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July 18, 2003

James R. Wade
Chief, Litigation III Section
Antitrust Division
U.S. Department of Justice
325 Seventh Street, N.W., Suite 300
Washington, D.C. 20530

Re: United States v. Univision Communications Inc.
Civ. Action No. 1:03CV00758

Dear Mr. Wade:

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)-(h), Spanish Broadcasting System, Inc. ("SBS") respectfully submits its comments on the proposed Final Judgment filed on March 26, 2003, by the Antitrust Division of the U.S. Department of Justice ("Department") in connection with the proposed acquisition of Hispanic Broadcasting Corporation ("HBC") by Univision Communications Inc. ("Univision").

A Univision and HBC combination raises serious antitrust issues that the Department's proposed Final Judgment fails to address. The draft decree leaves unremedied significant harm to competition and consumers that surely will result from the combination of the dominant firm in Spanish-language radio (HBC) with the dominant firm in Spanish-language television (Univision). Even if, as the Department Complaint posits, Spanish-language radio and television belong in separate markets, the remedy the Department selected fails to solve the competitive problem it identified: Univision's significant influence over one of HBC's closest competitors in Spanish-language radio, Entravision Communications Corporation ("Entravision"). The settlement only partially and incompletely disentangles Univision and Entravision. Moreover, the inadequate remedy the Department selected requires six years to implement, a period during which the transaction will continue to harm competition and consumers. Accordingly, the Court should reject the proposed Final Judgment as not within the reaches of the public interest.

1. SBS initially notes its disagreement with the Department's decision to confine its analysis to the product market for the "provision of advertising time on Spanish-language radio" (Compl. ¶ 14). The Department defined this market because "[m]any local and national

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advertisers" would "not turn to other media, including radio that is not broadcast in Spanish, if faced with a small but significant increase in the price of advertising time on Spanish-language radio" or its equivalent (Id.; emphasis added). The Department, however, provides no justification for ignoring the many other advertisers for whom Spanish-language radio and television are good substitutes.[1] From the perspective of these advertisers, an HBC/Univision combination is effectively a merger to monopoly, for it combines the dominant Spanish-language radio broadcaster (HBC) with the dominant Spanish-language television broadcaster (Univision).[2] This Spanish-language broadcasting market (defined from the perspective of advertisers for which Spanish-language television and radio are good substitutes) easily coexists with a Spanish-language radio-only market (defined from the perspective of other advertisers). The Department's Complaint and Competitive Impact Statement are entirely silent on why the Department has chosen to ignore the interests of advertisers who are vulnerable to the enhanced market power HBC and Univision will enjoy as a result of their combination.

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1 Letters expressing the views of such advertisers can be found in a number of letters filed with the Federal Communications Commission. See, e.g., Letter from Phillip L. Verveer et al., Attorneys Willkie Farr & Gallagher to Marlene H. Dortch, Secretary, Federal Communications Commission (June 2, 2003) (attachments), available at http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi (proceeding No. MB02-235) (attached hereto as Exhibit A). These letters demonstrate that there are many advertisers for whom the relevant market for analyzing this transaction is not properly confined to Spanish-language radio.

2 HBC's 2003 10-K explains that it "is the largest Spanish-language radio broadcasting company." Hispanic Broadcasting Corp. Form 10-K (Mar. 31, 2003), available at http://www.sec.gov/Archives/edgar/data/922503/000104746903011344/a2107188z10-k.htm. Univision "is the dominant broadcaster of Spanish-language television in the United States, capturing an approximate 81% audience share." Entravision Communications Corporation Annual Report for 2001, at 25, available at www.entravision.com. HBC's and Univision's combined dominance is illustrated by letters and charts filed with the Federal Communications Commission. See Letter from Phillip L. Verveer et al., Attorneys Willkie Farr & Gallagher to Marlene H. Dortch, Secretary, Federal Communications Commission (June 11, 2003) (attached as Exhibit B) and Letter from Andrew Jay Schwartzman, President and CEO, Media Access Project to Marlene H. Dortch, Secretary, Federal Communications Commission (June 9, 2003) available at http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi (proceeding No. MB02-235) (attached as Exhibit C).

Even accepting that Spanish-language radio and Spanish-language television belong in separate markets, SBS disagrees with the Department's conclusion that the only competitive harm from this acquisition flows from Univision's ownership of a significant stake in both Entravision and HBC. Specifically, Univision's acquisition of the dominant Spanish-language radio broadcaster, HBC, will give Univision, the dominant Spanish-language television broadcaster, an enhanced incentive to refuse to deal with or discriminate against Spanish-language radio competitors (such as SBS) who seek to advertise through Univision. Advertising on television is important for promoting Spanish-language radio stations and thus for surmounting the high entry barriers in Spanish-radio language that the Complaint identifies (Compl. ¶ 27).

Moreover, after the merger, Univision/HBC will have the power to insist that Spanish-language advertisers who wish to advertise through both radio and television purchase time from both Univision and HBC rather than from the merged firm's rivals, including SBS. Such difficult-to-detect and subtle tying arrangements or refusals to deal -- realistic possibilities here -- impair competition. See, e.g., Lorain Journal Co. v. United States, 342 U.S. 143 (1951). It is unrealistic to expect that, following the acquisition, advertisers will stand up to the HBC/Univision colossus and challenge such practices themselves. The Clayton Act properly is invoked to restrain these restraints in their incipiency.

The Department's failure to grapple with any of the competitive problems posed by combining the dominant Spanish-language radio broadcaster with the dominant Spanish-language television broadcaster should cause this Court to conduct an especially careful Tunney Act review. To be sure, that review is largely confined to determining whether the remedy the Department selected is a reasonable one for the competitive problem identified in the Department's Complaint. See United States v. Microsoft Corp., 56 F.3d 1448, 1461-62 (D.C. Cir. 1995). But when, as here, the Department has exercised its prosecutorial discretion to tailor its Complaint narrowly to the remedy selected, the Court must pay special attention to ensure that the fit between remedy and Complaint is indeed within the reaches of the public interest. As explained below, the fit here is very poor indeed.

2. The competitive problem the Complaint identifies is that Univision's significant control over, and its equity stake in, Entravision will cause HBC and Entravision to pull their competitive punches once HBC falls under Univision's control. The proposed Final Judgment seeks to preserve HBC/Entravision competition by requiring Univision to reduce its equity stake in Entravision and to relinquish certain rights Univision holds to control or influence Entravision's competitive activities. For a number of reasons, the proposed Final Judgment will not adequately protect purchasers of radio advertising from the adverse consequences of Univision's proposed acquisition of HBC.

First, the Department's requirement that Univision surrender certain rights and dilute its stock holding in Entravision fails to address the most significant way in which Univision influences Entravision: through the Univision/Entravision affiliate agreement. As the Department's Complaint explains, pursuant to this "long-term" agreement, "Entravision broadcasts Univision programming from Univision's two networks on 49 television stations. As part of this affiliation agreement, Univision serves as Entravision's sole representative for the sale of television advertisements sold on a national basis" (Compl. ¶ 23). This agreement is Entravision's lifeblood. From it, Entravision obtains key programming and significant advertising revenue. As Entravision's 2001 Annual Report explains, "Entravision has benefitted enormously from a close relationship with Univision" which is "the dominant broadcaster of Spanish-language television in the United States."[3] A recent Entravision securities filing also strikingly illustrates the importance of the affiliate agreement: Of an overall increase of $1.5 million in revenue for Entravision over the prior year, "$1.4 million was attributable to our Univision stations and 0.1 million was attributable to our Telfutura stations [a Univision network]."[4]

The affiliate agreement plainly will give Entravision significant reason to pull its competitive punches against HBC once HBC is acquired by Univision. The Department recognizes this; for the proposed Final Judgment prohibits Univision from "using or attempting to use any rights or duties" under the affiliate agreement "to influence Entravision in the conduct of Entravision's radio business" (Proposed Final Judgment § VI.A.5). This remedy, however, is a mirage. Univision need not actually use the affiliate agreement to influence Entravision's behavior. The mere fact that Univision might deny Entravision rights under the agreement, or even create disputes under the agreement, will cause Entravision to compete less vigorously with HBC.[5] Strikingly, the Department has rejected such "behavioral" remedies in other circumstances, even when punishable by contempt if violated.[6] The Competitive Impact

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3 Entravision Communications Corporation Annual Report for 2001, at 25, available at www.entravision.com.

4 Entravision Communications Corporation 10-Q, at 7 (May 12, 2003), available at www.entravision.com.

5 See, e.g., Letter from Arthur V. Belendiuk, Counsel to National Hispanic Policy Institute, Inc., to W. Kenneth Ferree, Esq., Chief, Media Bureau, Federal Communication Commission (July 11, 2003) (attached as Exhibit D).

6 For instance, the Department rejected Northwest Airline's suggestion that creating a voting trust for the stock it acquired in Continental Airlines would prevent a diminution of competition between the two airlines. The Department explained: "Courts are understandably loathe to rely on 'behavioral rules' as a substitute for divestiture, even

Statement provides no basis for believing that a "behavioral" remedy relating to the affiliate agreement will be effective here. By contrast, blocking Univision's acquisition of HBC will preserve competition.

Second, the proposed Final Judgment would allow Univision to retain shareholder rights to veto major strategic decisions of Entravision, including any plans i) to merge, consolidate or reorganize all or substantially all of its assets; ii) to transfer a majority of its voting power; iii) to dissolve, liquidate or terminate itself; as well as iv) to dispose of any interest in any FCC licenses relating to television stations that are Univision affiliates (Competitive Impact Statement ("CIS") at 11). Each of these actions that Univision can veto may have significant competitive impact. If, for example, Entravision wanted to sell a radio station to, or merge with, a rival, the proposed Final Judgment leaves Univision with the power to prevent possible competition-enhancing transactions. It plainly harms rather than benefits competition to require Entravision to obtain its rival's approval to undertake such actions. The Department should not hinder the competitive activities of third parties through consent judgments.

Third, the proposed Final Judgment would require Univision to reduce its equity stake in Entravision over a very lengthy period: to no more than 15 percent by March 2006 and to no more than 10 percent by March 2009. The Department acknowledges that this divestiture is necessary to preserve competition; for Univision's significant stake in Entravision means that Univision/HBC "would receive some significant benefit even on sales it loses to Entravision" (CIS at 12). The Department nonetheless is willing to tolerate the lessened competition and consumer harm for as long as six years. Although the rapid sale of stock may be difficult to accomplish and impose costs upon Univision, the costs of accomplishing the transaction should not be borne by consumers. If owning the stock is competitively harmful, Univision should be required to sell the stock as expeditiously as possible. The Department's explanation for its unprecedented six-year divestiture period -- that requiring a faster sale by Univision protects against "adversely affecting Entravision's ability to raise capital" (CIS at 12) -- fails to persuade. If the Department's reasoning were valid, it would always permit divestitures to be made over the course of several years; but that is obviously not the Division's policy. And with good reason: The longer the merging parties hold assets that must be divested to preserve competition, the longer the period during which competition and consumers suffer. The speculative fear that Entravision's ability to raise capital will be harmed by requiring a shorter divestiture period is no warrant for inflicting competitive harm on advertisers and others.

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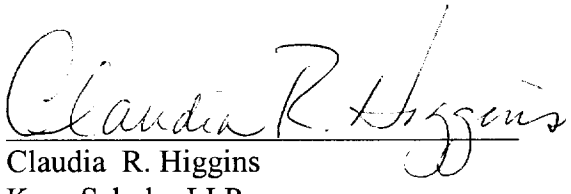
where the rules are court-ordered." Trial Br. of the United States at 18, United States v. Northwest Airlines Corp. (No. 98-74611, filed Oct. 24, 2000) (emphasis added), available at www.usdoj.gov/atr/cases/f7200/7288.htm.

Fourth, the divestiture the Department negotiated is insufficient to preserve competition. If the proposed Final Judgment is approved, Univision will continue to hold a ten percent stake in Entravision. Moreover, the Complaint alleges that Entravision and HBC have combined market shares ranging from 70 percent to as much as 95 percent in the several geographic markets (Compl. ¶ 21). It is plain that Univision will still financially benefit from every advertising dollar HBC loses to Entravision and, therefore, that Univision/HBC will compete less vigorously than if Univision's equity interest were divested completely. The Competitive Impact Statement fails to explain why a complete divestiture is inappropriate here.

* * *

Thus, for several reasons, the proposed Final Judgment leaves Entravision entangled with Univision in ways that will seriously harm competition. The Court accordingly should find that the Department's proposed Final Judgment is not within the reaches of the public interest.

Respectfully submitted,



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Dated: July 18, 2003

Exhibits Attached

United States v. Univision Communications, Inc.
Civ. Action No. 1:03CV00758

COMMENTS ON BEHALF OF SPANISH BROADCASTING INC.

JULY 18, 2003

EXHIBITS A-D

A

WILLKIE FARR & GALLAGHER

1875 K Street, NW
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June 2, 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, Harlingen, Texas *et al.* (Docket No. MB 02-235, FCC File Nos. BTC-20020723ABL, *et al.*)

Dear Ms. Dortch:

Spanish Broadcasting System, Inc. ("SBS") has asked more than twenty advertising agencies and advertisers with special knowledge of the Hispanic community to address the nature and extent of the media marketplace in which they conduct their business. Their responses are attached.

All of the responses indicate that English-language broadcasting and Spanish-language (Hispanic) broadcasting constitute separate markets. Many of them observe that the Spanish-language broadcasting market includes both radio and television.

These propositions are fundamental to the Commission's analysis of the proposed Univision Communications, Inc.-Hispanic Broadcasting Corp. merger. The agency and advertiser perspectives on the market address both competition and diversity, just as the Commission must in connection with its public interest determination on the permissibility of requested transfers.

