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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:

The Commission has before it a comprehensive record in the above-captioned proceeding that establishes that the proposed merger between Univision Communications Inc. (“Univision”) and Hispanic Broadcasting Corp. (“HBC”) is contrary to the public interest. In addition to the two Petitions to Deny,¹ several interested parties, including Spanish Broadcasting System, Inc. (“SBS”), experts with extensive industry experience, and preeminent communications scholars have all expressed their opposition to the proposed merger. This opposition has been echoed in the letters recently sent to the FCC from thousands of Hispanics living in this country who believe that the proposed merger would damage their culture, limit editorial voices, and limit competition in broadcast advertising.

SBS submits a summary of this record which, as a whole, makes clear that the proposed merger will significantly harm Hispanics who rely uniquely on Spanish-language broadcasting for their news, information and programming.

¹ Petition to Deny of National Hispanic Policy Institute, Inc., MB Docket No. 02-235 (filed Sept. 3, 2002); Petition to Deny of Elgin FM Limited Partnership, MB Docket No. 02-235 (filed Sept. 3, 2002).

Specifically, the record demonstrates that 1) Spanish-language broadcasting is in a separate market (*i.e.* not substitutable with English-language broadcasting); 2) the Spanish-language broadcasting market is already highly concentrated and the merger would create an entity with the capability of wielding monopoly power; 3) the merger will significantly harm diversity in Spanish-language broadcasting; 4) these ills will not be ameliorated by new entry into the market.

Notwithstanding its plain burden of proof to establish the public interest effects of the proposed transaction, Univision has offered little if anything of relevance to this critical debate. This unwillingness to engage in serious debate itself suggests two conclusions: 1) Univision has failed to substantively prosecute its application and thus has failed to carry its burden under Section 309, and 2) it is unable to summon serious evidence to dispute the allegations of harm.

The Communications Act requires the Commission to review every transaction involving broadcast licensees to determine whether approval is in the public interest. As the record shows, this transaction will adversely affect tens of millions of Hispanic Americans who live in this country today and millions more in the future as Hispanics are the largest and fastest growing minority group living in the United States. Accordingly, approval of the proposed merger between Univision and HBC cannot be deemed in the public interest.

I. SPANISH-LANGUAGE BROADCASTING IS A SEPARATE MARKET.

A. Entities Wishing To Reach Hispanics Rely Uniquely On Spanish-Language Broadcasting.

- Analysis by Evan Schouten, Vice President in the Competition Practice at Charles River Associates, in a paper entitled Spanish-Language Media: *Distinct from Anglo Media*, concludes that the Hispanic media market is distinct from the general media market in terms of all the relevant characteristics, including costs, advertisers' needs, and consumer preferences. See Joint Letter and Further Information from Arthur Belendiuk and Bruce Eisen, on behalf of the National Hispanic Policy Institute, Inc., and Spanish Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 02-235, at Exhibit 1 (Apr. 7, 2003) ("NHPI/SBS April 7 Letter").
- Jeffrey H. Smulyan, Chairman and Chief Executive Officer of Emmis Communications Corp., states that "[i]t is clear to me that English language and Spanish language radio stations do not generally compete with each other. . . . we do not consider the Spanish stations' rate cards in establishing our sales prices. The prices they charge simply do not have any influence on the advertising markets in which we operate." Letter from Jeffrey H. Smulyan to Secretary, FCC, MB Docket No. 02-235, at 1 (July 11, 2003).
- Castor A. Fernandez, an expert with over 30 years experience in Hispanic advertising (and a former SBS director) states that "English language media and Spanish language media are not substitutable. There definitely is a separate advertising product market defined by the Spanish language." Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 02-235, at attachment (June 2, 2003) ("SBS June 2 Letter").

- Eduardo Caballero, an expert with over 40 years experience in Hispanic advertising states that “[e]very advertiser in the U.S. considers [Spanish-language broadcasting] to be a SEPARATE AND DISTINCTIVE MARKET.” SBS June 2 Letter at attachment (emphasis in original).
- Leticia Pelaez, the Director of Advertising for *Diario Las Americas*, with over 15 years experience, concluded that “the US Hispanic media market should be treated separately from the non-Hispanic media market.” SBS June 2 Letter at attachment.
- Raquel Tomasino, Executive Vice President, Director of Media Services for Castells & Asociados, states that the “US Hispanic market is a separate marketplace.” SBS June 2 Letter at attachment.
- Linda Lane Gonzales, President of the VIVA Partnership, Inc., with over 15 years of experience in the U.S. Hispanic market, concluded with an “emphatic *yes*,” that “the U.S. Hispanic media market is actually a separate market.” SBS June 2 Letter at attachment (emphasis in original).
- Tere A. Zubizarreta, President and CEO of Zubi Advertising, concluded that “[t]here’s no doubt that the Hispanic media market is an entity completely separate from the ‘general market’.” SBS June 2 Letter at attachment.
- Richard Cotler, Senior Partner and Director of Local Broadcast for Mindshare, states that “[t]here’s ample evidence and factual corroboration to conclude that the U.S. Hispanic media market is a separate market.” SBS June 2 Letter at attachment.
- Emma Moya, VP/Client Services, Amistad Media Group, states that “[t]here is no question that the Hispanic market is indeed separate and should always be considered as such.” SBS June 2 Letter at attachment.
- Maria Meilan, Marketing Director for the Historical Museum of Southern Florida, stated that “[m]y answer is a definite, *si, por supuesto*,” when asked whether Hispanic media in the United States should be considered a separate market venue from that of the general market. SBS June 2 Letter at attachment.
- Pat Delaney, President of the Delaney Media Agency, with 27 years experience in the advertising industry, concluded that “the US Hispanic market is a separate market.” SBS June 2 Letter at attachment.
- Mike Herrera, of Presidente U.S.A., also states that “[t]here is ample evidence and factual corroboration to conclude that the U.S. Hispanic media market is a separate market.” SBS June 2 Letter at attachment.
- Nelson Quintero, District Manager, Southeast Florida, for Labatt USA, states that “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 targeted differently.” SBS June 2 Letter at attachment.
- Marci Neill, Advertising Coordinator for Glendale Nissan/Infiniti, states that “it is critical to be able to target Hispanic media, both TV and Radio, as a separate market.” SBS June 2 Letter at attachment.

