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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON DC 20554

In the Matter of **Univision Holdings, Inc.** *and* **Grupo Televisa, S.A.B.** Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended	)))))))))))	MB Docket No. __________

DOCKET FILE COPY ORIGINAL

To: Secretary, FCC
For: Chief, Media Bureau

PETITION FOR DECLARATORY RULING OF UNIVISION HOLDINGS, INC. AND GRUPO TELEVISA, S.A.B. UNDER SECTION 310(B)(4) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED

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SUMMARY

Univision Holdings, Inc. (formerly Broadcasting Media Partners Inc.) ("Univision"), and Grupo Televisa, S.A.B. ("Televisa", and together with Univision, "Petitioners"), by their attorneys, respectfully request that the Commission permit Univision to accept foreign investment in excess of the 25 percent benchmark set out in Section 310(b)(4) of the Communications Act of 1934, as amended, (the "Act"), 47 U.S.C. § 310(b)(4). Specifically, Petitioners seek a ruling permitting up to 49 percent aggregate foreign investment (voting and equity) in Univision, including up to a 40 percent interest in Univision to be held by Televisa and its affiliated companies.

Univision is the leading media company serving U.S. Hispanics. This Petition is being filed in anticipation of an Initial Public Offering of Univision's common stock ("IPO"), as it will permit Univision to be able to accommodate increased foreign investment, including from an established foreign investor that historically has played a unique and essential role in Univision's Spanish-language broadcast operations. Televisa, the largest producer of Spanish-language content in the world, has provided compelling programming to Univision for its Spanish-speaking audience in the United States for decades, thereby enhancing program diversity and strengthening competition in the U.S. broadcast television marketplace. Indeed, Univision and Televisa helped pave the way for a wide variety of program choices for diverse audiences by demonstrating that serving what were once viewed as niche markets is a viable business model.

Grant of this Petition, thereby enabling Univision and Televisa to deepen and broaden their strategic relationship, would serve the public interest. Beyond the fundamental benefits of promoting diversity and strengthening competition, grant of the Petition will enhance Univision's community-based empowerment initiatives, aligns with U.S. foreign trade policy, encourages reciprocity with U.S. trading partners, helps level the regulatory playing field while energizing competition among media companies, and encourages greater competition in non-media businesses as well. These wide-ranging benefits accrue without any countervailing national security, law enforcement, foreign policy, or trade policy concerns.

Grant of the Petition also would be a timely and important further step toward rationalization of the Commission's policies with respect to foreign investment in the U.S.

broadcast industry, as contemplated in the Commission's 2013 *Broadcast Clarification Declaratory Ruling*[1] and recent *Notice of Proposed Rulemaking*.[2]

I. THE PARTIES AND THE PROPOSED TRANSACTION

A. Description of the Parties

Univision, a Delaware corporation, indirectly owns and operates television and radio stations throughout the United States, and is therefore subject to the foreign ownership requirements of Section 310(b)(4). It also operates over a dozen national broadcast and cable networks, including the Univision Network, UniMás, and Galavision. By investing in the acquisition and production of high-quality content and devoting substantial resources to a wide range of public service and community empowerment initiatives serving Latinos, Univision has become the most recognized and trusted brand in the U.S. Hispanic community.

Univision also serves broader multicultural constituencies through The Root, a leading online outlet for news and commentary directed to the African American community, and Fusion, an English-language news and lifestyle cable television and digital network targeting diverse younger audiences. It has developed online services such as Flama, an English-language platform targeting a younger audience interested in Latin culture, and is a strategic investor in El Rey Network, an English language cable network developed by Robert Rodriguez that targets Latinos and culturally diverse viewers.

Televisa, a Mexican company that has been publicly traded on the New York Stock Exchange for over 20 years, is the largest producer of Spanish-language programming in

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[1] *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees*, Declaratory Ruling, 28 FCC Rcd 16244 (2013).

[2] *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Notice of Proposed Rulemaking, GN Docket No. 15-236, FCC 15-137 (rel. Oct. 22, 2015) ("*NPRM*").

the world, with its programming being available in more than 50 countries worldwide. It operates four broadcast channels in Mexico City and distributes more than 24 pay-TV services to viewers in Mexico and around the world. Televisa has provided highly valued programming to Univision and its affiliated stations for decades. Pursuant to a long-term license agreement with Univision, programming produced by Televisa currently reaches more than 92 percent of Hispanic television households in the United States. In addition to providing approximately 35 percent of Univision's broadcast programming (and more than 50 percent of content across all of Univision's broadcast, cable and online platforms), Televisa partners extensively with Univision in its public service and community empowerment efforts in the United States.

As discussed below, Televisa also is a minority shareholder in Univision, which is controlled by a consortium of private equity firms that includes Madison Dearborn Partners, Providence Equity Partners, TPG Capital and Saban Capital Group. These four entities jointly control Univision through their shareholdings and certain investor agreements pursuant to which they collectively have the right to designate a majority of the members of Univision's board of directors.[3] The relief requested herein will not affect the ultimate control of Univision.

B. Description of the Proposed Transaction and Post-Transaction Foreign Ownership

This Petition seeks a declaratory ruling authorizing up to 49 percent aggregate foreign ownership (equity and voting) of Univision shares, including up to a 40 percent interest in Univision shares to be held by Televisa and its affiliated companies as a named foreign investor. As has been widely reported, Univision anticipates bringing public shareholders into its ownership for the first time in nearly a decade through an IPO. After Univision becomes a

[3] A fifth member of the founding private equity consortium, Thomas H. Lee Partners, L.P., holds a non-attributable equity interest in Univision. *See Shareholders of Univision Communications Inc.*, Memorandum Opinion and Order, FCC 08-48 (rel. Feb. 12, 2008).

publicly traded company, as the FCC recently acknowledged in its NPRM,[4] it will be difficult, and possibly legally impossible, for it to determine the citizenship of all its public shareholders.

