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VIA ELECTRONIC FILING

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

**RE: Notice of Oral *Ex Parte* Presentation
MB Docket No. 14-57**

Dear Ms. Dortch:

On March 2, 2015, Lenard Liberman, CEO, President, & Secretary of Liberman Broadcasting, Inc. (“LBI”); Winter Horton, Chief Operating Officer and Corporate Vice President of LBI; and Blima Tuller, Chief Financial Officer of LBI, met with the following individuals in the FCC’s Media Bureau: William Lake, Hilary DeNigro, Sarah Whitesell, and Julissa Marengo. This letter is submitted to provide notice of the oral *ex parte* presentation made in the course of the meeting, pursuant to Section 1.1206(b) of the Commission’s rules. During the meeting, the parties discussed the decisions by Comcast Corporation (“Comcast”) that led to the removal of LBI’s popular Spanish-language television network Estrella TV from Comcast’s cable systems in several markets and Comcast’s persistent refusal to engage in good faith negotiation for expanded carriage of Estrella TV. As explained further below, the LBI representatives began by providing an overview of Estrella TV—which according to Nielsen ratings is the #3 Hispanic primetime network nationwide and outranks Comcast’s Telemundo in markets where it has comparable carriage—and LBI’s attempts to achieve distribution parity for Estrella TV with other Spanish-language networks carried on Comcast’s cable systems. The LBI representatives then discussed the irrationality of the reasons that Comcast has provided for its decision to deny Estrella TV the ability to compete on a level playing field. The LBI representatives noted, moreover, that Comcast’s actions fail to serve the public interest and that, if its proposed merger with Time Warner Cable is approved, Comcast will control access to 19 of the top 20 Hispanic markets and 90% of America’s Latino viewers.

Los Angeles – KRCA-TV KBUE-FM KBUA-FM KWIZ-FM KRQB-FM KVNR-AM
Houston – KZJL-TV KTJM-FM KJOJ-FM KQQK-FM KNTE-FM KEYH-AM
Dallas – KMPX-TV KNOR-FM KZZA-FM KZMP-AM/FM KBOC-FM
ESTRELLA -TV *San Diego* - KSDX-TV *Phoenix* - KVPA-TV *Chicago* - WESV -TV *Denver* - KETD -TV

Overview

Estrella TV is a minority-owned Hispanic television network that was launched in 2009 and now employs more than 1,000 minority television production workers domestically. The network is an innovative producer of original content, as evidenced by its growth in popularity in just a few short years. Indeed, Nielsen ratings for the November 2014 sweeps period establish that Estrella TV has become the third-ranked Hispanic network in primetime nationwide, and the second-most popular Hispanic network in the five Comcast and Time Warner markets where Estrella TV has distribution parity with its competitors. Estrella TV is the fastest-growing Spanish-language general audience television network in the U.S., and is the most direct competitor to Comcast's owned Spanish-language network Telemundo.

Notwithstanding Estrella TV's proven ratings performance and growing popularity, Comcast has rejected Estrella TV's requests for expanded cable carriage and thus denied Hispanics in the many markets where Estrella TV is not carried the choice of an additional source of Spanish-language programming. These Comcast markets include a number with large Hispanic populations, including Atlanta, Seattle, Monterey/Salinas, Ft. Myers, Jacksonville, and Miami (where an LBI-owned station would replace an Estrella TV affiliate that Comcast currently carries). Comcast has also declined to discuss paying Estrella TV any license fees whatsoever for its valuable programming, labeling Estrella's request as a "non-starter." What is more, Comcast's most recent written offer, which it contended was reflective of its agreements with comparable programmers, would merely have maintained the status quo in carriage while requiring that Estrella TV relinquish digital rights to all of its programming at no charge. Under this proposal, Estrella TV effectively would be paying Comcast just to maintain the limited carriage it previously had achieved. Comcast's refusal to bargain in an economically reasonable manner has now resulted in the removal of Estrella TV from its systems in Houston, Denver, and Salt Lake City, effective February 19, 2015, thus depriving Hispanics in those markets access to programming they have come to desire and expect.

In an attempt to justify its intransigent position in dealing with Estrella TV, Comcast has supplied a number of purported explanations. As the LBI representatives explained, however, each of these reasons is based on misinformation or pretext and therefore demonstrates that Comcast is not acting in an economically rational manner.

