1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel: (202) 637-4535
Fax: (202) 637-4530

August 21, 2003

BY HAND DELIVERY

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, D.C. 20554

Re: ***Ex Parte Presentation – MB Docket No. 02-235***

Dear Ms. Dortch:

The transaction proposed in this proceeding, if approved, would enable Univision Communications, Inc. ("Univision") to acquire Hispanic Broadcasting Corporation ("HBC"). The proposed combination, which would merge the nation's dominant Spanish-language television operator with its largest Spanish-language radio group, uniquely threatens the Commission's key goals of diversity and competition, especially for those millions of U.S. consumers who speak only Spanish (or who otherwise rely solely on Spanish-language media).

Following the proposed transaction, Univision will be the nation's most vertically integrated radio and television broadcasting conglomerate. Univision will control or have ownership interests in all of the following:

- The Univision network, the dominant Spanish-language television network which has a 70-plus percent Hispanic audience share and is affiliated with nearly twice as many full-power stations as its nearest competitor, Telemundo; [1]

- All but one of the 33 full-power Univision network affiliates, including 15 owned-and-operated stations ("O&Os") and 17 more stations through Univision's interest in Entravision;

- The Telefutura network, Univision's second "top-3" U.S. Spanish-language television network, which is affiliated with nearly as many full-power stations as is Telemundo;

---

[1] Attachment 1 includes, pursuant to Telemundo's records, a network affiliate list for Univision, Telefutura and Telemundo, including Univision and Entravision's own stations.

- All 19 full-power Telefutura network affiliates, including 18 O&Os and one through Entravision;

- Entravision's radio holdings, which is the nation's third largest Spanish-language radio group, with 54 stations in 22 markets; [2]

- Univision Music Group, which is the country's leading Spanish-language music provider, selling more Latin music recordings in the United States than any other record company;[3]

- Univision Online, Inc., the nation's leading Spanish-language internet portal; [4]

- Galavision, the leading Spanish-language cable network; and

- Hispanic Broadcasting Corporation, which is the nation's largest Spanish-language radio group, with 57 stations in 16 markets, and annual revenues roughly twice that of its nearest Spanish-language competitor. [5]

Univision also benefits from its longstanding economic ties with Grupo Televisa, the dominant Mexican television group and the largest producer of Spanish-language programming in the world, and with Venevision, Venezuela's leading Spanish-language programmer. [6] Already,

---

[2] *See* Broadcasting & Cable, *Top 25 Radio Groups* (September 9, 2002).

[3] Univision Communications, Inc., SEC Annual Report at 3 (submitted March 24, 2003) ("Univision's 10-K"). As a submission to another government agency, Univision's 10-K is subject to official notice, a point on which Univision appears to agree. *See, e.g.*, Univision *Ex Parte* Filing at 4 (submitted July 23, 2003). Univision's 10-K is available through www.freeedgar.com.

[4] *See id.* at 8.

[5] *See* Broadcasting & Cable, *Top 25 Radio Groups* (September 9, 2002).

[6] *See* Morgan Stanley Research Report, *Grupo Televisa: Proxy for Mexico's Economy* (dated July 30, 2003). Consistent with the vertical integration that is the hallmark of Univision's holdings, Televisa also is the world's largest Spanish-language magazine publisher with 50 titles distributed in 18 countries. *See* http://www.esmas.com/televisahome/empresa. The close ties between Univision and Televisa have dated to the beginnings of Univision. *See, e.g*, *Spanish International Communications Corp.*, FCC 86D-1 (ALJ, Jan. 8, 1986) (¶ 186), *mooted by Spanish International Communications Corp.*, 1 FCC Rcd 92 (Rev. Bd. 1986), *aff'd* 2 FCC Rcd 3336 (1987) *and Preservation of Hispanic Broadcasting v. FCC*, 931 F.2d 74 (D.C. Cir. 1991) (en banc). The ties continue; for example, just last year, Univision bought Televisa's music group. *See* Univision 10-K at 3, 4. Univision's ties with Venevision parallel its ties with Televisa, including the parties' exclusive programming arrangement and Venevision's longstanding investment in Univision. *See id.* at 11.

between Univision's music group and Univision's exclusive relationship with Televisa and Venevision, Univision is vertically integrated with nearly all of its programming sources and U.S. broadcast distribution outlets.

The only missing piece – Spanish-language radio – will be filled in if the proposed merger goes forward. By acquiring HBC, Univision will have substantial interests in not only the nation's first and third largest Spanish-language television networks, but also the nation's first and third largest Spanish-language radio groups. Univision claims that this merger is necessary in order to ensure that it can compete with English-language media groups, even though Univision already boasts that more Hispanics watch the Univision Network in each daypart than ABC, CBS, NBC, FOX and Telemundo, combined. [7] But the practical impact of the merger is to ensure that Univision will face only limited competition for the nation's underserved Spanish-speaking media consumer.