- Jaime Amoroso, General Manager of Toyota of Manhattan, with over 15 years experience in automotive sales, states “clearly ‘YES’” (in his answer to the question of whether “Hispanics in United States represent a unique market.”) SBS June 2 Letter at attachment.
- Sid Paterson, Sid Peterson Advertising, Inc., with many years experience as an owner/operator of a radio TV buying service, concluded that “[t]he US Hispanic media market is a separate entity.” SBS June 2 Letter at attachment.
- Gonzalo J. Gonzalez, Managing Officer at BVK/Meka in Miami, with over 15 years experience in the advertising industry in the United States, Spain, and Latin America states that “[t]he Hispanic media is and should be considered separate when planning, buying and evaluating broadcast media.” SBS June 2 Letter at attachment.
- Liza M. Santana, President, Creativas Group Inc., states that “[o]ur firm firmly believes” that “the Hispanic media market is a separate one.” SBS June 2 Letter at attachment.
- Tony Garcia, President, The Menda Group, with over 20 years experience in advertising, concludes that the Hispanic market is “a market with different cultures, ideas, values and customs.” SBS June 2 Letter at attachment.
- Helane Naiman, President, HN Media & Marketing Inc., with over 30 years advertising experience in New York City, stated that “[i]n my opinion it certainly is,” when asked to comment on whether the U.S. Hispanic media market is a separate market. SBS June 2 Letter at attachment.
- Anna María Fernández Haar, in her recent presentation to the Central Florida Hispanic Chamber of Commerce, indicates that “even official agencies consider this market a discrete entity within the larger marketplace...[T]he Hispanic market stands alone as a self-contained, differentiated, ‘country-like’ entity within U.S. borders.” SBS June 2 Letter at attachment.
- Julio Amparo, President, AMPRO Productions Advertising, owner of an independent advertising agency for over 15 years, concluded that “[t]he Hispanic Media market--radio and TV combined--is a separate and distinct market.” SBS June 2 Letter at attachment.

As evidence of the existence of a separate market, the record shows that a large and vibrant community of advertising agencies has arisen to serve the Hispanic media market with almost \$1.6 billion in billed revenues in 2001. *See* Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 02-235 (June 3, 2003) (“SBS June 3 Letter”). The record includes information from some of the top Hispanic-focused ad agencies in the nation which appeal to the different language and cultural identity of Hispanics:

- The Bravo Group, Integrated Hispanic Communications (explaining that advertising to Hispanics “[r]equires special efforts to address Hispanic consumer needs: Spanish Language (75% of consumers are Spanish dominant and bilingual); Different degrees of Brand experience and preference; Different cultural values”). *Id.* at attachment.

- Accentmarketing (“United by a common language, U.S. Hispanics are increasingly defining themselves in terms of their dual culture; for the older generations, it’s a way to validate their identity; for younger Hispanics, it’s the touchstone to a broader cultural experience.”) SBS June 3 Letter at attachment.

And to similar effect:

- Lopez Negrete
- Dieste Harmel
- Mendoza Dillon & Asociados
- Cartel Impacto
- The Vidal Partnership
- del Rivero Messianu
- al Punto Advertising
- La Agencia de Orcí & Asociados
- The IAC Group
- Casanova Pendrill
- Zubi
- Wing Latino Group

The fact that Spanish-language broadcasting uniquely reaches Hispanic Americans has been recognized at the most fundamental level of our democracy: the election process. The record shows the results of two studies of advertising directed at Hispanics in the 2000 presidential campaign and the 2002 gubernatorial, House, Senate campaigns. *See* Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 02-235 (June 20, 2003) (“SBS June 20 Letter”). These studies reached the following conclusions:

- President Bush’s campaign spent at least \$810,000 on Spanish-language advertisements, while the Republican National Committee and affiliated groups contributed an additional \$1.5 million on Spanish-language advertisements; Vice President Gore’s campaign and the Democratic National Committee spent at least \$490,000 and \$475,000 on Spanish-language advertisements respectively. *See* Adam J. Segal, “The Hispanic Priority: The Spanish-Language Television Battle for the Hispanic Vote in the 2000 U.S. Presidential Election,” Hispanic Voter Project, Johns Hopkins University, Washington, D.C., at 26 (Jan. 2003).
- “Strategists working for the parties and candidates commissioned Hispanic media consultants to produce unique ads that would only be aired on Spanish-language television stations. These ad makers understood that Spanish-language television programs viewed by Spanish-speaking Americans are distinct from national television broadcasting for the non-Hispanic audience. Dominant cultural differences are apparent when comparing broadcasts.” *Id.* at 36.

- In the 2002 election, “more ads...than ever before, were specifically created by candidates and parties to reach Hispanic voters. Dozens of ads were created with messages and images intended to resonate with Hispanics.” Adam J. Segal, “Records Broken: Spanish-Language Television Advertising in the 2002 Election,” Hispanic Voter Project, Johns Hopkins University, Washington, D.C., at 4 (Nov. 2002). More than \$16 million was spent on Spanish-language television advertising in the 2002 election by gubernatorial, Senate, House, and down-ballot candidates. *Id.* at 2.

