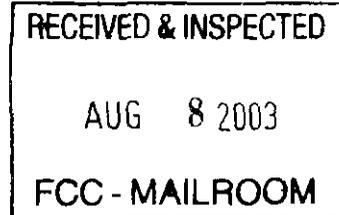


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August 5, 2003

Marlene H Dortch
Secretary
Federal Communications Commission
445 12th Street, S W
Washington, D C 20554

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

Dear Ms Dortch

We write this unsolicited letter as interested observers of the pending application to combine Univision Communications ("Univision") and the Hispanic Broadcasting Company ("HBC") as well as the related *ex parte* writing campaign designed to derail the pending merger. As practitioners in fields relevant to said proceeding (the initial undersigned is the owner of an advertising and marketing firm specializing in Hispanic media, and the latter undersigned is an attorney), and as Hispanic Americans, we have been taken aback by the tactics employed by certain non-parties to the proceeding. We write with specific reference to the July 16, 2003 letter to the Commission from Mr Philip L Veveer on behalf of Spanish Broadcasting System, Inc ("SBS") and a related submission entitled "Sociological Considerations Relevant to the Merger of Univision and HBC."

It is important to note at the outset the larger context behind said SBS-commissioned "academic study." The study, and the coordinated *ex parte* letter writing campaign associated with it, is simply an attempt by SBS to accomplish politically what it knew it could not accomplish legally. Typically in a merger pending before the Federal Communications Commission, a business competitor seeking to thwart a merger will file an official Petition to Deny with the FCC arguing for the rejection of the merger application. The Petition to Deny provides a merger opponent with an opportunity to state, for the record, the reasons why a proposed merger would not be in the public interest under the Federal Communications Act. Much like a pleading before a court of law, however, the burden of proof is on the petitioner to establish a factual basis showing that the proposed merger would not be in the public interest.

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(See Section 309(d)(1) of the Communications Act) Indeed, a merger opponent is obligated to articulate an argument against a merger by asserting facts that the opponent declares, under penalty of perjury, to be accurate. Mere allegations or conclusory statements without supporting evidence are simply not enough, nor should they be, for the FCC to deny an application. (See WFBM, Inc., 47 FCC2d 1267 (1974), at sec 2, see also License Renewal Applications of Certain Broadcast Stations Licensed for and Serving the Metropolitan Los Angeles, California Area, 68 FCC2d 75 (1978) (dismissing petitions to deny based on the failure to satisfy Section 309 (d), including lack of specific allegations of fact)

In the thirteen months since the FCC review of the Univision-HBC merger began, SBS has chosen not to file a Petition to Deny with the FCC, thus refusing to present its arguments against the merger in the manner provided by Federal law. From the conclusory statements and unsupported allegations contained in the "academic study" and related SBS *ex parte* submissions, SBS' refusal to mount a direct attack becomes somewhat understandable, for as further discussed below, the proffered arguments against the merger are each either false, flawed, or at best, inadequate. For example:

- The executive summary to the study, as provided by SBS's lawyer, Philip Verveer, is based on truisms and overgeneralizations all of which are not substantiated by hard evidence and all too often distort the arguments of the authors themselves. Despite the assertions and claims made in Mr. Verveer's letter, no evidence is provided to substantiate the argument that Hispanic Americans are not following a similar adaptation process that other immigrant groups follow. The cultural resilience of Hispanics as a group over time is shaped less by language factors than it is by a mix of historical factors, isolation, and socio-economic variables. Indeed, generationally-removed Hispanics are almost always completely fluent in English, even if they retain some linguistic ability in Spanish and high levels of ethnic and cultural identity.
- The authors have not established that Spanish-language news and public affairs programming is as "all important and as a unique source of information" as they assert. The assertion that Mexican Americans regularly and loyally depend on Spanish-language television and radio as an important source of news and information is more significantly understood as a function of immigration, recentness of arrival and relative isolation due to socio-economic factors. It is well understood that recently arrived Hispanics also receive information about "how things work" in this country from Spanish-language print, social service organizations, word of mouth, labor unions and churches. The reference to the authors' assertion regarding these concepts does not dispel what is known - all media impacts Hispanics as it does all other groups. It is neither a surprising nor a unique fact that Spanish-language broadcasts will impact the Spanish-language-dominant group of Latinos, and that English-language broadcasts will impact English-language-dominant Latinos. The loyalty to media claims as argued by Philip Verveer's summary of the authors' report is irrelevant to his conclusions and extraneous to the issue at hand.
- Contrary to Mr. Verveer's assertions, the Spanish-language population in the U.S. is hardly monolithic. The Spanish-language population is highly differentiated just as is the English-language-dominant sector of the Hispanic population. Indeed, many scholars argue that there is no such thing as a defining cultural reality. Verveer's assertions in this regard are even contrary to the opening section of the authors' study.

