

the development of a comprehensive product that will summarize and highlight varied approaches across the six strategy areas under the Promoting Cooperative Strategies to Reduce Racial Profiling initiative. This project will require the applicant to:

- Provide on-site and/or telephone technical assistance to the agencies, if necessary, to assist in the completion of the final technical assistance guides;

- Review the 21 technical assistance guides for the purpose of compiling successes, model practices and lessons learned during strategy development/enhancement and implementation;

- Incorporate the following information/discussion into the final product:

- (1) The impact of the strategies on the reduction and/or prevention of racial profiling and the perceptions of its practice;

- (2) How strategy development and implementation contributed to building trust between police and citizens and to advancing community policing;

- (3) Recommendations and considerations for other agencies that are interested in replicating these strategies.

Part II:

This project will require the applicant to:

- Work with the COPS Office to develop a preliminary assessment plan for documenting the progress of 101 grantees funded under the Creating a Culture of Integrity initiative;

- Submit a final report that discusses the following information:

- (1) How COPS funding was used to meet project goals and objectives;

- (2) Successes and challenges in developing and implementing the projects;

- (3) The impact of the funding on advancing police integrity and creating cultures of integrity.

Deliverable/Outcomes:

Part I:

The applicant will be expected to produce a comprehensive final product that will summarize the experiences of the 21 police departments in developing their strategy under the Promoting Cooperative Strategies to Reduce Racial Profiling initiative, and the related impact on advancing community policing and racial profiling prevention. This product will provide an overview of varied approaches to addressing this significant issue for other law enforcement agencies that are interested in replicating these strategies.

Part II:

The applicant will be expected to conduct a preliminary assessment of

101 law enforcement agencies and police chiefs' and sheriffs' associations funded under the Creating a Culture of Integrity initiative. The purpose of this assessment will be to assist the COPS Office in documenting the progress of these pilot projects. The COPS office will expect a final report that discusses the outcomes of the preliminary assessment.

Knowledge/Experience Required: In addition to the general criteria listed in the solicitation, the applicant should address knowledge and experience in the areas of police integrity and racial profiling. In addition, the applicant should address knowledge and experience in each of the six strategy topic areas under the Promoting Cooperative Strategies to Reduce Racial Profiling initiative. The applicant should demonstrate a thorough understanding of community policing, and the importance of mutual trust and respect between police and citizens in order to strengthen police integrity and to advance the principles of community policing. Applicants should also have a demonstrated awareness of the COPS Police Integrity Initiatives.

How To Apply. Those interested in submitting an application in response to this solicitation must complete a Community Policing Development Application Packet. A detailed project description that is responsive to the criteria presented above must be included under section I of the packet. In this project description also discuss your management plan for implementing this project with respect to internal and external management of personnel and resources and your experience with managing grants and cooperative agreements. Resumes of key project staff/named consultants (relevant experience for the proposed project should be highlighted) should also be included and does not count towards the page limit.

Applicants may submit distinct multiple applications for different topic areas or propose projects that effectively combine topic areas. However, each distinct project must be described in detail in a separate Community Policing Development Application Packet with original signatures.

Notice of Intent To Apply: Please fax the accompanying notice of intent to reply form to the COPS Office, indicating the topic area(s) you are planning to apply under. The letter should be faxed to the attention of Angel Winters at 202-616-8658 no later than June 2, 2003.

ADDRESSES: Applications for this solicitation are due to the COPS Office

by June 30, 2003 by 6 p.m. Please submit an original application package (with original signatures) and four copies to: U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Ave., NW., Washington, DC 20530, *Attn:* Angel Winters, PPSE.

FOR FURTHER INFORMATION CONTACT:

Please contact Angel Winters at (202) 514-9199 to obtain additional information about the solicitation. Application forms and information regarding the COPS Office are also available by calling the U.S. Department of Justice Response Center at 1-800-421-6770 or by visiting the COPS Office Internet Web site at www.cops.usdoj.gov.

(The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.)

Dated: May 5, 2003.

Carl R. Peed,

Director, Office of Community Oriented Policing Services.

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DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 1: 03CV 000758]

United States v. Univision Communications Inc. & Hispanic Broadcasting Corp.

Proposed Final Judgment and Competitive Impact Statement. Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States v. Univision Communications Inc.*, Civil Action No. 03CV000758. On March 26, 2003, the United States filed a Complaint alleging that Univision Communications Inc. ("Univision") and Hispanic Broadcasting Corp. ("HBC") violated Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that, due to Univision's partial ownership of Entravision Communications Corp. ("Entravision"), a principal competitor of HBC, the proposed acquisition, if consummated, will substantially lessen competition in the sale of advertising time on Spanish-language radio stations in many geographic markets. The proposed Final Judgment requires Univision to exchange its Entravision shares for a nonvoting equity interest, divest a substantial portion of its

ownership in Entravision, give up its seats 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 specifically 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. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC., Room 200, 325 Seventh Street, NW., on the Internet at <http://www.usdoj.gov/atr>, and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Public comment is invited within sixty days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James R. Wade, Chief, Litigation III Section, Antitrust Division, Department of Justice, 325 Seventh Street, NW., Suite 300, Washington, D.C. 20530 (telephone: (202) 616-5935).

Constance K. Robinson,
Director of Operations.

Competitive Impact Statement

Plaintiff, the United States of America, by and through the Antitrust Division of the Department of Justice ("Department"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), files this competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The Department filed a civil antitrust complaint on March 26, 2003, 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. 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 and

HBC's principal competitor in Spanish-language radio in many markets. The Complaint alleges that, due to Univision's substantial partial ownership and governance rights in Entravision, the proposed acquisition of HBC would lessen competition substantially in the provision of Spanish-language radio advertising time to a significant number of advertisers in several geographic areas of the United States. The request for relief seeks: (a) A judgment that Univision's proposed acquisition would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed merger; (c) an award to the United States of the costs of this action; and (d) such other relief as is just and proper.

Before this suit was filed, the Department reached an agreement with Univision and HBC on the terms of a proposed consent decree, which, if entered, would require Univision to reduce its equity interest in Entravision to 15 percent of outstanding shares within three years from the filing of the proposed decree and to 10 percent within six years. The decree would also require Univision to relinquish its rights to place directors on Entravision's Board, 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.

A Stipulation and proposed Final Judgment embodying the settlement were filed simultaneously with the Complaint on March 26, 2003. The Department and the defendants have stipulated that they will be bound by the proposed Final judgment upon its filing. The proposed Final Judgment may be entered after compliance with the APPA unless rejected by the Court. 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.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Univision, a Delaware corporation with its principal place of business in Los Angeles, California, is the largest broadcaster of Spanish-language television programming in the United States with two broadcast networks, Univision and Telefutera, and one cable channel, Galavision. It also has several

other Spanish-language media operations, including Internet sites and services, music recording, distribution, and publishing.

Univision has a significant and long-standing relationship with Entravision, a Spanish-language media company with television, radio, outdoor advertising, and publishing businesses. Entravision, which is not a party to this action, currently owns or operates approximately 55 radio stations throughout the United States, most of which broadcast Spanish-language programming. Entravision also owns or operates 49 television stations that broadcast Univision programming pursuant to an affiliation agreement that does not expire until December 31, 2021. As part of this affiliation agreement, Univision serves as Entravision's sole representative for the sale of television advertisements sold on a national basis.