The conclusions of the agency and advertiser executives conform with those the Commission has reached in other contexts. The Commission often and recently has recognized the existence of a separate Spanish language broadcasting market. It also has recognized that television and radio are part of the same product market for fundamental Communications Act purposes.

The separate nature of the Hispanic broadcasting market means that the FCC may not rely exclusively on its cross-ownership and multiple ownership rules in making its public interest determination. These heuristic devices may be a sufficiently reliable basis for decision where transfers implicate majority-language broadcasting. Their reliability cannot be assumed where minority-language broadcasting is concerned. In this case, the proposed merger moves the Hispanic market

very decidedly in the direction of monopoly. Both the statute and ordinary prudence require that the decision in this matter be the product of careful analysis of record evidence and that it be reflected in a reasoned explanation.

In this regard, **SBS** will respond to the many factual assertions contained in the May 14,2003, Univision submission shortly. Unsurprisingly, we do not find Univision's propositions probative of the substantive issues nor do we find Univision's legal and policy points relevant to the resolution of this important matter. (We note that the submission, inexplicably, is not posted on the ECFS site and thus remains unavailable to anyone seeking to follow the proposed transaction through the Commission's Web site).

Finally, we note the unusual circumstance presented by today's Commission vote fundamentally changing its principal media ownership regulations (following "the most exhaustive and comprehensive review of [the] broadcast rules ever undertaken") and the pendency of this major broadcasting transfer application. As we are able to learn the details of the new ownership rules, we will submit our analysis of their significance for the Univision proposal.

Respectfully submitted,

/s/ Philip L. Verveer

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Commissioner Copps
Commissioner Martin
Commissioner Adelstein
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Roy R. Russo, Counsel for Hispanic Broadcasting Corp.

Castor A. Fernandez

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castorgl@bellsouth.net
305-724-4363

May 27, 2003

To Whom It May Concern

Dear Sir or Madam:

I have been involved in the Hispanic Market USA since 1966 and have owned my own firm for over 31 years.

During that time, I have placed national and local ads for a very wide variety of companies, government agencies, and other public and private institutions, large and small including Coca Cola, McDonald's, Procter & Gamble, General Motors, Anheuser Busch, Castrol, Pizza Hut, Burger King to mention just a few. I am also the single largest individual receiver of Creative Awards in the industry, and was placed in the Hispanic Market Hall of Fame (only 4 recipients so far), in 2002.

I have been asked to address two issues:

First: Is there a separate advertising product market defined by the Spanish language? In other words, are Spanish language media and English language media substitutable for one another?

The answer is an unequivocal: NO! English language media and Spanish language media are NOT substitutable. There definitely is a separate advertising product market defined by the Spanish language.

Let me explain: One could safely say that for the first time in US history, there has been a CATERING to Spanish language, not so much out of a sociological sense of responsibility, but out of the dire necessity of the large and small American corporations to open new markets to replace maturing ones in the US. They do this by attracting an ever growing group of people (the largest single minority in the US) which could not be otherwise addressed. There are 27 Latin American countries with endless political and economic travails, which only serve to increase the CONTINUOUS , NON-STOPPING immigration WAVE to the LAND of opportunity.

Second: Are Spanish language video (television and cable) and radio substitutes for one another?

I have no doubt that Spanish and English language media are in different markets from the perspective of advertising buys. A small, but significant non-transitory increase in price in English language media will not induce the advertisers with whom I am familiar to shift their advertising to Spanish language media. Instead, they will absorb the price increase.

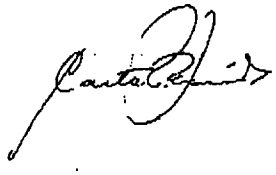
The reverse also is true. The reason is that for many products the target audience simply cannot be reached unless it is addressed in their familiar language. Among other obvious bits of evidence, the major television networks virtually never present a commercial in Spanish (or any language other than English, for that matter).

Spanish language video and radio are substitutes for many advertisers. Many advertise on both. Many sponsors are quite willing to allocate and reallocate percentages of their ad budgets to video or to radio depending upon shifts in the price and ratings of one or the other A small, but significant increase in price in one will shift purchases to the other for many products.

It is very common in negotiations over advertising rates, for agencies and clients to make the claim, for example, that if concessions in price are not made, the advertising will be placed on the other medium, video or radio as the case may be.

I hope that you find this information helpful. I would be happy to discuss it at greater length if you would find it useful.

Sincerely,



Castor A. Fernandez
President/Creative Director
Castor

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TV & CABLE SALES

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May 27, 2003

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
Washington, D.C. 20554

Dear Mr. Chairman,

My name is Eduardo Caballero, President/CEO of Caballero TV&Cable Sales, an independent-Spanish TV stations sales representative.

I started selling Spanish Media in February of 1962, as a local salesman for Radio Station WBNX, New York City. I became its General Sales Manager that same year.

I resigned in March of 1968 to become General Sales Manager of Spanish TV Station WXTV, Channel 41, New York Market (licensed to Paterson, N.J.)

Also in 1968, I became a VP and Director of National Sales for Spanish International Network (S.I.N., the predecessor of Univision), with affiliate stations in San Antonio, Los Angeles, Fresno, New York, Miami, San Francisco and Chicago.

In 1973 I resigned that position, as the first -and only- Hispanic to be in charge of national sales for any "national network" in U.S., to start the first Spanish Radio National Sales Representative in this Country (Caballero Spanish Media, Inc.), representing over 140 Spanish radio stations.

Amongst stations represented by CSM were those owned and operated by Heftel Broadcasting, Tichenor Broadcasting Co.(both of these Companies were the predecessors of the actual Hispanic Broadcasting Company -HBC), Spanish Broadcasting System, Liberman Broadcasting, Excel Broadcasting, The Z Network, etc.

CSM was sold in 1995 to the Interep Company (a General Market -English language- radio representative). Interep has kept CSM, to this day, as a separate Spanish division.

I remained with the Company until 1998, when I undertook the creation of a TV (low power stations) Network -MasMusica TeVe- to broadcast Spanish music, 24/7. At the present moment this programming is broadcast over 21 Spanish TV stations within the U.S.

Most recently, since there is no any advertising sales organization representing independent TV stations -including mine and others- I have started a new -and only- independent Spanish TV representative sales organization, Caballero TV&Cable Sales.

I have been selling time for Spanish Media in United States (both radio and TV), for the last 42 years, uninterruptedly. I can say, unequivocally and based on my professional experience, the following:

Unless an advertiser makes the decision to promote its products or services to the Hispanic consumer, in Spanish and, subsequently, creates a "Hispanic Budget", there will not be schedules placed on any Spanish Media.

Unfortunately, that "Hispanic Budget", when it does exist, amounts, at best, to a 1 to 3% of the "general market budget" (although Hispanic consumers represent about 14% of the total U.S. population, according to the Census Bureau). That brings, as a result, the situation where many of those advertisers' Hispanic budgets cannot afford both television and radio schedules.

Many of those advertisers are willing to allocated and reallocate parts of their Hispanic budgets to TV or to radio, depending on changes of rates and the ability of a particular medium to negociate those rates. The fact is that Spanish language TV and radio are substitutes for many advertisers.

Every advertiser in the U.S. considers this to be a SEPARATE AND DISTINCTIVE MARKET. In fact, most, if not all, of the still very few advertisers who have decided to advertise in the Spanish language have, first, funded a SPANISH ADVERTISING BUDGETS, then created a SPANISH MARKETING DEPARTMENT and, lastly, chosen a SPANISH ADVERTISING AGENCY. Without those three elements, the Spanish speaking consumer does not play any role in the marketing plans of ANY of the hundreds of national advertisers who are NOT advertising in the Spanish language, simply because the Spanish market is not integrated in their general market strategy, and as they say, "it has to be treated differently", language and otherwise.

Many times we were confronted with situations when general market agencies placed schedules on some of our represented stations: when they found out that we were broadcasting in Spanish, they canceled that schedule because, according to them, they were buying "radio" not "Spanish radio" or they were buying "television" not "Spanish television"

Still, today, we confront many situations where *most* national (or general market) advertisers do not buy any Spanish language media because they (the advertisers) are not "prepared" to go into the Spanish market.

Another point I want to make is the following. A General Market Network (radio or television), to be considered as such, has to guarantee advertisers to cover about 80% of the total U.S. population. In the case of Spanish Networks, they are required to cover ONLY ABOUT 80% OF THE HISPANIC POPULATION. Certainly, those Hispanic ADIs where about 80% of the National Hispanic population resides do not even get close to cover 80% of the General Population of the U.S. This marks another very clear separation between the General and the Spanish Markets.

If I can be of any help to this Commission, please, do not hesitate to have any of your associates to contact me.

Sinceramente,

EDUARDO CABALLERO
PERSONAL BIO

Eduardo Caballero was born in the Oriente Province, Cuba. Went to school in Sagua de Tánamo and Havana, where he obtained a Degree as Doctor in Law from the Jose Marti University.

Started his own law firm with his wife, Raquel Miller-Caballero, also a lawyer, and practiced that profession in Havana, until the end of 1961, when, in view of the political situation in his country, decided to come to the United States as a political refugee.

Under a program of relocation sponsored by the U.S. Government, he and Raquel went, first, to Dallas where he worked, simultaneously, at a restaurant, as a host, and at a department store, as a salesman; later on, they went to New York where, in 1962, Eduardo started his career in broadcasting, landing a job as a salesman for a local Spanish radio station (WBNX), thru the offices of a client of his former law firm in Cuba.

Soon he became the first Hispanic in USA to hold the position of General Sales Manager of a radio station.

In 1968 he helped to create what was known as Spanish International Network (SIN), today Univision. He was appointed first General Sales Manager for WXTV, Channel 41, New York and soon after that, in 1969, he became an Executive VP and Director of National Sales for the Network.

In March of 1973 he resigned his position, and, again, together with wife Raquel, started Caballero Spanish Media Inc., the first Spanish media sales representative in this country.

His company started representing four Spanish TV stations (all of the independent Spanish stations existing at that time), and fourteen Spanish radio stations (out of less than 35 existing stations). Eduardo also syndicated a weekly Spanish movie, which ran in twenty-nine television stations, almost all of them general market stations, using Ricardo Montalban as the presenter, and with the sponsorship of the Bristol Myers Company.

In 1976, Eduardo decided that he should be involved exclusively in radio, where he saw the greatest potential for C.S.M. His company grew to represent over 140 Spanish radio stations from coast to coast, covering over 95% of the Hispanic consumers in the country, opening opportunities for new radio operators and hundreds of jobs for both, Hispanics and non-Hispanics.

In 1995, Eduardo sold C.S.M. to Interep, and remained with the Company until the beginning of 1999, when he left to work on his new project, Caballero Television, owner and operator of twelve LP television stations, all of them located in Central California and Texas. He created his own network –Mas Música Teve- broadcasting 24 hours of music videos.
Caballero Television has offices in Dallas, New York, Miami and Bakersfield, CA.
Recently, the Broadcasters' Foundation presented to Eduardo, The American Broadcast Pioneer Award, as the first Hispanic to receive this award.

In September 2002, Eduardo was honored by the American Advertising Federation with the Mosaic Award.

Eduardo lives with his wife of 41 years, Raquel, in Miami, Florida. They have a daughter, Rosamaria, also a lawyer, who graduated from Georgetown Law School. Married, with two daughters, Sofia and Paloma, she lives, with husband P.J. Stafford, in New York City.

Eduardo is, or has been, involved in the following organizations:

Chairman-founder of the Hispanic arm of the Media Partnership for a Drug Free America.

Member of the US Postal Service Marketing Advisory Board.

Founder of the Spanish Radio Association of America.

Former Member of the Board of the Stations Representative Association (S.R.A.).

Former Member of the Board of Directors of the Advertising Counsel.

Former Member of the Arbitron Bi-lingual Advisory Committee.

Founder of the Association of Hispanic Advertising Agencies (A.H.A.A.).

Former member of the Board of Trustees of the National Hispanic University (San Jose, CA).

Former Member of the Board of Directors of the National Drop-out Prevention Foundation.

He is also a proud member of the N.A.B. and of the Pioneer Broadcasters, among many other organizations.

DIARIO LAS AMERICAS

South Florida's 1st Spanish-Language Daily Newspaper
Founded July 4, 1953

la Revista del DIARIO

Hi Albert, as per your request, following are my thoughts on why the Hispanic market should be treated separately from the general market. As you know, I have over 15 years in the industry. Most of these years have been with agencies specializing in Hispanic marketing and advertising. I am currently with Diario Las Americas, South Florida's first Hispanic daily newspaper.

The U.S. Hispanic media market should be treated separately from the non-Hispanic media market. Hispanics differ in many ways from non-Hispanics:

- Larger households 3.4 vs. 2.5
- Hispanics are younger 27.6 vs. 37.2
- More HH with children <18 58% vs. 34%
- Religion is more important in their lives 80% vs. 46%
- Language preference - over 90% of Hispanics speak some Spanish, over 70% prefer to speak Spanish at home and over 50% prefer to speak Spanish on social occasions.

sources: Nielsen Universe Estimates 2002, Strategy Research, Yankelovich 2000, Center for Media Research 10/7/02

Advertising in Spanish-language is proven to be far more effective with Hispanics. According to the Roslow 2000 study on advertising effectiveness among U.S. Hispanics:
ad recall rises 61% for those viewing in Spanish,
communication is 57% more effective and
persuasion is 5 times greater.

