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SCOTT R. FLICK
(202) 663-8167
scott.flick@shawpittman.com

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MAY 23 2003

Federal Communications Commission
Office of Secretary

May 23, 2003

VIA HAND DELIVERY

Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W., Room 8-B201
Washington, D.C. 20554

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MEDIA BUREAU

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

Dear Chairman Powell:

It appears that a competitor of Hispanic Broadcasting Corporation ("HBC"), having thoroughly saturated the Commission with false and baseless allegations regarding the proposed merger of HBC with Univision Communications Inc. ("Univision"), has taken its theater of the absurd to Capitol Hill, resulting in recent letters to you from Senators Clinton, Daschle, Kennedy, and other members of Congress. These letters question the propriety of a merger between Univision and Clear Channel Communications – a merger that has never been proposed and certainly is not pending before the Commission. That this competitor, Spanish Broadcasting System, Inc. ("SBS"), can only obtain support for its cause by inventing a fictional merger, demonstrates the emptiness of its position. These efforts should not distract the Commission from the tremendous public interest benefits created by a merger of Univision and HBC – the merger application that is actually pending before the Commission.

It is quite clear from these congressional letters, however, that the members of Congress writing to oppose a fictional Clear Channel/Univision merger have been misinformed about far more than just the identity of the parties to the proposed merger. As several of these letters repeat the same ridiculous and unfounded assertions that have characterized SBS's *ex parte* presentations before the Commission, Univision and HBC would like to take this opportunity to break this pernicious cycle of having statements that SBS has never sworn to be true in the first place, and which it in fact knows are false, repeated to the Commission by third parties who have no personal knowledge and who are therefore unaware of their falsity. While the applicants are not suggesting that the matters raised in those letters are relevant to the Commission's consideration of the merger

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application, to the extent that you will be responding to these congressional inquiries, the applicants feel it is important to address for you the false and misleading assertions unknowingly included therein.

First of all, the only involvement of Clear Channel in this transaction is that it, like every other shareholder of publicly traded HBC, will receive Univision stock in exchange for its minority stockholdings in HBC. Any suggestion that the transaction is a merger between Clear Channel and Univision is simply wrong and nothing more than a cynical attempt to grossly mischaracterize the pending application. In fact, the merger will actually reduce Clear Channel's equity interest from 26% in HBC to 6.9% in post-merger Univision, leaving it with only a 3.66% voting interest and no board representation in the post-merger company.

It is also worth noting that the proposed transaction involves no consolidation of either the radio or television markets, as the merger is a merger of a pure television company with a pure radio company. Thus, the allegation that the merger involves "the prospect of combining control over the two largest Spanish language radio station companies" (Clinton Letter at 1) is simply false.

Similarly, the assertion that approval of the proposed merger would put "nearly 70 percent of Spanish language media" (Clinton Letter at 1) under the control of a single individual is ludicrous. HBC's 56 Spanish-language radio stations, combined with Univision's 52 full and low power Spanish-language television stations, represent less than **12.5%** of the total number of U.S. broadcast stations carrying Spanish-language programming. As neither company owns any cable systems, DBS satellite interests, newspapers or magazines, the merged entity's share of all "Spanish language media" is obviously far below its 12.5% share of Spanish-formatted broadcast stations, making it far closer to 7% than 70%, even if all of the English-language media with which Univision and HBC must compete are arbitrarily ignored.

These letters make similarly skewed claims regarding the revenues of the merged entity. As indicated in our letter to you of May 14th, 2003, both HBC and Univision must compete with English-language stations for both a share of the Hispanic audience and advertisers' budgets. According to Nielsen and Arbitron data, Hispanics spend more time watching English-language television stations and listening to English-language radio stations than they spend with their Spanish-formatted counterparts. According to a ranking by *Advertising Age* of the 100 largest media companies, even ignoring the revenues of companies ranked below the top 100, Univision accounted for less than one half of one percent of the total media revenue nationwide in 2001. 100 Leading Media Companies, Advertising Age, Aug. 19, 2002 available at <http://www.adage.com/page.cms?pageId=940>.