Comcast's Treatment of Estrella TV Is Economically Irrational

As the LBI representatives noted, an MVPD engaged in rational economic decision-making would be expected to expand distribution of lower-cost television networks with proven ratings history such as Estrella TV and to provide such networks with parity as compared to their peers, in order to make its cable offerings more desirable to consumers. The LBI representatives explained, however, that Comcast's actions with respect to Estrella TV have not followed this pattern, and the reasons that it has given are factually inaccurate and/or pretextual.

As an initial matter, Comcast has attempted to justify its actions with respect to Estrella TV by asserting that it fails to compete with more established Hispanic networks such as Univision, Comcast's own Telemundo, Galavision, and UniMas. Instead, Comcast contends that Estrella TV is more fairly viewed as a competitor to Azteca America and Mundo Fox, both of which

struggle to compete. Comcast, moreover, has alleged that Estrella TV performs poorly among Hispanic audiences both nationally and locally. These assertions are demonstrably false. Instead, Nielsen primetime ratings for the November 2014 sweeps period demonstrate that Estrella TV consistently beats UniMas and Galavision both nationally and locally, and that it beats Telemundo—and often the major English-language stations—across the five Comcast and Time Warner local markets where Estrella TV has had distribution parity. Estrella TV thus is a strong local performer, with Nielsen ranking it second in primetime in Los Angeles, third in Houston, fourth in Dallas, and second in Denver among adults 25-54 and males 25-54. In Salt Lake City, Estrella TV is the highest-rated Hispanic network and ranks fourth overall, behind only the Big Four (English-language) television networks. And the ratings suggest that Estrella TV's popularity can be expected to continue growing as compared to other Hispanic networks, as it has achieved a 46% increase in ratings nationwide since just May 2010. During that same time period, Univision has suffered a 24% loss in ratings and UniMas' ratings have declined by 59%.

Faced with Nielsen ratings data that shows Estrella TV's strong performance, Comcast's response has been to question Nielsen ratings in general, claiming that its set-top box data is more reliable. This assertion, however, again belies reality. Nielsen is undeniably the industry standard ratings source, as Comcast itself knows as the owner of 23 programming networks. Comcast's attempt to sweep aside Estrella TV's strong Nielsen ratings performance is all the more transparent given that it regularly boasts of its own Nielsen performance in its promotions and in the press.¹

Comcast's contention that Estrella TV lags far behind other networks and that this precludes distribution parity for Estrella TV on Comcast or any other MVPD is equally unfounded. Estrella TV has achieved the impressive ratings cited above despite extremely limited national distribution on Comcast systems. Comcast's own channel lineups show that it currently distributes Estrella TV to a mere 6 million subscribers,² while distributing Univision to 21.3

¹ See, e.g., Roger Yu, *'Nightly News' Keeps Ratings Lead Amid Williams Scandal*, USA Today, <http://www.usatoday.com/story/money/2015/02/10/nbc-news-ratings/23168645/> (Feb. 11, 2015); NBCUniversal MediaVillage, *Telemundo's Broadcast of 'Miss Universe' Reaches over 4.7 Million Viewers*, <http://www.nbcumv.com/news/telemundo%E2%80%99s-broadcast-%E2%80%9Cmiss-universe%C2%AE%E2%80%9D-reaches-over-47-million-total-viewers> (Jan. 26, 2015); NBCUniversal MediaVillage, *Telemundo's Highly Rated "Señora Acero" Finale Ranks # 1*, <http://www.nbcumv.com/news/telemundo%E2%80%99s-highly-rated-%E2%80%9Cse%C3%B1ora-acero%E2%80%9D-finale-ranks-1-spanish-language-tv-10pm-averaging-27> (Jan. 15, 2015); Comcast Press Release, *Xfinity On Demand Now Home to Top 100 Nielsen Rated Shows*, <http://corporate.comcast.com/news-information/news-feed/xfinity-on-demand-now-home-to-top-100-nielsen-rated-tv-shows> (June 12, 2014); Comcast Press Release, *Comcast and Nielsen Collaborate to Further Monetize Timeshifted Television*, <http://corporate.comcast.com/comcast-voices/comcast-and-nielsen-collaborate-to-further-monetize-timeshifted-television> (Dec. 2, 2013).

