

August 27, 2003

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”) and Hispanic Broadcasting Corporation (“HBC”), we are writing to respond to last week’s thinly-veiled effort by NBC (nominally through its Telemundo subsidiary) to improve its competitive position at the expense of Univision, HBC, diversity, and ultimately, the public. Through a series of *ex parte* meetings at the Commission and an August 21, 2003 letter (“NBC Letter”), NBC, after remaining silent throughout the petition cycle, and for that matter, throughout the entire first year since the HBC merger was announced, has suddenly determined that the HBC merger will harm the public unless the applicants are burdened with unprecedented conditions on the grant. These proposed conditions provide no benefit to the public, but would be a competitive boon to NBC/Telemundo, which would itself never submit to such conditions.

While quite late to the party, NBC does have three things in common with the other major opponent to the merger, Spanish Broadcasting System, Inc. (“SBS”): (1) it is a competitor to one of the merger applicants that has a vested interest in preventing or hobbling the merger; (2) it is not a party to this proceeding, having declined to file a petition to deny; and (3) it was negotiating to acquire HBC when HBC announced that it was instead going to merge with Univision.¹ A fourth area that NBC and SBS appear to have in common is that neither saw any public interest harms from a Spanish-formatted radio/radio combination or a Spanish-formatted radio/television combination until they realized that they would not be in it.

Now, both of these jilted suitors appear to be taking the position that if they cannot have HBC, then nobody will. Worse, the Commission’s extended delay in acting upon the application

¹ See Declaration of Gary B. Stone attached hereto as Exhibit 1.

has emboldened these competitors to file an ever growing number of pleadings that have become so increasingly untethered from the actual facts, the law, or the jurisdiction of the Commission, that they would have been considered novelty pleadings if filed during the original petition window.

Now, however, NBC's August 21st submission raises the bar for sheer temerity, with one of the world's largest corporations, and the leading television company in the country, claiming that it is being brutalized by Univision, a company that is a fraction of its size, with the only solution being for the FCC to tie Univision's competitive arms behind its back so that NBC can finally have what it, and only it, considers a fair fight. NBC is correct that competition between Univision and NBC is a David and Goliath battle, but it fails to note that it is Univision, not NBC, that is being sent in with only a slingshot.

First of all, though NBC portrays Telemundo as being unable to survive without a government handout retrieved from Univision's pocket, it is worth noting that Univision's total assets are only 0.5% of the total assets of NBC/Telemundo's ultimate parent, General Electric.² NBC also makes much of the fact that Univision has an ownership interest of one type or another in 50 television stations, but fails to note that NBC/Telemundo has such ownership interests in over 90 television stations, and affiliation agreements with over 250 additional stations.³ Beyond that, NBC/Telemundo owns:

- The top-rated television network in the country;⁴
- The second-ranked Hispanic-oriented television network;⁵
- NBC News, the top-rated national nightly news broadcast;⁶
- NBC Studios, "one of the most prolific and successful television production companies in the industry" and recipient of 58 Emmy Awards;⁷
- NBC Cable, which has interests in A&E, which is available in over 85 million homes,⁸ the History Channel, which is available in nearly 80 million homes,⁹ and National Geographic

² See *Yahoo! Finance*, http://biz.yahoo.com/fin/l/g/ge_qb.htm and http://biz.yahoo.com/fin/l/U/uvn_qb.htm.

³ http://www.nbc.com/nbc/header/Corporate_Info2.shtml (visited Aug. 26, 2003) and Paxson Communications Corporation Form 10-K Annual Report (filed Mar. 31, 2003) at 6.

⁴ Bob Wright, Presentation at Banc of America Securities Electrical Equipment & Multi-Industry Conference, Aug. 1, 2003, *available at* http://www.ge.com/en/company/investor/investor_presentations.htm.

⁵ http://www.nbc.com/nbc/header/Corporate_Info.shtml (visited Aug. 26, 2003).

⁶ http://www.nbc.com/nbc/header/Corporate_Info5.shtml (visited Aug. 26, 2003).

⁷ http://nbcinternational25.console.net/international/nbc_studios.html (visited Aug. 26, 2003).

Channels International, which can be seen in 160 million homes in 143 countries and in 25 languages around the world;¹⁰

- MSNBC, through a partnership with Microsoft, a 24-hour cable news channel and Internet service viewed in 78 million homes;¹¹
- CNBC, a cable network reaching 175 million homes worldwide;¹²
- The Bravo cable network, which reaches more than 70 million homes in the U.S.;¹³
- NBC Sports, which has exclusive rights to numerous sporting events including every Olympic Game until 2014;¹⁴
- NBC Europe, which airs NBC programming to approximately 20 million homes in Germany, Switzerland, Austria, Poland, and the Czech Republic;¹⁵ and
- NBC Enterprises, which distributes NBC-owned products globally, including “foreign and domestic program syndication, strategic marketing, and ancillary exploitation of owned product in home video, merchandising, licensing, music, and publishing, as well as strategic production and co-production alliances and co-ventures.”¹⁶

While failing to even mention Telemundo’s connection with these vast programming, advertising, and promotional resources, the NBC Letter goes on to falsely state Univision’s viewership figures in an effort to portray Univision as an Hispanic leviathan. Specifically, the NBC letter states that the Univision Network “has a 70-plus percent Hispanic audience share”¹⁷ This statement is absolutely and categorically false. As demonstrated in the Nielsen data attached hereto as Exhibit 2, **the Univision Network’s share of Hispanic viewing is only 20%**, not the 70% falsely stated by NBC. In fact, even if the Telefutera Network’s Hispanic audience share is combined with

⁸ *Peabody Awards to be Televised*, Television Week, May 26, 2003, at 25.

⁹ Louis Chunovic, *Profile: Diane Donohue*, Electronic Media, Feb. 18, 2002, at 8.

¹⁰ http://www.nbc.com/nbc/header/Corporate_Info8.shtml (visited Aug. 26, 2003).

¹¹ http://www.nbc.com/nbc/header/Corporate_Info7.shtml (visited Aug. 26, 2003).

¹² *Id.*

¹³ http://www.nbc.com/nbc/header/Corporate_Info3.shtml (visited Aug. 26, 2003).

¹⁴ http://www.nbc.com/nbc/header/Corporate_Info6.shtml (visited Aug. 26, 2003).

¹⁵ http://www.nbc.com/nbc/header/Corporate_Info8.shtml (visited Aug. 26, 2003).

¹⁶ http://www.nbc.com/nbc/header/Corporate_Info.shtml (visited Aug. 26, 2003).

¹⁷ NBC Letter at 1.

that of the Univision Network, their **total** share of the Hispanic audience is still **just 25%**. Thus, 75% of Hispanic viewing is to *non*-Univision programming in both English and Spanish.¹⁸

NBC therefore premises its entire submission upon a false factual statement that overstates the Univision Network's Hispanic viewership by 250%. Starting with a false premise is certainly an easy way of reaching a false conclusion. But just where did the 70% figure come from? It would appear that NBC calculated this number by ignoring all Hispanic television viewing except for viewing of the Univision and Telemundo networks. In other words, if Hispanic viewing of all English-formatted broadcast networks, English-formatted broadcast stations, independent Spanish-formatted stations, Spanish-formatted networks other than Univision or Telemundo, and all cable viewing of any type in any language, is ignored, 70% of the remaining Hispanic viewing will be of Univision. This is of course a meaningless statistic, which could have been more accurately stated as "Univision Network programming is approximately twice as popular as Telemundo Network programming." That Univision is more successfully meeting the needs and interests of its target audience than NBC/Telemundo is hardly a reason for punishing Univision and rewarding Telemundo.

Moreover, that Hispanics make ample use of non-Spanish programming to meet their needs is demonstrated by the very fact that ignoring English-language viewing inflates the Univision Network's audience share from 20% to over 70%, thereby exploding the myth of a separate Spanish-language market. That Hispanics spend the *majority* of both their viewing and listening time with English-formatted stations is a cold hard fact that statistical manipulation cannot overcome.¹⁹

Thus, NBC rails against Univision's claimed dominance in a market curiously defined by neither viewers nor advertisers, and not even by station format, but by NBC itself. Obviously, it is easy to allege that every business in the world is a monopolist when its competitors are allowed to define the market necessary to self-servingly reach that result.