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HBC accounted for slightly more than one tenth of one percent. *Id.* Based on *Advertising Age's* rankings, Univision is the 34th largest media company in the United States, and HBC is the 92nd largest media company. The combination of the U.S. media revenue of these two companies would result in a single company ranked 28th overall with 0.61% of total U.S. media revenue. In comparison, Viacom, with which Univision must compete, accounted for over 8% of U.S. media revenue. *Id.* Hobbiling the ability of broadcasters serving minority audiences to achieve competitive parity with such media conglomerates prevents them from growing and expanding service to their minority audiences, is not in the public interest, and protects specific competitors at the expense of competition in general.

If it is not already clear from the above that both the applicants and the members of Congress who sent the letters have been the victims of a disinformation campaign by SBS, the Kennedy Letter (at 2) handily provides a bullet-point list of false statements which, among other things, asserts that the proposed merger "would place, in one non-Hispanic controlled corporation":

- "The two largest Spanish-language television networks." This is clearly wrong as this is not a merger between Univision and General Electric, which is the parent of NBC, the owner of the second largest Spanish-language television network, Telemundo.
- "97 percent of Spanish-language internet portal access." Neither Univision nor HBC owns *any* internet portal access business, much less controls 97% of "Spanish-language internet portal access." While Univision.com and HBC's netmio.com are popular web sites, there are nearly infinite other Spanish-language web sites, and there are no barriers to entry for those wishing to create new web sites to serve Hispanics.
- "Dominance of Spanish-language publishing." Far from dominance, Univision has *no* publishing interests of any kind, and HBC's sole publishing interest is a defunct Spanish-language medical journal that has not been published in over a year.
- "Dominance of Spanish-language recording." HBC has *no* interest in any Spanish-language recording business. Univision Music Group is a successful record company, as are Sony Discos, WEA Latina, and BMG Latin, among others, as well as numerous non-Spanish labels with which Univision competes for the record-buying public.
- "Dominance of Spanish language billboards and outdoor advertising." Neither Univision nor HBC owns *any* billboards or outdoor advertising, English, Spanish, or otherwise.

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- “The only substantial Spanish-language concert promotion company in the United States (jointly held by Clear Channel).” Neither Univision nor HBC owns or jointly owns *any* concert promotion company.

These factual “errors” are no accident, as they are also repeated in other congressional letters, including Senator Clinton’s Letter (at 1), in which she states that “the prospect of combining control over the two largest Spanish language radio companies with control over Spanish language broadcast television, cable television, internet portal access, publishing, concert promotion, television production, record production and outdoor advertising raises serious concerns.” Once again, these letters express concern about the impact of a merger, but the merger described bears no resemblance to the Univision/HBC merger that the Commission is currently considering.

Similarly false is the assertion that the Department of Justice (“DOJ”) has already recognized the Spanish-language media market as a separate and distinct market (Clinton Letter at 1; Kennedy Letter at 2). Despite the misinformation that is being spread, the DOJ did not even *allege* that Spanish-language media is a distinct product market from English-language media, that Spanish-language television was in the same product market as Spanish-language radio, or that the combination of Univision’s television assets with HBC’s radio assets would harm consumers or require relief. Instead, after an exhaustive review of both the television and radio aspects of the transaction, the sole *allegation* made by the DOJ with regard to the Univision/HBC merger was that some *portion* of radio advertisers “consider Spanish-language radio advertising to be a particularly effective advertising medium, and the provision of advertising time on Spanish-language radio stations *to these advertisers* is a relevant product market.” DOJ Complaint at ¶15 (emphasis added). Moreover, the DOJ concluded that the protections contained in the negotiated consent decree will ultimately protect against any potential adverse impact on competition. Interestingly, SBS and its minions have consistently ignored this DOJ finding in their presentations at the FCC and on Capitol Hill, finding the truth inconvenient to their cause.

Despite SBS’s repeated and unsupported assertions that the proposed merger will reduce Hispanic media ownership, the merger of Univision with HBC (which is also *de facto* controlled by non-Hispanic shareholders) will not alter Hispanic ownership of media one iota. Further, it is difficult to imagine how *blocking* Univision from growing to compete on fairer footing with competitors like Disney, GE, and Viacom will *help* the Hispanic community. If Univision is unable to grow to meet this competitive challenge, it is a pipe dream to believe that small Hispanic entrepreneurs that are allegedly unable to compete successfully against Univision will be able to step in, make up for the loss of

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Univision programming and community service, and compete successfully against the Disneys and Viacoms of the world. Those who seek to cripple the growth of Spanish-language broadcasters threaten to reduce, rather than increase, the quantity and diversity of programming available to Hispanics.