Marketing to Hispanics should not only be in Spanish-language but should also be culturally relevant. Translation of general market copy is not an effective or efficient approach for delivering the target. Advertising should be culturally relevant and dialect sensitive. Agencies specializing in Hispanic advertising and marketing understand that accents and terminologies differ based on country of origin. They exercise sensitivities to these differences when creating an advertising message. Important, as well, is not to stereotype this market.

2900 N.W. 39th Street; Miami, Florida 33142; (305) 633-3341 (ext 251) phone; (305) 635-4002 fax

DIARIO LAS AMERICAS

La Revista del DIARIO

Spanish language preference has not decreased throughout the years as many had predicted. It has actually increased. One contributor to the increase could be the increasing acceptance of Spanish-language, as well as, what many are calling 'retro-acculturation.' Latinos are feeling more comfortable with their culture and the use of Spanish-language. Great contributions by Latinos in the areas of sports, entertainment, and business have laid out a new dynamic for Latino youths. They are more proud to be a part of the Hispanic community and to be considered Latinos.

"The Spanish language is more important to me than it was just five years ago." - % HISPANICS AGREE

Source: Yankelovich Partners 1990 & 2002 Hispanic Monitor Study

The Hispanic market is **separated from general market by language and culture.** Hispanics have different viewing and listening patterns. That is why the top rated programs (overall - Hispanic & general market - source Nielsen Hispanic Station Index) on television for Hispanics are 'novelas' on Univision; and why the top radio stations in major Hispanic markets are Hispanic stations. Some Hispanics can be reached through general market advertising efforts (spill), but the effectiveness and impact of the message is not the same (per Roslow 2000). Hispanics are more likely to buy brands that advertise to them in Spanish-language. Many advertisers have become savvier to the fact. In November Burger King Inc. set aside swathes of aisle space in nearly 1,000 of its stores for videos dubbed in Spanish. In December, Kmart Corp. announced the launch of an apparel line named after Mexican pop star Thalia. P&G created a magazine-style direct mail piece specific to Hispanics.

Some companies early to see the potential are cashing in. Sales of Ford brand cars and light trucks to the Hispanic market grew 40% in the past five years. After the company started using Mexican bombshell Salma Hayek to market its Lincoln brand last year, Hispanic purchases of Lincoln Navigators grew 12%, while sales to non-Hispanics were flat, says a Ford Motor Co. spokeswoman. At Honda Motor Co.'s American arm, Latino purchases grew to 8.4% of all vehicles sold last year from about 7% five years ago.

With the nation's economy as a whole stagnating, the U.S. Hispanic population is emerging as one of the most promising motors for growth. Driving the growth is the population's higher-than-average birth rate and immigration. Additionally, Hispanic household incomes are starting to catch up with national averages. The Global Insight report estimates that Hispanic household incomes should grow from 77% of the national average in 2000 to 82% by 2020. The Selig Center for Economic Growth at the University of Georgia says Hispanic disposable income will reach $926 billion in 2007, up some 60% from $580.5 billion last year. Meanwhile, non-Hispanic buying power will grow less than 28%, to $8.9 trillion. The Selig Center estimates that in five years Hispanics will account for 9.4% of the nation's disposable income, up from 5.2% in 1990.

DIARIO LAS AMERICAS

La Revista del DIARIO

Both television and radio have seen the growth. Advertising on Spanish-language TV grew 16.5% last year, over twice the 7.6% growth by all broadcast TV, estimates Gordon Hodge of investment bank Thomas Weisel Partners. Today there are 8 times the number of Hispanic radio stations than there were 20 years ago.

1980	67	Hispanic Radio Stations
2002	600	Hispanic Radio Stations

Get the picture? It seems some major companies have, and it spell $$$. They understand the importance of the Hispanic market. They see it as a **separate market**, and so should we.

Sincerely,

Leticia R. Peláez
Director of Advertising

2900 N.W. 39th Street, Miami, Florida 33142; (305) 633-3341 (ext 251) phone: (305) 635-4002 fax

Castells & Asociados
ADVERTISING

INSPIRATION
PASSION
RESULTS

May 22, 2003

Federal Communications Commission
445 Twelfth Street South
Washington, D.C. 20554

To Whom It May Concern,

My name is Raquel Tomasino, I am Media Director of Castells & Asociados and have been asked to comment on whether the U.S. Hispanic media market is a separate market for the purpose of assisting the FCC in its ongoing review and analysis of the pending merger of Univision Communications and Hispanic Broadcasting Corporation.

From a marketing standpoint the US Hispanic market is a separate marketplace. Marketing to Hispanics requires understanding of the cultural differences that exist versus the General Consumer, understanding that creatively Spanish-language commercials need to reflect Latino cultural nuances and queues to be fully effective in producing similar results versus the General English-language commercials.

More than 50% of the US Hispanics are Spanish-dominant. In the West Coast that number is closer to 60%. While long time residents and US born Latinos speak English so that they can function in mainstream America, various factors which include, the growing population, strong Hispanic communities, and immigration keep fueling the desire for Hispanics to hang on to their culture, their language and entertainment preferences.

The Hispanic market is not one Monolithic segment of the population, it is a complex group comprised of many segments with different cultural nuances and origins, united by one language.

Spanish-language media plays a very big part in reaching out to the different segments of the population by continuing to supply programming that feature relevant content that speak to the Latino preferences.

865 south figueroa street suite 1100 los angeles, ca. 90017 phone: 213.688.7250 fax 213.688.7092 adcastells.com

In the case of Spanish-language TV, Experience has shown that original productions with familiar content such as Latino entertainers, International dramas and Futbol/Soccer is a formula for success. The English-TV programming, such as "Charlie's Angels" and "Reyes Y Ray" (Starsky & Hutch) remakes in Spanish that some networks tried to reproduce and run on Spanish-TV proved to be unsuccessful.

Radio has become the optional source of information and news not only about our homeland but our communities, with commercials that we can actually understand and follow in our language. Radio also offers the variety in programming needed to finely target the different segments of the Hispanic communities.

Like the Central American who listen to Cumbias, the Caribbean's who prefer Salsa, the South American's like Spanish-Rock and the Mexican Community who love their Rancheras and traditional sounds of Mexico.

As an agency it is important for us to educate our clients on the most effective way to reach the Hispanic consumer. We are responsible for creating advertising that is compelling, that builds awareness and consumer loyalty and at the end of the day we need to deliver these through the various, relevant forms of media vehicles.

That's why we have a list of ten things to avoid when marketing to Hispanics. Below is a top line of the top ten things not to do by Liz Castells-Heard, President of Castells & Asoicado:

10. Approaching The Market As If It Were A Monolithic Segment.
"One-Size Fits All" Approach No Longer Works, Unless It's just the Start.
Hispanic marketing has evolved from the '70's "orphan" to the "childish" '80's regional efforts; the post-pubescent 90's of homogenization; and now to bicultural segmentation, as "Hispanic" grows up as an adult rich with complexities. It's beyond country of origin -- one generic "broadcast" Spanish *can* be effective. It's knowing what makes us tick; foreign-born (58%) or US born; Spanish-dominants (58%) or reaching bilinguals/English-dominants with culturally-relevant English ads (like African-American). It's targeting various age targets *and* influencers. Companies like McDonald's who do this well, have very strong Hispanic positions.

9. Not Understanding Your "Hispanic" Category.
Category Dynamics Don't Automatically Apply. Know & Embrace The Differences.
Your "Hispanic" category is not at the same point of its lifecycle development; and Latinos are often behind on the learning curve. Cultural and lifestyle differences affect perceptions, needs, motivations and advertising. Demographic barriers may not exist; but perceptual barriers need to be addressed, like in cable or banking.

8. **Not Having A Long-Term Hispanic Market Plan.**
Have A Consistent & Integrated Hispanic Strategic Branding and Retail Plan.
You need to have bilingual training, people, operations; multi-media advertising, promotions and PR. Some believe you don't need a Hispanic branding campaign due to the *myth* of Hispanic brand loyalty. Hispanics will respond and brand-switch. You can't assume your established General Market or Latin American efforts will bleed over. Classic examples are Colgate-Palmolive left behind by P&G, or Toyota toppling Chevrolet. Continual short-term messages lead to poor brand perception, discounting and brand erosion. You need a branding campaign with "legs" and a multi-media mix, beyond TV to radio, OOH, DR, on-line, print, etc.

7. **Consistently Opting For General Market "Transcreations."**
Stay True To The Brand, Seek Synergies With Hispanic Consumer Relevance.
Look for synergies and commonalities between General and Hispanic consumer segments, but don't force-fit. Transcreating GM strategies or creative may work when the concept transcends ethnicities or for short-term promotions, but *consistently* employing this approach becomes ineffective. Just think about all the GM money you spend to identify that key consumer nugget, or that breakthrough ad. Know the cultural nuances that affect your direction and define ad relevance.

6. **Oversimplifying And Underestimating The Potential Of The HCM.**
Quantify The Hispanic Business Potential With Sound Research and Analysis.
Put the stats to work and figure out the actual potential, by market, by account. Once you assess the huge potential, "package" it internally. Call it a profitable "division" or establish a multi-discipline Hispanic committee to facilitate its viability.

5. **Inadequate Allocation Of Company Resources to "Hispanic."**
Proper Allocation of Hispanic Marketing Budgets and Resources is Key.
Inadequate pre-planning, sub-standard concepts, limited "test efforts," poor tactical executions and lack of performance metrics devalue Hispanic potential. Don't say; "This is all we have for Hispanic this year." Hispanic should an integral part of the budget pre-planning process. Assess Hispanic share vs. the GM; and weigh the trade-offs of where you spend. The $2.4 Billion spent in Spanish is still less than 4% of all ad dollars - But it's changing quickly as companies spend more; traditional categories *like packaged goods*, newer categories like telecomm, health, travel, entertainment, or high-tech.

4. **Thinking Hispanics Are Effectively Reached Via English Media.**
Spanish Ads are Critical; English-language Spillover is Not Necessarily Effective.
Don't say; "Half of Hispanics see our spots, they're the ones with the money." Spanish media continues to grow; 70% of Hispanic TV viewing goes to Spanish, up from 45% in 1995. Spanish broadcast gets the majority of share even among bilinguals. To know what to spend, apply a systematic budget formula that accounts for Nielsen spill, Roslow comprehension, population and CPP's.
Nationally, 10% of total dollars should go to Spanish, 4% to English-Hispanic; in L.A., 30% to Spanish, 11-18% to English-Hispanic. Hispanic median income is $49K (85 index vs. GM), so it's highly likely Hispanics can afford your product.

3. **Recruiting A Native Spanish Speaker To Critique Your Agency's Creative.** *Just Like the General Market, Let the Hispanic Consumers Be The Judge.*

Please don't say; "Juanita Garcia says the words are not right." Regis & Kelly are not asking you to write their monologue, so don't rely on your housekeeper to critique the work done by a creative with a Masters and 15 years experience. Do the same type of copy research as the GM, qualitative or quantitative, it all exists. Assure your Hispanic ads deliver the strategy and communication goals.

2. **Hispanic Programs Must Pay Out In Incremental Volume.**

Have a Measurable, Realistic and Agreed-Upon Hispanic ROI and Report Card.

There is a base cost for customer retention and maintaining brand share, and the Hispanic program should not pay-out solely on incremental sales. The report card should be based on cumulative measures; Hispanic sales tracking, field surveys and pre/post quantitative tracking studies. Don't relegate Hispanic research to the back shelf. Employ the proper research size and methodology to ensure the Hispanic sub-segments are well defined and represented.

1. **Not Allowing Your Hispanic Agency To Challenge Status Quo.**

Demand High Performance From Your Hispanic Agency.

Demand the same level of excellence as your General Market agencies. Be inclusive with your agency and set clear goals and expectations. Think of your agency as a marketing partner, as the more knowledge shared, the better the work. Allow Hispanic programs to evolve, flourish and increase. Hire a true Hispanic agency, not a Hispanic "division," or one – **like Castells & Asociados.**

Sincerely,

Raquel Tomasino

Raquel Tomasino
EVP, Director of Media Services

Latin America/U.S. Hispanic
Integrated Marketing & Communications

The Honorable Michael Powell, Chairman
Federal Communications Commission
445 12th Street, Southwest
Washington, D.C. 20554

Dear Chairman Powell:

My name is Linda Lane González, president of The VIVA Partnership, Inc., a Miami-based advertising agency specializing in the U.S. Hispanic market. My professional experience over the past 15 years has been almost exclusively in the U.S. Hispanic market, having worked with some of the greatest pioneers of our field, Lionel Sosa, Carlos Montemayor, Paul Castillo and others over the years on a variety of accounts including Chrysler, Builder's Square, Cuervo, CBS, Verizon Wireless, Uniroyal, Meow Mix, and Entenmann's.

I have been asked to comment on whether or not I believe the U.S. Hispanic media market is actually a separate market. My answer is an emphatic *yes*. To which could be added an emphatic *of course!* Hispanics are different in many ways: be it culture, language, or the numerous customs and traditions. Research shows that in-language programming is more impactful to the Hispanic target when it connects on a deeper level, in language and culturally relevant.

The Hispanic media market and it s numerous vehicles are a separate, relevant entity. From Nielsen to Arbitron – media is adapting and adjusting to the ever-growing Hispanic population. Nielsen has adjusted the way it measures audience levels due to the exploding Hispanic numbers. Arbitron continues to be challenged and is currently modifying their methodology on how to accurately measure Hispanic audience levels.

I hope my comments will be useful in the commission's consideration of the U.S. Hispanic media market as a separate and relevant entity and in its review of the Univision/HBC merger.

Very sincerely yours,

Linda Lane González
President
The VIVA Partnership, Inc.
4141 N.E. 2nd Avenue, Suite 203E
Miami, FL 33137

zubi advertising

May 27, 2003

The Honorable Michael K. Powell
Federal Communications Commission
445 12th Street
SW, Washington 20024

Dear Chairman Powell:

My name is Tere Zubizarreta, President & CEO of Zubi Advertising.