The evidence on the record in this proceeding offers compelling evidence that the Spanish-language media is distinct – especially from the perspective of the consumer – and far more similar to the limited media available to English-language consumers in the 1970s than today's vibrant and diverse English-language media marketplace. [8] If the Commission reviews the proposed merger in the context of competition and diversity within Spanish-language media, the proposed merger, based on the Commission's precedent, clearly warrants further Commission review, regardless of the status of the Commission's ownership rules. [9]

But the proposed Univision-HBC combination's dominance of U.S. Spanish-language broadcast media is just one of the unique aspects of this merger. Even if the Commission believes that many Spanish-language consumers and advertisers routinely can access general-language media, and that the proposed merger's impact on Spanish-language media does not compel separate consideration, these additional unique circumstances, including millions of Spanish-language consumers who rely on Spanish-language media, mandate Commission action.

---

7 *See* Univision 10-K at 4-5, 10-11; http://www.univision.net/jsp/en/ir.jsp.

8 *See, e.g.*, Spanish Broadcasting Systems, Inc. ("SBS") *Ex Parte* Filings, MB 02-235 (submitted July 14 & 21, 2003). Even supporters of the merger agree that huge numbers of consumers depend on Spanish-language media for their news and information. According to a press report released yesterday, Harry Reid has noted in a letter to Chairman Powell that "over 300,000 persons" in Nevada alone "rely on Spanish-language media," which, as Nevada has no Spanish-language daily newspaper, means Spanish-language broadcasters. *See Broadcasting & Cable TV Fax* at 2 (Aug. 20, 2003).

9 *See Application of Air Virginia, Inc. and Clear Channel Radio Licenses, Inc.,* Hearing Designation Order, 17 FCC Rcd 5423 (2002) (designating proposed radio acquisition for hearing based on dominance of top two competitors in relevant market); *cf.* Telemundo *Ex Parte Filing*, MB 02-235, Attachment at 8 (submitted June 27, 2003) ("Telemundo June 27 Filing").

Most important from the perspective of the Spanish-only consumer, Univision (or Univision-associated companies) have a history of exclusive relationships or other activity that threatens both content diversity and competition, including:

- *Exclusive Televisa and Venevision Relationships.* Grupo Televisa ("Televisa") is the world's largest producer of Spanish-language programming, producing roughly 47,000 hours per year. Venevision is Venezuela's largest producer of Spanish-language programming. Univision has a unique and exclusive relationship with both Televisa, which is controlled by the same family that drove the creation of Univision, and with Venevision, which has had investments in Univision for more than a decade.

  The result? Only Univision can show any Televisa- and Venevision-produced programming within the continental United States.

- *Exclusive Talent Arrangements.* Univision has a unique and exclusive relationship with its (and its investors') talent, which precludes newsworthy personalities from, for example, Univision television, Televisa or Univision Music Group from appearing on Telemundo. Accordingly, Telemundo is not able to interview Univision celebrities. Conversely, Univision self-censors its own coverage to eliminate any possible reference to Telemundo, despite the harm to its own news coverage.

  The result? Univision can control what the public hears on-camera from its talent and where its talent chooses to appear.

- *Recent Anticompetitive Activity by Univision-Affiliated Radio Groups.* Telemundo relies heavily on radio to attract new viewers. Because radio is the most critical means to reach Spanish-speaking television viewers, 74 percent of Telemundo's total corporate advertising budget in 2002 was spent on radio. However, during the last three years, Entravision radio stations in multiple key markets have rejected Telemundo advertising. In Denver, Entravision radio stations – which now comprise three-fifths of the Spanish-language full-power commercial radio outlets in the market – refused all advertising from Telemundo's owned and operated KMAS-TV (and its associated low-power station) for nearly a year. In El Paso, Entravision radio stations – which, combined with HBC, now comprise roughly 83 percent of the Spanish-language full-power commercial radio outlets in the market – simply rejected advertising requests from Telemundo's full-power affiliate.

  The result? Spanish-only consumers in these markets had virtually no way to learn about upcoming Telemundo programming except through Telemundo.