Having falsely stated the size of Univision's audience, NBC goes on to rationalize Telemundo's disappointing ratings by complaining about the Univision Network having obtained the U.S. exhibition rights to Televisa programming. In fact, NBC states that "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

¹⁸ While both NBC and SBS have implied that Univision somehow dominates the lives of the Hispanic populace, it is worth noting that the Univision Network's 20% share of the Hispanic viewing audience represents its share of those Hispanics *watching television*. However, even during the peak viewing hours of prime time, nearly *33 million* of the nation's 35.4 million Hispanics are *not* watching the Univision Network. Nielsen Media Research, NielsenTV Hispanic People Meter, June 30, 2003 – July 27, 2003.

¹⁹ Nielsen Media Research, NielsenTV Hispanic People Meter, Sept. 23, 2002 – May 11, 2003 and Arbitron, MaximiSer V9.0 MultiRanker Report Demographic, Winter 2003.

programming agreement with Televisa, the Telemundo station leads the market.”²⁰ Then, in a footnote, NBC goes so far as to suggest that the Commission condition a *radio merger* upon limiting Univision’s exclusive U.S. rights to Televisa *television* programming.²¹ Clearly, NBC is not concerned about the public interest, but its own self-interest.

As NBC itself notes, “certain exclusivity agreements may benefit the public interest”²² Certainly when NBC was the beneficiary of its “Must See TV” programming, it made no apologies to its competitors for its exclusive program rights, even though making such programming available to competitors would have certainly helped those competitors compete with NBC. Now NBC is attempting to introduce the concept of “Must *Steal* TV,” where NBC is permitted to violate valid programming contracts for its own benefit, but to the detriment of the public.

NBC’s facts are false and its logic horribly flawed. First, while NBC claims that Televisa programming is a magic bullet that ensures Univision dominance of an imaginary market, NBC notes in its own letter that Televisa programming represents less than one-third of Univision’s program schedule, and only one-fifth of Telefuturo’s program schedule.²³

Second, to support its assertion that Televisa programming is irresistible to Hispanics, NBC makes the claim quoted above that “in Puerto Rico, where the Telemundo station has an anomalous and soon-to-expire programming agreement with Televisa, the Telemundo station leads the market.”²⁴ This statement is false and leaves out a number of relevant facts. Univision has never owned a station in Puerto Rico, so the claim that the Telemundo station leads the market *because* of its access to Televisa programming is disingenuous. Telemundo has faced far less serious competition in Puerto Rico, so its success in that market demonstrates nothing about the effectiveness of Televisa programming. Confirming this fact, in February of 2002, Univision commenced a Time Brokerage Agreement to provide programming to Puerto Rico station WLII(TV). As Telemundo points out, Telemundo has exhibition rights to Televisa programming in Puerto Rico. Despite this fact, just four months later, WLII(TV) had moved from being the third-ranked station in the market to being the second-ranked station, and just three months after that, in September 2002, WLII(TV) became the top-rated station, where it has been ever since, consistently attracting more viewers than Telemundo station WKAQ-TV.²⁵ Thus, the NBC Letter not only falsely states that its Televisa-programmed station “leads the market,” but fails to note that it has been surpassed by a station using programming such as “The Simpsons” dubbed into Spanish. Far more important than any particular programming source is the need to adjust a

²⁰ NBC Letter at 7.

²¹ NBC Letter at n.12.

²² *Id.*

²³ *Id.*

²⁴ NBC Letter at 7.

²⁵ See Exhibit 3 hereto (Puerto Rico station ratings data from Mediafax, Inc.).

station's programming to meet the needs of its viewers. Televisa makes competitive programming, but the notion that Televisa programming must be spread among all competitors for competition to exist is just as false as would be similar claims regarding any particularly popular English-language program producer.

Third, and perhaps most amazing of all, is NBC's claim that violating Univision's U.S. exhibition rights would "facilitate Spanish-language diversity."²⁶ Having NBC invest its vast resources into developing new programming to compete with the Televisa programming would promote diversity. Having NBC say that it's just too hard to produce competitive programming and that it would prefer to share Univision's program sources does not promote diversity. In prior efforts to encourage program source diversity, "the Commission has felt that without diversity of sources, the variety of views would necessarily be circumscribed."²⁷ If, as NBC claims, it wishes to promote diversity, relying on a competitor's existing program sources, rather than using NBC's vast resources to cultivate new ones, is hardly the way to go.

Fourth, NBC was well aware of Univision's relationship with Televisa when it decided to acquire Telemundo, so it cannot now suddenly complain that it has no Televisa programming. Particularly informative in this regard is the statement by Bob Wright, NBC Chairman and Chief Executive Officer, just three weeks ago, stating that "[w]e thought quite frankly that we could catch up to [Univision] over time and save the \$6 billion differential that it would have [cost] for Univision."²⁸ NBC made the decision to save that money with full knowledge of Univision's relationship with Televisa. NBC's effort to obtain the Commission's assistance in purloining Univision rights that NBC was explicitly unwilling to pay for is an outrageous abuse of the Commission's merger approval processes. As the Commission has stated:

The filing of abusive petitions to deny as a vehicle to extort large settlement payments or force licensees into citizens' agreements can harm the public interest in several ways. Petitions are specifically intended to enable interested parties to provide factual information to the Commission as to whether grant of an application would serve the public interest. To the extent that they are used for other than their intended purpose, e.g., for private financial gain, to settle personal claims, or as an emotional outlet, the public interest is disserved. Beyond the costs to licensees and the public, consideration of meritless challenges wastes Commission resources.²⁹

²⁶ NBC Letter at n.12.

²⁷ Review of the Commission's Regulations Governing Television Broadcasting: Television Satellite Stations Review of Policy and Rules, 10 FCC Rcd 3524 (1995) at ¶ 61.

²⁸ Jesse Hiestand, *NBC Fuels GE Earnings*, Hollywood Reporter, Aug. 3, 2003.

²⁹ Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes, 5 FCC Rcd 3911 (1990) at ¶ 13 (footnote omitted).

Here, NBC's motives are even more transparent, arriving at the FCC with its wish list nearly a year after the deadline for petitions to deny, thereby avoiding the inconvenience of having to make its case on the record.

Finally, if as NBC claims, the public interest is disserved when a broadcaster acquires long term exclusive rights to uniquely attractive programming that is not made available to competitors, it is difficult to explain NBC's acquisition of the U.S. exhibition rights, in both English and Spanish, of every Olympic Game until the 2014 Olympics. Clearly, millions of television viewers want to watch Olympic programming, and it is unlikely that every event will or could be carried live by NBC and Telemundo. Therefore, under NBC's novel theory, NBC should be allowing competitors to carry all Olympic events not carried live by NBC and Telemundo, since large numbers of the public complain during every Olympics about events not covered, events that are tape-delayed, or events shown only in highly edited form. Univision believes it unlikely that NBC is willing to participate in such an arrangement, and there is no reason why NBC should expect Univision to do the same, since it defeats the very purpose of purchasing exclusive program rights. Moreover, NBC's \$2 billion purchase of the U.S. rights to carry the Olympics on Telemundo, rights that Univision could have never afforded, demonstrates that NBC is perfectly capable of acquiring very competitive programming for Telemundo without any outside assistance from the FCC.³⁰

Despite this, NBC has nonetheless arrived at the FCC with hat in hand, looking once again for a handout in the form of its three requested conditions. However, no matter how hard NBC rubs the FCC's lamp, the Commissioners are not genies, and they are not empowered to grant three wishes just because NBC asks. NBC's complaints have little to do with the HBC merger, and are instead focused almost exclusively on Univision's existing television network operations. NBC fails to demonstrate that its three requested "conditions" are in any way necessary, supported by the record, beneficial to the public, or connected to the application pending before the FCC in any way, shape, or form.