B. Demand For, And Usage Of, Spanish-Language Broadcasting By Hispanic Americans Confirms That It Is A Separate Market.

- There are 38.8 million Hispanics in the U.S. (now the largest U.S. minority according to the Census Bureau). See D’Vera Cohn, “Hispanics Are Nation’s Largest Minority,” *The Washington Post* (June 18, 2003) <<http://www.washingtonpost.com/wp-dyn/articles/A11080-2003Jun18.html>>; SBS June 20 Letter at 3.
- 47% of Hispanics are Spanish-Dominant (people who “predominantly speak Spanish”), while an additional 28% of Hispanics are bilingual. See “2002 National Survey of Latinos,” Pew Hispanic Center/Kaiser Family Foundation, Summary of Findings, Dec. 2002, at 16 (attached to SBS June 20 Letter) (“Pew/Kaiser Survey”).
- 11% of U.S. Hispanics speak and understand no English at all, while an additional 29% speak and understand English “just a little,” and an additional 9% speak and understand English “pretty well.” Pew/Kaiser Survey at 44.
- In the top ten Hispanic markets by number of Hispanic TV households, from 43.7% (Sacramento) to 67.7% (Miami) of Hispanic TV households in those markets are Spanish-Dominant (people who live in homes where mostly Spanish is spoken or only Spanish is spoken). See “Nielsen Media Research’s Hispanic Local Markets,” Nielsen Media Research, <http://www.nielsenmedia.com/ethnicmeasure/hispanic-american/16localmarkets.html>.
- Alan Sokol, a former senior executive of Telemundo, concluded that “Hispanic men and women who exclusively or predominantly speak Spanish are referred to by Nielsen Media Research, advertisers and television networks as ‘Spanish Dominant.’ They constitute fifty percent of all U.S. Hispanics. As one would expect, they rely heavily upon Spanish-language broadcasting.” “Declaration of Alan Sokol,” ¶ 3, attached to Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket 02-235 (July 14, 2003) (“Sokol Declaration”).

Hispanics are particularly dependent upon Spanish-language broadcasting for their news and information:

- “38% of Latinos report that they usually listen to and predominantly watch Spanish-language news programs, including one in four [25%] who *only* tune into Spanish language broadcasts.” Pew/Kaiser Survey at 45 (emphasis in original).

- Approximately 26% of Hispanic Americans rely on Spanish-language and English language broadcasting equally for their news and information. *See id.*
- 57% of bilingual Hispanic Americans watch news on Spanish-language television, and 63% watch Spanish-language variety or talk programs—only 16% reported watching news in English, and only 8% reported watching variety or talk programs in English. *See* Louis DeSipio, “Latino Viewing Choices: Bilingual Television Viewers and the Language Choices They Make,” The Tomas Rivera Policy Institute, at 7 (May 2003); *see also* SBS June 20 Letter at 3.
- “Issues of language proficiency and preference make Spanish-language broadcasting especially important for the consumption of news and information programming where comprehension of detail and nuance is most important.” Sokol Declaration ¶ 3.
- Letter from Peter M. Rivera, Assemblyman, The State of New York, to Michael K. Powell, Chairman, FCC, January 31, 2003 (noting that Spanish-speaking Americans rely heavily on Spanish-language media outlets to obtain news and information). *See* Letter from Arthur V. Belendiuk, Counsel to National Hispanic Policy Institute, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 02-235, at Attachment (February 12, 2003) (“NHPI February 12 Letter”).
- Letter from Lucy Velez, Executive Director, Little Branches of Borinquen, to Michael K. Powell, Chairman, FCC, January 3, 2003 (“Millions of Americans rely exclusively upon Spanish language radio and television to deliver them accurate news and information and to help them become acculturated and participating citizens of this society.”) NHPI February 12 Letter at attachment.
- *See also* the facts set forth in Section IV(C).

C. Substantial Evidence Indicates That The Hispanic American Reliance On Spanish-Language Media Will Persist Over Time.

- The number of Hispanic American television households has grown 19% from 1996 to 2001, while the number of *Spanish-dominant* Hispanic Americans has grown at a greater pace, 29%, over the same time period. *Source:* http://www.nielsenmedia.com/ethnicmeasure/hispanic-american/hisp_pop_growth.html.
- “Because identities based on national heritage or the new emerging pan-Hispanic heritage remain strong, Hispanic Americans have interests and engage in efforts to learn about the socio-cultural characteristics that stem from such heritage. And, different from the European immigration experience, this holds true even as Hispanics socialize into dominant American society.” Dr. Frederico Subervi, Dr. Guillermo Gibens, Dr. Tomas Lopez-Pumarejo, Dr. Diana Rios, Dr. Otto Santa Ana, Dr. Jorge Schement, Dr. Gonzalo Soruco, “Sociological Considerations Relevant to the Merger of Univision and HBC,” at 3, attached to Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket 02-235 (July 16, 2003) (“Sociological Considerations”).

- “This adaptation process—maintaining a strong ethnic identity in spite of acculturation, is not only distinct among Hispanic Americans compared to other groups, but it is persisting. In other words, it is not a passing trend among the vast majority of this population.” *Id.*
- D. For Thirty Years, Commission Precedent Has Acknowledged That Foreign-Language Stations, And Spanish-Language Stations In Particular, Serve A Distinct Audience.²**
- In *Telemundo*, the Commission granted a 12-month waiver of the TV duopoly rule to permit common ownership of three TV stations in the Los Angeles market. *See Telemundo Communications, Inc. (Transferor) and TN Acquisition Corp. (Transferee)*, 17 FCC Rcd 6958, 6977 (2002). In doing so, the FCC found that diversity would not be adversely affected because, *inter alia*, the Telemundo stations “each have a different set of programming designed for Spanish-language viewers and are among twenty-two different radio and television stations that are programmed towards the Hispanic audience in the Los Angeles market,” *id.* at 6977, and that, “[o]n the other hand, KNBC broadcasts to a wider audience exclusively in English.” *Id.* Similarly, the Commission determined that “we are not as concerned in this case that the competition for advertising dollars will be diminished because the Spanish-language format of the Telemundo stations means that *they do not compete directly with NBC's station.*” *Id.* at 6978-79 (emphasis added).
 - In 1972, the FCC adopted rules governing cable system carriage of broadcast television signals that allowed cable systems to carry distant foreign-language stations without counting such stations against their quota of distant non-network stations. This action was justified, the FCC explained, because foreign-language stations “fulfill an important need for what generally is an audience limited in number,” and thus the importation of such distant signals would not “have significant impact on the totality of local television service.” *Amendment of Part 74, Subpart K of the Commission’s Rules and Regulations Relative to Community Antenna Television Systems, et seq., Cable Television Report and Order*, 36 FCC 2d 143, ¶ 96 (1972), *aff’d sub. nom. American civil Liberties Union v. FCC*, 523 F.2d 1344 (9th Cir. 1975).
 - In affirming its treatment of foreign-language stations, the FCC stated “[w]hat we seek to isolate in the instant proceeding is programming which, by virtue of its nature or its content, is not of general interest to the average viewer. To subscribe to SICC’s argument we must hold that the average television viewer would find a film, news program, or sporting event of equal interest regardless of whether it is presented in English or Spanish. Suffice it to say we cannot so decide: *a program broadcast in a foreign language is of little interest to any but those fluent in the language.*”