Collectively, these unique aspects of the proposed merger (even beyond issues of market share) will result in merger-specific public interest harms that compel Commission intervention. The Justice Department has concluded that Univision's acquisition of the nation's largest Spanish-language radio group along with Univision's existing stake in the nation's second largest Spanish-language radio group is anticompetitive. Justice accordingly has conditioned its approval through a formal consent decree (the "Consent Decree"). Pursuant to these conditions, Univision has six years to reduce its economic stake in Univision and eliminate all formal means of direct Univision control over Entravision. However, the conditions imposed by Justice are necessarily limited by its more limited – for purposes of media transactions – merger review. It has been Commission policy to review mergers under a more comprehensive standard in order to protect the broader public, as well as advertisers. As Chairman Powell has noted: [10]

> Unlike antitrust agencies, which focus solely on whether the effect of a proposed merger "may be substantially to lessen competition," the Commission must examine other factors. Indeed, the Communications Act compels us to consider the broad aims of "ensuring the existence of an efficient, nationwide radio communications service" and promoting locally oriented service and diversity in media voices. In short, the Communications Act does not permit the Commission to turn a deaf ear to radio listeners. Thus, while our competitive analysis is informed by antitrust principles, our ultimate obligation is to consider the potential benefits and harms of the transaction on the listening public.

In particular, the Commission has long recognized that past (and ongoing) conduct detrimental to content diversity, competition and the public interest may justify conditions on a proposed merger. [11] At a minimum, the Commission should condition any approval of the proposed merger on the following three requirements:

- *Competitive Access to Talent.* Univision should pledge that it will not negatively influence the decision of any talent under contract with Univision or any company affiliated with Univision (including Televisa or Venevision) against making special or one-time-only appearances, such as interviews or entertainment awards programs, on Univision's Spanish-language competitors.

- *Competitive Access to Radio Promotion.* Univision should pledge that no radio station in which it has any ownership interest will discriminate on prices, terms or conditions (including on the basis of number or timing of spots, rates, delivery or

---

[10] *Application of Air Virginia, Inc. and Clear Channel Radio Licenses, Inc.,* Hearing Designation Order, 17 FCC Rcd 5423 (2002) (Separate Statement of Chairman Michael Powell).

[11] *See, e.g.*, *Policy Regarding Character Qualifications in Broadcast Licensing*, Notice of Inquiry 87 F.C.C.2d 836 (1981) (indicating that recent past conduct that limits diversity and recent past anticompetitive conduct "raises the inference that the applicant will attempt such behavior in the future"). *Cf. Melody Music, Inc.*, 2 FCC 2d 958 (1966) (confirming that " it is appropriate and necessary for the Commission to examine an applicant's past conduct in order to determine the nature of applicant's probable future performance as a licensee and the likelihood that applicant will operate its broadcast station in a manner to serve the public convenience, interest, or necessity."); *KFKB Broadcasting Associations, Inc. v. Fed'l Radio Com'n*, 47 F. 2d 670 (1931) (establishing as early as 1931 the principle that "an applicant's past conduct is an important consideration in passing on an application").

other material term) against the purchase of radio advertising time by any other Spanish-language television entity, including Telemundo. This no-discrimination principle means that all relevant radio stations should be required to bargain in good faith with regard to such advertising.

- *Cross-Media Joint Sales Ban.* Univision should agree that it will not joint sell any television property in which it has an ownership interest and any radio property in which it has an attributable interest. As a necessary means of enforcing this pledge, Univision should agree to maintain separate sales staff for its television and its radio operations.

A review of each of these conditions demonstrates why each is necessary to protect the public interest from multiple and significant merger-specific harms.

1. *Competitive Access -- Talent.*

Univision obstructs the free flow of information and programming to U.S. Spanish-language consumers in two direct ways. First, it has an exclusive programming agreement with Televisa and Venevision within the continental United States.[12] The effects of such exclusivity

---

[12] Although certain exclusivity agreements may benefit the public interest, these agreements appears aimed only at preserving Univision's position in the U.S. market. One, they are unusually long-term: the agreement commenced in the 1980s and, after a recent extension, is to run through 2017. *See* Univision 10-K at 11. Two, neither agreement is necessary to the survival of either programmer, as each dominates Spanish-language television programming in its respective country of origin. Three, the agreements apply to all Televisa and Venevision programming within the continental United States, even that which never airs on a Univision broadcast network. *See id.* at 11. ("The Program License Agreements provide Univision Network, TeleFutura Network and Galavisión with access to programming to fill up to 100% of their daily schedules. . . . [However,] Televisa and Venevision programming represented approximately 32% and 19%, respectively, of Univision Network's non-repeat broadcast hours in 2002. Televisa and Venevision programming represented approximately 20% and 2%, respectively, of Telefutura Network's non-repeat broadcast hours in 2002. The Program License Agreements allow the Company long-term access to Televisa and Venevision programs and the ability to terminate unsuccessful programs and replace them with other Televisa and Venevision programs without paying for the episodes that are not broadcast.") Accordingly, the Univision 10-K confirms that Univision affirmatively warehouses much Televisa (and Venevision) programming, which means much of it is never aired in the United States. *See also* SBS July 14 Filing at Declaration of Alan Sokol (¶ 11) ("Sokol Declaration") (confirming that Televisa programs not shown by Univision are not made available to other broadcasters). In other contexts, the Commission has concluded that exclusive agreements that preclude programming from being shown to particular consumers are contrary to the public interest. *Cf.* 47 C.F.R. 76.1002(c)(1) (prohibiting exclusivity in areas where operator does not distribute programming); *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992*, First Report and Order, 8 FCC Rcd 3359 (1992) (¶ 16) (finding exclusivity agreements that foreclose programming to certain areas to be "illegal *per se*" and

