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VIA ELECTRONIC COMMENT FILING SYSTEM

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW, TW- A325
Washington, DC 20554

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

Dear Ms. Dortch:

On behalf of Univision Communications Inc. ("Univision"), we are writing to address the recent repetitious ex parte filings that have been submitted by Spanish Broadcasting System, Inc. ("SBS"). SBS's campaign to have the Commission rewrite its multiple ownership rules to create a "separate but equal" class of broadcasters to be defined by the content of the programming that they voluntarily choose to air has reached the point of absurdity. As both Univision and Hispanic Broadcasting Company ("HBC") have previously demonstrated, there is no factual basis for this unprecedented effort to partition the broadcast audience, particularly in the face of prior Commission decisions specifically rejecting such an approach, the most recent of which was released less than two months ago. *See* Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to Steven A. Rechter *et al.*, dated May 30, 2003, granting FCC File No. BALH-20030307AEA.

SBS's scorched earth campaign in the courts, at the Department of Justice, on Capitol Hill, and at the FCC to break up the Univision/HBC merger so that it can itself resume its prior efforts to merge with HBC has been soundly rejected in each of those venues, with only the Commission remaining. As Judge Seitz wrote in response to an SBS effort to upset the merger in federal court,

> this case is really about the fallout from a failed merger. SBS expected to merge with HBC and create the largest Spanish-language radio station in the top-ten markets, but HBC decided to accept Univision's offer instead.[1]

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[1] Spanish Broadcasting System, Inc. v. Clear Channel Communications, Inc., 242 F. Supp. 2d 1350, 1364 (S.D. Fla. 2003).

For SBS to take the position that Spanish-language radio and television stations cannot be allowed to merge, but that the two top-ranked Spanish-language radio station groups could, raises disingenuousness to a level that is rarely reached, but with which SBS has become quite familiar in its assertions before the Commission.

From the beginning, SBS's efforts have been marked by the cynical belief that it can manipulate the government through the secretive dissemination of false information. The campaign began when SBS declined to file a petition to deny, where it would have to present a sustainable argument opposing the merger and declare under penalty of perjury the accuracy of its asserted facts, and instead chose to begin an extended ex parte campaign. Its first ex parte presentation was made on September 18, 2002, *the very day* that Univision was required to file its opposition to any petitions to deny, ensuring that neither Univision nor HBC would have the opportunity to respond during the pleading cycle. The letter notifying the Commission of these meetings noted that the written materials presented to the Commission at these meetings were confidential and would not be filed until later, along with a request for confidentiality.[2]

Only at the apparent behest of the Media Bureau were the written materials finally disclosed to Univision and HBC almost two weeks later, and the submission numbered 841 pages in length and contained no confidential materials. Clearly, SBS had the time and opportunity to file a petition to deny, but chose not to do so. This non-party has now filed *seventeen* written ex parte submissions numbering nearly 2000 pages in length, *eleven* of which have been filed in the last seven weeks, despite the fact that SBS has now had over a year to make any relevant arguments or information available to the Commission.

SBS's most recent tactic – repetitive filings arguing that there is a separate Spanish-language market despite prior FCC rulings and SBS statements to the SEC to the contrary – is merely a convenient argument that SBS presented only after ten months of trial and error advocacy. In fact, it was not until three months ago that SBS (and its alter ego, the National Hispanic Policy Institute, Inc. ("NHPI")) first suggested that so-called "Spanish-language media" do not compete with English language stations, *and* that, unlike English-language radio and television stations, Spanish-language radio stations compete directly with Spanish-language television stations. While both of these assertions must be true for the merger of Univision, a television company, and HBC, a radio company, to have any competitive impact at all, neither is true. In this regard, the Commission's recent elimination of the television/radio cross-ownership rule is particularly instructive, where the Commission wrote:

> In sum, television and radio stations neither compete in the same product market nor do they bear any vertical relation to one

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2 SBS letter dated September 20, 2002.

> another. A television-radio combination, therefore, cannot adversely affect competition in any relevant product market.[3]

The Department of Justice has routinely confirmed this conclusion and specifically reexamined the issue with regard to the Univision/HBC merger. The Department of Justice, as the Commission is aware, has approved the proposed merger.

Given the voluminous, yet vacuous nature of SBS's recent filings, it is important to retain some perspective regarding Univision and Hispanics in this country. As an initial matter, it should come as no great surprise to anyone that Univision's target audience is Hispanics. Thus, Univision's marketing materials, website, SEC Form 10-K, and business strategy all reflect the fact that the company aims to meet the needs of Hispanic viewers. That being said, however, numerous other media companies and media outlets also target the growing Hispanic population, in both English and Spanish, with more of them awakening to the opportunity to reach this community every day. Far from operating in an isolated market, Univision competes in the mainstream media market for viewers and advertisers that utilize numerous media sources in multiple languages.

For SBS's argument for a separate Hispanic market to have any semblance of relevance, SBS must somehow, through sleight of hand, lead the Commission to believe that Hispanic viewers and listeners are so myopic as to be unable to take advantage of the plethora of programming options available to them. Hispanics, however, do not limit their media diet to only Spanish-language programming sources, much less to only that programming that carries a Univision logo. As Univision indicated in its May 14th Letter to Chairman Powell, Hispanics rely heavily on English-language media and spend *the majority* of *both* their listening *and* viewing hours tuned to English-language programming.[4] In fact, many radio and television stations that specifically seek to appeal to Hispanics do not broadcast in Spanish. Nine of HBC's own radio stations targeted to the Hispanic audience broadcast either wholly in English, or in both English and Spanish. Similarly, Telemundo/NBC recently launched a new Hispanic cable network "mun2," which carries programs in English as well as Spanish.[5]

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[3] 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definitions of Radio Markets; Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area, Report and Order and Notice of Proposed Rulemaking, FCC 03-127 (released July 2, 2003) ("*Ownership R&O*") at ¶ 381 (footnote omitted).

[4] Letter from Scott R. Flick, Counsel to Univision Communications Inc., to Chairman Michael K. Powell, MB Docket 02-235 (May 14, 2003).

[5] Mireya Navarro, Is Spanish the Measure of "Hispanic"?, N.Y. Times, June 8, 2003, at Section 1, p. 45.

Despite this, SBS continues to put forth the offensive stereotype that all Hispanics are recent arrivals to this country with poor English skills and no ability to choose the programming that best serves their needs, whether it comes from a Spanish, English, bilingual, or other station. Similarly, SBS's highly exaggerated claims that Hispanics watch only Univision programming have no support in reality. As has been widely-reported, Hispanics now form the largest minority group in the United States with 38.8 million people, or approximately 13% of the country's population.[6] It is striking to note that, according to Nielsen, even though **13%** of television viewers nationwide are Hispanic, Univision's share of total television viewing hours is just **3%**.[7] Thus, even if every single Univision viewer were Hispanic, *less than one-quarter* of Hispanic viewing time is spent with Univision, with the bulk of the remaining three-quarters being spent with English-language programmers. Like the rest of its arguments, SBS's claims of Univision world domination are nothing more than hyperbole.

I. SBS Continues to Present Inconsistent Statements and Arguments

SBS's eagerness to attack the merger has led it to employ whatever argument or tactic is at hand, resulting in a number of flatly contradictory statements. The following are but a small sample of such statements made by SBS in this proceeding. In its June 11, 2003 letter (and indeed throughout its recent filings) SBS makes the definitive statement that "Spanish-language media does not compete with English-language media."[8] Yet in its Form 10-K filed with the SEC on March 31, 2003, SBS clearly states that, **"[e]ach of our radio stations competes with both Spanish-language and English-language radio stations in its market . . . ."**[9] As SBS itself notes in its June 16, 2003 letter, "SEC filings are attested under oath,"[10] so the Commission must give credence to this admission by SBS that there is in fact no separate Spanish-language market.

Similarly, in its July 14, 2003 letter, SBS states that "[t]here is no basis for the belief that entry, or the plausible threat of entry, will ameliorate the harm to competition. . . ." and argues that "reformatting is no answer to anticompetitive conduct. . . ."[11] But, in its Form 10-K filed March 31, 2003, SBS clearly states: "Although the radio broadcasting industry is highly competitive, some barriers to entry do exist. These barriers can be mitigated to some extent by

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6 *See* Census Bureau June 18, 2003 Press Release, *available at* http://www.census.gov/Press-Release/www/2003/cb03-100.html.

7 Sources: Nielsen Television Index, U.S. Nielsen Hispanic Television Index 9/23/02-5/21/03.

8 SBS letter dated June 11, 2003 at 1.

9 Spanish Broadcasting System, Inc. 2002 Form 10-K Annual Report (filed Mar. 31, 2003) at 9. This language also appears in SBS's 1999, 2000, and 2001 Form 10-Ks.

10 SBS letter dated June 16, 2003 at 3.

11 SBS letter dated July 14, 2003 at 2, 4.

changing existing radio station formats. . . ."[12] One wonders if SBS believes an ounce of what it has told the Commission, or if it is simply a business strategy to stall and undermine a merger to which it was not invited.

In the same July 14, 2003 letter, SBS states that "the risk associated with entry via purchasing an existing station and converting it to Spanish-language broadcasting is extraordinarily high . . . ." and that "new entry is highly unlikely to come from existing spectrum."[13] One week later, however, SBS informed the Commission that, by its own count, thirty-five stations in the top ten markets had converted to a Spanish-language format in the past thirty-nine months alone.[14] Thus, despite its rhetoric about the "extraordinarily high" risk and "highly unlikely" probability of reformatting a station from English to Spanish, SBS's own research indicates that, in just these ten markets, it has happened at least thirty-five times in just over three years – approximately once a month.