In anticipation of an IPO, Univision reduced its outstanding debt by entering into an agreement with Televisa pursuant to which certain Univision debentures issued to Televisa in 2010 were converted into warrants. Subject to certain contractual limitations in Univision's governing documents, the warrants are exercisable for a 27.7 percent equity interest in Univision (calculated on an as-converted basis). However, by their terms, the warrants may not be exercised unless the resulting stock interests would be permissible under Section 310(b)(4) of the Act.

Currently, Televisa holds a 9.58 percent equity interest, and a 14.2 percent voting interest, in Univision. It is worth noting, however, that approximately half of Televisa's shares are U.S.-owned. Pursuant to FCC policy and precedent, ownership attributable to foreign investors is calculated at each link in the ownership chain by multiplying an entity's percentage of foreign ownership by the percentage of equity it holds in the next successive link in the chain.[5] If the multiplier were applied to Televisa's ownership of Univision capital stock, only about half of Televisa's equity interests in Univision would be deemed to be foreign.

However, the FCC's application of the multiplier to foreign corporations with significant U.S. ownership has been uneven,[6] and given the challenges of demonstrating U.S. ownership and control of publicly-held Televisa shares, the Petitioners seek the certainty of a

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[4] *NPRM* ¶ 31.

[5] *See Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses*, 19 FCC Rcd 22612, 22627-30 (Int'l Bur. 2004).

[6] *See, e.g.*, Letter from Barbara A. Kreisman to Tom Davidson, Esq. *et al.*, File No. BTCCT-971230-PA-QC (rel. July 30, 1998) (discounting the foreign ownership attributable to Sony Corporation by the percentage of shares held by U.S. citizens).

declaratory ruling in order to ensure Univision's continued compliance with Section 310(b)(4) should Televisa's warrants be exercised, either at its own election or, as permitted by Univision's governing documents, at the request of Univision. The planned IPO—which is contemplated to involve only a small amount of Univision's shares—would not, either alone or in combination with the exercise of any or all outstanding Televisa warrants, affect control of Univision.

Accordingly, issuance of the ruling requested herein would (1) facilitate public ownership of Univision shares following its planned IPO, (2) permit exercise of the Televisa warrants, strengthening the strategic relationship between Univision and its largest programming supplier, and (3) accommodate future fluctuations in Univision's foreign ownership as a result of Univision's public company status.

II. PROCEDURAL MATTERS

A. The FCC's Streamlined Foreign Ownership Review Procedures for Common Carrier Licensees

The FCC has, over time, developed a body of precedent, rules, and procedures for transactions involving foreign ownership of common carriers in excess of the 25 percent benchmark. Nearly twenty years ago, the Commission concluded that, absent specific, credible, and substantial concerns regarding national security, foreign policy, law enforcement or competition, the public interest generally would not be served by limiting foreign investment to 25 percent in U.S. telecommunications companies provided such investment is sourced from WTO-member countries.[7] The Commission even adopted an "open entry standard" under which it presumed that foreign investment from WTO-member countries in a common carrier licensee would not pose competitive concerns in the U.S. market. For nearly twenty years, the FCC's

[7] *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market: Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891, 23944-45 ¶ 125, 23945 ¶ 127 (1997).

interpretation of Section 310(b)(4) has allowed foreign investors to own up to 100 percent of major cell carriers, backbone Internet providers, and other companies controlling critical elements of the U.S. telecommunications infrastructure.[8]

On April 18, 2013, recognizing that "foreign investment has been and will continue to be an important source of financing for U.S. telecommunications companies, fostering technical innovation, economic growth, and job creation," the Commission eliminated the distinction between foreign investment from WTO-member countries and non-WTO-member countries, deciding to apply the open entry standard in its public interest assessment of *all* foreign investment in U.S. common carriers.[9] At that time, the Commission adopted streamlined procedures for U.S. common carriers seeking to accept foreign investment at levels above the 25 percent benchmark.[10] Those streamlined procedures—set forth in Sections 1.990-1.994 of the Commission's Rules—permit common carrier and aeronautical licensees and applicants to petition the Commission for a declaratory ruling authorizing foreign ownership above the 25 percent mark while (1) no longer requiring petitioners to identify foreign equity and/or voting interests of five percent or less (with certain exceptions); (2) permitting petitioners to request

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[8] For example, until February 2014, Verizon Wireless—the nation's largest wireless provider—was a joint venture of Verizon Communications, Inc. and Vodafone Group plc, a U.K. company. T-Mobile USA, Inc.—the fourth largest wireless provider in the U.S. by subscribership—is a wholly owned subsidiary of German telecommunications provider Deutsche Telekom AG. Similarly, the Commission approved above-benchmark foreign investment in Global Crossing Ltd., a major Tier One common carrier and Internet Service Provider, and in Level 3, a major U.S. Department of Defense contractor. *See* Rachel Abrams, *Vodafone and Verizon Shareholders Approve Wireless Deal*, N.Y. Times (Jan. 28, 2014), http://dealbook.nytimes.com/2014/01/28/vodafone-shareholders-approve-sale-of-verizon-wireless-stake; Mathew Curtin, *T-Mobile US: Deutsche Telekom's Costly Long-Distance Call*, Wall St. J. Bus. Blog (June 4, 2015, 7:41 a.m.), http://blogs.wsj.com/briefly/2015/06/04/t-mobile-u-s-deutsche-telekoms-costly-long-distance-call-at-a-glance; *Applications Filed by Global Crossing Limited and Level 3 Communications, Inc. For Consent to Transfer Control*, IB Docket No. 11-78, Memorandum Opinion and Order And Declaratory Ruling, 26 FCC Rcd 14056 (2011).