I have been asked to comment on whether the U.S. Hispanic media market is a separate market. There's no doubt that the Hispanic media market is an entity completely separate from the "general market".

As will be shown below, there is ample evidence and factual corroboration to conclude that the U.S. Hispanic media market is a separate market.

The Hispanic media market stands alone since it caters strictly to those U.S. residents (33 million by 2000 census), in their native language, taking into account cultural idiosyncrasies and family values.

The media availability to address this market is professional in its programming and formats are according to the demographics in each of the major Hispanic markets.

This fact is particularly important when looking at the radio and TV networks as the primary source of communication with this fast growing market.

I hope the information provided will be useful in the consideration of the U.S. Hispanic media market as a separate relevant market.

Sincerely,

Tere A. Zubizarreta

TAZ:mlt

Tere A. Zubizarreta
President & CEO
tzub@zubiad.com

355 Alhambra Circle, 10th Floor, Coral Gables, Florida 33134
Tel: 305.428.6150 • Fax: 305.460.6859 • www.zubiad.com
Member of the Association of Hispanic Advertising Agencies (AHAA)

MindShare

May 21, 2003

To Whom It May Concern,

I'm Richard Cotter, Senior Partner and Director of Local Broadcast for Mindshare. We're one of the largest buyers of time on radio and television stations in America.

I've been asked to weigh in on the question if Hispanics in the United States represent a discreet market. The question is important because it's being used in the analysis by the F.C.C. concerning the proposed merger of Univision Communications and Hispanic Broadcasting Corporation. There's ample evidence and factual corroboration to conclude that the U.S. Hispanic media market is a separate market.

First, the Hispanic media market is separated from the rest by it's own radio and television stations broadcasting in their own language. The Spanish language radio and TV stations serve a distinct consumer base with different brand awareness, tastes and preferences. To be sure it's a separate population with different growth rates.

As the F.C.C. reviews the Univision/HBC merger I hope the information highlighted here will help provide direction and the right decision to this important question.

Sincerely,

Richard Cotter
Senior Partner, USA Director of Local Broadcast

WORLDWIDE PLAZA 825 8TH AVENUE NEW YORK NY 10019-7416 TEL 646 756 4000 FAX 646 756 4001

AMISTAD
MEDIA

May 2003

As a media executive, I've been asked to comment on whether the US Hispanic media market is a separate market from the general market. There is no question that the Hispanic market is indeed separate and should always be considered as such.

There is ample evidence and factual corroboration to conclude that this to be true. The language of preference for many Hispanics, whether they are recent arrivals or US born, is Spanish. The importance of the culture to Hispanics is such that parents instill pride in language, customs, music and dance to their children. In the mid seventies, the US had about 50 Spanish-language radio stations in the entire country. Today over 600 radio stations dot the landscape with stations cropping up in markets where just 10 years ago no one would have guessed the need for Spanish formats would be.

The same holds true for Spanish-language TV. We've seen the growth in the number of networks and independent stations everywhere. Some markets, such as Chicago, Miami and Los Angeles have at least five Spanish-language TV options.

The bottom line is, if you don't speak Spanish, chances are you ignore Spanish-language media. Similarly, if you don't speak English, or just simply prefer Spanish, chances are you ignore English-language media. So if you're not speaking to me in the language I prefer, I'm not listening to your message. Few advertisers can afford to ignore this market.

There is no question as to the relevance of this market, and ample evidence exists that it reached through Spanish-language media.

Emma Moya
VP/Client Services
Amistad Media Group
815 Brazos Street
Austin, Texas 78701

THE HISTORICAL ASSOCIATION OF SOUTHERN FLORIDA

AN ASSOCIATION OF PEOPLE SHARING AN INTEREST IN THE HISTORY OF SOUTH FLORIDA AND THE CARIBBEAN

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Dimizulu Gene S. Tinnie
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J. Andrew Brian
President

HISTORICAL MUSEUM OF SOUTHERN FLORIDA

Miami-Dade Cultural Center
101 West Flagler Street
Miami, Florida 33130-1504
Telephone 305 375 1492
Fax 305 375 1609
hasf@historical-museum.org
www.historical-museum.org

Founded in 1940—Accredited by the American Association of Museums

May 21st, 2003

Ladies and Gentlemen:

I am the Marketing Director for the Historical Museum of Southern Florida. My career in marketing and advertising expands more than twenty years of experience in TV, radio and major publications in the Caribbean and United States.

I have been asked to offer some observations about whether Hispanic media in the United States should be considered a separate market venue from that of the general market. My answer is a definite, *si, por supuesto.*

For the last two decades, major U.S. corporations have debated whether or not to consider Hispanics just a minority group who will, in time, assimilate to the American culture or a growing consumer powerhouse loyal to their ethnicity. Time has proven that the latter is the correct assessment of this market. Almost everyday, articles are published in major newspapers throughout the United States confirming the importance of reaching Hispanics in their own language, showing sensitivity to their particular customs.

The Hispanic market has evolved into a rich mosaic of cultures. Each segment with its own set of goals, music preferences and interests. There are two common denominators: Language and pride of culture.

Endless research has shown time and time again that Hispanics respond better when approached in *español*. The message is even more effective if it is tailored to their particular cultural background. Hispanic media, particularly radio and TV play a key role in the success of any promotional effort targeted to this important market. Hispanics depend on radio and TV for their news, entertainment and lifestyle trends. Hispanic radio and TV are their emotional link to their roots.

Hispanic media, in particular radio and TV, has evolved into a market in itself. Using the most efficient technology and combining it with the characteristics of the Hispanics' *simpatía*, makes it stand out and be different from any other mass communication venue.

I trust that the views offered here may be useful in the consideration of the U.S. Hispanic media market as a separate and relevant venue.

DMA

Delaney Media Agency
2000 South Ocean Dr. Suite 1401
Ft. Lauderdale, Fla. 33316

954 761-2358 Office
954 761-9749 Fax
954 336-5726 Cell

May 27, 2003

To Whom it May Concern:

My name is Pat Delaney. I am President of DMA and have been in the advertising industry for over 27 years. I have planned and purchased all mediums throughout the US for clients such as: Reebok, Wendy's International, BMW, AutoNation, Terminix, Rite Aid Drugs, Toys R Us, just to name a few.

I have been asked to comment on whether the US Hispanic media market is a separate market. Also, whether there is ample evidence and factual corroboration to conclude that the US Hispanic media market is a separate market:

The US Hispanic market is a separate market. Hispanics listen and watch various mediums differently than Anglos. With the available research on Hispanics, it clearly shows that while many Hispanics are bilingual, they still speak Spanish at home and do listen or watch Hispanic radio or TV. It's also substantiated by research that the number one radio or tv station in a given market (eg. Los Angeles, Miami, etc.) is Hispanic. This reflects all stations in a market, not just Hispanic and indicates to an advertiser that a large percentage of their potential customers are being missed if Hispanic media is not being purchased. In many markets, Hispanics account for over 50% of the market.

Over the years I have found that with the available research an advertiser can effectively reach their potential customers by using both Hispanic and Anglo mediums. The research provides duplicated and unduplicated listenership/viewership of the media purchased to assure full coverage of both Hispanics and Anglos. Without this research it would be a shot in the dark.

I hope this information provided will be useful in the consideration of the US Hispanic media market as a separate relevant market.

Sincerely,

Pat Delaney

Pat Delaney

Presidente
IMPORTED BEER

May 23, 2003

To: Federal Communications Commission
Honorable Michael Powel

I am Mike Herrera. My experience is Florida Distributor Coordinator. I have worked in the Florida Market for 17 year in the beer Industry. Fourteen years with Anheuser Busch and the last three with Presidente U.S.A. Presidente Beer is one of the leading beers in the U.S. that markets to Hispanic consumers across the country.

I have been asked to comment on whether the U.S. Hispanic media market is a separate market.

There is ample evidence and factual corroboration to conclude that the U.S. Hispanic media market is s separate market. Research companies such as Simmons measures media habits, product and service usage, demographics and psychographics of Hispanic consumers across the country.

In addition to the Nielsen media research is one of the market leaders in terms of providing quality measurement of Hispanic TV audiences.

When Presidente Beer commences its marketing planning and forecast our strategic approach is to identify the key markets within our Demographic group and separate within each market the hispanic and general market. This strategic marketing approach is used in all of our key markets across the United States.

I hope the information provided will be useful in the consideration of the U.S. Hispanic media market as a separate relevant market.

Sincerely,

Mike Herrera
Presidente U.S.A.

Labatt USA
America's Specialty Beer Company

11901 NW 14TH COURT
Pembroke Pines, Fl. 33026
(954) 437 2801 / fax (954) 437-2802

TO: Ana Figueroa

FROM: Nelson Quintero

DATE: May 22, 2003

RE: Hispanic Survey

In reference to your questions regarding the Hispanic media survey my personal opinion is that Hispanic media should be maintained separate from the general market. The Hispanic market is a different segment and should be targetted differently. In the beer industry we face these challenges everyday trying to cross over to a complex ethnic market with such a Latin American influx and diversity. We are struggling trying to convey the same message.

In reference to Radio, the audience of most listeners are probably working people or traveling in vehicles. During the most busy traffic hours and lunch time most people are listening to the radio. This is a key time for messages and commercials to get across. For example; lunch hour at any restaurant, bar or café usually has a radio station playing. I think today's TV viewer's are looking for specific shows, movies or the nightly news.

Ana, I hope this information helps you with your survey and please understand this is my opinion and not of Labatt USA.

Sincerely Yours,

Nelson Quintero
District Manager
Southeast Florida

NISSAN

GLENDALE NISSAN

727 South Brand Blvd.
Glendale, California 91204
(818) 240-6000
Fax (818) 543-1585

Mailing Address:
828 South Brand Blvd.
Glendale, California 91204
E mail: gni@sageauto.com

May 21, 2003

Federal Communications Commission
445 Twelfth St. South
Washington, D.C. 20554

To Whom It May Concern:

My name is Marci Neill I am the advertising coordinator for Glendale Nissan/Infiniti.

I have been asked to comment on whether the U.S. Hispanic media market is a separate market, for the purpose of assisting the FCC in its ongoing review and analysis of the pending merger of Univision Communications and Hispanic Broadcasting Corporation.

The first and most obvious example would be separate languages. From there the list goes on and on to include the following, separate location, population, growth rate, income level, brand preferences, and cost basis, to name just a few of the reasons why as an advertiser it is critical to be able to target Hispanic media, both TV and Radio as a separate market.

I hope the Commission will take these factors into consideration when reviewing the Univision/HBC merger.

Sincerely,

Marci Neill

Marci Neill
Advertising Coordinator

Toyota of Manhattan
608 West 57th Street, New York NY 10019 • Sales/Service 212-399-9600 • Fax 212-977-9144

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Fordham Toyota

WESTCHESTER, NY
Westchester Toyota

NEW JERSEY
Freehold Hyundai
Freehold Jeep
Freehold Mitsubishi
Route 22 Honda
Route 22 Nissan
Route 22 Toyota
Hudson Honda

To Whom It May Concern,

My name is Jaime Amoroso, general manager of Toyota of Manhattan. I've been in automotive sales for over 15 years.

I've been asked to give my opinion on the question, "Do Hispanics in United States represent a unique market?" The question is been used in the consideration of the pending merged between Univision Communications and Hispanic Broadcasting.

The answer is clearly "YES". While we are Americans we are also Hispanics with so many different things that make us unique such as the foods we eat, our traditions, our culture and so much more. We have our own separate language with our own tastes, preferences and brand awareness. We have our own population with it's own unique growth rate.

We have distinct radio, television stations, and programs that appeal specifically to us. These stations and programs broadcast directly to our community in our language with it's own cost base, discreet demographics and targets. It is unique and separate.

As the F.C.C. reviews the Univision/HBC merger I hope the information highlighted here will help provide direction and the right decision to this most important question.

Sincerely,

Jaime Amoroso

Sid Paterson
Advertising, Inc.

June 2, 2003

To Whom It May Concern:

I've owned and operated a radio and TV buying service in New York City for many years.

I'd like to share my thoughts with you concerning the Hispanic market in the hopes my comments will be useful in the Commissions consideration as it reviews the Univision/HBC merger. The central point is the US Hispanic media market is a separate entity. First, the radio and TV stations which make up this market deal a separate consumer base and communicate to it in a different language. Secondly, the markets population base differs as does its brand awareness and cost structure.

Turn the channel-tune your radio. Your eyes and ears should convince your mind and heart this truly is a distinct market.

Sid Paterson

Sid Paterson

99 Madison Avenue
9th Floor
New York, NY 10016
Tel 212.725.9600
Fax 212.779.7201

Miami, May 21, 2003
To Whom it may concern

I am Gonzalo J. Gonzalez, Managing Officer at BVK/Meka in Miami. My experience in the advertising industry includes over 15 years working with most product categories in the United States, Spain and Latin America.

BVK MEKA is one the leading Hispanic advertising and Public Relations marketing firms, and the Hispanic Division of BVK in Milwaukee, ranked among the top 50 Advertising Agencies in the United States.

Our current client list for the US Hispanic market include SouthWest Airlines, Sprint PCS, Pfizer, South East Toyota, Samsonite, Samsung and the Florida Anti-Tobacco campaign among others.

I have been asked to comment on whether the U.S. Hispanic media Market should be considered as a separate market. Not only for the proven effectiveness of the Spanish Language in communicating messages, but also because of the different media habits and cultural relevance of programming, the Hispanic media is and should be considered separate when planning, buying and evaluating broadcast media.