These are not isolated instances of SBS talking out of both sides of its mouth. SBS's desperate attempts to define radio and television as part of a single market are a repudiation of the position SBS took before a federal judge less than a year ago. At that time, when SBS was seeking to block the Univision/HBC merger via a federal antitrust lawsuit, SBS maintained that radio and television were distinct markets. *Spanish Broadcasting System, Inc. v. Clear Channel Communications, Inc.*, 242 F. Supp. 2d 1350, 1354, 1358-59 (S.D. Fla. 2003) (dismissing SBS suit with prejudice). One does not have to speculate too hard to discern the reasons for SBS's sudden about-face on this issue. As part of the fundamental basis for its suit, SBS specifically claimed in court that *Spanish-language* television and *Spanish-language* radio stations do not compete. *Id.* Therefore, by SBS's own admission, the proposed merger of Univision (a pure television company) and HBC (a pure radio company) will not have a competitive impact. Once again, it appears that SBS is fickle with its facts.

Given SBS's explicit statement to the U.S. District Court, SBS clearly appreciates the distinction between the radio and television markets, but conveniently forgot that distinction when the court dismissed its suit and SBS had to instead make its case with a contrary argument before the FCC. In addition to revealing the baseless nature of SBS's arguments, SBS should be estopped from making such statements of convenience, as the very purpose of estoppel is "'to protect the integrity of the judicial process,' *Edwards v. Aetna Life Ins. Co.,* 690 F.2d 595, 598 (6th Cir. 1982), by 'prohibiting parties from deliberately changing positions according to the exigencies of the moment,' *United States v. McCaskey*, 9 F.3d 368, 378 (5th Cir. 1993)." *New Hampshire v. Maine*, 532 U.S. 742, 749-50 (2001). The Commission's processes are no less deserving of protection from such cynical manipulation.

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[12] Spanish Broadcasting System, Inc. 2002 Form 10-K Annual Report (filed Mar. 31, 2003) at 9. This language also appears in SBS's 1999, 2000, and 2001 Form 10-Ks.

[13] SBS letter dated July 14, 2003 at 3.

[14] SBS letter dated July 21, 2003 at 4.

In one of its other recent filings, SBS submits a statement from Alan J. Sokol, a former Chief Operating Officer of Telemundo, in which Mr. Sokol represents to the Commission that "[l]anguage alone is sufficient to demark Spanish-language broadcasting as separate from English-language broadcasting . . . ."[15] Yet, less than two months earlier, Mr. Sokol was quoted in the New York Times, stating:

> "We recognized that we weren't really connecting with the audience" in Spanish, said Alan J. Sokol, who until recently was the chief operating officer for Telemundo. It switched its Mun2 cable network's programming to mostly English from mostly Spanish. "A large percentage of young Latinos live in an English-language world."[16]

It is not clear what caused Mr. Sokol to have this fundamental change of heart, or which of his conflicting statements to believe, but it certainly brings into question the credibility and relevance of his comments. It is clear from his statements to the New York Times that "Spanish-language" media competes with "English-language" media, demonstrating once again SBS's propensity for inconsistent statements and selective disclosure.

II. SBS's "Evidence" Actually Undercuts Its Own Claims

That SBS's new-found belief in a separate "Spanish-language market" is nothing more than a baseless but convenient argument is apparent from SBS's own ex parte submissions. For example, in SBS's June 20, 2003 letter, SBS states that "38% of Latinos report that they usually listen to and predominantly watch Spanish-language news programs . . . ."[17] Assuming, arguendo, the accuracy of that statement, it follows that the majority of Latinos, 62%, usually listen to and predominantly watch English-language news. Similarly, a recent "study" submitted by SBS notes: "Research shows that many Latinos are heavy users of English-language television for entertainment . . . ."[18] Thus, SBS's own filings support the conclusion that Hispanics rely heavily on English-language media, and are not subject to the "separate market" pigeonhole into which SBS is determined to jam them.

Similarly, SBS asserts that the very existence of advertising agencies which specialize in reaching Hispanic audiences proves the existence of a "separate market." Yet, according to the declaration of Alan J. Sokol, only "[a]bout fifty percent of the advertising money on Spanish-language television" is placed by these agencies.[19] So, according to SBS's own "evidence,"

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15 SBS letter dated July 14, 2003 at Attachment.

16 Mireya Navarro, Advertisers set targets on the Latino market that is urban, English-speaking and American-born, N.Y. Times, May 22, 2003, at C6.

17 SBS letter dated June 20, 2003 at 2-3.

18 SBS letter dated July 16, 2003 at Attachment.

19 SBS letter dated July 14, 2003 at Attachment.

English-language ad agencies account for at least fifty percent of the money spent on Spanish-language television despite the alleged fact that it is a "separate market." In the case of Univision's stations, Hispanic advertising agencies account for less than 40% of advertising revenues, with the amount attributable to English-language advertising agencies steadily increasing each year. Even if this were not the case, however, the fact that some advertising agencies have made a strategic decision to specialize their business to target a specific demographic in no way suggests that Hispanics constitute a separate market.

Another example of SBS's own statements being a two-edged sword appears in SBS's attempt to support its contention that there are high entry barriers to the fictional Spanish-language market. To make its argument, SBS relies on a letter from Mr. Dan Mason.[20] Mr. Mason is the former President of Infinity. **Currently, Mr. Mason serves as a Director of SBS, a fact SBS conveniently forgot to disclose to the Commission when presenting this "unbiased" evidence.** Mr. Mason is quoted as saying:

> It would also be very difficult for English-language operators to hold on to the best talent when the Spanish-language operators can provide more opportunity for movement and advancement within their companies. My former company recently lost a popular Hispanic announcer at an Infinity station in Fresno to a Spanish-formatted station owned by HBC in Chicago.[21]

To begin, Univision notes that Mr. Mason correctly recognizes that stations are "Spanish-formatted" and not, somehow, inherently Spanish. Univision, however, finds it highly ironic that the Commission is asked to recognize barriers to entry to the "Spanish market" because, according to Mr. Mason, Infinity apparently found it "very difficult" to internally promote Hispanic talent.[22] Indeed, the above-quoted statement conclusively proves that Infinity, the "English-language operator," and HBC, the "Spanish-language operator," vigorously compete with each other, thereby eviscerating the very point SBS intended to prove.

In a June 16, 2003 letter, SBS submitted numerous pages of Univision marketing materials touting Univision's ability to reach Hispanics as a smoking gun that there is a separate Spanish-language market.[23] As mentioned above, it should come as no surprise to anyone that Univision targets Hispanic viewers, or that in order to compete with other television stations for advertising dollars, Univision extols its ability to effectively reach its target demographic. In particular, SBS presents PowerPoint slides from Univision sales presentations which extol the ability of television stations to achieve greater "reach" than radio stations as conclusive evidence

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20 SBS letter dated July 14, 2003 at 5.

21 Letter from Dan Mason to Michael K. Powell (attached to SBS letter dated January 8, 2003) at 2.

22 Id.

23 *See* SBS letter dated June 16, 2003.

that radio and television compete with each other. While it is dangerous to place too much weight on claims made in any sales presentation, and SBS would find nearly identical slides in the sales presentations of most English-formatted television stations, the Univision materials that SBS includes tell only half the story. Also regularly found in Univision station sales materials are slides seeking to convince advertisers of the superiority of Univision stations over their local English-formatted competitors, including the ABC, CBS, NBC, and Fox television stations in their markets.

Attached hereto as Exhibit 1 are slides from sales presentations created by various Univision television stations to sell time to advertisers in markets across the nation. All of the slides in the exhibit showcase and highlight Univision's ratings relative to other stations in their respective local markets, including, of course, local English-language stations. For example, one slide compares the ratings of Univision's morning show, *Despierta America*, to NBC's *The Today Show,* ABC's *Good Morning America*, and CBS's *The Early Show*. Another slide presents ratings data comparing *Ultima hora*, Univision's late show, to Jay Leno, David Letterman, and Ted Koppel. If, as SBS claims, Univision's sales materials "show a Spanish-language determined market in which television and radio compete with each other for Spanish-language listeners and viewers,"[24] then the Univision sales materials comparing local Univision stations against their English-formatted competitors are conclusive evidence that there is no separate "Spanish-language market" at all.

Were SBS's claim of a market separated by language correct, the sales pitches included in Exhibit 1 would be pointless, as a Spanish-formatted station would only need to convince advertisers that it is superior to other Spanish-language stations. As the sales materials attached hereto demonstrate, that is clearly not the case. Moreover, the sales materials included in Exhibit 1 were all prepared and used prior to the filing of the HBC merger application, providing the Commission with assurances that Univision, unlike SBS, has not changed its facts to match this week's argument.

III. SBS Ignores "Inconvenient" Caselaw

After having perhaps set a Commission record by filing nearly 1500 pages without citing *a single precedent* supporting its position, SBS changed strategies in the tenth month of its campaign and began distorting Commission caselaw rather than merely ignoring it. In pursuing this new strategy, SBS has been forced to carefully pick and choose "support" for its novel arguments, often ignoring contrary dispositive caselaw in favor of extraneous cases and language. For example, while SBS would have the Commission rely on the Department of Justice ("DOJ") for the proposition that the ability to reformat a broadcast station is irrelevant for purposes of determining the anti-competitive effects of a merger,[25] SBS carefully avoids the fact that the DOJ has already approved the proposed Univision/HBC merger *even with* that view of format changes. If the Commission is to rely on anything from the DOJ, it should be the fact that

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24 SBS letter dated June 16, 2003 at 3.

25 SBS letter dated July 14, 2003.

an agency tasked with assessing the competitive implications of corporate mergers has already reviewed and approved this one. This is entirely appropriate, as the Commission has expressly explained that "our duty as an agency runs to consumers, not advertisers."[26]

In two of its repetitive submissions,[27] SBS "interprets," to put it nicely, an investment analyst's report focusing on competition in the urban radio format, and claims that the report asserts Univision has "monopoly power," though the report actually makes no such claim and addresses Spanish-formatted media only with regard to how it compares as an investment to urban-formatted stations. Furthermore, the idea that Univision is in a position to charge monopolistic prices is hard to square with the fact that Univision carries less commercials per hour, and sells them at lower cost, than does its television station competitors.[28] At any rate, Univision's share of the television market is irrelevant to competition in the radio market, and that share will not be increased by this merger.