[9] *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, 28 FCC Rcd 5741, 5744 ¶ 3, 5745 ¶ 5 (2013) ("*Common Carrier Foreign Ownership Order*").

[10] *Common Carrier Foreign Ownership Order*.

specific approval for any named foreign investor to increase its equity and/or voting interests up to and including a non-controlling 49.99 percent stake at some future time; and (3) permitting petitioners to request specific approval for any named foreign investor that proposes to acquire a controlling interest of less than 100 percent to increase its interest to 100 percent at some future time.

B. The FCC's Case-By-Case Review of Foreign Ownership in the Broadcast Sector

Although the exact same Communications Act provision governs both common carriers and broadcast licensees, the FCC's interpretation of Section 310(b)(4) has authorized significant foreign investment in common carriers (up to 100 percent) while limiting such investment in the broadcast sector. Indeed, just prior to the FCC's adoption of streamlined Section 310(b)(4) review procedures for common carriers, the Coalition for Broadcast Investment ("CBI") filed a *Request for Clarification of the Commission's Policies and Procedures Under 47 U.S.C. § 310(b)(4)*[11] pointing out that, in marked contrast to the FCC's treatment of common carriers, "for over 80 years, [the FCC] has failed to exercise its authority and discretion to permit foreign ownership interests in entities that control the licensees of broadcast radio or television stations in excess of the 25 percent benchmark."[12]

In response, the Commission issued the *Broadcast Clarification Declaratory Ruling* on November 14, 2013 "to remove apparent uncertainty about the Commission's policies and procedures for evaluating potential foreign investment in broadcast licensees under Section

[11] *Media Bureau Announces Filing of Request for Clarification of the Commission's Policies and Procedures Under 47 U.S.C. § 310 (b)(4) by the Coalition for Broadcast Investment*, MB Docket No. 13-50, Public Notice, 28 FCC Rcd 1469 (MB 2013).

[12] *Broadcast Clarification Declaratory Ruling*, 28 FCC Rcd 16244, 16246 ¶ 5 (2013) (citing CBI Request at 1).

310(b)(4) of the Communications Act[.]"[13] The Commission noted that, despite routinely granting common carrier Section 310(b)(4) petitions, it "has not been presented with a similar number of applications in the broadcast sector and therefore has not had the opportunity to develop its policies and procedures in this context."[14]

Although the FCC declined at that time to extend the streamlined procedures for common carriers to broadcast licensees, it clarified that "the plain language of the statute" gives the FCC "the opportunity to review on a case-by-case basis applications for approval of foreign investment" above the 25 percent benchmark, and that such applications "may be granted unless the Commission finds that a denial will serve the public interest."[15]

C. The FCC's Proposal to Extend Streamlined Foreign Ownership Review Procedures to Broadcast Licensees

On October 22, 2015, the Commission voted unanimously to initiate a rulemaking "to simplify the foreign ownership approval process for broadcast licensees by extending the streamlined rules and procedures developed for foreign ownership reviews for common carrier and certain aeronautical licensees under section 310(b)(4) . . . to the broadcast context."[16] The Commission noted that its "experience applying these rules in the common carrier context demonstrates that the process is efficient and that filers are benefitting from the formal guidance."[17] With this experience in mind, the Commission announced that "broadcasters can benefit from the streamlining measures that are applied to common carrier licensees that seek to exceed the 25 percent foreign ownership benchmark," and "tentatively conclude[d] that the

[13] *Id.* at 16244 ¶ 1.

[14] *Id.* at 16246 ¶ 3.

[15] *Broadcast Clarification Declaratory Ruling,* 28 FCC Rcd at 16249 ¶ 10.

[16] *NPRM* ¶ 1.

[17] *Id.* ¶ 10.

considerations underlying the adoption of the foreign ownership rules applicable to section 310(b)(4) petitions for common carrier licensees are generally applicable to broadcast licensees."[18]

Adoption of the rules proposed in the *NPRM* clearly would simplify the Section 310(b)(4) petition process for broadcasters in the future. But there is no reason for the Commission to await the conclusion of its rulemaking proceeding before acting on this Petition. *First*, as the Commission acknowledged in 2013, the statute itself authorizes foreign investment exceeding the 25 percent benchmark unless the Commission concludes that such investment is contrary to the public interest; indeed, this is the basis for the Commission's many decisions authorizing above-benchmark foreign investment involving common carrier licensees. *Second*, as the Commission has recognized, Section 310(b)(4) does not distinguish between common carriers and broadcasters; consequently, the Commission is free to grant this Petition just as it routinely granted common carrier petitions before adopting streamlined common carrier Section 310(b)(4) review procedures in 2013. *Finally*, consideration and grant of this Petition would be fully consistent with the Commission's 2013 pledge to review, on a case-by-case basis, broadcasters' Section 310(b)(4) petitions.

As demonstrated below, permitting foreign investment in Univision above the 25 percent benchmark as requested herein would serve the public interest. The Petitioners therefore urge the Commission to promptly issue a declaratory ruling granting this Petition.

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[18] *Id.*

III. GRANT OF THIS PETITION IS CONSISTENT WITH THE PUBLIC INTEREST

A. Grant of the Petition Will Enable Univision to Expand Its Efforts to Inform, Entertain and Empower U.S. Hispanics and Other Diverse Communities

1. Univision's Mission-Driven Focus on the Needs, Interests and Concerns of U.S. Hispanics and Other Multicultural Constituencies

As the leading media company serving Hispanic America for nearly three decades, Univision plays a unique role in both the U.S. media marketplace and the U.S. Hispanic community. Univision's national network and local programming, including its award-winning national and local news programming, has informed, entertained and empowered generations of U.S. Hispanics. Its television and radio stations and their employees—both on-the-air and behind-the-scenes—are part of the fabric of the U.S. Hispanic community. Univision's deep engagement with its listeners and viewers enables it to provide critical support to often underserved and sometimes vulnerable communities, from facilitating access to educational services and healthcare to fostering civic engagement. Indeed, Univision stations and their community partners respond to nearly a quarter of a million listener and viewer inquiries per year on education, health, immigration, civic engagement, and financial matters. In 2014 alone, Univision committed more than $82 million in airtime to support community initiatives.

