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

Re: Applications for Transfer of Control of Hispanic Broadcasting Corp., and Certain Subsidiaries, Licensees of KGBT (AM, Harlingen, Texas et al. (Docket No. MB 02-235, FCC File Nos. BTC-20020723ABL, et al.))

Dear Ms. Dortch:

Spanish Broadcasting System, Inc. (“SBS”) has submitted several filings for the record of this proceeding demonstrating that Spanish-language media constitute separate markets for competition and diversity purposes. The proposed Univision/HBC merger threatens to dramatically reduce the diversity of Spanish-language broadcast voices available to most Hispanic Americans. Nonetheless, the parties urge upon the Commission that it should not regard the proposed merger as a threat to the diversity of broadcast voices available to Spanish-speaking Americans because “Hispanics listen to and watch a broad diversity of broadcast sources, including English-language stations.”¹ In essence, the parties assert that the proposed merger poses no threat to Spanish-speaking Americans so long as they do not “listen only to Spanish-language media”² This is the fundamental error in their proposition.

From a diversity perspective, the important facts are that (1) a substantial minority of Spanish-speaking Americans have little or no English-language skills whatsoever, and are therefore entirely

¹ *Ex parte* letter from Scott Flick, Counsel for Univision Communications, Inc. and Roy Russo, Counsel for Hispanic Broadcasting Corp., to Chairman Powell, FCC, Docket No. MB 02-235, FCC File Nos. BTC-20020723ABL, *et. al.*, at 3 (May 14, 2003).

² *Id.* at 4.

dependent on Spanish-language media; (2) an even larger number of Spanish-speaking Americans are “Spanish-dominant”—who have some English skills but predominantly speak Spanish, and who usually listen to and predominantly watch Spanish-language media; and (3) even bilingual Spanish-speaking Americans predominantly choose to obtain television news, variety, and talk programs from Spanish-language broadcast outlets. For these Spanish-speaking Americans, the proposed merger represents a dramatic loss of diversity.

Recent surveys of Spanish-speaking Americans, including data from Nielsen Media Research, uniformly conclude that approximately 50% of “Hispanic” or “Latino” Americans are “Spanish Dominant,” meaning that they “predominantly speak Spanish”³ or live in “homes where only Spanish or mostly Spanish is spoken.”⁴ For example, the Pew/Kaiser Survey found that 47% of Hispanics are Spanish-Dominant, while an additional 28% of Hispanics are bilingual.⁵ Data compiled by Nielsen Media Research indicates that in the top ten Hispanic markets by number of Hispanic TV households, from 43.7% (Sacramento) to 67.7% (Miami) of Hispanic TV households in those markets are Spanish-Dominant.⁶ Moreover, according to the Pew/Kaiser Survey, 11% of U.S. Hispanics speak and understand no English at all, while an additional 29% speak and understand English “just a little,” and an additional 9% speak and understand English “pretty well.”⁷ This roughly approximates the number of Hispanic Americans who are Spanish-Dominant according to the survey (as well as the Nielsen Media Research Data). Thus, for approximately 40% of Hispanics, English-language broadcast media are of little or no relevance.

The correlation between language use and media use is no mere supposition, as the Pew/Kaiser Survey found that “Spanish-language media are an important source of broadcast news for a substantial majority of Latinos: 38% of Latinos report that they usually listen to and predominantly

³ “2002 National Survey of Latinos,” Pew Hispanic Center/Kaiser Family Foundation, Summary of Findings, Dec. 2002, at 16 (“Pew/Kaiser Survey”).

⁴ “Nielsen Media Research’s Hispanic Local Markets,” Nielsen Media Research, <http://www.nielsenmedia.com/ethnicmeasure/hispanic-american/16localmarkets.html> (“Nielsen Report”).