Examples of the disconnect between reality and statements contained in SBS's submissions are numerous. Immediately after the release of the text of the *Ownership R&O*, SBS claimed that the Commission's ownership rules are "merely heuristic devices" that should be ignored in favor of a case-by-case review.[29] However, in that very *Ownership R&O*, the Commission stated that "[r]equiring compliance with our rules, rather than conducting case-by-case evaluations or imposing merger conditions, is a more effective way to achieve [the Commission's diversity, competition, and localism] goals."[30] The Commission also noted that "[b]right lines provide the certainty and predictability needed for companies to make business plans and for capital markets to make investments in the growth and innovation in media markets," and that "[c]onversely, case-by-case review of even below-cap mergers on diversity grounds would lead to uncertainty and undermine our efforts to encourage growth in broadcast services."[31] The Commission further stated that it adopted bright line rules because such rules "provide certainty to outcomes, conserve resources, reduce administrative delays, lower transaction costs, increase transparency of our process, and ensure consistency in decisions."[32] The Commission noted that the bright line rules it established in the *Ownership R&O* "will

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26 *Ownership R&O* at ¶ 68.

27 SBS letter dated June 23, 2003; SBS letter dated July 14, 2003.

28 Bear Stearns Equity Research, Univision-Hispanic Merger: Que Pasa?, dated July 17, 2003.

29 SBS letter dated July 3, 2003 at 6.

30 *Ownership R&O* at ¶ 207.

31 Id. at n.980.

32 Id. at ¶ 82.

protect diversity, competition, and localism while providing greater regulatory certainty for the affected companies than would a case-by-case review."[33]

Despite SBS's recent claims to the contrary, the Commission rejected a case-by-case approach because "[a]ny benefit to precision of a case-by-case review is outweighed, in our view, by the harm caused by a lack of regulatory certainty to the affected firms and to the capital markets that fund the growth and innovation in the media industry."[34] Simply stated, the Commission's rules are the rules by which transactions are structured and money is invested in broadcasting, and are not, as SBS claims, a mere instructive aid that can be ignored when convenient.

Moreover, the issue which SBS belatedly raises regarding Spanish-formatted stations is not novel, and has been repeatedly rejected by the Commission. The Commission has in the past two months affirmed its long-standing policy that it will not consider a stations' programming format in processing assignment and transfer applications. Responding to a petitioner's complaint that a proposed FM station transferee would change the station's format to Spanish, the Commission reiterated that it "generally relies on market forces rather than regulatory oversight to arbitrate format changes, including changes in the language in which a station broadcasts."[35] In affirming its policy, the Commission cited several cases spanning the past twenty years, including *FCC v. WNCN Listeners Guild*, 450 U.S. 582 (1981), in which the Supreme Court upheld the Commission's policy of not considering format changes in reviewing transfer applications.

While ignoring Commission decisions directly on point that reject SBS's arguments for disparate treatment of Spanish-formatted stations, SBS attempts to extrapolate the result it seeks from unrelated Commission decisions whose only connection to this proceeding is the Commission's use of the word "Spanish" in them.[36] These filings selectively quote from such decisions while ignoring both the surrounding language and the more recent and relevant decisions adopted by the Commission rejecting SBS's contorted interpretations. The decisions SBS now cites generally fall into the category of circumstances where the Commission has sought to encourage the growth of minority-oriented programming, including Spanish-language programming, and have nothing to do with treating such programming as part of a separate market for multiple ownership purposes. Far from supporting SBS's strained contention, these cases actually support the proposition that the Commission should continue to encourage the

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33 Id. at ¶ 83.

34 Id. The Commission went on to state: "Companies seeking to enter or exit the media market or seeking to grow larger or smaller will all benefit from clear rules in making business plans and investment decisions. Clear structural rules permit planning of financial transactions, ease application processing, and minimize regulatory costs." Id.

35 Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to Steven A. Rechter *et al.*, dated May 30, 2003 granting FCC File No. BALH-20030307AEA (citations omitted).

36 *See* SBS letter dated June 26, 2003.

growth and competitiveness of Spanish-language media, not artificially retard its growth to the detriment of Hispanics everywhere.

The closest any case cited by SBS comes to addressing its argument for a separate Spanish-language market is a highly edited quote in its June 26, 2003 letter from a Commission decision considering the appropriate duration of a temporary triopoly waiver involving two Spanish-formatted television stations and one English-formatted television station.[37] SBS quotes the decision as saying: "we are not as concerned in this case that the competition for advertising dollars will be diminished because the Spanish-language format of the Telemundo stations means that they do not compete directly with NBC's station."[38] SBS summarizes this language as proving that the Commission "has already determined" that Spanish-language stations constitute a separate market, despite more recent caselaw to the contrary.[39]

However, SBS fails to include the Commission's very next sentence after the above quote, where the Commission further stated that: "Even the two Telemundo stations have different Spanish-language programming and they attract a different type of advertising with one station a Telemundo affiliate and the other an independent Spanish-language station."[40] This language makes clear that the Commission was not drawing a regulatory line between English and Spanish viewers, but merely noting that *each* of the three stations served a different segment of *advertisers*, not audiences, and that they did so *despite* the fact that two of the stations were both broadcasting in Spanish. While SBS must claim that the two Spanish stations necessarily competed for the same advertisers in order to establish its separate Spanish-language market theory, the Commission's language omitted by SBS directly contradicts such a claim.

Were it not obvious enough that the Commission was not seeking to rewrite its multiple ownership rules with the above statements, similar Commission language in other decisions clarifies that fact. For example, in the *Ownership R&O*, the Commission stated far more directly that "CBS and UPN do not compete for the same viewers."[41] However, the Commission did not revise its multiple ownership rules to designate a separate market for UPN. In neither case was the Commission suggesting that CBS and UPN, or NBC and Telemundo, be considered "separate markets" for purposes of its multiple ownership rules. SBS's proclivity for selectively ignoring adverse caselaw, adverse language in its own caselaw, and then extrapolating broad conclusions from the isolated Commission dicta that remains, demonstrates the lengths to which it has had to go to attack the Univision/HBC merger for its own competitive gain.

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37 SBS letter dated June 26, 2003 at 2-3.

38 Id. at 3 (citing Telemundo Communications Group, Inc., 17 FCC Rcd 6958 (2002) at ¶ 52).

39 SBS letter dated June 26, 2003 at 3.

40 Telemundo Communications Group, Inc., 17 FCC Rcd 6958 (2002) at ¶ 52.

41 *Ownership R&O* at n.1291.

IV. SBS's Continuing Pattern of Omissions Deprive Its Submissions of Any Credibility

While SBS repeatedly cites to its own letters as "proof" of various assertions, those letters are themselves highly suspect. SBS submits a letter from Castor A. Fernandez to demonstrate that some advertising agencies which make their living touting a specialization in Hispanic advertising claim, not surprisingly, that there is a separate Spanish-language market.[42] Mr. Fernandez proudly notes that he is the "single largest individual receiver of Creative Awards in the industry," **but neither Mr. Fernandez's letter nor the SBS letter submitting it disclose the fact that Mr. Fernandez has served as a member of SBS's Board of Directors, that he received $20,000 in director's fees, and that he held options to purchase 50,000 shares of SBS stock.**[43]

Indeed, SBS has repeatedly presented to the Commission statements of "unbiased" individuals without disclosing their relationship to SBS. In its July 14th submission, SBS relies heavily on statements provided by Dan Mason, "a former executive with several prominent radio broadcasters."[44] **What SBS neglects to share with the Commission is the fact that Dan Mason is also a member of SBS's Board of Directors.**[45] Interweaving Mr. Mason's letter with more recent observations from another individual, SBS's letter leaves the impression that Mr. Mason is an independent third-party simply sharing his knowledge and observations about the industry. In fact, he is one of the six Directors on SBS's Board. That SBS can find support for its cause only among its board of directors should give the Commission pause in giving any credence to such statements, particularly where SBS saw fit to conceal those relationships in its submissions. Far from the groundswell of support for a separate Spanish-language market that SBS claims, SBS's submissions more closely resemble an SBS "friends and family" program designed to improve SBS's competitive posture in which these individuals appear to have a direct economic interest.

Given this record of presenting "paid endorsements" without proper sponsorship identification, it is difficult to credit any of the statements presented by SBS. The most recent example is SBS's "academic study." In requesting that the Commission delay its decision on the Univision/HBC merger until the study could be completed, its principal author noted that "[m]y colleagues, the nation's leading Latino communications scholars, and I have been engaged by Spanish Broadcasting Systems, Inc. to produce a report that details the use of Spanish-language broadcasting by Hispanic Americans."[46] However, before even commencing that effort, the

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42 SBS letter dated June 2, 2003.

43 Spanish Broadcasting System, Inc. 2002 Form 10-K Annual Report (filed Mar. 31, 2003) at 50.

44 SBS letter dated July 14, 2003 at 3.

45 See SBS Press Release issued June 10, 2003 attached hereto as Exhibit 2; *see also* http://www.spanishbroadcasting.com/boardofdirectors.shtml, visited July 20, 2003.

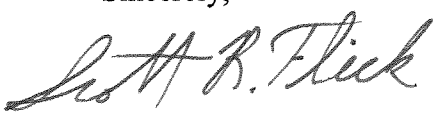
46 Ex parte letter of Dr. Federico Subervi, dated June 26, 2003.

letter concludes with the statement that "we will offer you and your fellow FCC Commissioners documentation about the characteristics of the Hispanic audience, their programming preferences and needs, *and why we believe that the merger of Univision and HBC may be detrimental to the diversity of information and other types of programs available to Hispanic Americans and their quality of life in the United States*."[47] While such a statement certainly undercuts any notion that the study was to be either independent or merit-based, at least its authors revealed to the Commission that they were being paid by SBS to reach that conclusion.

