Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554

In the Matter of	)	
	)	
Implementation of Section 103 of the STELA Reauthorization Act of 2014	)	MB Docket No. 15-216
	)	
	)	
Totality of the Circumstances Test	)	

To: The Commission

COMMENTS OF UNIVISION COMMUNICATIONS INC.

Univision Communications Inc. ("Univision")[1] submits these comments in response to the Notice of Proposed Rulemaking (the "NPRM") in the captioned proceeding.[2] As the leading Spanish-language broadcaster and one of the leading media companies in the United States, and having itself brought a successful good faith bargaining complaint against an MVPD before the Commission, Univision believes that it brings a unique perspective to the issues under consideration in this proceeding.

INTRODUCTION AND SUMMARY

In laying the foundation for the retransmission consent regime, Congress announced that its objective was "to establish a marketplace for the disposition of the rights to retransmit broadcast signals" but not "to dictate the outcome of the ensuing marketplace

[1] Univision is one of the largest owners of television broadcast stations and has elected retransmission consent for all but one of its full-power stations. Univision's Local Media division owns 59 full-power, Class A, and low-power television stations across the country, most of which are affiliated with its Univision and UniMás broadcast networks.

[2] Implementation of Section 103 of the STELA Reauthorization Act of 2014; Totality of the Circumstances Test, Notice of Proposed Rulemaking, FCC 15-109 (rel. Sept. 2, 2015) ("NPRM").

negotiations."[3] In furtherance of this end — and in respect of the limited authority the Commission has to regulate in this context — the Commission developed a two-step framework for determining whether a party has fulfilled its obligation to engage in retransmission consent negotiations in good faith, pairing objective *per se* indicia of bad faith with a standard against which a negotiating party's behavior may be measured under the "totality of the circumstances."[4] Since establishing this framework fifteen years ago, the Commission has identified only nine behaviors that could constitute a *per se* violation of the good faith obligation.[5] The Commission has suggested by implication, then, that the propriety of all other conduct must be considered under the totality of the circumstances test, a purposefully flexible tool designed to account for the dynamic and complex nature of business relationships in a continuously-evolving media marketplace. Expanding the universe of *per se* violations of the good faith obligation, especially to presumptively categorize substantive business terms, negotiated at arms length, as evidence of bad faith — despite Congress's clear admonition not to "dictate the outcome" of private negotiations — would mark a substantial and unjustified departure from the Commission's historically cautious regulatory approach in the retransmission consent context and an unsustainable departure from Congress's instruction in the STELA Reauthorization Act of 2014 that the Commission "review its totality of the circumstances test for good faith negotiations."[6]

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[3] S. Rep. No. 102-92 (1991), *reprinted in* 1992 U.S.C.C.A.N. 1133, 1169.

[4] Implementation of the Satellite Home Viewer Improvement Act of 1999; Retransmission Consent Issues: Good Faith Negotiation and Exclusivity, First Report and Order, 15 FCC Rcd. 5445, 5457-58 (¶¶ 30-32) (2000) ("Good Faith Order").

[5] *See* NPRM at 2 (¶ 2); *see also* 47 C.F.R. § 76.65(b)(1); Amendment of the Commission's Rules Related to Retransmission Consent, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd. 3351, 3352, (¶ 1) (2014); Implementation of Sections 101, 103 and 105 of the STELA Reauthorization Act of 2014, Order, 30 FCC Rcd. 2380, 2381 (¶ 4) (2015).

[6] Pub. L. No. 113-200, § 103(c), 128 Stat. 2059 (2014).

As the nation's largest Spanish-language media company and one of the leading media companies in the United States, Univision offers a unique perspective on the retransmission consent marketplace. With one exception, Univision did not elect retransmission consent for any of its stations until the fall of 2008, for the 2009-2011 election cycle — long after other major broadcasters had done so.[7] Since making that election, Univision has negotiated thousands of retransmission consent agreements for all of its stations and many of its affiliates with hundreds of multichannel video programming distributors ("MVPDs"), large and small, throughout the country. The well-established, mutually beneficial distribution partnerships that Univision has built with MVPDs are compelling evidence that the retransmission marketplace as currently structured functions efficiently and yields substantial consumer benefits. Accordingly, Univision believes that the expansion of the scope of *per se* prohibited business terms under the "good faith" rubric would be a disruptive, unnecessary and undesirable intrusion into the arms-length dealings between television stations and MVPDs.