At the time the proposed acquisition was announced, Univision owned an approximate 30-percent equity and seven-percent voting interest in Entravision. In addition, Univision, as the sole holder of Entravision's Class C common stock, has significant governance rights with respect to Entravision. Although Univision's representatives resigned after the proposed acquisition was announced, Univision has the right to place two representatives on Entravision's Board of Directors. Univision also has the right to veto important Entravision business decisions. Entravision's Bylaws provide Univision the right to veto Entravision's (a) Issuance of equity, (b) incurrence of debt at certain levels, and (c) acquisitions or dispositions of assets valued at greater than \$25 million. Entravision's Certificate of Incorporation provides Univision the right to approve any Entravision (a) Merger, consolidation, business combination or reorganization, (b) dissolution, liquidation, or termination, and (c) transfer of any FCC license with respect to a television station that is an affiliate of Univision.

HBC, a Delaware corporation with its principal place of business in Dallas, Texas, is a media company that owns or operates more than 60 radio stations in 18 geographic regions in the United States. Nearly all of the HBC's stations broadcast in Spanish. HBC's other businesses include a marketing group and interactive online services.

On June 11, 2002, Univision agreed to acquire all of the voting securities of HBC. This transaction, if consummated, would result in a reduction in competition between HBC and Entravision in the provision of Spanish-

language radio advertising in certain markets where the firms compete.

B. Markets

The Complaint alleges that the provision of advertising time on Spanish-language radio stations to advertisers that consider Spanish-language radio to be a particularly effective medium is a relevant product market, and that the Dallas, Texas; El Paso, Texas; Las Vegas, Nevada; McAllen-Brownsville-Harlingen, Texas; Phoenix, Arizona; and San Jose, California metro areas ("Overlap Markets") are each a relevant geographic market.

1. Relevant Product Market

Radio broadcasters, like HBC and Entravision, sell advertising time to local and national advertisers in areas where their stations are located. HBC and Entravision each negotiate these transactions individually with each local and national advertiser, and the resulting price for advertising time reflects the circumstances of these individual negotiations and the preferences of each advertiser.

There are a significant number of local and national advertisers in the geographic markets identified below that consider Spanish-language radio to be particularly effective in reaching desired customers who speak Spanish and who listen predominately or exclusively to Spanish-language radio. Such advertisers view Spanish-language radio, either alone or in conjunction with other media, to be the most effective way to reach their target audience and do not consider other media, including non-Spanish-language radio, to be a reasonable substitute. These advertisers 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 a reduction in the value of the services provided.

Given the nature of individualized negotiations between radio stations and advertisers discussed above, Spanish-language radio stations are likely able to identify advertisers that place a high value on utilizing Spanish-language radio to reach their targeted audience. Such advertisers would not find it economical to switch, or credibly threaten to switch, to other media to avoid a post-merger price increase. In the geographic markets identified below, there are a significant number of advertisers that consider Spanish-language radio advertising to be a particularly effective medium, and the provision of advertising time on

Spanish-language radio stations to these advertisers is a relevant product market within the meaning of Section 7 of the Clayton Act.

2. Relevant Geographic Markets

Advertising placed by local and national advertisers on radio stations in the Overlap Markets is aimed at reaching listening audiences within each of those Overlap Markets, and radio stations outside an Overlap Market do not provide effective access to that audience. If there were a small but significant increase in the price of advertising time on Spanish-language radio stations within an Overlap Market, advertisers would not switch enough purchases of advertising time to stations outside the Overlap Market and/or otherwise reduce their purchases to defeat the price increase. Thus, the Overlap Markets of Dallas, El Paso, Las Vegas, McAllen-Brownsville-Harlingen, Phoenix, and San Jose are each relevant geographic markets for the purpose of Section 7 of the Clayton Act.

C. Harm to Competition in Radio Advertising Markets

1. Current Competition Between HBC and Entravision

The Compliant alleges that Entravision and HBC are vigorous competitors in the provision of Spanish-language radio. They heavily promote their stations against each other in order to gain ratings; they program and format their stations with an eye toward attracting listeners from each other; they aggressively seek to acquire stations; and they closely monitor each other's competitive positions in the Overlap Markets. Most importantly, the Compliant alleges that HBC and Entravision compete aggressively to sell advertising time to advertisers that seek to reach Spanish-language audiences. During individualized rate negotiations, advertisers targeting Spanish-language listeners benefit from its competition, including the ability to play off HBC stations against Entravision stations to reach better terms.

2. Reduction in Competition From the Acquisition

The Complaint alleges that, given Univision's significant ownership stake and governance rights in HBC's principal competitor, Entravision, the acquisition of HBC by Univision will lessen competition substantially in the sale of advertising time on Spanish-language radio in the Overlap Markets. The market for the provision of Spanish-language radio in the Overlap Markets is highly concentrated, with HBC and

Entravision's combined share of advertising revenue ranging from 70 to 95 percent. HBC and Entravision face few other significant competitors and, for many local and national advertisers buying advertising time on Spanish-language radio, they are the next best substitutes for each other.

The Complaint alleges that Univision's ownership of a substantial equity stake in Entravision, and its ability to influence or control competitively significant Entravision decisions, will lessen the incentives of both companies to compete aggressively against each other and will result in higher prices and lower service quality in the sale of Spanish-language radio advertising time. Univision's right to place directors on Entravision's board and right to veto certain strategic business decisions (namely any Entravision issuance of equity or debt, or acquisitions over \$25 million) give it a significant degree of control or influence over Entravision and will likely impair Entravision's ability and incentive to compete with Univision/HBC. For example, Univision's right to veto any Entravision acquisition of assets over \$25 million would allow Univision/HBC to prevent Entravision from purchasing any significant radio station assets in a market where HBC competes. A Univision veto on the issuance of new stock or debt could leave Entravision without access to capital it may need to make acquisition or otherwise compete effectively with HBC. Entravision has frequently taken actions in the past that have been subject to these Univision veto rights and, because its plans call for more growth through acquisition, Entravision is likely to need Univision's approval on many occasions in the future. Indeed, the existence of these veto rights lessens competitions even if they are not exercised because Entravision will have the incentive to constrain its normal competitive behavior against Univision/HBC to ensure that Univision/HBC provides the necessary approval.

Univision's approximately 30-percent equity interest in Entravision also will substantially reduce competition between Univision/HBC and Entravision. Univision/HBC will have reduced incentives to compete against Entravision for advertisers seeking a Spanish-language radio audience because Univision/HBC, as a substantial owner of Entravision stock, will benefit even if a customer chooses Entravision rather than HBC. Consequently, HBC will compete less aggressively to gain customers at the expense of Entravision, resulting in an increase in prices for a significant number of advertisers in the

Overlap Markets. Advertisers that consider Spanish-language radio to be a particularly effective medium will find it difficult or impossible to “buy around” Univision/HBC and Entravision, *i.e.*, to effectively reach their targeted audience without using Univision/HBC and Entravision radio stations.