When the study was ultimately submitted to the Commission on July 16, 2003, it contained no cites to factual data nor any other source for the wildly conclusory statements it makes such as: "Hispanic American artists who affirm pan-Hispanic or U.S.-based heritage are repeatedly excluded from Univision, just as they are from general market mainstream media."[48] In fact, the only authority cited in the study is SBS's own June 16, 2003 letter.[49]

As detailed herein, the manner in which SBS has pursued from the shadows its campaign to prevent the merger of Univision and HBC indicates that even SBS is aware that its claims cannot survive the light of day. Throughout this proceeding, SBS has continuously sought to game the Commission's processes. The time for such game playing has long since passed. The merger application has been subjected to perhaps the most rigorous review any broadcast application has ever had to endure, and the time has come for the Commission to restore to its processes the integrity that SBS's actions have so severely damaged. SBS's recent spate of filings is but the latest chapter in a book of pure fiction. While SBS's submissions in this proceeding may have become steadily more frequent, they have not become any more relevant to the Commission's determination that grant of the Univision/HBC merger application is in the public interest, and that further delay serves no purpose other than to reward SBS for its abuse of the Commission's processes.

Sincerely,



Scott R. Flick

cc: Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein
Paul Gallant

---

47 Id. at 1-2.

48 SBS letter dated July 16, 2003 at Attachment.

49 Id.

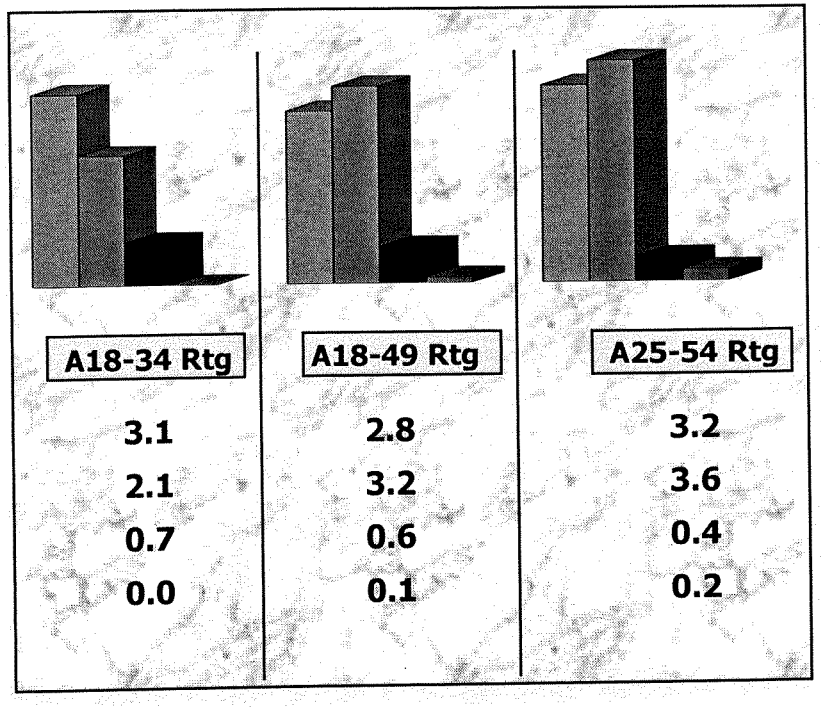
Stacy R. Robinson
Jordan B. Goldstein
Daniel Gonzalez
Johanna Mikes
W. Kenneth Ferree
Robert Ratcliffe
David Brown
Roy R. Russo, Counsel for Hispanic Broadcasting Corp.

EXHIBIT 1

NSI May 2002

Despierta America
Has loyal viewers among all demos!

Monday-Friday, 7am-9am



	A18-34 Rtg	A18-49 Rtg	A25-54 Rtg
KABE (UNI)	3.1	2.8	3.2
KGET (NBC)	2.1	3.2	3.6
KERO (ABC)	0.7	0.6	0.4
KBAK (CBS)	0.0	0.1	0.2

KABE - Despierta America
KGET - Today Show
KERO - Good Morning America
KBAK - Early Show

Bakersfield - KABE 39

univision

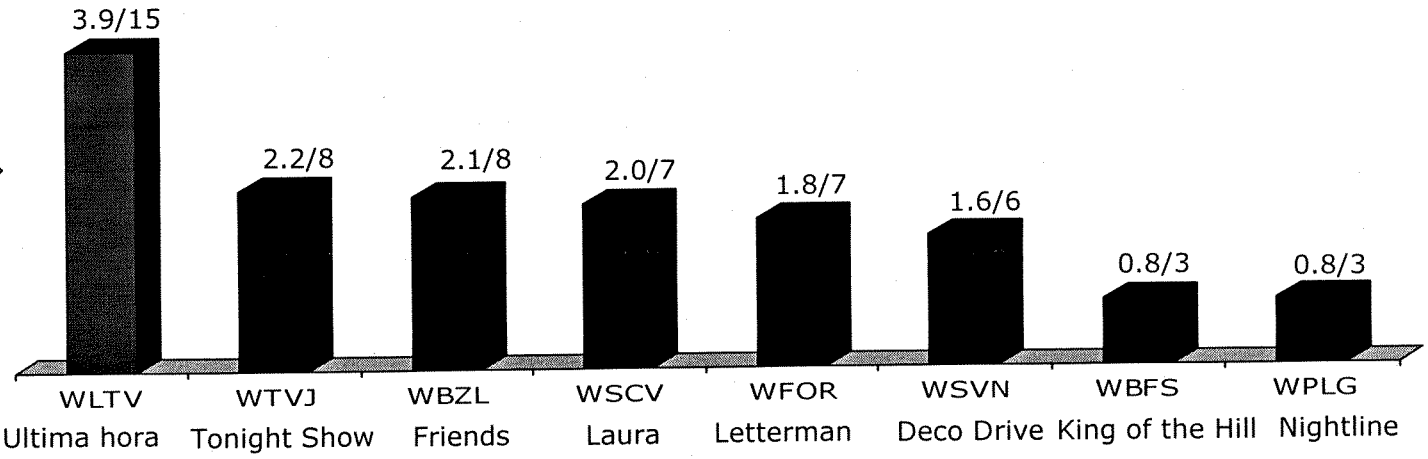
Source: NSI, May 2002, Monday-Friday, 7-9am

WLTV's *Ultima hora* towers over the competition!!!

M-F/11:30-12P Time Period

Men 18-49

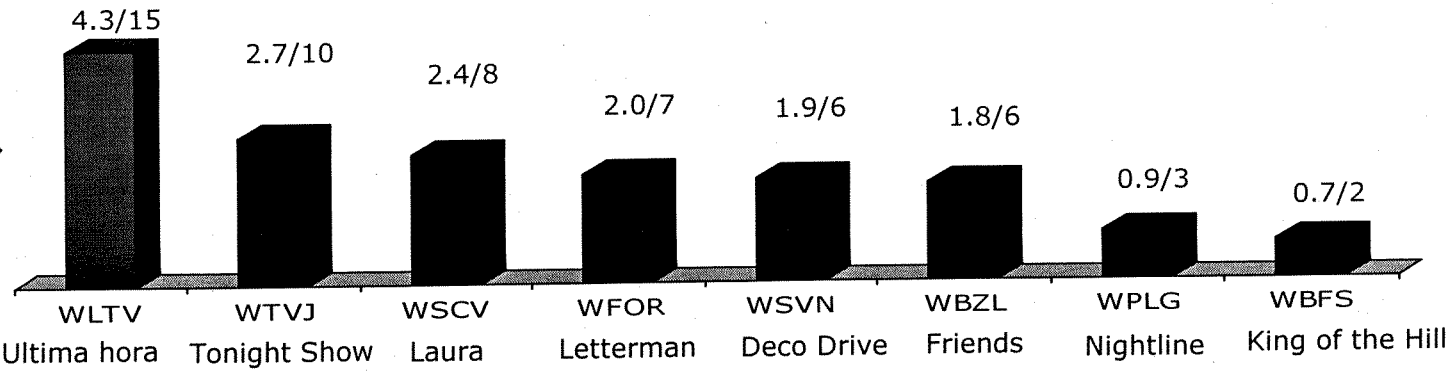
A 77% rating advantage over it closest competitor



M-F/11:30-12P Time Period

Men 25-54

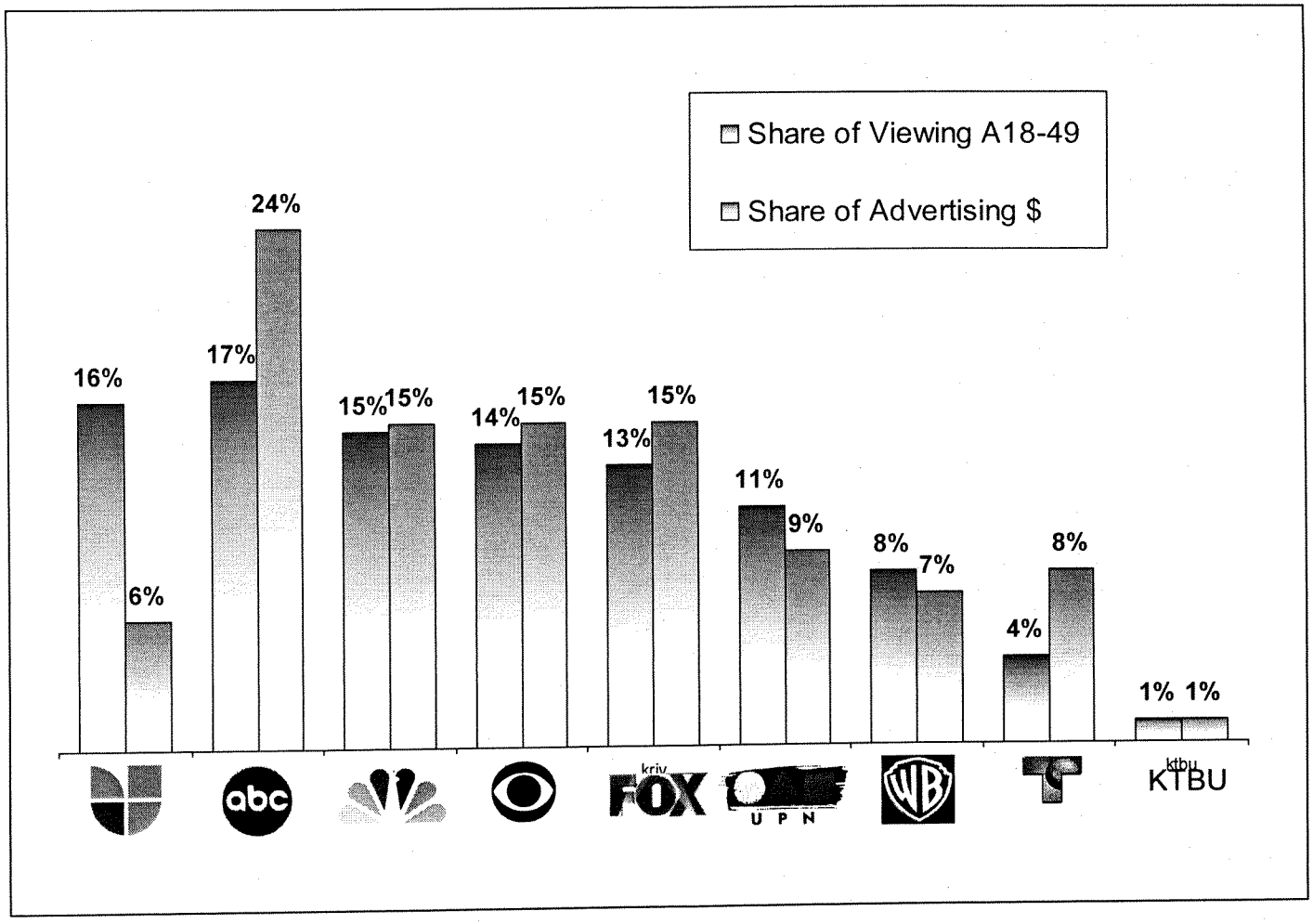
A 59% rating advantage over it closest competitor