Moreover, the merger of these two publicly held companies will not result in consolidation in either the radio or television market, but rather will leave the same number of stations in each market available for acquisition by potential new entrants as existed before the merger. By merging these two companies rather than forcing Univision to build a radio group on a station-by-station basis, the merger actually preserves the availability of radio stations for acquisition by those individuals, Hispanic or otherwise, who wish to program to the Hispanic audience.

One particularly repugnant statement that has been repeated in the congressional letters is the suggestion that the Commission should not approve the merger because Univision is controlled by a "*non-Hispanic individual*" (Clinton Letter at 1; Kennedy Letter at 2). It is unthinkable that the Commission would consider condemning a business transaction based upon the ethnicity of the controlling shareholder, particularly when that individual has done so much to serve and promote the Hispanic community.

The notion that Univision is a non-Hispanic company because of the ethnicity of a single shareholder is preposterous. The head executive of each of Univision's three divisions—Television, Music, and Internet—is Hispanic. Univision's three highest paid executives are Hispanic. Univision's board of directors is fifty percent Hispanic. Every person in charge of network programming decisions, and nearly all of those involved in local programming decisions, is Hispanic. Eighty percent of Univision employees overall are Hispanic. Through its hiring, training, and promotion of Hispanic employees, Univision has done more than any other broadcaster to create a pool of minority broadcast managers and future broadcast station owners. The beneficiaries of these efforts are not just Univision's viewers, but every viewer that watches a broadcast station – whether English or Spanish – whose programming is more diverse and reflective of the nation because of that station's Hispanic employees or owners who were attracted to, and trained in, the broadcast business by Univision. To ignore the literally thousands of minority executives, managers, and employees of Univision and proclaim it a non-Hispanic company because of the ethnicity of a single shareholder is sophistry of the ugliest sort.

Finally, the suggestion that there has been an outcry in the Hispanic community (or elsewhere) over this merger is entirely manufactured. Only a single petition to deny and a single informal objection were filed against the merger application, and the informal objector has not participated in this proceeding since filing its original letter over eight

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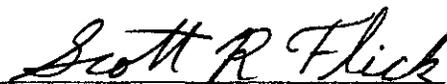
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months ago. Were it not for the efforts of competitor and non-party SBS to bury the Commission with unsworn *ex parte* filings, the entire record of this proceeding would fit into a manila envelope. Indeed, despite having expended extraordinary effort over the past ten months, the only outcry SBS has been able to generate with its scorched earth tactics is against a fictional Clear Channel/Univision merger that bears no relation to the application pending before the Commission.

Lost in this fog of orchestrated misinformation and obfuscation is the fact that the proposed merger fully complies with the Commission's Rules, requests no waivers, and will benefit the public in a number of ways. Univision has been a major influence in making Spanish-language broadcasting competitive with its much larger English-language brethren, while introducing many mainstream advertisers to the Hispanic populace for the first time. The result has been expanded opportunities for Hispanics in broadcasting, particularly for Hispanic entrepreneurs who are benefiting from the new access to advertisers and financing that Univision's efforts have brought to Spanish-language media. The ability to bring these benefits to radio while attempting to grow Hispanic broadcasting in general will yield numerous benefits to the public in both the short and long term. In addition, the merger will strengthen and expand the media services available to the Hispanic community as a result of the combination of Univision's and HBC's resources, much as the recent merger between NBC and Telemundo enhanced Telemundo's news resources and coverage.

The Commission has become well aware of the abusive tactics of SBS and its alter ego, the National Hispanic Policy Institute, as well as of the inflammatory and unsupported nature of its submissions. That these entities have succeeded in finding third parties to repeat these false statements is disappointing, but the applicants trust that the Commission will have no difficulty in discerning the truth and acting accordingly.

Respectfully,



Scott R. Flick

Counsel for Univision Communications Inc.



Roy R. Russo

Counsel for Hispanic Broadcasting Corporation

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cc: Commissioner Kathleen Q. Abernathy
Commissioner Jonathan S. Adelstein
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
W. Kenneth Ferree
David Brown