This fact has been proven by numerous research developed by the most prestigious research companies, such as Nielsen, Roslow Institute, Scarborough, Strategy research, among others.

As a result of this, companies that measure and monitor broadcast media, such as Nielsen and Arbitron, has adapted their methodology in term of measuring Hispanics across the country, publishing separate Hispanic books with the results of their surveys.

I hope the Point of View will be useful in the consideration of the U.S. Hispanic media market as a separate relevant market, and feel free to contact me should you need to further discuss this matter.

Sincerely,

Gonzalo J. Gonzalez
Managing Officer

bvkmeka 848 brickell avenue, 4th floor > miami fl 33131
305 3720028 > 3720880 > www.bvkmeka.com

creativas

May 21, 2003

Federal Communications Commission
445 12th Street, S.W.
Washington DC. 20554

To Whom It May Concern:

It is with great concern that our firm has approached you regarding the proposed merger between HBC and Univision.

As a boutique firm in Coral Gables providing counsel in the areas of Advertising, event marketing and public relations, we foresee the ramifications of this proposed merger. We are a young firm, comprised of individuals who have been active in the advertising industry in the South Florida marketplace for over a decade, particularly in Hispanic media. We live in this market, and understand the unique elements it's comprised of including how cyclical is it. The South Florida market will severely suffer if this merger happens.

Our philosophy rests on the shoulders of innovation and we stand strong in our focus on providing unique and cost effective methods for our clients to achieve their marketing goals. However, we believe that the uniting of the nation's number-one Spanish-language television operator and the number-one Spanish-language radio owner resembles the Clear Channel model. Formulas such as this have truly made it difficult for agencies and local businesses such as ours to thrive in a marketplace where as it relates to placing media, there are very few competitors.

We are convinced that with such a merger taking effect, many areas of our industry will be directly affected. Our concerns are the strong negative effects on both the general as well as the Hispanic market. We are specifically concerned about the business practices and methodology that will ultimately impact the consumer.

We would also like to comment on the issue of whether the Hispanic media market is a separate one. Our firm firmly believes it is. Just to begin, this is a market that ha its own consumer base that possess their own tastes, brand awareness, brand preferences, media, cost basis, population, and *language*. How can one ignore the facts listed above? Including both television and radio, it is evident that this market has its own unique set of separate characteristics, its own buying power, and its own consumer psychographics.

We implore the Commission to consider the ample evidence aforementioned. My firm could not feel more strongly about this matter. We respectfully seek your assistance in protecting the industry comprised of agencies and advertisers alike who realize how critical this matter is and how this proposed merger will affect the future of our industry. We trust in the judgment of the Commission and rely on its plight to protect the overall public's interest. Please take our plea into consideration. If need be, our firm is at your disposition as it relates to the Commission's consideration of the U.S. Hispanic media market as a autonomous market and its review of the Univision/HBC merger.

Sincerely,

Liza M. Santana
President, Creativas Group Inc.

www.creativasgroup.com
Email: lmsantana@creativasgroup.com
Office 305.856.3880 Fax 305.856.3882
1395 Coral Way, Suite 2-J, Coral Gables, FL. 33145

The Menda Group
advertising services

May 22, 2003

To Whom It May Concern:

As an advertising agency in the South Florida market for over 7 years, and as an advertising professional for over 13 years, I am always asked the same question from many of my advertisers: "How can I best reach the Hispanic market?"

The question would seem to have a simple answer: "Just through some budget dollars to a couple of Hispanic stations, translate our current spot (some advertisers actually use their English spot in Spanish language stations), and go with it!"

The more I see these situations occur, the more I realize that there are still many people in South Florida and the U.S. that still don't get it.

The Hispanic market is more than just a true and separate market from the general market. It has several "sub-markets" within itself. It is not suffice to think that with just one campaign, or one spot, or one theory, we can reach the entire Hispanic market. Hispanics in the U.S. are truly diverse. South Florida alone has possibly the most diverse Hispanic market in the country, comprised mostly of people from the Caribbean, Central and South America.

Unquestionably, the same applies to all the Hispanic markets across the U.S.
Hispanics have become an important part of our population with their rapid growth,
as well as their increasing buying power as consumers. This is a market with different cultures, ideas, values and customs.

Therefore, it is critical that Hispanics be considered as a separate market in order to reach them effectively and allow prospective advertisers to communicate with this powerful and evolving segment of our country.

Thank you

Tony Garcia
President
The Menda Group

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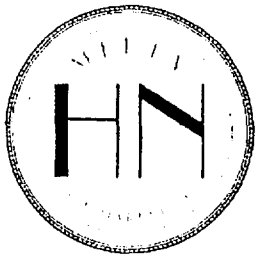

To Whom It May Concern,

I'm Helane Naiman. I have worked in media in New York City for over twenty five years and have for the past five years owned my own ad agency/buying service, HN Media & Marketing, Inc.

I've been asked to comment on whether the U.S. Hispanic media market is a separate market for the purpose of assisting the F.C.C. in its ongoing review and analysis of the pending merger between Univision Communications and Hispanic Broadcasting Corporation. In my opinion it certainly is. Here are just a few reasons why. The Hispanic population has separate tastes. It differs in brand awareness with a uniquely different consumer base. Hispanics in the United States have their own media. The market includes both radio and television stations that broadcast in the Spanish language.

I hope this information is useful to the Commission in their consideration of this issue. As the FCC reviews the question of whether Hispanics in the United States are a separate market the answer is clearly-yes.

Yours Truly,

Helane Naiman, President

Helane Naiman
President

accentmarketing

May 27, 2003

To whom it may concern:

My name is Migdalia Santana and I am the Media Director for Accentmarketing, a Hispanic advertising agency located in Coral Gables, Florida. I have been involved in the Hispanic Advertising business for more than 10 years, most of those as a Media Director for different agencies.

I have been asked for my opinion and comments on whether the U.S. Hispanic media market is a separate market.

During all my years in the business I have had multiple opportunities to experience the differences of this market versus the Non-Hispanic market in the U.S.

- The strongest and most obvious difference has been the Spanish language preference among Spanish dependants, Spanish dominants and bilingual Hispanics. Even the most acculturated Hispanics have showed their preference for the Spanish language and their appreciation of advertisers that communicate with them in this language. Research has shown that Hispanics feel more comfortable with a commercial message communicated in Spanish. They understand it better and most important, are conscious of the advertisers' interest in communicating with them and competing for their business. This perception has made a real difference in the share growth of these advertisers in the Hispanic market. Large and consistent Hispanic media investments as well as dedicated community involvement efforts have generated growing market shares for advertisers. I have witnessed this success with different product categories that I have worked with throughout the years, including package goods, special services and high-ticket items.

- Being Hispanic is a cultural issue beyond the day-to-day use of the language and despite the levels of acculturation. The pride of being part of the Hispanic culture has overcome all the differences between the multiple Hispanic nationalities that comprise this market. The Hispanic culture has several constant values that have been permanent across all groups and levels of acculturation throughout the years: Spanish language, Spanish music, family ties, religion, tradition, etc.

As will be shown below, there is ample evidence and factual corroboration to conclude that the U.S. Hispanic media market is a separate market.

-The growth of Broadcast Hispanic Media is the strongest proof of this market's uniqueness. Instead of disappearing or being reduced in number, the Spanish language television and radio stations continue to grow and get stronger in all markets. There are currently four over the air Network TV stations servicing the different Hispanic markets. There are also more than four Hispanic cable Networks and multiple local independent stations. Univision ranks as the fifth most watched TV network in the U.S. and this is not just among the Hispanic community. The same situation goes for Hispanic radio. There are more than 644 Hispanic radio stations in the U.S. Several Hispanic stations rank among the top 5 in Arbitron's audience books, in markets like L.A. and Miami.

-This growth of outlets and audience figures is the best proof that Hispanics need and prefer Spanish language media vehicles that offer them the kind of programming that is relevant to their culture and that keeps them informed of everything that is happening in the U.S., in the World and most important in their Hispanic communities as well as their countries of origin.

I hope the information provided will be useful in the consideration of the U.S. Hispanic media market as a separate relevant market.

Sincerely,

Migdalia Santana
VP Media Director

LA PUERTA DEL SOL
SUITE 100
800 DOUGLAS ROAD
CORAL GABLES, FL 33134
(305)461-1112
FAX (305)461-0071

May 23, 2003

Mr. Raul Alarcon Jr.
Chairman
Spanish Broadcasting System
2601 South Bayshore Drive
Penthouse II
Coconut Grove, FL 33133

Dear Raul,

Enclosed is a synopsis of my position paper on the U.S. Hispanic market. I have delivered this or very similar presentations on numerous occasions to a broad spectrum of general business and Hispanic marketing audiences. The most recent was at the Central Florida Hispanic Chamber of Commerce.

I have edited out only my personal (humorous) anecdotes; actually, they were the best part.

Best regards,

A COUNTRY WITHIN A COUNTRY

The U.S. Hispanic market is frequently referred to as "a country within a country...larger than Canada... the fourth largest Spanish speaking country in the hemisphere larger than Peru, Venezuela, Chile or Ecuador.". 42.6 million strong (including Puerto Rico), the population is expected to grow by more than 1.7 million per year. That's 100,000 people every three weeks or 5,000 every day.

Hispanic purchasing power exceeded $630 billion in 2002. In and of itself, it represents the 9th largest economy in the world, larger than the GDP of Brazil, Spain and even Mexico. All indices and economic measurement standards reflect growth and increased prosperity. In the decade between 1979 and 1999, the number of Hispanic families reaching the middle class (defined as those earning between $40,000 and $140,000) increased 71.3% to 2.5 million, fully one-third of the total.

The numbers get even more interesting in terms of business ownership. According to American Demographics Magazine, Hispanics now account for the largest share of minority entrepreneurs in the United States, owning 40% of all such businesses. The Census Bureau's last economic census reported 1.2 million Hispanic owned businesses with aggregate revenue in excess of $186 billion. The 2002 estimate put the figure at 2.3 million with $380 billion in sales. In 2001, the census also reported Hispanic labor-force participation at 80.4% (FYE 2000), higher than non-Hispanic white males as a whole.

It is evident that even official agencies consider this market a discrete entity within the larger marketplace measured and reported accordingly. And while other minority markets are similarly measured in a number of areas, the Hispanic market stands alone as a self-contained, differentiated, "country-like" entity within U.S. borders; one from which specialized disciplines, professions, governmental institutions, NGOs and even foreign policy initiatives, have arisen and will continue to arise well into the foreseeable future. This is not a matter of opinion. It is a matter of fact extremely well grounded in logic, as we shall see:

1. Let's consider the other two large minority segments in the United States, African-Americans (excluding Haitian-Americans) and Asian Americans. African-Americans speak English almost exclusively. There are few direct linkages to African countries of origin. Non-African Americans may easily communicate and participate in this sub-segment at will. They are tied to the mainstream culture by language if not by color.

2. The Asian-American segment is composed by a multiplicity of cultures divided by language – Chinese (Mandarin and Cantonese), Japanese, Korean, Vietnamese, Hindi, Bengali, Urdu, Malay, Punjabi – the influence and economic advantages (cost-effectiveness) that spring from critical mass are elusive if not impossible. Therefore, other than grassroots marketing or media outlets serving small

enclaves, any Pan-Asian network or national print vehicle would be either highly fragmented in a multiplicity of languages or require English as the common denominator.

3. Language is the single most important characteristic of culture and Hispanics in the United States are united by a common language traced to Spanish colonizers regardless of whether these are viewed as ruthless conquistadors (Mexico) or brothers from the mother country (Cubans). If this were not the case, neither national broadcast networks nor national print media would be viable business models. This isn't to say that there aren't English dominant Latinos, but rather that for marketing and communications purposes we include them in the mainstream universe just as we exclude non-Spanish speakers from the Hispanic consumer pool. Spanish dominant Latinos then, by necessity, must rely on Spanish language media even to exercise their right to vote; bilingual Latinos may choose either language based on content or self-identification. Considering that Latinos are basically absent from general market media, being depicted as less than 2% of all characters (while more than 12% of the population) and often in the most negative roles, bilingual Hispanics are practically compelled to turn to Spanish language media to see and/or hear themselves.

4. This cultural phenomenon known as Hispanic-America, and its need for in-language communications that respects and embraces our multiracial identities, musical preferences and folkloric richness created the Hispanic advertising industry. The Association of Hispanic Advertising Agencies was organized in recognition that ours is a marketing sector that could not and would not be well served by general market entities; the very same who for more that 30 years had been predicting with almost evangelical fervor our assimilation and demise. The truth is that Hispanic advertising and media professionals constitute a unique business specialty. As managers, we must have as thorough an understanding of the disciplines as our monolingual, general market counterparts and communicate in English with our clients, bankers, the IRS and the 21 year old brand manager who has never traveled outside of Indiana, yet transcreate, transform, interpret and connect with our consumers in Spanish, the language most likely to produce the sales and economic benefits sought by our clients. "Compre nuestro auto, nuestro jugo y traiga su dinero a nuestro banco." It's the American way. Consumer spending is the backbone of our economy. And let's be realistic, the mainstream population base is experiencing negative birth rates. All U.S. population growth is directly attributable to minority and immigrant sub-segments. The Census says so.

5. The wave of Hispanic agency acquisitions by general market firms shows that they were wrong about assimilation (which did not and will not take place), were wrong to remain intransigently monolingual as if it were a badge of honor and thus, with very few exceptions and these only in the multi-national arena, incapable of creating Hispanic divisions organically. Ultimately, they had to buy the agencies. Most were motivated by profit potential others to keep the market in check and under control.