Entry of new Spanish-language radio stations into the relevant geographic markets would not be timely, likely, or sufficient to mitigate the competitive harm likely to result from this acquisition. In theory, entry could occur by obtaining a license for new radio spectrum or by reformatting an existing station. New radio spectrum acquisition is highly unlikely, however, because spectrum is a scarce and expensive commodity and reformatting by existing stations is unlikely to defeat a price increase by Univision/HBC or Entravision. Radio stations are unlikely to undertake a format change solely in response to small but significant increases in price being charged to advertisers by a firm such as Univision/HBC, and even given such a format change, radio stations that did change formats would be unlikely to attract enough listeners to provide sufficient alternatives to the merged entity. Reformatting is an expensive endeavor that involves the loss of the station’s existing audience, a significant expense to attract new listeners, and no assurance of attracting a significant listening base to justify the costs involved. It generally occurs when a station believes that a particular format is not being sufficiently served or when a station finds a niche between existing formats. An increase in the price of advertising rates charged by existing stations serving a specific format does not in itself provide assurance that a newly formatted station would attract a sufficient audience base, particularly if there are strong incumbents already in that format.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment is designed to preserve competition in the sale of advertising time on Spanish-language radio stations in the Overlap Markets by restricting Univision’s ability to control or influence Entravision’s radio business and by significantly reducing Univision’s equity stake in Entravision. The proposed Final Judgment has three principal provisions: (1) Exchange of Univision’s Entravision stock for a nonvoting equity interest with limited shareholder rights; (2) divestitures of a substantial portion of the defendants’

equity stake in Entravision; and (3) restrictions on the defendant’s ability to interfere with the governance of Entravision’s radio business. The proposed Final Judgment also has several sections designed to ensure its effectiveness and adequate compliance. Each of these sections is discussed below.

A. Exchange of Shares for Nonvoting Equity

Section IV of the proposed Final Judgment requires Univision to exchange all of its Entravision Class A and Class C common stock for a nonvoting equity interest with limited rights and to certify that the voting and director rights that Univision has held in connection with its Entravision stock has been eliminated. The limited rights to be associated with the new class of stock to be issued to defendants are set forth in a Certificate of Designations, Preferences and Rights of Series U Preferred Stock, which is attached to the proposed Final Judgment. The exchange of stock must occur prior to the closing of the Univision/HBC merger.

These provisions will significantly curtail Univision’s ability to influence or control Entravision’s business conduct. As part of the acquisition of a new class of stock, Univision will relinquish certain rights it previously had in connection with Entravision governance. First, Univision will relinquish all shareholder voting rights so that it will not be able to vote on any corporate matters. Second, Univision will relinquish its two seats on Entravision’s Board of Directors so that it will no longer have access to confidential Entravision information or the ability to vote on matters before the Board. Third, Univision will relinquish certain “veto” rights over important Entravision decisions, namely Univision’s rights under the Entravision Bylaws to veto Entravision’s issuance of equity, incurrence of debt at certain levels, and acquisitions or dispositions of assets valued at greater than \$25 million. Retention of these rights would have allowed Univision to affect Entravision’s strategic decision-making by preventing, or threatening to prevent, Entravision from making acquisitions or raising capital. Moreover, the continued existence of these veto rights would lessen competition even if they were not exercised because Entravision would have the incentive to constrain its normal competitive behavior against Univision/HBC to ensure that Univision/HBC would grant necessary approvals for future transactions subject to the veto rights.

The proposed Final Judgment does not require elimination of all shareholder rights that Univision currently possesses. As set forth in the Certificate of Designations, Univision will retain the modified right to veto any decision by Entravision to merge, consolidate, or otherwise reorganize Entravision with or into one or more entities that results in a transfer of all or substantially all of the assets of Entravision or a transfer of a majority of the voting power of Entravision.¹ Univision also retains the right to veto any Entravision dissolution, liquidation, or termination. Finally, Univision will also have the right to veto any disposition of any interest in any FCC license with respect to television stations that are affiliates of Univision. The proposed Final Judgment makes clear that these rights may be terminated if Entravision and the defendants choose not to do so. See Section VI.C. Defendants, however, are restrained from seeking to expand or modify these limited rights in any manner.

B. Divestiture of Defendants’ Entravision Holdings

Section V of the proposed Final Judgment requires Univision to reduce its equity stake in Entravision so that it owns no more than 15 percent of all outstanding Entravision stock by March 26, 2006, and no more than 10 percent by March 26, 2009. The divestitures of this stock may be made by any combination of open-market sale, public offering, private sale, or repurchase by Entravision. The stock may not be sold by private sale or placement to any Spanish-language radio broadcaster other than Entravision unless the Department agrees to such a transaction in writing.

As explained above, if Univision/HBC owned a substantial, partial-ownership interest in Entravision, Univision/HBC would have an incentive to compete less aggressively. This is because Univision/HBC would receive some significant benefit even on sales it loses to Entravision. Reducing Univision/HBC’s stake in Entravision to a much lower

¹ Section D(i) of the Certificate provides that without Univision’s approval, Entravision will not “merge, consolidate or enter into a business combination, or otherwise reorganize this Corporation with or into one or more entities (other than a merger of a wholly-owned subsidiary of this Corporation into another wholly-owned subsidiary of this Corporation).” This approval right is identical to one that Univision possessed previously. Section VI.C of the proposed Final Judgment, however, limits Univision’s rights in that it provides that Univision may not exercise its rights under D(i) unless the transaction at issue “results in a transfer of all or substantially all of the assets of Entravision or a transfer of a majority of the voting power of Entravision.”

percentage reduces substantially the likelihood that Univision/HBC's competitive incentives will be affected by its partial ownership of Entravision, thus preserving Univision/HBC's incentive to compete with Entravision.

The terms of the proposed Final Judgment reflect a balancing of the potential harm to competition that might arise from a divestiture that proceeds either too slowly or too rapidly. In merger cases in which the Department seeks a divestiture of assets as a remedy, the Department requires completion of the divestiture within the shortest time period reasonable under the circumstances. In this case, the time periods for divestiture of stock are appropriate, however, because of concerns that a more rapid divestiture might harm competition by adversely affecting Entravision's ability to raise capital to fund expansion of its radio business.

C. Restrictions on Defendants Ability to Participate in the Governance of Entravision

Section VI of the proposed Final Judgment restrains defendants from directly or indirectly: (1) Suggesting or nominating any candidate for election to Entravision's board or serving as an officer, director, manager, or employee of Entravision; (2) accessing any nonpublic information relating to the governance of Entravision; (3) voting or permitting to be voted any shares of Entravision stock that defendants own; (4) using or attempting to use any ownership interest in Entravision to exert any influence over Entravision in the conduct of Entravision's radio business; (5) using or attempting to use any rights or duties under the television affiliation agreement or relationship to influence Entravision in the conduct of Entravision's radio business; and (6) communicating to or receiving from Entravision any nonpublic information relating to Entravision's radio business.

Collectively, these provisions are intended to prevent defendants from participating in Entravision's governance or in the conduct of Entravision's radio business, notwithstanding the defendants' remaining equity interest in Entravision and the television affiliation relationship. While recognizing that Univision and Entravision have a mutual interest in matters affecting their television affiliation relationship, these provisions seek to ensure the competitive independence of the two companies in matters involving the radio business.

