PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of **LIBERMAN BROADCASTING, INC.** and **LBI MEDIA, INC.**, Complainant, vs. **COMCAST CORPORATION** and **COMCAST CABLE COMMUNICATIONS, LLC**, Defendant.	)))))))))))))	File No. CSR-___________ **PROGRAM CARRIAGE COMPLAINT**

To: Chief, Media Bureau

<u>PROGRAM CARRIAGE COMPLAINT</u>

LIBERMAN BROADCASTING, INC.
LBI MEDIA, INC.

Dennis P. Corbett
David S. Keir
Laura M. Berman

Lerman Senter PLLC
2001 L Street, NW, Suite 400
Washington, DC 20036
Tel. (202) 429-8970

April 8, 2016

Their Attorneys

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SUMMARY

In this Complaint, Liberman Broadcasting, Inc. and LBI Media, Inc. ("LBI") demonstrate that Comcast Corporation and Comcast Cable Communications, LLC ("Comcast") have discriminated against LBI in the selection, terms, and conditions of carriage of LBI's Spanish language programming network Estrella TV on the basis of affiliation, to the unlawful benefit of Comcast-owned competing Spanish language networks Telemundo and NBC Universo. This Comcast discrimination violates: (i) Section 616 of the 1992 Cable Act; (ii) the FCC Carriage Rule embodied in 47 C.F.R. § 76.1301(c); (iii) the Merger Conditions imposed by the FCC when the agency approved Comcast's acquisition of NBCUniversal in 2011; and (iv) the underlying NBCU Merger Order. Comcast has also separately violated Section 616 and a second FCC Carriage Rule, 47 C.F.R. § 76.1301(a), by demanding that LBI surrender digital rights in its programming as a condition of carriage. The Complaint asks for appropriate redress, in this case FCC-mandated Estrella TV carriage parity with Telemundo, and for appropriate enforcement sanctions against Comcast for its multiple violations of law.

Launched by LBI in 2009, Estrella TV is a "video programming vendor" ("VPV") within the meaning of Section 616 and the Carriage Rules. Estrella TV produces the majority of its own programming at its California studios and markets and distributes that programming throughout the United States by means of LBI-owned and operated broadcast stations, third party-owned broadcast affiliates, and cable and satellite multichannel video programming distributors ("MVPDs"). LBI is a family-owned business. Comcast is the largest cable-only MVPD in the United States.

Estrella TV programming is a close substitute for the programming carried by Comcast-owned Telemundo and NBC Universo, evidenced in the many similarities of those three networks' genre, content, target audience and advertisers. Estrella TV is today a rising star in the

Spanish language video marketplace and has established itself as a primary competitive threat to Comcast-owned Telemundo and NBC Universo.

Estrella TV's popularity with viewers when given a fair opportunity to compete on a relatively even playing field is clearly evidenced by its Nielsen ratings performance in the Los Angeles DMA, by far the largest Hispanic TV market in the United States, where Estrella TV receives broad MVPD distribution. Nielsen ratings for the Los Angeles market in an illustrative key demographic category in prime time in the May and November 2015 sweeps periods show that Estrella TV has alternately beaten and been closely on the heels of Telemundo.
Estrella TV's Nielsen ratings performance in another major Hispanic market with roughly even MVPD distribution, Dallas-Ft. Worth, is comparable to Los Angeles. Further evidence of Estrella TV popularity is found in the impressive ratings for Estrella TV's weekday prime time newscasts in the Los Angeles and Dallas-Ft. Worth DMAs, a factor of outsized significance given the emphasis placed on the importance of Spanish language news in the NBCU Merger Order. Furthermore, even on a *national* basis, Estrella TV ratings far outpace those of Comcast-owned NBC Universo, *despite* the massive national distribution advantage Comcast confers on its own network. The overall audience appeal and fundamental market value of Estrella TV's programming is confirmed by the report submitted herewith of LBI's economic expert, Harold Furchtgott-Roth, who looks at a broader sample of markets, dayparts, and demographics.

Against this background, LBI unsuccessfully sought from Comcast fair distribution of and compensation for Estrella programming during an extensive discussion period that lasted more than a year. Those discussions ended in October 2015 with Comcast: refusing to restore the Comcast carriage of Estrella TV in Houston, Denver, and Salt Lake City which had terminated on February 19, 2015 (during the discussion period); refusing to extend Estrella TV distribution in any way; and refusing Estrella TV all compensation for distribution of Estrella TV programming. Without Comcast carriage in Houston/Denver/Salt Lake City, Estrella TV's Nielsen ratings have plummeted, to Telemundo's and NBC Universo's direct benefit.

Since release of the NBCU Merger Order in 2011, Comcast has elected to distribute a number of Spanish language networks that lack the proven audience appeal of Estrella TV ("Post-Merger Hispanic Network Additions"). Unlike Estrella TV, none of these networks offers an appreciable amount of original programming produced in this country, none earns meaningful Nielsen ratings, and none provides U.S.-focused news programming. In other words, unlike Estrella TV, none represents a competitive threat to Telemundo or NBC Universo.

During the seven year post-NBCU merger complaint window which remains open today, VPV program carriage complaints filed with the FCC need only present a prima facie case establishing Comcast discrimination on the basis of affiliation. They need not show that an MVPD's discrimination has unreasonably restrained the ability of the VPV to compete fairly in the video marketplace. This Complaint easily satisfies this single test, on multiple grounds:

First, a wide array of savvy and sophisticated MVPDs (e.g., Time Warner, Charter, Cablevision, AT&T/DIRECTV, DISH, Verizon, Mediacom) and broadcast Estrella TV affiliates (e.g., Nexstar, Hearst, Sinclair, Tegna) have recognized the value inherent in Estrella TV programming and voluntarily elected to distribute Estrella TV through their MVPD platforms and broadcast channels. Comcast, on the other hand, has denied that Estrella TV has value to viewers and has refused Estrella's request for fair distribution and compensation. Comcast's unique ownership of competing Spanish language networks Telemundo and NBC Universo explains this aberrant Comcast behavior toward one of its fiercest competitors in the Spanish language space.

Second, Comcast's decisions to distribute the Post-Merger Hispanic Network Additions while shunning Estrella TV separately demonstrate Comcast discrimination. Rather than provide expanded distribution to proven-ratings-success Estrella TV, Comcast has padded its channel lineup with programming of dramatically lesser audience appeal. While such decisions allow Comcast to claim cosmetic credit for "supporting" Spanish language programming, they are indefensible as legitimate business decisions designed to maximize value provided to Comcast subscribers.

Third, the fact that Comcast launched a rebranded Comcast-owned NBC Universo across its massive MVPD platform in February 2015, the very same month Comcast dropped Estrella TV in Houston, Denver and Salt Lake City, is compelling evidence of discrimination on the basis of affiliation. Only such unlawful discrimination, bereft of defensible, legitimate business support, explains Comcast's decision to simultaneously coddle its affiliated network, NBC Universo (with just a fraction of Estrella TV's viewer popularity) and stifle Estrella TV.

During the discussion period between the parties and subsequently, Comcast previewed arguments it is likely to advance in opposition to the Complaint. None has merit. Comcast has ineffectually referenced opaque, proprietary Comcast "set top box" data in lieu of industry-standard Nielsen ratings; placed mistaken reliance on national ratings comparisons of Telemundo and Estrella TV, which are badly skewed in Telemundo's favor by Comcast's refusal to distribute Estrella fairly; made inflated claims about the significance of heritage Comcast carriage of low power Estrella TV stations in certain markets on less widely penetrated standard definition tiers; and advanced a specious claim that it should enjoy a safe harbor within which to discriminate because (it contends) broadcast station owners cannot also be VPVs (LBI in fact fits comfortably within the VPV definition set forth in Section 616 and the Carriage Rules).

Comcast has compounded its violations of law in this case by demanding that LBI surrender its digital rights in Estrella TV programming as a condition of carriage. Comcast's efforts to minimize the significance of its demand as a standard-operating-procedure request for unimportant rights fail. Digital rights are indeed a financial interest within the meaning of Section 616 and the Carriage Rules and they have increasingly prominent value for those who, like LBI, create programming.

This Complaint presents the Commission with issues of profound importance to the public interest – it is a case study in harmful discrimination by massive MVPD Comcast in favor of not just one, but two of its own channels, and against Estrella TV, a popular source of general interest Spanish language programming, including vital news, for an American audience of burgeoning importance. LBI has here presented a *stronger* case on the merits than was made in prior Bureau-designated program carriage complaint cases (e.g., Tennis Channel and Game Show Network) to meet the *lighter* prima facie burden in effect during the seven year post-Merger Order period. Comcast, for its part, has effectively run through the *four* separate red lights set by Section 616, the Carriage Rules, the Merger Conditions, and the Merger Order. Comcast should suffer the consequences, and LBI should be afforded relief, accordingly.

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Liberman Broadcasting, Inc. and LBI Media, Inc. (collectively "Complainant" or "LBI"), by their attorneys and pursuant to 47 C.F.R. §§ 76.1300-76.1302 and other authorities cited herein, hereby submits this program carriage complaint ("Complaint") against Comcast Cable Communications, LLC and Comcast Corporation (collectively "Defendant" or "Comcast").[1] In support whereof, the following is shown.

I. Introduction.

1. As the facts set forth in this Complaint make clear, Comcast has violated in two fundamental ways Federal Communications Commission ("FCC" or "Commission") regulations set forth at 47 C.F.R. §§ 76.1300-76.1302 ("Carriage Rules"), which implement 47 U.S.C. § 536,

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[1] Liberman Broadcasting, Inc. is the parent of LBI Media, Inc. Comcast Corporation is the parent of Comcast Cable Communications, LLC.

enacted as Section 616 ("Section 616") of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").[2] That is, Comcast has: (i) discriminated against LBI in the selection, terms, and conditions of carriage on the basis of Comcast ownership of competing Comcast-owned Spanish language channels Telemundo and NBC Universo, by denying LBI's requests for expanded distribution on Comcast cable systems of, and/or distribution-related compensation for, LBI's Spanish language Estrella TV ("Estrella TV") programming; and (ii) unlawfully demanded that LBI surrender its digital rights in Estrella TV programming to Comcast as a condition of any Comcast carriage.[3]

2. This case cogently illustrates the validity of the concerns which: (i) motivated Congress in the 1992 Cable Act to direct the FCC to proscribe multichannel video programming distributor ("MVPD") discrimination against unaffiliated competing video program vendors ("VPVs") and to prohibit MVPDs from requiring financial interests in unaffiliated programming channels in return for distribution; and (ii) led the FCC, in return for allowing Comcast in 2011 to merge with NBC Universal, Inc. ("NBCU"), to impose special, strict conditions on Comcast ("Merger Conditions") in the underlying Order approving the merger.[4] The Merger Conditions, inter alia, deliberately echo Section 616 and the Carriage Rules by banning discrimination by the merged entity against unaffiliated VPVs.[5] Merger Condition XVIII makes clear that if Comcast

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[2] Cable Television Consumer Protection and Competition Act of 1992 § 616, 47 U.S.C. § 536 (2015).

[3] Exhs. 1 and 2 hereto contain the texts of, respectively, Section 616 and the Carriage Rules.

[4] *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer of Control of Licensees*, 26 FCC Rcd 4238 (2011) ("Merger Order").

[5] *See* Merger Order Condition III.1. The Merger Order (at ¶ 121) specified that "[t]his non-discrimination requirement will be binding on Comcast independent of the Commission's rules . . . ."

violated any of the Merger Conditions, that violation would itself be treated as a violation of the Merger Order.

3. The fears of Congress and the FCC deriving from the obvious potential for a company with the massive size and sweep of Comcast to discriminate against those who would bring marketplace competition to Comcast-owned programming channels have been dramatically realized here, in the form of Comcast violations that, for every day they are allowed to continue, redound to the profound detriment of LBI and the public interest, and the direct, tangible, and unlawful benefit of Comcast and its owned programming channels. This Complaint asks the FCC to find that Comcast has violated: Section 616, the Carriage Rules, the Merger Conditions, and the Merger Order, to provide LBI appropriate redress, and to take appropriate enforcement action against Comcast.

II. The Parties.

4. LBI is an Hispanic-owned broadcast station licensee and VPV, owned and controlled by Jose and Lenard Liberman, father and son. Jose Liberman is a Spanish language broadcasting pioneer in this country. His accomplishments include helping to launch in 1975 the first FM Spanish language radio station west of the Mississippi River. LBI was formed in 1987 and it bought its first television broadcast station in 1998 (KRCA, Los Angeles), acquired additional TV stations over the ensuing decade, worked to develop and implement program concepts on LBI-owned and non-LBI-owned affiliated TV stations, and launched Estrella TV as a national Spanish language television network in September 2009. Estrella TV programming is today a unique aggregation of Spanish language programming (which includes national and local news shows as well as sports, variety, talk, reality, drama, music, and comedy programming), some 75 percent of which is produced by LBI at its headquarters in Burbank, California, by an overwhelmingly Hispanic workforce numbering approximately 1,000.

5. From Estrella TV's inception, LBI has worked both to create and to produce original programming with broad appeal to the Spanish language audience in the United States[6] and to give Estrella TV the opportunity to grow and flourish by finding ways to distribute that programming as widely as possible to that nationwide audience. LBI's focus on creating Spanish language programming of broad popular appeal has proven quite successful as reflected in its Nielsen ratings.[7] Estrella TV's status as a rising star in the Spanish language marketplace has enabled Estrella TV distribution expansion efforts to succeed in many respects as well, with the glaring and troubling exception of the Comcast treatment of LBI that undergirds this Complaint. *Successful*, expanded distribution of Estrella TV has taken multiple forms on multiple fronts over time, from LBI's securing Estrella TV broadcast affiliates beginning in 2008 that today include many industry-leading, experienced, and successful broadcast companies (e.g., Hearst, Nexstar, Sinclair, and Tegna)[8] to LBI's current voluntary Estrella TV distribution agreements with MVPDs of wide-ranging size and scope, including industry-leading, experienced, and successful MVPDs (e.g., Time Warner, Charter, AT&T/DIRECTV, Verizon, and Cablevision).[9]

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[6] For example, LBI's current slate of original programming ranges from such shows as widely viewed Estrella TV newscasts (discussed below) to popular LBI-produced reality and talk shows, to boxing and international soccer matches. For a more complete listing of current LBI programming, *see* http://www.estrellatv.com/programas. This link and all others cited herein are current as of the filing date of this Complaint.

[7] *See, e.g.*, *infra* Sections V.A., C., and D.

[8] Exh. 3 hereto identifies LBI's owned and operated stations ("O&Os") and the full slate of LBI's current over-the-air affiliates.

[9] *See* Exh. 4 hereto for illustrative facts concerning Time Warner and Charter distribution of Estrella TV.

6. As the owner of television broadcast stations which produces a majority of its own programming and seeks to market that programming to a wide range of distributors, LBI is the quintessential VPV. LBI's status as a VPV is confirmed in multiple ways.

7. First, subsection (b) of Section 616 and subsection (e) of 47 C.F.R. § 76.1300 define the term VPV identically: "a person engaged in the production, creation, *or* wholesale distribution of video programming for sale." (Emphasis added). Even though the components of this definition are disjunctive, LBI meets *all three* of them, as LBI produces, creates, *and* distributes on a wholesale basis video programming for sale.[10]

8. Similarly, LBI is plainly a VPV as that term is used in the Merger Order, entitled to invoke the protections thereof. That is, Condition III.1 contained in Appendix A of the Merger Order prohibits Comcast discrimination in "Video Programming distribution." That same Appendix A specifies that "Video Programming" "means *programming provided by*, or generally considered comparable to programming provided by, *a television broadcast station* or cable network . . . ." (emphasis added). Appendix A's definition of "Video Programming Vendor" merely incorporates "the meaning given that term under 47 C.F.R. § 76.1300(e)," a definition quoted above. Again, LBI produces, creates, *and* engages in the wholesale distribution of video programming.

9. The fact that broadcasters like LBI fit comfortably within the definition of VPV has also been recognized as a matter of course by the FCC in briefs before the federal courts. For example, in the latest iteration of the long-running dispute between Comcast and The Tennis Channel, Inc., the government's brief last autumn explained to the United States Court of Appeals for the District of Columbia Circuit the relevant MVPD/VPV terrain as follows:

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[10] *See supra* n.6 and Exh. 12 hereto for information concerning LBI-produced programming.

> Title VI of the Communications Act contains a series of provisions governing the relationship between multichannel video programming distributors (MVPDs) and *video programming vendors*. *See, e.g.*, 47 U.S.C. §§ 531-536. MVPDs, such as cable companies, offer consumers access to multiple channels of video programming. 47 U.S.C. § 522(13); 47 C.F.R. § 76.1300(d). *Programming vendors, such as broadcast stations* or cable networks, produce the video programming that consumers receive on a given channel. 47 U.S.C. § 522(2); 47 C.F.R. § 76.1300(e).[11]

10. Estrella TV is an independent network owned by LBI, not affiliated with or owned in whole or in part by any cable or satellite operator, including Comcast. *See* 47 C.F.R. § 76.1300(a). LBI's address is 1845 Empire Avenue, Burbank, California 91504, and its telephone number is 818-729-5300.

11. Comcast is the largest cable-only MVPD[12] in the United States. Comcast operates as an MVPD in some 69 U.S. markets.[13] Its market capitalization as of the end of December 2015 was $139.73 billion,[14] with 2015 consolidated revenues and consolidated operating income of $74.5 billion and $16 billion, respectively.[15] Comcast owns an ample suite of program channels that encompasses, among others, the NBC Broadcast Network, USA Network, Bravo, MSNBC, CNBC, E!, Golf Channel, Syfy, Oxygen, and NBCSN, and also

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[11] October 21, 2015 Brief for Respondents in *The Tennis Channel, Inc. v. FCC*, Case No. 15-1067 at 4 (emphasis added). Once a full power TV broadcaster elects retransmission consent in lieu of must carry, it is identically situated to cable-only channels seeking distribution by an MVPD.

[12] Comcast is an MVPD because it is a cable operator "engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming." 47 C.F.R. § 76.1300(d).

[13] *See* Comcast Markets, *available at* https://www.comcastspotlight.com/markets/all.

[14] *See*, *e.g.*, YCharts, Comcast Market Cap (*available at* http://ycharts.com/companies/CMCSA/market_cap).

[15] *See* Comcast Reports 4th Quarter and Year-End 2015 Results, Feb. 3, 2016 (*available at* http://www.cmcsa.com/earnings.cfm).

includes two Spanish language program networks of direct relevance here – Telemundo and NBC Universo.[16] Comcast acquired Telemundo in 2011 as part of NBCU's portfolio of channels and networks.[17] In its capacity as an MVPD, Comcast distributes Telemundo across its many markets throughout the United States.[18] Comcast rebranded and launched NBC Universo as a national program service on February 1, 2015.[19] In its capacity as an MVPD, Comcast widely distributes NBC Universo within the United States.[20]

12. Comcast has been acquisitive over the years, sometimes successfully, as with the NBCU merger in 2011, and sometimes not, as with Comcast's more recent failed attempt to merge with Time Warner.[21] Comcast recently made public its ambitious plans for elevating Telemundo's profile and increasing that network's success in the Spanish language marketplace.[22] Comcast has long combined ownership of multiple programming

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[16] *See*, *e.g.*, Comcast Company Overview, *available at* http://corporate.comcast.com/news-information/company-overview#accordion-1, which lists additional Comcast-owned programming channels.

[17] *See* Merger Order, 26 FCC Rcd at 4238 (¶ 1).

[18] NBCUniversal Telemundo, http://www.nbcuniversal.com/business/telemundo.

[19] *See* "Why mun2 Is now NBC Universo," Feb 2, 2015 (*available at* http://www.nbcuniversal.com/article/why-mun2-now-nbc-universo).

[20] NBCUniversal NBC Universo, http://www.nbcuniversal.com/business/NBCUniverso.

[21] *See* Shalini Ramachandran, "Comcast Kills Time Warner Cable Deal; Pressure from regulators doomed $45.2 billion cable deal," Wall Street Journal, Apr. 24, 2015, *available at* http://www.wsj.com/articles/comcast-kills-time-warner-cable-deal-1429878881.

[22] *See* Bob Fernandez,"With Comcast's Backing, Telemundo Ready to Compete," Philadelphia Business Journal, December 28, 2015, which is Exh. 5 hereto. *See also* Comcast Press Release, "NBCUniversal Telemundo Enterprises to Build State-of-the-Art Global Headquarters in Miami-Dade," dated February 9, 2016, *available at* http://corporate.comcast.com/news-information/news-feed/nbcuniversal-telemundo-enterprises-to-build-state-of-the-art-global-headquarters-in-miami-dade.

channels/networks with its MVPD role and Comcast has been the subject of multiple program carriage complaints over time at the FCC.[23]

13. Comcast's address is One Comcast Center, 1701 JFK Boulevard, Philadelphia, PA 19103, and its telephone number is 215-665-1700.

III. Jurisdiction, Pre-Filing Notification, and Certification.

14. The Commission has jurisdiction over program carriage disputes pursuant to Section 616. This Complaint is governed by the Carriage Rules.

15. On February 9, 2016 LBI provided Comcast with written notice of its intent to file this Complaint, as required by 47 C.F.R. § 76.1302(b). A copy of the pre-filing notice letter is attached hereto as Exh. 7 ("Notice"). Copies of Comcast's February 18, 2016 response thereto (the "Comcast Response to Notice") and LBI's February 26, 2016 reply to the Comcast Response to Notice ("LBI Reply to Comcast Response to Notice") comprise Exhs. 8 and 9 hereto respectively.[24]

16. Also attached hereto are the executed Declarations of Lenard D. Liberman ("Liberman"), President and Chief Executive Officer of LBI, and Winter W. Horton ("Horton"), LBI's Chief Operating Officer, collectively supporting the allegations set forth herein, in compliance with 47 C.F.R. § 76.6(a)(3).

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[23] *See* Exh. 6 hereto for a list of those complaints. *See also* Michal Lev-Ram, "How Comcast lost friends, its influence, and the bid for Time Warner Cable, Fortune, May 20, 2015, *available at* http://fortune.com/2015/05/20/how-comcast-lost-bid-for-time-warner ("For years Comcast has been embroiled in litigation and high-profile disputes with a dizzying list of cable programmers").

[24] This Complaint is timely filed under both 47 C.F.R. §§ 76.1302(h)(2) and (3) as it is being submitted within one year of the date of the Notice and within one year of October 15, 2015, which marked the end of the Discussion Period (defined *infra* Section V.B.).

IV. Statutory and Regulatory Background.

A. Section 616 and the Carriage Rules.

17. Section 616 embodies Congress' response to the competitive threats posed by MVPD vertical ownership of video programming channels or networks, and the Carriage Rules implement, more or less verbatim, Section 616's express directives. In mandating in 1992 that the Commission adopt the new regulations, Congress cited testimony that vertically integrated operators "have impeded the creation of new programming services by refusing or threatening to refuse carriage to such services that would compete with their existing program services" or "have agreed to carry a programming service only in exchange for an ownership interest in the service."[25]

18. Subsection (a)(3) of Section 616 mandates that the FCC adopt regulations that prohibit MVPDs from "engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors." Subsection (c) of 47 C.F.R. § 76.1301 ("Prohibited Practices") implements this statutory mandate by providing that: "No multichannel video programming distributor shall engage in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on

[25] Cable Television Consumer Protection and Competition Act of 1992, H.R. Rep. No. 102-628, at 41 (1992). *See also* Testimony of Preston Padden (INTV), "Media Ownership, Diversity and Concentration," p. 308, *quoted in* S. Rep. No. 102-92, at 26 (1991) ("You don't need a Ph.D. in Economics to figure out that the guy who controls a monopoly conduit is in a unique position to control the flow of programming traffic to the *advantage* of the program services in which he has an equity investment and/or in which he is selling advertising availabilities, and to the *disadvantage* of those services, including local independent broadcasting stations, in which he does *not* have an equity position") (emphasis in the original).

the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors."

19. Subsection (a)(1) of Section 616 mandates that the FCC adopt regulations "designed to prevent a cable operator or other multichannel video programming distributor from requiring a financial interest in a program service as a condition for carriage on one or more of such operator's systems." Subsection (a) of FCC Rule 76.1301 implements this statutory mandate by providing that: "No cable operator or other multichannel video programming distributor shall require a financial interest in any program service as a condition for carriage on one or more of such operator's/provider's systems."

20. In adopting the regulations implementing Section 616, the Commission observed that "Congress was concerned that increased horizontal concentration and vertical integration in the cable industry . . . created an imbalance of power between cable operators and program vendors."[26] Specifically, Congress had concluded that "vertically integrated cable operators have the incentive and ability to favor affiliated programmers over unaffiliated programmers with respect to granting carriage on their systems," and programmers that compete with such vertically integrated entities "may suffer harm *to the extent that they do not receive such favorable terms*."[27]

B. The Merger Order and Merger Conditions.

21. When the FCC approved the Comcast/NBCU merger in 2011, a "transaction [that] . . . effectuate[d] an unprecedented aggregation of video programming content with control

[26] *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992,* Second Report & Order, 9 FCC Rcd 2642, 2643 (¶ 2) (1993).

[27] *Id*. (emphasis added).

over the means by which video programming is distributed to American viewers,"[28] it recognized dangers inherent in the increased programming channel portfolio and consequent leverage Comcast was acquiring.[29] Those risks include giving Comcast greater incentive as an MVPD to discriminate against unaffiliated VPVs that are dependent on Comcast distribution to effectively compete. The FCC therefore imposed, and Comcast accepted, very specific conditions on its merger approval.[30] Those conditions, in place for seven years after the FCC's merger approval (Post-Merger Complaint Window),[31] include Condition III.1, which mimics Section 616 and the Carriage Rules by prohibiting Comcast from discriminating in video programing distribution on the basis of affiliation or non-affiliation with Comcast/NBCU. The text of the Merger Order adds a *proviso* that the Carriage Rules would be relaxed in one important respect during the Post-Merger Complaint Window – an aggrieved VPV need only show during that period that it was discriminated against in the selection, terms, or conditions of carriage on the basis of non-

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[28] Merger Order at 4240 (¶ 3).

[29] The Merger Order, for example, recited that Comcast acknowledged during the merger review process that "'[c]able channels represent 82% of the new joint venture's [operating cash flow] and drive its profitability.'" Merger Order at 4286 (¶ 118) (footnote omitted).

[30] Letter from Kathryn A. Zachem, Vice President, Regulatory and State Legislative Affairs, Comcast Corporation; Ronald A. Stern, Vice President and Senior Competition Counsel, General Electric Company; and Richard Cotton, Executive Vice President and General Counsel, NBC Universal, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-56 (filed Jan. 21, 2011) (Comcast "accept[s] as binding the conditions and enforceable commitments included in the [Merger Order] and expressly waive[s] any right [it] may have to challenge the Commission's legal authority to adopt and enforce such conditions and commitments.")

[31] Merger Order, Appendix A, Conditions, at 4381 (Section XX).

affiliation or affiliation, *not* that it was unreasonably restrained thereby from competing fairly with Comcast-owned programming channels.[32]

22. During the merger review process, Comcast also voluntarily entered into various Memoranda of Understanding ("MOUs") appended to the FCC Order which approved the merger. In its MOU with the Hispanic Leadership Organizations ("Hispanic MOU") Comcast, inter alia, reiterated its sweeping statement that "there is *no prospect* that the proposed transaction will diminish Comcast's reliance on unaffiliated content" and made a series of specific commitments to serve public interest-oriented diversity goals, one of which was "launching a package of 40-60 Spanish language channels in all of its major Latino markets, with a balanced mix of programming serving all demographics and strongly promoting a diversity of Latino voices" following the merger (*see* "Focus Area Four – Programming" in the Hispanic MOU).[33]

23. The Commission adopted Merger Condition III because it was unpersuaded by Comcast's representation during the review process that preceded the Merger Order that

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[32] Merger Order at 4287 (¶ 121). That same paragraph of the Merger Order prohibits Comcast from retaliating against any party which files a program carriage complaint against it, further evidence of the depth of FCC concern about Comcast's "ability and incentive" to misbehave, given its substantial aggregation of vertically-owned assets. *See also* Merger Order at 4282 (¶ 110) ("We agree that the vertical integration of Comcast's distribution network with NBCU's programming assets will increase the ability and incentive for Comcast to discriminate against or foreclose unaffiliated programming.").