6. The increasing acceptance of Mexican Matriculas, the strengthening of Radio Marti's signal, NAFTA and the proposed FTAA, point to Hispanic interests influencing the national agenda well beyond the Congressional Hispanic Caucus. This is understandable as Hispanics represent the country's largest pool of bilingual, transnational citizens. It may be a small percentage of the vast United States of America, but a critical component of the country's hemispheric – perhaps global – aspirations. A country within a country indeed.

© 2003 Ana María Fernández Haar

B

AMPRO
PRODUCTIONS
ADVERTISING

May 20, 2003

To Whom It May Concern:

I am Julio Amparo. I have worked in the Hispanic market as an owner of an independent advertising agency for over 15 years.

I have been asked to comment on the pending merger between Univision Communications and Hispanic Broadcasting Corporation. An important question the F.C.C. is facing is whether or not the U.S. Hispanic market is separate market.

First, we speak a different language. We have our own consumer base, our own and separate tastes. As an owner of an ad agency I can tell you Hispanics have their own brand awareness for our own products, Our population growth is different, the cost structure of media is separate --- we are a separate consumer base.

The Hispanic Media market--- radio and TV combined --- is a separate and distinct market. Listen and you will hear with your ears we are a separate market.

I hope my comments will be useful in the Commission's consideration of the US Hispanic media market as a separate relevant entity and in it review of the Univision/HBC merger.

Julio Amparo
President

16 BOBOLINK PLACE • BRYN MAWR, NY 10701 • TEL. (914) 423-7373 • FAX (914) 423-2579

WILLKIE FARR & GALLAGHER

1875 K Street, N.W.
Washington, DC 20006-1238
Tel: 202 303 1000
Fax: 202 303 2000

June 11, 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, Harlingen, Texas *et al.* (Docket No. MB 02-235, FCC File Nos. BTC-20020723ABL, *et al.*)

Dear Ms. Dortch:

Spanish Broadcasting System, Inc. ("SBS") has submitted several filings for the record of this proceeding demonstrating that Spanish-language media does not compete with English-language media. In other words, English-language and Spanish-language broadcasting constitute separate markets for competition and diversity purposes. The proposed Univision/HBC merger threatens to create substantial market power in numerous geographic markets for Spanish-language broadcasting to the detriment of advertisers, consumers, competition, and diversity. This letter submits data demonstrating the severity of that threat in the ten metropolitan areas with the largest Hispanic populations.

Attached hereto is a chart for each of the top ten Spanish-language broadcast markets displaying the market share of each participant in terms of combined television and radio advertising revenues for 2002.[1] In seven of the top ten markets, the combined entity's (Univision + HBC) post-

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1 The charts were prepared using the following methodology: The advertising data for both broadcast radio and broadcast television were obtained from BIA, Inc., through its *Media Access Pro* software (current as of June 5, 2003). BIA provides station-level revenue and ownership data for more than 13,000 radio stations and nearly 2,000 commercial television stations in the United States. Revenues from BIA are estimated using data from its proprietary survey of station managers and owners. For radio stations, BIA reports information on station format. These data were supplemented with information from the *2002 Television and Cable*

merger market share will equal or exceed 60%, and in two of the top ten markets the combined entity's market share will exceed 70%. Indeed, in San Antonio, the combined entity will control a striking 80% of the market. Only in Brownsville/McAllen (13%) and New York (48%) will the combined entity have a market share below 50%. When Entravision's market share is included (Univision + HBC + Entravision), the combined entity's market share ranges from 48% in New York to 84% in Phoenix. For convenience, the table below summarizes the distribution of revenue shares for the combined entity, with and without Entravision. As illustrated by the data in this table, the combined entity would account for a large majority of advertising revenues in 8 (or 9) of the top ten markets.

Cumulative Distribution of 2002 Broadcast Advertising Revenue Shares*

SHARE	UNIVISION + HBC	UNIVISION + HBC + ENTRAVISION
>80%		1
>70%	2	5
≥60%	7	7
>50%	8	9
>40%	9	10

* Numbers may differ from those obtained from the charts due to rounding.

These high market shares—including above 70% in several markets—demonstrate that the merger will enable the new Univision/HBC to exercise substantial market or monopoly power to the detriment of both Spanish-speaking consumers and advertisers who seek to reach that audience. For "a share above 70% is usually strong evidence of monopoly power" and "a share between 50% and 70% can occasionally show monopoly power." *Broadway Delivery Corp. v. United Parcel Service of Am., Inc.*, 651 F.2d 122, 129 (2nd Cir. 1981). Even a share below 50% can support a finding of monopoly power when other indicia of such power—such as the high entry barriers present here—exist. *See id.* The consequences of a monopoly in Spanish-language broadcasting is not only higher rates for

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Factbook, 2002 U.S. Hispanic Market (a publication of Strategy Research Corporation), and various internet websites, including www.100000watts.com.

First, all of the radio and television stations broadcasting to the ten metropolitan areas with the largest Hispanic populations were identified. Using information from BIA as well as internet-based research, each station's language format was determined. A radio station was classified as a Spanish-language station if a portion of the BIA format description was Spanish (BIA reports the current format, which may not necessarily correspond to the station's format in 2002, although we believe relevant changes, if any, to be minimal) or, alternatively, if it could be determined that a portion of the station's programming was in Spanish. Similarly, for television stations, a station was classified as Spanish-language if a portion of the station's programming was in Spanish. Because all Univision television stations broadcast in Spanish, this decision rule provides a conservative estimate of Univision's revenue share.

advertisers, but also a substantial loss in diversity of voices. Moreover, where, as here, the combined entity will control over 40% in all or virtually all of the major relevant markets, diminished economic performance is likely. *See FTC v. Swedish Match*, 131 F. Supp. 2d 151, 166 (D.D.C. 2000) ("Without attempting to specify the smallest market share which would still be considered to threaten undue concentration, we are clear that 30% presents a threat." *quoting United States v. Philadelphia National Bank*, 374 U.S. 321, 364 (1963)). In sum, the market shares shown here present a real risk of anticompetitive harm to Spanish-language advertisers, as well as a critical loss of diversity to Spanish-speaking Americans in these markets.

Moreover, the merger threatens both competition and diversity whether or not Spanish-language television and radio compete in the same market. The reason is that the merger gives Univision/HBC the power to exclude competition even if Spanish-language TV and radio belong in different markets. First, the Univision/HBC merger would raise already high entry barriers into Spanish-language radio. Advertising on Spanish-language TV is important to a Spanish-language radio station's ability to obtain significant audience. Indeed, several of SBS's stations only succeeded because of risky and expensive television advertising campaigns. However, after its acquisition of HBC, Univision—which dominates Spanish-language television—will have an incentive to refuse to deal with, or discriminate against, Spanish-language radio competitors (including SBS) who seek to advertise through Univision (and other properties) in order to advantage HBC. Second, after the merger, the combined entity will have the power to insist that Spanish-language advertisers who wish to advertise through both radio and television purchase time from both Univision and HBC rather than from the combined entity's rivals. Such difficult-to-detect and subtle tying arrangements or refusals to deal—realistic possibilities here—impair competition. *See, e.g., Lorain Journal Co. v. U.S.*, 342 U.S. 143 (1951). The resulting harm to competitors, including SBS, that is sure to follow will not only harm advertisers, but also will impair diversity.

To meet its obligations under the Communications Act, the FCC must undertake a detailed analysis of diversity and competition specific to the Spanish-language media markets implicated by

this merger. In addition to the materials submitted last week and filed today, SBS intends to file shortly with the Commission further information demonstrating the severity of the threat to competition and diversity presented by the proposed merger.

Respectfully submitted,

/s/ Philip L. Verveer

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Sue D. Blumenfeld
Michael G. Jones
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1875 K Street NW
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and

Bruce A. Eisen
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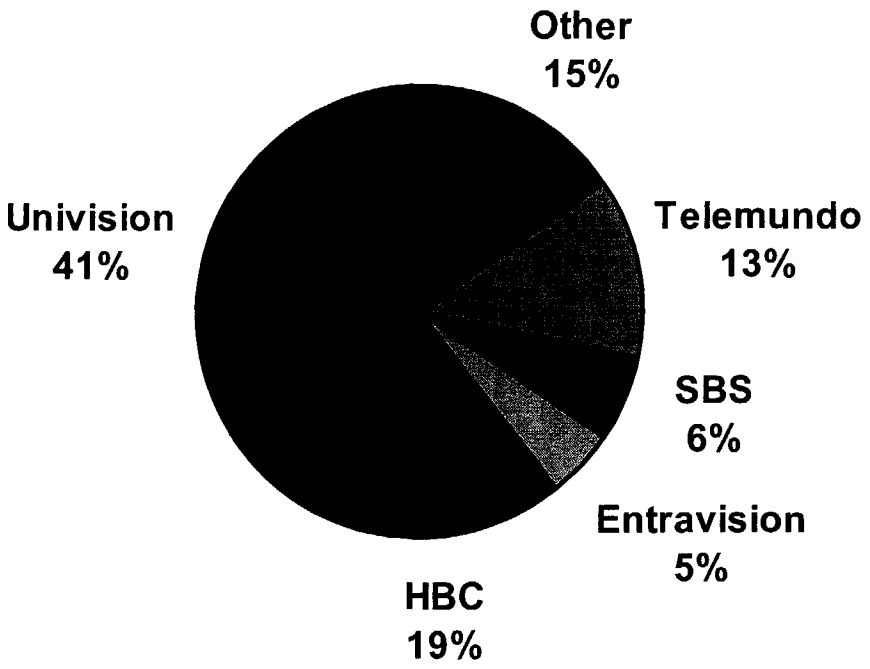
Attorneys for Spanish Broadcasting System, Inc.

cc: Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein
Susan M. Eid
Stacy R. Robinson
Jordan B. Goldstein
Catherine Crutcher Bohigian
Johanna Mikes
W. Kenneth Ferree
David Brown
Scott R. Flick, Counsel for Univision Communications, Inc.
Roy R. Russo, Counsel for Hispanic Broadcasting Corp.
Harry F. Cole, Counsel for Elgin FM Limited Partnership

C

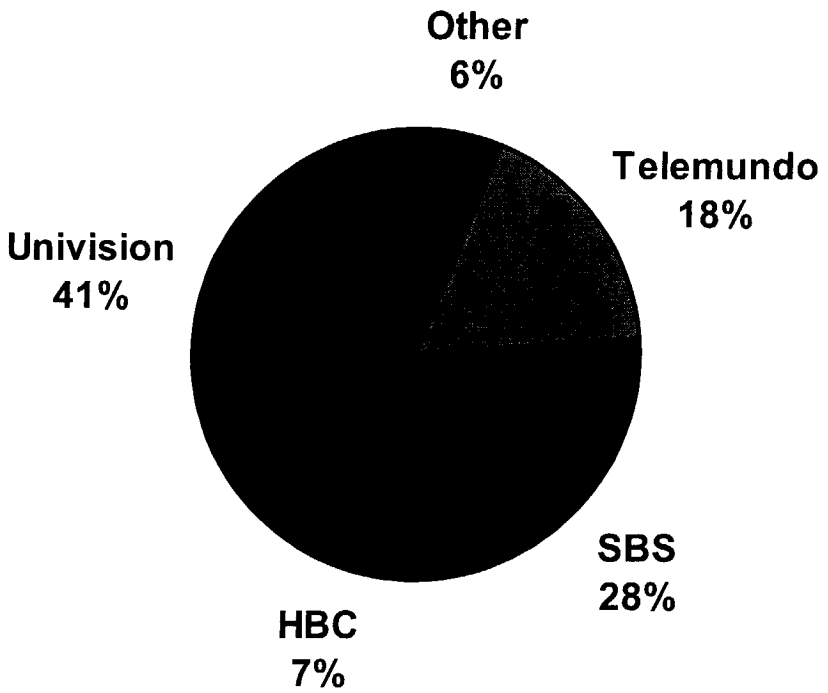
Spanish-Language Broadcast Advertising Revenues, 2002
Los Angeles: Hispanic Population of 7.0 million



Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America, and Viva Television Network.

Sources: 2002 BIA, Inc.; *2002 Television and Cable Factbook; 2002 U.S. Hispanic Market,* Strategy Research Corporation.

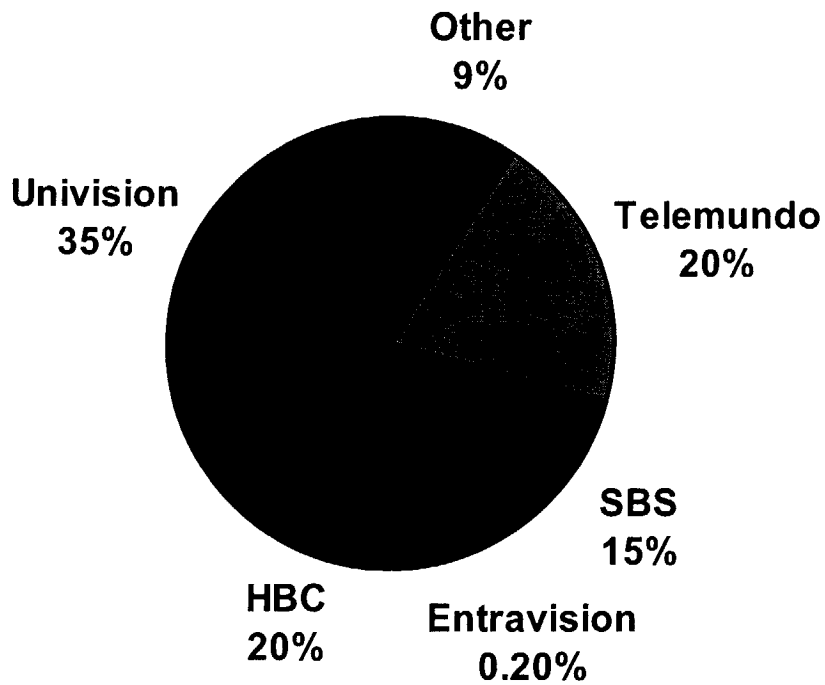
Spanish-Language Broadcast Advertising Revenues, 2002
New York: Hispanic Population of 4.0 million



Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America, and Viva Television Network.