cannot be overstated. Televisa is the largest producer of Spanish-language programming in the world: [13] Televisa produces 10 to 12 novelas annually, whereas the sole independent Mexican program producer might complete one to two. [14] A recent study confirms that Televisa produces, on average, approximately 47,000 hours of original Spanish-language programming per year. [15] Televisa programming is both familiar to and popular with virtually all recent Spanish-speaking immigrants to the United States. Univision's exclusive control over Televisa programming is critical to Univision's Spanish-language market position: in Puerto Rico, where the Telemundo station has an anomalous and soon-to-expire programming agreement with Televisa, the Telemundo station leads the market. [16]

Second, Univision seeks to reinforce its stranglehold on critical Spanish-language content by limiting the appearances of its (or Televisa's) entertainment on Telemundo, Univision's sole national Spanish-language television competitor. Univision's control of the public appearances of its entertainment talent – including talent in Televisa's hugely celebrated novelas -- is unique in today's U.S. television market. And it is no secret, either to the talent or to the public. [17]

"not . . . justified under any circumstances"*)*. In the unique circumstances of this case, all U.S. broadcast consumers are held hostage to Univision's control of Televisa programming. Accordingly, a condition that would limit Univision's exclusivity rights in order to allow other broadcast networks to air programming that is not aired shortly after production on the Univision or Telefutura broadcast networks would help to protect all U.S. consumers, facilitate Spanish-language diversity and competition and be consistent with Commission policy.

[13] *See* Morgan Stanley Research Report, *Grupo Televisa: Proxy for Mexico's Economy* (dated July 30, 2003).

[14] Novelas are *the* critical element in Spanish-language programming. As Univision's corporate web site notes, "Novelas have outdelivered the Super Bowl in reaching Hispanic adults." *See* http://www.univision.net/jsp/en/ir.jsp.

[15] *See id*

[16] *See* Attachment 2, Affidavit of Ibra Morales at 1.

[17] Recent television and newspaper stories have addressed this problem. *See* Eduardo Porter, *Univision Keeps A Short Leash On Its Stars*, Wall St. J., at B1 (July 25, 2003) (submitted to record by Media Access Project on July 25, 2003). The attached videotape, which consists of subtitled footage developed by journalists for Cotorreando, a Telemundo entertainment news program, includes five clips of Univision or Televisa Spanish-language stars who expressly decline interviews because the interviewer is working with Telemundo (the "Cotorreando Videotape"). These statements merit inclusion in the record of this proceeding. *See, e.g.*, *Echostar Communications Corp. v. FCC*, 292 F.3d 749, 753 (D.C. Cir. 2002) (allowing evidence in administrative merger proceeding if it bears sufficient indicia of reliability). An analogy in the English-language market would be if NBC told Lisa Kudrow, Jennifer Aniston or Noah Wyle that they never could appear on David Letterman or talk to Entertainment Tonight.

Conversely, Univision routinely alters its coverage of news or other events in order to excise any mention of Telemundo or Telemundo celebrities, and refuses to cover Telemundo talent.[18] The result is that many consumers cannot learn the whole story from Univision, which especially injures those viewers who have no other option for accessing such information. Such extreme measures not only reflect badly on Univision's commitment to provide complete information to its audiences, but also demonstrate what Telemundo believes to be an unprecedented level of routine corporate interference in the delivery of news and information. Neither serves the public interest.

Maria Celeste Arraras, formerly of Univision, confirms Univision's express control of its talent's public appearances. Celeste, who now is the host of the Telemundo news and entertainment program "Al Rojo Vivo," had worked for Univision for approximately 12 years. While with Univision, she was repeatedly warned not to appear on Telemundo air for any reason.[19] The problem is ongoing. The producer of Al Rojo Vivo has confirmed that in the past 16 months "booking interview with talent that works for Televisa has been close to impossible" and attempts to book Univision talent have met "with no success." Al Rojo Vivo has had similar issues with Univision-associated music talent.[20] As the Cotorreando Videotape demonstrates, Univision's restrictions preclude both unscheduled or impromptu interviews as well as scheduled sessions. Accordingly, Al Rojo Vivo and other Spanish-language television interviewers unaffiliated with Univision have no on-camera opportunity to speak to such talent, and the talent, in turn, has scant opportunity to tell their views to the public on any Spanish-language outlet that is beyond Univision's influence.