[33] Exh. 10 hereto shows representative Spanish language networks ("Hispanic Networks") Comcast currently offers on an "XFINITY Latino package" called TV 150 Latino advertised by Comcast as providing access to "60+ Spanish Channels" and "70+ English Channels." The illustrative list in Exh. 10 is drawn from a listing of Comcast service in Montgomery County, Maryland. *See* "The New Xfinity Channel Lineup, Montgomery County, MD" at 4 (effective October 8, 2015), *available at* http://lwmc.com/docs/lw_comcast_lineup.pdf. Comcast also offers even broader XFINITY Latino packages – TV 200 Latino, TV 300 Latino and TV 450 Latino. Exh. 10 identifies with an asterisk certain Hispanic Networks which Comcast has launched since 2011 in major Latino markets ("Post-Merger Hispanic Network Additions").

Comcast would treat unaffiliated VPVs in an even-handed manner. Indeed, Appendix B to the Merger Order recites empirical analysis showing "that Comcast currently favors its affiliated programming" in making carriage and placement decisions and makes clear that "this behavior stems from anticompetitive motives rather than due to reasons that arise from vertical efficiencies"[34] and that "[t]he empirical analysis supports the conclusion that Comcast discriminates against unaffiliated programming in favor of its own."[35] The Commission noted, in particular, that "[b]y foreclosing or disadvantaging rival programming networks, Comcast can increase subscribership or advertising revenues for its own programming content."[36] As a result, the FCC determined that the combination of Comcast with NBCU, "which increases the scope of programming affiliated with Comcast's MVPD service, will likely lead to further anticompetitive discrimination unless appropriate conditions are imposed."[37]

V. Statement of Facts.

A. The U.S. Spanish Language Video Marketplace and Estrella TV's Performance Therein.

24. Spanish language viewers are a rapidly growing segment within the overall United States video marketplace,[38] and Estrella TV competes for that audience with numerous

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[34] Merger Order, Appendix B, Section 1.E., at 4402 (¶ 65).

[35] *Id*. at 4403 (¶ 70).

[36] *Id*. at 4287 (¶ 119).

[37] *Id*., Appendix B, Section 1.E., at 4402 (¶ 65)

[38] *See, e.g.*, Joanne Ostrow, "Telemundo sneaks up on Spanish-language TV rival Univision in Denver," dated Apr. 3, 2016 ("Telemundo Sneaks Up"), which is attached hereto as Exh. 11. *See also* Salvador Rodriguez, *Netflix is Adding Telenovelas and Other Spanish-Language Shows in Quest for Growth*, International Business Times (June 9, 2015, 5:41 p.m.), http://www.ibtimes.com/netflix-adding-telenovelas-other-spanish-language-shows-quest-growth-1959429 (noting that the Hispanic demographic is "one of the fastest-growing segments in America, and it's a segment that absolutely cannot be ignored").

Spanish language networks, including the Hispanic Networks and Comcast-owned Telemundo and NBC Universo.[39] Estrella TV programming competes closely with Telemundo and NBC Universo programming in genre, ratings, target audience, target advertisers, and target programming. That is: (i) all three networks are Spanish language; (ii) Telemundo *and* Estrella TV each offers a closely comparable mix of programming that includes news, sports, reality, talk, drama, and comedy programming targeting the same audience and advertisers; and (iii) NBC Universo offers a programming mix similar to Telemundo and Estrella TV, but without news.[40] Phrased in terms used in the Merger Order, Estrella TV is a "close substitute" for Telemundo and NBC Universo and therefore a real competitive threat to Comcast.[41]

25. Overall, Estrella TV competes in a U.S. Spanish language video marketplace the scope and breadth of which is illustrated by Comcast's XFINITY Latino packages referenced above. Within the U.S. Spanish language video universe, in markets where the playing field is level, namely where Estrella TV enjoys distribution comparable to that of Telemundo and NBC Universo, Estrella TV programming competes with demonstrable success against the Hispanic

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[39] As the HFR Report discussed in Section V.D. below makes clear, MVPDs distribute on their numerous channels an amalgam of: (i) "cable-only networks" (networks that are not also carried by broadcasters over the air); and (ii) "broadcast networks" (networks originated over the air through a web of affiliated broadcast stations). The suite of networks which Comcast *owns* includes both cable-only networks like MSNBC, CNBC, and NBC Universo, as well as broadcast networks NBC and Telemundo. Estrella TV, like Telemundo, is a broadcast network, one of six U.S. Spanish language broadcast networks – the others are Univision, UniMas, Azteca, and MundoMax. The HFR Report explains that Comcast currently offers packages containing numerous Spanish language networks (the vast majority of which are cable-only), such as the 60+ Spanish language networks that Comcast offers in Xfinity Latino packages.

[40] *See also* Exh. 12 hereto, which reviews the similarities in these areas.

[41] *See* Merger Order at 4286 (¶ 119). In the words of *Game Show Network*, cited *infra*, at ¶ 10, Estrella TV "provides video programming that is similarly situated to video programming provided by" Telemundo and NBC Universo, "based on a combination of factors," including genre, ratings, and target audience, advertisers, and programming.

Networks in general and the two Comcast-owned Spanish language networks in particular. In such markets, Estrella TV also substantially outperforms the large majority of its other Spanish language competitors.

26. At the threshold, it is important to acknowledge several bedrock principles of the video marketplace. MVPDs *and* broadcasters are in the business of distributing programming to audiences. MVPDs typically do so over hundreds of channels, whereas broadcasters operate over the air on a primary channel and secondary multicast channels, typically supplemented by critically important MVPD distribution of the primary, and potentially the multicast, channels. MVPDs *and* broadcasters tasked with deciding which programming networks to carry rationally strive to find unique programming that viewers want to watch, a reasoned instinct premised on the simple proposition that audience ratings drive value.[42] When the decision is whether to launch a new, untested channel, where there is no performance roadmap to consult, a prospective program distributor's analysis is necessarily imprecise and carries higher risk. This decision is quite different and much easier when a distributor's choice involves a channel that already has had a chance to establish a track record with audiences. In the latter context, where a channel is already operational, success is most readily judged by consulting Nielsen ratings. Within the world of ratings, evening prime time is the most highly valued daypart, when viewers are the most plentiful.[43] Similarly, the most important ratings measuring periods are the quarterly

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[42] *See*, *e.g.*, Philip M. Napoli, "Audience Economics: Media Institutions and the Audience Marketplace," Columbia Univ. Press, at 11 (2003) ("measured audiences represent the coin of exchange in the audience marketplace.").

[43] *See*, *e.g.*, *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, 27 FCC Rcd 8610, 8695-96 (¶ 192) (2012) (cost per ratings point "vary by the time of day, with prime time (8 p.m.-11 p.m., Eastern and Pacific Time; 7 p.m.-10 p.m., Central and Mountain Time), being the most expensive").

Nielsen "sweeps" periods, when the video marketplace is most closely observing results and video programmers compete most directly to garner the largest possible audiences.[44]

27. Against this background, the popularity of Estrella TV programming can readily be seen: (i) by consulting how, with relatively robust distribution by Time Warner and other MVPDs, Estrella TV performed in the Los Angeles and Dallas-Ft. Worth markets in a key demographic in weekday evening prime time during two key recent sweeps periods; (i) by reviewing the ratings performance in the Los Angeles and Dallas-Ft. Worth markets of Estrella TV's prime time daily newscasts within that same demographic group in those same sweeps; and (iii) by looking at how Estrella TV's national performance within that same prime time daypart and same demographic group in those same sweeps compares with NBC Universo's performance.[45]

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[44] In various contexts, the FCC has recognized the importance of ratings sweeps periods within the video marketplace. *See, e.g.*, *In the Matter of Gray Television Licensee, LLC*, Petition For Waiver of Section 76.92(f) and 76.106(a) of the Commission's Rules, CSR-8759-N, Docket No. 13-16 (Feb. 2015) ("Over time, The Nielsen Company ("Nielsen") became the primary surveying organization through which a petitioner [making a significant viewing showing under Rule 76.54(b)] could obtain television surveys. Nielsen, which routinely surveys television markets to obtain television stations' viewership, conducts four-week audience surveys four times a year (i.e., February, May, July and November "sweep periods"). The Bureau has found that replacing each week required under [the rules] with a sweep period is acceptable and, if anything, adds to the accuracy of the audience statistics because of the increased sample size."); *CoxCom, LLC*, MB Docket No. 15-120, CSR 8909-A (Oct. 2015) ("Cox asserts [in support of a market modification petition under Rule 76.59] that, as demonstrated by Nielsen Media ratings, WMDE had no reportable viewing for either MVPD or non- MVPD households in Fairfax County in the year 2014, or in either the November 2014 or February 2015 sweeps. Based on this data, "with regard to the first and fourth statutory factors, WMDE has no significant historic carriage and no measurable viewership in the Communities.").

[45] The HFR Report (Appendix), *infra* Section V.D., takes a broad look at the fundamental ratings value of Estrella TV.

1. The Los Angeles DMA.

28. Los Angeles is far and away the largest Spanish language market in the United States. Nielsen estimates that, as of January 1, 2016, there were 1,924,270 Hispanic TV homes in the Los Angeles DMA,[46] nearly half a million more than the second-ranked market (New York City), and some 1.15 million more than third-ranked Miami.[47] In the universe of Spanish language video, Los Angeles constitutes the single most important ratings crucible. To adapt a line from a Sinatra classic from the American songbook about another city: "If you can make it there, you can make it anywhere."[48] For purposes of this Complaint, comparative ratings performances in the Los Angeles DMA carry particular weight because distribution of the various Spanish language competitors is fair. As the dominant MVPD in Los Angeles, Time Warner distributes Estrella TV along with such Spanish language competitors as Univision, UniMas, Telemundo, Azteca, and MundoMax.[49] Estrella TV and these competitors are also

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[46] A DMA is a local television market area designated by The Nielsen Company. There are 210 DMAs in the United States. The Nielsen Company, "Local Television Market Universe Estimates," http://www.nielsen.com/content/dam/corporate/us/en/public%20factsheets/tv/2016-local-television-market-universe-estimates.pdf.

[47] *See* Exh. 13 hereto, a copy of "Local Television Market Universe Estimates: Hispanic or Latino Homes" from The Nielsen Company, which ranks U.S. markets by the number of Hispanic households in each. Statistics concerning market size for other U.S. DMAs cited *infra* (e.g., Dallas-Ft. Worth, Houston, Denver) are drawn from this exhibit.

[48] Given the outsized importance of the Los Angeles market, it is no coincidence that *Telemundo's* original flagship station was KVEA, Los Angeles, purchased in 1986. *See* Felix Gutierrez, "Spanish Media in L.A. on Upswing," LA Times (June 1, 1986), *available at* http://articles.latimes.com/1986-06-01/news/mn-8862_1_spanish-language-media. *See also* Guillermo The Handbook of Spanish Language Media 241 (Alan Albarran ed. 2009).

[49] The channel currently known as MundoMax was previously affiliated with Fox under the name MundoFox. The rebranding to MundoMax reportedly resulted from difficulties Fox had in finding success in the Spanish language marketplace. *See* Anna Marie de la Fuente, "MundoFox Shuts Down News Division, Changes Name to MundoMax," VARIETY (July 31, 2015), *available at* http://variety.com/2015/tv/news/mundofox-shuts-down-news-division-now-mundomax-1201554102/. This Complaint uses the name MundoMax for consistency, but it encompasses

distributed in the Los Angeles DMA by other MVPDs, including DirecTV, DISH, AT&T U-verse, Charter, Frontier and Cox.

29. Recent Nielsen ratings for the Los Angeles market[50] evidence the broad popularity and appeal of Estrella TV programming, as carried on LBI O&O KRCA(TV). They show that KRCA's live plus same-day, Monday-Friday, 7-11 p.m. average rating in the key adults 25-54 demographic during the November 2015 sweeps period was [redacted], second only to Univision's [redacted] rating in the Spanish language market, and *ahead* of Comcast-owned Telemundo ([redacted]), UniMas ([redacted]), Azteca ([redacted]), and MundoMax ([redacted]) (all with these same metrics in place).[51] Holding these metrics steady for the prior May 2015 sweeps period, Estrella TV ([redacted] rating) finished third to Univision ([redacted]) and Telemundo ([redacted]), with Univision-owned UniMas, Azteca, and MundoMax tracking far behind, with ratings of [redacted], [redacted], and [redacted] respectively.[52] In the Los Angeles market, the [redacted] November sweeps rating of Estrella TV translates into [redacted] Nielsen impressions (viewers) in the relevant demographic. The November 2015 ratings show not only that Estrella TV beat Telemundo by [redacted]% within these metrics, but that Estrella TV's rating *equaled* the *combined* ratings of UniMas, Azteca, and MundoMax. The May 2015 ratings also

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MundoFox as well. MundoMax's history of economic challenge demonstrates the highly competitive nature of the Spanish language marketplace.

[50] *See* Exh. 14 hereto. The cited Nielsen ratings are illustrative. As noted below, and as reflected in Exh. 19 hereto, throughout the LBI/Comcast discussions which preceded the filing of this Complaint, LBI cited to Comcast comparable past Estrella TV ratings successes. *See also infra* Section V.D.

[51] A channel's rating represents the percentage of households watching that channel at a particular time measured against the universe of all households in the relevant demographic, *whether or not* anyone in the household is watching television at the time.

[52] *See id*. Estrella TV's strong Nielsen ratings performance holding these same metrics steady has continued in the most recent February 2016 sweeps, where Estrella TV's rating ([redacted]) was a sliver behind Telemundo ([redacted]), and well ahead of UniMas ([redacted]), Azteca ([redacted]), and MundoMax ([redacted]). *See* Exh. 15 hereto.

demonstrate that Estrella TV's audience size *exceeded* the aggregate audience of UniMas, Azteca, and MundoMax. Considered together, these ratings data constitute ample evidence demonstrating that Estrella TV is one of the most popular networks in the country's largest Spanish language market.[53]

2. The Dallas-Ft. Worth DMA.

30. Estrella TV's rating success extends to other markets. For example, the fifth-ranked Hispanic DMA in the U.S., Dallas-Ft. Worth (534,760 Hispanic TV households), tells a similar, confirming story. Like Los Angeles, Dallas-Ft. Worth is a market where LBI owns a full-power TV station (KMPX(TV)), where the dominant MVPD Time Warner provides the key Spanish language competitors fair distribution, and where Estrella TV is also distributed by DirecTV, DISH, AT&T U-verse, Frontier, Charter, and Suddenlink. KMPX's live plus same-day, Monday-Friday 6-10 p.m. (which is prime time in the Central Time Zone) average rating in the adults 25-54 demographic excelled in comparison to its competition in the November 2015 *and* May 2015 sweeps.[54] In that market and within those important metrics, Estrella TV tied with Telemundo in November 2015 for second place ([redacted]) behind Univision ([redacted]), far eclipsing UniMas ([redacted]), Azteca ([redacted]), and MundoMax ([redacted]). In the May 2015 sweeps, Estrella TV's 0.5 rating trailed only Univision ([redacted]) and Telemundo ([redacted]), tied UniMas, and dwarfed Azteca ([redacted]), and MundoMax ([redacted]).[55] In the Dallas-Ft. Worth market, Estrella TV's [redacted] rating in the

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[53] *See* Adam Jacobson, "Strong Ratings for Estrella TV in Los Angeles; Affiliate KRCA is Now Market's No. 2 Hispanic Station in Primetime," Multichannel News, December 16, 2014 ("the station is tops among adults 18-34 in primetime, beating the *combined* ratings performance of Telemundo station KVEA and UniMas outlet KFTR.") (emphasis in original), *available at* http://www.multichannel.com/strong-ratings-estrella-tv-los-angeles/386347.

[54] *See* Exh. 16 hereto.

[55] *See id*.

November 2015 prime time sweeps translates to [redacted] Nielsen impressions (viewers). Dallas-Ft. Worth market ratings *confirm* that, where networks are on an equal footing, Estrella TV is a staunch competitor to Comcast-owned Telemundo.[56]

3. <u>Prime Time News</u>.

31. The Merger Order placed a particular emphasis on the "special importance" of news programming.[57] Indeed, the Commission stressed therein that it is "*particularly mindful of the distinct news, information and emergency alert needs of the Spanish language audience*."[58] In the universe of Spanish language programming within the United States, four primary content providers – Univision, Telemundo, Azteca, and Estrella TV – produce original newscasts and compete with each other within this critically important category.[59] This fact, particularly where the news programming in question is demonstrably popular with viewers, would logically have substantial significance for a rational MVPD deciding which Spanish language channels to distribute.

32. Here, Estrella TV not only produces its own news programming, it schedules news during the last hour of *evening prime time*, opposite novelas regularly aired in that time slot

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[56] *See infra* Section V.A.4. for a discussion of Estrella's competitive performance vis-à-vis NBC Universo on a national scale.

[57] Merger Order at 4287-88 (¶ 122).

[58] Merger Order at 4321 (¶ 200) (emphasis added) (where the Commission also required at least six Telemundo O&O's to collectively produce and air additional 1,000 hours per year of original, locally produced and locally oriented news programming). *See also* Merger Condition XI.2.b.

[59] *See*, *e.g.*, "Telemundo Sneaks Up," cited *supra* n.38 (reporting on increased competition in local news between Telemundo and Univision affiliates in the Denver market); Ashley Parker, "Donald Trump Gets Earful in Spanish as Latino Outlets Air Disdain," NEW YORK TIMES, Aug 26, 2015 (referencing "the national United States evening news broadcasts of Azteca"), *available at* http://www.nytimes.com/2015/08/27/us/politics/latino-news-media-offended-by-donald-trump-shows-it-in-broadcasts.html?_r=0.

by both Univision and Telemundo.[60] That means Estrella TV offers viewers the only Spanish language news broadcast during prime time hours when the audience of maximal size can watch. Furthermore, because they are available before 11 p.m., these newscasts are more readily accessible to blue collar workers who must start their days early. And Estrella TV's prime time newscast is *very* popular with viewing audiences, as the ratings demonstrate.

33. Indeed, consulting live plus same day, Monday-Friday (7-11 p.m. Pacific/6-10 p.m. Central) average rating in the adults 25-54 demographic, Estrella TV's prime time news hour, during the November 2015 sweeps, *earned a* [redacted] *rating* in the Los Angeles DMA and a [redacted] rating in Dallas Ft. Worth.[61] In the May 2015 sweeps, Estrella TV's prime time newscasts *earned a* [redacted] *rating* in Los Angeles and a [redacted] rating in Dallas-Ft. Worth.[62]

4. **National Performance of Estrella TV v. NBC Universo.**

34. *National* audience data relating to NBC Universo viewership reveal that Estrella TV *substantially outperforms* this *second* Comcast-owned Spanish language competitor to Estrella TV.[63] That is, again consulting data reflecting live plus same day viewership during the 7 p.m. to 11 p.m. M-F daypart within the adult 25-54 demographic, Estrella TV registered [redacted] Nielsen impressions (viewers) during the May 2015 sweeps across the United States, nearly [redacted] better than NBC Universo's [redacted] impressions (viewers).[64] During the

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[60] Estrella TV also airs news weekday programming in the Los Angeles DMA market as follows: at noon, 5 p.m., and 11 p.m.

[61] *See* Exh. 17 hereto.

[62] *See id*.

[63] See Exh. 18 hereto. LBI does not currently have access to market-specific Nielsen data concerning NBC Universo.

[64] Because this particular comparison is national in scope, Telemundo outperforms Estrella TV due in significant part to the huge disparity in national Comcast distribution of Telemundo vis-à-

November 2015 national sweeps, again holding all of these metrics steady, Estrella TV generated [redacted] impressions compared to NBC Universo's [redacted], a differential of nearly [redacted] in Estrella TV's favor.

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35. It is precisely this kind of overall ratings success across multiple programming categories that has led broadcast affiliates and MVPDs *other than Comcast* to decide, for sound business reasons, to distribute Estrella TV programming. The roster of MVPDs and broadcasters that have voluntarily[65] decided to carry Estrella TV on their distribution platforms includes a who's who of today's video marketplace. Distributing MVPDs include: Time Warner, Charter Communications, AT&T/DIRECTV, DISH Network, Verizon Fios, Cablevision, Mediacom, Frontier Communications, Suddenlink, and Cox Communications. Distributing broadcast affiliates include: Nexstar, Sinclair, Tegna, Hearst, DTV America, Northwest Broadcasting, and Cocola Broadcasting. All of these MVPDs and broadcast affiliates have recognized Estrella TV's value and have proven willing to work out distribution deals in good faith. Not so, Comcast.

B. Comcast's Refusal and Comcast's Digital Rights Demand.

36. Estrella TV's present dispute with Comcast emerged against the general background set forth above. During an earlier stage of its evolution as a key competitor in the Spanish language video marketplace (namely, the must carry/retransmission consent election

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vis Estrella TV. *See infra* pp. 42. This wide distribution disparity, however, *also* works dramatically in NBC Universo's favor, making Estrella TV's huge viewership advantage over NBC Universo all the more remarkable.

[65] For MVPDs, these voluntary decisions have been made in the retransmission consent (not mandatory must carry) context. Broadcaster decisions as to which programming networks they will carry are entirely voluntary.

cycle which ended December 31, 2014), LBI elected must carry status under the Commission's rules, including for three key LBI-owned full power stations in markets where Comcast is the dominant MVPD ("Houston/Denver/Salt Lake City Carriage"). In the autumn of 2014, as the end of that previous cycle approached, LBI, having enjoyed sustained ratings success during that cycle, decided that the logical and most efficient way to expand Estrella TV's distribution going forward through all MVPDs, including Comcast, was to elect retransmission consent across the board in lieu of must carry. Well in advance of the three-year cycle beginning January 1, 2015, and in reliance on the law cited above prohibiting Comcast from offering Estrella TV carriage on less "favorable terms" than affiliated Telemundo, LBI approached Comcast accordingly to secure for that upcoming cycle broad distribution (and related compensation) on Comcast nationwide, comparable to the distribution Comcast had long been affording Comcast-owned and directly competitive Telemundo.

37. Specifically, LBI sought from Comcast distribution and compensation that would parallel Telemundo's: carriage and compensation for all Estrella TV O&O stations (like Estrella TV, Telemundo has O&O stations); carriage in markets where non-owned Estrella TV broadcast affiliates not otherwise carried by Comcast operate (e.g., [redacted]) (like Estrella TV, Telemundo has non-owned broadcast affiliates); and Estrella TV carriage and compensation in "white areas," markets where there is neither an Estrella TV O&O nor an Estrella TV affiliate (like Estrella TV, Telemundo has white areas).

38. From the beginning of the LBI/Comcast discussions until their conclusion in October 2015 (the "Discussion Period"), Comcast essentially rejected the notion of a fair expansion of its carriage and compensation of Estrella TV programming beyond the uncompensated Houston/Denver/Salt Lake City Carriage Comcast had provided Estrella TV

under the FCC's broadcast must-carry rules.[66] For example, on November 23, 2014 Comcast Senior Vice President Michael Nissenblatt ("Nissenblatt") responded by email to LBI's Jake Martinez ("Martinez") that: [redacted]

39. Multiple email exchanges between the parties, as well as face-to-face meetings in Philadelphia in October 2014 and February 2015, occurred during the Discussion Period, ultimately to no avail. Even when [redacted], Comcast would not agree.[67] To the contrary, Comcast only undermined the process by making the demand for Estrella TV digital rights discussed *infra* in paragraph 41. Despite such LBI efforts, on February 19, 2015, given Comcast's unwillingness to broaden distribution of Estrella TV programming in a reasonable way or to compensate LBI in any way at all for that carriage, extensions concerning the Houston/Denver/Salt Lake City Carriage expired, and that carriage ceased.[68] Comcast never even responded to Liberman's letter of April 20, 2015 to

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[66] Exh. 19 provides, in reverse chronological order, documents that contain material exchanges between the parties during the Discussion Period.

[67] *See* February 1, 2015 email from Martinez to Nissenblatt, where [redacted] *See also* February 19, 2015 email from Martinez to Nissenblatt [redacted].

[68] After February 19, 2015, Comcast continued to carry Estrella TV in New York City and Chicago and in certain other Estrella TV over-the-air affiliates' markets, carriage that is addressed *infra* at pp. 43-44.

Comcast's Chief Diversity Officer David Cohen ("Cohen") (copy contained in Exh. 19), whereby LBI [redacted].

40. The Discussion Period ended on October 15, 2015 after a final exchange: (i) A September 30, 2015 Letter from Horton to Nissenblatt in which LBI [redacted] ("Estrella TV's Parity Request"), grounded in Section 616, the Carriage Rules, and the Merger Conditions, and [redacted]; and (ii) An October 15, 2015 Letter from Nissenblatt to Horton, in which Comcast [redacted] ("Comcast's Refusal"). Comcast's Refusal was comprehensive – in the words of Section 616 and the Carriage Rules, it encompassed the selection, terms, *and* conditions of carriage of Estrella TV programming. In Nissenblatt's words, expressed in his October 15, 2015 Letter to Horton (at 2): [redacted][69]

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[69] (Emphasis added.) *See also* Comcast Response to Notice at 1 (An LBI "program carriage complaint against Comcast . . . would be meritless. We urge you to reconsider pursuing such a frivolous action") and 2 ("[O]ur evaluation of the limited demand for Estrella TV in the relevant markets led us to conclude that there were no benefits of continuing to carry the network that could even begin to justify the significant monetary compensation LBI demanded for that privilege.").

41. Not only did Comcast refuse to engage Estrella TV in any bona fide, legitimate discussion of the business merits of fair Comcast distribution of Estrella TV,[70] but in an email dated January 23, 2015 which transmitted a Comcast proposal rejecting Estrella TV's Parity Request (copy contained in Exh. 19 hereto), Comcast compounded the problem by making a demand that Estrella TV surrender its digital rights in Estrella TV programming in return for Comcast carriage of that programming ("Comcast Digital Rights Demand").[71] LBI had made clear as early as the November 18, 2014 email to Comcast contained in Exh. 19 hereto that Estrella TV "[d]igital distribution rights" were to be the subject of negotiation between the parties, and LBI reiterated its unwillingness to meet the unilateral Comcast Digital Rights Demand in an email dated February 13, 2015 from Martinez to Nissenblatt at 2 (copy contained in Exh. 19 hereto) [redacted]. The Comcast Digital Rights Demand was never withdrawn.

C. Houston, Denver, and Salt Lake City.

42. As noted above, the LBI/Comcast dispute that is the subject of this Complaint originated in part with sharply divergent views between the parties concerning the Houston/Denver/Salt Lake City Carriage. For that reason, LBI herein reviews relevant data

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[70] *See* Section VI.B. *infra* concerning the unavailing rationales on which Comcast relied to rebuff Estrella TV's requests during the Discussion Period, rationales on which Comcast continues to rely.