D. Permitted Conduct

Section VII of the proposed Final Judgment identifies certain conduct that is permitted. Individual managers, agents, and employees of the defendants are allowed to hold, acquire, or sell Entravision stock solely for personal investment. Officers and directors also may hold or sell Entravision stock but may not acquire any additional Entravision stock. Any Entravision stock held by these individuals is not subject to the stock-exchange or divestiture requirements of Sections IV and V of the proposed Final Judgment.

Section VII also provides that Univision may acquire a majority of Entravision's voting securities so long as the transaction is subject to the reporting and waiting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a, provided, however, that Univision cannot acquire or retain any interest in Entravision's radio assets in any of the Overlap Markets as part of such a transaction without the approval of the Department, in its sole discretion. This provision makes clear that the proposed Final Judgment does not prohibit a transaction in which Univision would acquire a majority stake in Entravision so long as the Department is afforded the ability to review the transaction pursuant to the established Hart-Scott-Rodino framework. The Department, of course, would review any such transaction to determine whether it was likely to lessen competition in any relevant market. Because the Department has determined that a combination of Univision and Entravision would lessen competition in the sale of advertising on Spanish-language radio in the Overlap Markets, a transaction in which Univision acquired Entravision may not include any Entravision radio assets from the markets that are the subject of the Complaint unless the Department gives its approval.

E. Compliance, Inspection, and Other Provisions Designed To Ensure Effectiveness of the Proposed Final Judgment

Section VIII of the proposed Final Judgment provides for appointment of a trustee should defendants not comply with the terms of the proposed Final Judgment that require stock divestitures within the established time periods. The trustee would have the power to accomplish the divestitures. Section IX requires the defendants to distribute the proposed Final Judgment to certain officers, directors, and appropriate employees, and obtain statements from

these individuals that they understand their obligations under the Final Judgment. The terms of this provision are designed to ensure that those individuals responsible for complying with the Final Judgment are aware of its existence and understand its requirements. Section IX also requires annual reports and certifications during the life of the decree. Section X provides a means for the Department to obtain information from the defendants to determine or secure compliance with the proposed Final Judgment. Under Section XI, the Court would retain jurisdiction over this matter to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions. Section XII provides that the proposed Final Judgment will expire 10 years after it is entered by the Court. Section XIII states that the entry of the proposed Final Judgment is in the public interest.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The Department and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the Department has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the Department written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The Department will evaluate and respond to the comments. All comments will be given due

consideration by the Department, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the Department will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: James R. Wade, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 325 7th Street, NW., Suite 300, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The Department considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint for Injunctive Relief against Univision and HBC as well as a proposal by the defendants that they would, in lieu of divestitures, place their Entravision stock in a long-term trust. The Department is satisfied, however, that the divestiture of a substantial portion of equity interest in Entravision by Univision, the surrender of several key control rights, and the other relief contained in the proposed Final Judgment will preserve competition in the sale of radio advertising time on Spanish-language stations serving the Overlap Markets. Thus, the proposed Final Judgment would achieve substantially all the relief the Department would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court may consider:

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects to alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including

consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the United States Court of Appeals for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States v. Microsoft*, 56 F.3d 1448, 1461-62 (D.C. Cir. 1995).

In conducting this inquiry, "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).² Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-Am. Dairymen, Inc., 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. May 17, 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United State v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); see also *Microsoft*, 56 F.3d at 1460-62. Precedent requires that

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. 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

² See also *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer "whether the settlement achieved [was] within the reaches of the public interest"). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93-1463, 93rd Cong., 2d Sess. 8-9 (1974), reprinted in 1974 U.S.C.A.N. 6535, 6538.

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." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).³

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette*, 406 F. Supp. at 716), aff'd sub nom. *Maryland v. United States*, 460 U.S. 1001 (1983); see also *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Because the "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," 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 that the United States might have but did not pursue. *Id.* at 1459-60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the

³ Cf. *BNS*, 858 F.2d at 463 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *Gillette*, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). See generally *Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

Department in formulating the proposed Final Judgment.

Dated this 7th day of May 2003.

Respectfully submitted,

/s/ 11111111111111111111

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 Competitive Impact Statement was served on the following counsel, by electronic mail in PDF format and by hand delivery, this 7th day of May, 2003:

John M. Taladay,
Howrey, Simon, Arnold & White L.L.P., 1299
Pennsylvania Avenue, NW., Washington, DC
20004-2402.

Neil W. Imus,
Vinson & Elkins L.L.P., The Willard Office
Building, 1455 Pennsylvania Avenue, NW.,
Washington, DC 20004-1008.

/s/ 11111111111111111111

William H. Stallings,

Stipulation and Order

It is hereby stipulated by and between the undersigned parties, through their respective counsel as follows:

1. The Court has jurisdiction over the subject matter of plaintiff's Complaint alleging defendants Univision Communications Inc. ("Univision") and Hispanic Broadcasting Corporation ("HBC") violated Section 7 of the Clayton Act (15 U.S.C. 18), and the parties do not object either to the Court's exercise of personal jurisdiction over them in this case, or to the propriety of venue of this action in the United States District Court for the District of Columbia. The defendants authorize John M. Taladay, Esq. of Howrey, Simon, Arnold & White L.L.P. to accept service of all process in this matter on their behalf.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedure and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or

until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event that (1) plaintiff withdraws its consent, as provided in paragraph two above, (2) defendants provide notice to plaintiff and the Court that the Agreement and Plan of Reorganization dated June 11, 2002 has been terminated or that the Merger of Univision and HBC (as defined in the Agreement and Plan of Reorganization) has been abandoned; or (3) that the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendants represent that the required actions set forth in Sections IV, V, and VI of the proposed Final Judgment can and will be implemented and followed and that the defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained therein.

Respectfully submitted,

For Plaintiff United States of America:

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William H. Stallings,
U.S. Department of Justice, Antitrust
Division, Litigation III Section, 325 7th
Street, NW., Suite 300, Washington, D.C.
20530, Tel: (202) 514-9323, Fax: (202) 307-
9952.

Dated: March 26, 2003.

For Defendant Univision Communications Inc.:

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John M. Taladay
Howrey, Simon, Arnold & White, L.L.P. 1299
Pennsylvania Avenue, NW., Washington,
D.C. 20004-2402, Tel: (202) 383-6564, Fax:
(202) 383-6610.

For Defendant Hispanic Broadcasting Corporation:

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Neil W. Imus,
Vinson & Elkins L.L.P. The Willard Office
Building, 1455 Pennsylvania Avenue, NW.,
Washington, D.C. 20004-1008, Tel: (202)
639-6675, Fax: (202) 879-8875 D.C. Bar
394544.

Order

It is so ordered, this 1 day of March, 2003.