Source: Miami Ft.Lauderdale NSI May 2002

univision

Univision 45 KXLN - TV
Delivers Fast Food Customers to KFC

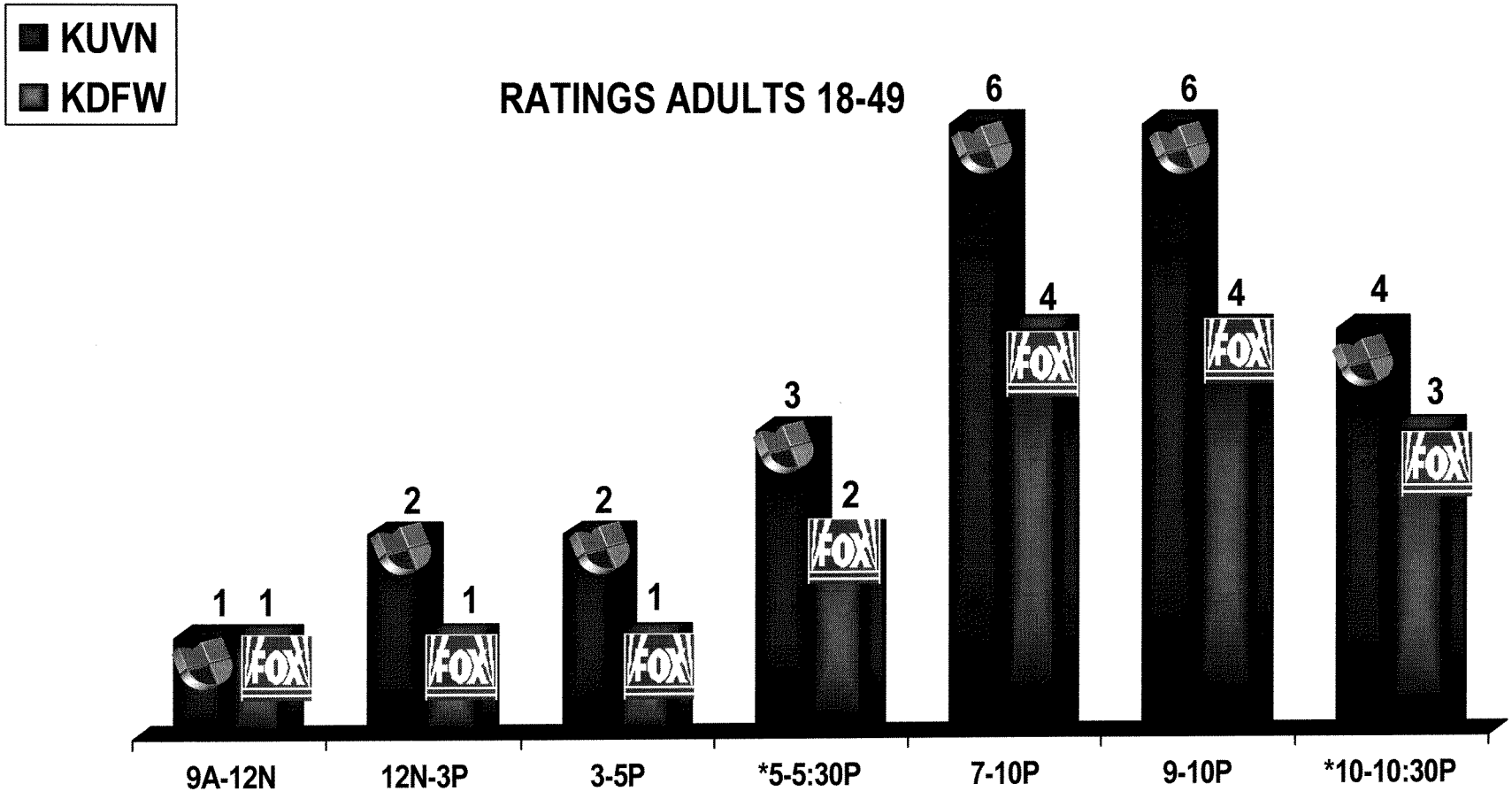


Monday to Sunday 6a-2a Viewing Share Versus Advertising $ Share

Source: January to August 2001 CMR, Houston DMA; NSI A18-49 share Feb 01, May 01, Jul 01.

OUT-FOXED!

UNIVISION KUVN-23 OUT-DELIVERS OR TIES KDFW IN KEY A18-49 DEMO!

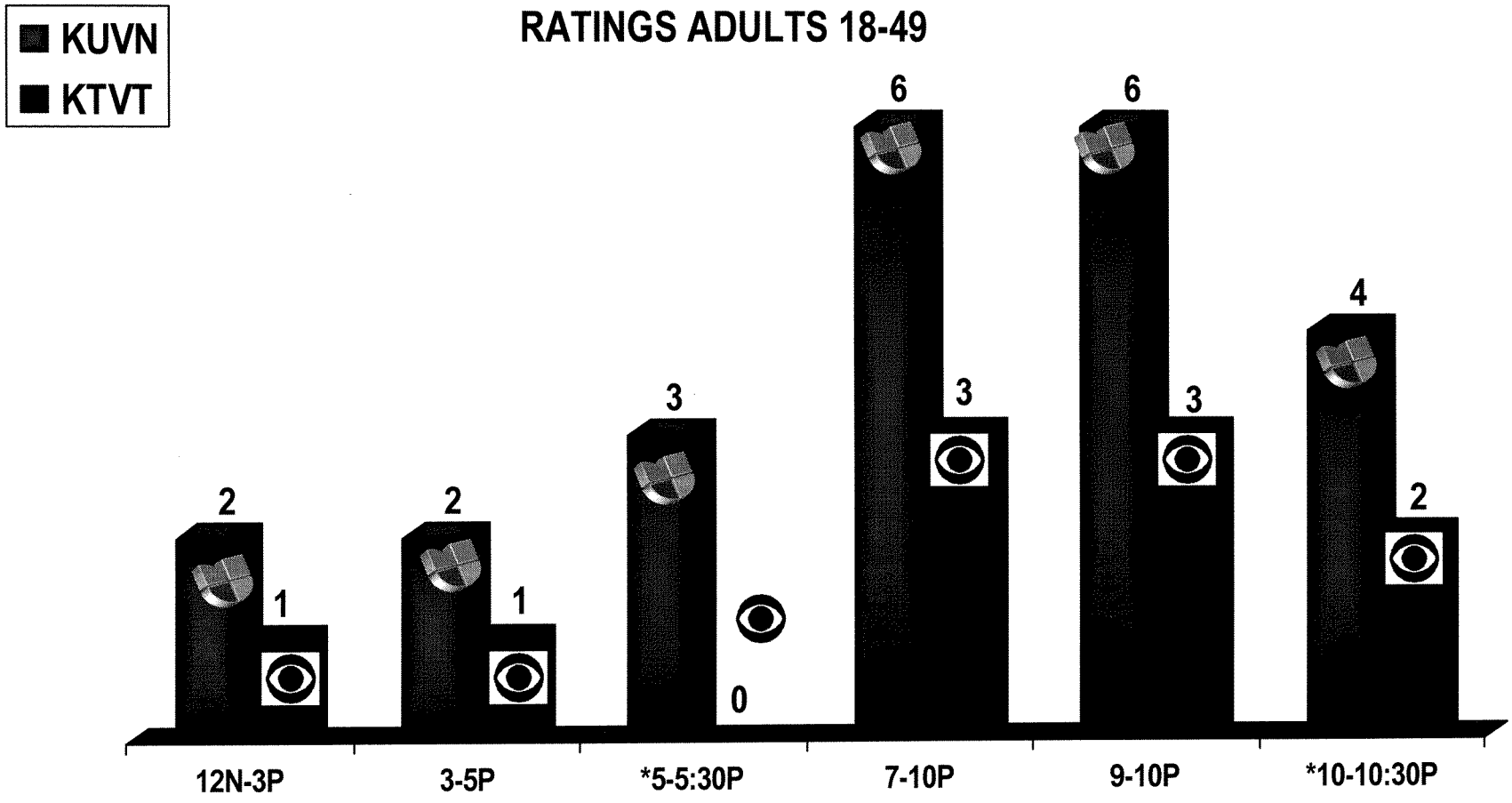


*INDICATES PAV

Source: NSI TP AVERAGES, FEB02

WHO'S THE "SURVIVOR?"

