WILLKIE FARR & GALLAGHER

1875 K Street, NW
Washington, DC 20006

Tel: 202 303 1000
Fax: 202 303 2000

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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 a distinct market for competition and diversity purposes. Advertisers seeking to reach the Hispanic audience,[1] Spanish-speaking Americans,[2] Wall Street analysts,[3] and even the Applicants' own marketing materials[4] are in accord on this point. This is not surprising, as the Commission has understood for more than 30 years that Spanish-language broadcasters serve a distinct audience, and as recently as last year granted a

1 *See generally* Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc. to Marlene H. Dortch, Secretary, FCC, MB Docket 02-235 (June 2, 2003).

2 *See* Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc. to Marlene H. Dortch, Secretary, FCC, MB Docket 02-235, at 2-3 (June 20, 2003) ("SBS June 20 Letter").

3 *See generally* Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc. to Marlene H. Dortch, Secretary, FCC, MB Docket 02-235 (June 23, 2003) ("SBS June 23 Letter").

4 *See generally* Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc. to Marlene H. Dortch, Secretary, FCC, MB Docket 02-235 (June 16, 2003).

temporary waiver of the TV duopoly rule in large part on the basis that Spanish-language and English-language broadcasters compete in separate competition and diversity markets.[5]

SBS also has demonstrated that the proposed merger threatens substantial harm to both competition and diversity in Spanish-language broadcast markets. In seven of the top ten markets, the combined entity's (Univision + HBC) post-merger market share will equal or exceed 60%, and in two of the top ten markets the combined entity's market share will exceed 70%.[6] Similarly, SBS has demonstrated that, including Entravision (in which Univision would continue to hold an economic interest), 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.[7]

The Applicants suggest that any increase in concentration caused by the merger should not concern the FCC, arguing that English-language stations can "readily" enter the Spanish-language broadcasting market by simply converting to a Spanish-language "format," citing as evidence that 99 stations changed from English-language to Spanish-language between 2001 and 2002.[8] However, examination of available data on stations changing from English-language to Spanish-language reveals that, contrary to the Applicants' argument, the barriers to such entry are in fact quite high. From 2000 to the present, HBC accounted for most of the entry in the top-ten Hispanic markets by population (where by far the vast majority of Hispanic Americans reside); the rest was accomplished by Spanish-language broadcast incumbents. It is striking evidence of high entry barriers that in the markets where most Spanish-speaking Americans live, there have been no new entrants. Moreover, apart from HBC, many firms that accomplished this "entry" have since fallen on hard times or are undergoing liquidation to avoid bankruptcy. Thus, the recent history of entry to the Spanish-language broadcasting market indicates that new commercial entry is quite rare, and quite risky. The conclusion is clear. There is no basis for the belief that entry, or the plausible threat of entry, will ameliorate the harm to competition and diversity threatened by the proposed merger.

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5 *See generally* Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc. to Marlene H. Dortch, Secretary, FCC, MB Docket 02-235 (June 26, 2003).

6 *See* Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc. to Marlene H. Dortch, Secretary, FCC, MB Docket 02-235, at 1-2 (June 11, 2003).

7 SBS June 20 Letter at 3, n.9, and attachment. Even excluding Entravision, the merged entity will control more than 40% of the Spanish-language outlets in four of the top ten Spanish-language markets, and go as high as 50% in Dallas/Ft. Worth. *See id.* at attachment.

8 *See* Letter from Scott R. Flick, counsel to Univision Communications, Inc., and Roy R. Russo, counsel to Hispanic Broadcasting Corporation, to Michael K. Powell, Chairman, FCC, MB Docket 02-235, at 4-5 (May 14, 2003) ("Univision May 14 Letter").

The high entry barriers that characterize Spanish-language broadcasting mean that the significant increases in concentration described above will ineluctably lead to serious and lasting harm to competition and diversity. First and foremost, the Commission can take official notice of the fact that spectrum available for radio and television broadcasting is scarce, and that new entry via applying for and receiving a new broadcast license is increasingly rare. Second, the risk associated with entry via purchasing an existing station and converting it to Spanish-language broadcasting is extraordinarily high, in part because of the extremely high market valuations on radio stations, even stations that lack positive cash-flow. A former executive with several prominent radio broadcasters has stated for the record of this proceeding that "stick values"—values for stations with no cash flow—have been at an all-time high in the radio industry in recent times and that "[i]t is commonplace for FM stations in the top ten markets to be sold for numbers in excess of $100 million with little or no cash flow."[9] Moreover, top-notch facilities rarely go on the market and command top dollar when they do. *Id.* Indeed, a radio station in the Los Angeles market already broadcasting Spanish-language programming costs nine figures.[10] Antitrust jurisprudence has long acknowledged that high initial investment is an entry barrier where, as is the case here, the investment itself has significant risks.[11]

Thus, even where the hurdles peculiar to entering the Spanish-language market are not present, the Department of Justice has concluded in the context of radio mergers that new entry is highly unlikely to come from existing licensed spectrum. In the course of reviewing numerous media mergers, the Department has concluded that stations are unlikely to change formats in response to price increases by rivals. Reformatting, as DOJ observed, is "the equivalent of 'blow[ing] . . . up' your station."[12] Changing formats is a risky and expensive undertaking. If reformatting fails, the station will lose audience and, hence, advertising revenue. Thus, "[a] broadcaster is unlikely to take such a risk simply to capitalize on a small but significant price increase" by rivals after a merger.[13]

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9 Letter from Dan Mason to Michael K. Powell, Chairman, FCC, MB Docket 02-235, at 1-2 (Dec. 16, 2002) attached to Letter from Bruce A. Eisen, counsel to Spanish Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket 02-235 (Jan. 8, 2003) ("Dan Mason Letter").