Univision's flagship, its Spanish-language Univision Network, is one of the top five networks in the country in any language, directly competing with and often outperforming ABC, CBS, FOX and NBC. Fully 71 percent of Univision's primetime Adult 18-49 audience is unduplicated; that is, viewers who do not tune into another of the top-10 rated broadcast or cable networks—as compared to an average 16 percent unduplicated audience among the top-four English-language networks.

Univision's programming is popular and commands such consumer loyalty because—in addition to providing hard news and entertainment—it addresses the issues that matter most to the U.S. Hispanic community, including health, education, immigration and politics. Moreover, Univision connects with its viewers and listeners both through its programming and through "boots-on-the-ground" involvement in its local communities. Its cross-platform "Contigo" community empowerment initiative produces positive, measureable results in four critical areas—Education, Health, Prosperity, and Civic Participation—through both on-air and non-broadcast community activities such as "Ya Es Hora," to encourage civic participation; "Salud es Vida," to raise awareness of health issues and encourage positive and informed health care decision-making; and "Avanzamos Conectados," to raise awareness among Hispanic families about the educational importance of Internet connectivity and the impact of technology on their children's education. To date, more than 95,000 families have requested information through the program and 31,000 individuals have participated in local events throughout the country emphasizing the importance of connectivity to educational attainment.[19]

Meanwhile, Univision's award-winning News division is committed to informing Hispanic America across all the company's platforms. In the 2014-15 season alone, Univision's News division received (among others) the Walter Cronkite Award for Achievement in National Investigative Journalism; an Alfred I. DuPont Award from Columbia University; and a National Edward R. Murrow Award for Best News Website. As recently as December 10, 2015, Univision was recognized with an additional 99 National and Regional Emmy® Awards in categories such as Investigative Reporting, Sports News Feature, and Human Interest News Feature.

[19] *See* Comments of Univision Communications Inc. in WC Docket 11-42 *et al.*, Lifeline and Link Up Reform and Modernization (filed Aug. 31, 2015) (emphasizing the importance of broadband connectivity in reducing the "homework gap" among Latino households).

For its part, Televisa, through its Televisa Foundation, has partnered with Univision on numerous projects in the United States to serve the public interest. In 2012, for example, the Televisa Foundation teamed with Univision to create Teletón USA, an American charity supporting treatment for sick, disabled, and special-needs children in the U.S. Hispanic community, which to date has raised more than $60 million. In 2014, Teletón USA opened the one-of-a-kind Children's Rehabilitation Institute ("CRI") in San Antonio, Texas, a 45,000 square foot facility that to date has served nearly 650 families from 34 states. CRI assists children with neurological and musculoskeletal disorders by providing them with compassionate state-of-the-art rehabilitation services, regardless of their financial circumstances. CRI is on track to serve approximately 600 families in each of the next two years.

Televisa also has partnered with other U.S. organizations in the media and technology sectors. For example, Televisa teamed with the National Association of Independent Latino Producers to produce informational videos related to immigration. And Televisa worked with the White House and the Hispanic Heritage Foundation to promote Latinos in science, technology, engineering and mathematics (STEM) and support afterschool programs across the country. It also has collaborated with the National Center for Women & Information Technology to raise awareness among Latinas and their families about opportunities and careers in technology.

With Televisa's support, Univision has also worked to bring other historically underserved communities within the scope of its fundamental mission to inform, entertain and empower. For example, starting in 2012, Univision became an early distributor of Bounce TV, a digital network focused on African-American viewers and the first English-language programming service broadcast on Univision stations. Today Univision is the largest Bounce affiliate, carrying the network in a dozen markets, including New York, Los Angeles and Philadelphia, the first, second and fourth-ranked DMAs nationally.

In May 2015, Univision acquired The Root, an online portal serving the African American community. According to Professor Henry Louis Gates Jr., director of the Hutchins Center for African and African-American Research at Harvard University and one of the founders of The Root, Univision's acquisition symbolizes the "ties that have long bound people of color together" and facilitates "even greater levels of communication" between Hispanics and African-Americans. [20]

In addition, in 2013, Univision launched Fusion, a millennial-focused television and digital network, in a joint venture with an affiliate of The Walt Disney Company. Fusion features news and lifestyle programming directed toward English-speaking milliennials, in a style reflecting and promoting a culture of inclusion -- embracing not only young, English-speaking Hispanics, but also other communities of color and the LGBT community. In its first year on the air, Fusion was nominated for two National Emmy® Awards, in the "Outstanding Investigative Journalism – Long Form" and "Outstanding Research" categories. Fusion's news programming and news commentary also received three 2015 NAHJ Journalism Awards from the National Association of Hispanic Journalists.

Univision has been recognized as a diversity leader in the media industry. Eighty percent of Univision's overall workforce is made up of minorities, making Univision a leading employer of multiculturals in the United States. Latinos and multiculturals comprise 98 percent of the company's total production employee base across the company. And, as the

[20] Richard Prince, "Univision Buys The Root—Fusing the No. 1 Hispanic and the No. 1 Black News Outlets in the US," (May 22, 2015), http://www.theroot.com/blogs/journalisms/2015/05/univision_buys_the_root_fusing_the_no_1_hispanic_and_the_no_1_black_news.html.

company's total programming hours produced domestically continues to grow—up 37 percent between 2001 and 2015—Univision is creating additional opportunities for U.S. multicultural writers, producers and talent.