The prohibitions even extend to appearances at events to be shown by Telemundo. For example, on May 14, 2003 Telemundo and "People En Espanol" hosted an event to celebrate "People En Espanol's 25 Most Beautiful Latin People." "People En Espanol" is the largest Spanish-Language Magazine Publication in the United States, and being honored at this event is an important event for a celebrity. The event was to be aired on Telemundo. None of the five Univision or Televisa stars to be honored attended.

The result is not merely Telemundo's lost access to hundreds of Spanish-language stars, but an obvious loss of program and viewpoint diversity. Under current FCC policy, a single owner is assumed to have a single viewpoint. But, among all Spanish-language television, only Univision owned outlets routinely can interview Univision-affiliated celebrities. Accordingly, non-Univision Spanish-language television networks are effectively denied the opportunity to

---

[18] *See* Attachment 3, Affidavit of Maria Celeste Arraras at 1.

[19] *See id.* at 1.

[20] *See* Attachment 4, Affidavit of Sairy Perez.

ask the questions that Univision's own hosts may not think (or may think not in Univision's interests) to ask. [21]

The merger will exacerbate the problem. The acquisition of HBC will expand – to HBC's radio celebrities – the list of Spanish-language celebrities unable to appear on Telemundo. Further, the merger will likely eliminate any real chance that Univision will end its exclusionary practices. Following the merger, Univision can promote its talent on two of the three leading U.S. Spanish-language television broadcast networks and two of the three leading U.S. Spanish-language radio groups without involving any entity in which Univision does not have an ownership interest, as well as block any efforts by Telemundo to do likewise. Accordingly, the merger ensures that Univision's "internal" promotional reach is so great as to diminish any need for Spanish-language promotional appearances outside the Univision family of companies.

The condition will specifically address the further loss of content diversity and information that will result from the merger. Put simply, the condition will enable Univision talent, rather than Univision, to decide whether to make a special appearance on other media outlets. Telemundo recognizes that Univision talent may not choose to respond to every independent request. Telemundo also recognizes that the proposed condition does not require Univision to represent Telemundo appropriately in the information it provides to its consumers. However, the Commission should expect that the condition will result in a significant increase in the number of special appearances or even impromptu interviews made by Univision-associated talent on Telemundo, which will facilitate better information reaching Spanish-only and other television consumers.

2. Competitive Access -- Telemundo Promotional Advertising.

The numbers tell the story. The Spanish-language – particularly the Spanish-dominant – consumer depends heavily on broadcast media for information. According to recent reports, a higher percentage of U.S. Hispanics watch television or listen to radio than the general population.[22] Conversely, a significantly lower percentage read newspapers or access the

---

[21] This loss of diversity is not cured by the occasional English-language television appearances of these celebrities. First, English-language media are, in general, not as familiar with the celebrities' work or circumstances and may not ask questions that evoke new information. Second, unlike Spanish-language television, English-language television rarely seeks to interview foreign celebrities. Even English-language appearances for U.S. Spanish-language celebrities are far less common than Spanish-language appearances could be without Univision's interference. Third, the interviews are conducted in language that many Spanish-language consumers do not understand, which limits the accessibility of the information (and, in the case of certain stars, may limit or even preclude such interviews).

[22] *See* Telemundo June 27 Filing, Attachment at 4. Notably, nearly 20 percent of Spanish-dominant television households watch *only* Spanish-language television. That sizeable subset – which includes millions of U.S. consumers – compels special Commission consideration.

Internet: in 14 of the top 20 Spanish-language markets, there is no daily Spanish-language newspaper.[23]

For Telemundo, these numbers mean that the only way for a Spanish-language television entity to reach new viewers is through Spanish-language radio, as no Spanish-language television entity will sell promotional time to a direct competitor. In 2002, nearly three-quarters -- 74 percent -- of Telemundo's advertising budget was spent on radio.[24] Of that amount, 47 percent was spent on HBC stations, which owns approximately 42 Spanish-language full-power commercial radio stations in multiple Telemundo O&O markets. Another 10 percent was spent on Entravision, which owns 27 such stations in these markets. The combination of HBC and Entravision account for roughly 57 percent of all Telemundo radio advertising purchases.[25] Through these ad buys, Telemundo is able to reach potential new viewers, which is critical to attracting more advertisers and developing more innovative programming. Such promotions also directly serve the public interest in diversity: without such promotions, the public – especially the Spanish-only public, which has limited or no understanding of English-language programming – is unlikely to be aware of new content. (Indeed, the reason Telemundo spends millions of dollars on promotions is to increase viewers' exposure to such content.)