² *See generally* Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket 02-235 (June 20, 2003) (“SBS June 20 Letter”).

Amendment of Part 76, Subparts A and D of the Commission's Rules and Regulations Relative to Adding a New Definition for "Specialty Station" and "Specialty Format Programming" and Amending the Appropriate Signal Carriage Rules, First Report and Order, 58 FCC 2d 442, ¶24 (1976) (emphasis added).

- When the FCC adopted the newspaper/broadcast cross-ownership prohibition, 47 C.F.R. § 73.3555(d), it excluded foreign-language newspapers from the rule because “[t]heir situation would be different, for much of the audience of a station owned by such an entity would receive that entity’s views for the first time.” *Amendment of Sections 73.34, 73.240, and 73.636 of the Commission’s Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations*, 50 FCC 2d 1046, ¶101 (1975), *aff’d sub. nom. FCC v. National Citizens Committee for Broadcasting, et al.*, 436 U.S. 775 (1978).
- Beginning at least in 1995, and continuing to the present, the FCC has taken into account the relatively more limited audience of a foreign-language broadcast station in the context of determining a station’s “historical viewing” for purpose of modifying the cable carriage rights of such stations. As the Cable Services Bureau observed, “[w]e have previously recognized that Spanish-language stations . . . are capable of offering desirable diversity of programming, . . . yet typically attract limited audiences. We continue to believe. . . that the fact that such stations attract limited audiences must be taken into account in determining the equities concerning such stations’ rights to cable carriage. (Internal quotation marks omitted).” *Tele-Media Co.*, 10 FCC Rcd 8615, ¶ 14 (CSB 1995) (footnote omitted). The Media Bureau has repeatedly followed this analysis up to the present. *See, e.g., Norwell Television, LLC*, 17 FCC Rcd 16085, ¶ 13 (MB 2002); *Coxcom, Inc.*, 17 FCC Rcd 17192, ¶¶ 8, 12 (MB 2002); *Comcast Cablevision of Danbury*, 18 FCC Rcd 274, ¶ 8 (MB 2003).
- Spanish-language networks hold a permanent waiver of the rule prohibiting networks from representing affiliated stations in national spot sales. In granting the permanent waiver, the FCC stated that in the absence of the prior temporary waiver (originally granted in 1978 to Univision’s predecessor in interest), the development of new foreign-language programming services would have been hampered, and that the waiver continues to further the FCC’s “longstanding goals: encouraging the growth and development of new networks; fostering foreign-language programming; increasing programming diversity; strengthening competition among stations; and fostering a competitive UHF service.” *Amendment of Section 73.658(i) of the Commission’s Rules*, 5 FCC Rcd 7280, ¶ 12 (1990) (citations omitted). These goals were once again confirmed in the Media Bureau’s grant of a waiver to Azteca America in May. *See Azteca International Corporation (Azteca America)*, 18 FCC Rcd 10662, ¶¶ 2, 4 (MB 2003).

E. The Parties' Own Marketing Materials And Securities Filings, Submitted Into The Record, Reveal Their Understanding That Spanish-Language Listeners And Viewers Significantly Favor Spanish-Language Radio And Television.³

- Univision “believes that the strong Spanish-language retention among Hispanics indicates that the Spanish-language media has been and will continue to be an important source of news, sports and entertainment for Hispanics.” Univision 2001 SEC Form 10-K Annual Report at 3; Univision 2002 SEC Form 10-K Annual Report at 9.
- “Among Adults, Univision 23 WLTV delivers a significant exclusive audience. . . . 51.9% of WLTV-TV’s audience does not watch any English television at all during the week!” Univision *Reaching the Lucrative South Florida Market* presentation (SBS June 16 Letter at Attachment 1, at 31) (emphasis added) (“*Univision South Florida Presentation*”)
- “67% of those 1.6 million Hispanics [in South Florida] speak Spanish mostly or only at home (Spanish dominant). This means that if you do not target Hispanics over 1,055,000 Hispanics or 27% of the total Miami/Ft. Lauderdale population will not be effectively reached by your general market television advertising efforts.” *Univision South Florida Presentation* at Attachment 1, p. 21 (emphasis added).
- “Among Hispanics nationwide, commercials in Spanish (as compared to commercials in English) are: 5 times more persuasive than commercials in English; 61% more effective at increasing awareness levels than commercials in English; 57% more effective in terms of message comprehension than commercials in English; Among Bilingual Hispanics, Spanish-language commercials are 3.4 times more persuasive!” *Univision South Florida Presentation* at Attachment 1, p. 22.
- “The bilingual viewers feel especially positive toward the advertiser who makes the extra effort of creating and airing Spanish language spots. Spanish dependant viewers expect to be advertised to in Spanish, ‘Since I’m not available on English media, how else do you expect to reach me?’” *Univision South Florida Presentation* at Attachment 1, p. 23.
- “Hispanics are the market in the top DMAs.” Univision, *Reaching the Lucrative U.S. Hispanic Market* presentation (SBS June 16 Letter at Attachment 2, p.3) (“*Univision National Sales Presentation*”).
- “Among bilingual households, the top 73 shows are on Univision.” *Univision National Sales Presentation* at Attachment 2, p. 26 (emphasis added).