Univision also knows first-hand that the existing standard under the totality of the circumstances test is appropriate and effective. In response to a complaint by Univision, the Commission in 2007 determined that a cable operator in Puerto Rico had violated the totality of the circumstances standard by failing to negotiate with a Univision network affiliate in good faith.[8] The Commission found, among other things, that the cable operator had refused to put forth "more [than] a single unilateral proposal" and had prolonged negotiations while it arranged

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[7] Univision elected retransmission consent only for its Puerto Rico stations in 2005. It elected retransmission consent for nearly all of its mainland stations in 2008, effective for the 2009-2011 election cycle. One of Univision's stations, not affiliated with either the Univision or UniMás networks, continues to elect must-carry status.

[8] *See* Letter to Jorge L. Bauermeister from Steven Broeckaert, Deputy Chief, Policy Division, Media Bureau, 22 FCC Rcd. 4933 (2007).

compensation-free carriage of an independently owned station that retransmitted the signal of the Univision affiliate.[9] By the Commission's own account, that proceeding represents the single instance in which the Commission has found a violation of the good faith obligation.[10] It follows — and bears emphasizing here — that the Commission has never found a *broadcaster* to have engaged in retransmission consent negotiations in bad faith, even after reviewing numerous MVPD complaints on the merits.

These comments focus on three of the "specific practices" on which the Commission has sought comment.[11] First, Univision explains why permitting networks to undertake retransmission consent negotiations on behalf of their affiliates is efficient not only for Univision, but also for its affiliates and for MVPDs — with benefits accruing ultimately to Univision's Hispanic viewers. Second, Univision demonstrates that offering multiple, commonly owned program services in a single negotiation enhances programming diversity and innovation and that any efforts to engage in unlawful tying arrangements can be addressed by state and federal antitrust law. Finally, Univision demonstrates that relegating its programming to a Spanish-only tier is at once bad for the Hispanic community and for Univision's ability to compete effectively in the television marketplace.

I. NETWORK REPRESENTATION OF AFFILIATES IN RETRANSMISSION CONSENT NEGOTIATIONS ENHANCES EFFICIENCY AND CONSUMER WELFARE.

The NPRM seeks comment on whether the good faith standard is implicated under the totality of the circumstances test when a broadcast station gives a network with which

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[9] *Id.* at 4933-34.

[10] NPRM at 5-6 & nn.31-32 (¶ 5).

[11] NPRM at 10 (¶ 12).

it is affiliated the right to approve a retransmission consent agreement with an MVPD. More generally, the NPRM seeks comment on the permissible scope of a network's involvement in the negotiation or approval of an affiliate's retransmission consent agreements.[12] Univision believes there is no basis to interfere in these well-functioning business arrangements; indeed, doing so would reduce the efficiencies realized by networks, their affiliates and MVPDs alike and would do substantial harm to the interests of consumers.

Univision's experience in the retransmission consent process confirms that the process is far from "broken." Having historically provided its programming to cable and other subscription television services free of charge under the must-carry rules, Univision determined in 2008 that in order to sustain its investment in high-quality programming and services for the Hispanic community, it must — and could reasonably expect to — receive fair compensation from its MVPD partners for their distribution of its content. Since electing retransmission consent for nearly all of its full-power stations, Univision has negotiated thousands of carriage agreements to completion on reasonable terms acceptable to its MVPD partners, Univision's affiliated stations and Univision itself.[13] What is more, over the course of its seven-year history

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[12] *Id.* at 12-13 (¶ 14).

[13] *See, e.g.*, Press Release, Univision Commc'ns Inc., Univision Communications and DIRECTV Sign Comprehensive Multi-Year Agreement (Mar. 19, 2013), http://corporate.univision.com/2013/03/univision-communications-and-directv-sign-comprehensive-multi-year-agreement; Press Release, Univision Commc'ns Inc., Univision and Verizon Announce Multi-Year Carriage Agreement (June 1, 2012), http://corporate.univision.com/2012/06/univision-and-verizon-announce-multi-year-carriage-agreement-2; Press Release, Univision Commc'ns Inc., DISH Network and Univision Communications Sign Groundbreaking Multi-Platform Distribution Agreement (Jan. 9, 2012), http://corporate.univision.com/2012/01/dish-network-and-univision-communications-sign-groundbreaking-multi-year-multi-platform-distribution-agreement; Press Release, Univision Commc'ns Inc., Univision Announces Multi-Year Carriage Agreement with Mediacom Communications; Signs More Than 100 Deals in First Half of 2009 (June 24, 2009), http://corporate.univision.com/2009/06/univision-announces-multi-year-carriage-agreement-with-mediacom-communications-signs-more-than-100-deals-in-first-half-of-2009; Press Release, Univision Commc'ns Inc., Univision Announces Multi-Year Carriage Agreement with Cox Communications (June 24, 2009), http://corporate.univision.com/2009/06/univision-announces-multi-year-carriage-agreement-with-cox-communications. Indeed, in just the two-year period following its initial election of (continued…)