Following the transaction, however, Univision will become the gatekeeper to Spanish-language radio in multiple key markets. Again, the numbers are troubling:[26]

- In 7 of the 13 markets where Telemundo has a full-power O&O, HBC and Entravision collectively own more than 50% of Arbitron-rated Spanish-language radio stations in the market;

- In four of these markets (Denver, San Francisco, Phoenix and Dallas), HBC and Univision combine to own at least 60 percent of the Spanish-language outlets;

---

[23] *See id.*

[24] This calculation is from Telemundo's internal data, and includes monies spent by corporate or the Telemundo network in markets where Telemundo's O&Os are located. *See* Attachment 5, Affidavit of Marlene Moreno at 1 ("Moreno Affidavit").

[25] Telemundo also spent about 30 percent of its 2002 radio ad dollars on Spanish Broadcasting Systems, which has stations in only seven markets, including Miami and New York, and between 3 and 6 percent on each of Radio Unica, Liberman and Futbol de Primera. *Id.*

[26] *See* Attachment 6 ("HBC-Entravision Radio Matrix"), as derived from www.InsideRadio.com at Ratings (detailing programming and ratings of every rated commercial station for Spring 2003 sweeps). In television markets that included multiple radio metros, the market used attempted to reflect the radio market most critical to the Telemundo station at issue.

- In two of these markets – Dallas and Phoenix -- HBC and Entravision own all but one – or roughly 90 percent -- of the Spanish-language radio outlets.

- The dominance is not limited to Telemundo O&O markets. In El Paso, for example, the HBC-Univision-Entravision axis will control 83 percent of the Spanish-language radio outlets.

If Univision's past practice is any indication, it will wield this new power to further restrict or deny access.

It is widely known that radio stations associated with Univision have rejected Telemundo advertising outright for substantial periods. Two examples are telling. In December 2000, Telemundo launched its full-power Denver O&O. At this crucial point for a successful entry, Entravision's stations – which now comprise 60 percent of all Spanish-language radio in the Denver market -- rejected all advertising from Telemundo's O&O (and an associated low-power station) for ten months, until September 2001.[27] Then, after a few weeks of accepting Telemundo ads, the radio stations refused to accept any Telemundo's November sweep promotionals, and again dropped all Telemundo ads. The matter was resolved only after Telemundo pulled all ads on Entravision's radio stations in other markets – including Chicago, Los Angeles and San Francisco -- where Entravision competed against HBC stations.

More recently, while this merger was pending, Entravision El Paso radio stations refused to accept promotional spots from a Telemundo affiliate.[28] In January 2002, Council Tree Communications acquired full-power Station KTYO(TV), El Paso, Texas. In April 2003, Council Tree tried to advertise on Entravision's radio stations, but when it became clear that the client would be KTYO, Entravision refused. At that time, Entravision personnel explained that it was withdrawing its offer because of the competition between Telemundo and Univision (and Telefutura). Accordingly, the Station is still not able to advertise on Entravision's radio stations in the market. Instead, the Station has devoted more than 50 percent of its media advertising budget to the three HBC El Paso Spanish-language radio stations. Based on its ongoing experiences with Entravision, Council Tree expects that, upon Univision's acquisition of HBC, Council Tree will no longer be able to promote Telemundo on either HBC or Entravision in the El Paso market unless the Commission intervenes. That means that Council Tree will have access to only one U.S. Spanish-language full-power radio station.

The repeated exclusion of Telemundo advertising from Entravision stations – in which Univision had a substantial attributable stake – offers a clear lesson: radio stations associated with Univision can and will choose to deny Telemundo advertising at any time. And, just as the

---

[27] The Denver market is the lone Telemundo O&O market in which Entravision, without HBC, owns more than half of the Spanish-language radio outlets. Following the proposed transaction, Univision-HBC-Entravision, on average, will hold 55 percent of the Spanish-language radio stations in Telemundo O&O markets. *See id.*

[28] *See* Attachment 7, Affidavit from Julie Scheff.

Commission has concluded that cross-promotions serve the public interest in the case of a merged entity, a radio entity's extended refusal to accept a television station's efforts to cross-promote must be deemed a significant public interest harm, both for reasons of diversity and competition.