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United States District Court Judge

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on March 26, 2003, alleging that defendants, Univision Communications Inc. ("Univision") and Hispanic Broadcasting Corporation ("HBC"), violated Section 7 of the Clayton Act, 15 U.S.C. 18, and plaintiff and defendants, by their attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against, or an admission by, any party with respect to any issue of fact or law;

And Whereas, defendant have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court:

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by and the imposition of related injunctive relief against the defendants to ensure that competition is not substantially lessened:

And Whereas, defendants have represented to plaintiff that the divestitures required below can and will be made and that defendants will later raise no claim of hardship of difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below:

Now Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon the consent of the parties, it is Ordered, adjudged and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of, and each of the parties to, this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. "Univision" means defendant Univision Communications Inc., a Delaware corporation with its principal place of business in Los Angeles, California, its successors and assigns,

and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. "HBC" means defendant Hispanic Broadcasting Corporation, a Delaware corporation with its principal place of business in Dallas, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. *Entravision* means Entravision Communications Corporation, a Delaware corporation with its principal place of business in Santa Monica, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. *Divestiture Assets* means that portion of the Entravision Holdings required to be divested under this Final Judgment.

E. *Entravision Holdings* means any equity interest, whether voting or nonvoting, of Entravision that defendants own or control, directly or indirectly, including, but not limited to, the 21,983,392 shares of Entravision's Class C common shares and the 14,943,231 shares of Entravision's Class A common shares owned by Univision as of the date of the filing this Final Judgment.

F. *The Univision/HBC Merger* means the Agreement and Plan of Reorganization dated June 11, 2002, by and among Univision and HBC under which Univision will acquire 100 percent of the voting securities of HBC.

G. *Own* means to have or retain any right, title, or interest in any asset, including any ability to control or direct actions with respect to such asset, either directly or indirectly, individually or through any other party.

H. *Overlap Markets* are the following Metro Survey Areas: Dallas, Texas; El Paso, Texas; Las Vegas, Nevada; McAllen-Brownsville-Harlingen, Texas; Phoenix, Arizona; and San Jose, California. A Metro Survey Area is a geographical unit for which Arbitron, a company that surveys radio listeners, furnishes radio stations, advertisers, and advertising agencies in a particular area with data to aid in evaluating radio size composition.

III. Applicability

This final Judgment applies to Univision and HBC, both individually and jointly, and all other persons in active concert or participation with any of them who receive actual notice of this

Final Judgment by personal service or otherwise.

IV. Exchange or Entravision Shares

A. Univision is hereby ordered and directed, prior to closing of the Univision/HBC Merger, to exchange all of its Entravision Class A and Class C common stock for a nonvoting equity interest with rights and restrictions as specified in the Certificate of Designations, Preferences and Rights of Series U Preferred Stock (attached hereto as Schedule A and made a part of this Final Judgment).

B. Univision is hereby ordered and directed, prior to closing of the Univision/BBC Merger, to provide written certification and supporting documentation to plaintiff that all voting and director rights associated with Entravision's Class C common shares contained in Univision's First Restated Certificate of Incorporation, dated July 24, 2000, and Entravision's Second Amended and Restated Bylaws, dated July 11, 2002, have been eliminated.

V. Divestiture of Entravision Holdings

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, on or before three (3) years from the date of filing of this Final Judgment, to divest that portion of the Entravision Holdings sufficient to cause defendants to own no more than fifteen (15) percent of all outstanding shares of Entravision on a fully converted basis. On or before six (6) years from the date of this Final Judgment, defendants shall divest that portion of the Entravision Holdings sufficient to cause defendants to own no more than ten (10) percent of all outstanding shares of Entravision on a fully converted basis.

B. Defendants are enjoined and restrained from the date of the filing of this Final Judgment until the completion of the divestitures required by Section V.A from acquiring, directly or indirectly, any additional share of Entravision stock, except pursuant to a transaction that does not increase defendants' proportion of the outstanding equity of Entravision, such as a stock split, stock dividend, rights offering, recapitalization, reclassification, merger, consolidation, or corporate reorganization. Any additional Entravision equity acquired by defendants as specifically permitted in this Section V.B. shall be part of the Entravision Holdings and be subject (1) the divestiture obligations of Section V.A of this Final Judgment; and (2) to the rights and restrictions set forth in Section IV.A and embodied in the

attached Certificate of Designations, Preferences and Rights of Series U Preferred Stock.

C. Upon completion of the divestitures required by Section V.A, defendants may acquire additional shares of Entravision, but defendants are enjoined and restrained from owning any more than ten (10) percent of all outstanding shares of Entravision on a fully converted basis. Any additional Entravision shares acquired by defendants shall be subject to the rights and restrictions set forth in Section IV.A and embodied in the attached Certificate of Designations, Preferences and Rights of Series U Preferred Stock.

D. The divestitures required by Section V.A may be made by open market sale, public sale, repurchase by Entravision, or a combination thereof. Such divestitures shall not be made by private sale or placement to any person who provides Spanish-language radio broadcasting services other than Entravision unless plaintiff, in its sole discretion, shall otherwise agree in writing.

E. Univision shall notify plaintiff no less than sixty (60) calendar days prior to the expiration of each of the time periods for the divestitures required by Section V.A of this Final Judgment of the arrangements it has made to complete each required divestiture in a timely fashion.

VI. Entravision Governance

A. From the date of the filing of this Final Judgment and until its expiration, defendants are enjoined and restrained, directly or indirectly, from:

1. Suggesting or nominating, individually or as part of a group, any candidate for election to Entravision's Board of Directors, or having any officer, director, manager, employee, or agent serve as an officer, director, manager, employee, or in a comparable position with or for Entravision:

2. Participating in, being present at, or receiving any notes, minutes, or agendas of, information from, or any documents distributed in connection with, any nonpublic meeting of Entravision's Board of Directors or any committee thereof, or any other governing body of Entravision. For purposes of this provision, the term "meeting" includes any action taken by consent of the relevant directors in lieu of a meeting:

3. Voting or permitting to be voted any Entravision shares that defendants own, provided, however, that Univision shall have the right to vote on matters arising under the attached Certificate of Designations, Preferences and Rights of Series U Preferred Stock:

4. Using or attempting to use any ownership interest in Entravision to exert any influence over Entravision in the conduct of Entravision's radio business:

5. Using or attempting to use any rights or duties under any television affiliation agreement or relationship between Univision and Entravision (including any duties Univision may have as national television sales representative for Entravision), to influence Entravision in the conduct of Entravision's radio business; and

6. Communicating to or receiving from any officer, director, manager, employee, or agent of Entravision any nonpublic information regarding any aspect of defendants' or Entravision radio business, including any plans or proposals with respect thereto. Nothing in this prohibition, however, is intended to prevent: (1) Entravision from advertising its radio business on defendants' stations or to prevent defendants from advertising on Entravision stations; (2) joint promotions between Entravision and defendants and communications regarding the same; (3) Univision from hiring Entravision personnel or Entravision from hiring Univision personnel; and (4) nonpublic communications regarding industry-wide issues or possible potential business transactions between the two companies provided that such communications do not violate the antitrust laws or any other applicable law or regulation.

B. Defendants are enjoined and restrained from preventing, or attempting to prevent, Entravision from making any changes in any corporate governance documents (including its First Restated Certificate of Incorporation and Second Amended and Restated Bylaws) to implement the prohibitions contained in Section VI.A.