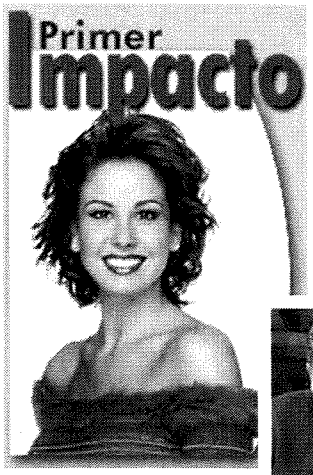
UNIVISION KUVN-23 OUT-DELIVERS KTVT IN KEY A18-49 DEMO!

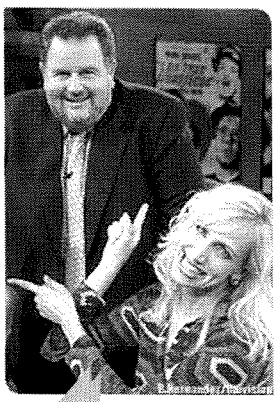


*INDICATES PAV

Source: NSI TP AVERAGES, FEB02

KDTV's Early Fringe Shows Catch More Viewers Than Rosie, Judge Judy & Psychic John Edward!





Feb02 NSI RTG / Top 15 Early Fringe Shows* Among A18-34

Rank	Station	Time	Program	A18-34
1	KGO	4-5P	OPRAH WINFREY	1.6
2	KTVU	5-6P	PEOPLE'S COURT	1.5
3	**KDTV**	**3-4P**	**SECRET O-MF-UNI**	**1.2**
4	KGO	3-4P	ROSIE ODONNELL	1.1
5	KNTV	4-5P	MAURY POVICH 2	1.0
5	**KDTV**	**5-6P**	**PRIM IM MF UNI**	**1.0**
7	KBWB	630-7P	DIVORCE COURT	0.9
8	KBWB	6-630P	DIVORCE CRT B	0.7
8	KBHK	530-6P	SABRINA-WITCH	0.7
8	KBWB	5-6P	JERRY SPRINGER	0.7
11	**KDTV**	**4-5P**	**GORDO Y-MF-UNI**	**0.6**
11	KRON	430-5P	JUDGE JUDY	0.6
13	KNTV	3-4P	DAYS-OUR LIVES	0.6
14	KTVU	430-5P	JOHN EDWARD B	0.3
15	KBHK	5-530P	SISTER SISTER	0.2

Did You Know?
KSTS' "Laura" fell from the #2 ranked show in Feb01 with a 3.0 rating among A18-34 to the #21 Early Fringe show in Feb02 with a mere 0.1?

**Excludes OTO specials. Source: NSI, Feb02 and Feb01.*

For More Information, call your KDTV sales rep, San Francisco: (415) 538-8034, San Jose: (408) 392-6900

San Francisco - Oakland - San Jose KDTV 14 univision

WLTV May 2002 NSI Key Demos

WLTV's *Noticias 23* is the clear choice for Early News among S. Florida Adults!!

M-F/6-6:30p Time Period

			A18-49		A25-54	
			Rtg	Shr	Rtg	Shr
1	**WLTV**	**NOTICIAS 23**	**4.0**	**17**	**4.5**	**17**
2	WPLG	CH10 NEWS	2.6	11	3.0	11
3	WSVN	CH7 NWS	2.5	11	2.9	11
4	WBZL	SIMPSONS	2.3	10	1.7	6
5	WBFS	LIVING SINGLE	2.0	9	1.6	6
6	WTVJ	NBC 6 NEWS	1.7	7	2.5	9
7	WSCV	NOTICIERO51	1.6	7	2.8	10
8	WFOR	CH 4 NEWS	1.1	5	1.5	6
9	WAMI	MARIA BELEN	0.4	2	0.4	1
10	WPXM	SPRMARKET SWEEP	0.2	1	0.2	1

Adults are Watching *Noticias 23* more than any other Late Local Newscast

M-F/11-11:30PM Time Period

			A18-49		A25-54	
			Rtg	Shr	Rtg	Shr
1	**WLTV**	**NOTICIAS 23**	**4.2**	**12**	**4.7**	**12**
2	WTVJ	NBC 6 NEWS	3.7	11	4.7	12
3	WSCV	NOTICIERO 51	3.6	11	4.4	12
4	WBZL	FRIENDS	3.0	9	2.5	7
5	WSVN	CH7 NEWS	2.8	8	3.2	8
6	WFOR	CH 4 NEWS	2.2	6	2.7	7
7	WBFS	FRASIER	1.9	6	2.0	5
8	WPLG	CH10 NEWS	1.7	5	2.3	6
9	WPXM	ITS MRC/TME LF	0.3	1	0.3	1
11	WAMI	CONTACTO DEP.	0.1	0	0.1	0

Sign on to Sign off WLTV leads the Pack...

M-Su/7AM-1AM

		A18-49		A25-54	
		Rtg	Shr	Rtg	Shr
1	**WLTV**	**2.4**	**12**	**2.6**	**12**
2	WTVJ	1.9	9	2.3	10
3	WSVN	1.9	9	2.1	9
4	WSCV	1.7	8	2.0	9
5	WFOR	1.5	7	1.7	8
5	WPLG	1.5	7	1.7	8
7	WBZL	1.4	7	1.2	5
8	WBFS	1.1	5	1.0	4
9	WAMI	0.3	1	0.3	1
10	WPXM	0.1	1	0.2	1

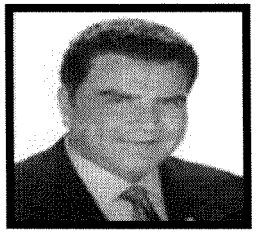
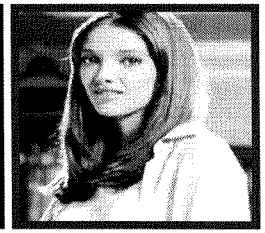
Adults in South Florida choose WLTV for Prime Time Viewing...

M-F/7-11PM Time Period

		A18-49		A25-54	
		Rtg	Shr	Rtg	Shr
1	**WLTV**	**4.4**	**10**	**4.6**	**10**
2	WTVJ	4.4	11	5	11
3	WSCV	4.3	10	4.8	11
4	WBZL	2.7	7	2.4	5
5	WSVN	3.5	8	3.8	8
6	WBFS	2.3	6	2	4
7	WFOR	3.5	8	4.1	9
7	WPLG	3	7	3.6	8
9	WPXM	0.4	1	0.4	1
10	WAMI	0.5	1	0.5	1

Source: Donovan Dem 32 NSI May02

univision
Miami Channel 23

YOUNG VIEWERS CHOOSE KUVN FOR PRIME FAVORITES!

TOP 10 PRIME PROGRAMS
MON-FRI 7-10P

ADULTS 18-34

RANK	STATION	DAY	TIME	PROGRAM NAME	RATING
1	KXAS	THU	7-7:30P	Friends	16.8
2	KXAS	THU	9-10P	E.R.	14.7
3	KXAS	THU	8-8:30P	Will & Grace	12.0
4	KXAS	THU	8:30-9P	Just Shoot Me	9.5
5	KTXA	THU	8-9:30P	Mavericks Basketball	8.3
6	**KUVN**	**M-F**	**7-7:30P**	**Privilegio De Amar**	**7.9**
7	**KUVN**	**MON**	**9-10P**	**Cristina Edición Especial**	**7.4**
8	KXAS	MON	7-8P	Fear Factor	7.3
9	KTVT	THU	8-9P	CSI	7.0
10	**KUVN**	**M-F**	**7-8P**	**Amigas y Rivales**	**6.8**

MEN 18-34

RANK	STATION	DAY	TIME	PROGRAM NAME	RATING
1	KXAS	THU	7-7:30P	Friends	13.1
2	KTXA	THU	8-9:30P	Mavericks Basketball	10.7
3	KXAS	THU	9-10P	E.R.	10.4
4	KXAS	THU	8-8:30P	Will & Grace	9.7
5	**KUVN**	**MON**	**9-10P**	**Cristina Edición Especial**	**9.0**
6	**KUVN**	**FRI**	**9-10P**	**Los Metiches**	**8.4**
7	**KUVN**	**WED**	**9-10P**	**Don Francisco Presenta**	**8.3**
8	**KUVN**	**M-F**	**7-8P**	**Amigas Y Rivales**	**8.2**
9	**KUVN**	**TUE**	**9-10P**	**Aqui Y Ahora**	**7.6**
10	KXAS	THU	8:30-9p	Just Shoot Me	6.7

Dallas-Fort Worth - KUVN 23

Source: NSI PAV Averages, MAY02

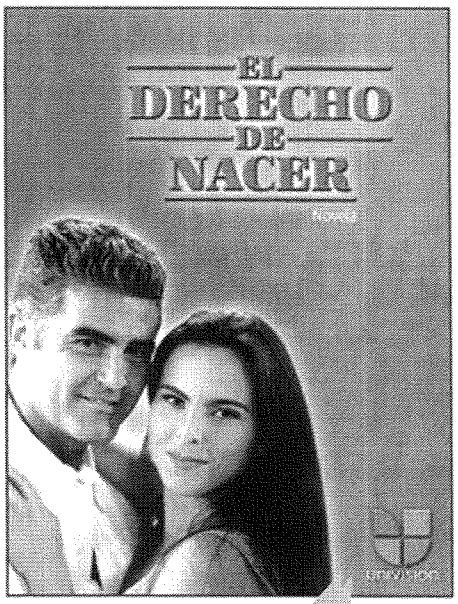
univision

KDTV Posts Three of the Top 25 Primetime TV Series!

KDTV's popular Primetime novelas beat high profile English-language TV shows such as CSI, Fear Factor and Frasier!