interacting with MVPDs in the retransmission consent marketplace, Univision has never withheld its signal from a distributor while retransmission consent agreements were pending resolution.[14]

Consistent with Congress's intent in enacting the retransmission consent system, Univision is committed to achieving a mutually beneficial outcome in each of its carriage negotiations, and it works with its distribution partners and affiliated stations in order to do so. For example, Univision routinely grants extensions of expired contracts in order to maintain service while negotiations continue. Univision believes — and its experience demonstrates — that the market functions most efficiently when parties are able to negotiate without unnecessary constraints or prescriptions.

Univision's success in negotiating mutually beneficial retransmission consent arrangements is due in no small measure to its ability to represent its network affiliates in this process. Although Univision serves many markets through its owned-and-operated stations, affiliates expand its Univision and UniMás networks' footprints nationwide, particularly in smaller Hispanic DMAs. Univision's affiliates often are smaller station operators that lack the resources and expertise to negotiate increasingly complex technical and digital carriage/rights requirements with MVPDs, which have grown larger and stronger in a media market that has seen significant consolidation in the past several years.[15] (Indeed, at the start of its first round of

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retransmission consent, Univision secured more than 150 carriage agreements with MVPDs of various sizes across the country.

[14] Some systems ultimately decided to discontinue carriage of Univision, but only after negotiations had run their course and the parties could not agree on terms. This potential outcome and the underlying jeopardy for broadcasters, *i.e.*, that a station and a cable operator might fail to reach a carriage agreement, is precisely what Congress contemplated in enacting the retransmission consent system as an alternative to the mandatory carriage regime.

[15] *See, e.g.*, Press Release, AT&T Inc., AT&T Completes Acquisition of DIRECTV (July 24, 2015), http://about.att.com/story/att_completes_acquisition_of_directv.html; Press Release, Charter Commc'ns, Charter (continued…)

retransmission consent negotiations in 2008, one of Univision's largest affiliates had just filed for bankruptcy and lacked any resources to negotiate on its own.[16]) In addition, more than a dozen of Univision's affiliates are low-power stations, and some of its affiliates are minority-owned small business entities or station operators serving only a single market. Without representation by Univision, these station owners would be required to negotiate against MVPDs with market value well over one hundred billion dollars, some of which serve the entire nation.

Univision's adoption of a "clearinghouse" model with respect to its affiliates' retransmission consent rights has significantly reduced these stations' transaction costs and provided them with more sophisticated business resources than would otherwise be available to them and that are an effective counterweight to the resources brought to bear by their MVPD counterparts. By the same token, Univision has every incentive to ensure that its network programming is distributed as widely as possible and thus has a stake in the favorable resolution of its station affiliates' retransmission consent negotiations. Consequently, Univision's representation of its independently owned affiliates produces efficiencies that inure to the benefit of Univision, its affiliates, MVPDs and Hispanic television viewers.

Significantly, no MVPD has objected to Univision's representation of its affiliates in retransmission consent negotiations. What is more, at least one major MVPD *required* that Univision negotiate a group retransmission consent agreement on behalf of its affiliates in its first retransmission consent agreement executed in 2009. The reason is simple: a "proxy" arrangement provides an efficient means for Univision and its MVPD partners to come to

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Communications to Merge with Time Warner Cable and Acquire Bright House Networks (May 26, 2015), http://ir.charter.com/phoenix.zhtml?c=112298&p=irol-newsArticle&ID=2053012.