2. Univision's Plans to Expand Its Community-Based Empowerment Initiatives

Authorizing additional foreign investment generally, and increased investment by Televisa in particular, will strengthen the strategic relationships between Univision and Televisa to the benefit of underserved diverse communities across the United States. In particular, as the economic, political and cultural impact of U.S. Hispanics and other diverse communities continues to grow, Univision and Televisa believe it is critically important for Latinos and other minorities to participate in, and play a leading role in shaping, the media industry in the United States. Accordingly, these companies have joined forces to achieve two overarching goals. *First,* to strengthen and expand their existing efforts to increase the pipeline of Latinos and other minorities in media and technology; and, *second,* to develop and educate future media leaders and professionals.

In furtherance of this vision, Univision and Televisa, working with partners in the multicultural community, local government and academia, are focusing on the following activities:

STEM and Media. In order to promote STEM opportunities in the media industry and highlight the sharpest Latino STEM talent, Univision and Televisa plan in 2016 to present a series of events and symposia at locations across the country, including Silicon Valley. Univision and Televisa will conduct these activities in partnership with community, education, and technology organizations. In addition, Univision will open a technology and learning center at its television station in San Jose, California, which will include computer coding training and other STEM-related training and events.

School Programs. In 2015, Univision created a media lab at the New Venture School, a middle school in the Bronx. In the coming year, it plans to expand this effort to schools in other markets. These facilities will provide students with the tools and training to understand how a media newsroom operates. In addition to getting hands-on production and editing experience, the students will receive training from local Univision station news staff.

Production and Distribution Opportunities. Univision and Televisa will bring together students and emerging talent to produce and develop documentaries and short fiction pieces to be distributed on Fusion. This effort will include a mentorship program with journalists from Fusion, Univision, and The Root.

Incubator Programs. Univision will launch and underwrite incubator programs, such as the Univision Creator Network, that will allow emerging Latino media makers to showcase their production and writing skills at both the local and national level. These programs will provide creators with an ecosystem that will extend their access to linear and digital distribution while supplying both a community of industry experts and opportunities to collaborate with other creators. The project will also offer access to Univision studios and the company's music library.

Writing and Development Fellowships. Univision will offer development fellowships to mentor and promote multicultural and millennial writers in broadcast, film, digital and other media formats. Univision also is supporting third-party initiatives to promote an original TV writers program, develop a database of Latino television and film executives, and promote policy fellowships in telecommunications law.

Grant of the Petition will serve the public interest by facilitating these and other community-enhancement initiatives Univision seeks to undertake. Among other benefits, grant of the Petition will strengthen Univision's relationship with Televisa—a strategic partner with a demonstrated interest in promoting Univision's public service mission—and thereby enable Univision to increase its level of support to diverse underserved communities throughout the United States.

B. Grant of the Petition Will Help Level the Competitive Playing Field Among Media Companies

Univision competes for viewers, advertisers, and programming with a wide variety of entities, the great majority of which do not own broadcast station groups. With respect to Spanish-language content providers alone, these include, for example, (1) cable and satellite-delivered news and entertainment channels such as CNN en Español and Discovery en Español; (2) online news and entertainment sites such as Elsalvador.com, LaPrensa.com, and Hola.com; and (3) newspapers, including *El Diario de Hoy* and *La Prensa*. In addition, because a majority of English-speaking Hispanics in the United States are bilingual, Univision's competition is not limited to Spanish-language programming and service providers, or to traditional forms of media and entertainment. For example, Univision competes against cable operators like Charter and Verizon, Internet portals such as Google, Yahoo! (which also have Spanish-language portals in the United States), and AOL, and an enormous variety of streaming sites, including Hulu and Netflix. As these competitors proliferate, the proportion of overall content provided by broadcasters -- the only entities subject to foreign ownership restrictions -- diminishes.

While these non-broadcast competitors enjoy unimpaired access to global capital markets and no restrictions on their ability to take on foreign investment and foreign strategic partners, Univision remains bound by the constraints of Section 310(b)(4). Univision thus is at a distinct disadvantage vis-à-vis many of its media competitors, which are able to benefit from the resulting (i) lower costs of capital and (ii) better access to foreign strategic partners. The advantages of both attributes are self-evident. Companies with lower costs of capital can take on larger projects with greater risks, including focusing their efforts on diverse and historically underserved communities; better survive tough economic environments; and generate greater profits, thereby attracting yet more investment, creating a virtuous cycle. Similarly, having the freedom to take on key strategic partners through equity investments, regardless of citizenship, allows a business to reduce risks in new ventures, expand into new product and service markets where the barriers to entry would otherwise be too high, more effectively leverage existing assets, and compete more effectively against businesses that do not face such constraints.

While some of the benefits of a foreign strategic relationship may be derived contractually, inflexible constraints on foreign equity participation preclude a true alignment of the parties' economic interests, and therefore necessarily result in a provisional and more tenuous relationship. In contrast, strategic equity investors have every incentive to promote their own, and their broadcasting partner's, common interests.

The FCC has itself acknowledged numerous benefits of enhanced foreign investment in both the telecommunications[21] and broadcast contexts. In the recent *NPRM*, the Commission stated that extending investment flexibility to broadcasters "will facilitate investment from new sources of capital at a time of growing need for capital investment in this important sector of our nation's economy"[22] and "will help improve access to capital from

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[21] *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry and Regulation of Foreign Affiliated Entities*, IB Docket Nos. 97-142, 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23894 ¶ 4 (1997).