³ See generally Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 02-235 (June 16, 2003) (“SBS June 16 Letter”).

- “The Top 78 shows among Hispanics aged 18-49 are on Univision.” *Univision National Sales Presentation* at Attachment 2, at 25.
- “U.S. Hispanics speak Spanish at home regardless of age, regardless of education of head of household, regardless of household income.” *Univision National Sales Presentation* at Attachment 2, at 15.
- “Univision’s programming is similar to English-language network formats, but is more culturally relevant to Hispanic audiences.” *Univision National Sales Presentation* at Attachment 2, at 23 (emphasis added).
- “The majority of Hispanics prefer to get information in Spanish and they want to be marketed to as Hispanics.” *Univision National Sales Presentation* at Attachment 2, at 16.
- “Hispanics are more likely to purchase brands which advertise in Spanish.” *Univision National Sales Presentation* at Attachment 2, at 17.
- “Even the highest rated English-language television shows underdeliver Hispanic adults 18-49.” *Univision National Sales Presentation* at Attachment 2, at 24.
- “Only Univision delivers a significant exclusive audience.” *Univision National Sales Presentation* at Attachment 2, at 31.

Similarly, HBC makes the following claims in its marketing materials. HBC *Si* presentation and HBC *Hispanic Radio* presentation, (SBS June 16 Letter at Attachment 3 and Attachment 4, respectively):

- “You can’t reach HBC listeners on general market stations.” HBC *Hispanic Radio* at Attachment 4, p. 25.
- “On average, Spanish radio stations duplicate less than 10% with English language stations.” HBC *Si* presentation at Attachment 3, p. 4.
- “Commercials in Spanish are 57% more effective than commercials in English.” HBC *Hispanic Radio* at Attachment 4, p. 14.
- “Radio has a much stronger story to tell in the Hispanic market than it does in the general market.” HBC *Hispanic Radio* at Attachment 4, p. 14.

II. RADIO AND TELEVISION ARE IN THE SAME SPANISH-LANGUAGE BROADCASTING MARKET FOR COMPETITION PURPOSES.

Substantial record evidence demonstrates that Spanish-language radio and television compete for advertising revenue and are used as substitutes by many advertisers seeking to reach Spanish-speaking Americans.

- A Lehman Brothers Report submitted into the record on June 23, 2003 documents that Spanish-language radio has consistently “forfeited share to Spanish-language television,” and that “Spanish-language television has stolen share from Spanish-language radio.” See Letter from Philip L. Verveer, *et al.*, Counsel to Spanish

Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket 02-235 (June 23, 2003) (“SBS June 23 Letter”).

- Alan Sokol concluded that “Spanish-language radio stations compete with Spanish-language television stations for local advertising,” and that “Spanish language television stations take into account radio’s advertising prices when setting their own. This was the case during my tenure as Telemundo’s chief operating officer. When we were setting our advertising rates, we considered both the prices Univision was charging and the prices Spanish radio was charging. We did not give significant consideration to the rates being charged by English-language radio and television broadcasters or the rates being charged by newspapers and Internet websites.” Sokol Declaration ¶ 10.
- Eduardo Caballero concludes that many advertisers seeking to reach the Hispanic audience “are willing to allocate[] 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 negotiate those rates. The fact is that Spanish-language TV and radio are substitutes for many advertisers.” SBS June 2 Letter at attachment.
- Castor Fernandez states that “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.” SBS June 2 Letter at attachment.
- While the Commission does not (at least after the July 2 Media Ownership Order) generally consider radio and television to be in the same market for competitive purposes, in “thin” markets such as Spanish-language broadcasting markets, it is more likely that advertisers seeking to reach a Spanish-speaking audience view Spanish-language radio and television stations as much more substitutable than is apparent today in the more developed English-language markets. Indeed, the Spanish-language markets of today are more fragile than the general markets of 1989, when the radio/television cross-ownership rule was first relaxed to allow for waivers of the rule in the top 25 markets. In 1989, the FCC relied on data indicating that in the top 25 television markets there were an average of 13.4 TV stations, 29.8 commercial AM stations and 29.2 commercial FM stations. *Amendment of Section 73.3555 of the Commission’s Rules, the Broadcast Multiple Ownership Rules, Second Report and Order*, 4 FCC Rcd 1741, ¶ 14 (1989) (“1989 Order”).

The Applicants’ marketing and sales materials reflect the reality of competition between radio and television stations in Spanish-language broadcasting.

- In a national sales presentation to advertisers, Univision appeals to advertisers not as a complement, but as a substitute for radio. City by city, Univision proclaims its strengths over radio as a medium that is more “influential, authoritative, exciting, and persuasive.” See Univision *Media Usage* presentation at 1 (Attachment 5 to SBS June 16 Letter). It asserts that Univision reaches more Hispanic adults than every Spanish radio station in each of the top 15 markets in the nation. *Id.* at 5-22. It also

shows that it delivers more Hispanics than its nearest daily newspaper competitor (English or Spanish). *Id.* at 22-30.

- HBC’s marketing materials show that “Spanish language radio out delivers Spanish TV across all HBC markets!” SBS June 16 Letter, Attachment 3, at 6. HBC also notes that Spanish-radio has a particular place in the Spanish-language broadcast market because “[r]adio provides an important cultural touchstone, especially to a market that has a large segment of the audience driven by dependence and not just preference.” *Id.* at 7 (emphasis added).

III. THE SPANISH-LANGUAGE BROADCASTING ADVERTISING MARKET IS HIGHLY CONCENTRATED AND THE MERGER IS PRACTICALLY A MERGER TO MONOPOLY.

Record evidence demonstrates that the merged entity’s market share in Spanish-language broadcasting is tantamount to a merger to monopoly.