² Before Comcast dropped Estrella TV from its Houston, Denver, and Salt Lake City cable systems, it provided Estrella TV to 7.5 million subscribers.

million subscribers, Telemundo to 21.1 million, UniMas to 19.8 million, and Galavision to 20.6 million. Although Comcast touts the fact that it is Estrella TV's largest distributor, the vast majority of Comcast subscribers with access to the network have such access for reasons *other than* any discretionary recognition by Comcast that Estrella TV delivers real value to its viewers. Instead, Comcast provides Estrella TV to most of these subscribers as a result of past must-carry status or retransmission consent arrangements negotiated with Estrella TV's contractual affiliates, based on whatever leverage those third parties may have. Contrary to Comcast's contention, other MVPDs have recognized the value of Estrella TV. In this regard, Estrella TV has obtained national distribution deals with other MVPDs that include licensee fees and full system-wide carriage, and many of these MVPDs have voluntarily launched Estrella TV based on the quality of its programming and ratings performance. Unlike Comcast, however, these MVPDs do not own or operate programming networks that compete with Estrella TV.

As noted above, Comcast has also summarily asserted that Estrella TV should not receive any license fees for carriage of its programming. This position cannot be squared with either the ratings data discussed above or Comcast's apparent agreement to pay millions of dollars in license fees to other networks that are far less popular than Estrella TV. For example, in Houston, Estrella TV has higher ratings than six networks that are reported to receive license fees from Comcast, and Estrella TV's ratings exceed the only other two networks that are not reportedly paid license fees by a factor of more than three times combined. In Denver, Estrella TV ranks number two and apparently is the only full-power television station to which Comcast pays no license fees. In that same market, FCC records show that Telemundo paid \$42,000,000 to acquire a full-power television station (demonstrating the value it placed on reaching Denver's Hispanic viewers), while Estrella TV beats Telemundo's ratings by five times. And in Salt Lake City, Estrella TV is the number one Hispanic voice and the only full-power television station that receives no license fees from Comcast. In Los Angeles, Estrella TV beat Telemundo and UniMas combined in the November sweeps primetime Nielsen ratings. Time Warner Cable and other MVPDs in those markets reportedly are paying these two networks combined license fees of approximately \$35 million. In Dallas, also a Time Warner market, Estrella is the fourth-ranked network overall, and appears to be the only network that does not receive license fees among the top eight broadcast networks.

Comcast's actions with respect to Estrella TV are all the more troubling given its manifest provision of favorable treatment to other Hispanic networks during the same period that it has refused to expand carriage of, or pay license fees to, Estrella TV. Overall, among seventeen rated Hispanic networks that Comcast carries, Estrella TV ranks third, but it is only one of three that reportedly receive no license fees. Comcast, moreover, has granted distribution *and* reportedly paid license fees to an additional twenty-eight non-rated Hispanic networks during the same period that it has denied Estrella TV similar treatment. Since 2011, Comcast has agreed to carry four newly launched Hispanic networks—at least three of which it reportedly pays millions in license fees—all of which target a niche audience and none of which, therefore, pose any direct competitive threat to Telemundo. During the same time period, a total of no less than nine Hispanic networks (including new networks just discussed) have achieved expanded carriage in Comcast markets, while Comcast steadfastly refuses to expand its carriage of Estrella TV.

Comcast's Treatment of Estrella TV Does Not Serve the Public Interest

The LBI representatives explained, moreover, that Comcast's treatment of Estrella TV does not serve the interests of competition, diversity, or localism. As already noted, Comcast's refusal to expand carriage of and pay license fees to Estrella TV harms competition and denies the public access to a diverse programming voice. These harms are all the more troubling given Estrella TV's status as a small, minority-owned, family business that provides distinctive programming that caters specifically to United States-based Hispanic communities. What is more, Estrella TV provides a critical news voice to Hispanic-Americans, offering *five* newscasts daily (including two daily national newscasts). This news programming is both unique and highly-valued by viewers. For example, in Los Angeles, Estrella TV's primetime newscast ranked number one in the November 2014 ratings, beating out the newscasts of all of the English-language networks. In Salt Lake City, Estrella TV is one of only two full-power stations that offer any news at all. Estrella TV's news programming is invaluable to the Hispanic community, and it often brings breaking stories to the public before any of its competitors.

In sum, the explanations that Comcast has provided for refusing to deal fairly with Estrella TV are economically irrational and inconsistent with the way Comcast deals with other Hispanic networks that do not pose a competitive threat to Telemundo. Comcast's treatment of Estrella TV also conflicts with the goals of fostering competition, diversity, and localism.

Should any questions arise concerning this matter, please contact the undersigned.

Respectfully submitted,

/s/ Lenard Liberman

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cc: William Lake
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