[22] *NPRM* ¶ 1.

foreign investors and promote regulatory flexibility[.]"[23] In 2013, "the Commission acknowledged that 'changes have occurred in the media landscape and marketplace since the foreign ownership restriction was enacted and that limited access to capital is a concern in the broadcast industry, especially for small business entities and new entrants, including minorities and women.'"[24] Since that time, the media landscape has continued to evolve, rendering the Commission's conclusions truer than ever.

While the FCC contemplates in the NPRM permitting up to 100 percent foreign ownership of U.S. broadcasters in order to obtain these benefits, this Petition provides an opportunity to provide at least incremental foreign investment flexibility to Univision under the Commission's existing Section 310(b)(4) guidelines. As discussed herein, doing so would generate immediate and tangible benefits, helping strengthen Univision and enhancing the services it provides to the public.

C. Grant of the Petition Will Help Enhance Competition in Non-Broadcast Products and Services

Historically, the American economy has benefitted by businesses seeing an opportunity and having the resources to launch a product or service seemingly unrelated to their existing line of business. And, in fact, media companies today must diversify across multiple lines of business in order to compete and survive.[25] But the foreign ownership limit has a practical effect that was not intended by Congress in adopting the Communications Act; namely,

[23] *Id.* ¶ 12.

[24] *Id.* ¶ 6 (citing *Broadcast Clarification Declaratory Ruling*, 28 FCC Rcd at 16249 ¶ 10).

[25] For example, (i) health care manager Kaiser Permanente was in part an outgrowth of employee health needs at the Kaiser shipbuilding yards, *Our History*, KaiserPermanente.org, http://share.kaiserpermanente.org/article/history-of-kaiser-permanente (last accessed Dec. 14, 2015); (ii) Nokia was originally a paper milling company, *Our Story*, Nokia.com, http://company.nokia.com/en/about-us/our-company/our-story (last accessed Dec. 14, 2015); and (iii) 3M (formerly the Minnesota Mining and Manufacturing Company) today produces tens of thousands of products, few of which have much connection to mining, *All 3M Products*, 3M.com, http://www.3m.com/3M/en_US/company-us/all-3m-products (last accessed Dec. 14, 2015).

that a limitation on foreign investment in broadcasting is a *de facto* limit on foreign investment for every other line of business a company with broadcast licenses might wish to pursue.

The unintended consequence of an inflexible limit on foreign investment is that it not only can harm broadcast service to the public, but also inhibit a broadcaster's ability to compete effectively in what would otherwise be unregulated lines of business. The result is that broadcasters are discouraged from launching new media or non-media services to the public.[26] For example, when a company that owns broadcast licenses seeks to launch a line of business unrelated to its broadcast activities, a business that would otherwise be free from foreign ownership restrictions suddenly becomes subject to them simply because it holds those licenses. This places broadcasters at a competitive disadvantage against diversified multinational media and other businesses that can freely take on foreign investment and foreign partners, and that as a result have lower capital costs, broader strategic relationships, lower barriers to entry into new markets, and a more diversified revenue base.

Creating a financial impediment to diversification harms both diversity and competition. For instance, with easier access to capital, Univision would be better positioned to develop business models that might be more accessible to underserved communities, which (as the FCC and NTIA have recognized) currently suffer from a significant broadband adoption gap.[27] Importantly, increasing Univision's ability to foster broadband adoption in underserved

[26] While a media company could historically make its revenue from selling content directly to the public, having advertisers fund the creation and distribution of content, or both, such a simplistic approach today would leave that company severely disadvantaged against competitors that are engaged in myriad other business ventures. For example, (i) worldwide merchandising, (ii) licensing intellectual property for others to use, (iii) selling or licensing physical or electronic copies of individual pieces of content via optical disks and streaming, and (iv) launching related lines of business, such as (a) a recording company producing soundtrack records or the latest hit from a winner of a TV talent show, or (b) a movie company producing film adaptations of various TV programs and characters.

[27] *See, e.g.*, Remarks of Commissioner Jessica Rosenworcel, *Taking the Pulse of the High School Student Experience in America, Hispanic Heritage Foundation* (Apr. 29, 2015) ("Latinos and African Americans are most

communities would have an impact beyond simply increasing access to video content, as "[a] high-speed Internet connection can provide access to everything from online job postings to educational opportunities to valuable healthcare information."[28] Ultimately, an important part of Univision's continued growth and success is that it be able to expand its Spanish-language offerings across digital and mobile products and platforms, while at the same time extending the reach of the Univision brand through innovative products and services targeting millennials seeking English-language content.

The Commission has long lauded the benefits of competition, but its ability to promote competition has largely been limited to the services it regulates. By lowering one of the barriers to entry broadcast companies face in launching new ventures, grant of the Petition will not only enhance competition within the media industry, but also promote competition in markets outside the media industry, with significant public interest benefits.

D. Grant of the Petition Aligns With U.S. Foreign Policy and Will Enhance Reciprocity With U.S. Trading Partners

Inbound foreign investment is an important driver of U.S. economic growth. Indeed, the U.S. Department of Commerce and the President's Council of Economic Advisors reported that "[i]n 2011, value added by majority-owned U.S. affiliates of foreign companies accounted for 4.7 percent of total U.S. private output, and these affiliates "employed 5.6 million

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likely to use a smartphone to complete a homework assignment—because they have no other options. And overall, nearly 50 percent of students say they have been unable to complete a homework assignment because they didn't have access to the Internet or a computer."); NTIA, *Exploring the Digital Divide* (Nov. 30, 2010) ("Even after accounting for socio-economic factors, significant gaps in broadband adoption persist along racial, ethnic, and geographic lines. For example, White households had higher broadband adoption rates than African American and Hispanic households[.]").