Sources: 2002 BIA, Inc.; *2002 Television and Cable Factbook; 2002 U.S. Hispanic Market,* Strategy Research Corporation.

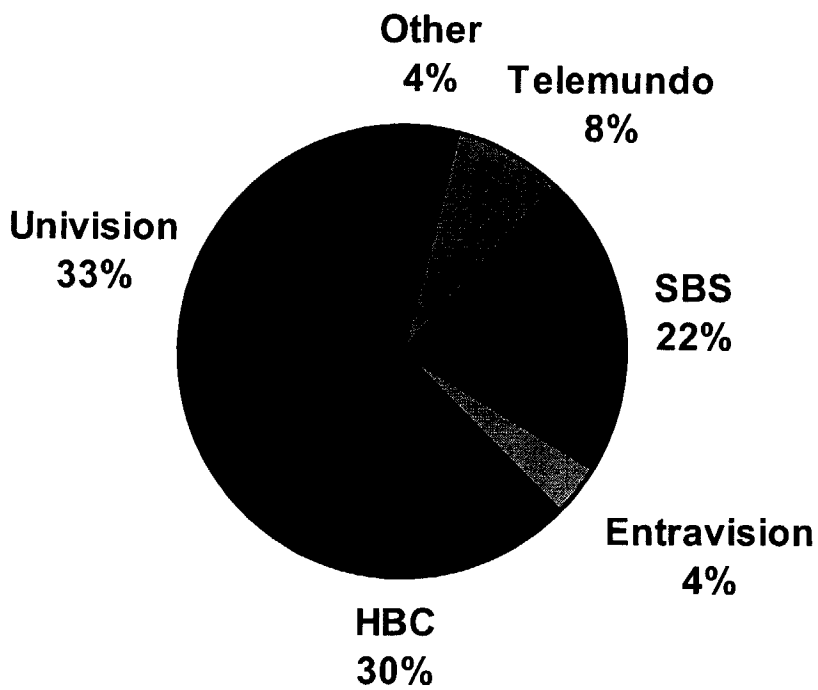
Spanish-Language Broadcast Advertising Revenues, 2002
Miami: Hispanic Population of 1.7 million



Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America, and Viva Television Network.

Sources: 2002 BIA, Inc.; *2002 Television and Cable Factbook; 2002 U.S. Hispanic Market,* Strategy Research Corporation.

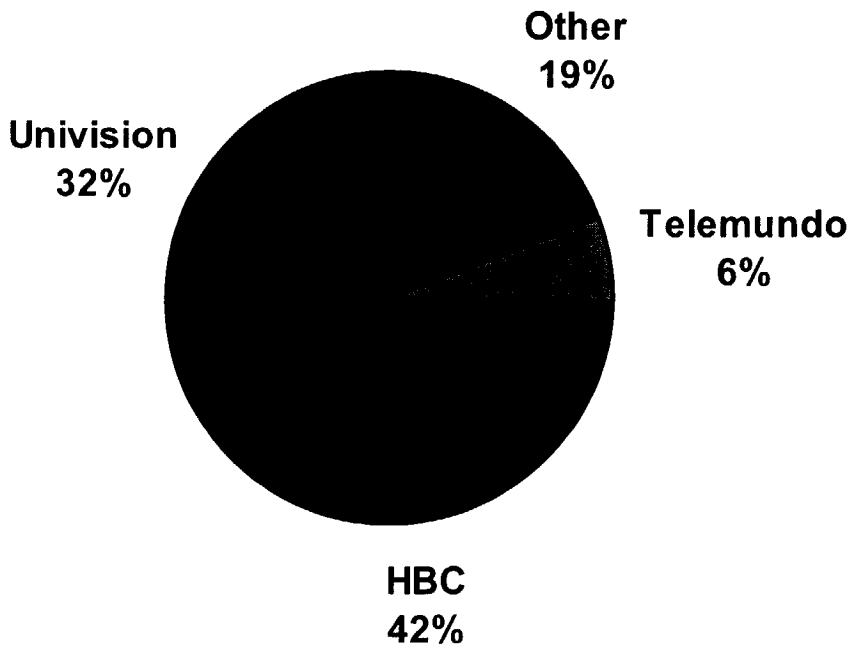
Spanish-Language Broadcast Advertising Revenues, 2002
Chicago: Hispanic Population of 1.6 million



Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America, and Viva Television Network.

Sources: 2002 BIA, Inc.; *2002 Television and Cable Factbook; 2002 U.S. Hispanic Market,* Strategy Research Corporation.

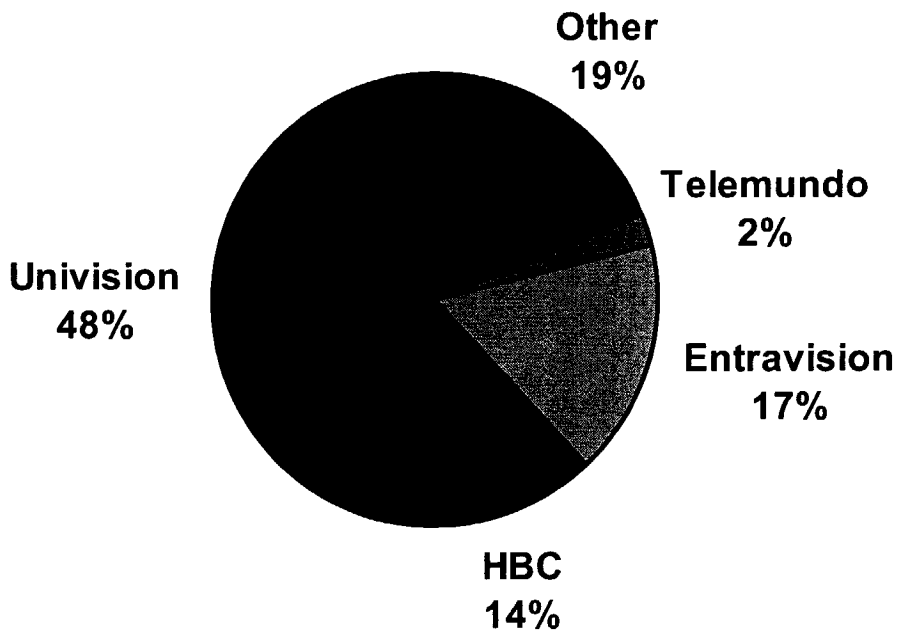
Spanish-Language Broadcast Advertising Revenues, 2002
Houston: Hispanic Population of 1.6 million



Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America, and Viva Television Network.

Sources: 2002 BIA, Inc.; *2002 Television and Cable Factbook; 2002 U.S. Hispanic Market,* Strategy Research Corporation.

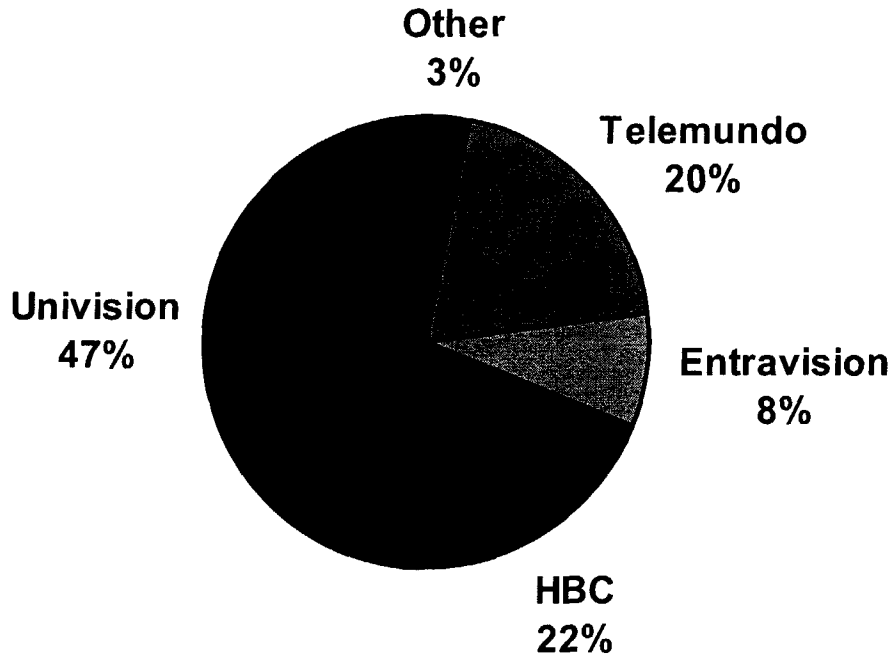
Spanish-Language Broadcast Advertising Revenues, 2002
San Francisco/San Jose: Hispanic Population of 1.4 million



Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America, and Viva Television Network.

Sources: 2002 BIA, Inc.; *2002 Television and Cable Factbook; 2002 U.S. Hispanic Market,* Strategy Research Corporation.

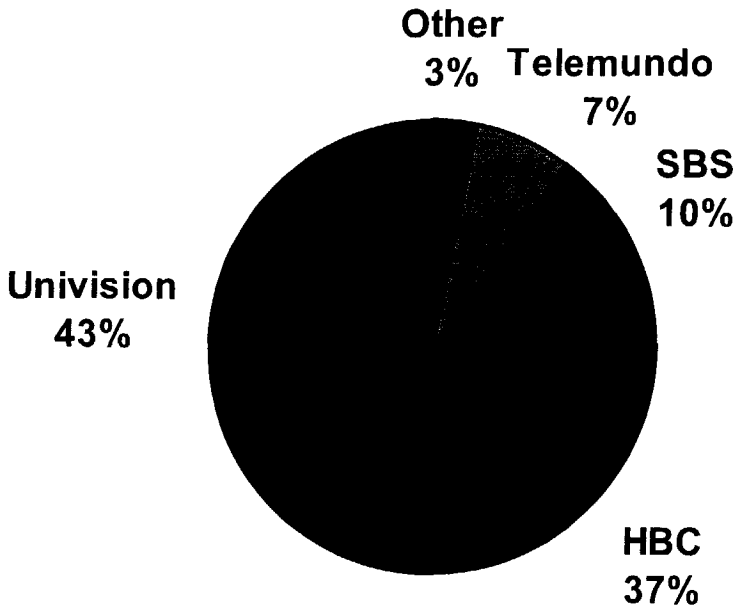
Spanish-Language Broadcast Advertising Revenues, 2002
Dallas/Ft. Worth: Hispanic Population of 1.3 million



Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America, and Viva Television Network.

Sources: 2002 BIA, Inc.; *2002 Television and Cable Factbook; 2002 U.S. Hispanic Market*, Strategy Research Corporation.

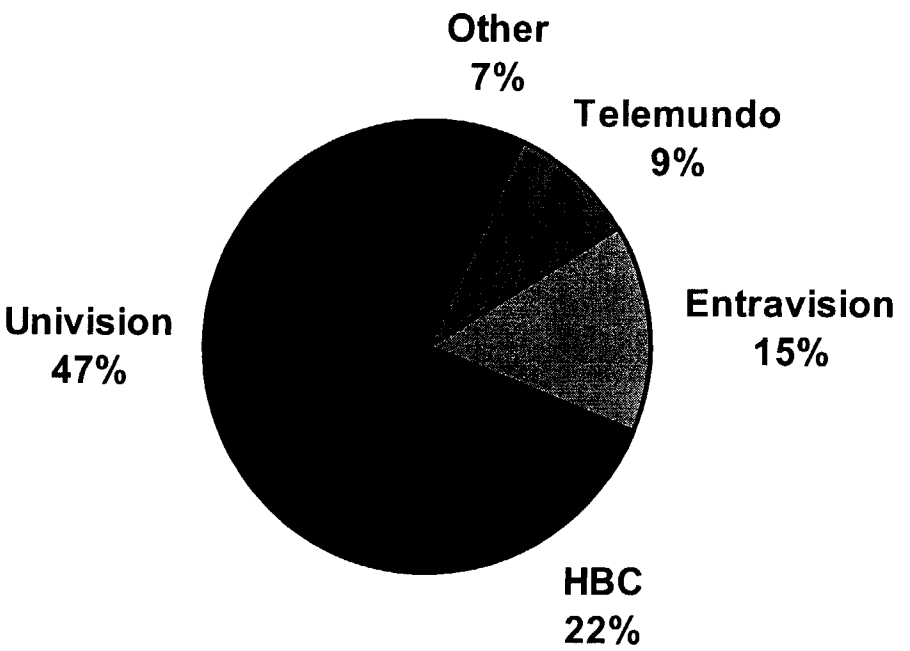
Spanish-Language Broadcast Advertising Revenues, 2002
San Antonio: Hispanic Population of 1.2 million



Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America, and Viva Television Network.

Sources: 2002 BIA, Inc.; *2002 Television and Cable Factbook; 2002 U.S. Hispanic Market,* Strategy Research Corporation.