- In seven of the top ten Spanish-language broadcast markets, the combined entity’s (Univision + HBC) post-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%. *See* Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 02-235 at 1-2 and Attachments (June 11, 2003) (summarizing advertising revenue in each of the top 10 Hispanic markets).
- In San Antonio, the combined entity will control 80% of the market. *See id.* at 2.
- 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. *See id.*

Antitrust precedent indicates that such market shares support of finding of market power and harm to competition, including higher prices for advertisers.

- “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.*
- Where 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)).

The merger gives Univision/HBC the power to exclude competition.

- “Even today (without HBC), to reach the Spanish-speaking population, it is necessary for companies (including radio stations) to advertise on Univision. Our advertising sales force at Telemundo often encountered situations where Univision required companies to advertise their products and services exclusively or nearly so with it or risk being ‘blackballed’ (*i.e.*, Univision would not carry their ads).” Sokol Declaration ¶ 16.
- “With the addition of HBC, Univision would become a nearly complete gatekeeper to the Spanish-language audience.” *Id.*
- Such difficult-to-detect and subtle tying arrangements or refusals to deal described by Mr. Sokol impair competition. *See, e.g., Lorain Journal Co. v. U.S.*, 342 U.S. 143 (1951).

IV. THE MERGER WILL SIGNIFICANTLY HARM DIVERSITY IN SPANISH-LANGUAGE BROADCASTING.

The proposed merger also threatens violence to the “widest possible dissemination of information from diverse and antagonistic sources [that] is essential to the welfare of the public” for Hispanic Americans. *See Amendment of Sections 73.35, 73.240, and 73.636 of the Commission’s Rules Relating to Multiple Ownership of Standard FM, and Television Broadcast Stations, First Report and Order*, 22 FCC 2d 306, ¶ 16 (1970) (“1970 Order”) quoting *Associated Press v. U.S.*, 326 U.S. 1, 20 (1945). The record evidence of this harm is set forth below.

A. For Purpose Of Analysis Of The Effect Of The Merger On Diversity, The Commission Has Always Considered Radio And Television Together In The Same “Diversity” Market.

- “Both radio and television outlets, however, inhabit the larger speech market...the ‘viewpoint’ market in which television and radio stations participate is broader than the economic product markets, as defined by standard competition theory, in which either competes.” *2002 Biennial Regulatory Review - Review of the Commission’s Broadcast Ownership Rules and Other Rules adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets, Definition of Radio Markets for Areas in an Arbitron Survey Area*, MB Dkt. No. 02-277; MM Dkt. Nos. 01-235; 01-317; 00-244; and 03-130, Report and Order and Notice of Proposed Rulemaking, FCC 03-127, ¶ 437 (rel. July 2, 2003) (“Media Ownership Order”).
- “The public continues to rely on both radio and television for news and information, suggesting the two media both contribute to the ‘marketplace of ideas’ and compete in the same diversity market.” *Review of the Commission’s Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules, Report and Order*, 14 FCC Rcd 12903, ¶ 104 (1999) (finding that as radio and television “do serve as substitutes at least to some degree for diversity purposes, we

will retain a relaxed one-to-a-market rule to ensure that viewpoint diversity is adequately protected.”).

- “Insofar as there is overlap of audiences of the three services [AM, FM, TV], separate ownership, of course, would bring more voices to the overlapping audiences. Such overlap may be substantial.” *Amendment of Sections 73.35, 73.240, and 73.636 of the Commission’s Rules Relating to Multiple Ownership of Standard FM, and Television Broadcast Stations, Report and Order*, 22 FCC 2d 306, ¶ 44 (1970).

B. Millions Of Hispanic Americans Significantly Rely On Spanish-Language Broadcast Media For News And Information.

- See facts set forth at Section I(B).

C. Hispanic Americans’ Reliance On Spanish-Language Broadcast Media Is A Function Of A Mix Of Language, Culture And Content.

- Scientists have extensively studied and documented the degree to which “language is a symbol expressing the concepts and values embedded in culturally bound cognitive values.” Luna, Peracchio & de Juan, “Cross-Cultural and Cognitive Aspects of Web Site Navigation,” 30 *Journal of the Academy of Marketing Science*, 397, 398 (2002); SBS June 20 Letter at 5.
- Scholars have found that “[d]ifferent cultures have distinct ways of perceiving, organizing, relating to and interacting with society,” and that in order to communicate effectively, “the message needs to fit the cultural context and the mind-set of the audience being targeted.” *Id.* at 36; SBS June 20 Letter at 5.
- The “attitudes, behaviors and values vary among cultures so that what makes sense (or is ‘in consonance’) to members of one group may mystify others. All these elements are implicitly present in dialogue....” *Id.* (emphasis added); SBS June 20 Letter at 5-6.
- “Many Hispanic Americans are effectively dependent on Spanish-language broadcast media for news and information that directly affects their daily lives in this country.” *Sociological Considerations* at 1.
- “An important repeated research finding is that Hispanic Americans have a high demand for in-depth ethnic-relevant news. By this we mean news items and other cultural information that are pertinent to Hispanic Americans, and often to the broader English-speaking world. These news items require more than coverage in the Spanish-language. They require in-depth cultural background that provides a Latin American—rather than Anglo-American—expository point of view. On the other hand, English-language news media normally do not offer programming with ethnic (i.e., Hispanic) perspectives.” *Id.* at 5.
- “Hispanic Americans seek content to affirm, retain, and amplify their grasp of their world. They cannot and do not simply want to get by with the veneer of an Anglo-American viewpoint on the Hispanic experience in the US or about Latin America.