[71] *See* Attachment A (New Media Terms and Conditions) to Comcast's draft Retransmission Consent Agreement sent to Estrella TV with the January 23, 2015 email.

concerning Estrella TV performance in Houston and Denver both before and after Comcast carriage of Estrella TV in those markets ceased (i.e., on February 19, 2015).[72]

43. Analysis of the Houston (4th largest Nielsen U.S. Spanish market, with 667,160 Hispanic TV households) and Denver (17th largest Nielsen U.S. Spanish market, with 242,680 Hispanic TV households) DMAs: (i) reinforces what the Los Angeles and Dallas-Ft. Worth DMA data cited above make clear – Estrella TV is popular with viewing audiences; and (ii) illustrates the profoundly negative effect Comcast's lack of Estrella TV carriage has had on competitive marketplace balance.

44. For example, as Exh. 20 hereto demonstrates, one year *before* the key February 19, 2015 date, during the period February 3-14, 2014, Nielsen live plus same-day, M-F, 6-10 p.m. average ratings data (adults 25-54) show that Estrella TV and Telemundo were closely competitive in Houston and Denver – a [redacted] Houston rating for Telemundo versus a [redacted] rating for Estrella TV, as well as a [redacted] Denver rating for Telemundo versus a [redacted] rating for Estrella TV. In sharp contrast, one year *after* the key February 19, 2015 date, using the same Nielsen metrics for the period February 1-12, 2016, with Comcast no longer distributing Estrella TV, Telemundo had risen to a rating of [redacted] in Houston compared with Estrella TV's fall to [redacted], and Telemundo had held steady at [redacted] in Denver[73] compared with Estrella TV's fall all the way to [redacted] (all in sharp contrast to Estrella TV's *consistently* strong performance in Los Angeles and Dallas-Ft. Worth, where Time Warner has provided steady distribution, as reflected in the November 2015 and May 2015 sweeps data cited above).

[72] LBI does not have access to data for Salt Lake City (32nd largest Nielsen U.S. Spanish market with 94,090 Hispanic TV households).

[73] *But see* "Telemundo Sneaks Up," cited *supra* n.38, citing improved Telemundo ratings performance in the Denver market.

D. Estrella TV Offers Fundamental Value to MVPDs.

45. The Appendix hereto contains the Expert Report of Harold W. Furchtgott-Roth (the "HFR Report"), which includes a description of Mr. Furchtgott-Roth's qualifications as a media industry and economics expert. That report looks at a broad pool of Nielsen data and rigorously tests five key propositions relevant to this Complaint and to the relative value of Estrella TV to MVPDs in today's video marketplace. It reaches the following key conclusions about those propositions:

(1) Estrella TV is available in valuable television markets, particularly with respect to Spanish language households;

(2) Programming with positive ratings is valuable to a cable operator such as Comcast;

(3) Estrella TV has positive ratings when carried on a cable system such as Comcast;

(4) Estrella TV is one of the most popular Spanish language TV networks;

(5) The discontinuation of Comcast's carriage of Estrella TV in certain markets led to a measurable reduction in Estrella TV's ratings in those markets; and

(6) Telemundo's ratings benefited in those same markets from the discontinuation of carriage of Estrella TV.

46. Highlights of the HFR Report are as follows:

- As a VPV, Estrella TV competes with many others for MVPD distribution in today's video marketplace, where a 0.1 rating in prime time has value for MVPDs, both from a subscriber's and an advertiser's perspective, and places a cable-only VPV's channel in the top 100 of all such channels (i.e., without taking into consideration over-the-air broadcast viewing).

- Viewed through the prism of multiple relevant metrics, Estrella TV programming achieves a 0.1 rating, and often substantially exceeds it.

- Estrella TV's ratings performance is strong in prime time in sweeps periods, the most important time period within which a channel seeking distribution must perform.

- Estrella TV's prime time daily newscasts garner impressive ratings, even more so when distributed comprehensively by MVPDs in a DMA.

- Estrella TV's overall ratings performance is particularly robust when the platform on which MVPD distribution is built is the primary channel of a full power broadcast station (as it is in the case of LBI's full power O&Os) versus an LBI O&O low power station or an Estrella TV affiliate's low power station/secondary multicast channel.

- Even with sharply stunted Comcast distribution nationwide, in the twelve markets reviewed in the report, Estrella TV ranks fourth overall among Spanish language networks.

- The discontinuance of Comcast's carriage of Estrella TV dramatically harmed LBI's ratings performance and benefitted Telemundo's.

47. Together with the other information presented in this Complaint, the HFR Report supports a finding that Comcast's rejection of Estrella TV's requests for wider distribution and compensation cannot be explained as a legitimate business decision, but rather as one designed to benefit Telemundo and NBC Universo by suppressing, perhaps even ultimately foreclosing, the competitive threat posed by Estrella TV.

E. Hispanic Networks Added and Distributed Post-Merger by Comcast in lieu of Estrella TV.

48. Before, during, and after the Discussion Period, Comcast has typically announced Post-Merger Hispanic Network Additions (*see supra* Exh. 10 cited *supra* n.33) with self-congratulatory fanfare, adverting to the Hispanic MOU and Comcast's voluntary commitments to add such channels to promote viewpoint diversity post-Merger Order.[74] Listed below are illustrative Post-Merger Hispanic Network Additions, with the general type of programming offered by each shown in a succeeding parenthetical:

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- Hispanic Information & Telecommunications Network - HITN (non-commercial Spanish language educational programming)[75]
- LATV (bilingual mix of original and imported music, talk and variety series aimed at Hispanic and Latino American teenagers and young adults between the ages of 12 and 34)[76]
- NuvoTV (formerly SiTV, English-language general entertainment programming directed toward bicultural Latinos)[77]

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[74] *See supra* Exh. 10. *See, e.g.*, Comcast Press Release, "Comcast to Expand Carriage of Hispanic Networks to Additional 14 Million Subscribers," dated July 26, 2011, *available at* http://corporate.comcast.com/news-information/news-feed/comcast-to-expand-carriage-of-hispanic-networks-to-additional-14-million-subscribers.

[75] *See* Comcast Press Release, "Comcast to Expand Carriage of Hispanic Networks to Additional 14 Million Subscribers," July 26, 2011, *available at* http://corporate.comcast.com/news-information/news-feed/comcast-to-expand-carriage-of-hispanic-networks-to-additional-14-million-subscribers.

[76] *See id*.

[77] *See* Comcast Press Release, "nuvoTV the Latest Hispanic Network to Receive Distribution Boost from Comcast," Aug. 16, 2011, *available at* http://corporate.comcast.com/news-

2012

- BabyFirst Americas (designed for families with infants and young children and their parents with a focus on early development)[78]
- beIN SPORT Español (sports programming, principally soccer from Europe and South America)[79]
- CentroAmerica TV (general entertainment channel featuring content from Central America with foreign news, series, comedies and live soccer)[80]
- LAS - Latin American Sports (coverage of events and original productions from Puerto Rico, Cuba and Mexico including baseball, soccer, basketball, volleyball, boxing and Mexican rodeo)[81]
- Pasiones (features Spanish language novelas from North and South America)[82]
- Vme Kids (Spanish language programming for children ages 2-6)[83]

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information/news-feed/nuvotv-the-latest-hispanic-network-to-receive-distribution-boost-from-comcast.

[78] *See* Comcast Press Release, "Comcast Announces Agreements With Four New Minority-Owned Independent Networks," Feb. 21, 2012, at 2 ("Comcast 2/21/12 Press Release"), *available at* http://corporate.comcast.com/news-information/news-feed/comcast-announces-agreements-with-four-new-minority-owned-independent-networks.

[79] *See* Comcast Press Release, "Comcast More Than Doubles Spanish-Language On Demand Content on TV and Online with XFINITY Latino," Dec. 17, 2012 *available at* http://corporate.comcast.com/news-information/news-feed/comcast-more-than-doubles-spanish-language-on-demand-content-on-tv-and-online-with-xfinity-latino.

[80] *Id*.

[81] *Id*.

[82] *Id*.

[83] *Id*.

<u>2013</u>

- El Rey (general entertainment network in English for Latino and general audiences that includes an emphasis on martial arts movies, and seventies and eighties era off-network reruns, with a mix of reality, scripted and animated series, music, comedy, and sports programming)[84]

49. Unlike Estrella TV:

(1) None of these Post-Merger Hispanic Network Additions offers an appreciable amount of original programming produced in the United States;

(2) None of these Post-Merger Hispanic Network Additions provides any original news content, much less highly popular prime time news programming; and

(3) None of these Post-Merger Hispanic Network Additions earns meaningful ratings in the United States Spanish language video marketplace (even without fair national Comcast distribution, Estrella TV ranks fourth in the twelve markets reviewed in the HFR Report, and Estella TV substantially outperforms Comcast-owned NBC Universo in national ratings).

50. In other words, unlike Estrella TV, none of these Post-Merger Hispanic Network Additions offers anything comparable to the viewer value Estrella TV provides nor, insofar as LBI is able to determine, does any Post-Merger Hispanic Network Addition offer any meaningful competitive threat to Comcast-owned Telemundo and NBC Universo.

51. And yet, figuratively speaking, Comcast has rolled out the red carpet for the Post-Merger Hispanic Network Additions and shown Estrella TV the door.

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[84] *See* Comcast 2/21/12 Press Release at 2.

VI. Argument.

A. Comcast Has Discriminated Against Estrella TV on the Basis of Affiliation in the Selection, Terms, and Conditions of Carriage.

52. The Discussion Period made plain that LBI and Comcast hold sharply divergent positions on the inter-related issues of whether legitimate business principles support LBI's request for expanded carriage of and compensation for Estrella TV programming by Comcast (currently embodied in Estrella TV's Parity Request), and whether Comcast's denial of such carriage and compensation constitutes unlawful discrimination.[85]

53. Actionable discrimination is typically embodied in a biased or prejudicial choice made on the basis of factors such as race, religion, or gender. As made clear by Section IV.A. above, the discrimination at the heart of *this* Complaint, proscribed by Section 616 and the Carriage Rules, is an MVPD's election to favor the distribution of a programming network or channel which the MVPD owns, at the expense of a competing network or channel that is not owned or otherwise affiliated with that MVPD. Here, Estrella TV competes fiercely and successfully with Telemundo and NBC Universo whenever and wherever it has the opportunity, making plain that the choice made by Comcast with respect to Estrella TV distribution constitutes precisely the sort of discrimination based on vertical integration which the law forbids. Comcast's choices in this case can be identified as prohibited discrimination, not legitimate business decisions, in multiple ways.

54. First, this Complaint recognizes, indeed is predicated on, a fundamental principle around which today's highly competitive video marketplace revolves – MVPDs grant

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[85] It is entirely unsurprising that Comcast repeatedly tried to portray Comcast's Refusal as an exercise of "business" judgment during the Discussion Period and in the Comcast Response to Notice, in lieu of conceding discriminatory intent. But Commission analysis of a prima facie carriage complaint showing considers and weighs *facts*, not a complaint target's self-serving alibis.

distribution rights to, and broadcast stations affiliate with, programming networks and channels that generate value by attracting viewers. Stated another way, for-profit MVPDs and broadcasters distribute program content that viewers want to watch, which helps MVPDs succeed; those same businesses decline to distribute programming that lacks viewer value. And as the facts set forth above make clear, in this video marketplace, a deep divide has formed.

55. On one side of the chasm stand a plethora of sophisticated MVPDs and broadcast companies which have made the decision to distribute Estrella TV programming, including but not limited to: Time Warner, Charter, AT&T/DIRECTV, DISH, Verizon, Cablevision, Mediacom, Cox, Nexstar, Sinclair, Tegna, and Hearst. Such companies share a common characteristic – none holds an ownership interest in a programming channel or network that competes with Estrella TV. And a key corollary inference is readily drawn from their decisions to carry Estrella TV – *they all recognize the value of Estrella TV to their subscribers and viewers*. Otherwise, distribution of the programming would serve no business purpose. And those distributors' recognition of Estrella TV's value is in turn rationally predicated on the types of Estrella TV ratings reviewed in Sections V.A., C., and D. above.

56. On the other side of the divide sits Comcast, the nation's largest and most vertically integrated MVPD, in (not so) splendid isolation. Comcast denies (and has done so repeatedly over an extended period of time) that Estrella TV has any distribution value and, on that ostensible basis, refuses LBI fair and critically important distribution comparable to that enjoyed by Comcast-owned Telemundo and NBC Universo.

57. These simple facts make LBI's case. That is, an unusually large number of savvy, sophisticated, profit-driven MVPDs and broadcasters, none of which owns a Spanish language network or programming channel, finds ratings-based value in Estrella TV and works with LBI

to find ways to enhance, if not maximize, that programming's value through its distribution, to their *mutual* benefit. Comcast, on the other hand, insists on pursuing its own singular path through the same rough and tumble, highly competitive marketplace, professing that *despite the ratings*, *it finds no value in Estrella TV programming*. In doing so, Comcast is openly denying LBI's request for the type of fair distribution that is vital to Estrella TV's future, to the direct benefit of Comcast-owned Telemundo and NBC Universo. There can be only one rational explanation for this demonstrable gulf between Comcast's unique assessment that Estrella TV *lacks* value and the directly contrary judgment of so many non-conflicted companies that Estrella TV *provides* value: Comcast owns competing services Telemundo and NBC Universo, whereas the many MVPDs and broadcasters which have freely and consistently decided to distribute Estrella TV own no competing Spanish language channels.

58. Second, the Post-Merger Hispanic Network Additions – the flip side, if you will, of Comcast's decision to deny fair distribution to Estrella TV – provide additional support for the conclusion that Comcast has unlawfully discriminated against Estrella TV. That is, the Post-Merger Hispanic Network Additions are nothing more than classic "window dressing," Comcast's promotion of relatively non-competitive channels at the expense of fair distribution of robustly competitive Estrella TV. As shown above, unlike Estrella TV, none of the Post-Merger Hispanic Network Additions delivers an appreciable amount of original programming produced in the United States; none offers original *news* programming to the underserved Spanish language audience; none is even close to the wide popularity Estrella TV has achieved even with sharply limited Comcast distribution nationwide; and none earns meaningful national Nielsen ratings.

59. Comcast's actions in this regard beg the question: Why would a rational MVPD decision-maker expand carriage of existing, relatively low-rated channels or elect to add new Hispanic Networks with no track records proving an ability to attract viewers, while keeping proven audience favorite Estrella TV pinned to the sidelines? As with Comcast's decision to break with every other major MVPD (and reality) by denying that Estrella TV has viewer value, Comcast's choices to distribute the Post-Merger Hispanic Network Additions and stifle Estrella TV cannot be explained as defensible business decisions designed to bring maximal value to its customers. Rather, they are transparent elections designed to curry cosmetic favor, and simultaneously (and unlawfully) feather the competitive nests of Comcast-owned Telemundo and NBC Universo, while harming Estrella TV.[86]

60. LBI also emphasizes that the Post-Merger Hispanic Network Additions expose the shallowness of Comcast's commitment in the Hispanic MOU to promote competition, non-discrimination, and diversity *after* FCC approval of Comcast's merger with NBCU. *Before* being permitted to acquire NBCU, Comcast assured the Commission and the Hispanic community that, post-merger, there was "no prospect" that fair distribution of unaffiliated Hispanic programming would suffer on Comcast's massive MVPD platform and that Comcast would launch a package of "40-60 Spanish language channels in all of its major Latino

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[86] LBI notes that Comcast's ownership of news channels MSNBC and CNBC only gives the MVPD *additional* incentive to stifle the growth of any and all competitive news programmers. *See Bloomberg, L.P. v. Comcast Cable Communications, LLC*, 28 FCC Rcd 14346, 14362-63 (¶ 33) & n.125 (2013) ("After acquiring NBCU, however, Comcast has an incentive to advantage its affiliated news programming networks, such as CNBC and MSNBC, by declining to neighborhood a popular competing news programming network, even if by doing so Comcast risks losing the right to carry the network. This is because any subscribers Comcast might lose as a result of losing access to an independent news network would be offset by the increased proceeds Comcast would gain from increased viewership of its affiliated networks.").

markets."[87] And yet, today, even while the Post-Merger Complaint Window remains wide open, Comcast clings to untenable positions in direct contradiction of its pre-merger promises. *Now* Comcast argues that Estrella TV is unworthy of distribution and compensation on a par with Comcast-owned Telemundo, and does not merit a spot in Comcast's roster of 40-60 Spanish language channels, despite: (i) Estrella TV's proven track record of ratings success on level playing fields such as those that exist in the Los Angeles and Dallas-Ft. Worth markets; (ii) Estrella TV's popular evening prime time newscasts; and (iii) Estrella TV's national audience appeal which far exceeds that of Comcast-owned NBC Universo. Only unlawful discrimination designed to favor Comcast-owned Telemundo and NBC Universo, not defensible, legitimate business decisionmaking, explains this Comcast behavior.[88]

61. Still more evidence of Comcast's discrimination on the basis of affiliation can be found in the starkly disparate treatment Comcast has afforded Comcast-owned NBC Universo and Estrella TV. That is, in early February 2015, LBI was continuing its efforts in good faith to give Comcast the opportunity to distribute Estrella TV on terms and conditions comparable to Comcast-owned competitor Telemundo. Rather than work out a reasonable business deal with LBI consistent with its obligations under Section 616, the Carriage Rules, and the Merger Conditions, as well as the many promises it made at the time of the NBCU merger, Comcast gave LBI the cold shoulder and focused instead on the launch *in that same month* of its own

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[87] *See supra* ¶ 22.

[88] LBI anticipates that discovery in this proceeding will enable it to show that *another* set of decisions, which LBI expects Comcast has made to compensate Telemundo and NBC Universo, as well as a wide variety of other Spanish language and English-language Hispanic networks that lag far behind Estrella TV in head-to-head ratings on level competitive playing fields, will further demonstrate Comcast's discriminatory intent. Any carriage compensation paid by Comcast to NBC Universo, for example, props that Comcast-owned network up at the expense of Estrella TV.

rebranded NBC Universo, granting NBC Universo wide carriage and support across Comcast's huge national MVPD platform. In other words, Comcast moved to give *affiliated*, rebranded NBC Universo every chance to succeed in the hotly competitive Spanish language video marketplace *at the very same time* it was moving to harm, if not foreclose, an unaffiliated competitor with a proven track record of ratings success (Estrella TV) by denying it fair carriage and compensation.

62. The *national* Nielsen viewership levels cited in Section V.A.4. above demonstrate that, in so doing, Comcast was devoting scarce resources to a network that did not have anything close to the resumé and prospects of Estrella TV. And, despite the massive distribution advantages Comcast conferred on its affiliate NBC Universo, Estrella TV viewership levels exceeded those of NBC Universo by [redacted] in a key demographic group during evening prime time in the May and November 2015 sweeps. Yet even today, Comcast continues to coddle its *affiliated* network while continuing to deny *unaffiliated* Estrella TV the expanded distribution and compensation it needs. This is precisely the sort of behavior Section 616, the Carriage Rules, and the Merger Conditions were designed to prevent.

63. In sum, the objective ratings evidence of the Estrella TV appeal to viewers set forth in Section V.A., C., and D above (e.g., Estrella TV performance in the Los Angeles and Dallas-Ft. Worth DMAs, in its prime time news slot, and vis-à-vis NBC Universo nationally) undergirds the business decisions made by so many non-conflicted MVPDs and broadcasters to distribute Estrella TV. Indeed, the very fact that these other decision makers, with their vast collective experience in program content selection, have independently elected to distribute Estrella TV confirms the programming's marketplace value, which in turn constitutes the requisite prima facie showing that Comcast's decisions with respect to the selection, terms, and

conditions of carriage of Estrella TV are based on discrimination driven by Comcast's vertical ownership of two Spanish language program networks (the only prong of the traditional two-part test that needs to be satisfied during the Comcast Complaint Window). This prima facie showing is strongly supported by the irrational Post-Merger Hispanic Network Additions, non-market-based Comcast decisions to distribute Hispanic programming of substantially less viewer popularity than Estrella TV, and Comcast's decision to widely distribute its own freshly rebranded NBC Universo at the same time it was rejecting Estrella TV's carriage and compensation proposal.[89] This discrimination violates Section 616, the Carriage Rules, the Merger Conditions, and the Merger Order.

B. No Valid Basis Exists for Comcast's Refusal.

64. Comcast made a series of claims during the Discussion Period, now reiterated in the Comcast Response to Notice, that provide a roadmap of arguments Comcast will likely advance in opposition to this Complaint. These contentions, however, are either untethered in

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[89] Even though the Merger Order makes clear that LBI has no burden to make a prima facie case herein that Comcast's actions have unreasonably restrained the ability of unaffiliated Estrella TV to compete fairly with Telemundo and NBC Universo, this Complaint nonetheless makes that case. As shown above, when Estrella TV competes on a fair and level playing field with Comcast-owned Telemundo and NBC Universo, as it does in the Los Angeles and Dallas markets, Estrella TV ratings are closely comparable to those of Telemundo in key demographics and easily beat NBC Universo's. Given this demonstrably strong marketplace performance, rational MVPDs distribute Estrella TV, in sharp contrast to Comcast's Refusal, a refusal which unreasonably restrains Estrella TV's ability to fairly compete. It is also the case that when the playing field is slanted in favor of Telemundo and NBC Universo, as happened, for example, in the Houston and Denver markets after February 19, 2015, Estrella TV ratings suffer and Telemundo ratings benefit. Such "tilting" of the marketplace obviously favors Comcast-owned program networks at Estrella TV's expense, and is the very definition of an unreasonable restraint borne of discrimination which hampers Estrella TV's ability to compete fairly with Comcast-owned channels. Comcast's unlawful suppression of Estrella TV's ability to compete creates an unfortunate array of collateral damage, which includes, but is not limited to, harming Estrella TV's ability to continue to produce unique programming; foreclosing access by Estrella TV advertisers to Comcast markets; and depriving consumers of programming they want to watch, including but not limited to popular news programming that provides substantial public interest benefits.

fact or belied by context. Comcast, for example, has alleged that [redacted] in any market, national or local, Estrella TV's marketplace performance has been nowhere close to Telemundo's; cited [redacted] proprietary and confidential Comcast set top box data; relied on *national* ratings statistics skewed by Comcast's lack of fair distribution of Estrella TV programming; tried to analogize Estrella TV to lesser Spanish language network competitors MundoMax and Azteca; and relied on the carriage of Estrella TV programming in New York City and Chicago as evidence of Comcast's supposed noble support of otherwise undeserving Estrella TV.

65. Each justification proffered by Comcast in defense of Comcast's Refusal fails.[90]

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[90] Comcast's October 15, 2015 Letter and the Comcast Response to Notice redundantly and stridently contend that LBI is now suffering the consequences of its own unilateral and ill-advised decision to pull the Estrella TV signal from Comcast systems in Houston, Denver, and Salt Lake City. In fact, such Comcast behavior as its repeated and unwarranted denigrations of Estrella TV's ratings and value, its inflexible unwillingness to entertain in any fashion the idea that Estrella TV merited carriage and compensation parity with Comcast-owned Telemundo and NBC Universo, and its unlawful demand for Estrella TV digital rights drove LBI to let the final extension of the consent embodied in LBI's 2012-14 must carry elections for the Houston, Denver, and Salt Lake City DMAs lapse. Comcast's repeated refusals to provide fair and non-discriminatory carriage and compensation to LBI and Estrella TV have caused the harm here, not LBI's reasonable decisions along the time continuum. LBI notes that in an April 9, 2014 Joint Written Statement to the U.S. Senate Committee on the Judiciary ("Joint Statement"), when Comcast was still seeking government approval of the proposed (ultimately failed) Time Warner merger, Cohen and fellow Comcast executive Arthur T. Minson, Jr. touted Comcast's Section 616 record as of that date, and made claims that must now be viewed through the prism of *this* dispute:

> [S]ince the Comcast-NBCUniversal transaction . . . Comcast has not *dropped* any major cable programming network over an inability to reach a carriage agreement, or *lost* the signal of any major broadcaster in a retransmission consent dispute.
>
> A refusal by Comcast to carry unaffiliated programming content that customers demand would only drive customers to competing MVPDs, harming one of our core businesses. And, of course, the FCC's program carriage rules provide a backstop against any wrongful denials of carriage.

Joint Statement at 47 (emphasis added; footnote omitted).

66. First, Comcast has tried to minimize the significance of data relied on by LBI from Nielsen, the industry's long recognized source of television ratings, which document Estrella TV's consistently strong marketplace performance on level playing fields. Comcast makes general reference instead to its own "set top box" data. Comcast set top box data is opaque to LBI, the FCC, and the public in general, effectively "secret" data which Comcast alleges tell a story which conveniently disfavors Estrella TV. Comcast may not rely on such unsubstantiated, self-serving claims, which constitute nothing more than an inartful dodge, impervious to meaningful analysis by Estrella TV or anyone else. In any event, tellingly, in other contexts, Comcast has itself relied on industry-standard *Nielsen* ratings for such purposes as touting the viewership performance of the channels it carries.[91] In fact, in the Modified Final Judgment which Comcast and the Justice Department entered in connection with the NBCU Merger, DOJ and Comcast agreed, in Section II.DD. thereof, to define the term "Value" as "the economic value of Video Programming based on, among other factors, *the Video Programming's ratings* (*as measured by The Nielsen Company* or other Person commonly relied upon in the

[91] *See* Rene Rodriguez, "Telemundo: revitalized and stronger than ever," MIAMI HERALD, Oct. 25, 2015, *available at* http://www.miamiherald.com/news/business/biz-monday/article41256162.html ("This summer, Telemundo ran a full-page ad in The New York Times crowing about its latest success: narrowing its prime-time ratings gap with Univision from 1.2 million viewers in July 2013 to 238,000 in July 2015."). Press Release, NBCUniversal, Telemundo Super SeriesTM "El Señor De Los Cielos" Delivers Highest Rated Premier in Network History Among Total Viewers (Mar. 29, 2016) (http://www.nbcuniversal.com/press-release/telemundo-super-series%E2%84%A2-%E2%80%9Cel-se%C3%B1or-de-los-cielos%E2%80%9D-delivers-highest-rated-premiere); Press Release, Comcast, Telemundo's First Latin American Music Awards Reaches 3.8M Total Viewers (Oct. 9, 2015) (http://corporate.comcast.com/news-information/news-feed/telemundos-first-ever-latin-american-music-awards-reaches-3-8-million-total-viewers); Press Release, Comcast, Xfinity on Demand Now Home to Top 100 Nielsen Rated Shows (June 12, 2014) (http://corporate.comcast.com/news-information/news-feed/xfinity-on-demand-now-home-to-top-100-nielsen-rated-tv-shows).

television industry for television ratings). . . ."[92] Clearly, given these public Comcast positions, LBI is fully entitled to rely on industry-standard Nielsen data in making its prima facie showing in this Complaint. And those data reveal Estrella TV to be a vigorous competitor to Comcast-owned Telemundo and NBC Universo.[93]

67. Second, Comcast relies on false ratings comparisons in an effort to denigrate Estrella TV's performance vis-à-vis Telemundo. Comcast repetitively cites, for example, comparisons based on *national* ratings, which are obviously skewed in favor of Telemundo due to distribution of Telemundo on Comcast systems throughout the country, in clear contrast to Comcast's stunted distribution of Estrella TV.[94] *And*, Comcast assiduously ignores the starkly inferior *national* ratings performance of Comcast-owned NBC Universo vis-à-vis Estrella TV, *despite* Comcast's broad national distribution of NBC Universo. Comcast also tried to analogize Estrella TV performance to that of MundoMax and Azteca, an argument that is easily debunked

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[92] *U.S. et al. v. Comcast Corp.*, *et al.*, Modified Final Judgment, Case No. 11-CV-00106, at 8 (§ II.DD.), filed Aug. 21, 2013 (emphasis added), *available at* https://www.justice.gov/atr/case-document/file/492176/download.