Feb02 NSI Top 25 M-Su Primetime TV Series* Among A18-34

Rank	Station	Day	Time	Program	A18-34
1	KNTV	Th	830-9P	FRNDS-SPCL.NBC	18.1
2	KNTV	Th	8-830P	FRIENDS-NBC	16.5
3	KTVU	Su	9-930P	SIMPSON SP-FOX	14.1
4	KNTV	Th	830-9P	FRNDS-SP.-NBC	13.9
5	KNTV	Th	9-930P	WILL&GRACE-NBC	11.9
6	KTVU	Su	830-930P	MALCLM-MDL-FOX	11.5
7	KTVU	Su	8-830P	SIMPSONS-FOX	10.5
8	KNTV	Th	10-11P	E.R.-NBC	9.6
9	KTVU	Tu	8-830P	THAT70-SPC-FOX	9.5
10	KTVU	Th	9-10P	TEMPTN ISL2FOX	8.7
11	KTVU	Tu	9-10P	24-FOX	7.5
11	KPIX	Th	9-930P	EVRBDY-SPL-CBS	7.5
13	KNTV	Th	930-10P	JUST SHOOT-NBC	7.4
14	KTVU	F	8-10P	FOX MOVIE SP	7.1
15	KTVU	Su	9-930P	SMPSN SPC-FOX	6.8
15	KTVU	Tu	8-830P	THAT '70S-FOX	6.8
17	KPIX	Th	930-10P	KING-QN SP-CBS	6.5
18	KNTV	Tu	830-9P	WATCHELLIE-NBC	6.4
18	KPIX	Th	8-9P	CSI-SPECL-CBS	6.4
20	KNTV	W	9-10P	WEST WING-NBC	6.2
21	**KDTV**	**Th**	**9-10P**	**DERCH-NACR-UNI**	**6.0**
21	**KDTV**	**M**	**8-9P**	**AMIGAS-RVL-UNI**	**6.0**
23	**KDTV**	**Th**	**8-9P**	**AMIGAS-RVL-UNI**	**5.8**
24	KPIX	Th	9-10P	CSI-CBS	5.7
24	KNTV	M	8-9P	FEAR FACTR-NBC	5.7



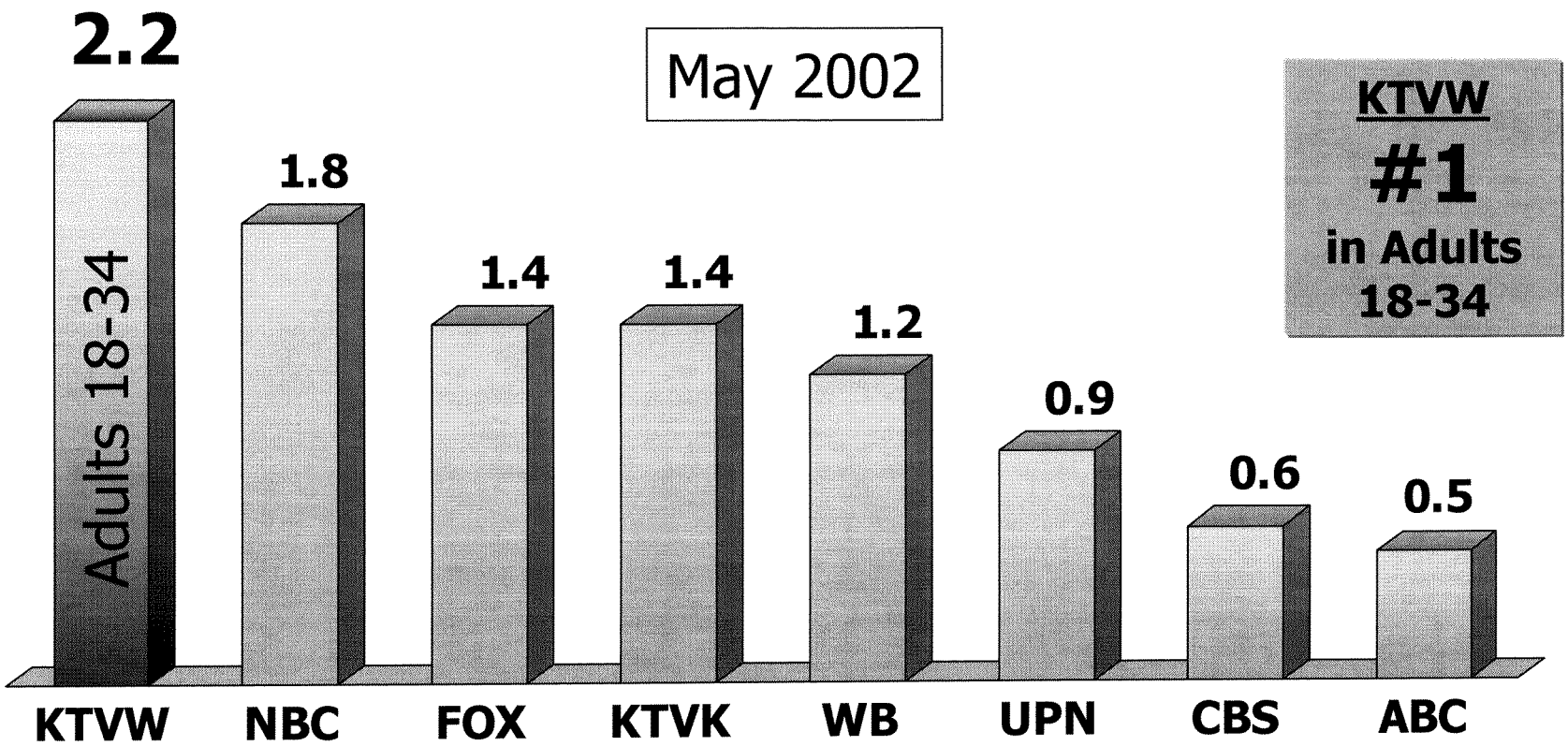
Did you know?
With an impressive 3.4 average rating during M-Su Prime, KDTV outperforms KGO, KPIX, KBHK, KBWB among DMA A18-34!

**Excludes OTO specials. Source: NSI, Feb02.*

For More Information, call your KDTV sales rep, San Francisco: (415) 538-8034, San Jose: (408) 392-6900

San Francisco - Oakland - San Jose KDTV 14 univision

KTVW is the TOP RATED Station with ADULTS 18-34 in All Week Viewing in NSI !!!

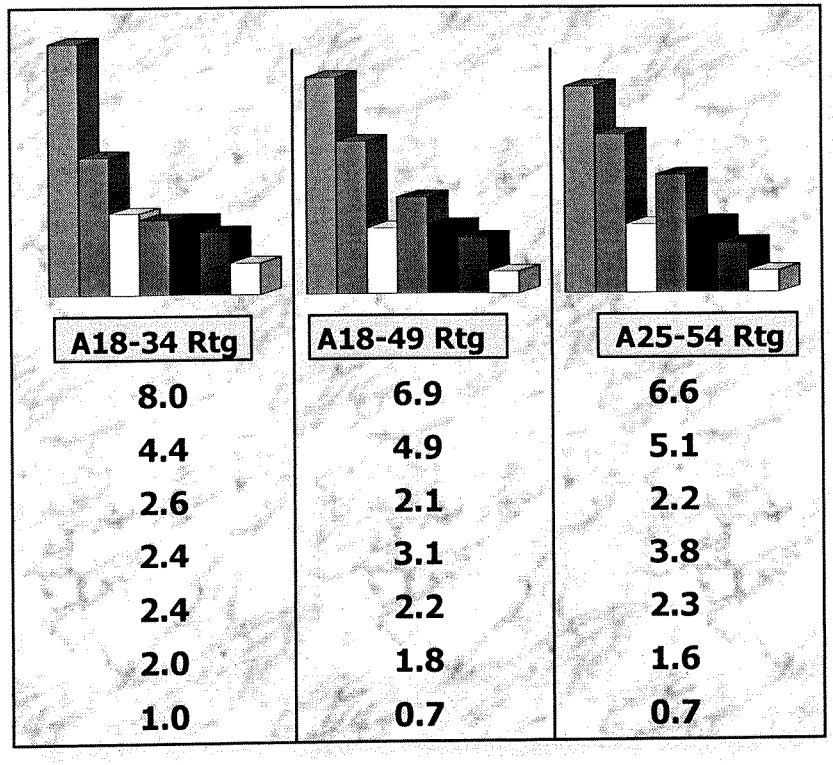


[redacted]

NSI May 2002

To target Bakersfield Adults, KABE is the Place to be…
KABE is #1 among all Major Demos During Prime-Time!

Monday-Friday 7 P.M. to 10 P.M.



	A18-34 Rtg	A18-49 Rtg	A25-54 Rtg
KABE (UNI)	8.0	6.9	6.6
KGET (NBC)	4.4	4.9	5.1
KBFX (FOX)	2.6	2.1	2.2
KBAK (CBS)	2.4	3.1	3.8
KERO (ABC)	2.4	2.2	2.3
KUVI (UPN)	2.0	1.8	1.6
AWFB (WB)	1.0	0.7	0.7