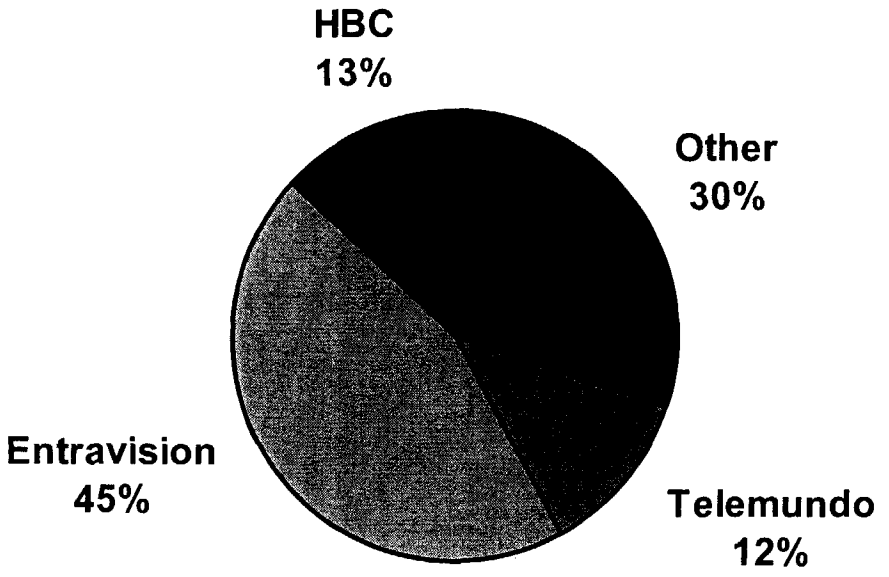
Spanish-Language Broadcast Advertising Revenues, 2002
Phoenix: Hispanic Population of 1.0 million



Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America, and Viva Television Network.

Sources: 2002 BIA, Inc.; *2002 Television and Cable Factbook; 2002 U.S. Hispanic Market,* Strategy Research Corporation.

Spanish-Language Broadcast Advertising Revenues, 2002
Brownsville/McAllen: Hispanic Population of 1.0 million



Notes: Advertising revenue-based satellite program services that also offer Spanish-language programming include services such as Galavision Cable Network, MTV Latin America, and Viva Television Network.

Sources: 2002 BIA, Inc.; *2002 Television and Cable Factbook; 2002 U.S. Hispanic Market,* Strategy Research Corporation.

July 9, 2003

Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 12th Street, SW
Washington, DC 20554

Re: Notice of *Ex parte* Presentation
MB 02-235

Dear Ms. Dortch:

On July 8, Andrew Jay Schwartzman of the Media Access Project met with Susan Eid, Legal Advisor to the Chairman to discuss the proposed transfer of control of Hispanic Broadcasting Corporation.

Mr. Schwartzman took the position that the Commission should treat Spanish language radio as a separate market for purposes of this case, and that leads to the conclusion that the transaction is contrary to the public interest. He made two specific points.

First, Mr. Schwartzman discussed the extraordinary and insuperable barriers that any new entrant would face in trying to compete with the combined Univision/HBC entity. Unlike English language markets, a competitor would face great difficulty in making the audience aware of its service, as Univision would control the principal means of promoting and advertising a new radio station, *i.e.*, Spanish language broadcasting. Moreover, Clear Channel, which would be one of the largest shareholders of the combined companies, is the largest owner of outdoor advertising, which is the second most important advertising medium used for this purpose.

Mr. Schwartzman then turned to how the Spanish language market should be treated from a diversity perspective. He noted that under the FCC's 1981 radio deregulation decision, broadcasters were freed from the obligation to serve every enumerated audience segment in their community. They were, however, expected to demonstrate that they have met the problems needs and interests of whatever niche audience segment they might have chosen to serve. Plainly then, the Commission treated Hispanic other minority communities as distinct for this purpose as well.

In response to questioning from Ms. Eid, Mr. Schwartzman explained that he thought it was entirely logical for the Commission to conduct an analysis of the impact of a transaction on particular segments of the community while still including the same stations in voice counts and other analyses of the entire market. Thus, the question of how many stations a particular broadcaster might own in a market would be a separate issue from whether it held excessive power within the Spanish language submarket.

Sincerely,

Andrew Jay Schwartzman
President and CEO

cc. Susan Eid

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July 11, 2003

W. Kenneth Ferree, Esquire
Chief, Media Bureau
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445 12th Street, N.W.
Room 3-C740
Washington, D.C. 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:

The National Hispanic Policy Institute, Inc. ("NHPI") hereby replies to the June 25, 2003 letter filed by Univision Communications, Inc. ("Univision"). In its letter Univision again restates its contention that, if the proposed merger with Hispanic Broadcasting Corporation ("HBC") is granted, Univision's interest in Entravision Communications Corporation ("Entravision") will be non-attributable.

In arguing for a "bright-line" attribution test, Univision claims that it demonstrated in a December 9, 2002 letter to the Media Bureau that its interest in Entravision is below the 33% threshold equity/debt plus ("EDP") ratio. In fact, Univision failed to make any such showing.

Univision's December 9, 2002 letter was filed in response to a November 29, 2002 Commission request for further information. The Commission was responding to a NHPI showing, that Entravision had outstanding debts owed to Univision. Univision had previously represented to the Commission that "Univision has no debt interest in

Entravision."[1] The Commission ordered Univision to "explain the origin and nature of such accounts." It further ordered Univision to, "[p]rovide an audited financial statement to support any factual assertion, and a detailed showing demonstrating compliance with the Equity/Debt Plus Rule."[2]

In response to the Commission's letter, Univision submitted certain documentation, which it claimed showed that it was in compliance with the Commission's EDP rule. However, the evidence Univision provided was incomplete and not audited.[3] As NHPI stated in its December 16, 2002 letter:

> Univision has again misled the Commission and has failed to be forthcoming and candid in its representations to the Commission. .... Entravision's DEF 14A shows that Andrew Hobson, Executive Vice President of Univision, holds 211,136 Class A shares of Entravision. The DEF 14A also shows that Michael D. Wortsman, Co-President of Univision Television Group, Inc., holds 56,136 Class A shares of Entravision.
>
> Entravision's DEF 14A reports stock ownership of (1) persons or entities known to be the beneficial owners of more than 5% of the outstanding shares of stock, (2) each of its directors, and (3) certain key executives of the company. Mr. Hobson and Mr. Wortsman's share holdings were reported because, at the time, they were members of Entravision's board of directors. Entravision's DEF 14A does not require it to report shares held by Univision insiders unless their individual holdings exceed 5% of the outstanding shares. Thus, in addition to Mr. Hobson and Mr. Wortsman, it is quite possible that other Univision officers and directors hold Entravision shares. There may also be other Entravision debts owed to Univision that are not reported in SEC filings. Had an independent audit been conducted, an honest and complete answer could have been provided.

For the Commission to make a bright-line determination concerning compliance with the EDP rule, it must know the percentage of equity and debt a party holds. In this

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[1] Univision Opposition to Petition to Deny, at p. 11.
[2] FCC letter dated November 29, 2002.
[3] Univision letter dated December 9, 2003.

case, the Commission knows that Entravision has outstanding debts owed to Univision. What the Commission does not know, is the amount and percentage of Entravision's debt owed to Univision. Also unknown, is how many shares of Entravision's stock are held by Univision's officers and directors. See, Section 73.3555, note 2. Here again Univision has refused to provide this information. Without knowing the extent of equity, and the extent of debt Univision, its officers and directors hold in Entravision, the FCC cannot determine whether Univision complies with the EDP rule.

Univision's failure to produce information, which is easily obtained and uniquely within its control, permits the Commission to draw the negative conclusion that if the information were produced it would show that Univision, post-merger, will still have an attributable interest in Entravision. *Tendler v. Jaffe,* 203 F.2d 14, 19 (D.C. Cir. 1953) ("The omission by a party to produce relevant and important evidence of which he has knowledge, and which is peculiarly within his control, raises the presumption that if produced the evidence would be unfavorable to his cause."); *International Union, UAW v. National Labor Relations Board,* 459 F.2d 1329, 1336 (D.C. Cir. 1972) ("the failure to bring before the tribunal some circumstance, document, or witness, when either the party himself or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so, and this fear is some evidence that the . . . document, if brought, would have exposed facts unfavorable to the party.") (quoting J. Wigmore, Evidence §284, 3rd ed. 1940); *United States v. Robinson,* 233 F.2d 517, 519 (D.C. Cir. 1956) ("[u]nquestionably the failure of a defendant in a civil case to testify or offer other evidence within his ability to produce and which would explain or rebut a case made by the other side, may, in a proper case, be considered a circumstance against him and may raise presumption that the evidence would not be favorable to his position"); *Washoe Shoshone Broadcasting,* 3 FCC Rcd 3948, 3952-53 (Rev. Bd. 1988); *Thornell Barnes v. Illinois Bell Telephone Co.,* 1 FCC 2d 1247, 1274 (Rev. Bd. 1965). Univision's failure to produce evidence permits the Commission to conclude that Univision's interest in Entravision is attributable as a matter of law.

Univision does not meet the FCC's bright-line EDP test. Even if Univision could demonstrate that its interest in Entravision is below the 33% debt/equity threshold, its relationship with Entravision is such that it would still be able to continue to exert significant influence over key licensee decisions. As the Commission has said:

> In adopting the EDP rule, we affirm our tentative conclusion. . . that there is the potential for certain substantial investors or creditors to exert significant influence over key licensee decisions, even though they do not hold a direct voting interest. . . which may undermine the diversity of voices we seek to promote. They may, through their contractual rights and their ongoing right to

> communicate freely with the licensee, exert as much, if not more, influence or control over some corporate decisions as voting equity holders whose interests are attributable.[4]

Univision's relationship with Entravision is significantly different from previous relationships that the FCC has found to be non-attributable. For this reason, the cases Univision cites in support of its claim that its interest in Entravision, will be non-attributable are inapposite.

Univision debt and equity interests in Entravision have historically been attributable interests. Univision has a long relationship with Entravision as a business partner, program supplier, creditor and financial backer. In return for Univision's support, Entravision has granted Univision significant rights, including the right to appoint two directors to its board and the right to influence its core operations. As Entravision's SEC 10K acknowledges, **"Univision has significant influence over our business."** Univision proposes to convert its voting shares into non-voting shares and to give up its right to appoint directors to Entravision's board. This, however, will not change the fundamental well-established relationship between Univision and Entravision.

In none of the cases Univision sites, did the Commission permitted an applicant to convert a long-standing attributable relationship with another party into a non-attributable interest. For example, General Electric's purchase of Telemundo fully complied with the multiple ownership rules without the need to convert previously held attributable interests into non-voting, non-attributable interests.[5] If, for example, General Electric's proposed purchase of Telemundo did not comply with the FCC's multiple ownership rules and General Electric proposed to convert its attributable interest in NBC into a non-voting interest, and further, if the FCC had permitted such a transaction, then Univision would have a case on point.

Univision's letter has little to say about its plan to retain the exclusive right to make national sales on behalf Entravision. Section 73.658(i) prohibits a television network from representing individual stations, affiliated with the network, for the sale of non-network time. In the 1970s, Univision's predecessor entity argued that, as a fledgling network, a waiver of this rule was required to enhance the development of Spanish language television.[6] Univision's letter merely states that Telemundo was given the "exact same waiver." Here again the situation is quite different. In *Telemundo II,* there was no issue concerning Telemundo's inappropriate exercise of control over its

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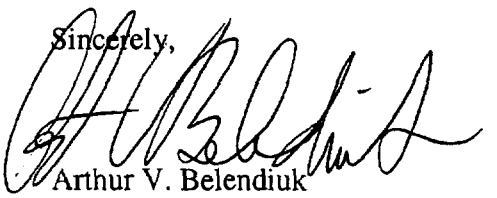
[4] *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Report and Order,* 14 FCC Rcd 12559, 12582-3 (1999) ("*Attribution Order*").
[5] *Telemundo Communications Group, Inc.*, 17 FCC Rcd 6958 (2002). (*Telemundo II*).
[6] *Amendment of §73.658(i) of the Commission's Rules,* 5 FCC Rcd 7280 (1990).

affiliates. In this case, the central question is, will Univision's exclusive right to make national sales on behalf of Entravision give Univision the right to influence Entravision's core operations, especially its radio station holdings?

Univision's letter cites, with approval, the Commission's statement, "[t]he mass media attribution rules seek to identify those interests in or relationships to licensees that confer on their holders a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions."[7] The FCC, while granting a waiver of the national spot sales rule to Univision and Telemundo, maintained the rule for other, non-Spanish language television networks. The FCC reasoned that without the rule networks would be able to exert undue influence over affiliate programming decisions. The right to sell national spot advertising gives Univision significant rights to influence Entravision, including, as the Commission has stated, the power to influence programming decisions. At a minimum, the FCC should forbid Univision from making national spot sales on behalf of Entravision, if the proposed merger is approved.

Converting Univision's voting shares in Entravision into non-voting shares will not fundamentally change the existing relationship. Entravision has been and will continue to be dependent on Univision for it continued survival. Univision, through its control of national sales and it absolute right to grant or deny new network affiliations, will be able to control financial decisions, programming and personnel at Entravision owned radio stations, thus ensuring that Entravision's radio stations will not compete with HBC's radio stations. Such influence will diminish diversity and stifle competition, two key aspects of the FCC local ownership rules.

Sincerely,



Arthur V. Belendiuk

Counsel to National Hispanic Policy
Institute, Inc.

cc: Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin

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[7] Univision, June 25, 2003 letter citing the *Attribution Order at p. 12560*, (emphasis added).

Commissioner Jonathan S. Adelstein
David Brown, Esquire (Media Bureau, FCC)
Barbara Kreisman, Esquire (Video Division, Media Bureau, FCC)
Lawrence N. Cohn, Esquire
(Counsel for The Shareholders of Hispanic Broadcasting Corp.)
Scott R. Flick, Esquire (Counsel for Univision Communications, Inc.)
Harry F. Cole, Esquire (Counsel to Elgin FM Limited Partnership)