C. Defendants are enjoined and restrained from exercising the rights contained in Section D(i) of the attached Certificate of Designations, Preferences and Rights of Series U Preferred Stock except in connection with a decision by Entravision to merge, consolidate or otherwise reorganize Entravision with or into one or more entities which results in a transfer of all or substantially all of the assets of Entravision or a transfer of a majority of the voting power of Entravision.

VII. Permitted Conduct

A. Nothing in this Final Judgment shall prohibit individual managers, agents, and employees of defendants, other than individual directors and officers of defendants, from holding,

acquiring, or selling shares of Entravision stock solely for personal investment, and any shares so held will not be subject to the requirements of Sections IV and V of this Final Judgment.

B. Nothing in this Final Judgment shall prohibit individual directors or officers of defendants from continuing to hold, sell, or otherwise dispose of shares of Entravision stock acquired prior to the filing of this Final Judgment and held solely for personal investment, and any shares so held will not be subject to the requirements of Sections IV and V of this Final Judgment. Individual directors and officers of defendants shall not acquire any additional shares of Entravision stock after the filing of this Final Judgment.

C. Nothing in this Final Judgment shall prohibit defendants from agreeing with Entravision to terminate the rights under Section D of the attached Certificate of Designations, Preferences and Rights of Series U Preferred Stock.

D. Nothing in this Final Judgment shall prohibit defendants from entering into a transaction in which Univision would acquire a majority of the voting securities of Entravision so long as the transaction is subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a; provided however, that Univision shall not acquire or retain any direct or indirect interest in Entravision's radio assets in any of the Overlap Markets as part of that transaction without the approval of plaintiff, in its sole discretion.

VIII. General Powers and Duties of the Trustee

In the event that plaintiff, in its sole discretion, determines (a) that, upon receipt of the notice called for in Section V.E. defendants have not made arrangements that will result in completion of any divestiture within the time limits specified in Section V.A, or (b) that defendants have not completed any of the divestitures required in Section V.A. within the specified time limits, the Court shall, upon application of plaintiff, appoint a trustee selected by plaintiff to effect such divestiture. Plaintiff may request, and the Court may appoint, a trustee before any of the time periods for divestiture specified in Section V.A. expire. The following provisions apply to the trustee:

A. After the appointment of a trustee becomes effective, only that trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestitures to an acquirer(s) acceptable

to plaintiff at such price and on such terms as are then obtainable upon the best reasonable effort by the trustee, and shall have such other powers as the Court shall deem appropriate. The trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestitures.

B. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to plaintiff and the trustee within ten (10) calendar days after the trustee has provided the notice required under sections VIII.E and F.

C. The trustee shall serve at the cost and expense of defendants on such terms and conditions as plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the Divestiture Assets and based on a fee arrangement providing the trustee with incentives based on the price and terms of the divestitures and the speed with which they are accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountant, attorney's, and other persons retained by the trustee shall have full and complete access to all information held by defendants relating to the Divestiture Assets. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestitures.

E. After his or her appointment becomes effective, the trustee shall file monthly reports with the Court and plaintiff, setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an

inquiry about acquiring, any interest in the Divestiture Assets by means of private sale or placement, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

F. If the trustee has not accomplished such divestitures within sixty (60) calendar days after his or her appointment, the trustee shall promptly file with the Court a report setting forth: (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustees judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee at the same time shall furnish such reports to plaintiff, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such order as it deems appropriate to carry out the purpose of this Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

IX. Compliance

A. Defendants shall maintain an antitrust compliance program which shall include designating, within thirty (30) days of filing of this Final Judgment, an Antitrust Compliance Officer with responsibility for achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of current and proposed activities to ensure compliance with this Final Judgment. In the event that individual is unable to perform his or her duties, defendants shall appoint, subject to plaintiff's approval, a replacement Antitrust Compliance Officer within five (5) working days. Should defendants fail to appoint a replacement acceptable to plaintiff within this time period, plaintiff shall appoint a replacement.

B. The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

(1) Distributing within forty-five (45) days of the filing of this Final Judgment, a copy of this Final Judgment to each current director and each current officer, and obtaining within ninety (90) days from the filing of this Final Judgment and retaining for the duration of this Final Judgment, a written certification from each such director or officer that he or she: (a) Has received,

read, understands, and agrees to abide by the terms of this Final Judgment; (b) understands that failure to comply with this Final Judgment may result in conviction for contempt of court; and (c) is not aware of any violation of this Final Judgment that has not been reported to plaintiff.

(2) Distributing within forty-five (45) days of the filing of this Final Judgment, a copy of this Final Judgment to each employee and any manager of any such employee who has any responsibility for or authority over the sale of advertising time on radio stations, and obtaining within ninety (90) days from the filing of this Final Judgment and retaining for the duration of this Final Judgment, a written certification from each such employee or manager that he or she: (a) Has received this Final Judgment and has read, understands, and agrees to abide by the terms of Section VI of this Final Judgment; (b) understands that failure to comply with Section VI of this Final Judgment may result in conviction for contempt of court; (c) is not aware of any violation of Section VI of this Final Judgment that has not been reported to plaintiff.

(3) Obtaining, within thirty (30) days from the time of such succession, a written certification from each director or officer identified in Section IX.B.1 who succeeds to such a position that he or she: (a) Has received, read, understands, and agrees to abide by the terms of this Final Judgment; (b) understands that failure to comply with this Final Judgment may result in conviction for contempt of court; and (c) is not aware of any violation of this Final Judgment that has not been reported to plaintiff.

(4) Obtaining within thirty (30) days from the time of such succession, a written certification from each employee or manager identified in Section IX.B.2. who succeeds to such a position that he or she: (a) Has received this Final Judgment and has read, understands, and agrees to abide by the terms of Section VI of this Final Judgment; (b) understands that failure to comply with Section VI of this Final Judgment may result in conviction for contempt of court; and (c) is not aware of any violation of Section VI of this Final Judgment that has not been reported to plaintiff.

(5) Obtaining annually thereafter, and retaining for the duration of this Final Judgment, a written certification from (a) each director; (b) each officer with responsibility for or authority over the sale of advertising time on radio stations; (c) the individual or individuals with primary operational responsibility for the Univision

Television Group (currently the co-Presidents of UTG); and (d) the individual or individuals with primary supervisory responsibility for National Sales within the Univision Television Group (currently the Senior Vice President of National Sales for UTG), that he or she: (i) Has received, read, understands, and agrees to abide by the terms of this Final Judgment; (ii) understands that failure to comply with this Final Judgment may result in conviction for contempt of court; and (iii) is not aware of any violation of this Final Judgment that has not been reported to plaintiff.

C. Within sixty (60) days of filing of this Final Judgment, defendants shall certify to plaintiff that it has: (1) Designated an Antitrust Compliance Officer, specifying his or her name, business address, and telephone number; and (2) distributed the Final Judgment in accordance with Section IX.B.1 and 2.

D. For the term of this Final Judgment, on or before each annual anniversary of the date of its filing, defendants shall file with plaintiff a statement as to the fact and manner of its compliance with the provisions of Section V, VI, and IX.B, including a statement of the percentage of all outstanding shares of Entravision owned by defendants.