They want to nurture the cultural knowledge and values that developed over a lifetime via the Spanish language.” *Id.*

- “Only Spanish-language media provide this culturally-relevant information *on a regular* basis. These media are currently the exclusive sources of such information. For Latinos, it is not simply a format choice. It is also a language choice, a cultural content choice, and a cultural value choice.” *Id.*
- “A substantial number of immigrants who are primarily Spanish-language speakers continue to arrive in the United States and are dependent on Spanish language broadcast media for their well-being and adaptation to this country.” *Id.* at 1.
- “Research consistently indicates that the processes of adaptation (*i.e.*, pluralism, acculturation or assimilation) are very distinct for Hispanic Americans in comparison to what was the case for other immigrant groups; Spanish-language broadcast media are central players in the adaptation processes.” *Id.* at 1.
- “The bad consequences of the proposed merger are not just about the language in which the information is presented, but also the specific content that is provided.” *Id.* at 1.
- “Language alone is sufficient to demark Spanish-language broadcasting as separate from English-language broadcasting, but differences in content, which reflect differences in culture, also establish the separate nature of Spanish broadcasting.” Sokol Declaration ¶ 4.
- “The news programming produced by Spanish-language broadcasters emphasizes events occurring in Latin American countries and in local Hispanic areas, and matters of particular relevance to Hispanic Americans, such as immigration issues. Similar stories are produced by English-language broadcasters much less often and are given much less exposure.” *Id.*
- “Even when there is a news event that is covered by both the Spanish- and English-language broadcasters, the focus of the story tends to be very different.” *Id.*
- The creative content of many of the ads seeking to reach the U.S. Hispanic audience are noticeably different from “the creative aspects of ads designed to reach the general audience, focusing on Hispanics’ sensitivities and cultural sensitivities.” *See id.* ¶ 9.
- *See also* the facts set forth in Section II(B).

D. The Merger Will Dramatically Reduce The Diversity Of News And Information Available To Spanish-speaking Americans.

- Not including Entravision, the merged entity would control more than 30% of the Spanish-language broadcast outlets in six of the top ten markets, and more than 40% of the Spanish-language broadcast outlets in four of the top ten markets. Including Entravision, the merged entity would control more than 40% of the Spanish-language broadcast outlets in six of the top ten markets, and more than 50% of the Spanish-language broadcast outlets in four of the top ten markets. *See* “Spanish Language

Broadcast Outlets -- Top Ten Hispanic Markets By Population,” attached to the SBS June 20 Letter. Note that this calculation gives no weight to the dominance of the merged entity with respect to Spanish-language viewership/listenership.

- In five of the ten largest Hispanic markets, Spanish-language broadcasting would be considered a very thin market under the Commission’s recently-adopted cross-ownership rules (fewer than four TV stations licensed to the market), where cross-ownership would be strictly prohibited. *See* Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 02-235, Attachment A (July 3, 2003) (“SBS July 3 Letter”).
- Univision presently has TV duopolies in four of the remaining five thin markets, which would be prohibited by the new local TV ownership rule. *See id.* at Attachment B.
- In 1989, the FCC relied on data indicating that in the top 25 television markets there were an average of 13.4 TV stations, 29.8 commercial AM stations and 29.2 commercial FM stations. *See 1989 Order* ¶ 14; SBS July 3 Letter at 7. As shown in SBS July 3 Letter Attachment A, in the top ten Hispanic markets today there are an average of 3.3 television stations, 5.7 AM stations, and 6 FM stations. In terms of the number of broadcast stations in the market, the top ten Hispanic markets today more closely resemble markets 151-175 from 1989 (an average of 3.9 TV stations, 4.8 AM stations and 5 FM stations). *See 1989 Order* ¶ 14, n.20; SBS July 3 Letter at 7.

V. NEW ENTRY WILL NOT AMELIORATE THIS CONCENTRATION.

A. Barriers To Entry In Radio Are High As A General Matter.

- The Commission has found that “barriers to entry [in the radio business] are high because virtually all available radio spectrum has been licensed” making it a “closed entry market.” *Media Ownership Order* ¶ 288; SBS July 21 Letter at 2.
- Antitrust jurisprudence has long acknowledged that high initial investment is an entry barrier where the investment itself has significant risks. *AREEDA & HOVENKAMP, ANTITRUST LAW* ¶ 421b, at 66 (2d ed. 2002) (“AREEDA”); SBS July 14 Letter at 3.
- A former executive with several prominent radio broadcasters has stated for the record of this proceeding that “stick values”—values for stations with no cash flow—have been at an all-time high in the radio industry in recent times and that “[i]t is commonplace for FM stations in the top ten markets to be sold for numbers in excess of \$100 million with little or no cash flow.” Letter from Dan Mason to Michael K. Powell, Chairman, FCC, MB Docket 02-235, at 1-2 (Dec. 16, 2002), attached to Letter from Bruce A. Eisen, Counsel to Spanish Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 02-235 (Jan. 8, 2003) (“Dan Mason Letter”); SBS July 14 Letter at 3.
- Reformatting is risky because it is “the equivalent of ‘blow[ing] . . . up’ your station.” *Complaint, United States v. Chancellor Media Co., Inc., and SFX Broadcasting, Inc.*, No. CV97-6497, ¶ 26 (E.D.N.Y. Nov. 6, 1997), *available at* <http://www.usdoj.gov/atr/cases/f3700/3714.htm>. Thus, “[a] broadcaster is unlikely to

take such a risk simply to capitalize on a small but significant price increase” by rivals after a merger. *Id.*; see also AREEDA ¶ 421c, at 68-69 (risk is more likely to be a barrier to entry when investment is not salvageable and prospective gains are low); SBS July 14 Letter at 3.