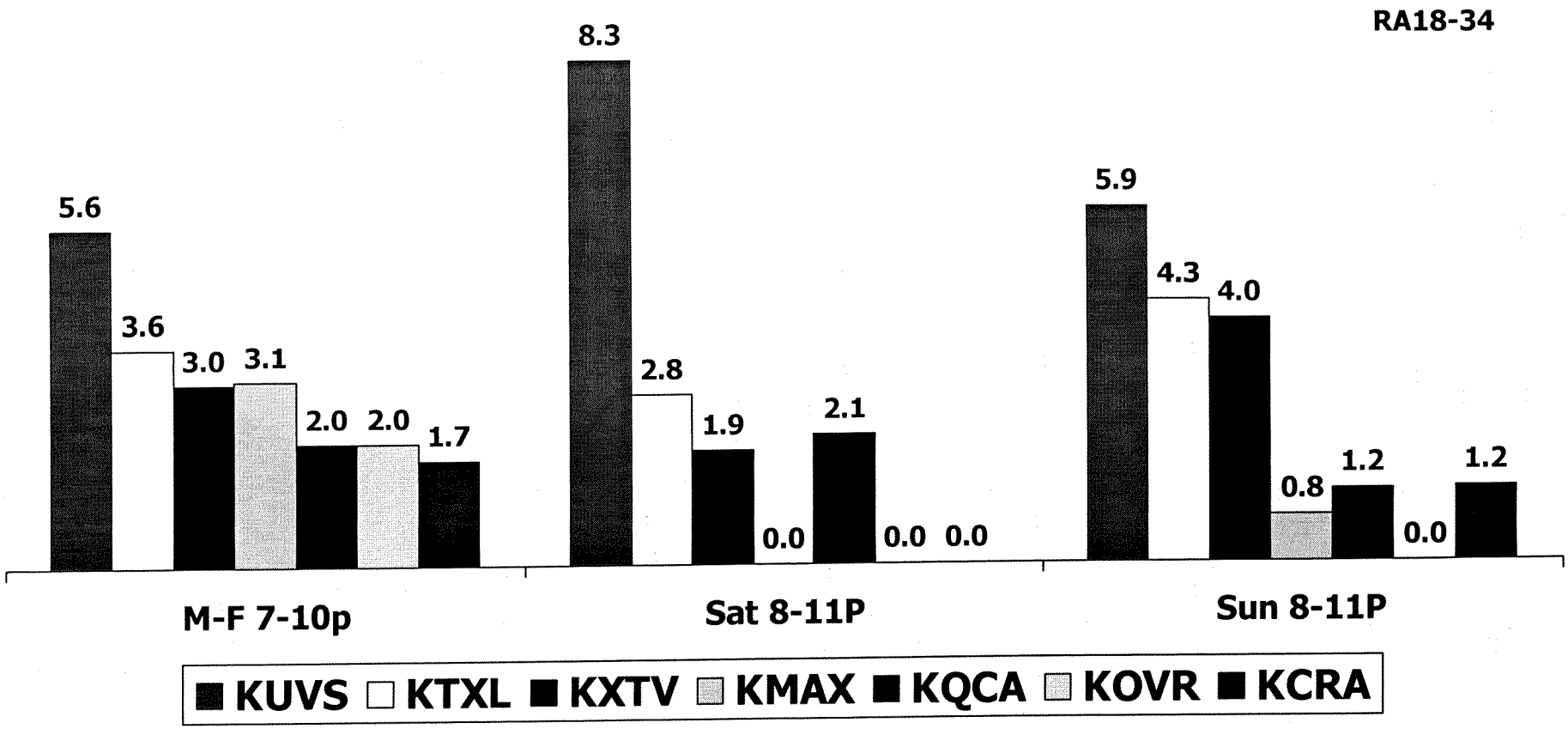
KABE - Various
KGET – Various
KBFX - Various
KBAK - Various
KERO - Various
KUVI -Various
AWFB - Various

Bakersfield - KABE 39

Source: NSI, May 2002, Monday-Friday, 7-10pm

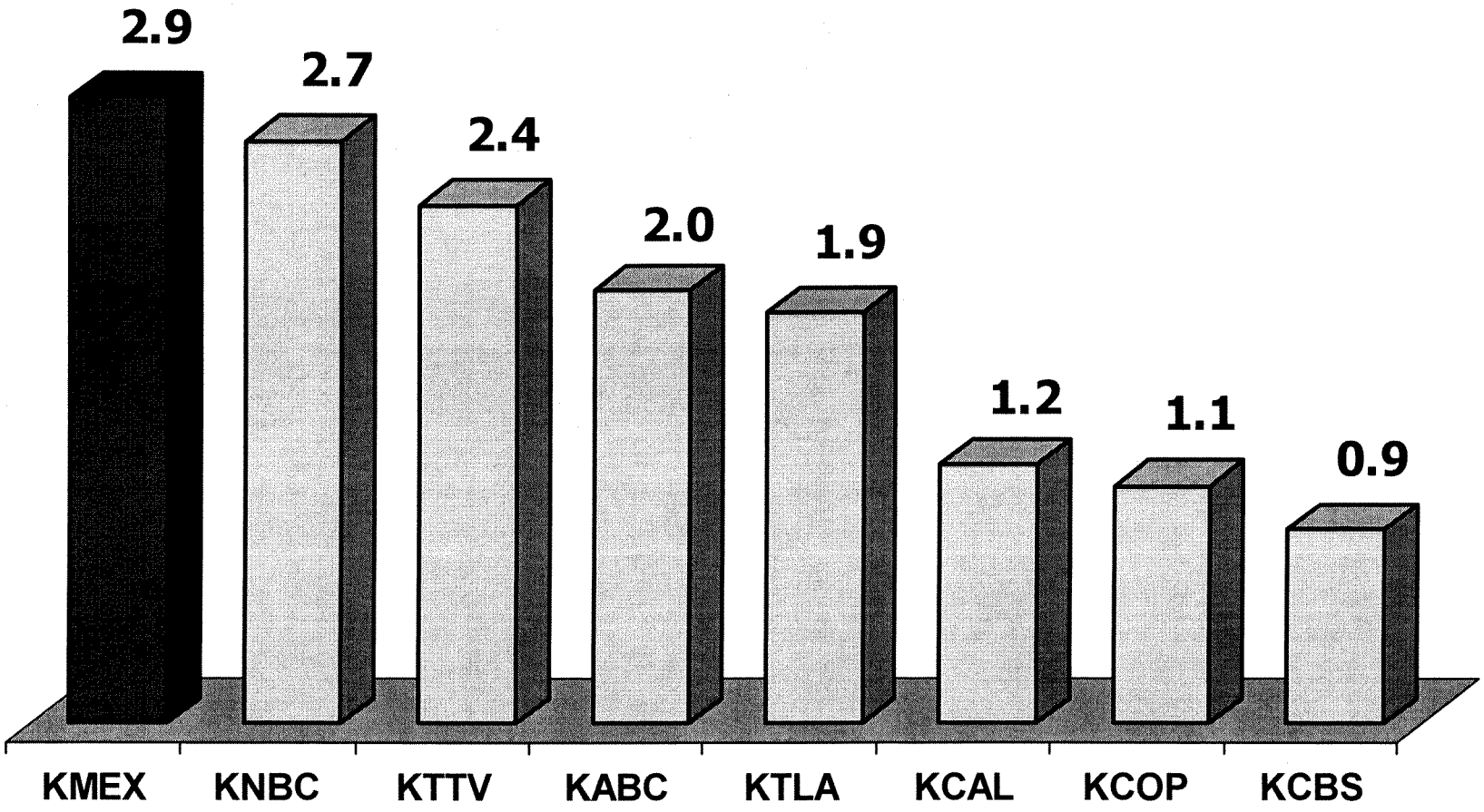
univision

KUVS is the Top Rated Station in Stanislaus County in Prime



Source: NSI Nov '01, Stanislaus County

Among Adults 18-49, KMEX-TV is the Highest Rated Station in L.A. Regardless of Language!



34 KMEX-TV UNIVISION

Average Rating among Adults 18-49, Monday to Sunday, 7:00AM to 1:00AM

Source: Nielsen NSI May 1999

Univision's Delivers Adults 18-49

NSI Ratings

Adults 18-49

Univision Delivers More Adults 18-49 than:

ABC
CBS
WB
UPN

All Week
Adults 18-49
M-Su 6A-2A

February 2002

UNIVISION 33

Spanish Language TV
It Works

All Week

Phoenix NSI Ratings, A18-49 February 2002, M-Su 6A-2A

univision

EXHIBIT 2

For Immediate Release

SPANISH BROADCASTING SYSTEM ANNOUNCES BOARD OF DIRECTOR NOMINATIONS

- Nominees Jack Langer and Dan Mason would serve as independent Board members -

- Company's Annual Meeting rescheduled to July 10, 2003 -

COCONUT GROVE, FLORIDA, June 10, 2003 – Spanish Broadcasting System, Inc. (the "Company" or "SBS") (NASDAQ: SBSA) announced today that the Company's Board of Directors has nominated Jack Langer and Dan Mason for election to the Company's Board of Directors. The election of the nominees, along with the re-election of incumbent directors Raúl Alarcón, Jr., Pablo Raúl Alarcón, Sr., Jason L. Shrinsky and Carl Parmer, will be voted upon by shareholders at the Company's annual meeting. If elected, Mr. Langer and Mr. Mason would join the Company's Board of Directors as independent members.

In conjunction with this announcement, SBS has rescheduled its annual meeting to July 10, 2003, in order to allow its shareholders sufficient time to review the nominations. The Company's annual meeting was previously scheduled for June 19, 2003. The annual meeting will be held at the Wyndham Grand Bay, 2669 South Bayshore Drive, Coconut Grove, Florida 33133 at 10:00 a.m. ET.

Jack Langer has over 27 years of investment banking experience, and was most recently Managing Director and Global Co-Head of the Media Group at Lehman Brothers, Inc. from 1997 to 2002. He has also held Managing Director and Head of Media Group positions at Bankers Trust & Company, Kidder Peabody & Co., Inc. and Drexel, Burnham Lambert & Co. Mr. Langer has extensive experience in advising media companies on financial strategies, financings and acquisitions.

Dan Mason, a veteran of the radio broadcasting industry with nearly 30 years experience, was most recently President of Infinity Radio from 1999 to 2002 and currently serves as a consultant to various companies in the radio broadcasting industry. Besides his tenure at Infinity Radio, Mr. Mason has also served as President of CBS Radio, Group W Radio and Cook Inlet Radio.

About Spanish Broadcasting System, Inc.

Spanish Broadcasting System, Inc. is the largest Hispanic-controlled radio broadcasting company in the United States. SBS currently owns and/or operates 27 stations in seven of the top-ten U.S. Hispanic markets, including New York, Los Angeles, Miami, Chicago, San Francisco, San Antonio, and Puerto Rico. The Company also operates LaMusica.com, a bilingual Spanish-English Internet Web site providing content related to Latin music, entertainment, news and culture. The Company's corporate Web site is located at www.spanishbroadcasting.com.

Contact:

Analysts and Investors
Joseph A. García
Executive Vice President, Chief Financial Officer and Secretary
(305) 441-6901

Analysts, Investors or Media
Todd St.Onge
Brainerd Communicators, Inc.
(212) 986-6667

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