[28] U.S. Dep't of Commerce, Deputy Assistant Secretary for Communications and Information Anna M. Gomez, *Driving broadband adoption in the Latino community*, http://www.ntia.doc.gov/blog/2012/driving-broadband-adoption-latino-community (July 6, 2012) (noting that "too many Latino households remain cut off from these important benefits.").

people in the United States and accounted for 9.6 percent of U.S. private research and development spending."[29] The report concluded that:

> Looking ahead, the United States will remain an attractive destination for foreign investment, and this investment will help bolster our economy. However, *we need to continue to nurture and build upon the underlying strengths of the U.S. economy that make firms want to invest here; including an open investment regime*, a large economy, a skilled labor force, community colleges, world-class research universities, predictable and stable regulatory regime, adequate infrastructure, and new energy sources.

As an advocate of open trade, the U.S. government has also actively worked to remove other countries' barriers to U.S. investment. For example, the United States entered into an accord earlier this year with Mexico, Canada, Japan, and eight other countries around the Pacific to lower trade barriers to goods and services and set commercial rules of the road for a significant portion of the global economy. In advocating for the passage of the Trans-Pacific Pact ("TPP"), the Office of the U.S. Trade Representative noted that

> TPP will make it easier for American entrepreneurs, farmers, and small business owners to sell Made-In-America products abroad by eliminating more than 18,000 taxes & other trade barriers on American products across the 11 other countries in the TPP—barriers that put American products at an unfair disadvantage today.[30]

Many countries around the world have adopted a similar approach to foreign trade and investment. Given Televisa's investment in Univision, most immediately relevant here is Mexico's enactment of a package of amendments to the Mexican constitution in 2013 aimed at reforming Mexico's telecommunications and broadcast media sectors.[31] A key element of those

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[29] U.S. Department of Commerce and the President's Council of Economic Advisors, *New Report: Foreign Direct Investment in the United States* (2013) (emphasis added).

[30] OFFICE OF THE U.S. TRADE REPRESENTATIVE, *The Trans-Pacific Partnership: Leveling the Playing Field for American Workers & American Businesses*, https://ustr.gov/tpp/ (last accessed Dec. 14, 2015).

[31] *See* U.S. DEP'T OF STATE, 2014 INVESTMENT CLIMATE STATEMENT 4 (2014).

reforms was the lifting of foreign ownership limits to permit up to 49 percent foreign ownership of Mexican radio and television broadcasting companies, *subject to reciprocity.*

Mexico is a longtime ally and trading partner of the United States. Encouraging investment in Univision from Mexican companies, including Televisa, would align with the U.S. government's desire to promote cross-border investment, and would be a significant step toward establishing mutually beneficial foreign investment reciprocity with Mexico. In contrast, continuing to limit such cross-border investment would not only undermine efforts to establish genuine reciprocity, but would undermine the credibility of U.S. advocacy for removing such barriers worldwide, hampering U.S. trade policy objectives. Grant of the Petition would therefore be not only consistent with U.S. trade interests and policies, but supportive of them.

IV. GRANT OF THIS PETITION IS CONSISTENT WITH THE COMMUNICATIONS ACT

Unlike the public interest standard used in much of the rest of the Act requiring that FCC approval of an action be predicated on a finding that the "public interest, convenience, and necessity would be served," Section 310(b)(4) does not require an affirmative finding that increased foreign investment is in the public interest. Instead, it reverses the burden, authorizing the Commission to deny a licensee's request to exceed the 25 percent foreign investment benchmark *only* if the "the public interest will be served by *the refusal or revocation* of such license."[32]

For the many reasons discussed above, Petitioners believe grant of their request is affirmatively in the public interest, even though such a finding is unnecessary to meet the requirements of the Act by its terms. However, even if those numerous public interest benefits

[32] 47 U.S.C. § 310(b)(4) (emphasis added).

did not exist, the Petitioners submit that the public interest would affirmatively *not* be served by denying this Petition. In that regard, the Petitioners note that no countervailing harm would arise from grant of this Petition. It presents no national security, law enforcement, foreign policy or trade policy concerns, and even were that not the case, the FCC's experience and practice with respect to foreign ownership in the telecommunications sector ensures that any national security issues (to the extent such issues can even exist in the broadcast context) can be fully addressed through existing processes. As the Commission demonstrated in its *Pandora* decision,[33] the same processes used in the telecommunications context are fully adequate to assess and address any genuine concerns raised by a particular foreign investment scenario involving a broadcaster.

Moreover, while national security and related issues may arise in the context of a telecommunications transaction, resistance to foreign investment in broadcasting has typically been limited to citing a concern about foreign propaganda. For example, in the *Broadcast Clarification Declaratory Ruling*, the FCC hesitated to streamline foreign ownership review in broadcast applications, contending that the Communications Act's foreign ownership restrictions were "designed to protect the integrity of ship-to-shore and governmental communications and thwart the airing of foreign propaganda on broadcast stations."[34] In that proceeding, the FCC rejected the notion that "the historical statutory concern for foreign influence over broadcast stations has disappeared."[35]

In truth, however, historical context makes clear that a "propaganda" concern was not the basis for the enactment of foreign ownership restrictions, and is instead an after-the-fact

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[33] *Pandora Radio LLC Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, MB Docket No. 14-109, 30 FCC Rcd 5094, Declaratory Ruling (2015), *reconsideration denied*, FCC 15-129 (rel. Sept. 17, 2015).

[34] *Broadcast Clarification Declaratory Ruling*, 28 FCC Rcd at 16244 ¶ 2.