⁵ *See* Pew/Kaiser Survey at 16. The Pew/Kaiser Survey “was conducted by telephone between April 4 and June 11, 2002 among a nationally representative sample of 4,213 adults, 18 years and older, who were selected at random.” *Id.* at 100. The sample results were “weighted to reflect the actual distribution among Latino adults of country of origin, age, sex and region.” *Id.* Of those interviewed, 2,929 identified themselves as being of Hispanic or Latin origin. The report uses the terms “Hispanic” and “Latino” interchangeably. *See id.*

⁶ *See* Nielsen Report.

⁷ *See* Pew/Kaiser Survey at 44.

watch Spanish-language news programs, including one in four [25%] who *only* tune into Spanish language broadcasts.”⁸ This tracks the 40% of Hispanics reported above who have little or no English-language usage or understanding. The implication of these facts are grim for Spanish-speaking Americans’ access to a diversity of news and information sources after the proposed merger: at least 40% of Hispanics will have fewer independent broadcast sources of news and information in markets where Spanish-language outlets are already concentrated.⁹ Critically, fully 25% of the 38.8 million Hispanics in the U.S. (now the largest U.S. minority according to the Census Bureau),¹⁰ or approximately 9.7 million people, rely exclusively on Spanish-language media—and will lose HBC as an independent voice as a result of the merger.

The merger would be a significant loss of diversity for bilingual Hispanic Americans, as well. According to the Pew/Kaiser survey, 26% of Hispanics watch or listen to Spanish-language and English-language broadcast news equally.¹¹ Moreover, a survey released last month conducted on behalf of The Tomas Rivera Policy Institute found that 57% of bilingual Hispanic Americans watch news on Spanish-language television, and 63% watch variety or talk programs—only 16% reported watching news in English, and only 8% reported watching variety or talk programs in English.¹² Like the Pew/Kaiser Survey (26% of Hispanics watch or listen to Spanish-language and English-language broadcast news (radio and television) equally), the Tomas Rivera Survey found that 26.7% of Hispanics reported using a mix of Spanish-language and English-language television. Added to the 57% of bilingual Hispanic Americans who use Spanish-language television, the Tomas Rivera Survey

⁸ *Id.* at 45 (emphasis in original). This correlation is not surprising, as academicians who have studied the matter state that “language proficiency as stated [by a person being interviewed] should correlate highly with place of birth, age at arrival, and media preference when cross-analyzed.” M. Isabel Valdes, *Marketing to American Latinos: A Guide to the In-Culture Approach*, Part 2, at 69 (2002).

⁹ See “Spanish Language Broadcast Outlets -- Top Ten Hispanic Markets By Population,” attached hereto. Including Entravision, the merged entity would control more than 40% of the Spanish-language broadcast outlets in six of the top ten markets, and more than 50% of the Spanish-language broadcast outlets in four of the top ten markets.

¹⁰ D’Vera Cohn, “Hispanics Are Nation’s Largest Minority,” *The Washington Post* (June 18, 2003) < <http://www.washingtonpost.com/wp-dyn/articles/A11080-2003Jun18.html>>.

¹¹ Pew/Kaiser Survey at 45.

¹² Louis DeSipio, “Latino Viewing Choices: Bilingual Television Viewers and the Language Choices They Make,” The Tomas Rivera Policy Institute, at 7 (May 2003) (“Tomas Rivera Survey”) (conducted by Interviewing Services of America between December 10, 2001 and January 7, 2002, the survey includes 1,232 respondents divided between Los Angeles, Houston and New York).

reports that 83.7% of bilingual Hispanic Americans (excluding Spanish-Dominant Hispanic Americans) rely on Spanish-language television as an important source of news and information. The Tomas Rivera Survey data on television usage generally track the Pew/Kaiser data on usage of broadcast media generally (both radio and television), with the conclusion that even for bilingual Hispanic Americans, the proposed merger threatens violence to the “widest possible dissemination of information from diverse and antagonistic sources [that] is essential to the welfare of the public.”¹³ Spanish-speaking Americans’ First Amendment claim to such diversity must be safeguarded.