[93] The fact that Estrella TV beat Telemundo in the November 2015 prime time sweeps in a key demographic group in the largest (by far) Hispanic market in the United States (Los Angeles) puts the lie to Comcast's claim that [redacted] Estrella TV lags far behind, and is not comparable to, Telemundo in the competitive marketplace. *See also* the February 13, 2015 email from Martinez to Nissenblatt in which Martinez rebuts in detail Comcast's proffered rationales for its repeated denials of LBI's proposals for Estrella TV carriage and compensation. The viewership levels achieved by Estrella TV, a small, family-owned U.S. business, are all the more remarkable given that LBI competes with channels and networks capitalized and promoted by large, multinational corporations. For example, Univision is owned by Univision Communications Inc. *See* Univision Communications Inc., http://corporate.univision.com/corporate/ (last visited Apr. 5, 2016). Azteca is part of Groupo Salinas, a Mexico-based company. *See* Grupo Salinas, http://www.gruposalinas.com/en/descripcion (last visited Apr. 5, 2016). And, MundoMax is owned by RCN Televisión, a Colombia-based entity. *See* Organización Ardila Lülle, http://www.oal.com.co/empresas (last visited Apr. 5, 2016).

[94] Exh. 21 hereto contains side-by-side national maps comparing the starkly divergent Comcast distribution footprints of Estrella TV and Telemundo.

by reviewing the sharply divergent ratings of those companies and Estrella TV reflected in Exhs. 14 through 17 hereto. Estrella TV's performance relative to Telemundo and other channels must be evaluated through data generated where there is a level playing field.

68. Third, Comcast has made inflated claims about its alleged beneficent voluntary carriage of Estrella TV LPTV O&O stations in New York City and Chicago, and Comcast's distribution of certain non-O&O Estrella TV affiliates – to an aggregate of approximately 5.9 million subscribers,[95] and misleadingly suggested that Estrella TV performance in those two markets demonstrates Estrella TV's lack of audience appeal.

69. In New York City and Chicago, Comcast has for now agreed only to *continue* (not to launch anew) heritage carriage of Estrella TV multicasts that originated at a time when the Tribune Company was an Estrella TV affiliate and Tribune stations WPIX-TV (NYC) and WGN-TV (Chicago) passed through carriage of Estrella TV. In New York City, the fact that Cablevision, Time Warner, and Verizon create a competitive MVPD market (within which all carry Estrella TV) made it particularly difficult for Comcast to drop Estrella TV.[96] Indeed, in New York City, Comcast elimination of Estrella TV carriage would carry a much higher risk of alienating subscribers who could find Estrella TV within the channels provided by competing MVPDs.[97] In any event, Estrella TV's ratings performance in New York City and Chicago is hamstrung by a variety of factors in those markets. That is, Comcast carries Estrella TV only in standard definition in high channel positions in New York City and Chicago, denying

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[95] *See* Comcast Response to Notice at 3.

[96] *See* November 26, 2014 email from Martinez to Nissenblatt (copy in Exh. 19 hereto).

[97] Importantly, the FCC recognized in Appendix B of the Merger Order that Comcast engages in *less* anticompetitive behavior when it is subject to *more* competition. Merger Order at 4382 (Appendix B).

Estrella TV a fair chance to compete in more heavily penetrated tiers in those markets.[98] Furthermore, Telemundo has *full power* O&O's in the New York City (WNJU, Linden, New Jersey) and Chicago (WSNS-TV) markets, whereas Estrella TV's stations in those markets are *low power*, with a much more limited over the air presence.[99]

70. The other subscribers which Comcast attributes to its largesse toward Estrella TV are in fact found in markets where non-O&O Estrella TV affiliates have secured Comcast carriage on their own, either through exercise of their must carry rights, as a multicast Estrella TV channel wrapped into a larger negotiation, or as a result of their own negotiating leverage.[100]

71. Comcast also claims that when its carriage of Estrella TV programming ended in February 2015 in Houston, Denver, and Salt Lake City, [redacted] and that [redacted][101] In fact, around February 19, 2015, Estrella TV

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[98] *See* February 13, 2015 email from Martinez to Nissenblatt (copy in Exh. 19 hereto). The Merger Order (at 4285, ¶ 116) made clear that the Commission was particularly concerned with the anticompetitive effects which result from Comcast confining competing networks (like Estrella TV) to less penetrated tiers than those on which Comcast would place NBCU networks (like Telemundo and NBC Universo).

[99] Comcast very well knows the value and importance of a full power station in a market. In 2006, for instance, Comcast paid $42 million to acquire full-power station KDEN-TV in the Denver market (Longmont, CO). "NBC's Buying KDEN Denver for Telemundo," TVNewsCheck, (Jan. 19, 2006, 9:28 a.m.), http://www.tvnewscheck.com/article/308/nbcs-buying-kden-denver-for-telemundo.

[100] This Complaint is not intended to supersede or override any Estrella TV affiliate's carriage agreement with Comcast. But, the Complaint does ask that Comcast be ordered to distribute and compensate all Estrella TV affiliates *not* currently distributed and compensated by Comcast (*i.e.*, distribution and compensation relating to Estrella TV and its affiliates should mirror the distribution and compensation Comcast provides to Telemundo and its affiliates).

[101] *See* the August 31, 2015 Letter from Nissenblatt to Horton contained in Exh. 19 hereto.

witnessed a substantial spike in telephone calls from consumers at the time of the disappearance of Estrella TV from Comcast in the three markets.

72. Finally, Comcast devotes space in the Comcast Response to Notice to an argument that companies which hold broadcast licenses are not VPVs and lack standing to file program carriage complaints. LBI has thoroughly rebutted these spurious Comcast claims *supra* at pp. 5-6. Comcast's professed belief that broadcasters may permissibly file *only* complaints based on alleged failures to negotiate in good faith under 47 C.F.R. § 76.65, and *not* program carriage complaints, has no basis in law, precedent, or logic. The Carriage Rules proscribe *discrimination* by vertically-integrated MVPDs against unaffiliated VPVs (those who create, produce, *or* seek to distribute programming). Acceptance of Comcast's "standing" argument would bizarrely and inequitably create a safe harbor within which MVPDs could discriminate *in favor of* affiliated program networks (including those, like Telemundo, which hold broadcast licenses) *against* program creators/producers/distributors that also happen to hold broadcast licenses.

73. The arguments which Comcast has repeatedly advanced in an effort to justify its discrimination against LBI and Estrella TV are particularly disingenuous when viewed in light of the Hispanic MOU. When it was trying to persuade the Commission to overcome its qualms and allow Comcast to acquire the broad array of NBCU programming networks, prominently including Telemundo, Comcast presented itself as a champion of diversity, committed to expanding competition in the Spanish language video marketplace. In light of the facts presented here, Comcast's assurance to the Commission that there was "no prospect" that Comcast would reduce its reliance on unaffiliated content post-merger has turned out to be untrue, as have grandiose promises about how robust the post-merger future of Spanish language

programming on Comcast would be. The facts underlying this Complaint tell a dramatically different story than the narrative purveyed by Comcast when it was seeking necessary approval from a skeptical government agency.

74. Viewed against the backdrop of the myriad lofty promises Comcast made when it needed government approval of the NBCU Merger, one would have expected Comcast to jump at the chance to prove its bona fides by carrying and compensating a network like Estrella TV, with its proven record of success. The opposite, as the Commission feared,[102] has proven true.

C. Grant of the Relief Requested by this Complaint Would Be Fully Consistent with Commission Precedent.

75. By this Complaint, LBI requests that in light of the compelling showing herein, the Chief of the Media Bureau grant Estrella TV's Parity Request, with or without discovery pursuant to 47 C.F.R. §§ 76.1302(i)(1)(i)-(ii). In the alternative, LBI requests that the Bureau Chief refer this matter for hearing to an Administrative Law Judge pursuant to 47 C.F.R. § 76.1302(i)(2).

76. LBI notes that prior cases have been set for hearing by the Commission under Section 616 and the Carriage Rules on the basis of much less persuasive showings than LBI has made here. For example:

77. In 2010, the Commission designated for hearing a Section 616/Carriage Rule complaint filed by The Tennis Channel, Inc. ("TTCI").[103] In *Tennis Channel*, a niche cable-only network carrying event and non-event programming relating to racquet sports (TTCI), alleged that Comcast had discriminated against it by refusing to relocate unaffiliated Tennis Channel programming from a premium tier to a more widely distributed tier. TTCI alleged that this

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[102] *See supra* ¶ 23.

[103] *The Tennis Channel, Inc. v. Comcast Cable Commc'ns, LLC*, 25 FCC Rcd 14149 (MB 2010).

refusal provided an advantage to affiliated Comcast cable-only networks like Versus (now NBCSN) which were being distributed more widely than Tennis Channel.

78. In 2012, the Commission designated for hearing a Section 616/Carriage Rule complaint filed by Game Show Network, LLC ("GSN").[104] In *Game Show Network*, a niche cable-only network whose signature programming consists of syndicated game show reruns alleged that Cablevision Systems Corp. ("CSC") had discriminated against it by relocating unaffiliated GSN programming from an expanded basic tier to a premium sports tier, a move which GSN alleged advantaged affiliated CSC cable-only networks WE tv (featuring programming on topics of interest to women) and Wedding Central, (featuring programming relating to weddings, dating, and relationships) which remained on the expanded basic tier.[105]

79. To cite only two key differences between this case and *Tennis Channel* and *Game Show Network*: (i) both *Tennis Channel* and *Game Show Network* involved *niche* programmer disputes over MVPD channel *tiering* selection, not the more fundamental issues of carriage and compensation per se of a network of broad programming appeal; and (ii) the competitive nexus between the complainants' programming and that of the allegedly discriminating MVPD was more attenuated than the closely substitutable programming offered by Estrella TV and Comcast-owned Telemundo and NBC Universo.

80. From a public interest perspective, *this* case is quite different from *Tennis Channel* and *Game Show Network*. It involves Estrella TV, a rising direct competitor to *two* Comcast-owned networks in the increasingly important Spanish language space, where Comcast is widely supporting two of its own channels – Telemundo, with which Estrella TV fiercely

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[104] *Game Show Network, LLC v. Cablevision Systems Corp.*, 27 FCC Rcd 5113 (MB 2012).

[105] *See also TCR Sports Broadcasting Holding, LLP v. Comcast Corp.*, 21 FCC Rcd 8989 (2006).

competes, and NBC Universo, which is barely registering in the ratings. On a parallel track, Comcast is choking off distribution and flatly denying warranted compensation to proven Estrella TV, all in derogation of Section 616 and the Carriage Rules. *This* case involves discriminatory Comcast actions which, for every day they are allowed to continue, harm the public interest by depriving Spanish language viewers of access not only to Estrella TV's wide range of entertainment, sports, and special interest programming, but to an hour of weekday prime time news, precisely the type of programming which the Commission has singled out as carrying special importance. *This* case involves Comcast's throttling of original programming of demonstrable popular appeal and broad public interest importance to a key segment of the American viewing audience.

81. Designation for hearing is particularly warranted in this case because, even though LBI's showing on the merits is *stronger* than in the previously designated *Tennis Channel* and *Game Show Network* cases, LBI's prima facie burden in this case is considerably *lighter* than it was for those other complainants. As noted above, the Merger Order specified that during the Post-Merger Complaint Window (which remains open today), a carriage complaint like this one need *not* make a prima facie showing that Comcast's discrimination on the basis of affiliation in the selection, terms or conditions for carriage relating to a competing VPV unreasonably restrained that VPV's ability to compete fairly. A complainant like LBI in this case need *only* show that Comcast discriminated against it in the selection, terms or conditions for carriage on the basis of affiliation, which has occurred here.

* * *

82. The scope and depth of Comcast's violations of law in this case are striking. In pursuit of the transparent self-interest of Comcast-owned Telemundo and NBC Universo, even

though it remains squarely within the Post-Merger Complaint Window, Comcast has abandoned caution as well as prior commitments made to the FCC, recklessly running through four independent, clearly posted "red lights," those *separately* embodied in: Section 616, the Carriage Rules, the Merger Conditions, and the Merger Order. Consequences commensurate to these grave, multiple transgressions should follow.

83. In this regard, the remedy to redress the harm Estrella TV has suffered at the hands of Comcast as a competing programmer which has "not receive[d] such favorable [distribution] terms" as those enjoyed by Comcast-owned Telemundo[106] is relatively easy to implement. That is, wherever (i.e., in all DMAs served by Comcast) and however (e.g., standard definition/high definition/carriage in a particular neighborhood, etc.) Comcast carries Telemundo, Comcast should be ordered to carry Estrella TV in a commensurate fashion. Similarly, Comcast should be ordered to compensate Estrella TV to the extent it compensates Telemundo (e.g., Comcast shall pay the same per subscriber amounts to Estrella TV as it pays Telemundo on a market-by-market basis each year). These distribution and compensation benefits should also flow not only to LBI in the same manner they flow to Comcast owned Telemundo but to non-LBI owned Estrella TV affiliates in the same manner Comcast provides them to non-Comcast owned Telemundo affiliates. Carriage of Estrella TV on the same "favorable terms" as those Comcast provides Telemundo and its network of affiliates is the entirely appropriate and necessary relief LBI seeks hereunder to fulfill the goals of Section 616, the Carriage Rules, and the Merger Conditions, particularly given the ongoing actions and inactions of Comcast described herein.

[106] *See supra* n.27 and accompanying text.

D. Comcast's Digital Rights Demand Is Unlawful.

84. Comcast's grab for ownership of Estrella TV's digital programming rights both completes the picture of Comcast's disregard for the law under which it operates and undercuts Comcast's basic position on the business merits of distributing Estrella TV programming more widely. That is, Comcast knows full well that Section 616 and the Carriage Rules *prohibit* Comcast acquisition of this kind of financial interest as a condition of carriage, yet Comcast made the demand anyway. And, if Comcast really believed Estrella TV programming was worth so little, why would it make a play for Estrella TV digital rights in the first place? Under all circumstances, the fact that Comcast demanded Estrella TV's digital rights as a condition of carriage of Estrella TV satisfies this Complaint's burden of making a prima facie case.

85. LBI notes that in the Comcast Response to Notice, Comcast endeavors to treat its demand for Estrella TV's digital programming rights as nothing more than a plain vanilla acquisition of non-exclusive TV Everywhere-type rights. But, as LBI responded in the LBI Reply to Comcast Response to Notice, Comcast's position

> improperly treats Comcast's claim to digital rights as if they were a Comcast birthright, a notion which is as unfounded as [Comcast's] attempt to treat the 47 U.S.C. § 536(a)(1) term 'financial interest' as if it somehow encompasses only 'ownership' and 'equity' rights. In fact, digital programming rights are clearly a 'financial interest' within the meaning of the relevant statute and rule, with real value to MVPDs like Comcast, as evidenced by the publicity surrounding the recent live streaming rights deal between CBS and Cablevision. If these rights conferred no financial benefit, Comcast would neither want nor demand them. Against this background, LBI's claim concerning Comcast's unlawful grab for digital rights will present the government with an issue of fundamental importance and consequence reaching far beyond the Comcast/LBI dispute. To the extent no VPV has complained to date about Comcast's insistence on obtaining these rights as a condition of carriage, that only magnifies the importance of this issue here. If LBI prevails, Comcast can expect the floodgates to open. Every VPV which has found itself surrendering its digital rights in return for carriage will have the precedent to support a new cause of action. See 47 C.F.R. § 76.1302(h)(1). LBI

> looks forward to resolution of all issues to be presented, including this key issue, truly one 'of first impression.'

Count I:

Discrimination on the Basis of Affiliation.

86. Complainant LBI repeats and re-alleges each and every allegation contained in paragraphs 1 through 85 of this Complaint.

87. By virtue of the acts described above, Comcast has discriminated against LBI by refusing to carry Estrella TV on comparable terms and conditions as similar channels owned by Comcast, thereby violating Section 616, 47 CFR § 76.1301(c), the Merger Conditions, and the Merger Order.

Count II:

Conditioning Carriage on Acquisition of a Financial Interest in Programming.

88. Complainant LBI repeats and re-alleges each and every allegation contained in paragraphs 1 through 85 of this Complaint.

89. By virtue of the acts described above, Comcast has violated Section 616 and 47 CFR § 76.1301(a) by requiring LBI to give Comcast a financial interest in Estrella TV's digital rights as a condition of carriage.

Prayer for Relief

Estrella TV respectfully requests that the Commission:

(a) find Comcast in violation of Section 616, 47 CFR §§ 76.1301(a) and (c), the Merger Conditions, and the Merger Order;

(b) enjoin Comcast from further program carriage discrimination against LBI and Estrella TV;

(c) order Comcast to distribute and compensate Estrella TV on terms comparable to the terms on which Comcast distributes and compensates Telemundo or on such other equitable terms as the Commission may determine;

(d) take appropriate enforcement action against Comcast for its violations of law; and

(e) order any other relief that the Commission may deem appropriate.

VII. Conclusion.

90. The facts of this case dictate that the government enforce Section 616 and the Carriage Rules to protect the marketplace overall and LBI in particular against the damaging discriminatory actions of Comcast. For all of the reasons set forth herein, LBI asks that the Commission grant the relief requested herein.

Respectfully submitted,

LIBERMAN BROADCASTING, INC.
LBI MEDIA, INC.

By: Dennis P. Corbett

Dennis P. Corbett
David S. Keir
Laura M. Berman

Lerman Senter PLLC
2001 L Street, NW, Suite 400
Washington, DC 20036
Tel. (202) 429-8970

April 8, 2016

Their Attorneys

Attachments to Complaint

Appendix

Expert Report of Harold W. Furchtgott-Roth

Exhibits

Exhibit #	Description
1	Section 616 of the Communications Act of 1934, as amended (47 U.S.C. § 536)
2	The FCC's Program Carriage Rules (§ 76.1300 *et seq*.)
3	List of LBI Owned & Operated Stations and Current Broadcast Affiliates
4	Time Warner/Charter Carriage of Estrella TV
5	Philadelphia Business Journal article "With Comcast's Backing, Telemundo Ready to Compete," December 28, 2015.
6	Complaints Filed Against Comcast under the Program Carriage Rules
7	LBI's February 9, 2016 Pre-Filing Notice Letter
8	Comcast's February 18, 2016 Response to LBI's Pre-Filing Notice Letter
9	LBI's February 26, 2016 Reply to the Comcast Response to LBI's Pre-Filing Notice Letter
10	Spanish Language Networks Currently Offered on Comcast's XFINITY "TV 150 Latino" Programming Package in Montgomery County, Maryland
11	Denver Post article "Telemundo Sneaks Up on Spanish-language TV Rival Univision in Denver," April 3, 2016
12	Showing of the Similarity of Estrella TV to Telemundo and NBC Universo in Genre, Ratings, Target Audience, Target Advertisers and Target Programming

Exhibit #	Description
13	U.S. Television DMA Market Ranking by Number of Hispanic Households
14	Los Angeles Market Spanish-Language TV Ratings for Prime Time (7pm – 11pm, M-F), May and November 2015 Sweeps Periods
15	Los Angeles Market Spanish-Language TV Ratings for Prime Time (7pm – 11pm, M-F), February 2016 Sweeps Period
16	Dallas-Fort Worth Market Spanish-Language TV Ratings for Prime Time (6pm – 10pm, M-F), May and November 2015 Sweeps Periods
17	Dallas-Fort Worth and Los Angeles Market Spanish-Language TV Ratings – Estrella TV Prime Time News (M-F), May and November 2015 Sweeps Periods
18	Estrella TV vs. NBC Universo, et al. – National Spanish-Language TV Prime Time Ratings, May and November 2015 Sweeps Periods
19	Documents, in chronological order, that comprise the material exchanges between the parties during the Discussion Period
20	Change in Prime Time (6pm – 10pm) Spanish-Language TV Ratings in Houston and Denver, February 2014 v. February 2016
21	National Maps Comparing Divergent Distribution Footprints of Estrella TV and Telemundo

Declarations

Declaration of Lenard D. Liberman, President and Chief Executive Officer of LBI

Declaration of Winter W. Horton, Chief Operating Officer of LBI

APPENDIX

[Redacted in its Entirety from Public Version]

EXHIBIT 1

quirements and state the basis for such allegations.

(2) Opportunity to respond

The Commission shall afford such cable operator an opportunity to present data, views, and arguments to establish that the cable operator has complied with the signal carriage requirements of this section.

(3) Remedial actions; dismissal

Within 120 days after the date a complaint is filed under this subsection, the Commission shall determine whether the cable operator has complied with the requirements of this section. If the Commission determines that the cable operator has failed to comply with such requirements, the Commission shall state with particularity the basis for such findings and order the cable operator to take such remedial action as is necessary to meet such requirements. If the Commission determines that the cable operator has fully complied with such requirements, the Commission shall dismiss the complaint.

(k) Identification of signals

A cable operator shall identify, upon request by any person, those signals carried in fulfillment of the requirements of this section.

(*l*) Definitions

For purposes of this section—

(1) Qualified noncommercial educational television station

The term ''qualified noncommercial educational television station'' means any television broadcast station which—

(A)(i) under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as a noncommercial educational television broadcast station and which is owned and operated by a public agency, nonprofit foundation, corporation, or association; and

(ii) has as its licensee an entity which is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B) of this title; or

(B) is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes.

Such term includes (I) the translator of any noncommercial educational television station with five watts or higher power serving the franchise area, (II) a full-service station or translator if such station or translator is licensed to a channel reserved for noncommercial educational use pursuant to section 73.606 of title 47, Code of Federal Regulations, or any successor regulations thereto, and (III) such stations and translators operating on channels not so reserved as the Commission determines are qualified as noncommercial educational stations.

(2) Qualified local noncommercial educational television station

The term ''qualified local noncommercial educational television station'' means a qualified noncommercial educational television station—

(A) which is licensed to a principal community whose reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (as in effect on March 29, 1990), or any successor regulations thereto, is within 50 miles of the principal headend of the cable system; or

(B) whose Grade B service contour, as defined in section 73.683(a) of such title (as in effect on March 29, 1990), or any successor regulations thereto, encompasses the principal headend of the cable system.

(June 19, 1934, ch. 652, title VI, § 615, as added Pub. L. 102–385, § 5, Oct. 5, 1992, 106 Stat. 1477.)

EFFECTIVE DATE

Section effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102–385, set out as an Effective Date of 1992 Amendment note under section 325 of this title.

§ 536. Regulation of carriage agreements

(a) Regulations

Within one year after October 5, 1992, the Commission shall establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors. Such regulations shall—

(1) include provisions designed to prevent a cable operator or other multichannel video programming distributor from requiring a financial interest in a program service as a condition for carriage on one or more of such operator's systems;

(2) include provisions designed to prohibit a cable operator or other multichannel video programming distributor from coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights against other multichannel video programming distributors as a condition of carriage on a system;

(3) contain provisions designed to prevent a multichannel video programming distributor from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors;

(4) provide for expedited review of any complaints made by a video programming vendor pursuant to this section;

(5) provide for appropriate penalties and remedies for violations of this subsection, including carriage; and

(6) provide penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

(b) "Video programming vendor" defined

As used in this section, the term ''video programming vendor'' means a person engaged in the production, creation, or wholesale distribution of video programming for sale.

(June 19, 1934, ch. 652, title VI, § 616, as added Pub. L. 102–385, § 12, Oct. 5, 1992, 106 Stat. 1488.)

EFFECTIVE DATE

Section effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102–385, set out as an Effective Date of 1992 Amendment note under section 325 of this title.

§ 537. Sales of cable systems

A franchising authority shall, if the franchise requires franchising authority approval of a sale or transfer, have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Commission regulations and by the franchising authority. If the franchising authority fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the franchising authority agree to an extension of time.

(June 19, 1934, ch. 652, title VI, § 617, as added Pub. L. 102–385, § 13, Oct. 5, 1992, 106 Stat. 1489; amended Pub. L. 104–104, title III, § 301(i), Feb. 8, 1996, 110 Stat. 117.)

AMENDMENTS

1996—Pub. L. 104–104 redesignated subsec. (e) as entire section, substituted "A franchising authority" for "LIMITATION ON DURATION OF FRANCHISING AUTHORITY POWER TO DISAPPROVE TRANSFERS.—In the case of any sale or transfer of ownership of any cable system after the 36-month period following acquisition of such system, a franchising authority", and struck out subsecs. (a) to (d) which related to three-year holding period requirement, treatment of multiple transfers, exceptions to holding requirement, and waiver authority.

EFFECTIVE DATE

Section effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102–385, set out as an Effective Date of 1992 Amendment note under section 325 of this title.

PART III—FRANCHISING AND REGULATION

§ 541. General franchise requirements

(a) Authority to award franchises; public rights-of-way and easements; equal access to service; time for provision of service; assurances

(1) A franchising authority may award, in accordance with the provisions of this subchapter, 1 or more franchises within its jurisdiction; except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise. Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of section 555 of this title for failure to comply with this subsection.

(2) Any franchise shall be construed to authorize the construction of a cable system over public rights-of-way, and through easements, which is within the area to be served by the cable system and which have been dedicated for compatible uses, except that in using such easements the cable operator shall ensure—

(A) that the safety, functioning, and appearance of the property and the convenience and safety of other persons not be adversely affected by the installation or construction of facilities necessary for a cable system;

(B) that the cost of the installation, construction, operation, or removal of such facilities be borne by the cable operator or subscriber, or a combination of both; and

(C) that the owner of the property be justly compensated by the cable operator for any damages caused by the installation, construction, operation, or removal of such facilities by the cable operator.

(3) In awarding a franchise or franchises, a franchising authority shall assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

(4) In awarding a franchise, the franchising authority—

(A) shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area;

(B) may require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; and

(C) may require adequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service.

(b) No cable service without franchise; exception under prior law

(1) Except to the extent provided in paragraph (2) and subsection (f) of this section, a cable operator may not provide cable service without a franchise.

(2) Paragraph (1) shall not require any person lawfully providing cable service without a franchise on July 1, 1984, to obtain a franchise unless the franchising authority so requires.

(3)(A) If a cable operator or affiliate thereof is engaged in the provision of telecommunications services—

(i) such cable operator or affiliate shall not be required to obtain a franchise under this subchapter for the provision of telecommunications services; and

(ii) the provisions of this subchapter shall not apply to such cable operator or affiliate for the provision of telecommunications services.

(B) A franchising authority may not impose any requirement under this subchapter that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a cable operator or an affiliate thereof.

(C) A franchising authority may not order a cable operator or affiliate thereof—

(i) to discontinue the provision of a telecommunications service, or

(ii) to discontinue the operation of a cable system, to the extent such cable system is used for the provision of a telecommunications service, by reason of the failure of such cable operator or affiliate thereof to obtain a franchise or franchise renewal under this subchapter with respect to the provision of such telecommunications service.

(D) Except as otherwise permitted by sections 531 and 532 of this title, a franchising authority may not require a cable operator to provide any telecommunications service or facilities, other

EXHIBIT 2

PUBLIC VERSION

interested party may petition the Commission for such a determination.

§ 76.1209 Theft of service.

Nothing in this subpart shall be construed to authorize or justify any use, manufacture, or importation of equipment that would violate 47 U.S.C. 553 or any other provision of law intended to preclude the unauthorized reception of multichannel video programming service.

§ 76.1210 Effect on other rules.

Nothing in this subpart affects § 64.702(d) of the Commission's regulations or other Commission regulations governing interconnection and competitive provision of customer premises equipment used in connection with basic common carrier communications services.

Subpart Q—Regulation of Carriage Agreements

SOURCE: 58 FR 60395, Nov. 16, 1993, unless otherwise noted.

§ 76.1300 Definitions.

As used in this subpart:

(a) *Affiliated.* For purposes of this subpart, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(b) *Attributable interest.* The term ''attributable interest'' shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(c) *Buying groups.* The term ''buying group'' or ''agent,'' for purposes of the definition of a multichannel video programming distributor set forth in paragraph (e) of this section, means an entity representing the interests of more than one entity distributing multichannel video programming that:

(1) Agrees to be financially liable for any fees due pursuant to a satellite cable programming, or satellite broadcast programming, contract which it signs as a contracting party as a representative of its members or whose members, as contracting parties, agree to joint and several liability; and

(2) Agrees to uniform billing and standardized contract provisions for individual members; and

(3) Agrees either collectively or individually on reasonable technical quality standards for the individual members of the group.