[16] Erik Larson, *Equity Media, TV Station Owner, Files for Bankruptcy*, Bloomberg.com, http://www.bloomberg.com/apps/news?pid=email_en&refer=home&sid=aDVf83geoJ3c (last updated Dec. 9, 2008).

agreement on terms of retransmission consent. Rather than dealing with individual affiliates in multiple negotiations, MVPDs can broker retransmission consent agreements directly and exclusively with Univision, which is both a less time-intensive and more cost-effective endeavor and minimizes the risk of a service disruption.[17]

Consumers also are the beneficiaries of this type of network-affiliate arrangement. Revenue derived by Spanish-language programmers from retransmission consent is used to fund programming and other initiatives that are designed to inform, empower and entertain the U.S. Hispanic community. This is particularly true for Univision, which in recent years has introduced new Spanish-language networks, as well as video-on-demand, TV Everywhere, and other innovative products and services, that are tailored to meet the unique needs and preferences of U.S. Hispanic viewers.[18] Program quality and diversity are enhanced by Univision's and its distribution partners' creative and collaborative approach to retransmission consent negotiations.

When the Commission last sought comment on this issue in 2011,[19] certain parties argued that such arrangements give broadcasters an unfair advantage in retransmission negotiations and heighten the threat of signal disruptions.[20] Univision's experience is decidedly

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[17] Comments of Time Warner Cable Inc. at 34, MB Docket No. 10-71 (filed May 27, 2011) ("Time Warner 2011 NPRM Comments") (explaining that "a network's use of a 'clearinghouse' model for the disposition of its affiliates' retransmission consent rights may, in some cases, bring efficiencies by reducing transaction costs for stations and MVPDs alike").

[18] *See, e.g.*, Jennifer Ball, Senior Vice President of Distribution Mktg., Univision Commc'ns Inc., *Culture on Demand*, Univision Commc'ns Inc. (Sept. 6, 2011), http://corporate.univision.com/2011/09/culture-on-demand.

[19] Amendment of the Commission's Rules Related to Retransmission Consent, Notice of Proposed Rulemaking, 26 FCC Rcd. 2718 (2011).

[20] *See, e.g.*, Comments of the American Cable Association at 44, MB Docket No. 10-71 (filed May 27, 2011); Comments of the American Public Power Association et al. at 21-22, MB Docket No. 10-71 (filed May 27, 2011); Comments of CenturyLink at 5-6, MB Docket No. 10-71 (filed May 27, 2011); Comments of DISH Network L.L.C. at 23-24, MB Docket No. 10-71 (filed May 27, 2011); Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies et al. at 9-11, MB Docket No. 10-71 (filed May 27, 2011); Comments of Public Knowledge and New America Foundation at 7, MB Docket No. 10-71 (filed May 27, 2011); (continued…)

to the contrary; indeed, Univision's record demonstrates that, far from evincing a violation of the good faith standard, network participation in the retransmission consent process enhances efficiency and promotes high-quality local service, and thereby serves the public interest.

II. NEGOTIATED CARRIAGE OF AFFILIATED PROGRAMMING NETWORKS FACILITATES THE DEVELOPMENT OF NEW AND DIVERSE CONTENT AND SERVICES.

The NPRM invites comment on how the purported "bundling" of broadcast signals with other broadcast stations or cable networks, or offering differential pricing based on whether programming is purchased on a package or standalone basis, should be treated under the totality of the circumstances test.[21] Yet the Commission recognized fifteen years ago in its *Good Faith Order* that consideration in the form of carriage of affiliated programming is presumptively consistent with competitive marketplace conditions under the totality of the circumstances test. [22] Univision believes there is no reason to revisit that determination now.

Non-cash, in-kind consideration has been a consistent and essential feature of retransmission consent arrangements. As the NPRM acknowledges, early retransmission consent agreements provided broadcasters with consideration by way of carriage of additional programming services.[23] The ability to secure carriage in this manner enabled emerging programmers — including those that targeted minority audiences — to develop new services. Today, these sorts of mutually beneficial arrangements — which also are typical of cable

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Comments of the United States Telecom Association at 24-26, MB Docket No. 10-71 (filed May 27, 2011); Time Warner 2011 NPRM Comments at 33-35.

[21] NPRM at 13-15 (¶ 15).

[22] Good Faith Order, 15 FCC Rcd. at 5469 (¶ 56). The Commission has invited comment on whether this presumption, and others not addressed here, should be reconsidered. *See* NPRM at 8 (¶ 9).

[23] *See id.* at 13 (¶ 15).

program network distribution deals — continue to enhance program diversity.[24] The ability to negotiate for distribution of new service offerings allows Univision to deliver innovative, Spanish-language programming responsive to the needs of the U.S. Hispanic community.