Finally, it is plain that simple translation of English-language broadcast news and information are not a substitute for Spanish-language media. For example, the Tomas Rivera Survey indicated that only 42% of bilingual Hispanic Americans have Second Audio Program (“SAP”) capability on their television sets, and only 17% use SAP often.¹⁴ This is not surprising, given the inconsistent availability of SAP programming (particularly news programming) available on broadcast stations. For example, WRAL-TV in Raleigh, North Carolina, discontinued its SAP feed for its evening newscasts because the effort received little feedback and was not deemed to justify the costs.¹⁵ Similarly, ABC dropped its SAP audio track for *World News Tonight* after one year because “it had no discernable effect on viewership in Hispanic households,” while “CBS translates a single show, soap opera *The Bold and the Beautiful*.”¹⁶ Most telling, an executive at a Spanish-language network (unnamed) was cited for the proposition that “news translated to Spanish is tremendously different from Spanish news,” and that “the stories are aimed at Anglos, not Latinos.”¹⁷

The relative lack of SAP use is indicative of the central fallacy of the parties’ position here—that language is just another format and that the combined entity’s virtual Spanish-language monopoly will just be a small drop in the comprehensive English-language ocean. In other words, the merger parties would have it that Hispanic use of Spanish-language media is merely a preference—like choosing vanilla versus chocolate ice cream—and that Hispanic Americans are served just as well by English-language media. This rather cynical view is demonstrably incorrect. Preserving sufficient

¹³ *Amendment of Sections 73.35, 73.240, and 73.636 of the Commission’s Rules Relating to Multiple Ownership of Standard FM, and Television Broadcast Stations, Report and Order*, 22 FCC 2d 306, 310 (1970) (“1970 Order”) quoting *Associated Press v. U.S.*, 326 U.S. 1, 20 (1945).

¹⁴ Tomas Rivera Survey at 4.

¹⁵ John M. Higgins, “Spanish on SAP Just Hasn’t Caught On,” *Broadcasting & Cable*, Mar. 24, 2003 <http://www.broadcastingcable.com/index.asp?layout=story_stocks&articleid=CA286326> (“Spanish on SAP”).

¹⁶ *Id.*

¹⁷ *Id.*

independent Spanish-language sources of news and information is critical because language is critical—it is a key medium through which culture is created, maintained and ultimately transmitted to subsequent generations, and at the same time it is an integral part of the culture.¹⁸

At the most basic level, it is plain that a straight translation from one language into another, a necessity for timely news programming, is not a substitute for news programming created in a given language.¹⁹ Even where the translation (*i.e.*, the words used) is technically correct, the meaning may not be correct. “Anybody can learn another language, but learning the emotional connotations and denotations of the words, as well as learning how words are used in a particular culture, is a more difficult and demanding process.”²⁰ Scientists have extensively studied and documented the degree to which “language is a symbol expressing the concepts and values embedded in culturally bound cognitive values.”²¹ Thus, it is the expression that matters, and the manner in which English-speakers express a concept can be different from the way Spanish-speakers express the same concept—with the result that the meaning is not conveyed in a straight translation. As Luna *et al.* explain:

The features activated by one word—for example, *dinner*—are not necessarily the same features activated by its Spanish translation equivalent, *cena*. Hence *dinner* may be associated with the concepts *evening* and *convenient* while *cena* may be associated with the concepts *evening* and *family*.²²

Moreover, scholars have found that “[d]ifferent cultures have distinct ways of perceiving, organizing, relating to and interacting with society,” and that in order to communicate effectively, “the message needs to fit the cultural context and the mind-set of the audience being targeted.”²³ Moreover, the “attitudes, behaviors and values vary among cultures so that what makes sense (or is ‘in

¹⁸ See generally M. Isabel Valdes, *Marketing to American Latinos: A Guide to the In-Culture Approach*, Part 1, at 36-37 (2000) (“Marketing to Latinos, Part 1”).

¹⁹ Recall the Spanish-language network executive cited above who stated “news translated to Spanish is tremendously different from Spanish news.” See Spanish on SAP.

²⁰ Marketing to Latinos, Part 1 at 43.

²¹ Luna, Peracchio & de Juan, “Cross-Cultural and Cognitive Aspects of Web Site Navigation,” 30 *Journal of the Academy of Marketing Science*, 397, 398 (2002).