The proposed merger significantly increases the likelihood and severity of this harm. First, HBC, by virtue of the location and quality of its stations, is a far more important means of promotion than Entravision. Second, Telemundo will lose the ability to use its access to an independently-owned HBC to counter Entravision's exclusionary tactics. Third, these recent events demonstrate that there is a point when Telemundo cannot simply shift blocked advertising to other radio stations in the same market. In Denver, for example, Telemundo was not able to replace the lost access by shifting advertising dollars to another Denver radio station from Entravision -- which owns 60 percent of the Spanish-language radio stations in Denver.[29] Following the proposed deal, Univision-HBC-Entravision will control approximately 55 percent of all of the rated commercial Spanish-language stations in all Telemundo O&O markets -- a number that is dangerously close to the Denver threshold. In particular markets, the numbers are much worse. For example, in Phoenix, where Telemundo is again trying to develop new television competition to Univision, Univision post-merger will have an ownership stake in nearly 90 percent of the rated Spanish-language full-power radio stations.

Abstract theory suggests that HBC-Entravision's market dominance will not endure: new entrants will enter the market; anticompetitive practices by Univision will cause audience to shift to alternatives; and, as the final stopgap, Univision will reduce its level of influence in Entravision. In reality, however, all three are highly unlikely at least for the next several years. As to the first, even extreme anticompetitive conduct by Univision against Telemundo *alone* is unlikely to attract new entrants -- and new ways to access the Spanish-only audience -- into a market. As to the second, there is no basis to expect that listeners will shift to a new upstart Spanish-language radio station (or an English-language station) simply because a Univision-associated station refuses to carry Telemundo's promotional content. Third, for another six years, Univision can maintain an interest in Entravision higher than what the Justice Department has deemed acceptable on antitrust grounds. And even when Univision's required divestiture is complete, the lingering effects of Univision's influence – through its economic stake, its national representation of Entravision's television stations, its historic ties – cannot help but endure.

During this entire period, the losers will be the public, especially that public that speaks only or principally Spanish. In a number of other contexts, the Commission has recognized that an entity that acts as a gatekeeper for a particular subset of consumers and that has reasons to reject certain programming should be limited in its ability to do so. [30] Here, Spanish-only

---

29 *See* Moreno Affidavit at 2. As Moreno notes, in 2002, Telemundo spent nearly 75 percent of its Denver radio promotional budget on Entravision stations.

30 *See, e.g.*, 47 C.F.R. 76.1000, *et. seq*. Commission policy in many contexts has been consistent on this point: when a party with entrenched market position "has the incentive and ability to act anticompetitively," the Commission has instituted structural and nonstructural safeguards to limit the harm of such activity. *Amendment of the Commission's Rules to*

consumers rely on radio advertising as the only broadcast means to hear about new television programming. In many markets, this means that they have no real choice but to listen to Univision-associated stations. Univision's gatekeeping capability and Entravision radio stations' past refusals to accept ads from Univision's leading television competitor compel the proposed competitive promotional access condition, which directly addresses the real danger that the proposed combination will substantially further limit public awareness of the alternate content available.[31]

Finally, this condition will not pose a significant burden to Univision or Entravision. An HBC spokesperson has publicly and recently asserted that the company does not plan to turn away Telemundo's promotions.[32] In such unique circumstances, there is no public interest harm in ensuring that HBC follows through on this pledge indefinitely, and that Entravision stations fulfill this commitment until the Consent Decree is terminated.

3. Cross-Media Joint Sales Ban.

In a typical merger, cross-media joint sales are presumptively a benefit to the public and to advertisers. Several unique circumstances of this proposed transaction, however, indicate that the Commission should prohibit cross-media joint sales between Univision-owned television stations and HBC radio stations, at least until Univision has fulfilled all the conditions specified in the Consent Decree:

- In part because of a waiver of the Commission's national sales network representation rule, Univision serves as the national sales representative for Entravision's television stations. That means that any effort by Entravision to sell its television and radio stations jointly on a national basis requires communications with Univision. However, under the Consent Decree, Univision will be prohibited from communicating with Entravision regarding any Entravision's radio advertising sales. Accordingly, if this merger is consummated, Univision will be able to conduct joint national sales operations with its television stations and the HBC radio stations, but Entravision will not.

Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, 12 FCC Rcd 15,668 (¶ 69) (1997). In this case, Univision's consistent exclusionary practices – even extending to its leading Internet portal, Sokol Declaration at ¶ 16 – those practices' effect on program diversity, and Univision's dominance with regard to Spanish-only consumers is more than sufficient basis for Commission action.

31 As part of this condition, the Commission should indicate that Telemundo's insistence on a strict confidentiality clause between HBC and other arms of the Univision octopus is not an acceptable reason for HBC to discriminate against Telemundo. *See infra* discussion of cross-media issues.

