,419	Encee Inc. (Wkrs)	Eden, NC	11/03/2003	10/24/2003
53,420	Surgical Specialties Corp. (Wkrs)	Ada, OK	11/04/2003	11/04/2003
53,421	Seamless Textiles (PR)	Humacao, PR	11/04/2003	10/10/2003
53,422	United Airlines (Wkrs)	Elk Grove, IL	11/04/2003	11/03/2003
53,423	Drexel Heritage Furniture Industries (Wkrs)	Hildebran, NC	11/04/2003	10/24/2003
53,424	Clore Automotive (MN)	Eden Prairie, MN	11/04/2003	10/30/2003
53,425	Trane and American Standards Co's (MN)	White Bear Lake, MN	11/04/2003	10/30/2003
53,426	Neutronics, Inc. (Comp)	Phoenix, AZ	11/04/2003	10/27/2003
53,427	Puzzle-Craft (MN)	Wabasso, MN	11/04/2003	10/28/2003
53,428	Hawkeye Group (Wkrs)	Mediapolis, IA	11/04/2003	10/23/2003
53,429	R. Leon Williams Lumber Co. (ME)	Clifton, ME	11/04/2003	10/23/2003

[7] Univision, June 25, 2003 letter citing the *Attribution Order at p. 12560,* (emphasis added.