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- The authors' observations concerning the persistence of ethnic identity and their assertion that Hispanics have a cultural propensity toward maintaining ethnic identity is interesting, but the authors have failed to establish how this affects the relationship between Hispanic-oriented media and Hispanic socialization, nor have they established a demonstrable connection to the issue at hand. The main issue before the FCC is not ethnic identity or cultural maintenance, but language. Among Hispanic Americans, linguistic differentiation is prevalent. The authors do not provide evidence to support their conclusion that all information available to the Spanish-language-dominant audience will be controlled by any one entity. Their assertion that the merger "is not in the public interest" is not supported by any evidence.
- The authors discuss the diverse and complex attributes of the Hispanic population, but no demonstrable connection is made between this sweeping generalization and the authors' argument that a merger between Univision and HBC will necessarily lead to a "potential reduction in the opportunities for a wider diversity of creative voices in music, social, economic and cultural life," nor is evidence provided that this would be counterproductive to "the democratic process and the development of Hispanic Americans in the United States." Many factors can effect a reduction or expansion in diversity along the dimensions suggested by the authors. There is no empirical reason to suggest that the merger will necessarily or single-handedly effect a reduction in diversity of programming or creative voices.
- The first two pages of the authors' report are replete with overgeneralizations with respect to ethnic and cultural identity formation and maintenance. Their observations connecting these factors to the media are also problematic as well. Contrary to the authors' assertion, Univision recognizes diversity by producing local and competing news that is locally focused and the HBC produces music programs that are also regionally focused, thus both media sources are very popular in their respective markets. There is no evidence that the merger will necessarily cause a reduction in program diversity content or popularity.
- Similarly, the discussion concerning news and public affairs and entertainment programming, while thought-provoking, is not evidence in itself to suggest that the merger will necessarily have a negative or damaging impact on choices and programming available to the Hispanic audience. It is very likely that market driven forces could cause an expansion of formats and programming content, rather than a reduction, a mix of factors having nothing to do with the merger per se.
- The authors' assertion of different "potentially deleterious effects" on the Hispanic audience is not substantiated by evidence. It is not in the interest of the parties in the merger, nor is there any appearance that it is their intention, to provide fewer news and public affairs programming outlets because of the merger, nor does it appear to be the applicants' intention to reduce locally relevant and diverse programs in the Spanish language, or to dismiss or silence any person's or group's perspectives. Neither Univision nor HBC seek to "abuse its power to present its preferred images or symbolic representations at the expense of others" as the authors claim. The internal operations of any media company is determined by a combination of factors and do not necessarily result in a reduction in the frequency or quality of contacts between audiences and management.

- The study makes the brazen assertion that “[S]ince there are no studies on how the Hispanic American audiences are affected by mergers with this degree of concentration, it is impossible to conclude that the Univision-HBC merger would be in the public interest.” The reasoning here is that public policy cannot possibly be effectuated in the absence of some prospective “what if” sociological analysis. If this twist of logic were to be applied across the spectrum of public policy, as presumably the authors would similarly advocate, then most regulatory promulgations and perhaps all pieces of legislation across the land could not become law unless and until some far-reaching sociological investigation had been completed. Whether or not American law and rule-making should be thusly changed is far beyond the scope of the pending application, if not the authors’ study. If this logical extension of the aforementioned illogical assertion by the authors is indeed their intent, there are avenues available to them to have the Union’s fifty-one constitutions so amended.
- The concluding assertion that the merger should not be permitted at this time is a quantum leap from the body of the study. The authors are applying a standard not applied to other mergers, and they have not provided a reason to apply it in this case. The request that the FCC delay in making a decision is fundamentally based on a partisan opinion written on behalf of consultants who have been retained by SBS to bolster its position. In this capacity, the scholars have subsumed their academic credentials to a secondary role and thus have no legitimate claim that they bring an academic perspective to the FCC deliberations. By their own admission they begin their study with SBS’s position and seek to end their work with SBS’s conclusion. This approach would be unacceptable in academia and should likewise be rejected in the public arena.

In summary, the authors have not produced an academically credible, independent study nor have they produced evidence that the pending merger would necessarily result in a negative impact on Spanish-language and other Hispanic audiences. They certainly have not provided any evidence (beyond a string of assertions, overgeneralizations, and conclusions that do not necessarily follow from their assertions) demonstrating that the merger would be contrary to the public interest. The authors have not provided cause to delay or deny approval of the merger, nor have they provided reasonable grounds that a delay in approval should be made until further studies are conducted.

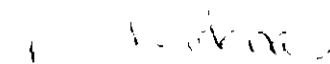
Clearly, to declare, under penalty of perjury no less, that the allegations contained in the “academic study” constitute accurate facts would be a risky business decision with potentially serious legal implications for the declarant. The real SBS game plan may be evident in the principal request made by the authors of the study to withhold approval of the merger until a far-reaching study of the sociological impacts of the proposed merger on the U.S. Latino population can be conducted. It may be that this SBS-subsidized “scholarship” is simply an attempt to somehow convince the members of the Commission to give someone the time to do such a study in order to, SBS would hope, come up with the factual “silver bullet” that has eluded SBS and their paid consultants for over a year. Thus the SBS-financed study may be nothing more than a ruse by which to buy time with which to try to prove what may not be provable. After all, if SBS and its allies, with all their resources, have not been able to demonstrate in over a year that the Univision-HBC merger is not in the public interest, and have chosen not to even try to do so with a Petition to Deny, it may simply be because the merger *is* in the public interest and they can’t fashion a *supportable* argument proving otherwise.

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We urge the members of the Commission not to be swayed by a "sociological study" of dubious origination and logic. The applicants have submitted information to the Commission suggesting strongly that the proposed merger will in fact be in the public interest. A business competitor has forsaken the opportunity to provide the Commission with a Petition to Deny which asserts data proving otherwise. The future of Hispanic-oriented media in the United States should not be determined by political hyperbole but by the very processes which our elected representatives have designed for the sake of open and fair deliberation.

Respectfully yours,



Rosalina Cardenas
President, The Right Cause



Frank Cardenas, Esq
Frank Cardenas & Associates