32 Eduardo Porter, *NBC, Telemundo Oppose Merger Univision Plans*, Wall St. J., at B3 (July 3, 2003) ("Telemundo also worries that Hispanic Broadcasting will stop airing Telemundo's ads, a charge that a Hispanic Broadcasting spokeswoman rejected.")

- Univision, by virtue of its position as Entravision's sales rep, has inside knowledge as to the level of demand and the going rate for Entravision television stations. That means that Univision will be able to prepare Univision's radio and television joint sales packages with full access to that information. That result will have adverse effects on both Entravision and the rest of Univision's competitors.

- Telemundo must buy time on HBC radio stations in order to attract new viewers. But any purchase of time on a Univision-controlled HBC station will unavoidedly reveal to Univision Telemundo's promotional strategy, which will facilitate Univision's counterprogramming against Telemundo. Confidentiality requirements would not provide sufficient protections: these requirements would be extremely difficult to enforce and necessitate pursuing costly and time-consuming legal action.

- To the extent the Commission has any doubt as to whether Spanish-language is a separate market, and yet approves the merger, the proposed condition is merely the bare minimum needed to protect competitors and advertisers alike.

Accordingly, the best way to address all of these concerns is a ban on joint sales of Univision's television and radio interests. As a logical outgrowth of that requirement, Univision should, as in the case of other joint sales bans, be required to have separate sales staff for its radio and its television properties so as to eliminate intra-company sharing of, for example, Telemundo promotional information. [33] This condition also will support the Justice Department's analysis of radio, including Spanish-language radio, as a market distinct from television.

Also, this result, unlike Commission action affecting the network sales representation waiver, is unlikely to have an adverse impact on Entravision. Entravision apparently benefits from Univision's national representation of Entravision's television stations or it would logically have already terminated that representation. Accordingly, any elimination of Entravision's ability to use Univision as a national representative is likely to harm Entravision. As a practical matter, a condition whose result is to harm Entravision makes little sense as a means of safeguarding Spanish-language consumers and others from inappropriate or unfair conduct by Univision.

---

[33] *See, e.g.*, *Telemundo Communications Group, Inc.,* Memorandum Opinion and Order, 17 FCC Rcd 6958 (¶ 52) (2002). *Cf. Satellite Business Systems,* Memorandum Opinion and Order, 62 FCC 2d 997 (¶ 132) (1977) (restricting joint efforts, including requiring separate staffs, between FCC regulatee and other entity lest dissemination of proprietary information impede competition in FCC-regulated area).

4. Conclusion

The Commission's "ultimate obligation is to consider the potential benefits and harms of the transaction on the listening public." [34] The proposed Univision-HBC combination will create an unprecedented opportunity for a single media entity to affect millions of consumers' primary or sole access to information and media content diversity. Both the record in this proceeding and Telemundo's own experiences confirm that this merger's impact on the United States' Spanish-language media market warrants separate Commission review. If Spanish-language media is separately considered for purposes of this transaction, the transaction, as a matter of existing Commission precedent, cannot be approved.

If, however, the proposed transaction is approved, it must impose the described protective conditions on the merged entity. Without such conditions, it will be extremely difficult for new entrants (or even Univision's existing competitors) to deliver diverse and quality programming to Spanish-only consumers within the United States. Each of these conditions will address a harm that is caused or significantly exacerbated by the proposed merger. Each of the conditions will protect the public interest, including diversity and competition. Each should be able to be enforceable by individual private parties through a complaint to the Commission, pursuant to established Commission complaint policies (including the right to request discovery).

---

[34] *Application of Air Virginia, Inc. and Clear Channel Radio Licenses, Inc.,* Hearing Designation Order, 17 FCC Rcd 5423 (2002) (Separate Statement of Chairman Michael Powell).

Accordingly, Telemundo respectfully requests that the Commission adopt the proposed conditions in the event it decides to approve the proposed merger.

Respectfully submitted,

/s/ F. William LeBeau .

F. William LeBeau

Senior Regulatory Counsel
Telemundo Communications Group, Inc.

Attachments

cc: ITS*
Chairman Michael Powell*
Commissioner Kathleen Abernathy*
Commissioner Kevin Martin*
Commissioner Michael Copps*
Commissioner Jonathan Adelstein*
Paul Gallant, Media Legal Adviser to Chairman Powell
Stacy Robinson, Media Legal Adviser to Commissioner Abernathy
Tony Dale, Interim Media Legal Adviser to Commissioner Martin
Jordan Goldstein, Media Legal Adviser to Commissioner Copps
Johanna Mikes, Media Legal Adviser to Commissioner Adelstein
Kenneth Ferree, Media Bureau Chief
Robert Ratcliffe, Assistant Media Bureau Chief
David Brown, Media Bureau*

* to receive copy of videotape noted in footnote 17