(d) *Multichannel video programming distributor.* The term ''multichannel video programming distributor'' means an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities.

(e) *Video programming vendor.* The term ''video programming vendor'' means a person engaged in the production, creation, or wholesale distribution of video programming for sale.

[58 FR 60395, Nov. 16, 1993, as amended at 64 FR 67197, Dec. 1, 1999; 69 FR 72046, Dec. 10, 2004]

§ 76.1301 Prohibited practices.

(a) *Financial interest.* No cable operator or other multichannel video programming distributor shall require a financial interest in any program service as a condition for carriage on one or more of such operator's/provider's systems.

(b) *Exclusive rights.* No cable operator or other multichannel video programming distributor shall coerce any video programming vendor to provide, or retaliate against such a vendor for failing to provide, exclusive rights against any other multichannel video programming distributor as a condition for carriage on a system.

(c) *Discrimination.* No multichannel video programming distributor shall engage in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.

§ 76.1302 Carriage agreement proceedings.

(a) *Complaints.* Any video programming vendor or multichannel video programming distributor aggrieved by conduct that it believes constitute a violation of the regulations set forth in this subpart may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7 of this part with the following additions or changes:

(b) *Prefiling notice required.* Any aggrieved video programming vendor or multichannel video programming distributor intending to file a complaint under this section must first notify the potential defendant multichannel video programming distributor that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in § 76.1301 of this part. The notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

(c) *Contents of complaint.* In addition to the requirements of § 76.7, a carriage agreement complaint shall contain:

(1) Whether the complainant is a multichannel video programming distributor or video programming vendor, and, in the case of a multichannel video programming distributor, identify the type of multichannel video programming distributor, the address and telephone number of the complainant, what type of multichannel video programming distributor the defendant is, and the address and telephone number of each defendant;

(2) Evidence that supports complainant's belief that the defendant, where necessary, meets the attribution standards for application of the carriage agreement regulations;

(3) The complaint must be accompanied by appropriate evidence demonstrating that the required notification pursuant to paragraph (b) of this section has been made.

(d) *Prima facie case.* In order to establish a *prima facie* case of a violation of § 76.1301, the complaint must contain evidence of the following:

(1) The complainant is a video programming vendor as defined in section 616(b) of the Communications Act of 1934, as amended, and § 76.1300(e) or a multichannel video programming distributor as defined in section 602(13) of the Communications Act of 1934, as amended, and § 76.1300(d);

(2) The defendant is a multichannel video programming distributor as defined in section 602(13) of the Communications Act of 1934, as amended, and § 76.1300(d); and

(3)(i) *Financial interest.* In a complaint alleging a violation of § 76.1301(a), documentary evidence or testimonial evidence (supported by an affidavit from a representative of the complainant) that supports the claim that the defendant required a financial interest in any program service as a condition for carriage on one or more of such defendant's systems.

(ii) *Exclusive rights.* In a complaint alleging a violation of § 76.1301(b), documentary evidence or testimonial evidence (supported by an affidavit from a representative of the complainant) that supports the claim that the defendant coerced a video programming vendor to provide, or retaliated against such a vendor for failing to provide, exclusive rights against any other multichannel video programming distributor as a condition for carriage on a system.

(iii) *Discrimination.* In a complaint alleging a violation of § 76.1301(c):

(A) Evidence that the conduct alleged has the effect of unreasonably restraining the ability of an unaffiliated video programming vendor to compete fairly; and

(B) (*1*) Documentary evidence or testimonial evidence (supported by an affidavit from a representative of the complainant) that supports the claim that the defendant discriminated in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors; or

(*2*) (*i*) Evidence that the complainant provides video programming that is similarly situated to video programming provided by a video programming vendor affiliated (as defined in §76.1300(a)) with the defendant multichannel video programming distributor, based on a combination of factors, such as genre, ratings, license fee, target audience, target advertisers, target programming, and other factors; and

(*ii*) Evidence that the defendant multichannel video programming distributor has treated the video programming provided by the complainant differently than the similarly situated, affiliated video programming described in paragraph (d)(3)(iii)(B)(*2*)(*i*) of this section with respect to the selection, terms, or conditions for carriage.

(e) *Answer*. (1) Any multichannel video programming distributor upon which a carriage agreement complaint is served under this section shall answer within sixty (60) days of service of the complaint, unless otherwise directed by the Commission.

(2) The answer shall address the relief requested in the complaint, including legal and documentary support, for such response, and may include an alternative relief proposal without any prejudice to any denials or defenses raised.

(f) *Reply*. Within twenty (20) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

(g) *Prima facie determination*. (1) Within sixty (60) calendar days after the complainant's reply to the defendant's answer is filed (or the date on which the reply would be due if none is filed), the Chief, Media Bureau shall release a decision determining whether the complainant has established a *prima facie* case of a violation of §76.1301.

(2) The Chief, Media Bureau may toll the sixty (60)-calendar-day deadline under the following circumstances:

(i) If the complainant and defendant jointly request that the Chief, Media Bureau toll these deadlines in order to pursue settlement discussions or alternative dispute resolution or for any other reason that the complainant and defendant mutually agree justifies tolling; or

(ii) If complying with the deadline would violate the due process rights of a party or would be inconsistent with fundamental fairness.

(3) A finding that the complainant has established a *prima facie* case of a violation of §76.1301 means that the complainant has provided sufficient evidence in its complaint to allow the case to proceed to a ruling on the merits.

(4) If the Chief, Media Bureau finds that the complainant has not established a *prima facie* case of a violation of §76.1301, the Chief, Media Bureau will dismiss the complaint.

(h) *Time limit on filing of complaints*. Any complaint filed pursuant to this subsection must be filed within one year of the date on which one of the following events occurs:

(1) The multichannel video programming distributor enters into a contract with a video programming distributor that a party alleges to violate one or more of the rules contained in this section; or

(2) The multichannel video programming distributor offers to carry the video programming vendor's programming pursuant to terms that a party alleges to violate one or more of the rules contained in this section, and such offer to carry programming is unrelated to any existing contract between the complainant and the multichannel video programming distributor; or

(3) A party has notified a multichannel video programming distributor that it intends to file a complaint with the Commission based on violations of one or more of the rules contained in this section.

(i) *Deadline for decision on the merits*. (1)(i) For program carriage complaints that the Chief, Media Bureau decides on the merits based on the complaint, answer, and reply without discovery, the Chief, Media Bureau shall release a decision on the merits within sixty (60) calendar days after the Chief, Media Bureau's *prima facie* determination.

(ii) For program carriage complaints that the Chief, Media Bureau decides on the merits after discovery, the Chief, Media Bureau shall release a decision on the merits within 150 calendar days after the Chief, Media Bureau's *prima facie* determination.

(iii) The Chief, Media Bureau may toll these deadlines under the following circumstances:

(A) If the complainant and defendant jointly request that the Chief, Media Bureau toll these deadlines in order to pursue settlement discussions or alternative dispute resolution or for any other reason that the complainant and defendant mutually agree justifies tolling; or

(B) If complying with the deadline would violate the due process rights of a party or would be inconsistent with fundamental fairness.

(2) For program carriage complaints that the Chief, Media Bureau refers to an administrative law judge for an initial decision, the deadlines set forth in § 0.341(f) of this chapter apply.

(j) *Remedies for violations*—(1) *Remedies authorized.* Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, mandatory carriage of a video programming vendor's programming on defendant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of a video programming vendor's programming. Such order shall set forth a timetable for compliance, and shall become effective upon release, unless any order of mandatory carriage would require the defendant multichannel video programming distributor to delete existing programming from its system to accommodate carriage of a video programming vendor's programming. In such instances, if the defendant seeks review of the staff, or administrative law judge decision, the order for carriage of a video programming vendor's programming will not become effective unless and until the decision of the staff or administrative law judge is upheld by the Commission. If the Commission upholds the remedy ordered by the staff or administrative law judge in its entirety, the defendant will be required to carry the video programming vendor's programming for an additional period equal to the time elapsed between the staff or administrative law judge decision and the Commission's ruling, on the terms and conditions approved by the Commission.

(2) *Additional sanctions.* The remedies provided in paragraph (j)(1) of this section are in addition to and not in lieu of the sanctions available under title V or any other provision of the Communications Act.

(k) *Petitions for temporary standstill.* (1) A program carriage complainant seeking renewal of an existing programming contract may file a petition along with its complaint requesting a temporary standstill of the price, terms, and other conditions of the existing programming contract pending resolution of the complaint. To allow for sufficient time to consider the petition for temporary standstill prior to the expiration of the existing programming contract, the petition for temporary standstill and complaint shall be filed no later than thirty (30) days prior to the expiration of the existing programming contract. In addition to the requirements of § 76.7, the complainant shall have the burden of proof to demonstrate the following in its petition:

(i) The complainant is likely to prevail on the merits of its complaint;

(ii) The complainant will suffer irreparable harm absent a stay;

(iii) Grant of a stay will not substantially harm other interested parties; and

(iv) The public interest favors grant of a stay.

(2) The defendant multichannel video programming distributor upon which a petition for temporary standstill is served shall answer within ten (10) days of service of the petition, unless otherwise directed by the Commission.

(3) If the Commission grants the temporary standstill, the adjudicator deciding the case on the merits (*i.e.*, either the Chief, Media Bureau or an administrative law judge) will provide for

remedies that are applied as of the expiration date of the previous programming contract.

[64 FR 6574, Feb. 10, 1999, as amended at 76 FR 60673, Sept. 29, 2011]

§§ 76.1303–76.1305 [Reserved]

Subpart R—Telecommunications Act Implementation

SOURCE: 61 FR 18980, Apr. 30, 1996, unless otherwise noted.

§ 76.1400 Purpose.

The rules and regulations set forth in this subpart provide procedures for administering certain aspects of cable regulation. These rules and regulations provide guidance for operators, subscribers and franchise authorities with respect to matters that are subject to immediate implementation under governing statutes but require specific regulatory procedures or definitions.

§ 76.1404 Use of cable facilities by local exchange carriers.

(a) For purposes of §76.505(d)(2), the Commission will determine whether use of a cable operator's facilities by a local exchange carrier is reasonably limited in scope and duration according to the procedures in paragraph (b) of this section.

(b) Based on the record created by §76.1617 of the rules, the Commission shall determine whether the local exchange carrier's use of that part of the transmission facilities of a cable system extending from the last multi-use terminal to the premises of the end user is reasonably limited in scope and duration. In making this determination, the Commission will evaluate whether the proposed joint use of cable facilities promotes competition in both services and facilities, and encourages long-term investment in telecommunications infrastructure.

[65 FR 53617, Sept. 5, 2000]

Subpart S—Open Video Systems

SOURCE: 61 FR 28708, June 5, 1996, unless otherwise noted.

§ 76.1500 Definitions.

(a) *Open video system.* A facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, provided that the Commission has certified that such system complies with this part.

(b) *Open video system operator* (*operator*). Any person or group of persons who provides cable service over an open video system and directly or through one or more affiliates owns a significant interest in such open video system, or otherwise controls or is responsible for the management and operation of such an open video system.

(c) *Video programming provider.* Any person or group of persons who has the right under the copyright laws to select and contract for carriage of specific video programming on an open video system.

(d) *Activated channels.* This term shall have the same meaning as provided in the cable television rules, 47 CFR 76.5(nn).

(e) *Shared channel.* Any channel that carries video programming that is selected by more than one video programming provider and offered to subscribers.

(f) *Cable service.* This term shall have the same meaning as provided in the cable television rules, 47 CFR 76.5(ff).

(g) *Affiliated.* For purposes of this subpart, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(h) *Attributable Interest.* The term ''attributable interest'' shall be defined by reference to the criteria set forth in Notes 1 through 5 to §76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(i) *Other terms.* Unless otherwise expressly stated, words not defined in this part shall be given their meaning

EXHIBIT 3

Estrella TV Stations Owned and Operated by Liberman Broadcasting, Inc.

Hispanic Market Rank	Total Hispanic Households	DMA	Call Sign	Digital Channel
1	1,924,270	Los Angeles	KRCA	62.1
2	1,437,900	New York	WASA	24.1
4	667,160	Houston	KZJL	61.1
5	534,760	Dallas/Ft. Worth	KMPX	29.1
6	528,900	Chicago	WESV	41.1
9	376,070	Phoenix (Prescott)	KVPA	42.1
12	263,390	San Diego	KSDX	9.1
17	242,680	Denver	KETD	53.1
32	94,090	Salt Lake City	KPNZ	24.1

= Comcast Markets Where Estrella TV is no longer carried

Estrella TV Affiliates

Hispanic Market Rank	Total Hispanic Households	DMA	Owner	Call Sign	Digital Channel
3	770,180	Miami-Ft. Lauderdale	Sunbeam	ESVN	7.2
7	443,440	San Antonio	Gannett	NENS	5.2
8	426,450	San Francisco-Oakland-San Jose	Titan	KTNC	42.1
10	316,640	Harlingen-Brownsville-McAllen	Nexstar	NVEO	23.2
11	282,240	Sacramento-Stockton-Modesto	Hearst	OQCA	46.2
13	260,220	Fresno-Visalia	Sinclair	NFRE	59.2
14	249,990	Orlando-Daytona Bch-Melbourne	Hearst	GKCF	18.3
15	261,200	Albuquerque-Santa Fe	Hearst	NOAT	7.2
19	239,750	El Paso (Las Cruces)	Nexstar	NTSM	9.2
20	234,260	Tampa-St. Petersburg (Sarasota)	Hearst	GMOR	32.3
22	179,300	Austin	Gannett	NVUE	24.2
23	173,520	Atlanta	Prism B'casting	IANN	32.10
24	164,990	Las Vegas	Sinclair	NSNV	21.2
25	127,500	Tucson (Sierra Vista)	Gannett	NTTU	18.2
28	112,960	West Palm Beach-Ft. Pierce	Hearst	EPBF	25.2
30	96,440	Bakersfield	Jacco	KBBV	19.1
31	95,510	Portland, OR	Gannett	NGW	8.3
33	82,230	Raleigh	DTV America	WNCB	15.1
34	78,840	Monterey-Salinas	Cocola	NMBY	19.2
35	72,140	Ft Myers	WGPS of SW FL	WGPS	22.1
36	71,420	Charlotte	Norsan Media	WCEE	16.1
37	70,810	Odessa-Midland	Nexstar	NPEJ	24.2
39	67,870	Yuma	Northwest	OSWT	13.3
40	65,670	Waco-Temple-Bryan	Nexstar	NWKT	44.2
46	57,080	Yakima	Hispanivision	KWYT	39.2
47	56,380	Oklahoma City	Tyler	KOCY	48.1
50	54,260	Lubbock	DTV America	KNKC	29.1
51	53,030	Amarillo	DTV America	KLKW	22.1
59	40,400	Reno	DTV Innovators	KRMF	7.3
68	30,790	Tyler-Longview, TX	DTV America	KDKJ	27.1
69	28,360	Tulsa	Perez	KXAP	51.1
71	26,240	Boise	Cocola	KZAK	49.2
72	25,880	Ft Smith-Fayetteville, AR	Kaleidoscope	KEGW/KSJF	30.1 & 50.1
80	21,240	Memphis	Intern. Enter.	WPGF	17.1
81	21,090	Chico	DT Innovators	KBIT	51.2
87	18,970	Little Rock	Kaleidoscope	KKYK	30.1
138	6,990	Wilmington, NC	DTV America	WADA	41.1

EXHIBIT 4

[Redacted in its Entirety from Public Version]

EXHIBIT 5

PUBLIC VERSION

With Comcast's backing, Telemundo ready to compete

Jaime Becerril and Iris Delgado on the set of "Noticiero Telemundo62." Comcast is spending millions to take on No. 1 Spanish-language network Univision. (DAVID SWANSON / Staff Photographer)

GALLERY: Weather anchor Violeta Yas on the set of "Noticiero... (DAVID SWANSON...)

By Bob Fernandez, Staff Writer

POSTED: December 28, 2015

Cesar Conde, the head of Comcast-owned Telemundo network, peppers his conversation with references to popular American cable shows *Homeland* and *Breaking Bad*, and says it feels like a new era in Spanish-language TV.

There is, Conde said, "a tectonic shift taking place in Hispanic media."

And Philadelphia's Comcast - which acquired the also-ran Telemundo network as part of its $30 billion deal for NBCUniversal in 2011 - is aiming to be a big part of it.

The nation's cable giant, with tentacles all over the media landscape, is spending hundreds of millions of dollars to take on the No. 1 Spanish-language network, Univision, by developing faster-paced Americanized dramas, locking up the TV rights to World Cup Soccer into the 2020s, and launching live local newscasts in big TV markets, such as Philadelphia.

The winner of this pitched TV battle for eyeballs will gain the largest access to a fast-growing Hispanic market that is expected to account for 40 percent of the U.S. household formations over the next decade and grow to 77 million Hispanics by 2030 from today's 57 million.

"Comcast isn't investing into Telemundo because they love Mexicans," said Alex Nogales, CEO of the advocacy group National Hispanic Media Coalition. "They are doing it because it was a great business proposition."

Added Nogales: "Telemundo has been the stepchild of Hispanic media for many years. Now they have a big sugar daddy and they can compete."

The results have been impressive so far: Telemundo has narrowed Univision's 2.4 million prime-time viewer lead in 2011 to 923,000 viewers this year, according to Nielsen figures provided by Telemundo. This is for weekdays.

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The Nielsen numbers also show that Univision's average weekday prime-time audience has fallen to 2.6 million viewers this year from 3.7 million in 2011, which partly reflects the broad declines in TV viewership across the industry.

Telemundo's prime-time audience, moreover, grew to 1.7 million from 1.3 million over the same period. Telemundo officials believe they are taking Hispanic market share from rival Univision.

Telemundo attributes the positive ratings trends to its 10 p.m. "super series," one of the new faster-paced American-style dramas. Among the most popular has been *El Senior de Los Cielos* ("Lord of the Skies") about a narco-trafficker who comes back from the dead to seek revenge on enemies, which aired its third season this year.

Nogales, of the Hispanic media coalition, said that Telemundo "hit the jackpot" with the shows, comparing them to *The Godfather* movies with antiheroes.

Now solid at the 10 p.m. time slot, Telemundo is targeting 8 p.m. with a "bio-musical," or a fictionalized musical drama. The current one is of Cuban salsa queen Celia Cruz.

"It is basically changing the model of what Spanish-language programming looks like," said Telemundo spokeswoman Michelle Alban.

Felix Gutierrez, professor emeritus at the USC Annenberg School for Communication and Journalism, said that Telemundo appears to have found a niche by producing Americanized shows that connect with Hispanics instead of importing telenovelas from Mexico.

Univision spokeswoman Esther Tejeda said Univision remains popular with audiences and beats the English-language networks ABC, CBS, NBC and Fox on some nights. One recent Saturday, she said, "Univision ranked as the No. 3 network," beating NBC and Fox.

Univision Communications Inc. - a privately held company whose owners include billionaire Haim Saban, Madison Dearborn Partners, Providence Equity Partners, TPG, and Thomas H. Lee Partners - recently postponed its initial public offering.

Univision's board postponed the IPO until early 2016 because of the poor performance of media-company stocks and a weak market for first-time share sales, according to reports in the Wall Street Journal.

The programmer, which includes Spanish-language cable networks and digital properties, went private in 2007 in a $13.7 billion debt-laden deal and its partners have been seeking an exit.

In a filing with regulatory authorities, Univision reported $2.9 billion in revenue and $900,000 in profits for 2014. Bloomberg estimates that the Univision TV broadcast network generated $1.1 billion in advertising revenue in 2014. Telemundo had $457 million, a 35 percent jump from 2011, according to Bloomberg.

Comcast's success with Telemundo has a precedent. Steve Burke, the former Comcast cable executive who heads the company's NBCUniversal unit, has turned around the over-the-air NBC TV network. Conde, a former Univision executive, is now chairman of Telemundo Enterprises and reports to Burke. Comcast CEO Brian Roberts has mentioned the rise of Hispanic television in the same breath as the rapid growth in the highly profitable Universal theme parks.

In the Philadelphia region, more than 20 NBC10 news trucks now cruise the highways and rowhouse neighborhoods with both the NBC logo and Telemundo's stylized red "T" - part of a "duopoly" strategy of NBC10 and Telemundo sharing resources.

Over the last two years, Philadelphia affiliate Telemundo62 has launched slick Spanish-language local newscasts by piggybacking on NBC10's camera crews and coordinating news coverage, beginning with a 9:15 a.m. editorial meeting.

This was evident one recent morning at NBC10's office in Bala Cynwyd.

Telemundo62 reporter Christian Cazares and three Telemundo62 news managers joined about a dozen NBC10 staffers in the morning meeting run by vice president of news Anzio Williams.

Williams listened to weatherman Glenn "Hurricane" Schwartz forecast record highs and to early takes from producers on developing new stories, concluding with, "We should kill it on weather."

Williams then turned to the Telemundo62 staffers to ask what they saw as their stories. Cazares said he was covering a protest rally for unionized janitors whose contract was about to expire. He also was looking into an alleged child molestation in Atlantic City.

Cazares' story on the janitors - many of them chanting in Spanish as they protested outside corporate offices in Chester County - aired on Telemundo62 newscasts at 5:30, 6, and 11 p.m. - which together have a viewership of about 21,000 a night, according to the network. Cazares said he was interested in the story because "we have a lot of Hispanics working as janitors."

bfernandez@phillynews.com

215-854-5897

@bobfernandez1

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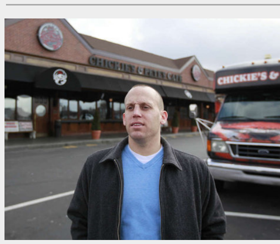

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EXHIBIT 6

Complaints Filed Against Comcast under the Program Carriage Rules

Date of Complaint	Complainant	Communities	File Number	Docket Number	Principal Issue(s)	Public Notice Number & Date	Hearing Designation or Initial Decision
6/14/2005	TCR Sports Broadcasting Holding, LLP	Washington, DC	CSR-6911-N	MB 06-148	Denial of Carriage; Demand for Financial Interest	Report No. 0151 (07/18/2005)	FCC 06-111 21 FCC Rcd 8989 (07/31/2006)
4/21/2008	Herring Broadcasting, Inc. (WealthTV)	San Diego, CA	CSR-7907-P	MB 08-214	Denial of Carriage; Demand for Financial Interest	Report No. 0252 (06/03/2008)	DA 08-2269 23 FCC Rcd 14787 (10/10/2008)
5/06/2008	NFL Enterprises, LLC	New York, NY	CSR-7876-P	MB 08-214	Tier Discrimination; Demand for Financial Interest	Report No. 0250 (05/16/2008)	DA 08-2269 23 FCC Rcd 14787 (10/10/2008)
7/01/2008	TCR Sports Broadcasting Holding, LLP	VA, WV, DE, DC, PA & NC	CSR-8001-P	MB 08-214	Denial of Carriage	Report No. 0257 (07/18/2008)	DA 08-2269 23 FCC Rcd 14787 (10/10/2008)
1/05/2010	The Tennis Channel, Inc.	National	CSR-8258-P	MB 10-204	Tier Discrimination	Report No. 0303 (01/14/2010)	DA 10-1918 25 FCC Rcd 14149 (10-05-2010)
6/13/2011	Bloomberg LP	National	None	MB 11-104	"Neighborhooding" Discrimination Under Comcast-NBCU Order	DA 11-1077 (06/20/2011)	DA 12-694, 27 FCC Rcd 4891 (5/02/2012) (Decided by Media Bureau)

EXHIBIT 7

PUBLIC VERSION

LIBERMAN BROADCASTING, INC.
1845 W. Empire Avenue, Burbank, CA 91504
phone (818) 729-5300, fax (818) 729-5308

February 9, 2016

VIA EMAIL & FEDERAL EXPRESS

Mr. Brian L. Roberts, Chairman & CEO
Comcast Corporation
One Comcast Center
1701 JFK Boulevard
Philadelphia, PA 19103-2838

Mr. Neil Smit, President & CEO
Comcast Cable Communications, LLC
One Comcast Center
1701 JFK Boulevard
Philadelphia, PA 19103-2838

Re: Estrella TV – Pre-Filing Notice Pursuant to 47 C.F.R. § 73.1302(b) (Program Carriage Complaint)

Dear Messrs. Roberts and Smit:

LBI Media, Inc. and its parent company Liberman Broadcasting, Inc. (collectively "LBI") hereby provide notice pursuant to Section 76.1302(b) of the Rules of the Federal Communications Commission ("FCC" or "Commission") of their intent to file with the FCC a program carriage complaint against Comcast Cable Communications, LLC and its parent company Comcast Corporation (collectively "Comcast"). LBI's complaint will be predicated on violations by Comcast of 47 C.F.R. § 76.1300 *et seq.* ("Carriage Rules"), which implement Section 616 of the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. § 536), as well as violations of the express programming non-discrimination conditions imposed in the Commission's 2011 Order granting Comcast's application to acquire NBC Universal, Inc. *See Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. (For Consent to Assign Licenses and Transfer Control of Licensees)*, 26 FCC Rcd 4238, 4287 (¶ 121), 4353 (¶ 285) & Appendix A, Section III at 4358-59 (2011) ("Merger Order").

LBI is a minority-owned, independent "video program vendor" within the meaning of 47 C.F.R. § 76.1300(e). LBI offers and provides Spanish-language video programming on its Estrella TV television network ("Estrella TV"), including both LBI-produced programs and other exclusive programming. Estrella TV programming encompasses news, as well as sports, variety, talk, reality, drama, music, and comedy programming, and it competes directly with Spanish-language programming on both the Comcast-owned Telemundo and NBC Universo television networks. Estrella TV is currently distributed via multiple outlets, including LBI's owned and operated television stations, as well as broadcast TV affiliates and multichannel video programming distributors ("MVPDs") of wide-ranging size and scope.

As Comcast is aware, during the period from the Fall of 2014 until October 2015, Comcast and LBI engaged in multiple discussions, some involving senior executives of both companies, through which LBI sought to expand distribution of Estrella TV (and secure related compensation) on Comcast cable systems nationwide. These discussions, in which Estrella TV sought expanded Comcast distribution and compensation, ended in October 2015 with Comcast flatly refusing to meet LBI's carriage requests relating to Estrella TV, or to provide LBI any compensation for Estrella TV. LBI seeks distribution and compensation from Comcast on a comparable basis to that which Comcast affords to its own directly competitive Spanish-language television network, Telemundo. Such an arrangement is amply supported by Estrella TV's consistently strong Nielsen ratings performance vis-à-vis Telemundo and Comcast-owned NBC Universo in the overall Spanish-language marketplace – when LBI is allowed to compete on a level playing field. Estrella TV's strong viewership in markets like Los Angeles, where a level MVPD distribution playing field exists, demonstrates the validity of LBI's position.

However, from the beginning of the LBI/Comcast discussions in 2014 until their conclusion late last year, Comcast refused to provide LBI any significant distribution of Estrella TV programming beyond the Houston, Denver, and Salt Lake City markets to which Estrella TV had been entitled as a broadcast licensee under the FCC's "must-carry" rules, and Comcast has rejected out-of-hand any type of fair compensation for Estrella TV distribution. Multiple exchanges of correspondence between Comcast and LBI, as well as face-to-face meetings in Philadelphia in October 2014 and February 2015, failed to result in a carriage agreement. Not only did Comcast refuse to engage LBI in good faith in any *bona fide* discussion of the business merits of expanded Comcast carriage of Estrella TV, but it demonstrated its bad faith by making, and failing to withdraw, a demand that Estrella TV surrender its digital rights in Estrella TV programming as an express condition of a deal for Comcast carriage of Estrella TV programming.

Under the circumstances presented, including but not limited to the demonstrated marketplace appeal that has allowed LBI to secure distribution of Estrella TV programming by a wide cross-section of industry-leading – *but non-conflicted* – MVPDs and broadcast companies, Comcast's refusal to distribute Estrella TV on terms and conditions consistent with Comcast-owned Spanish-language networks Telemundo and NBC Universo is fundamentally inconsistent with the type of evenhanded business decision-making that would govern if Comcast's MVPD business were not concerned with protecting those networks from competition. The manifest discrimination against LBI and its Estrella TV network arising from the vertical integration of these businesses (i.e., MVPD and Spanish-language television networks), coupled with Comcast's demand that LBI cede to it digital streaming rights for the network as a condition of carriage, violates both Sections 76.1301(a) and (c) of the Carriage Rules. 47 C.F.R. §§ 76.1301(a) & (c).

In addition, Comcast's affirmative discrimination against its unaffiliated competitor, Estrella TV, violates the express conditions imposed on Comcast in the Merger Order that it "not discriminate in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection of, and terms and conditions for, carriage." Merger Order, 26 FCC Rcd at 4287 (¶ 121). There, the Commission stated that for a period of seven (7) years after the Commission release of the Merger Order (i.e., until January 2018), "[if] program carriage disputes arise based on this non-discrimination condition, it will be sufficient for the aggrieved vendor to show that it was discriminated against on the basis of its affiliation or non-affiliation" and that such a vendor "will not need to also prove that it was unreasonably restrained from competing, as it would under our program carriage rules." *Id.* It should be noted that a violation of a Merger Order Condition constitutes a per se violation of the Merger Order itself.

This pre-filing notification letter starts a ten-day period after which LBI may file a program carriage complaint against Comcast pursuant to the Carriage Rules and the Merger Order. 47 C.F.R. § 76.1302(b). Under any interpretation of the FCC's rules, this ten-day period will end on February 22, 2016. LBI's complaint will, *inter alia*, seek findings of violations by, and appropriate enforcement action against, Comcast, as well as other relief that will enjoin Comcast from further discriminatory actions against LBI, and that will provide LBI distribution and compensation parity with Comcast's carriage of Comcast-owned Telemundo.

Should you have questions regarding this notice, or should Comcast wish to engage in a good faith dialogue prior to LBI's filing of the complaint, please direct all communications to our FCC regulatory counsel in this matter, Dennis P. Corbett of Lerman Senter PLLC, at (202) 416-6780 or by email at dcorbett@lermansenter.com.

This letter is not intended to be a complete statement of the facts or legal issues regarding this matter, nor a waiver or limitation upon any of LBI's rights and remedies, whether at law or in equity, all of which are hereby expressly reserved.

Very truly yours,

Lenard D. Liberman
President & CEO
Liberman Broadcasting, Inc. &
LBI Media, Inc.

cc (by email and Federal Express):
David L. Cohen, Senior Executive Vice President, Comcast
Arthur R. Block, Senior Vice President, General Counsel & Secretary, Comcast
James L. Casserly, Willkie Farr & Gallagher, Counsel to Comcast
David H. Solomon, Wilkinson Barker Knauer, LLP, Counsel to Comcast
Dennis P. Corbett, Lerman Senter PLLC, Counsel to LBI
Nicholas Simmons, General Counsel, LBI

EXHIBIT 8

[Partially Redacted in Public Version]

COMCAST

Comcast Corporation
300 New Jersey Avenue, NW
Suite 700
Washington, DC 20001

February 18, 2016

Via E-mail & Federal Express

Mr. Lenard D. Liberman
President & CEO
Liberman Broadcasting, Inc. & LBI Media, Inc.
1845 W. Empire Avenue
Burbank, CA 91504

Re: Estrella TV Pre-Filing Notice of Program Carriage Complaint

Dear Mr. Liberman:

I am in receipt of your letter of February 9 threatening to file a program carriage complaint against Comcast. Such a complaint would be meritless. We urge you to reconsider pursuing such a frivolous action. Should Liberman Broadcasting, Inc. ("LBI") proceed with litigation, Comcast will defend itself vigorously and reserves all rights in doing so.

As we have consistently made clear, including in our most recent (October 15, 2015) correspondence with your company, Comcast's negotiations with LBI and consideration of Estrella TV have been based on the merits and have not been the product of any economic motive to discriminate in favor of Telemundo or any other Comcast-affiliated network. For the reasons more fully outlined below, there is no "discrimination on the basis of affiliation or non-affiliation" to be found here. We also note that, a year ago, it was LBI that (1) chose to pull its broadcast signals from Comcast systems in Houston, Denver, and Salt Lake City, in an effort to leverage what LBI wrongly perceived to be an opportunity to extract unwarranted fees and expanded carriage, and then (2) serially rejected various offers we made to restore carriage of the programming in the affected markets.

LBI's claim that Comcast has violated the prohibition against "requir[ing] a financial interest in any program service as a condition for carriage"[1] is similarly baseless. Comcast has never sought or demanded a "financial interest" (i.e., an *equity* or *ownership* interest) in Estrella TV, much less as a condition for carriage. The conduct you are presumably referencing – Comcast's proposal for certain *non-exclusive* digital distribution rights – was not a demand that LBI "surrender" anything. Instead, it was a standard request for access to TV Everywhere and other rights for Comcast customers, as part of the larger licensing negotiations, and, in all instances, was subject to LBI itself already having the rights to grant to Comcast. There is nothing unusual, much less improper, about including such terms in a retransmission consent negotiation.

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1 47 C.F.R. § 76.1301(a).

As a threshold matter, LBI's threatened complaint would likely fail as a matter of law. As a broadcaster whose arrangements with MVPDs are governed by broadcaster-specific statutory and regulatory rights and obligations, LBI has no legal standing to bring a program carriage complaint pursuant to the Commission's program carriage rules.[2] Qualifying broadcasters *do* have the ability to obtain forced-carriage on cable systems, *but only* via the broadcast *must-carry* regime. Broadcasters that forgo must-carry status and elect retransmission consent (as did LBI for its stations in the Houston, Denver, and Salt Lake City markets) are governed instead – as are the MVPDs with which they negotiate – by the good-faith negotiation obligations of the Communications Act and the FCC's implementing rules.[3]

In contrast, the program carriage regime governs carriage negotiations between MVPDs and non-broadcast "video programming vendors" (i.e., cable programmers).[4] That is why, in the more than two decades since the program carriage and retransmission consent rules have been in place, there is *no precedent* for a *broadcaster* bringing a program carriage complaint. This same clear distinction is reflected in the NBCUniversal Conditions: Section III of the Conditions sets forth provisions concerning carriage of unaffiliated video programming, including the program carriage non-discrimination provision that LBI invokes; a wholly separate section establishes protections for broadcast station programming (Section IX "Broadcast Conditions"), including *non-discrimination* protection for eligible broadcasters in their retransmission consent negotiations with Comcast.[5]

But even leaving the determinative standing issue aside, LBI's claims of discrimination are demonstrably wrong. It is our business to assess and address our customers' demand for programming in an intensely competitive marketplace, and our evaluation of the limited demand for Estrella TV in the relevant markets led us to conclude that there were no benefits of continuing to carry the network that could even begin to justify the significant monetary compensation LBI demanded for that privilege. And nothing that has happened since has led us to question our original assessment – we have seen no evidence of customer demand for Estrella TV in the three markets where LBI pulled the Estrella TV signal more than a year ago. Furthermore, where Comcast continues to distribute Estrella TV, it has seen no discernible audience interest during the past year. In short, our decision not to pay the price LBI demanded was not unlawful discrimination; it was instead an appropriate exercise of reasonable business judgment in the interest of our customers – and one that has been confirmed since.

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2 *See* 47 C.F.R. §§ 76.1300-1302 (implementing Section 616 of the Communications Act, 47 U.S.C. § 536); *see also Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, 26 FCC Rcd. 4238, Appendix A, § III.1, 4 (2011) ("NBCUniversal Conditions").

3 *See* 47 C.F.R. § 76.65 (implementing Section 325(b)(3) of the Communications Act, 47 U.S.C. § 325(b)(3)). Comcast did negotiate in good faith, and LBI has neither alleged nor could it sustain a claim under the FCC's good-faith negotiation rules.

4 *See* 47 C.F.R. § 76.1300(e).

5 *See* NBCUniversal Conditions, §§ III, IX.

Your letter points to no contrary evidence and simply fails to address, or even acknowledge, the following factual points that seriously undermine your claim:

- Prior to LBI pulling the three Estrella TV signals from Comcast systems in Houston, Denver, and Salt Lake City (serving about 1.5 million customers) in February 2015, Comcast was Estrella TV's largest distributor, including Comcast's *voluntary* carriage of Estrella TV's wholly-owned low-power stations in New York and Chicago, as well as a number of Estrella TV signals carried on a multicast basis by broadcasters in other markets – local distribution not found on our largest competitors. Today, *Comcast still carries Estrella TV to 5.9 million customers* – a fact that cannot be squared with allegations that Comcast seeks to suppress carriage of Estrella TV to benefit Telemundo, or (for that matter) that Estrella TV has somehow been unreasonably restrained from competing fairly.

- Indeed, between 2011 and 2014, *Comcast steadily expanded Estrella TV carriage within our footprint*, similar to how we have treated other Hispanic broadcast networks with relatively comparable audiences, during that same time period, including Azteca America and MundoFox (now MundoMax). As LBI's representative at the time acknowledged in a communication with us in September of 2014, "To date, Comcast has been very good to Estrella [TV]."[6]

- It was LBI that: (1) chose to disrupt that status quo when, beginning in the Fall of 2014 through early 2015, it made exorbitant demands for fees for continued carriage by Comcast of Estrella's TV stations in Houston, Denver, and Salt Lake City, coupled with other unreasonable terms for carriage of Estrella TV's satellite feed; (2) unilaterally pulled the Estrella TV signals from Comcast systems in these three markets in February 2015 (thereby self-inflicting any harms LBI/Estrella TV claims to have incurred), when we would not acquiesce to those unreasonable demands; (3) rejected our proposals in February and March 2015 to resume carrying those three signals on the status-quo-ante terms, consistent with market conditions for comparable stations, with some additional distribution; (4) rejected Comcast's offer in May 2015 to carry the three signals on status-quo-ante terms; (5) then reversed course *again* in August and sought to resuscitate the same May proposal that LBI had previously rejected; and (6) in September 2015, reversed course a third time and purported to "refresh the ground" by reverting to an even more exorbitant demand going back to January 2015.

- Nor is there any marketplace evidence that Estrella TV warrants anything like the "distribution and compensation parity with Comcast's carriage of . . . Telemundo" that LBI demands. Rather, there is ample objective marketplace evidence that Estrella TV and Telemundo are *not* similarly situated in multiple dispositive ways.[7] But even

---

6 Sept. 8, 2014 E-mail from Michael Ruggiero, ATV Broadcast, to Michael Nissenblatt, Comcast Cable.

7 The mere fact that Estrella TV and Telemundo are both Spanish-language networks is insufficient to meet the threshold requirement that these networks be "similarly situated" for purposes of a prima facie case of program carriage discrimination. *See* 47 C.F.R. § 76.1302(d)(3)(iii)(B)(*2*)(*i*). As the Commission has made clear:

> focusing narrowly on ratings, as your letter does, LBI's claim that Estrella TV has "consistently strong Nielsen ratings performance vis-à-vis Telemundo" is simply not accurate. As we detailed in our prior correspondence, Telemundo regularly outperforms Estrella TV in ratings by *several multiples*. In 2014, for example, on a national basis, both Telemundo's average annual primetime rating ([redacted]) and 24-hour rating ([redacted]) were [redacted] *higher* than Estrella's respective average primetime rating ([redacted]) and 24-hour rating ([redacted]).[8] Locally, in Houston – which is the largest and most heavily Hispanic-penetrated of the three affected markets, and where Estrella TV's broadcast platform is equal to those of other Spanish-language broadcasters – Estrella TV's ratings' performance significantly lagged Telemundo's on both a 24-hour ([redacted] versus [redacted]) and primetime ([redacted] versus [redacted]) basis among Hispanic households for the cumulative 2014 sweeps periods. Indeed, Estrella TV's ratings weakness relative to Telemundo continued in December 2015, lagging Telemundo by a factor of [redacted] in 24-hour ratings, and by a factor of [redacted] in primetime ratings.[9]

In short, LBI's demands for retransmission consent fees and expanded carriage are unjustified and, in the year since LBI made the decision to pull its programming, Comcast's views as to the value of Estrella TV's programming in the marketplace have only been reinforced: Comcast has not detected any customer defection to other MVPDs due to the loss of this programming in these markets. As a result, the value proposition to Comcast of carrying Estrella TV more broadly than we do today is simply not there. It is not unlawful discrimination to have reached that conclusion, but rather an exercise of reasonable business judgment.

If LBI has any material information it wishes to share with us that it believes warrants further consideration of the value proposition it is offering, we are of course open to considering such information as appropriate. Should LBI pursue a litigation path, however, we will have no qualms about presenting our compelling case to the Commission.

> Although no single factor is necessarily dispositive, the more factors that are found to be similar, the more likely the programming in question will be considered similarly situated to the affiliated programming. On the other hand, *it is unlikely that programming would be considered 'similarly situated' if only one of these factors is found to be similar*. For example, *a complainant is unlikely to establish a prima facie case of discrimination on the basis of affiliation by demonstrating that the defendant MVPD carries an affiliated music channel targeted to younger viewers but has declined to carry an unaffiliated music channel targeted to older viewers with lower ratings and a higher license fee*.

Revision of the Commission's Program Carriage Rules, Second Report and Order, 26 FCC Rcd. 11494, ¶ 14 (2011) (emphasis added).

8 SNL Kagan, Network Economics. The same holds true for 2012 and 2013. In each of those years, Estrella TV had an average primetime rating of [redacted] and average 24-hour rating of [redacted]. *Id.* Telemundo's average primetime rating was [redacted] in 2012 and [redacted] in 2013, and its average 24-hour rating was [redacted] in 2012 and [redacted] in 2013. *Id.* Thus, in view of the cumulative 2012-2014 ratings record, LBI's prior claim that Estrella TV's inferior ratings performance vis-à-vis Telemundo was only the case after it pulled its signals from Comcast systems in Denver, Houston, and Salt Lake City (*see* Sept. 30, 2015 LBI Letter to Comcast) is simply not true.

9 In December 2015, Telemundo's average primetime rating was [redacted], and Estrella TV's was [redacted]; Telemundo's average 24-hour rating was [redacted], and Estrella TV's was [redacted]. Kym Christelle Nator, *Domestic broadcast ratings slip in December '15*, SNL Kagan (Feb. 10, 2016).

Sincerely,

Francis M. Buono
Senior Vice President
Legal Regulatory Affairs &
Senior Deputy General Counsel
Comcast Corporation

cc: Dennis P. Corbett, Lerman Senter PLLC (via e-mail)
Nicholas Simmons, General Counsel, LBI (via e-mail)

EXHIBIT 9

PUBLIC VERSION

LERMAN SENTER PLLC

WASHINGTON, DC

DENNIS P. CORBETT
202.416.6780
DCORBETT@LERMANSENTER.COM

February 26, 2016

Via Email and Hand Delivery

Alex J. Moyer, Esq.
Willkie Farr & Gallagher LLP
1875 K Street, NW
Washington, DC 20006-1238

Re: Liberman Broadcasting, Inc./LBI Media, Inc. v. Comcast Cable Communications, LLC and Comcast Corporation

Dear Alex:

On February 18, 2016, I received from you a pdf of a letter of that same date from Comcast Corporation Senior Deputy Counsel Francis M. Buono to Lenard D. Liberman, President and CEO of Liberman Broadcasting, Inc. and LBI Media, Inc. (collectively, LBI). The letter from Mr. Buono references Mr. Liberman's letter of February 9, 2016 to Comcast executives Brian L. Roberts and Neil Smit (the LBI Notice) and urges LBI to reconsider what Mr. Buono characterizes in his first paragraph as an LBI "threat[]" to file what Mr. Buono also characterizes therein as a "meritless" and "frivolous" program carriage complaint against Comcast with the Federal Communications Commission. LBI responds as follows.

First, as a threshold matter, even if Mr. Liberman had not specified, as he did in the LBI Notice, that all Comcast communications concerning this matter be directed to undersigned LBI counsel, Rule 4.2 of the District of Columbia Rules of Professional Conduct prohibits one client's lawyer from communicating directly with another lawyer's client, unless that other lawyer has given prior consent.[1] By sending his missive to the President and CEO of my client, Mr. Buono clearly violated this fundamental Rule and LBI hereby expressly reserves all its rights and remedies with respect to Mr. Buono's (and Comcast's) improper actions. To be clear, and to prevent any further violations of the Rules of Professional Conduct, LBI has never given any consent to any Comcast lawyers allowing them to communicate directly with my client and, in

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[1] *See In re Hansen*, Bar Docket No. 507-02, at 3 & 4 (informal admonition) (July 30, 2003) ("When you sent your letter to [attorney] Byrum's client, you communicated directly with a party that you knew, or should have known, was represented by Ms. Byrum. Further, you communicated directly with Ms. Byrum's client regarding the subject of Ms. Byrum's representation, without authorization from Ms. Byrum .... The letter constitutes clear and convincing evidence of misconduct in violation of Rule 4.2(a).").

the absence of such consent, Rule 4.2 (and/or the corresponding rule from any other State Bar to which a Comcast lawyer may be subject) prohibits them from directly communicating with LBI.

Second, Mr. Buono's characterization of the LBI Notice as a "threat" is flatly inaccurate. 47 C.F.R. § 76.1302(b) *mandates* that LBI provide notice to Comcast at least ten days before filing a program carriage complaint.

Third, Mr. Buono's letter confirms that the LBI and Comcast positions in this matter sharply diverge, necessitating LBI's complaint. LBI accedes to none of the positions Mr. Buono takes in his letter regarding the merits of this dispute, and will vigorously dispute his claims in all respects.

Fourth, although I do not address herein Mr. Buono's positions on the merits point-by-point, I will briefly take up two of them – LBI's standing to bring this complaint and the viability of LBI's claim that Comcast's insistence on obtaining LBI digital rights during the parties' carriage negotiations was unlawful:

(a) Mr. Buono contends that broadcasters lack standing to bring carriage complaints because they may exercise must carry rights and are obligated, as are MVPDs, to negotiate retransmission agreements in good faith. Mr. Buono stakes this lack of standing claim in part on the fact that no broadcaster has previously brought such a complaint. I recognize that the benefits to Comcast would be dramatic if Mr. Buono's promised challenge to LBI's standing had merit. After all, such a ruling would establish a spacious safe haven within which Comcast would be free to discriminate against any video programming vendor ("VPV") which happens to both hold broadcast licenses and compete in the MVPD marketplace with a Comcast-owned network like Telemundo (itself a company that is both a broadcast licensee and a VPV). But Mr. Buono's argument in fact is without merit. No statute, FCC rule, or FCC decision recognizes the "standing" restriction Comcast apparently plans to try to champion. To the contrary, as LBI will more fully articulate in its complaint in this matter, LBI is the quintessential VPV, fitting squarely within, among other things, the definition of VPV consistently articulated in 47 U.S.C. § 536(b), 47 C.F.R. § 76.1300(e), and Appendix A of the Comcast/NBCU Merger Order, as well as positions taken by the FCC in court. Mr. Buono's claimed Comcast discrimination safe haven is illusory.

(b) Mr. Buono is dismissive of LBI's claim that Comcast's insistence on obtaining LBI digital rights as a condition of carriage violated 47 C.F.R. § 76.1301(c), arguing that such digital rights are in effect, "no big deal," merely embedded within and ancillary to carriage agreements. Mr. Buono's letter improperly treats Comcast's claim to digital rights as if they were a Comcast birthright, a notion which is as unfounded as his attempt to treat the 47 U.S.C. § 536(a)(1) term "financial interest" as if it somehow encompasses only "ownership" and "equity" rights. In fact, digital programming rights are clearly a "financial interest" within the meaning of the relevant statute and rule, with real value to MVPDs like Comcast, as evidenced by the publicity surrounding the recent live streaming rights deal between CBS and Cablevision. If these rights conferred no financial benefit, Comcast would neither want nor demand them. Against this background, LBI's claim concerning Comcast's unlawful grab for digital rights will present the government with an issue of fundamental importance and consequence reaching far beyond the Comcast/LBI dispute. To the extent no VPV has complained to date about Comcast's insistence on obtaining these rights as a condition of carriage, that only magnifies the importance of this issue here. If LBI prevails, Comcast can expect the floodgates to open. Every VPV which has found itself surrendering its digital rights in return for carriage will have the precedent to support a new cause of action. See 47 C.F.R. § 76.1302(h)(1). LBI looks forward to resolution of all issues to be presented, including this key issue, truly one "of first impression."

Finally, in anticipation of LBI's filing its program carriage complaint, I am attaching hereto a records preservation notice. Please circulate it comprehensively on the Comcast side of this dispute.

If you have any questions regarding this letter, or the matters addressed herein, please ensure that any and all such communications are directed exclusively to my attention. This letter is not intended to be a complete statement of the facts or legal issues regarding this matter, nor a waiver or limitation upon any of LBI's rights and remedies, whether at law or in equity, all of which are hereby expressly reserved.

Sincerely,

Dennis

Dennis P. Corbett

Attachment

LERMAN SENTER PLLC

WASHINGTON, DC

DENNIS P. CORBETT
202.416.6780
DCORBETT@LERMANSENTER.COM

February 26, 2016

Via Email and Hand Delivery

Alex J. Moyer, Esq.
Willkie Farr & Gallagher LLP
1875 K Street, NW
Washington, DC 20006-1238

Re: Records Preservation Notice
Liberman Broadcasting, Inc./LBI Media, Inc. v. Comcast Cable Communications, LLC and Comcast Corporation

Dear Alex:

We represent Liberman Broadcasting, Inc. and LBI Media, Inc. (collectively "LBI") against Comcast Cable Communications, LLC and Comcast Corporation (collectively "Comcast") in the above-referenced matter, which has already been the subject of a February 9, 2016 letter, in which LBI gave Comcast the notice required by 47 C.F.R. § 1302(b) of its intent to file a program carriage complaint with the Federal Communications Commission against Comcast, and to which Francis M. Buono of Comcast responded on February 18, 2016. We believe that information within Comcast's possession, custody, or control may contain evidence relevant to this matter.

This letter requests Comcast's immediate action to preserve all electronic or hard copy records, in any form whatsoever, from January 1, 2014 to the present, potentially relevant to LBI's impending program carriage complaint against Comcast. Electronically stored information (ESI) should be afforded the broadest possible definition and includes potentially relevant information stored electronically, magnetically, or optically, including, but not limited to, emails, back-up tapes, any archived data, documents, graphs, stored on shared servers, tablets, and desktop and laptop computers (office and person), electronic contact lists and calendars, voicemails, and data stored on phones (images, voicemail, and texts). It does not matter what format the information is stored in – whether on a computer hard drive, disk, CD-ROM, DVD-ROM, tape back-up media, or any other format capable of storing electronic information.

The importance of immediate action cannot be overstated. ESI is easily corrupted, altered, and deleted in normal daily operations. Even booting a drive, running an application, or reviewing a document can permanently alter evidence. If there is any doubt as to whether any record should be preserved, the presumption should be that it needs to be preserved.

To properly fulfill Comcast's preservation obligation, Comcast is to stop all scheduled data destruction, electronic shredding, rotation of back-up tapes, and the sale, gift, or destruction of hardware. Notify all individuals and affiliated organizations of the need and duty to take the necessary affirmative steps to comply with the duty to preserve evidence. LBI will pursue all available remedies for any Comcast failure to do so.

Thank you for your attention to this matter.

Sincerely,

LERMAN SENTER PLLC

Dennis

Dennis P. Corbett

EXHIBIT 10

Spanish Language Networks Currently Offered on Comcast's
XFINITY "TV 150 Latino" Programming Package in Montgomery County, Maryland

Broadcast Channels (DC – Montgomery Co., MD)

Univision (WFDC-14)
UniMas (WMDO-47)
Telemundo (WZDC-64)
Azteca (WQAW-20)
V-me (WMPT 22.2)
*LATV (WMDo 47.2)

Comcast Xfinity Latino Tier Cable Networks

*BabyFirst Americas
Bandamax
*beIN Sport En Español
Canal 52MX
Caracol TV
*CentroAmerica TV
Cine Latino
Cine Mexicano
Cine Sony Television
Cinema Dinamita
CNN en Español
De Pelicula
De Pelicula Clasico
Discovery en Español
Discovery Familia
DisneyXD Español
Ecuavisa
ESPN Deportes
EWTN en Español
Fox Deportes
Fox Life
Galavision
History en Español
*HITN
*Latin American Sports
Mexicanal
MTV Tr3s
Multimedios
NBC Universo
Nuestra Tele
*nuvoTV
Once TV
*Pasiones
Ritmo Son Latino
SUR
Sur Peru
TBN Enlace
Telefe
TeleFórmula
Telehit
TV Chile
TV Dominicana
TV Venezuela
TVE Internacional
uniMàs (W)
Univision (W)
Univision Deportes
*V-Me Kids
Videorola
Viendo Movies
WAPA America
Xfinity Latino Barker Channel

EXHIBIT 11

PUBLIC VERSION


Bill to give local governments more control over fracking dies in Colorado House (http://www.denverpost.com/news/


Denver to pay Alonzo Ashley's family $295,000 over 2011 death at zoo (http://www.denverpost.com/news/


Colin Kaepernick reports to 49ers' offseason workouts, can earn $400,000 (http://www.denverpost.com/bronc


Paige: John Elway lead formulation of Bronco before NFL draft (http://www.denverpo

TELEVISION

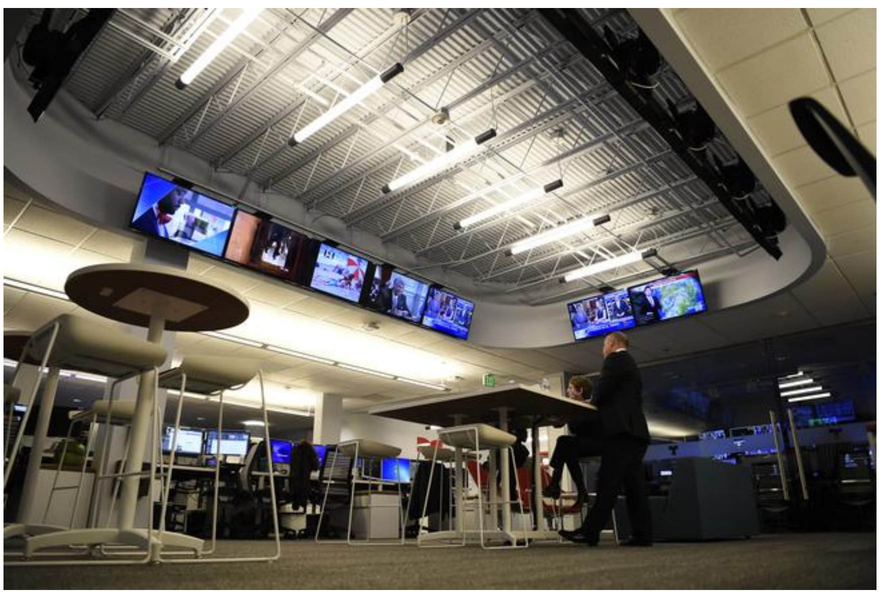
Telemundo sneaks up on Spanish-language TV rival Univision in Denver

Denver's Spanish-language TV battle heats up

By Joanne Ostrow
Denver Post Television Critic **(mailto:jostrow@denverpost.com?subject=The Denver Post:)**

POSTED: 04/03/2016 12:01:00 AM MDT | UPDATED: ABOUT 6 HOURS AGO

ADD A COMMENT (HTTP://WWW.DENVERPOST.COM/TELEVISION/CI_29710062/TELEMUNDO-SNEAKS-UP-SPANISH-LANGUAGE-TV-RIVAL-UNIVISION#DISQUS_THREAD)



(/portlet/article/html/imageDisplay.jsp?contentItemRelationshipId=7460207)
Telemundo Denver is coming on strong thanks to major investment by NBCUniversal. (*Photos by AAron Ontiveroz, The Denver Post*)

The race is on in Hispanic TV. And that's news, particularly in an election year.

As the booming U.S. Latino market reshapes everything from branding to prime time TV, the battle to capture Spanish-speakers' attention is heating up in Denver.

For this market's 790,000 Hispanics, there has historically been one go-to TV source. KCEC-Channel 50, the Univision affiliate (owned by Entravision) was by far the dominant Spanish-language station in Denver. Telemundo-owned KDEN-Channel 25 trailed from a distance.

Lately, the challenger is on a roll: "Noticiero Telemundo Denver" at 5 p.m. was the top Spanish-language newscast among adults 18 to 49 and adults 25 to 54 for the February sweep. On some nights, Telemundo beats the English-language contenders, a distinction formerly achieved only by Univision.

"There was only one player; now the landscape has changed," said KDEN General Manager Andres Chaparro.

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Culture and cuisine, deep in the heart of Texas (http://www.denverpost.com/travel/ci_29709807/cu and-cuisine-deep-heart-texas)

Jordan Murphy, former CU fullback, making most of life's offers (http://www.denverpost.com/broncos/ci_29717779 murphy-cu-fullback-nfl-draft)

Officer sues, claiming department shared nude photos of her (http://www.denverpost.com/ci_29717966)

Looking to buy a starter home in Denver? Good luck. (http://www.denverpost.com/news/ci_29668566/m denver-short-starter-homes)

Nolan Arenado says Rockies have to win to shut up club's many critics (http://www.denverpost.com/rockies/ci_29715773/ arenado-says-rockies-have-win-shut-up)

How "American Idol" changed pop culture forever (http://www.denverpost.com/television/ci_2971006 american-idol-changed-pop-culture-forever)

Del Frisco's Grille already siphoning patrons from Elway's in Cherry Creek (http://www.denverpost.com/food/ci_29696327/del friscos-grille-restaurant-review)

Recommended by (http://www.outbrain.com/what-is/default/en)

PUBLIC VERSION


(/portlet/article/html/imageDisplay.jsp?contentItemRelationshipId=7460209)
General manager Andres Chaparro oversees Telemundo Denver. The station outranked all other Spanish-language TV stations with the top 5 p.m. weekday newscast in February.

For February, weekdays at 5 p.m., among viewers age 25-54, "Noticiero Telemundo Denver" drew 7,371 average viewer impressions; "Noticias Colorado" on Univision drew 6,479. A year earlier, Univision was a steamroller with 13,208 impressions to Telemundo's 2,680.

"We are closing the gap," Chaparro stated.

"I really think competition is healthy," said KCEC General Manager Don Daboub. "This news they're touting is frankly only going to open doors. We've been the trailblazers in the market for years," he said, citing Univision's Colorado Springs and radio properties as well. "Another voice in the market is going to elevate the Latino market in a new way."

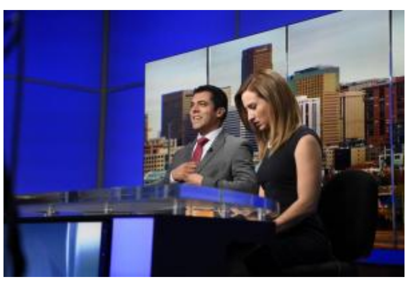
The local Univision boss acknowledges "we definitely have seen some growth on their end, but it's not about one day-part. You have to look at the overall strength of the station group, it's about our strategy and talking to different segments of the Latino market ... It's about broadcast, social media, digital," Daboub said. "We're focused on trying to engage an elusive target."

Multiple backgrounds, languages and attitudes are covered by the "Hispanic" label, a hard to reach but growing consumer force (https://www.thinkwithgoogle.com/articles/us-hispanic-market-digital.html).

Nationally, Univision's stragegy includes reaching out to partners like ABC News to create Fusion, a news network for the English-speaking Hispanic audience. Telemundo's strategy is to pull from the NBCUniversal built-in millennial base.

The NBCU connection

A major investment by corporate parent NBCUniversal allowed Telemundo to grow in terms of staff, office and studio space, equipment, content, graphics and accompanying digital platforms. The 4:30 p.m. local newscast was launched in 2014. It's paying off in terms of ratings.


(/portlet/article/html/imageDisplay.jsp?contentItemRelationshipId=7460211)
Anchors Carlos Rausseo and Pamela Padilla prepare for their 4:30 p.m. telecast.

Both Denver stations have impressive new offices and studios.

Since moving out of a corner of KUSA's newsroom and into state-of-the art quarters the Comcast Media Center in Centennial in July 2015, the KDEN news staff has grown from four to 18 people.

KCEC moved to its quarters in Denver's Highlands in 2012, updated to high-definition equipment and a versatile newsroom set. Univision's KCEC has a newsroom of 20 staffers.

A continuing partnership allows KDEN to share content with KUSA. (KUSA is owned by Tegna, formerly Gannett, a corporate cousin of Telemundo under the NBCUniversal banner.) KCEC has a relatively new partnership to share content with Fox31.

KDEN's 4:30 and 5 p.m. weekday newscasts are gaining traction while the station's 10 p.m. newscast remains a distant second to KCEC's. For now, neither KDEN nor KCEC airs a live weekend newscast.

Telemundo Denver now produces more than seven hours of local news and programming each week. There is glee in the control room at 4:30 when the newscast begins and the competition is showing light entertainment fare.

In prime time, too, Telemundo is narrowing Univision's lead. Among 18- to 49-year-olds, Telemundo has cut the difference by 54 percent since 2010, leaning heavily on fast-paced soaps about the drug trade, known as "narco novelas."

The focus is localism

Being the perennial also-ran allowed KDEN to sneak up on the competition. "Nobody believed KDEN was going to be serious about localism," Chapparo said. "We caught everybody by surprise."

» Investigations tips: 1-866-748-TIPS (tel:+18667488477)

Denver Local Guide (http://mylocal.denverpost.com/)

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PUBLIC VERSION

Telemundo's 4:30 newscast not only competes well against Entre vision's entertainment fare, but provides a strong lead-in at 5 p.m. KDEN gets a 30-second jump on the competition, the better to lure the early news audience into the next newscast. At 5 p.m. the stations go head-to-head.

KDEN co-anchors Guillermo Martinez Villarreal and Pamela Padilla are a smooth team; KCEC anchor and news director Juan Carlos Gutiérrez, (http://www.denverpost.com/ci_23746077/kcec-anchor-relishes-role-reporting-stories-spanish-speakers)who has won multiple Emmys for reporting on the local immigrant community, is tough competition. KCEC is currently advertising (http://www.broadcastersvirtualjobfair.com/newsite/g_job.php?id=21594) for a bilingual anchor/reporter for the 5 and 10 p.m. newscasts.

At 10 p.m., Univision remains the leader (http://www.denverpost.com/television/ci_25458285/telemundo-denver-hires-anchor-makes-tv-rating-strides), pulling more than double the Telemundo audience (KCEC claims 54 percent of Spanish-language viewers to KDEN's 27 percent, with Estrella's KETD, Azteca's KDCO and UniMas' KTFD digital channels taking up the rest).

'Untapped potential'

Hispanics are the fastest growing market segment in the country. There are over 50 million living in the U.S. and, by 2050, the Census Bureau expects the number to grow to 130 million. The marketing opportunities are stunning.

Denver is the No. 17 market in both Hispanic and Nielsen rankings nationally. Last year, Denver TV counted ad revenues of $269 million, of which Spanish language stations collectively received 5.5 percent. "My point is, there is a huge untapped potential for revenues," Daboub said.

Ultimately, Daboub cites social media during the recent blizzard to gauge how the outlet is doing: "You could tell who people go to when the weather goes bad." KCEC has 317,000 Facebook likes, he said; the news page drew 86,000 views in just one post. "This is a testament to our audience engagement."

Will election year political ad spending disproportionately boost Hispanic TV? Both station managers note the Latino market continues to grow faster than the general market, and Colorado could be a key state in the 2016 election. Hispanics are expected to play a huge role.

In 2016, more than 28 million Hispanics or 13 percent of all eligible U.S. voters, will be eligible to vote. However, Hispanics are historically underrepresented (http://www.usnews.com/news/blogs/data-mine/2015/10/06/hispanics-could-play-huge-role-in-the-2016-elections)in national elections with lower turnout rates than other minority groups.

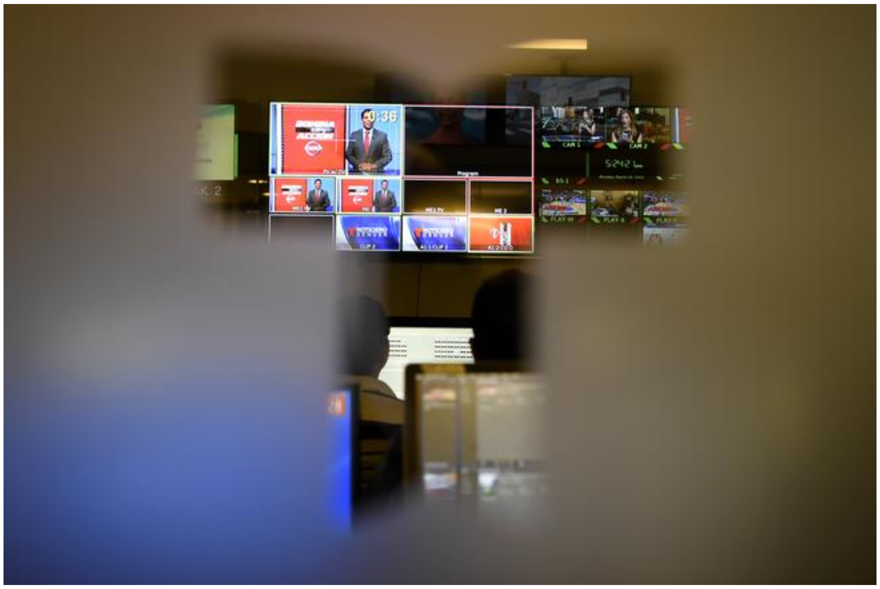
Both stations continue to work on voter registration and efforts to help immigrants become citizens. "Civic enagement is one of the pillars for us," Daboub said.

Telemundo's consumer investigative franchise, Telemundo Responde (Telemundo Responds), will launch in Denver next year, dealing particularly with matters of immigration and fraud. Across nine Telemundo markets, the unit recovered $4 million in 2014. The mission is journalism with an emphasis on "empowering" the lives of local Hispanic viewers, Chaparro said.

As the competition kicks into high gear, there's always a potential ratings bonanza around the corner. This summer Univision will air the Copa America Centario (http://corporate.univision.com/centenario/)tournament. "I call it the mini-World Cup on steroids," Daboub said. "It's going to be a huge ratings blitz."

Joanne Ostrow: 303-954-1830, jostrow@denverpost.com or @ostrowdp

PUBLIC VERSION



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Producers work a control room for an afternoon newscast. Telemundo Denver is coming on strong thanks to major investment by NBC Universal. (*Photos by AAron Ontiveroz, The Denver Post*)

RELATED STORIES DISCUSSION (NO COMMENTS)

More from The Denver Post




(http://www.denverpost.com/ci_29711919)

THE DENVER POST

Amtrak train hits equipment on track; 2 workers die

(http://blogs.denverpost.com/ostrow/2016/04/01/eric-kahnert-out-at-kmgh-channel-7/24360/)

OSTROW OFF THE RECORD

(http://www.denverpost.com/...couple-builds-denver-dream-house-from-nine-steel)

THE DENVER POST

Couple builds Denver dream house from nine steel

(http://www.denverpost.com/business/ci_29709144/conflicting-regulations-roil-short-term-vacation-rentals-estes)

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(http://www.denverpost.com/...help-cargo-or-help-him-get-out)

(http://blogs.denverpost.com/...cartoons/2016/03/31/trump-campaign-manager-

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(http://blogs.denverpost.com/letters/2016/03/30/climate-change-whack-mole/41382/)

THE DENVER POST

(http://www.denverpost.com)

NEXT ARTICLE IN TELEVISION(/TELEVISION) ✖

Taylor Swift thanks 'boyfriend Adam' at iHeartRadio Awards (http://www.denverpost.com/entertainment/ci_29719777/meghan-trainor-justin-bieber-set-rock-iheartradio-awards?source=JPopUp)

article...
nverpost.com/entertainment/ci_29719777/meghan-
bieber-set-rock-iheartradio-awards?
Jp)

EXHIBIT 12

PUBLIC VERSION

NBC UNIVERSO | NBCUniversal

NBCUniversal

NBC UNIVERSO is a modern general entertainment cable channel for Latinos, bringing the world's top sports franchises and edgy, emotional programming to more than 40 million households in the U.S. As one of the most widely available modern cable channels for U.S. Latinos, NBC UNIVERSO delivers in Spanish language a thrilling mix of exclusive sports action – including FIFA World Cup™, NASCAR Mexico Series, NFL, Premier League and the 2016 Olympic Summer Games in Rio – along with signature series, blockbuster movies, music, must-see live events and strategic acquisitions, on TV, online and mobile devices. NBC UNIVERSO is part of Hispanic Enterprises and Content, a division of NBCUniversal, one of the world's leading media and entertainment companies. NBCUniversal is a subsidiary of Comcast Corporation. For more information, please visit NBCUNIVERSO.com.

PUBLIC VERSION

Telemundo | NBCUniversal

Telemundo, a division of NBCUniversal Hispanic Enterprises and Content, is a world-class media company, leading the industry in the production and distribution of high-quality Spanish-language content across its multiplatform portfolio to U.S. Hispanics and audiences around the world. Telemundo's multiple platforms include the Telemundo Network, a Spanish-language television network featuring original productions, theatrical motion pictures, news and first-class sports events, reaching U.S. Hispanic viewers in 210 markets through its 17 owned stations, broadcast and MVPD affiliates; Telemundo Digital Media, which distributes Telemundo's original content across digital and emerging platforms including mobile devices and telemundo.com; an owned and operated full power station in Puerto Rico that reaches 99% of all TV households in that DMA; and Telemundo Internacional, the international distribution arm which has positioned Telemundo as the second largest provider of Spanish-language content worldwide by syndicating content to more than 100 countries in over 35 languages.

Summary: Similarities between Telemundo, NBCUniverso and EstrellaTV

- EstrellaTV, NBCUniverso and Telemundo have similar target audiences:
  - Spanish Dominant homes
  - Equivalent education levels for High School and College graduates
  - Families with 1+ children
  - Looking to reach the same audience (18-49 and 25-54)
- Similar split of M/F viewers

	Male	**Female**
ETV	50%	50%
TEL	41%	59%
NBCUNIVERSO	61%	39%

Source: Nielsen Npower Hispanic sample 4Q 2015

- The median ages are in the same range (C3 ratings Primetime viewing)
  - Telemundo: 43
  - EstrellaTV: 43
  - NBCUniverso: 35
- EstrellaTV shares many of the same large advertisers with both Telemundo and NBCUniverso
  - MetroPCS
  - Ford
  - Mars
  - AT&T
  - Anheuser Busch
  - Colgate
  - Clorox
  - Constellation Brands
  - Dish
  - L'Oreal
  - GM
  - P&G
  - Miller Coors
  - Samsung

  - State Farm
  - Wendy's
- Programming types
  - Sports
  - Variety and Reality Shows
  - Movies
  - Dramas/Telenovelas
  - News
  - Award Shows
  - Concerts

ESTRELLATV - Year to Date programs

Awards Show		
ESTRELLA	ACCESO EXCLSV PREMIOS '15	AWARD CEREMONIES
ESTRELLA	PREMIOS DE LA RADIO 2015	AWARD CEREMONIES
ESTRELLA	PREMIOS-RADIO 2015 RR	AWARD CEREMONIES
Concerts		
ESTRELLA	ASI ES MI HISTORIA	CONCERT MUSIC
ESTRELLA	CONCERT JOAN SEBASTIAN	CONCERT MUSIC
ESTRELLA	CONCIERTO PAQUITA BARRIO	CONCERT MUSIC
ESTRELLA	CONCIERTO CALIBRE 50	CONCERT MUSIC
ESTRELLA	CONCIERTO DURCAL/VARGAS	CONCERT MUSIC
ESTRELLA	CONCIERTO GRDO ORTIZ 1/1	CONCERT MUSIC
ESTRELLA	CONCIERTO JENNI RVRA 12/9	CONCERT MUSIC
ESTRELLA	CONCIERTO LUPILLO & JENNI	CONCERT MUSIC
ESTRELLA	CONCIERTO PAQUITA BARRIO	CONCERT MUSIC
ESTRELLA	CONCIERTO RAMON AYALA	CONCERT MUSIC
ESTRELLA	CONCIERTO TAPIA/HRNDZ	CONCERT MUSIC
ESTRELLA	CONCIERTO VICENTE FERNDZ	CONCERT MUSIC
ESTRELLA	ESPECIAL VIRGEN GUADALUPE	CONCERT MUSIC
ESTRELLA	SABADOS EN CONCIERTO	CONCERT MUSIC
Variety		
ESTRELLA	CHUPERAMIGOS, LOS	COMEDY VARIETY
ESTRELLA	FABRICA DE LA RISA SAT 1	COMEDY VARIETY
ESTRELLA	LAGRMITA Y COSTEL SAT	COMEDY VARIETY
ESTRELLA	NOCHES CON PLATANITO FRI	COMEDY VARIETY
ESTRELLA	CAMINO A PREMIOS DE LA RA	GENERAL VARIETY
ESTRELLA	DON CHETO	GENERAL VARIETY
ESTRELLA	ESPECIAL DE DON CHETO	GENERAL VARIETY
ESTRELLA	ESTO ES GUERRA 1/10	GENERAL VARIETY
ESTRELLA	ESTUDIO 2 - M-F 6AM	GENERAL VARIETY
ESTRELLA	JENNI (GENTE IMPORTANTE)	GENERAL VARIETY
ESTRELLA	RETOFAMOSOS	GENERAL VARIETY
ESTRELLA	VIDA DE UNA DIVA 10PM	GENERAL VARIETY
ESTRELLA	PREMIOS RED CRPT	PARTICIPATION VARIETY
ESTRELLA	TENGO TALENTO 10-24	PARTICIPATION VARIETY
ESTRELLA	QUE NO PUEDES 1	QUIZ GIVE AWAY
Movies/Documentaries		
ESTRELLA	CINE DE ACCION	FEATURE FILM
ESTRELLA	CINE DEL DOMINGO	FEATURE FILM
ESTRELLA	CINE DEL SABADO	FEATURE FILM
ESTRELLA	CINE ESPECTACULAR	FEATURE FILM
ESTRELLA	CINE ESPECTACULAR 7P	FEATURE FILM
ESTRELLA	GRAN CINE FRI	FEATURE FILM
ESTRELLA	JENNI INOLVIDABLE SPECIAL	GENERAL DOCUMENTARY
Children		
ESTRELLA	REINO ANIMAL	GENERAL DOCUMENTARY
General Drama		
ESTRELLA	AMOR SECRETO 11A	GENERAL DRAMA
ESTRELLA	HISTORIAS DELIRANTES 1	GENERAL DRAMA
ESTRELLA	RICA FAMOSA LATINA 2/14	GENERAL DRAMA

PUBLIC VERSION

ESTRELLA	RICA LA NOCHE	GENERAL DRAMA
ESTRELLA	ROSARIO FRI	GENERAL DRAMA
ESTRELLA	SECRETOS	GENERAL DRAMA
ESTRELLA	TALISMAN M-F	GENERAL DRAMA
Religious		
ESTRELLA	MANANITAS A LA VIRGEN	DEVOTIONAL
ESTRELLA	MANANITAS VIRGEN-PRE MASS	DEVOTIONAL
ESTRELLA	MILAGROS 11AM	DEVOTIONAL
News		
ESTRELLA	ALARMA TV - FRI 10P	NEWS
ESTRELLA	EN LA LUCHA	NEWS
ESTRELLA	EN VIVO	NEWS
ESTRELLA	ITESTIGO	NEWS
ESTRELLA	NOTC-CIERRE EDICION 11-20	NEWS
ESTRELLA	NOTICIERO CIERRE 11/6	NEWS
ESTRELLA	NOTICIERO E GRATAS - FRI	NEWS
ESTRELLA	NOTICIERO ESTRELLA	NEWS
ESTRELLA	NOTICIERO GRATAS RPT	NEWS
Sports		
ESTRELLA	QUE JALADA	SITUATION COMEDY
ESTRELLA	PRE GAME SAT	SPORTS COMMENTARY
ESTRELLA	BOXEO ESTELAR	SPORTS EVENT
ESTRELLA	LIGA MX	SPORTS EVENT
ESTRELLA	LIGA MX TUES	SPORTS EVENT

PUBLIC VERSION

NBCUNIVERSO - Year to Date programs

			COMPARISON TO ETV
Awards Show			
NBC UNIVERSO	IHEART RADIO FIESTA LATIN	AWARDS CEREMONIES	Jenni Vive concert of Fiestas Patrias live events across the country. Sponsored by Sprint and Ford which are advertisers on the network
NBC UNIVERSO	LATIN AME MUSIC AWARDS	AWARDS CEREMONIES	Premios de la Radio. MetroPCS sponsor of both shows. Targeting the 18-54 music lover
NBC UNIVERSO	LATIN AME MU AW ALL ACCESS	AWARDS CEREMONIES	Premios de la Radio Accesso - behind the scenes
Concerts			
NBC UNIVERSO	EMMANUEL DESDE VINA	MUSIC CONCERTS - POPULAR	ETV concerts
NBC UNIVERSO	MAS MOVIDO VINA MAR 2015	MUSIC CONCERTS - POPULAR	ETV concerts
NBC UNIVERSO	MEJOR DE VINA 2015 VLM1	MUSIC CONCERTS - POPULAR	ETV concerts
NBC UNIVERSO	REIK DESDE VINA	MUSIC CONCERTS - POPULAR	ETV concerts
NBC UNIVERSO	RICARDO ARJO DESDE VINA	MUSIC CONCERTS - POPULAR	ETV concerts
NBC UNIVERSO	YANDEL DESDE VINA	MUSIC CONCERTS - POPULAR	ETV concerts
NBC UNIVERSO	SON MARIACHIS	MUSIC - VARIETY	ETV concerts
Variety			
NBC UNIVERSO	EXC GMO DEL TORO - CRIMSO	GENERAL VARIETY	
NBC UNIVERSO	GRAN HERMANO - NOVELA	GENERAL VARIETY	
NBC UNIVERSO	I LOVE JENNI	GENERAL VARIETY	ETV Jenni Miniseries
NBC UNIVERSO	PANICO 9-1-1	GENERAL VARIETY	
NBC UNIVERSO	PITBULL: FAMA Y FORTUNA	GENERAL VARIETY	
NBC UNIVERSO	COMBATE AMERICAS	PARTICIPATION VARIETY	MMA Fighting similar to Boxeo Estelar with Golden Boy Promotions on ETV
NBC UNIVERSO	12 CORAZONES	AUDIENCE PARTICIPATION/QUIZ SHOW	
Movies/Documentaries			
NBC UNIVERSO	JNIVERSO MOVIE/FAST & FURIOUS	MOVIE	ETV movies/documentaries
NBC UNIVERSO	CELIA POR SIEMPRE	DOCUMENTARY - SPECIAL	
NBC UNIVERSO	GERAR ORTIZ: COMO SUENO	DOCUMENTARY - PERSONALITIES	AsiEsMiHistoria presented viewers with a deeper look into Gerardo Ortiz and young millennial music artists
NBC UNIVERSO	GERARDO ORTIZ SIN CENSURA	DOCUMENTARY - PERSONALITIES	
NBC UNIVERSO	VICTOR ESPI. ORGU LATINO	DOCUMENTARY - PERSONALITIES	
Drama			
NBC UNIVERSO	CRIMEN 360	SERIES - DRAMA	Telenovelas on ETV like Rosario, Talisman and Secretos
NBC UNIVERSO	CRONICA DE CASTAS	SERIES - DRAMA	Telenovelas on ETV like Rosario, Talisman and Secretos
NBC UNIVERSO	FUERZA ESP DE FUGITIVOS	SERIES - REALITY	
NBC UNIVERSO	FUGITIVOS DE LA LEY LA	SERIES - REALITY	
NBC UNIVERSO	LARRYMANIA	SERIES - REALITY	
General Market Dramas			
NBC UNIVERSO	ALPHAS	SERIES - DRAMA	
NBC UNIVERSO	BATTLESTAR GALACTICA	SERIES - DRAMA	
NBC UNIVERSO	CHILDHOODS END	SERIES - DRAMA	
NBC UNIVERSO	LAW & ORDER	SERIES - DRAMA	
NBC UNIVERSO	OPERACION REPO	SERIES - REALITY	
NBC UNIVERSO	PRISON BREAK	SERIES - DRAMA	
NBC UNIVERSO	SEXO DEBIL	SERIES - FAMILY	
NBC UNIVERSO	SOUTH PARK	SERIES - DRAMA	
NBC UNIVERSO	TOP CHEF MEXICO	SERIES - REALITY	
NBC UNIVERSO	WALKING DEAD, THE	SERIES - DRAMA	
NBC UNIVERSO	WWE RAW - EN ESP	GENERAL VARIETY	
NBC UNIVERSO	WWE SMACKDOWN - EN ESP	GENERAL VARIETY	
NBC UNIVERSO	STAN LEES SUPERHUMANS	GENERAL VARIETY	
NBC UNIVERSO	HEROES	GENERAL VARIETY	
Sports			
NBC UNIVERSO	CAMINO AL SUPER BOWL	PRO FOOTBALL-ANTHOLOGY	
NBC UNIVERSO	FUTBOL AMER HEREN HISP	PRO FOOTBALL-ANTHOLOGY	
NBC UNIVERSO	SABOR AL SUPER BOWL	PRO FOOTBALL-ANTHOLOGY	
NBC UNIVERSO	BPL PREVIEW	SPORTS HIGHLIGHTS	
NBC UNIVERSO	BPL WORLD	SPORTS HIGHLIGHTS	
NBC UNIVERSO	BPL WORLD	SPORTS HIGHLIGHTS	
NBC UNIVERSO	CONCACAF P-OLY SEMI BDG S	SPORTS HIGHLIGHTS	
NBC UNIVERSO	CONCACAF PREOLY POSTGM	SPORTS HIGHLIGHTS	
NBC UNIVERSO	CONCACAF PREOLY PREGAME	SPORTS HIGHLIGHTS	
NBC UNIVERSO	ESCENA DEPORTIVA - PREVIA	SPORTS HIGHLIGHTS	
NBC UNIVERSO	ESCENA DEPORTIVA-WRAPUP	SPORTS HIGHLIGHTS	
NBC UNIVERSO	LIGA MX PRE-GAME	SPORTS HIGHLIGHTS	
NBC UNIVERSO	NETBUSTERS	SPORTS HIGHLIGHTS	
NBC UNIVERSO	NFL PREGAME SHOW	SPORTS HIGHLIGHTS	
NBC UNIVERSO	NFL PREGAME SHOW	SPORTS HIGHLIGHTS	
NBC UNIVERSO	PREMIER L EXTRA POST-GAME	SPORTS HIGHLIGHTS	Similar to LIGA MX Dorados de Sinaloa games on ETV
NBC UNIVERSO	PREMIER L EXTRA POST-GAME	SPORTS HIGHLIGHTS	
NBC UNIVERSO	PREMIER L EXTRA PRE-GAME	SPORTS HIGHLIGHTS	
NBC UNIVERSO	PREMIER L EXTRA PRE-GAME	SPORTS HIGHLIGHTS	

NBC UNIVERSO	RUMBO MUNDIA PRE-SHOW	SPORTS HIGHLIGHTS
NBC UNIVERSO	CLAYS PREMIER LEAGUE SOCCER	LEICE CI V. LIVERPOOL 2/2
NBC UNIVERSO	CONCACAF-POLY-F-UNVSO-01	MEXICO VS. USA 2/13
NBC UNIVERSO	FIFA-SUB-17-03-UNVSO	CHILE VS. CROACIA 10/17
NBC UNIVERSO	FUTBOL LIGA MX	PACHUCA V. QUERETAN 1/16
NBC UNIVERSO	GOLF ON UNVSO OHL CLASSI	GOLF
NBC UNIVERSO	NASCAR EN NBC UNIVERSO	MOTOR SPORTS - NASCAR
NBC UNIVERSO	NFL EN NBC UNIVERSO	GRE B PCK V. PHX CAR 1/16
NBC UNIVERSO	RUMBO AL MUNDIAL	TRINI & TOBA V. USA 11/17

PUBLIC VERSION

TELEMUNDO - Year to Date programs

				COMPARISON TO ETV
Awards Show				
	TEL	ALFOMBRA LATIN AME AWAR	GENERAL VARIETY	Red Carpet show from Premios de la Radio . MetroPCS sponsor of both shows. Targeting the 18-54 music lover
	TEL	LATIN AME M AW AC VIP1009	GENERAL VARIETY	Premios de la Radio. MetroPCS sponsor of both shows. Targeting the 18-54 music lover
	TEL	LATIN AME MU A ACESSO VIF	GENERAL VARIETY	Premios de la Radio Accesso - behind the scenes
Concerts				
	TEL	IHEARTRADIO FIESTA LATINA	CONCERT MUSIC	ETV Concerts
Variety				
	TEL	COMO UN SUENO 1/02	GENERAL VARIETY	AsiEsMiHistoria presented viewers with a deeper look into Gerardo Ortiz and young millennial music artists
	TEL	CONDUCTA TOL DISPAR SAT	GENERAL VARIETY	
	TEL	MISA VIRGEN GUADALU 12/12	GENERAL VARIETY	
	TEL	NUEVO DE TLMD Y NBC	GENERAL VARIETY	
	TEL	NUEVO DIA	GENERAL VARIETY	En Vivo - daily entertainment show
	TEL	QUE NOCHE	GENERAL VARIETY	Noches con Platanito - evening show
	TEL	RANKING ESTRELLAS 10/10	GENERAL VARIETY	
	TEL	SOS: SALVA MI CASA - SAT	GENERAL VARIETY	
	TEL	SI SE PUEDE	PARTICIPATION VARIETY	Esto Es Guerra
Variety/General Market				
	TEL	AMERICAS FUNNIEST VIDEOS	GENERAL VARIETY	Que Jalada
	TEL	SHADES OF BLUE 1/09	GENERAL VARIETY	
	TEL	CRISS ANGEL: MINDFR 1/24	GENERAL VARIETY	
Movies/Documentaries				
	TEL	CINE DE LA TARDE I	FEATURE FILM	ETV Movies and Documentaries
	TEL	CINE EN CASA 1/09	FEATURE FILM	ETV Movies and Documentaries
	TEL	CINE ESPECIAL 10/02	FEATURE FILM	ETV Movies and Documentaries
	TEL	CINE EXCLUSIVO SAT	FEATURE FILM	ETV Movies and Documentaries
	TEL	CINE MILLONARIO 11/1	FEATURE FILM	ETV Movies and Documentaries
	TEL	CINE NUESTRO 12/05	FEATURE FILM	ETV Movies and Documentaries
	TEL	FESTIVAL ANO NUEVO I	FEATURE FILM	ETV Movies and Documentaries
	TEL	FESTIVAL CINE NAVIDENO I	FEATURE FILM	ETV Movies and Documentaries
	TEL	FESTIVAL FIN DE ANO II	FEATURE FILM	ETV Movies and Documentaries
	TEL	REVERSION 12/27	FEATURE FILM	ETV Movies and Documentaries
	TEL	SUPER CINE 10/31	FEATURE FILM	ETV Movies and Documentaries
	TEL	SUPER CINE SUN I	FEATURE FILM	ETV Movies and Documentaries
	TEL	CELIA CRUZ AZUCAR	GENERAL DOCUMENTARY	ETV Movies and Documentaries
	TEL	MUJERES DEL NARCO	GENERAL DOCUMENTARY	ETV Movies and Documentaries
	TEL	NUESTROS IDOLOS CELIA CR	GENERAL DOCUMENTARY	ETV Movies and Documentaries
	TEL	VIDEOS ASOMBROSOS 10/17	GENERAL DOCUMENTARY	ETV Movies and Documentaries
	TEL	C. CERRADO-ED. ESTELAR F	CONVERSATIONS, COLLOQUIES	ETV Movies and Documentaries
	TEL	CASO CERRADO 10/21	CONVERSATIONS, COLLOQUIES	ETV Movies and Documentaries
	TEL	MEJOR CASO CERRA 10/21	CONVERSATIONS, COLLOQUIES	ETV Movies and Documentaries
	TEL	SUELTA LA SOPA 10/21	CONVERSATIONS, COLLOQUIES	ETV Movies and Documentaries
Children				
	TEL	CHICA SHOW 10/31	CHILD MULTI-WEEKLY	ETV Reino Animal Children's weekend AM programming
	TEL	CHICA SHOW SAT	CHILD MULTI-WEEKLY	ETV Reino Animal Children's weekend AM programming
	TEL	CHICA SHOW SUN	CHILD MULTI-WEEKLY	ETV Reino Animal Children's weekend AM programming
	TEL	LAZYTOWN 10/31	CHILD MULTI-WEEKLY	ETV Reino Animal Children's weekend AM programming
	TEL	NOODLE & DOODLE 11/29	CHILD MULTI-WEEKLY	ETV Reino Animal Children's weekend AM programming
	TEL	RAGGS 11/29	CHILD MULTI-WEEKLY	ETV Reino Animal Children's weekend AM programming
	TEL	SHOW DE CHICA 11/29	CHILD MULTI-WEEKLY	ETV Reino Animal Children's weekend AM programming
	TEL	INCORRECTO, EL - SAT	COMEDY VARIETY	ETV Reino Animal Children's weekend AM programming
	TEL	YA ERA HORA SUN	COMEDY VARIETY	ETV Reino Animal Children's weekend AM programming
General Drama				
	TEL	AURORA M-F	DAYTIME DRAMA	Telenovelas on ETV like Rosario, Talisman and Secretos
	TEL	HEREDEROS DEL MONTE M-F	DAYTIME DRAMA	Telenovelas on ETV like Rosario, Talisman and Secretos
	TEL	PRECIOSA PERLA M-F	DAYTIME DRAMA	Telenovelas on ETV like Rosario, Talisman and Secretos
	TEL	QUE CULPA TIENE FATMAGUL	DAYTIME DRAMA	Telenovelas on ETV like Rosario, Talisman and Secretos
	TEL	AVENIDA BRASIL - F	GENERAL DRAMA	Telenovelas on ETV like Rosario, Talisman and Secretos
	TEL	BAJO EL MISMO CIELO - F	GENERAL DRAMA	Telenovelas on ETV like Rosario, Talisman and Secretos
	TEL	D.C. LA BIBLIA CONTINUA	GENERAL DRAMA	
	TEL	DECISIONES 2/25	GENERAL DRAMA	En La Lucha and ETV's Deicsion 2016 and YoSoyelVoto campaign
	TEL	ESP SENORA ACERO II	GENERAL DRAMA	
	TEL	GRAN HERMANO - NOVEL DAY	GENERAL DRAMA	Competition reality like Tengo Talento, Mucho Talento
	TEL	HIST VIRGEN MORENA 12/11	GENERAL DRAMA	Telenovelas on ETV like Rosario, Talisman and Secretos
	TEL	QUERIDA CENTAURO - F	GENERAL DRAMA	Telenovelas on ETV like Rosario, Talisman and Secretos
	TEL	QUIEN ES QUIEN - F	GENERAL DRAMA	Telenovelas on ETV like Rosario, Talisman and Secretos
	TEL	REINA DE EL CHAPO - SUN I	GENERAL DRAMA	Telenovelas on ETV like Rosario, Talisman and Secretos
	TEL	REINA DEL SUR - SAT	GENERAL DRAMA	Telenovelas on ETV like Rosario, Talisman and Secretos
	TEL	SENOR C VUELO A 4TEM 2/28	GENERAL DRAMA	Telenovelas on ETV like Rosario, Talisman and Secretos
	TEL	SENOR DE LOS CIELO III MF	GENERAL DRAMA	Telenovelas on ETV like Rosario, Talisman and Secretos
	TEL	SENORA ACERO II - F	GENERAL DRAMA	Telenovelas on ETV like Rosario, Talisman and Secretos
Religious				
	TEL	GUADALUPE: IMG VIVA 12/11	DEVOTIONAL	Holiday religious programming similar on ETV
	TEL	VIRGEN DE GUADALUPE 12/11	DEVOTIONAL	Holiday religious programming similar on ETV
News				
	TEL	ARV ED ESP CHAPO 1/08	NEWS	
	TEL	BATALLA POR EL CHAPO 2/28	NEWS	
	TEL	DECISION 16: FRO DEM 2/18	NEWS	ETV Decision 2016 and YoSoyelVoto campaign
	TEL	ENFOQUE	NEWS	
	TEL	NOT TEL ED CHP 1/08 II	NEWS	
	TEL	NOTICIERO TELEMUN 01/01	NEWS	Cierre Edicion on ETV
	TEL	NUEVO DIA PAPA 2/15 II	NEWS	
	TEL	RECAPTURA CHP 1/08	NEWS	
	TEL	AL ROJO VIVO	NEWS DOCUMENTARY	En Vivo/Estrellas Hoy
	TEL	ARV GRAN HERMANO - SUN	NEWS DOCUMENTARY	

TEL	BATALLA EN FRONTERA 12/13	NEWS DOCUMENTARY	
TEL	CAIDA DEL CHAPO 1/17	NEWS DOCUMENTARY	Covered on ETV Noticiero
TEL	EFECTO FRANCISCO 2/17	NEWS DOCUMENTARY	Covered on ETV Noticiero
TEL	FRANCI PAPA ENTRE G 2/17	NEWS DOCUMENTARY	Covered on ETV Noticiero

Sports

TEL	ALIANZA FUT LOGRA SUENO	SPORTS ANTHOLOGY	
TEL	SABOR AL SUPER BOWL 2/06	SPORTS ANTHOLOGY	
TEL	ANT-MUND-TEL-UNVSO-11/17	SPORTS COMMENTARY	
TEL	ANTESALA CONCACAF 06	SPORTS COMMENTARY	
TEL	ANTESALA FIFA SUB17-01	SPORTS COMMENTARY	
TEL	ANTESALA-SUB17-TEL-UNVSO	SPORTS COMMENTARY	
TEL	CAMINO SUPER BOWL 1/09	SPORTS COMMENTARY	
TEL	FUTBOL AMER MES HISPANA	SPORTS COMMENTARY	
TEL	RITMO DEPORTIVO SUN	SPORTS COMMENTARY	
TEL	BOXEO TELEMUNDO	SPORTS EVENT	
TEL	CONCACAF-PREOLY-TEL-04	MEXICO VS COSTA RICA	
TEL	FIFA SUB-17-01-TEL	NIGERIA VS USA	
TEL	FIFA-SUB-17-52-TEL-UNVSO	MALI VS NIGERIA	
TEL	FUT-EST-LE-TEL-UNVSO-1128	LEON VS AMERICA	
TEL	FUTBOL ESTELAR BPL 10/17	WATFORD VS ARSENAL	
TEL	LIGA PREM EXTRA 10/25	SPORTS EVENT	Similar to LIGA MX Dorados de Sinaloa games on ETV
TEL	RUM-MUND-TEL-UNVSO-11/17	HONDURAS VS MEXICO	
TEL	TITULARES TELEMUNDO S	SPORTS NEWS	

EXHIBIT 13

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Local Television Market Universe Estimates: Hispanic or Latino TV Homes

Estimates as of January 1, 2016 and used throughout the 2015-2016 television season

Effective September 26, 2015

Rank	Designated Market Area (DMA)	Hispanic TV Homes	% of US
1	Los Angeles	1,924,270	13.09
2	New York	1,437,900	9.781
3	Miami-Ft. Lauderdale	770,180	5.239
4	Houston	667,160	4.538
5	Dallas-Ft. Worth	534,760	3.638
6	Chicago	528,900	3.598
7	San Antonio	443,440	3.016
8	San Francisco-Oak-San Jose	426,450	2.901
9	Phoenix (Prescott)	376,070	2.558
10	Harlingen-Wslco-Brnsvl-McA	316,640	2.154
11	Sacramnto-Stkton-Modesto	282,240	1.92
12	San Diego	263,390	1.792
13	Fresno-Visalia	261,390	1.778
14	Orlando-Daytona Bch-Melbrn	257,140	1.749
15	Albuquerque-Santa Fe	257,080	1.749
16	Philadelphia	248,030	1.687
17	Denver	242,680	1.651
18	Washington, DC (Hagrstwn)	241,770	1.645
19	El Paso (Las Cruces)	239,750	1.631
20	Tampa-St. Pete (Sarasota)	234,260	1.594
21	Boston (Manchester)	182,290	1.24
22	Austin	179,300	1.22
23	Atlanta	173,520	1.18
24	Las Vegas	164,990	1.122
25	Tucson (Sierra Vista)	127,500	0.867
26	Seattle-Tacoma	124,480	0.847
27	Corpus Christi	116,420	0.792
28	West Palm Beach-Ft. Pierce	112,960	0.768
29	Hartford & New Haven	106,000	0.721
30	Bakersfield	96,440	0.656
31	Portland, OR	95,510	0.65
32	Salt Lake City	94,090	0.64
33	Raleigh-Durham (Fayetvlle)	82,230	0.559
34	Monterey-Salinas	78,840	0.536
35	Ft. Myers-Naples	72,140	0.491
36	Charlotte	71,420	0.486
37	Odessa-Midland	70,810	0.482
38	Laredo	68,430	0.465
39	Yuma-El Centro	67,870	0.462
40	Waco-Temple-Bryan	65,670	0.447

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Local Television Market Universe Estimates: Hispanic or Latino TV Homes

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Effective September 26, 2015

Rank	Designated Market Area (DMA)	Hispanic TV Homes	% of US
41	Milwaukee	62,470	0.425
42	Colorado Springs-Pueblo	61,630	0.419
43	Detroit	59,290	0.403
44	Minneapolis-St. Paul	59,050	0.402
45	SantaBarbra-SanMar-SanLuOb	57,850	0.394
46	Oklahoma City	57,080	0.388
47	Yakima-Pasco-Rchlnd-Knnwck	56,380	0.384
48	Palm Springs	55,540	0.378
49	Providence-New Bedford	54,330	0.37
50	Lubbock	54,260	0.369
51	Amarillo	53,030	0.361
52	Kansas City	52,230	0.355
53	Cleveland-Akron (Canton)	46,170	0.314
54	Wichita-Hutchinson Plus	44,640	0.304
55	Nashville	44,120	0.3
56	Baltimore	43,130	0.293
57	Indianapolis	42,750	0.291
58	Jacksonville	41,480	0.282
59	Reno	40,400	0.275
60	Greensboro-H.Point-W.Salem	40,300	0.274
61	New Orleans	39,580	0.269
62	Harrisburg-Lncstr-Leb-York	38,900	0.265
63	Grand Rapids-Kalmzoo-B.Crk	37,870	0.258
64	Springfield-Holyoke	36,080	0.245
65	Honolulu	35,550	0.242
66	Greenvll-Spart-Ashevll-And	34,780	0.237
67	Norfolk-Portsmth-Newpt Nws	34,050	0.232
68	Tyler-Longview(Lfkn&Ncgd)	30,790	0.209
69	Tulsa	28,360	0.193
70	Omaha	27,430	0.187
71	Boise	26,240	0.178
72	Ft. Smith-Fay-Sprngdl-Rgrs	25,880	0.176
73	St. Louis	25,830	0.176
74	Spokane	25,400	0.173
75	Wilkes Barre-Scranton-Hztn	23,880	0.162
76	Columbus, OH	23,070	0.157
77	Rochester, NY	22,360	0.152
78	Richmond-Petersburg	21,810	0.148
79	Abilene-Sweetwater	21,660	0.147
80	Chico-Redding	21,240	0.144

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Local Television Market Universe Estimates: Hispanic or Latino TV Homes

Estimates as of January 1, 2016 and used throughout the 2015-2016 television season

Effective September 26, 2015

Rank	Designated Market Area (DMA)	Hispanic TV Homes	% of US
81	Memphis	21,090	0.143
82	Buffalo	20,500	0.139
83	Louisville	19,830	0.135
84	Toledo	19,820	0.135
85	Mobile-Pensacola (Ft Walt)	19,230	0.131
86	Greenville-N.Bern-Washngtn	19,140	0.13
87	Little Rock-Pine Bluff	18,970	0.129
88	Savannah	18,960	0.129
89	Albany-Schenectady-Troy	18,930	0.129
90	Birmingham (Ann and Tusc)	18,710	0.127
91	San Angelo	18,320	0.125
92	Cincinnati	18,150	0.123
93	South Bend-Elkhart	17,770	0.121
94	Shreveport	17,560	0.119
95	Wichita Falls & Lawton	17,540	0.119
96	Chattanooga	17,420	0.118
97	Des Moines-Ames	17,160	0.117
98	Davenport-R.Island-Moline	16,470	0.112
99	Huntsville-Decatur (Flor)	16,000	0.109
100	Pittsburgh	15,690	0.107
101	Lincoln & Hastings-Krny	15,470	0.105
102	Beaumont-Port Arthur	15,450	0.105
103	Madison	14,140	0.096
104	Columbia, SC	13,890	0.094
105	Flint-Saginaw-Bay City	13,690	0.093
106	Green Bay-Appleton	13,330	0.091
107	Tallahassee-Thomasville	13,180	0.09
108	Rockford	12,850	0.087
109	Knoxville	12,720	0.087
110	Victoria	12,560	0.085
111	Topeka	12,490	0.085
112	Medford-Klamath Falls	12,130	0.082
113	Eugene	12,060	0.082
114	Charleston, SC	10,930	0.074
115	Lexington	10,920	0.074
116	Springfield, MO	10,840	0.074
117	Baton Rouge	10,770	0.073
118	Lansing	10,730	0.073
119	Sioux City	10,710	0.073
120	Idaho Fals-Pocatllo(Jcksn)	10,670	0.073

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Rank	Designated Market Area (DMA)	Hispanic TV Homes	% of US
121	Syracuse	10,400	0.071
122	Twin Falls	10,270	0.07
123	Ft. Wayne	10,240	0.07
124	Roanoke-Lynchburg	9,660	0.066
125	Columbus, GA (Opelika, AL)	9,610	0.065
126	Anchorage	9,320	0.063
127	Augusta-Aiken	9,270	0.063
128	Champaign&Sprngfld-Decatur	9,230	0.063
129	Myrtle Beach-Florence	9,190	0.062
130	Gainesville	8,980	0.061
131	Dayton	8,410	0.057
132	Cedar Rapids-Wtrlo-IWC&Dub	8,240	0.056
133	Grand Junction-Montrose	7,830	0.053
134	Sioux Falls(Mitchell)	7,490	0.051
135	Sherman-Ada	7,430	0.051
136	Cheyenne-Scottsbluff	7,240	0.049
137	Macon	7,180	0.049
138	Wilmington	6,990	0.048
139	Salisbury	6,780	0.046
140	Albany, GA	6,590	0.045
141	Paducah-Cape Girard-Harsbg	6,480	0.044
142	Lafayette, LA	6,420	0.044
143	Peoria-Bloomington	6,350	0.043
144	Biloxi-Gulfport	5,490	0.037
145	Fargo-Valley City	5,480	0.037
146	Jackson, MS	5,430	0.037
147	Youngstown	5,270	0.036
148	Panama City	5,260	0.036
149	Joplin-Pittsburg	5,220	0.035
150	Portland-Auburn	4,870	0.033
151	Evansville	4,850	0.033
152	Rochestr-Mason City-Austin	4,820	0.033
153	Eureka	4,760	0.032
154	Harrisonburg	4,700	0.032
155	Minot-Bsmrck-Dcknsn(Wlstn)	4,590	0.031
156	Montgomery-Selma	4,340	0.03
157	Burlington-Plattsburgh	4,230	0.029
158	Tri-Cities, TN-VA	4,180	0.028
159	Billings	3,970	0.027
160	Lafayette, IN	3,880	0.026

Local Television Market Universe Estimates: Hispanic or Latino TV Homes

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Rank	Designated Market Area (DMA)	Hispanic TV Homes	% of US
161	Traverse City-Cadillac	3,640	0.025
162	Casper-Riverton	3,630	0.025
163	Utica	3,610	0.025
164	Charleston-Huntington	3,520	0.024
165	La Crosse-Eau Claire	3,420	0.023
166	Monroe-El Dorado	3,370	0.023
167	Erie	3,350	0.023
168	Rapid City	3,330	0.023
169	Bend, OR	3,320	0.023
169	Johnstown-Altoona-St Colge	3,320	0.023
171	Columbia-Jefferson City	3,310	0.023
172	Columbus-Tupelo-W Pnt-Hstn	3,260	0.022
173	Binghamton	3,250	0.022
174	Dothan	3,210	0.022
175	Watertown	3,090	0.021
176	Alexandria, LA	2,930	0.02
177	Wausau-Rhinelander	2,790	0.019
178	Lake Charles	2,620	0.018
179	Missoula	2,530	0.017
179	Charlottesville	2,530	0.017
181	Fairbanks	2,310	0.016
182	Bowling Green	2,220	0.015
183	Hattiesburg-Laurel	2,150	0.015
184	Terre Haute	1,900	0.013
185	Jonesboro	1,870	0.013
186	Butte-Bozeman	1,820	0.012
187	St. Joseph	1,780	0.012
188	Jackson, TN	1,760	0.012
189	Duluth-Superior	1,730	0.012
190	Mankato	1,700	0.012
191	Ottumwa-Kirksville	1,550	0.011
191	Bangor	1,550	0.011
193	Lima	1,500	0.01
194	Great Falls	1,470	0.01
195	Elmira (Corning)	1,380	0.009
196	Quincy-Hannibal-Keokuk	1,210	0.008
197	Juneau	1,140	0.008
198	Wheeling-Steubenville	1,120	0.008
199	Bluefield-Beckley-Oak Hill	1,090	0.007
200	Clarksburg-Weston	1,020	0.007

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Local Television Market Universe Estimates: Hispanic or Latino TV Homes

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Rank	Designated Market Area (DMA)	Hispanic TV Homes	% of US
201	Meridian	930	0.006
202	North Platte	840	0.006
203	Marquette	820	0.006
204	Greenwood-Greenville	750	0.005
205	Helena	640	0.004
206	Parkersburg	460	0.003
207	Alpena	270	0.002
208	Zanesville	180	0.001
208	Presque Isle	180	0.001
210	Glendive	90	0.001
	NSI Total U.S.	**14,700,490**	**100.000**

EXHIBIT 14

[Redacted in its Entirety from Public Version]

EXHIBIT 15

[Redacted in its Entirety from Public Version]

EXHIBIT 16

[Redacted in its Entirety from Public Version]

EXHIBIT 17

[Redacted in its Entirety from Public Version]

EXHIBIT 18

[Redacted in its Entirety from Public Version]

EXHIBIT 19

[Redacted in its Entirety from Public Version]

EXHIBIT 20

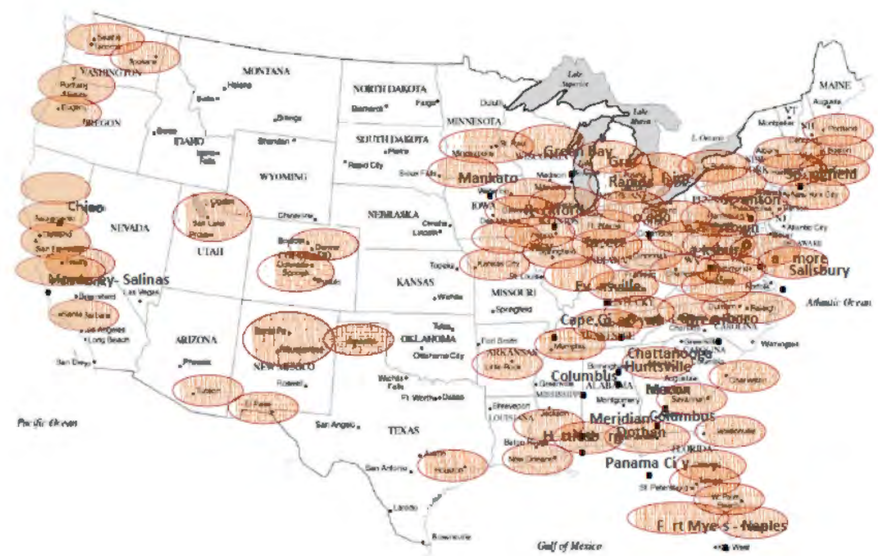
[Redacted in its Entirety from Public Version]

EXHIBIT 21

COMCAST DISTRIBUTION: ESTRELLA TV AND TELEMUNDO

ESTRELLA TV
6,000,000 Comcast Subscribers

TELEMUNDO
21,100,000 Comcast Subscribers



Source: Comcast channel lineups

DECLARATION OF LENARD D. LIBERMAN

I, Lenard D. Liberman, hereby declare, under penalty of perjury, that the following statements are true and correct:

1. I am the Chief Executive Officer and President of both Liberman Broadcasting, Inc. and LBI Media, Inc.

2. I have read the foregoing Program Carriage Complaint. To the best of my knowledge, information and belief formed after reasonable inquiry, the Complaint is well grounded in fact and is warranted under existing law. The complaint is not interposed for any improper purpose.

By: ______________________________

Lenard D. Liberman
Chief Executive Officer & President
Liberman Broadcasting, Inc.
LBI Media, Inc.

Dated: April 8, 2016

DECLARATION OF WINTER W. HORTON

I, Winter W. Horton, hereby declare, under penalty of perjury, that the following statements are true and correct:

1. I am the Chief Operating Officer of both Liberman Broadcasting, Inc. and LBI Media, Inc.

2. I have read the foregoing Program Carriage Complaint. To the best of my knowledge, information and belief formed after reasonable inquiry, the Complaint is well grounded in fact and is warranted under existing law. The complaint is not interposed for any improper purpose.

By: ______________________________

Winter W. Horton
Chief Operating Officer
LBI Broadcasting, Inc.
LBI Media, Inc.

Dated: April 8, 2016

CERTIFICATE OF SERVICE

I, Dennis P. Corbett, certify that on this 8th day of April, 2016, I caused a copy of the foregoing Program Carriage Complaint, as well as a copy of the redacted version thereof electronically filed with the Commission this day, to be served by hand on the following:

Francis M. Buono
Senior Vice President
Legal Regulatory Affairs &
Senior Deputy General Counsel
Comcast Corporation
300 New Jersey Avenue, NW
Suite 700
Washington, DC 20001

Alex Moyer
Willkie Farr & Gallagher LLP
1875 K Street, NW
Washington, DC 20006
Counsel to Comcast Corporation

Dennis P. Corbett

Dennis P. Corbett