Fulfillment of NBC's Three Wishes is, at best, unprecedented, at worst, physically impossible, and at all times, unwise. Setting aside for the moment the lack of any basis to impose NBC's three suggested conditions, and certain limitations upon the Commission's jurisdiction to do so, NBC is unable to point to a single Commission precedent to support the imposition of such conditions on a merger applicant, much less a *radio* merger applicant. The Commission has repeatedly rejected "grab-bag" requests for conditions that are outside the scope of the merger application at hand.³¹

³⁰ See Mary Sutter, *Telemundo pumps original programming*, Variety, May 13, 2003. As James MacNamara, the president and CEO of Telemundo has stated, "the big NBC synergy is the Olympics.... Telemundo will air over 100 hours in August of 2004." *Id.*

³¹ See, e.g., *AT&T/TCI Merger Order*, 14 FCC Rcd 3160 (1999) at ¶ 37 (refusing to impose proposed restrictions that were "beyond the scope" of the Commission's Rules); *SBC/Pactel*, 12 FCC Rcd 2624 (1997) (rejecting competitors' numerous proposed conditions as unrelated to the

In this case, NBC's proposed conditions are:

1. "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."
2. "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 other material term) against the purchase of radio advertising time by any other Spanish-language television entity, including Telemundo."
3. "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 for enforcing this pledge, Univision should agree to maintain separate sales staff for its television and its radio operations."³²

In addition to being unprecedented and generally beyond the Commission's authority, NBC fails to explain how these conditions could be successfully implemented. For example, Univision must pledge that *every* radio station in which it has *any* interest will categorically refuse to discriminate against Telemundo no matter what the circumstances, even if Telemundo is refusing to take that radio station's own advertising. With Entravision radio stations being a prime example, Univision has no control over Entravision's radio advertising sales, and no power to force Entravision to take Telemundo advertising, FCC condition or not. Similarly, because NBC attempts to apply its proposed condition on mandatory celebrity access to any company "affiliated" with Univision,³³ it would have the FCC order Univision to provide access to employees that have no connection whatsoever to the FCC's jurisdiction, such as recording artists and internet columnists. This incredible overbreadth is not accidental, and is yet another effort on the part of NBC to obtain by regulation what it has not been able or willing to buy outright.

As NBC stated to the Commission in another context, "market forces coupled with antitrust enforcement are more than adequate to protect the agency's legitimate public interest

specific issues involved in the proceeding); BA/NYNEX, 12 FCC Rcd 19985 (1997) (rejecting a competitor's proposed conditions as irrelevant to the merger proceeding).

³² NBC Letter at 5-6 (emphases added).

³³ NBC fails to explain its claim that Televisa and Venevision are "affiliated" with Univision (thereby subjecting its talent to the same prohibitions), as Univision has no ownership interest in either of those companies.

objectives.”³⁴ That NBC has presented no “legitimate public interest objective” here is readily apparent, and if Univision foolishly causes its program talent to decline worthwhile promotional opportunities, then the market will certainly punish Univision for those missed opportunities. NBC can hardly claim that it lacks the resources to survive and prosper until that market adjustment occurs.

Finally, NBC, having failed in its bid to acquire HBC for itself, has apparently decided that it would be even better if Univision had to spend the money to acquire HBC, but was then prevented from benefiting from the merger through prohibitions on joint selling and unified sales staffs. However, even NBC admits that “[i]n a typical merger, cross-media joint sales are presumptively a benefit to the public and to advertisers.”³⁵ As is discussed below, NBC presents nothing to suggest that the HBC merger is anything other than “a typical merger,” and the only basis for NBC’s objection appears to be that although the joint sale of Univision/HBC advertising time will be a benefit to the public and advertisers, it will not be a benefit to NBC.

NBC’s suggested “Cross-Media Joint Sales Ban” is completely without basis. Before reading further herein, the reader should take a moment to read NBC’s argument in support of its proposed joint sales ban (NBC Letter at 13-14). The most succinct response to that proposal is that the supporting argument makes no sense whatsoever, being both internally inconsistent and premised on false assumptions. It appears that NBC decided such a ban would be a good idea for it from a competitive standpoint, and then attempted to come up with a rationalization for robbing Univision of the merger benefits enjoyed by competitors.

So exactly what is NBC’s basis for seeking a joint sales ban? It is based on three assertions. First, NBC claims that since Univision is the national spot sales representative for Entravision, and is prohibited by the Department of Justice merger consent decree from being involved in Entravision radio sales, Entravision will be unfairly prevented from jointly selling its television and radio advertising time. While NBC’s concern for Entravision’s ability to jointly sell its radio and television advertising is touching, it is also misplaced. Univision’s national spot sales representation agreement with Entravision already permits Entravision to make such joint sales (as Univision has no prior experience with radio advertising sales), and Entravision already engages in such joint sales regularly and will presumably continue to do so after Univision’s merger with HBC.³⁶

³⁴ Comments of NBC and Telemundo, et al., MB Docket No. 02-277, In the Matter of 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules, submitted January 2, 2003, at 58.

³⁵ NBC Letter at 13.

³⁶ See Declaration of Charles R. Stuart attached hereto as Exhibit 4. Besides being factually flawed, NBC’s argument makes no internal sense. NBC is arguing that it is so unfair to prevent Entravision from engaging in joint advertising sales that Univision should be prevented from doing it as well! Moreover, even if NBC’s factual premise had been correct, imposition of a joint

Second, in another show of sympathy for Entravision, NBC argues that Univision's access as national spot sales representative to pricing and demand information for Entravision television stations will allow Univision to price its own joint radio/television sales so as to undercut Entravision's sales. As an initial point, NBC needs to make its mind up about whether it wants to argue that Entravision is a key portion of Univision's alleged media empire (*see, e.g.*, NBC Letter at 1-2 and 10-11), or that the HBC merger is an insidious Univision plot to undercut Entravision advertising sales (NBC Letter at 13-14). Moreover, since Univision does not sell local television advertising time in any Entravision television market, there would not even be an opportunity to jointly sell television and radio advertising time in competition with Entravision joint advertising sales. Once again, NBC seems far more intent upon undercutting Univision's ability to compete with NBC/Telemundo than it does upon protecting Entravision.

NBC's third and final argument for a joint sales ban is that because Telemundo may choose to promote its television programming on HBC stations, Univision could learn Telemundo's upcoming promotional strategies through Telemundo's radio advertising purchases on HBC. NBC fails, however, to demonstrate how this "fact" has anything to do with whether the public is harmed by Univision selling television and radio advertising time jointly. Whether or not Univision engages in such joint sales makes no difference whatsoever with regard to whether Telemundo discloses its promotional strategies through HBC radio advertising purchases. As a result, the claim that Univision must be banned from joint radio/television advertising sales in order to protect Telemundo's secrets is a complete red herring.

Despite that fact, NBC tries to bootstrap from its baseless arguments for a joint sales ban to yet more overreaching sub-conditions:

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.³⁷

Since there is no basis for a ban on joint sales, the Commission need not consider NBC's "logical outgrowth" of a separate sales staff requirement. At any rate, NBC's suggested condition offers no benefit whatsoever to the public, which really does not care how Telemundo promotes its

sales ban on Univision would still not change Entravision's ability to engage in joint advertising sales. Once again, the beneficiary of such a condition would not be Entravision, but NBC.

³⁷ NBC Letter at 14 (citation omitted). It is not clear why NBC uses the phrase "for example" in describing Telemundo promotional advertising as a type of information for which it deems separate sales staffs necessary, as NBC's argument would not apply to any other type of information.

programming or whether Univision knows about it in advance. Altering the structure and capabilities of the entire merged company on the off-chance that NBC will want to put advertising dollars in the pocket of a competitor cannot be justified. NBC's statement that "cross-media joint sales are presumptively a benefit to the public and to advertisers"³⁸ is an accurate one and fully applicable here.³⁹ NBC must now decide whether advertising on post-merger HBC stations fits with its future promotional plans – the same decision that must be made by any broadcaster before buying promotional airtime on a competitor's station. If not, NBC will look to its ample alternatives in both Spanish and English for promoting its programming to Hispanic viewers. As the Commission recently wrote, "our duty as an agency runs to consumers, not advertisers."⁴⁰ NBC's proposed ban on joint sales yields no benefit to consumers, and provides a minor benefit to one specific potential advertiser at the expense of all other advertisers.⁴¹

NBC's claim that there are no other promotional alternatives to the HBC radio stations is patently false, and its suggested condition that Telemundo therefore be given a right of access to Univision radio advertising time is both unsupported and violative of the very principle of broadcasting. While the NBC Letter engages in extended ad hominem attacks upon Univision, far more telling is the fact that most of the actions of which it complains do not involve Univision in

³⁸ NBC Letter at 13.