Absent extrinsic evidence of predatory behavior, the offering of a suite of services does not demonstrate, or even suggest, that a programmer is utilizing a discounted pricing model to anticompetitive effect. For example, when Univision first elected retransmission consent, it negotiated for retransmission of stations affiliated with the Univision Network, one of the top five networks in the country regardless of language, and of the UniMás Network, whose programming is aimed toward Hispanic millennials; and for carriage of the Galavisión Network, the nation's leading Spanish-language cable network for families. Today, Univision offers and negotiates for distribution of twelve programming services, including a popular sports network, UDN; two movie channels, De Película and De Película Clásico; two music services, Ritmoson and Bandamax; a news service, FOROtv; a youth lifestyle network, TeleHit; a classic telenovela network, TLNovelas; and an English-language bicultural network, El Rey, controlled by minority filmmaker, Robert Rodriguez. Like other content companies, Univision offers a discount to MVPDs willing to carry all of its programming services, and the need to incentivize carriage of new services by offering them as part of a discounted package is especially critical for Univision and other programmers that seek to bring to market innovative content for diverse and often underserved populations.

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[24] *See* Reply Comments of Tribune Broadcasting Company at 7-8, MB Docket No. 10-71(filed June 27, 2011) (extolling the benefits of tailoring consideration "to the parties' desires and capabilities" and noting that "[t]he program networks that have sprung up as a result of retransmission consent negotiations have enriched the diversity of programming available to the public, without disrupting the negotiation process").

But Univision has never required that all of its services be purchased in order to reach agreement on a retransmission consent deal. Moreover, even where Univision offers distributors a package of programming services at a discounted rate, some MVPDs ultimately decide to take the entire suite of services, while others select specific services that they believe best meet the needs of their subscribers. Significantly, in the last negotiating cycle several of the country's largest MVPDs entered into early renewals of their retransmission consent agreements with Univision, in deals that included Univision's expanded network portfolio for the first time. Their decision to do so is hardly symptomatic of market dysfunction; rather, it demonstrates that MVPDs embrace the opportunity to purchase a suite of services as an opportunity to grow their business and meet the needs of Hispanic consumers. Indeed, that some MVPDs opt to purchase Univision's full suite of services while others do not is proof of an efficient and competitive market.

Meanwhile, Univision provides extensive marketing support to its largest MVPD partners as part of their omnibus distribution deals. In some cases, MVPDs even look to Univision as their agency for marketing to Hispanics — recognizing Univision's superior resources and its deep connection to the Hispanic community. These types of comprehensive distribution and marketing partnerships enable Univision and MVPDs to provide valuable services to the Hispanic community that otherwise would not be feasible.

Univision's commitment to the success of TV Everywhere — an initiative launched and driven by MVPDs — is another example of the consumer benefits of innovative relationships between broadcasters and MVPDs. Univision, unlike other broadcasters, has taken on the responsibility of educating Hispanic, Spanish-language viewers about TV Everywhere; to date, Univision has invested more than $20 million to communicate the benefits of TV

Everywhere to Hispanic viewers so they can derive the same benefits and value from their MVPD service as the general market. Univision has taken on that role in recognition of its obligation to its community and due to the lack of effort by MVPDs to educate or market directly to Hispanics. But for Univision's omnibus partnerships with MVPDs, which facilitate efficient negotiations for suites of its broadcast and cable network services, Univision would not be in a position to undertake these efforts to market TV Everywhere, which ultimately benefit both subscribers and distributors.

To the extent that a broadcaster (or cable network) were to seek to engage in an unlawful restraint of trade through the marketing of its affiliated programming services, existing state and federal antitrust laws provide an adequate and exclusive remedy. The mere *possibility* that a bad actor may seek to exploit its market position by bundling programming services does not warrant regulatory intervention through the establishment of a new *per se* standard. Rather, the totality of the circumstances test remains the most reliable and appropriate tool for the Commission to employ in instances where the threat of anticompetitive harm arises.

III. RELEGATING UNIVISION TO A SPANISH-ONLY TIER WOULD HARM THE PUBLIC INTEREST.

The NPRM invites comment on whether, under the totality of the circumstances test, it should be deemed a violation of the duty to negotiate in good faith under the totality of the circumstances test for a broadcast station to "demand" tier placement commitments from MVPDs, which, according to the Commission, "compel MVPDs to place [broadcasters'] affiliated networks in the most popular programming packages."[25] The Commission recognized in the *Good Faith Order* that proposals for carriage conditioned on channel position are

[25] NPRM at 16 (¶ 16).

presumptively consistent with competitive marketplace conditions under the totality of the circumstances test.[26] Here, too, Univision believes there is no basis in historical or current market conditions to disturb that conclusion.