E. If the Antitrust Compliance Officer or any of defendants' director, officers, or employees learn of any violation of this Final Judgment, defendant shall: (1) Within three (3) business days take appropriate action to terminate or modify the activity so as to assure compliance with this Final Judgment, and (2) within ten (10) business days notify plaintiff of any such violation and the actions taken with respect to it.

X. Plaintiff's Access and Inspection

A. For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at plaintiff's option, to require defendants to provide copies of, all records and documents in its possession or control relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' director, officers, employees, agents or other persons, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by plaintiff to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material. "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XI. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions.

XII. Expiration of Final Judgment

Unless extended by this Court, this Final Judgment shall expire ten (10) years from the date of its entry.

XIII. Public Interest Determination

Entry of this Final Judgment is in the public interest.

DATED:111

Court approval subject to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16. 11111111111111111111111111111111 United States District Judge

Certificate of Designations, Preferences and Rights of Series U Preferred Stock of Entravision Communications Corporation

Pursuant to Section 151 of the General Corporation Law of the State of Delaware:

Whereas, Entravision Communications Corporation, a corporation organized and existing under the laws of the State of Delaware (this "Corporation"), does hereby certify that, pursuant to the authority conferred on the Board of Directors of this Corporation by the First Restated Certificate of Incorporation, as amended, of this Corporation in accordance with Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors of this Corporation adopted the following resolution establishing a new series of preferred stock of this Corporation.

Resolved, that pursuant to the authority conferred on the Board of Directors of this Corporation by Article 4 of the First Restated Certificate of Incorporation, as amended, the Board of Directors of this Corporation hereby establishes a series of the authorized preferred stock of this Corporation, \$0.0001 per value per share, which series will be designated as "Series U Preferred Stock," and which will consist of 369,266 shares and will have the following rights, preferences, privileges and restrictions (capitalized terms not defined herein shall have the meaning given to such terms in the First Restated Certificate of Incorporation, as amended, of this Corporation):

A. *Dividends and Distributions.* The holders of shares of Series U Preferred Stock will be entitled to participate with the holders of Class A Common Stock with respect to any dividend declared on the Class A Common Stock in proportion to the number of shares of Class A Common Stock issuable upon conversion of the shares of Series U Preferred Stock held by them.

B. *Liquidation Preference.* (i) In the event of any liquidation, dissolution or winding up of this Corporation, either voluntary or involuntary, subject to the rights of the Series A Preferred Stock and any other series of Preferred Stock to be established by the Board of Directors of this Corporation (collectively, the "Senior Preferred Stock"), the holders of the Series U Preferred Stock shall be entitled to

receive, after any distribution with respect to the Senior Preferred Stock and prior to and in preference to any distribution of any of the assets of this Corporation to the holders of Common Stock by reason of their ownership thereof, \$0.0001 for each share (as adjusted for any stock split, stock division or consolidation) of Series U Preferred Stock then-outstanding.

(ii) Upon the completion of the distribution required by subparagraph (i) of this Section B, the remaining assets of this Corporation available for distribution to stockholders shall be distributed among the holders of Series U Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock held by each (assuming conversion of all such Series U Preferred Stock.)

C. *Voting.* Except as provided in this Certificate of Designations, the holders of shares of Series U Preferred Stock will have no right to vote on any matters, questions or proceedings of this Corporation including, without limitation, the election of directors.

D. *Protective Provisions.* So long as Univision Communications Inc. ("Univision"), or any Permitted Transferee of Univision, owns at least 65,950 shares of Series U Preferred Stock, without the consent of the holders of at least a majority of the shares of Series U Preferred Stock then outstanding, in their sole discretion, voting as a separate series, given in writing or by vote at a meeting of such called for such purpose, this Corporation will not:

(i) Merge, consolidate or enter into a business combination, or otherwise reorganize this Corporation with or into one or more entities (other than a merger of a wholly-owned subsidiary of this Corporation into another wholly-owned subsidiary of this Corporation);

(ii) Dissolve, liquidate or terminate this Corporation;

(iii) Directly or indirectly dispose of any interest in any FCC license with respect to television stations which are affiliates of Univision Communications Inc.;

(iv) Amend, alter or repeal any provision of the Certificate of Incorporation or bylaws of this Corporation or this Certificate of Designations, each as amended, so as to adversely affect any of the rights, preferences, privileges, limitation's or restrictions provided for the benefit of the holders of the Series U Preferred Stock; or

(v) Issue or sell, or obligate itself to issue or sell, any additional shares of Series U Preferred Stock, or any securities that are convertible into or

exchangeable for shares of Series U Preferred Stock.

E. Conversion.

(i) *Voluntary Conversion.* Each share of Series U Preferred Stock shall convert automatically without any further action by the holder thereof into a number of shares of Class A Common Stock determined in accordance with Section E(ii) upon its sale, conveyance, assignment, hypothecation, disposition or other transfer (each a "Transfer") to any third party other than an "affiliate" (as such term is defined in Rule 405 promulgated under the Securities Act of 1933, as amended) of the transferor and may be so converted at the option of the holder thereof in connection with any such Transfer.

(ii) *Conversion Rate.* Each share of Series U Preferred Stock shall be convertible in accordance with Section E(i) into the number of shares of Class A Common Stock that results from multiplying (x) 1 by (y) the conversion rate for the Series U Preferred Stock that is an effect at the time of conversion (the "Conversion Rate"). The Conversion Rate for the Series U Preferred Stock initially shall be 100. The Conversion Rate shall be subject to adjustment from time to time as provided in this Certificate of Designations. All references to the Conversion Rate herein mean the Conversion Rate as so adjusted.

(iii) *Mandatory Conversion.* When and if this Corporation is authorized to issue a class of Common Stock that has generally the same rights, preferences, privileges and restrictions as the Series U Preferred Stock (other than the liquidation preference provided for in Section B), the final terms of such class of Common Stock to be mutually agreed upon by this Corporation and the holders of the Series U Preferred Stock, then this Corporation shall have the right, without any further action by the holder of the Series U Preferred Stock, to cause each share of Series U Preferred Stock to convert into the number of shares of Class U Common Stock that results from multiplying (x) 1 by (y) the Conversion Rate. The Conversion of the Series U Preferred Stock pursuant to this subsection D(iii) shall be deemed to occur on the date this Corporation deposits written notice of such conversion in the United States mail, postage prepaid, and addressed to the holder of the Series U Preferred Stock at its address appearing on the books of this Corporation.

(iv) *Subdivisions: Combinations.* In the event this Corporation should at any time prior to the conversion of the Series U Preferred Stock fix a record date for the effectuation of a split or

subdivision of the outstanding shares of Class A Common Stock or the determination of holders of Class A Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock, then, as of such record date (or the date of such dividend, distribution, split or subdivision if no record date is fixed), the Conversion Rate shall be appropriately decreased so that the number of shares of Class A Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Class A Common Stock outstanding. If the number of shares of Class A Common Stock outstanding at any time prior to the conversion of the Series U Preferred Stock is decreased by a reverse split or combination of the outstanding shares of Class A Common Stock, then, following the record date for such reverse split or combination, the Conversion Rate shall be appropriately increased so that the number of shares of Class A Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(v) *Recapitalizations.* If at any time or from time to time after the effective date of this Certificate of Designations there is a recapitalization, reclassification, reorganization or similar event, then in any such event each holder of a share of Series U Preferred Stock shall have the right thereafter to convert such share into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification, reorganization or other change by a holder of the number of shares of Class A Common Stock into which such share of Series U Preferred Stock could have been converted immediately prior to such recapitalization, reclassification, reorganization, or other change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(vi) *No Impairment.* This Corporation will not, by amendment of its Certificate of Incorporation or this Certificate of Designations (except in accordance with applicable law) or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Section E by this Corporation, but will in good faith assist in the carrying out of all the provisions of this Section E

and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of Series U Preferred Stock against impairment.