³⁹ In previous mergers involving the combination of radio and television stations, the Commission has not imposed any conditions on the joint sale of advertising by the combined radio and television groups. See, e.g., Applications of Shareholders of CBS Corporation, 15 FCC Rcd 8930 (2000) (approving combination of CBS's 20 television stations and 162 radio stations with Viacom's 18 television stations, resulting in Viacom controlling radio-television combinations in 15 U.S. television markets); Applications of AMFM, Inc., Transferor, and Clear Channel Inc., Transferee, 15 FCC Rcd 16062 (2000) (approving the combination of AMFM's radio interests with Clear Channel's television and radio interests and resulting in radio-television combinations in six new markets); Stockholders of Infinity Broadcasting Corporation (Transferor) and Westinghouse Electric Corporation (Transferee), 12 FCC Rcd 5012 (1996) (approving combination of Westinghouse's 18 television stations and 39 radio stations with Infinity's 43 radio stations).

⁴⁰ 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; Definition of Radio Markets; Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area, FCC 03-127 (released July 2, 2003) at ¶ 68.

⁴¹ NBC is well aware of the benefits of jointly selling advertising with co-owned companies, as it is presently selling NBC and Telemundo advertising jointly. Steve McClellan, *Hot Market + Hot Census = Hot Hispanic Upfront*, *Broadcasting & Cable*, July 14, 2003, at 10 ("A few weeks ago, a senior executive at Telemundo parent NBC indicated that much of the Spanish-language net's advertising was sold in packages with other NBC networks.").

any way. Chief among these are its somewhat ambiguous claims that Entravision, a company that Univision does not control, (a) once rejected Telemundo advertising in Denver two years ago until NBC flexed its market muscles and Entravision resumed carriage of Telemundo advertising, and (b) has declined to accept radio advertising from a television competitor in El Paso. Based on just these two isolated claims, apparently the only incidents NBC could point to in support of its argument for mandatory advertising access, the NBC Letter states that: "It is widely known that radio stations associated with Univision have rejected Telemundo advertising outright for substantial periods."⁴²

Aside from the fact that Entravision's radio stations are hardly "associated" with Univision, which has no involvement in their programming or advertising sales, NBC fails to mention that in both circumstances, Entravision, not Univision, owns the local television station airing Univision Network programming. In other words, NBC's incontrovertible evidence that Univision will in the future reject a competitor's advertising (as broadcasters are entitled to do) is that a company (which Univision does not control) allegedly did it twice to avoid promoting a competitor of that company's local television station. NBC's evidence is not just unpersuasive; it is irrelevant.

Moreover, even if true, one of the most fundamental precepts of broadcasting is that broadcasters are not common carriers, and that they are therefore not required to carry any particular party's messages.⁴³ NBC's accusatory tone notwithstanding, if Entravision did in fact decline to promote a competitor's programming on two occasions, it appears to have been well within its discretion to do so. Indeed, NBC itself has similarly rejected airing its competitors' promotions in the past.⁴⁴

⁴² NBC Letter at 11.

⁴³ Broadcasters have long been held not to be common carriers and are therefore afforded considerable discretion with regard to program content. *See FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 474 (1940) (broadcasters are not common carriers and are therefore not required to give access to anyone seeking airtime). Courts and the FCC have concluded that this discretion extends to advertising and that a broadcaster is entitled to reject any advertising that it chooses not to accept. *See J. Curtis Herge (NCPAC)*, 88 F.C.C.2d 626 (BB 1981) ("Moreover, the Supreme Court has affirmed the Commission's determinations that the 'public interest' standard of the Communications Act, which incorporates First Amendment principles, does not require broadcasters to accept every announcement offered for broadcast. *CBS v. DNC*, 412 U.S. 94 (1973)."). Indeed, NBC's proposed advertising access right violates these principles, and the Commission has explicitly ruled that stations are free to reject advertisements and promotions of their competitors. Elimination of Unnecessary Broadcast Regulation, 57 RR 2d 913 (1985) at ¶ 28 (regulations requiring stations to air the advertisements and promotions of competitors are "unnecessary and possible counterproductive").

⁴⁴ In one highly publicized incident, NBC refused to air a Diet Pepsi commercial featuring ABC's "NYPD Blue" star Dennis Franz. In response, an NBC spokeswoman explained: "Our policy is to prohibit direct or indirect promotion of a program or events on a competing network."

NBC seeks to circumvent the state of the law, however, by making what is effectively an antitrust argument that the HBC radio stations are an essential asset to anyone wishing to operate an Hispanic-oriented television network. However, even NBC's own letter indicates that Telemundo spent less than half of its *radio* promotional budget with HBC stations,⁴⁵ clearly indicating that there are ample *radio* alternatives for promoting Hispanic television programming should Telemundo reduce its HBC radio advertising.

Moreover, in order to make its argument, NBC not only ignores the fact that Hispanics spend the majority of their listening time with English-formatted radio stations, but also ignores the numerous alternatives to radio stations that are available to promote Telemundo programming, stating that "Spanish-only consumers rely on radio advertising as the *only broadcast* means to hear about new television programming."⁴⁶ Even accepting NBC's inexplicable decision to limit its promotional efforts solely to Spanish-language broadcast media, this statement is patently false. Most viewers obviously learn about new television programming not from radio, but from television, where Telemundo is certainly as well equipped as anyone to deliver its promotional messages to Hispanic viewers.

NBC also has the added advantage of being able to promote Telemundo programming to Hispanics through the NBC Network, which it is already doing,⁴⁷ or through its various cable

Richard Huff, *For Dennis Franz, NBC Means No Balding Cops*, N.Y. Post, Apr. 16, 1997; see also Tricia Lane, Tiarra Mukherjee; Casey Davidson, *Soda Jerking Around*, Entertainment Weekly, Apr. 18, 1997 at 12 ("From our perspective [the Pepsi commercial] was promoting one of our competitors' top 10 programs,' explains NBC VP of advertising standards Rick Gitter."). Similar refusals are commonplace among the major networks, as demonstrated by the following examples: (1) ABC passed on a series of Pepsi spots featuring NBC's "Unsolved Mysteries" host Robert Stack. Richard Huff, *For Dennis Franz, NBC Means No Balding Cops*, N.Y. Post, Apr. 16, 1997; (2) all the major networks with the exception of CBS have refused to carry advertisements for HBO's "The Sopranos." Diane Eicher, *Media Event Screening trumpets 2nd "Sopranos" season*, Denver Post, Jan. 15, 2000 at F-05; (3) in January of 2000, CBS inserted a virtual CBS logo to cover an NBC advertisement on an electronic billboard in Times Square during a telecast of the millennium celebration. Frances Grandy Taylor, *Sleight of News, When Images Are Altered, There's Deception in Your Reception*, Hartford Courant, Jan. 26, 2000, at D1; and (4) during the last presidential election, CBS and ABC executives refused to air proposed presidential debates moderated by CNN's Larry King and NBC's Tim Russert. Dana Calvo and Elizabeth Jensen, *Bush's Debate Offer Elicits Doubt From TV Executives*, L.A. Times Sept. 6, 2000, at Part A, Part 1, Page 14.

⁴⁵ NBC Letter at Attachment 5.

⁴⁶ NBC Letter at 12-13 (emphasis added).