²² *Id.*

²³ *Id.* at 36.

consonance') to members of one group may mystify others. All these elements are implicitly present in dialogue....²⁴

These insights are, unsurprisingly, in full evidence at the most fundamental aspect of our democracy: the election process. A study of advertising directed at Hispanics in the 2000 presidential campaign found that President Bush's campaign spent at least \$810,000 on Spanish-language advertisements, while the Republican National Committee and affiliated groups contributed an additional \$1.5 million on Spanish-language advertisements; Vice President Gore's campaign and the Democratic National Committee spent at least \$490,000 and \$475,000 on Spanish-language advertisements respectively.²⁵ And by far most of these advertisements were specifically created for the Hispanic audience:

Strategists working for the parties and candidates commissioned Hispanic media consultants to produce unique ads that would only be aired on Spanish-language television stations. These ad makers understood that Spanish-language television programs viewed by Spanish-speaking Americans are distinct from national television broadcasting for the non-Hispanic audience. Dominant cultural differences are apparent when comparing broadcasts.²⁶

This trend gained momentum in the 2002 election, when "more ads...than ever before, were specifically created by candidates and parties to reach Hispanic voters. Dozens of ads were created with messages and images intended to resonate with Hispanics."²⁷ More than \$16 million was spent on Spanish-language television advertising in the 2002 election by gubernatorial, Senate, House, and down-ballot candidates.²⁸ This evidence reveals in sharp relief, at the most fundamental—electoral—level, the undeniably critical importance of Spanish-language media to Hispanic Americans.

²⁴ *Id.* (emphasis added).

²⁵ *See* Adam J. Segal, "The Hispanic Priority: The Spanish-Language Television Battle for the Hispanic Vote in the 2000 U.S. Presidential Election," Hispanic Voter Project, Johns Hopkins University, Washington, D.C., at 26 (Jan. 2003).

²⁶ *Id.* at 36.

²⁷ Adam J. Segal, "Records Broken: Spanish-Language Television Advertising in the 2002 Election," Hispanic Voter Project, Johns Hopkins University, Washington, D.C., at 4 (Nov. 2002).

²⁸ *See id.* at 2.

Thus, the Hispanic reliance on Spanish-language media for news and information is not merely a “preference” for language, but a preference for meaningful communication and comprehension of news, information and public affairs programming. These are fundamental interests at the very core of the FCC’s obligation to safeguard diversity, and they are profoundly threatened by this transaction.

To meet its obligations under the Communications Act, the FCC must undertake a detailed analysis of diversity specific to the Spanish-language media markets implicated by this merger. In addition to the materials previously submitted and filed today, SBS intends to file shortly with the Commission further information demonstrating the severity of the threat to competition and diversity presented by the proposed merger.

Respectfully submitted,

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Spanish Language Outlets -- Top 10 Hispanic Markets By Population

Metro Area	Total AM	Total FM	Total TV	Total HBC-Univision	Total HBC-Univision-Entravision		
	Outlets	Outlets	Outlets	Outlets	Percentage	Outlets	Percentage
Los Angeles	8	9	4	6	29%	8	38%
New York	4	3	2	3	33%	3	33%
Miami	10	6	4	6	30%	7	35%
Chicago	3	7	2	5	42%	7	58%
Houston	5	8	5	8	44%	8	44%
San Francisco	5	3	4	4	33%	6	50%
Dallas/Ft. Worth	7	6	3	8	50%	11	69%
San Antonio	5	4	2	5	45%	5	45%
Phoenix	4	7	2	5	38%	8	62%
Brownsville-McAllen	6	7	5	2	11%	5	28%

Notes:

1. Station count includes stations for which BIA reports revenues. Based on a conversation with the Director of Research at BIA, we understand that BIA strives to report estimated revenues for all Arbitron-rated stations in the metropolitan area.

Sources:

2002 BIA, Inc.; various internet websites; 2002 *U.S. Hispanic Market*, Strategy Research Corporation; Entravision 10-K 2002.