[35] *Id.* at 16253 ¶ 16.

rationale unsupported by statute or legislative history. An examination of the legislative history of what is now Section 310(b) reveals that while security concerns were responsible for the foreign control provisions, those concerns were wholly unrelated to broadcasting; indeed, they predated broadcast radio in the United States by nearly a decade.[36] As a result, it is clear that Congress was concerned about foreign nationals relaying national security information via international radiotelegraph in transoceanic point-to-point radio communications, not about mass dissemination of propaganda via radio stations.[37]

Congress has reaffirmed this fact through more recent legislative actions. For example, when Congress enacted the Telecommunications Act of 1996, it eliminated Section 310's restrictions on foreign officers and directors of licensee companies and their holding company parents for all services, including broadcasting.[38] Given that officers and directors

[36] The original limitation on foreign ownership is found in the Radio Act of 1912, while the first license for a commercial broadcast radio station was not issued by the federal government until 1920. Radio Act of 1912, Pub. L. No. 62-264 § 2, 37 Stat. 302 (1912) (stating that "every such [radio] license shall be issued only to citizens of the United States or Porto [sic] Rico or to a company incorporated under the laws of some State or Territory or of the United States or Porto [sic] Rico"). *See KDKA's Historic Broadcast*, CBS Pittsburgh, (March 8, 2012), http://pittsburgh.cbslocal.com/2012/03/08/kdkas-historic-broadcast ("The U.S. Department of Commerce, Bureau of Navigation, which served as the radio licensing agency of the day, issued the first radio license ever to KDKA, on Oct. 27, 1920.").

[37] The legislative proposals that formed the basis of the alien ownership limits in the Radio Act of 1927, which were largely carried over to the Communications Act of 1934, were focused upon ship-to-shore and transoceanic point-to-point communications. *See, e.g.*, Rita Zajácz, *Liberating American Communications: Foreign Ownership Regulations from the Radio Act of 1912 to the Radio Act of 1927* at 166, 48 J. Broad. & Elec. Media 157 (2004) ("H.R. 19350 was introduced in December 1916 and contained all the essential features of the foreign ownership provisions later codified in the Radio Act of 1927."); *id.* at 158 ("Section 12 of the Radio Act of 1927 . . . was incorporated in the Communications Act of 1934 word for word as Section 310 and its scope was broadened to restrict investment by holding companies."); J. Gregory Sidak, FOREIGN INVESTMENT IN AMERICAN TELECOMMUNICATIONS 63 (2008) ("It is unclear whether the foreign ownership restrictions in the Radio Act of 1927 were originally conceived to apply to broadcasting. The Navy officer most responsible for passage of the restrictions, Captain Stanford Hooper, expressed little interest in the broadcast use of radio when testifying before Congress following enactment of the new legislation."); Hearings on H.R. 7716, 72d Cong. 1st Sess. 33 (1932) (statement of Capt. S.C. Hooper) (revealing that the concern underlying adoption of § 310(b)(4) related to the common carrier, not broadcast, arena. The object of the effort spearheaded by Capt. Hooper was International Telephone and Telegraph Co., which had several alien directors. Capt. Hooper wanted to ensure that American transoceanic commercial stations would be ready for war.).

[38] The Telecommunications Act of 1996, Pub. L. No. 104-104, § 403(k), 110 Stat. 56 (*amending* 47 U.S.C. § 310(b)).

have far more direct influence on day-to-day programming decisions than any shareholder, particularly shareholders with less than 50 percent of the voting shares, Congress made clear by eliminating these restrictions that if limiting propaganda was ever the intent of Section 310(b), it is no longer.

This conclusion is buttressed by technological developments since 1996. Americans today have a multitude of additional information sources, including those delivered via cable, satellite, and Internet. Not only are none of these programming sources subject to foreign investment restrictions, but many of them are actually transmitted directly from foreign lands; indeed, some are controlled by foreign governments. The Commission itself noted this as early as 1995, stating that "the burgeoning number of information and entertainment sources has lessened the concern that misinformation and propaganda broadcast by alien-controlled licensees could overwhelm other media voices."[39] In light of the reality that "the vast expansion of the media landscape has greatly diminished any [propaganda] danger," Commissioner O'Rielly aptly noted that "artificially limiting foreign ownership for broadcasters without a legitimate, identifiable concern regarding the specific transaction proposed makes as much sense as imposing technological speed limits on bicycles while cars, trucks, and buses continue to fly by."[40]

But more important than any of this statutory history is that fact that Televisa, which is the only party proposed herein as a named foreign investor, has been delivering a great deal of Univision's programming for decades. The high quality of its Spanish-language programming is well known, and Univision has consistently chosen to air that programming over

[39] *Market Entry & Regulation of Foreign-Affiliated Entities*, 11 FCC Rcd 3873, 3947 (1995).

[40] Michael O'Rielly, *Team Telecom Reviews Need More Structure,* FCC Blog (Sept. 18, 2015, 2:18 p.m.), https://www.fcc.gov/news-events/blog/2015/09/18/team-telecom-reviews-need-more-structure.

the years, both at times when Televisa was a Univision shareholder, and at times when it was not. Televisa is not a government outlet; rather, it is a publicly traded company with substantial U.S. ownership and a strong track record of producing popular entertainment programming. Its goal is to produce programming that is as appealing as possible to viewers. There is no reason to believe an increased ownership stake in Univision would do anything but incentivize Televisa to further attune its programming to the needs and interests of Univision's audience.

CONCLUSION

Grant of this Petition, permitting up to 49 percent aggregate foreign investment (voting and equity) in Univision, and including up to a 40 percent interest in Univision to be held by Televisa and its affiliated companies, is affirmatively in the public interest. More to the point, however, grant of this Petition meets the decisional requirements set forth in Section 310(b)(4), which permits the Commission to deny such a request only where the "the public interest will be served by the refusal or revocation of such license." The public interest most definitely would not be served by the Commission's rejection of this Petition.

For all the reasons stated above, Petitioners therefore respectfully request the Commission promptly grant this Petition and issue the declaratory ruling sought herein.

Respectfully submitted,

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