- DOJ has recognized that reformatting is no answer to anticompetitive conduct in every merger involving radio stations that DOJ has reviewed. See SBS July 14 Letter at 4.
- DOJ recognized this reality in reviewing this very transaction. DOJ concluded:

Reformatting is an expensive endeavor that involves the loss of the station’s existing audience, a significant expense to attract new listeners, and no assurance of attracting a significant listening base to justify the costs involved An increase in the price of advertising rates charged by existing stations serving a specific format does not in itself provide assurance that a newly formatted station would attract a sufficient audience base, particularly if there are strong incumbents already in that format.⁴
- DOJ’s findings in the context of specific mergers is borne out by a regression analysis of radio station data from 10 MSAs spanning 1988 to 1998 conducted by two DOJ economists.⁵ The analysis examined the effect of format changes on station listener shares from the perspective of individual stations and station groups, and the effect various factors have in motivating stations to change format. See *id.* at 4-5. The authors determined that “stations tend to be very cautious about changing formats and even more cautious about changing their listener base,” and that “format changes frequently fail to bring about the performance improvements desired by radio groups.” *Id.* at 3. The authors therefore concluded that “these findings suggest that antitrust agencies should not look to format changes to counter the exercise of market power by a radio group that merges to dominance in a particular audience demographic.” *Id.* at 3-4 (emphasis added).

B. The Unique Impediments To Entry To The Spanish-Language Radio Market Significantly Raise The Hurdle For Successful Commercial Entry Substantially.

- “[T]here is no compelling economic rationale today that would convincingly argue for an English-language operator to dedicate valuable capital resources to experiment against established and well-entrenched competitors who super-serve this specialized niche market.” Dan Mason Letter at 2.

⁴ Competitive Impact Statement, *United States v. Univision Communications, Inc., and Hispanic Broadcasting Corp.*, No. 1:03 CV00758, at 9 (D.D.C. May 7, 2003), available at <http://www.usdoj.gov/atr/cases/f201000/201006.htm>.

⁵ See Charles J. Romeo and Andrew R. Dick, “The Effect of Format Changes and Ownership Consolidation on Radio Station Outcomes,” *mimeo* Economic Analysis Group, US Department of Justice (Dec. 2001).

- Obstacles specific to entry to Spanish-language radio broadcasting by English-language operators include unfamiliarity with Hispanic culture and music, as well as recruiting and retaining the Hispanic on-air and sales personnel. *See* Dan Mason Letter at 2; Sokol Declaration ¶ 14.
- Spanish-language advertising budgets are often totally separate from English-language advertising budgets, *see id.*, *see also* Sokol Declaration ¶13, and are frequently administered by ad agencies dedicated to the Spanish-language market. *See* Sokol Declaration ¶ 13.
- “Even today (without HBC), to reach the Spanish-speaking population, it is necessary for companies (including radio stations) to advertise on Univision.” Sokol Declaration ¶ 16.

C. Many Of The Entry Barriers To Spanish-Language Radio Are Barriers To Spanish-Language TV As Well.

- Entry barriers to Spanish-language television include limited availability of stations, lack of ability to identify, recruit and retain talent, need for specialized knowledge of and contacts with the Spanish-language advertising community, including even lack of experience with specialized sales techniques. *See* Sokol Declaration ¶ 11-12.
- Dedicated and relatively limited Spanish-language ad budgets are similarly a substantial impediment. *See id.* ¶ 12.
- An entry barrier to Spanish-language television generally, but with special significance for this merger, is Univision’s exclusive right to broadcast in the U.S. all programming produced by Televisa and Venevision until 2017. *See* Univision Communications, Inc., SEC Form 10-K Annual Report for the year ended Dec. 31, 2002, at 10 (filed Mar. 24, 2003). Even Televisa and Venevision programming not carried by Univision is not available to other stations. *See* Sokol Declaration ¶ 11.
- In addition, and partly because of the dominance of Univision programming, the costs of and risks associated with producing totally new programming for the Hispanic audience are very great. *See id.*
- Finally, one must note that an analysis of the extent to which new entry can offset the likely anticompetitive effects of the proposed merger using antitrust learning does not tell us much about overcoming the loss of diversity. As the Commission has recently stated, “the analogy between economic competition and diversity is not perfect.” Media Ownership Order ¶ 393.

D. The Practical Effect Of These Entry Barriers Is That “Entry” Is Relatively Rare And Essentially Limited To The Established Incumbents.

- “[I]n my thirty years of radio experience, I cannot recall a single successful example of a major market English-language radio competitor entering any market with a new Spanish-language format.” Dan Mason Letter at 2.

- “Despite ... seemingly strong prospects, general market operators have not meaningfully shifted their portfolios into the Spanish-language format. In fact, the top ranks of the Spanish format remain unpenetrated by mainstream broadcasters.” Lehman Brothers, *Urban Competition: A Look at the Numbers*, June 11, 2003, at 1. SBS June 23 Letter, at Attachment.
- “It is almost impossible for a new Spanish-language broadcaster to thrive given [the barriers to entry].” Sokol Declaration ¶ 13.
- The data show that over the last 39 months (including the first quarter of this year, the most recent quarter for which data are available) there were only 35 conversions of AM and FM stations to Spanish-language broadcasting in the top 10 Hispanic markets, where most Hispanics live. *See* Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 02-235, at 3-4 (July 21, 2003) (“SBS July 21 Letter”).
- Nine of the 27 non-religious station format changes over the last 39 months were undertaken by HBC and Entravision (in which Univision will continue to hold an economic interest. SBS and Liberman Broadcasting each account for six of the 27 format changes. *See* SBS July 21 Letter at 5.
- The remaining 6 of 27 non-religious Spanish-language format changes over the last 39 months were accomplished by stations that either no longer broadcast in Spanish, are financially unstable, or account for no more than 0.1% of top ten Hispanic metropolitan area ad revenues. *See id.* at 5-6.
- Table 3 of the SBS July 21 Letter (at 7) demonstrates that HBC’s and Entravision’s Spanish-language radio stations overlap in thirteen markets.
- Thus, the merger will leave two wholly independent, financially stable group owners of material size with experience in and resources dedicated to Spanish-language radio on which the Commission and our society would be relying for entry. *See* SBS July 21 Letter at 8.

Conclusion.

The record is overwhelming in its proof that the application cannot be granted. Univision has had more than ample opportunity to offer responsive competent evidence, but has chosen not to do so. At a bare minimum, the Commission cannot act favorably on the application without requiring Univision to attempt to make a public interest showing in further proceedings.

Respectfully submitted,

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