Univision endeavors in its retransmission negotiations to ensure that its popular Spanish-language programming services are not relegated to a Spanish language-only tier. According to recent census data, there are currently about 55 million Hispanics in the United States (constituting more than 17 percent of the U.S. population).[27] That number is expected to grow to approximately 106 million over the next 35 years.[28] Given the multicultural and multiracial character of our nation now and in the future, the public interest mandates that programming representing diverse cultures and viewpoints be accessible to all consumers.

Furthermore, Univision should be entitled to make the business judgment that placement on a Spanish-only tier is not a viable distribution strategy. Younger Hispanic viewers, and particularly millennials, are more likely than older viewers to be fluent in both English and Spanish and to shift effortlessly between languages and cultures.[29] As a result, younger Hispanic viewers are less likely than their parents' generation to watch programming exclusively on a Spanish-language tier but rather seek a broad menu of television options that is not language-

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[26] Good Faith Order, 15 FCC Rcd. at 5469 (¶ 56). Univision acknowledges that as part of this proceeding, the Commission has also invited comment on whether this presumption, as well as others, should be reconsidered. *See* NPRM at 8 (¶ 9).

[27] *See* Jens Manuel Krogstad & Mark Hugo Lopez, *Hispanic Population Reaches Record 55 Million, but Growth Has Cooled*, Pew Research Ctr. (June 25, 2015), http://www.pewresearch.org/fact-tank/2015/06/25/u-s-hispanic-population-growth-surge-cools.

[28] *See* Jens Manuel Krogstad, *With Fewer New Arrivals, Census Lowers Hispanic Population Projections*, Pew Research Ctr. (Dec. 16, 2014), http://www.pewresearch.org/fact-tank/2014/12/16/with-fewer-new-arrivals-census-lowers-hispanic-population-projections-2.

[29] *See* Jens Manual Krogstad & Ana Gonzalez-Barrera, *A Majority of English-Speaking Hispanics in the U.S. Are Bilingual*, Pew Research Ctr. (Mar. 24, 2015), http://www.pewresearch.org/fact-tank/2015/03/24/a-majority-of-english-speaking-hispanics-in-the-u-s-are-bilingual.

exclusive. Permitting MVPDs to reject tier-placement commitments as a matter of right would serve not only to reinforce the prevailing notion that Spanish-language programming is less desirable than English-language programming but also to limit the ability of Univision to reach one of the fastest-growing and most highly sought after demographics in the television industry.

Displacement of Spanish-language broadcast stations to non-broadcast tiers would require Univision (and other Spanish-language programmers) to undertake significant new marketing initiatives and incur substantial expenses — activities and costs that would not be required of their English-language competitors. This, of course, would directly affect Univision's ability to invest in new content and services responsive to the needs, interests and concerns of the Hispanic community.

Univision has a balanced portfolio of broadcast and cable services that receive both broad and tiered distribution reflecting mutual business negotiations that generate the highest value for Univision and its distribution partners alike. These arrangements are the result of close collaboration and successful negotiations between Univision and MVPDs that take into account the needs of both parties. Government-mandated packaging and distribution requirements will distort this historically efficient, well-functioning market by outlawing precisely the sort of "give and take" that has yielded significant mutual benefits for Univision and its distribution partners and their viewers and subscribers.

CONCLUSION

Univision's experience in reaching mutually beneficial retransmission consent agreements with MVPDs of all sizes demonstrates that the retransmission consent process functions well, and just as Congress intended. The limited number of identified practices deemed to constitute *per se* violations of the good faith standard reflects a conscious effort by

Congress and the Commission to proscribe conduct only where clear evidence of underlying bad faith is ascertainable "in *all* possible instances."[30] To preserve program diversity and to advance the public interest — and, in particular, to ensure that the needs, interests and concerns of the U.S. Hispanic community are well-served — the Commission should assume a cautious posture with respect to the proposals under consideration in this proceeding to expand the scope of proscribed practices under the good faith bargaining regime.

Respectfully submitted,

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December 1, 2015

[30] Good Faith Order, 15 FCC Rcd. at 5457 (¶ 31) (emphasis added).