⁴⁷ See Exhibit 5 hereto; see also Andrew Grossman, *Telemundo brass center stage*, Hollywood Reporter, May 14, 2002 (NBC comments that "the synergies will take on promotional

networks. Since Hispanics spend the majority of their viewing time with English-language programming, such promotions can be highly effective, with the NBC Network reaching nearly 11 million Hispanic viewers every week.⁴⁸ In fact, the NBC Network reaches substantially more Hispanics every week than all of the HBC radio stations combined.⁴⁹

There are also considerable non-broadcast options available for promoting Telemundo, including over 20 non-broadcast Spanish-language television networks available on cable and/or satellite in the United States.⁵⁰ Among these is NBC's own Hispanic-oriented cable network, Mun2.⁵¹

In addition, NBC discards in less than a single sentence a highly useful and readily available promotional media – Spanish-language newspapers – by noting in passing that only six of the top twenty Hispanic markets have a Spanish-language daily newspaper.⁵² However, NBC fails to mention that *all but four* of those twenty markets have at least one daily, twice-a-week, or weekly Spanish-language newspaper.⁵³ Given that many major market English-language broadcasters promote their programming in their local newspaper's weekly television program guide, there is no reason for NBC to just casually discard from consideration Spanish-language newspapers merely because they are not published daily. Similarly, NBC ignores the wide range of outdoor advertising opportunities available for station promotion efforts.

This brief review of readily available promotional resources makes clear that it is not Telemundo's fundamental ability to promote its programming with which it is concerned, but a desire to obtain mandatory access to a *preferred* promotional avenue. Suffice it to say that the Commission is not the guardian of such preferences, which have no public interest benefit. NBC itself confirms this fact, when it states that "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."⁵⁴ The reason is simple – the only benefit is not to the public, but to NBC.

overtones as talent who appear on shows like NBC's 'Today' will hype Telemundo's programming.”).

⁴⁸ Nielsen Media Research, N*Power, NHTI May 19-25.

⁴⁹ Arbitron, Spring 2002.

⁵⁰ Electronic Media, Hispanic Television Directory at <http://www.tvweek.com/hispanictv>.

⁵¹ Mireya Navarro, *Is Spanish the Measure of "Hispanic"?*, N.Y. Times, June 8, 2003, at Section 1, p. 45.

⁵² NBC Letter at 9-10.

⁵³ Gale Database of Publications and Broadcast Media, 136th Edition, 2002 (top 20 Hispanic markets as determined by Nielsen Media Research, January 2003); Selected Hispanic-American Newspapers, at http://www.hodesrecruitmentdirectory.com/diversity_sel_hisp-am_np.asp.

⁵⁴ NBC Letter at 12.

Finally, although NBC attempts to downplay it, NBC asks that it not only receive mandatory non-discriminatory access to HBC advertising time, but that it be able to enforce that access through formal complaints to the Commission, “including the right to request discovery.”⁵⁵ Not only would the burden of processing such complaints overwhelm the Commission (even assuming the Commission had the statutory authority to entertain such complaints in the first place), but such complaints would be encouraged by the fact that discovery in such cases would largely center on Univision’s pricing and sales practices with its other advertisers (to compare for discrimination), thus providing Univision competitors with sensitive competitive information about Univision’s operations. In short, NBC’s requested condition is not necessary to preserve competition, but it can certainly be used by NBC/Telemundo to undercut it.

NBC’s effort to hijack the Commission’s regulatory authority so that Telemundo can conduct more celebrity interviews bears no relation to the application before the FCC and is a frightful abuse of the Commission’s processes. The bulk of the NBC letter (and presumably of NBC’s oral ex parte presentations) is nothing more than a vitriolic and irrelevant effort to smear Univision’s corporate character. However, a careful review of the letter reveals that it is predominantly Televisa and Entravision, two companies that Univision does not control, whose actions have apparently so offended NBC.⁵⁶

NBC conjures up a great conspiracy on the part of Univision to block performers from appearing on Telemundo – a conspiracy that includes performers who are not even employed by Univision. However, the overly simplistic assumption that whenever a celebrity declines to appear on a poorly-rated Telemundo program, it was not because it was a poor promotional opportunity, but because of a Univision conspiracy, is less than persuasive. Using such unassailable logic, NBC has apparently engaged in a similar conspiracy, since NBC celebrities rarely appear on Univision. Quite frankly, Telemundo has often engaged in sensationalist journalism with regard to celebrities, as is obvious from its obsession in this proceeding with celebrity interviews. Thus, Telemundo’s claims that celebrities have declined to talk with a reporter upon discovering that the reporter represented Telemundo is probably accurate, but for reasons entirely unrelated to any Univision “conspiracy” against Telemundo.

Hoping to get through brute regulatory force what it has apparently been unable to achieve otherwise, NBC now seeks to anoint the FCC as the Federal Celebrity Commission, and impose a condition upon the application grant that is so completely unrelated to the HBC radio merger as to boggle the mind.⁵⁷ Specifically, NBC demands that Univision be prohibited from “negatively

⁵⁵ NBC Letter at 15.

⁵⁶ See NBC Letter at 7-11.

⁵⁷ While the relevance of Univision celebrities to the merger at hand is unclear, NBC’s demand that the Commission essentially guarantee access to stars somehow affiliated with Univision is absurd. It is unthinkable that the FCC would force NBC to assist its competitors by encouraging Lisa Kudrow, Jennifer Aniston, or Noah Wyle to appear on or promote the products

influencing” 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.”⁵⁸ To say that this is overreaching by NBC is obvious. To say that it is far beyond the purview of the FCC is unnecessary. To say that this has anything to do with a radio merger is preposterous.

Planning promotional appearances to promote new programming, or limiting public appearances to avoid detrimental overexposure such that the public becomes bored with a celebrity, is one of the fundamental missions of a television network, as NBC is well aware. Moreover, even if NBC’s proposed condition could somehow be justified, it is laughably unworkable.⁵⁹ However, NBC attempts to rationalize its demand by claiming that: (1) its proposed condition is relevant to the radio merger because Univision will likely discourage HBC radio personalities from appearing on Telemundo; and (2) Telemundo’s inability to interview

of a competing network. To compel Univision to engage in such illogical and self-destructive behavior is at odds with both industry practice and good business sense.

⁵⁸ NBC Letter at 5.

⁵⁹ The surreal effects of prohibiting Univision from “negatively influencing” a celebrity’s decision to appear on a Telemundo program are obvious, resulting in dialogues like the following:

Celebrity: I’ve been asked to appear on three programs, CBS’s Superbowl halftime show, Telemundo’s Olympic shuffleboard coverage, and the Telemundo program, “Bowling for Dollars.”

Univision Network Executive: Well, it’s hard to go wrong with a Superbowl appearance, and your new Univision series is set to premiere right after the Olympic shuffleboard event, so I’d say that’s probably a good idea too.

Celebrity: So you don’t think that next week’s “Bowling for Dollars” would help promote my public image?

Univision Network Executive: Because our parent company bought some radio stations, I’m not allowed to comment on that. It might negatively influence your decision as to whether to appear on a Telemundo program.

Celebrity: But you said the other programs were good promotional ideas, so you must think “Bowling for Dollars” is a bad idea, right? Help me out here. I need some guidance.

Univision Network Executive: I’m not permitted to comment on any appearances on “Bowling for Dollars.”

Celebrity: Oh, I get it. I think I’ll skip the appearance on “Bowling for Dollars” and appear on the other two programs.

NBC Lawyer: Sir, I need to get the correct spelling of your name for my complaint and discovery request at the FCC regarding your interference with Telemundo’s access to Univision celebrities.

celebrities “creates an obvious loss of program and viewpoint diversity.”⁶⁰ The first rationale is clearly spurious, as the attached Declaration of HBC Chief Operating Officer Gary B. Stone indicates that Telemundo has rarely shown interest in interviewing HBC radio personalities.⁶¹ That Telemundo will want to significantly increase such promotional interviews after HBC merges with a Telemundo competitor seems unlikely. Thus, the requested condition is indeed entirely unrelated to the application before the Commission.

Even if that were not the case, however, NBC’s public interest basis for its requested condition – that more celebrity interviews will promote diversity – does not survive its own statement. Celebrity interviews are a poor substitute for actual program diversity. As the Commission has stated, “[w]hen we talk about diversity, we generally are referring to diversity in the presentation of news and public affairs programming. While diversity of entertainment formats and programming is desirable, we have traditionally left it to marketplace forces to determine their appropriate availability and mix.”⁶²

Like all of NBC’s requested conditions, NBC’s desire for improved celebrity access has no public interest basis, and there is no justification for the Commission inserting itself into perfectly legal internal business operations. While NBC demands that this condition, like the others, be imposed by the Commission and enforced through FCC complaint and discovery requests, there is a limit to how far even the FCC’s public interest mandate can be stretched, not to mention its resources.⁶³ That NBC has come to believe that the Commission is not a federal regulatory agency, but its personal valet, is all too apparent from this abusive request. To waste the federal government’s expert agency on communications technology and policy on such trivial matters is appalling, particularly since television networks advising celebrities on promotional opportunities is not only perfectly legal, but part of a network’s job. If NBC wants to submit a petition for rulemaking on celebrity appearances and itself abide by the results of any such proceeding, that is its privilege. But to seek Commission action to impose all of the burdens on NBC’s competitors

⁶⁰ NBC Letter at 8.