(vii) *Unconverted Shares.* If less than all of the outstanding shares of Series U Preferred Stock are converted pursuant to Sections E(i) and E(iii) above, and such shares are evidenced by a certificate representing shares in excess of the shares being converted and surrendered to this Corporation in accordance with the procedures as the Board of Directors of this Corporation may determine, this Corporation shall execute and deliver to or upon the written order of the holder of such certificate, without charge to the holder, a new certificate evidencing the number of shares of Series U Preferred Stock not converted. No fractional shares shall be issued upon the conversion of any share or shares of Series U Preferred Stock, and the number of shares to be issued shall be rounded to the nearest whole share.

(viii) *Reservation.* This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, to effect conversions, such number of duly authorized shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series U Preferred Stock; and if at any time the number of authorized but unissued shares of Class A Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series U Preferred Stock; in addition to such other remedies as shall be available to the holder of the Series U Preferred Stock, this corporation will take such corporate action as may, in the opinion of counsel, be necessary to increase its authorized but unissued shares of Class A Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Corporation's Certificate of Incorporation.

F. Redemption by this Corporation. The Series U Preferred Shares shall not be redeemable by this Corporation.

G. Recquired Shares. Any shares of Series U Preferred Stock which will have been converted will be retired and cancelled promptly after the acquisition thereof. All such shares will upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance

set forth herein, in the Certificate of Incorporation, or in any other certificate or designations creating a series or any similar stock or as otherwise required by law.

Resolved, further, that the officers of this Corporation be, and each of them hereby is, authorized and empowered on behalf of this Corporation to execute, verify and file a certificate of designations of preferences in accordance with Delaware law.

In Witness whereof, Entravision Communications Corporation has caused this certificate to be duly executed by its duly authorized officers this day of March, 2003.

Entravision Communications Corporation

By: 11111111111111111111

Walter F. Ulloa,

Chairman and Chief Executive Officer.

By: 11111111111111111111

John F. DeLorenzo,

Chief Financial Officer.

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BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Village Voice Media, LLC, & NT Media, LLC; Public Comments and Plaintiff's Response

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) and (d), the United States hereby publishes below the written comments received on the proposed Final Judgment in *United States of America v. Village Voice Media, LLC, and NT Media, LLC*, Civil Action No. 1:03CV0164, filed in the United States District Court for the Northern District of Ohio, together with the United States' response to the comments.

Copies of the comments and the United States' response are available for inspection at the United States Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 300, Washington, DC 20530, and at the Office of the Clerk, United States District Court for the Northern District of Ohio, Carl B. Stokes United States Court House, 801 West Superior Avenue, Cleveland, OH 44113-1830. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,
Director of Operations.

Response to Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h) ("APPA" or

"Tunney Act"), the United States hereby responds to the public comments received regarding the Proposed Final Judgment in this case.

I. Background

On January 27, 2003, the United States filed the Complaint in this matter to terminate the Defendants' illegal agreement to allocate markets for advertisers in, and readers of, alternative newsweeklies in metropolitan Cleveland, Ohio, and Los Angeles, California, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. Simultaneously with the filing of the Complaint, the United States filed a Proposed Final Judgment. A Competitive Impact Statement ("CIS") was also filed with the Court on February 3, 2003, and published in the **Federal Register**, along with the Proposed Final Judgment, on February 12, 2003 (*see* 68 FR 7132). Pursuant to 15 U.S.C. 16(c), a summary of the terms of the Proposed Final Judgment and CIS was published in *The Plain Dealer* during the period of February 6 through 12, 2003, and *The Washington Post*, a newspaper of general circulation in the District of Columbia, during the period of February 14 through 20, 2003.

As explained more fully in the Complaint and CIS, prior to entering into their unlawful agreement, Defendants NT Media ("New Times") and Village Voice Media were head-to-head competitors in publishing alternative newsweeklies in Cleveland and Los Angeles. In October 2002, New Times agreed to shut down its Los Angeles alternative newsweekly, the *New Times Los Angeles*, if Village Voice Media closed its newsweekly in Cleveland, the *Cleveland Free Times*. Thus, Defendants "swapped" markets, leaving New Times with a monopoly in Cleveland and Village Voice Media with a monopoly in Los Angeles. This unlawful agreement eliminated the competition that had brought advertisers in both cities lower advertising rates, more promotional opportunities and better service, and that had benefitted readers with a higher quality product.

The Proposed Final Judgment requires, in part, that New Times and Village Voice Media terminated their unlawful agreement, allow affected advertisers in Los Angeles and Cleveland to terminate their contracts, notify the United States before entering into any merger, sale, or joint venture involving their alternative newsweeklies, and divest the assets of the *New Times Los Angeles* and the *Cleveland Free Times* to new entrants in those markets. The proposed consent

decree also prohibits the companies from entering into any market or customer allocation agreements in the future.

The sixty-day period for public comment expired on April 21, 2003. As of today, the United States has received written comments from; (1) Citizens for Voluntary Trade, whose president filed an amicus motion with this Court, (2) Gary Beberman, and (3) Denise D'Anne. The United States has carefully considered the views expressed in these comments, but nothing in the comments has altered the United States' conclusion that the Proposed Final Judgment is in the public interest. Pursuant to section 16(d) of the Tunney Act, the United States is now filing with this Court its response to such comments. Once these comments and this response are published in the **Federal Register**, the United States will have fully complied with the Tunney Act and will file a motion for entry of the Proposed Final Judgment.

II. Response to Public Comments

A. Citizens for Voluntary Trade's Comment

In its written comment, Citizens for Voluntary Trade ("CVT") states that the First Amendment to the U.S. Constitution preempts the Proposed Final Judgment, as "[e]ven the most 'anti-competitive' conduct is protected by the First Amendment." (CVT Comment at 2, a copy of which is attached at Exhibit A.)

The Supreme Court as long ago as 1945 dismissed this assertion. The restraints imposed by these private arrangements are not protected by the First Amendment. *Citizen Publishing Co. v. United States*, 394 U.S. 131 (1969); *Associated Press v. United States*, 326 U.S. 1, 20 (1945). Neither news gathering nor news dissemination are being regulated by the Proposed Final Judgment, which addresses only the Defendants' per se illegal restraints on certain business or commercial practices. The Defendants' unreasonable restraints on competition—which the Proposed Final Judgment remedies—comport neither with the antitrust laws nor with the First Amendment. As the Supreme Court held in the *Associated Press* case, and reiterated twenty-four years later in the *Citizen Publishing* decision:

It would be strange indeed * * * if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government was without power to protect that freedom. The First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful