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**ORIGINAL**

October 25, 2002

**RECEIVED**

**OCT 25 2002**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554  
**ATTN: David Brown**

Re: Docket No. MB 02-235  
Ex Parte Presentation, DA 02-2082

Dear Ms. Dortch:

On October **24** and 25, 2002, Spanish Broadcasting System, Inc. made ex parte presentations to Commissioner Kathleen Abernathy and Commissioner Kevin Martin, respectively, pursuant to the Commission's Public Notice in the above-referenced docket, released August 26, 2002.

There is transmitted herewith two (2) copies of a bound document associated with the oral ex parte presentations, and filed in accordance with Section 1.1206(b)(1) of the Commission's Rules.

Should any questions arise with regard to this matter, kindly communicate directly with this office.

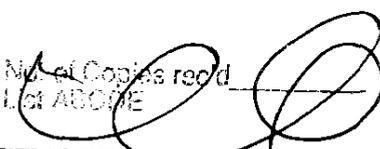
Very truly yours,

KAYE SCHOLER, LLP

By:   
Bruce A. Eisen

Enclosure

cc: Qualex International/Rm CY-B402

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# UNIVISION +

## Monopolistic Control of U.S. Hispanic Media & Entertainment

UNIVISION  ENTRAVISION

 CLEAR CHANNEL 

**FC** Federal  
Communications  
Commission

COMMISSIONER KATHLEN G. ABERNATHY  
OCTOBER, 2002

ORIGINAL

# UNIVISION +

## Related Hearings, Investigations, Proceedings and Filings

### Regulatory Agencies

- DOJ - Task Force investigating Clear Channel Entertainment
- DOJ - Task Force reviewing Univision/HBC transaction/"second request" issued
- FCC - Ringer Petition to Deny various Clear Channel acquisitions alleging CC control of radio "fronts"
- FCC - Petitions to Deny filed against Univision/HBC transaction
- FCC - Commission waives ex parte rules in seeking comments on Univision/HBC transaction – SBS participates in ex parte proceedings

### Congress

- Congressman Berman investigating CC anticompetitive practices
- Congressman Weiner investigating CC corporate abuse
- Senator Feingold formulates legislation against CC's anticompetitive practices
- Congressional Hispanic Caucus to review Univision/HBC transaction

### Federal Court

- SBS Antitrust Complaint

# UNIVISION + Public Interest Conflicts

fact



- Have intentionally lied to the FCC, flagrantly violated ownership limits and conspired to control U.S. Hispanic Radio



- Have misrepresented Univision's de facto control of Entravision and has conspired to control U.S. Hispanic TV

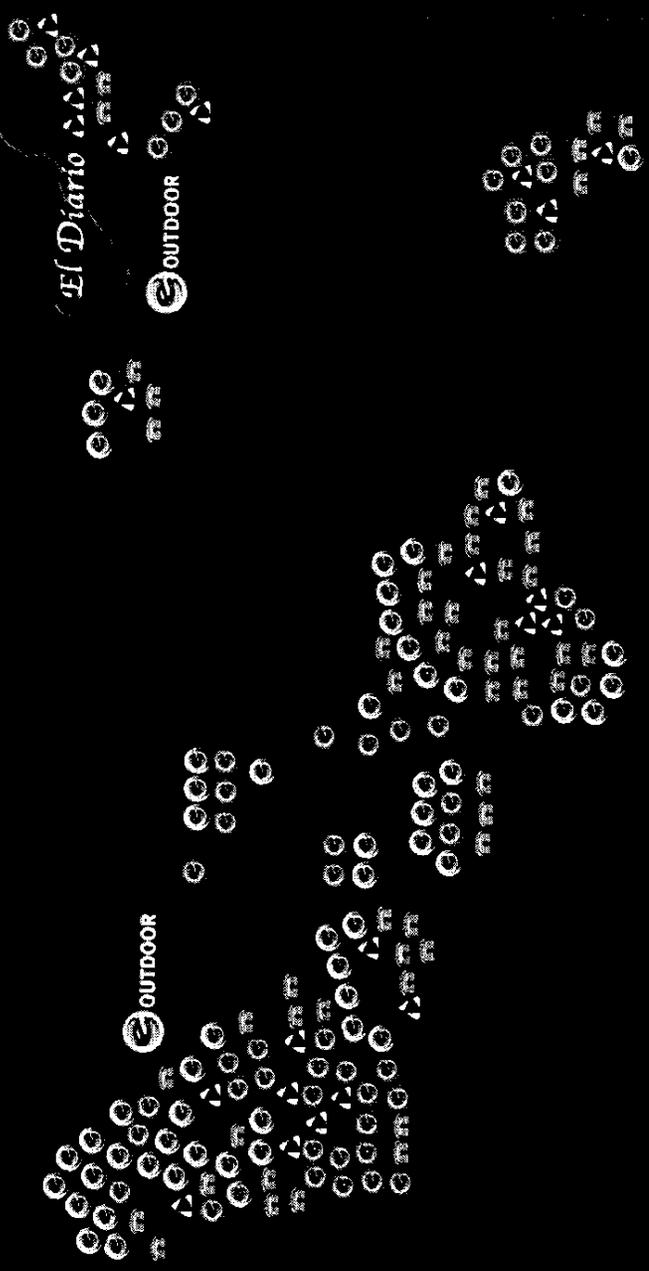


- Elimination of viable competitor
- Monopolistic market share
- Dominant economic concentration
- Decreases diversity of voices
- Reinforces existing barriers to entry (Forecloses Hispanic ownership of media)

U.S. HISPANIC MEDIA & ENTERTAINMENT WILL BE CONTROLLED BY ONE INDIVIDUAL

# UNIVISION + Resultant Control of U.S. Hispanic Media

Univision stations	
Telefuturo stations	
Cable	
Entravision stations	
Radio	
Internet	UNIVISION.COM 
Billboards	
Newspaper	<i>El Diario</i>
Publishing	
Records	



**One individual (non-Hispanic) will control U.S. Hispanic Media & Entertainment**



# Total Hispanic Broadcast Revenues

(amount in Millions)

## TOP 10 MARKETS – STARTING POINT\*

<u>Market</u>	<u>Total TV/Radio</u>	<u>Univision + HBC</u>	<u>% of Total</u>
Los Angeles	\$303	\$219	72%
Miami	171	95	56%
New York	122	59	48%
Houston	84	68	81%
Chicago	73	50	68%
San Francisco	64	52	82%
Dallas	62	45	71%
San Antonio	42	34	81%
San Diego	26	23	86%
El Paso	23	22	96%
<b>Total</b>	<b>\$970</b>	<b>\$666</b>	<b>69%</b>

\* Excludes Telefutura and Cross Platform selling efforts

Source 2002 BIA Financial Network

**UNIVISION**  **ENTRAVISION**

 **CLEARCHANNEL** 

# Parallel Paths to Control U.S. Hispanic Media & Entertainment

**UNIVISION+** 

# Sham Checklist

## FCC SHAM FILINGS

## MARKETPLACE REALITIES

<p>Clear Channel is a passive investor does not control HBC</p>	<p>Clear Channel created HBC Clear Channel funded HBC Clear Channel assisted/directed HBC Clear Channel "dealt" HBC to Univision – Bel Air, CA May 2002 Clear Channel illegally tried to derail HBC competitor SBS</p>
<p>Clear Channel has "non-voting" stock in HBC</p>	<p>Clear Channel's 26% "non-voting" HBC stake is actually much more determinative than if 26% were actually voting: HBC cannot make a single major corporate act without Clear Channel approval (negative control)</p>
<p>Clear Channel has no HBC board representation</p>	<p>To this day, HBC board has directors originally named by Clear Channel prior to adoption of "non-voting" scam</p>
<p>Clear Channel has character qualifications befitting an FCC licensee</p>	

# UNIVISION + Sham Checklist

## FCC SHAM FILINGS MARKETPLACE REALITIES

~~Clear Channel  
is a passive investor  
does not control HBC~~

Clear Channel created HBC  
Clear Channel funded HBC  
Clear Channel assisted/directed HBC

~~Clear Channel has  
"non-binding" shareholder~~

~~Clear Channel has no  
HBC board representation~~

~~Clear Channel does not have  
qualifications to hold  
an FCC license~~



# UNIVISION + Sham Checklist

## FCC SHAM FILINGS

## MARKETPLACE REALITIES

~~Clear Channel~~

~~is a passive investor  
does not control HBC~~

Clear Channel created HBC

Clear Channel funded HBC

Clear Channel assets sold/directed HBC

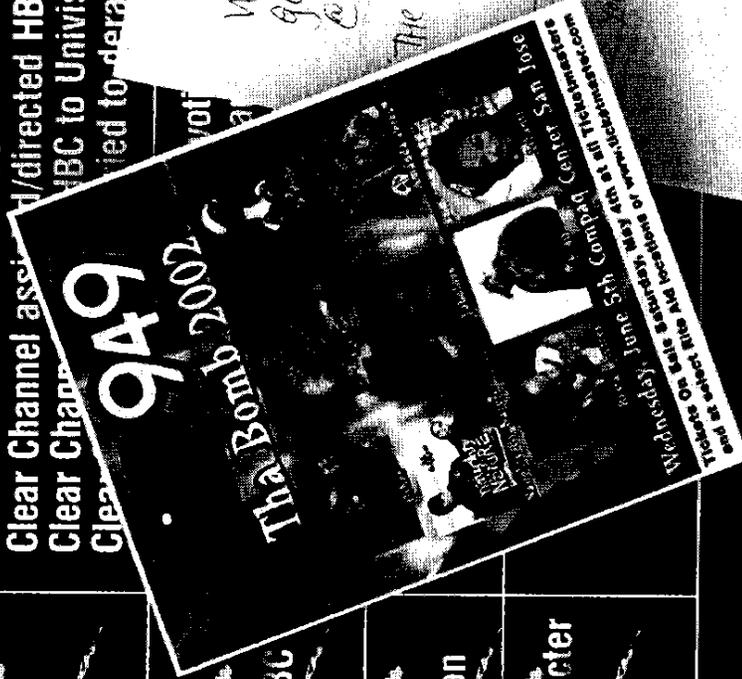
Clear Channel sold HBC to Univision - Bel Air, CA May 2002

Clear Channel tried to derail HBC competitor SBS

~~Clear Channel has no  
"non-exclusivity" with HBC~~

~~Clear Channel has no  
HBC debarment application~~

~~Clear Channel does not have  
qualification to hold  
an FCC license~~



92.7 Party!

Welcome to the Bay  
Good Luck! FROM THE STAFF  
& WILD 94.9

THE BAY AREA'S ONLY PARTY  
STATION

77  
I need it!!

# UNIVISION+ Sham Checklist

## FCC SHAM FILINGS

## MARKETPLACE REALITIES

~~Clear Channel~~

~~is a passive investor  
does not control HBC~~

~~Clear Channel is  
"non-qualified" shareholder HBC~~

~~Clear Channel has no  
HBC board representation~~

~~Clear Channel does not  
qualify to hold an FCC license~~

Clear Channel created HBC

Clear Channel funded HBC

Clear Channel assisted/directed HBC



# UNIVISION + Sham Checklist

FCC SHAM FILINGS

MARKETPLACE REALITIES

~~Clear Channel  
is a passive investor  
does not control HBC~~

~~Clear Channel has no  
"non-binding" agreement with HBC~~

~~Clear Channel has no  
HBC license creation~~

~~Clear Channel has character  
qualifications holding  
an FCC license~~

Clear Channel created HBC  
Clear Channel funded HBC  
Clear Channel assisted/directed HBC

RADIO  
WARRIORS!

# UNIVISION+ Sham Checklist

FCC SHAM FILINGS

MARKETPLACE REALITIES

~~Clear Channel is a passive investor does not control HBC~~

~~Clear Channel has no "non-binding" relationship with HBC~~

~~Clear Channel has no HBC debarment or creation~~

~~Clear Channel does not have character qualifications for holding an FCC license~~

Clear Channel created HBC  
 Clear Channel funded HBC  
 Clear Channel assisted/directed HBC

COCK  
 ST  
 FLORIDA

# UNIVISION



# Sham Checklist

## FCC SHAM FILINGS

## MARKETPLACE REALITIES

~~Clear Channel is a passive investor does not control HBC~~

Clear Channel created HBC  
Clear Channel funded HBC  
Clear Channel assisted/directed HBC  
Clear Channel "dealt" HBC to Univision - Bel Air, CA May 2002  
Clear Channel illegally tried to derail HBC competitor SBS

~~Clear Channel has "non-voting" stake in HBC~~

Clear Channel's 26% "non-voting" HBC stake is actually more determinative than if 26% were actually voting:  
HBC cannot make a single major corporate act without Clear Channel approval (negative control)

~~Clear Channel has no HBC board representation~~

To this day, HBC board has directors originally named by Clear Channel prior to adoption of "non-voting" scam

~~Clear Channel has character qualifications holding an FCC license~~

PICK THE PARTY!



# UNIVISION+ Sham Checklist

## FCC SHAM FILINGS

## MARKETPLACE REALITIES

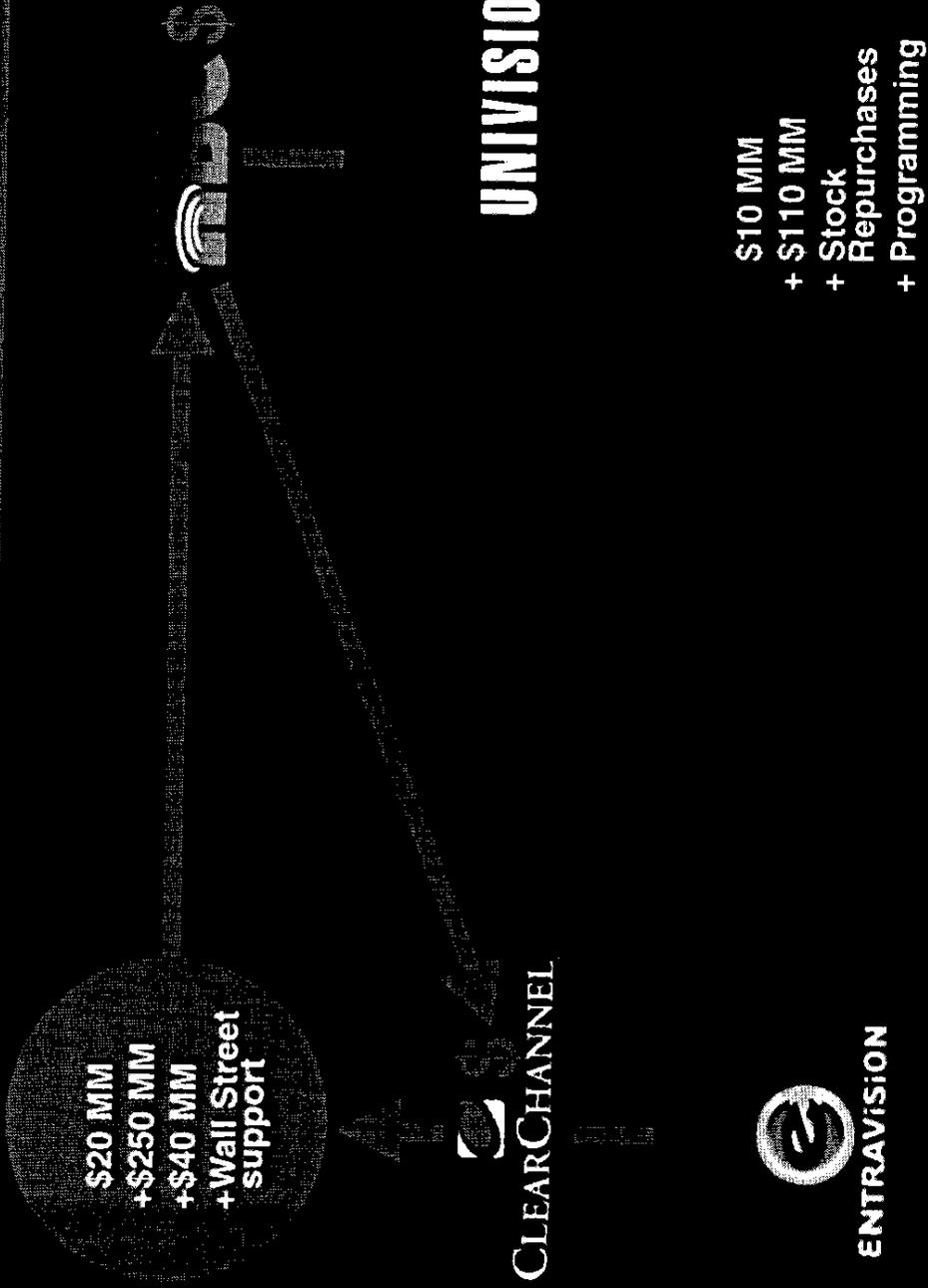
<p>Univision does not control Entravision</p>	<p>Univision created Entravision          Univision funded Entravision          Univision repurchased Entravision shares in open market          Univision controls programming = lifeblood of Entravision</p>
<p>Univision and Entravision are "independent" competitive entities</p>	<p>Univision blocked Entravision competitor from acquiring TV stations in Tampa, Orlando and Washington, D.C.</p>
<p>Univision is not involved in Entravision operations</p>	<p>Univision blocked competitor Telemundo from advertising on Entravision radio stations in Denver</p>
<p>Univision is not a monopolist</p>	<p>Univision denied access to its TV network to all internet portals in order to provide exclusivity to Univision.com</p>
<p>Univision has proposed non-voting stock and removal of directors from Entravision board</p>	<p>Univision retains 31% ownership          Univision retains programming lifeblood          Univision non-voting sham = Clear Channel non-voting sham</p>

# UNIVISION+ Sham Checklist

## FCC SHAM FILINGS MARKETPLACE REALITIES

<p><del>Univision does not control Entravision</del></p>	<p>Univision created Entravision          Univision funded Entravision          Univision repurchased Entravision shares in open market          Univision controls programming = lifeblood of Entravision</p>
<p><del>Univision and Entravision are "interdependent" competitive entities</del></p>	<p>Univision blocked Entravision competitor from acquiring TV stations in Tampa, Orlando and Washington, D.C.</p>
<p><del>Univision is not involved in Entravision operations</del></p>	<p>Univision blocked competitor Telemundo from advertising on Entravision radio stations in Denver</p>
<p><del>Univision is not a major shareholder</del></p>	<p>Univision denied access to its TV network to all internet portals in order to provide exclusivity to Univision.com</p>
<p><del>Univision has proposed non-voting stock and removal of directorate from Entravision board</del></p>	<p>Univision retains 31% ownership          Univision retains programming lifeblood          Univision non-voting sham = Clear Channel non-voting sham</p>

# UNIVISION + The Money Trail



Clear Channel Dollars      Univision Dollars



Univision  
#1 TV Group(s)  
#1 Network(s)  
#1 Radio  
#1 Records  
#1 Cable  
#1 Online

Economic dominance  
of Univision Group  
expansion of Univision assets  
inhibits competitors

Lack of competitive  
TV programming  
(15 years remaining)  
excludes competitors

Stronger  
#1 Univision Group  
economic clout

Stronger #1 Univision  
TV + Cable

Univision  
Radio + TV, Records, Online  
commands higher  
rates

Massive promotion of  
Univision Radio  
excludes competitors

Stronger #1 Univision  
Online

Stronger #1 Univision  
Radio

Univision Radio, TV and Records  
feed Univision Online  
excludes competitors

Univision Radio + TV favors  
Univision Records  
excludes competitors

Stronger #1 Univision  
Records

# UNIVISION'S Self-Perpetuating Monopolistic Model

**Reinforces barriers to entry (forecloses Hispanic ownership of media)**

UNIVISION + 

# Reinforces Barriers to Entry

Availability  
of  
stations

Existing Barriers



MARKETPLACE ENTRY

UNIVISION + FBC

# Reinforces Barriers to Entry

MARKETPLACE ENTRY

Availability  
of  
stations

Access  
to  
capital

Existing Barriers



UNIVISION+ABC

# Reinforces Barriers to Entry

MARKETPLACE ENTRY

Unavailability  
of  
**UNIVISION**  
as  
promotional  
vehicle

**UNIVISION**  
as  
competitor

**UNIVISION**  
as  
bidder

Access  
to  
capital

Availability  
of  
stations

**UNIVISION+**

Reinforced Barriers

Existing Barriers



# ACCESS DENIED

**UNIVISION +  Public Interest Conflicts**

## **Elimination of Hispanic Voices**

**Nelson Lavergne**  
(New York)

**Amador Bustos**  
(Multiple markets)

**Julio + Elias Liberman**  
(Los Angeles)

**Tom Castro**  
(Los Angeles/Houston)

**Amancio Suarez**  
(Miami)

**Rene de la Rosa**  
(San Francisco)

**Arturo Velazquez**  
(Chicago/San Francisco)

**Marcos Rodriguez**  
(Dallas)

UNIVISION +  Public Interest Conflicts

## Elimination of Hispanic Voices

Nelson Lyndine  
(New York)

Amador Bados  
(Miami Markets)

Julio E. Drman  
(Los Angeles)

Tercis  
(Los Angeles-Houston)

Amanda Diez  
(San Francisco)

Rene DelaDosa  
(San Francisco)

Arturo Diez  
(Chicago-San Francisco)

Marcos Diez  
(Miami)



# UNIVISION + Public Interest Conflicts

## Why the Commission should oppose the UNIVISION + merger

### HISTORICALLY

- Abuse of FCC ownership rules
- Anticompetitive practices
- Conspiratorial control of U.S. Hispanic Media & Entertainment
- Applicants are large thriving entities – each enjoys above average growth

### PROSPECTIVELY

- Elimination of viable competitor
- Monopolistic market share
- Dominant economic concentration – Advertisers will be "squeezed" and small Hispanic Agencies will disappear
- Decreases diversity of voices
- Reinforces existing barriers to entry (Forecloses Hispanic ownership of media)
- U.S. Hispanic Media & Entertainment will be controlled by ONE INDIVIDUAL

UNIVISION +  DOES NOT SERVE THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY



## **Recommendations**

The proposed acquisition of HBC by Univision should be DENIED as it will create an irreversible negative impact inconsistent with the public interest.

The Perenchio, Clear Channel, Tichenor voting agreement should be voided as it violates the Communications Act.

Since June 1996 the Clear Channel stake in HBC has been illegal and attributable.

The Commission should designate both licensees for hearing.

Since December 1996 Univision has misrepresented its control of Entravision. Univision now proposes to use Clear Channel's sham ownership structure to control U.S. Hispanic media. The Commission should designate both licensees for hearing.

**UNIVISION+** 



**Selected Testimony for FCC Commissioners – October 10, 2002**

"We must determine what effect the merger will have on the state of competition in the relevant market and whether the efficiencies created by the merger will be passed on to consumers... The Commission must then balance the potential benefits against the potential harms of the merger. The Commission's review goes beyond traditional antitrust considerations to encompass a broader public interest analysis,

The record developed thus far demonstrates that this proposed merger will likely harm consumers by eliminating a viable competitor... the Applicants have not demonstrated any merger-specific public interest benefits that outweigh the harms.

More specifically, the proposed merger will substantially increase the level of concentration in an already highly concentrated market. I have no doubt that business combinations... may be pro-consumer. BUT OUR TASK IS TO REVIEW ONLY THE APPLICATION IN FRONT OF US AND TO WEIGH THE POTENTIAL BENEFITS AGAINST THE THREATS TO COMPETITION. On this record, I am forced to conclude that the public interest would not be served by granting the application."

**- Commissioner  
Kathleen Q. Abernathy**

# UNIVISION +



## Selected quotes from FCC Commissioners – October 10, 2002

"...the proposed merger would eliminate an existing viable competitor in every market in the country...

This flies in the face of three decades of communications policy that has sought ways to eliminate the need for regulation by fostering greater competition"

– Chairman  
Michael K. Powell

Were this merger to proceed as presented, the likelihood of another (competitor) entering the market in the near future – and being able to compete effectively with the huge merged entity applicants seek to create – would be so tiny as to be almost invisible."

– Chairman  
Michael J. Copps

"Particularly in this environment, the Commission must be wary of taking action that would decrease, not increase, competition in this market"

– Commissioner  
Kevin J. Martin

# UNIVISION +

## UNIVISION /

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This flies in the face of three decades of communications policy that has sought ways to eliminate the need for regulation by fostering greater competition"

– **Chairman**  
Michael K. Powell

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– **Chairman**  
Michael J. Copps

"Particularly in this environment, the Commission must be wary of taking action that would decrease, not increase, competition in this market"

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Kevin J. Martin