⁶¹ See Exhibit 1 hereto.

⁶² Review of the Commission’s Regulations Governing Television Broadcasting, 10 FCC Rcd 3524 (1995) at n.93 (citation omitted). According to a recent study conducted by the Pew Hispanic Center and the Kaiser Family Foundation, more than half (53%) of registered Hispanic voters watch and listen predominantly to English news programs, with an additional 27% reporting that they watch and listen equally to both Spanish and English news programs. Even the remaining 19% of Hispanics watch or listen *predominantly*, not necessarily exclusively, to Spanish-language news. Pew Hispanic Center/Kaiser Family Foundation National Survey of Latinos: The Latino Electorate, October 2002, at http://www.pewhispanic.org/site/docs/pdf/latino_chartpack_092002.pdf. Thus, there is no conceivable “diversity” basis for treating the HBC merger differently than any other merger.

⁶³ It is also far from clear what possible action the Commission could take to enforce such a “condition.”

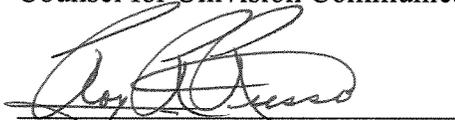
while ensuring that all of the benefits flow to NBC is nothing short of reprehensible, and a far cry worse than anything of which NBC has accused Univision.

As the *Washington Post* recently editorialized, “Hispanic-oriented media companies deserve the chance to compete on an equal footing with other conglomerates. What Univision and Hispanic Broadcasting propose is no different from what the giant media have been doing for years. A separate regulatory standard would only hobble broadcasters that serve minority audiences.”⁶⁴ However, NBC appears determined to ensure that Univision is indeed hobbled through unprecedented regulatory conditions aimed at eliminating any competitive threat to NBC.⁶⁵ However, as NBC itself notes, “[t]he Commission’s ‘ultimate obligation is to consider the potential benefits and harms of the transaction on the listening public.’”⁶⁶ The merger will benefit both the public and advertisers, and NBC presents not one scintilla of evidence to the contrary. The fact that NBC will not necessarily benefit from the growth of a competitor may be of great interest to NBC, but it is irrelevant to the Commission’s public interest analysis. Univision strongly urges the Commission to promptly approve the transaction proposed by the applicants as being in the public interest, and decline the invitation of NBC or anyone else to craft conditions designed to make the merger good only for the competitors of Univision and HBC.

Respectfully submitted,



Scott R. Flick
Counsel for Univision Communications Inc.



Roy R. Russo
Counsel for Hispanic Broadcasting Corporation

⁶⁴ Editorial, *A Good Media Merger*, Wash. Post, Aug. 22, 2003, at A20, attached as Exhibit 6 hereto.

⁶⁵ That NBC’s efforts are nothing more than a cynical abuse of the Commission’s processes is apparent from NBC’s statements made to the Commission when it sought to protect its own right to grow larger. There, NBC stated that “the time has come for the Commission to rely on market forces in lieu of unnecessary and counterproductive structural regulations” and that “it is highly unlikely that any combination permissible under the antitrust laws would threaten competition in the marketplace of ideas.” Comments of NBC and Telemundo, et al., MB Docket No. 02-277, In the Matter of 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules, submitted January 2, 2003, at 66-67.

⁶⁶ NBC Letter at 15 (quoting Application of Air Virginia, Inc. and Clear Channel Radio Licenses, Inc., 17 FCC Rcd 5423 (2002) (Separate Statement of Chairman Michael K. Powell)).

Ms. Marlene H. Dortch, Secretary
August 27, 2003
Page 19

cc (via hand delivery): Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein
Paul Gallant
Matthew Brill
Jordan B. Goldstein
Daniel Gonzalez
Johanna Mikes
W. Kenneth Ferree
Robert Ratcliffe
David Brown

Enclosures

Exhibit 1

DECLARATION

I, Gary B. Stone, do hereby declare under penalty of perjury that the following is true and correct to the best of my personal knowledge and belief:

1. I am Chief Operating Officer and Senior Vice President of Hispanic Broadcasting Corporation ("HBC").
2. HBC held discussions with other media companies regarding potential business combinations, including with Spanish Broadcasting System, Inc. and NBC/Telemundo. Meetings between representatives of HBC and NBC were held in May 2002 and HBC principals made a tour of several NBC properties on May 9, 2002. At the beginning of June 2002, NBC made a written offer to HBC proposing a business combination but, for various business reasons, the HBC Board of Directors instructed the officers of HBC on June 9, 2002 to reject the NBC proposal. On June 10, 2002, the Board voted to approve Univision's offer.
3. It is my experience that HBC personnel have rarely been asked to appear on Telemundo television programs.



Gary B. Stone

Dated: 8-26-03

Exhibit 2

06/30/2003-07/27/2003
 TOTAL-06/30/2003
 DAYPARTS
 ORIGINATORS

DAY(S)	S TIME	E TIME	ORIG	T DUR	WKS AIRED	TC	A S CT	A P CVG	EPISODE TITLE	HHLN	P2+	P18-49
										US AA%	US AA%	US AA%
										US SHR	US SHR	US SHR
										AA(000)	AA(000)	AA(000)
MTWTFSS	6:00 AM	6:00 AM		38825		615				7.3	3.1	3.2
UNI Daypart Portion										22	20	22
										709	1084	592
TF Daypart Portion				38610		535				1.8	0.8	0.9
										5	5	6
										177	288	161

NielsenTV Hispanic People Meter		HHL	P2+	P18-49
MEASUREMENT PERIODS		UE(000)	UE(000)	UE(000)
INCREMENTS		INTAB	INTAB	INTAB
COVERAGE AREAS		INTAB	INTAB	INTAB
06/30/2003-07/27/2003				
TOTAL-06/30/2003		9730	35422	18727
TOT US		807	2669	1346

Request Title: July03 24hr performance - all programs

Request Name: test
Template Name: "(none)"
User Name: univmi02
Run Date: 08/22/2003
Run Time: 6:02 PM

General Report Features:

Result Type: Report Only
Row Display Style: Stacked Rows
Statistic Display Style: Stacked Column Headings
Minimums Applied: Sample And Viewing
Output Options: Un-suppressed
Sample: NielsenTV Hispanic People Meter

Report Format

<u>Report Axis</u>	<u>Data Element</u>	<u>Report / Data</u>	<u>Interval</u>
Page	MEASUREMENT PERIODS	Report	
Page	INCREMENTS	Report	
Row	DAYPARTS	Report	
Row	ORIGINATORS	Data	Daypart Only
Column	DEMOGRAPHICS	Report	
Column	STATISTICS	Report	

Measurement Period/Increment

Date Range: 06/30/2003-07/27/2003
Calendar Type: NTI
Increment Sort: Ascending
Increment(s): TOTAL

Data Available

Hispanic Broadcast: 10/25/1992-08/17/2003

Demographic / Statistic

Demographic
HHLD
P2+
P18-49

Household data Elements:
Statistic
US AA%
US SHR
AA(000)

Precision
1 decimal place
0 decimal places

Rank

Data Elements Selected:
US AA%
US SHR
AA(000)

1 decimal place
0 decimal places

Rows not containing data have been removed from report
Non-Combo Dayparts

Days	Times	Segments
MTWTFSS	6:00 AM - 6:00 AM	Daypart

Program Information

Originator(s) UNI

TF

DAY(S)

S TIME

E TIME

ORIG

T DUR

WKS AIRED

TC

A S CT

A P CVG

EPISODE TITLE

Chronologically

Program Interval Descending

Breakouts Reported Separately

Specials Reported Separately

(None)

Program Type Code

Program Search Criteria:

Program Search performed by the server

Indicators Included/Excluded:

Description

(none)

Exclude/Include

Value

EXPLANATION OF SYMBOLS

<< - AA% below minimum standards ^ - Relative error 25% - 49%

DNA - Data Not Available v - Relative error 50% or more

IFR - Insufficient sample size

LT - Insufficient projected audience

N/A - Not Applicable

* One or more originator/buckets did not broadcast during the entire daypart/Measurement Period

PAE = Flag indicates short duration program (10 minutes or less) or remainder ratings or sustainers

I = Data requested is not available for the entire measurement period

A = TDA contains no GAA data

One or more summary level averages above program may not contain all programs listed in the report

Viewing source category is no longer produced, but remains available for historical reporting.

Refer to viewing source access rights for availability dates.

Data on report does not reflect application of included minimums.

[AA%/SHR] - When reporting 'Specials' in the grid report, Explorer replaces the PTD average with an average of all telecasts (regardless of program)

that started and ended within a specific grid cells time period from that time periods most recent Premiere to current and reports the resulting PTD average in brackets.

A = Acquired (Program/Episode) O = Original (Program/Episode)
B = Breakout P = Premiere
C = Complex R = Repeat
D = Programs < 5 minutes S = Special
G = Gapped T = Team Sports
L = Live U = Umbrella
M = Movie V = Various (Program)
N = Non Commercial X = Unordered Sustainer
1 = Long Term

Est.M AGE/TP.Est.M AGE (Program and Time Period respectively) = Estimated Median Age represents the median age of viewers based on aggregated building block projections.

Time period estimates for HBO-The Works, MultiMax, Showtime and The Movie Channel reflect tuning to all of the 'multiplexed' channels of these services.
Program estimates for these networks reflect tuning to all the 'multiplexed' channels of these services during the times that the reported programs appeared on the network's primary channel.

Note

This service is part of a regular syndicated rating service accredited by the MRC. The National People Meter data reported via this product have been accredited since 1987. Hispanic People Meter data reported via this product have been accredited since November 2001.

Exhibit 3

FOR MORE INFORMATION CALL:
MEDIAFAX, INC.
BILL McKENNA 787-721-0141

January 15, 2003
San Juan, PR

MEDIAFAX ANNOUNCES DECEMBER 2002 TV VIEWING ESTIMATES

FOR

THE PUERTO RICO TV MARKET

Mediafax announced the results of the December 2002 TV Audience Measurement period today.

The December 2002 measurement period began December 2, 2002 and ended on December 29, 2002. The island wide Mediafax statistical sample of TV households was utilized to measure TV viewing behavior during the entire four (4) week reporting period. The tabulated results are based upon an average of 434 meter households that provided usable data to Mediafax during each day of the December 2002 TV audience measurement period. The installed Mediafax meter household sample contains an average of 484 households with approximately 841 metered TV sets. TV viewing data from an average of 434 households with approximately 738 metered TV sets are included during each day of the December 2002 Report.

During December 2002, the total sign-on to sign-off average weekly rating for Puerto Rico TV households was 35.2. This means that during an average 15-minute period of an average week, 35.2% of all Puerto Rico TV households had one or more of their TV sets in use from 6:00 a.m. in the early morning to 2:00 a.m. in the late night. The December 2002 household TV usage viewing level remains unchanged from the viewing level reported for the December period of last year and 2% below the level of viewing reported for November 2002, the preceding month.

Prime Time (6:00 p.m. to 10:00 p.m.) viewing audiences recorded an average quarter-hour household rating of 59.0 for the Monday-Friday Prime Time period and a 56.9 rating for the Prime Time viewing period throughout the entire week. The Monday-Friday Prime Time viewing level is 3% below the viewing level reported for December of last year and 6% below the viewing level reported for November 2002, the preceding month. The Total Week Prime Time viewing level is 3% below the level of viewing reported for December of last year and 6% below in comparison with the prior month, November 2002.

CALENDAR 2002 MONTHLY TV VIEWING TRENDS
PUERTO RICO TV HOUSEHOLD VIEWING
AVERAGE QUARTER HOUR RATINGS AND SHARES
SIGN-ON (6:00 AM) TO SIGN-OFF (2:00 AM)
TOTAL WEEK (MONDAY TO SUNDAY)

JAN - JUN '02

TV STATIONS	<u>JAN '02</u>		<u>FEB '02</u>		<u>MAR '02</u>		<u>APR '02</u>		<u>MAY '02</u>		<u>JUN '02</u>	
	RTG	SHR										
<u>LOCAL COMMERCIAL BROADCAST</u>												
WKAQ CH 2	12.7	35	12.7	35	12.7	35	12.1	34	12.3	34	12.7	35
WAPA CH 4	9.4	26	9.6	26	9.3	25	9.6	26	9.3	26	9.3	25
WSTE CH 7	0.5	1	0.7	2	0.5	1	0.6	2	0.5	2	0.6	2
WLII CH 11	8.4	24	8.6	24	8.8	24	9.0	25	9.3	26	9.7	27
<u>TOTAL CABLE TV</u>												
IMPORTED CABLE TV	4.3	12	3.8	10	4.1	11	4.0	11	3.6	10	3.8	10
<u>LOCAL PUBLIC BROADCAST</u>												
<u>WIPR/WIPM CH 6/3</u>	<u>1.4</u>	<u>4</u>	<u>1.5</u>	<u>4</u>	<u>1.4</u>	<u>4</u>	<u>1.5</u>	<u>4</u>	<u>1.6</u>	<u>4</u>	<u>1.6</u>	<u>4</u>
TOTAL TV USAGE	35.6	100	36.1	100	36.1	100	35.9	100	35.6	100	36.2	100

JUL - DEC '02

TV STATIONS	<u>JUL '02</u>		<u>AUG '02</u>		<u>SEP '02</u>		<u>OCT '02</u>		<u>NOV '02</u>		<u>DEC '02</u>	
	RTG	SHR										
<u>LOCAL COMMERCIAL BROADCAST</u>												
WKAQ CH 2	13.0	35	11.8	33	10.8	29	10.8	29	10.9	30	10.2	29
WAPA CH 4	9.3	25	9.2	25	9.0	25	8.3	23	9.0	25	8.7	25
WSTE CH 7	0.5	1	0.4	1	0.3	1	0.3	1	0.4	1	0.5	4
WLII CH 11	10.1	27	10.5	29	12.2	33	12.4	34	11.4	32	10.8	31
<u>TOTAL CABLE TV</u>												
IMPORTED CABLE TV	4.1	11	3.3	9	3.0	8	3.1	8	2.8	8	2.8	8
<u>LOCAL PUBLIC BROADCAST</u>												
<u>WIPR/WIPM CH 6/3</u>	<u>1.5</u>	<u>4</u>	<u>1.5</u>	<u>4</u>	<u>1.4</u>	<u>4</u>	<u>1.3</u>	<u>4</u>	<u>1.3</u>	<u>4</u>	<u>1.4</u>	<u>4</u>
TOTAL TV USAGE	37.2	100	36.0	100	36.6	100	36.8	100	36.1	100	35.2	100

FOR MORE INFORMATION CALL:
MEDIAFAX, INC.
BILL McKENNA 787-721-0141

August 11, 2003
San Juan, PR

MEDIAFAX ANNOUNCES JULY 2003 TV VIEWING ESTIMATES

FOR

THE PUERTO RICO TV MARKET

Mediafax announced the results of the July 2003 TV Audience Measurement period today.

The July 2003 measurement period began June 30, 2003 and ended on July 27, 2003. The island wide Mediafax statistical sample of TV households was utilized to measure TV viewing behavior during the entire four (4) week reporting period. The tabulated results are based upon an average of 420 meter households that provided usable data to Mediafax during each day of the July 2003 TV audience measurement period. The installed Mediafax meter household sample contains an average of 476 households with approximately 817 metered TV sets. TV viewing data from an average of 420 households with approximately 706 metered TV sets are included during each day of the July 2003 Report.

During July 2003, the 6:00am to Sign-Off average weekly rating for Puerto Rico TV households was 38.5. This means that during an average 15 minute period of an average week, 38.5% of all Puerto Rico TV households had one or more of their TV sets in use from 6:00 a.m. in the early morning to 2:00 a.m. in the late night. The July 2003 household TV viewing level is 3% above the viewing level reported for the July period of last year and remains unchanged in comparison to the viewing level reported for June 2003, the preceding month.

The Sign-On to Sign-Off (2:00 AM – 2:00 AM) average weekly rating for Puerto Rico TV households was 33.4, in a 24-hour period. This remains unchanged in comparison to the TV viewing level reported for June 2003, the preceding month. Being 2003 the first year that Mediafax officially reports 24-hour TV viewing data, there are no prior year comparison data.

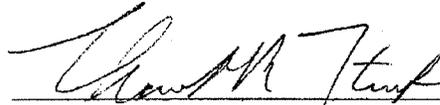
Prime Time (6:00 p.m. to 10:00 p.m.) viewing audiences recorded an average quarter-hour household rating of 62.8 for the Monday-Friday Prime Time period and a 60.2 rating for the Prime Time viewing period throughout the entire week. The Monday-Friday Prime Time viewing level is 3% above the viewing level reported for July of last year and is 3% below the viewing level reported for June 2003, the preceding month. The Total Week Prime Time viewing level is 3% above the level of viewing reported for July of last year and 2% below in comparison to the viewing level reported for the prior month, June 2003.

Exhibit 4

DECLARATION

I, Charles R. Stuart, do hereby declare under penalty of perjury that the following is true and correct to the best of my personal knowledge and belief:

1. I am Senior Vice President, National Sales, Univision Television Group, Inc. In this capacity, I am familiar with the national spot sales representation agreement between Univision Network Limited Partnership ("Univision") and Entravision Communications Corporation ("Entravision").
2. Univision's national spot sales representation agreement with Entravision, like most national spot sales representation agreements, permits Entravision to also sell its own national television spots on its television stations. Entravision may therefore sell such national television spots either alone or in combination with its radio stations, just as it is able to jointly sell its local television and radio spots.
3. I am aware that Entravision does in fact engage in joint sales of its television and radio advertising time for both national and local spots.


Charles R. Stuart

Dated: 8-25-03

Exhibit 5



[Home](#) > [Search Results](#) > [Inside Move: NBC to promo Telemundo](#) > Inside Move: NBC to promo Telemundo

http://www.variety.com/index.asp?layout=print_story&articleid=VR1117891314&categoryid=14

To print this page, select "PRINT" from the File Menu of your browser.

Posted: Thurs., Aug. 21, 2003, 9:45pm PT

Inside Move: NBC to promo Telemundo

'Amor,' 'Cenicienta' get sisterly network boost

By **MICHAEL SCHNEIDER**

NBC en Espanol? The Peacock will air two promos in primetime next Monday hyping series from *hermana* Spanish-lingo net Telemundo.

The spots, for Telemundo's "Amor Descarado" and "La Cenicienta," will air Aug. 25 during episodes of "Fear Factor" and "For Love or Money."

Peacock hopes to use the mothership to lend some buzz to the two Telemundo shows' Sept. 8 launch, much like NBC has helped jumpstart sister cabler Bravo in recent weeks.

The cross-promotion also reps the first major splash for Telemundo since the web's marketing was integrated this summer under the NBC Agency, the Peacock's advertising arm. The NBC Agency handled all of Telemundo's fall marketing for the first time.

"We're trying to bring the same weight of NBC behind Telemundo as we did with Bravo, to show that Telemundo is as important to us at NBC as any other property," said Peacock entertainment prexy Jeff Zucker. "Obviously we understand it can't have the same impact, given the language difference. But there are some people who watch both NBC and Telemundo."

The Telemundo spots will air in a mix of English and Spanish, with subtitles underneath clips of the two shows.

Zucker said NBC research determined that some of its highest concentration of Spanish-language crossover auds tuned into "Fear Factor" and "For Love or Money," hence the placement.

Exhibit 6

The Washington Post

AN INDEPENDENT NEWSPAPER

A Good Media Merger

AFTER HAVING HAD MORE than a year to consider the planned merger between Spanish-language television network Univision and radio company Hispanic Broadcasting Corp., it's time for the Federal Communications Commission to approve the \$3 billion deal. The merger is opposed by those who stand to lose from the transaction—Hispanic media outlets such as television rival Telemundo, which is owned by NBC, and radio chain Spanish Broadcasting System, which had previously made a bid to merge with Hispanic Broadcasting. Some opponents contend that Spanish-language media constitute a separate market from those in English and that allowing the merger between the largest Spanish-language TV network and the biggest radio company would create a conglomerate that would dominate the market.

These claims are unwarranted. Univision owns and operates only 51 of the 279 Spanish-language stations in the country; Hispanic Broadcasting System operates 58 of 673 Spanish-language radio stations, plus eight English or bilingual stations directed at Hispanic listeners. More important, both Spanish and English-language media focusing on the Hispanic audience have skyrocketed in recent years. Television watchers can choose from Univision, Telemundo, CNN en Español, Discovery en Español, Fox Sports en Español, HBO Latino, MTV Latino and others. The

number of Hispanic-oriented radio stations broadcasting primarily in Spanish has doubled in the past decade. Several major newspapers are starting and expanding Spanish-language editions. Yet advertising dollars have failed to keep pace with growing interest and an audience that, according to the most recent U.S. Census, is the nation's largest minority. This is partly because, despite the differences in language and format, there is in fact no separate market for Hispanic media. These entities compete for the same major advertiser dollars as Viacom, Disney and AOL Time Warner—giants who can argue that they offer broader exposure to all segments of American society, including the many Hispanics who watch their programming.

Hispanic-oriented media companies deserve the chance to compete on an equal footing with other conglomerates. What Univision and Hispanic Broadcasting propose is no different from what the giant media have been doing for years. A separate regulatory standard would only hobble broadcasters that serve minority audiences. The Department of Justice has made reasonable divestiture requirements of Univision, which has agreed to reduce substantially its stake in multimedia company Entravision Communications. Further steps to preserve competition in certain cities may be warranted. But there is no public-interest justification to block this merger.

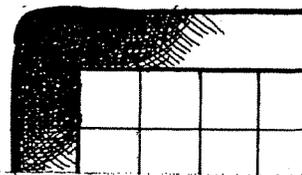
Accent on Efficiency

IT'S SAFE TO SAY that after decades of one-party control in Maryland, the state government is pudgy in more than a few places, bogged down by overlapping agencies, commissions and programs. Gov. Robert L. Ehrlich Jr. said so during his campaign and now has moved to find the bloat. In an address to the Maryland Association of Counties last weekend, Mr. Ehrlich proposed the first large-scale restructuring of state government since 1972. It happens to

James M. Harkins, former Prince George's County executive and Maryland congressman Lawrence J. Hogan Sr. and former Anne Arundel County executive James Lighthizer. Some examples of overlap: Housing and human resources agencies both have energy components, even though there is an energy agency.

Mr. Ehrlich went ahead with a little restructuring of his own last week, announcing the elimination of the Hot Spots crime-fighting pro-

Tom Toles



Let the Distr

In arguing against a cor
[“... And a Bogus Case 1
to Home, Aug. 17] said th
in comparison with other
gets a disproportionate a
of federal funds compare
other cities.

The U.S. General Acco
Office, the Brookings Inst.
and McKinsey & Co. hav
ified that the District has
demic gap between its ab
raise revenue at reasona
rates and its ability to p
services of reasonable qu
and quality to residents. I
the GAO reported that th
is between \$470 millio
more than \$1.1 billion pe
the underlying factors dri
capacity,” the GAO said, “
remain.” It also said that
provement can solve the
ance. More information o
of Columbia: Structural I
Issues,” is available at <http>

Mr. Michel also did not
single largest industry, th
no property tax, even thot
percent of the District. N
federal government prohi
revenue where it's earne

According to an Aug. 19 F
article, “Pentagon Reconsider
System for Contractors,” the
gon paid “\$400 million in bon
efforts to deliver on schedule
budget” the USS Ronald R
even though the aircraft can

Yasser

Everywhere Yasser Ara
been, he has left behind a
that thrives on murder and
The Jordanian government
forcibly throw Mr. Arafat