10 *See generally* Declaration of Alan Sokol at ¶ 15, attached hereto ("Sokol Declaration").

11 AREEDA & HOVENKAMP, ANTITRUST LAW ¶ 421b, at 66 (2d ed. 2002) ("AREEDA").

12 Complaint, *United States v. Chancellor Media Co., Inc., and SFX Broadcasting, Inc.*, No. CV97-6497, at ¶ 26 (E.D.N.Y. Nov. 6, 1997), *available at* http://www.usdoj.gov/atr/cases/f3700/3714.htm.

13 *Id. See also* AREEDA ¶ 421c, at 68-69 (risk is more likely to be a barrier to entry when investment is not salvageable and prospective gains are low).

The DOJ's findings in the context of specific mergers is borne out by a regression analysis of radio station data from 10 MSAs spanning 1988 to 1998 conducted by two DOJ economists.[14] The analysis examined the effect of format changes on station listener shares from the perspective of individual stations and station groups, and the effect various factors have in motivating stations to change format. *See id.* at 4-5. The authors determined that "stations tend to be very cautious about changing formats and even more cautious about changing their listener base," and that "format changes frequently fail to bring about the performance improvements desired by radio groups." *Id.* at 3. The authors therefore concluded that "<u>these findings suggest that antitrust agencies should not look to format changes to counter the exercise of market power by a radio group that merges to dominance in a particular audience demographic</u>." *Id.* at 3-4 (emphasis added). That is precisely what the FCC is being asked to do here,[15] and it is precisely what the Commission must avoid to protect competition and diversity for Hispanic Americans.

DOJ has recognized that reformatting is no answer to anticompetitive conduct in *every* merger involving radio stations that DOJ has reviewed. For instance, the Competitive Impact Statement in the DOJ's suit to force Clear Channel to divest some of its assets before merging with AM/FM states: "Format changes are unlikely to deter the anticompetitive consequences of this transaction. Successful radio stations are unlikely to undertake a format change solely in response to small but significant increases in price being charged to advertisers. . . ."[16] Other DOJ Complaints and Competitive Impact Statements make precisely the same point.[17]

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14 *See* Charles J. Romeo and Andrew R. Dick, "The Effect of Format Changes and Ownership Consolidation on Radio Station Outcomes," *mimeo* Economic Analysis Group, US Department of Justice (Dec. 2001).

15 *See* Univision May 14 Letter at 5 ("[C]hanging a station to a Spanish-language format is little different than any other format change, and this fact ensures that there will continue to be ample listening options available to even those Hispanics who listen to little English-language radio.").

16 Competitive Impact Statement, *United States v. Clear Channel Communications, Inc., and AMFM Inc.*, No. 1:00CV02063, at 9 (D.D.C. Nov. 15, 2000), available at http://www.usdoj.gov/atr/cases/f6900/6985.htm.

17 *See, e.g.*, Competitive Impact Statement, *United States v. Westinghouse Electric Corp. and Infinity Broadcasting Corp.*, No. 1: 96CV02563, at 10 (D.D.C. Nov. 15, 1996), *available at* http://www.usdoj.gov/atr/cases/f1000/1045.htm; Competitive Impact Statement, *United States v. EZ Communications, Inc., and Evergreen Media Corp.*, No. 97CV00406, at 7 (D.D.C. Mar. 20, 1997), *available at* http://www.usdoj.gov/atr/cases/f2600/2647.htm; Competitive Impact Statement, *United States v. American Radio Stations Systems Corporation, the Lincoln, Group, L.P., and Great Lakes Wireless Talking Machine, LLC*, No. 1:96CV02459, at 9 (D.D.C. Oct. 24, 1996), *available at* http://www.usdoj.gov/atr/cases/f0900/0970.htm.

The risks of entering Spanish-language broadcasting are even higher when, as here, retooling would require a station operator to change languages from English to Spanish. As fully discussed in SBS's submission on June 20, 2003, successful entry could not be achieved by simply translating programming from English to Spanish.[18] Changing languages is not like moving from 'Golden Oldies' to 'Classic Rock and Roll.' It is a fundamental change that carries extreme financial risk, specialized knowledge, relationships with distinct advertisers and unique programming—simply put, operators changing from English-language to Spanish-language broadcasting experience "culture shock." Existing English-language operators are particularly hampered in this regard:

> existing English-language operators would face serious operational obstacles stemming from the unfamiliarity with Hispanic culture and music. More importantly, English language operators would undoubtedly find it extremely difficult to identify, recruit and retain the varied sources of Hispanic talent necessary to properly run a major market radio facility. It would also be very difficult for English-language operators to hold on to the best talent when the Spanish-language operators can provide more opportunity for movement and advancement within their companies…The fact is that Spanish-language media is a separate and unique sector that requires specialized expertise.[19]

As the Lehman Brothers report explains, there has been virtually no entry by an English-language operator converting a station to Spanish-language: "Despite seemingly strong prospects, general market operators have not meaningfully shifted their portfolios into the Spanish-language format." And the report specifically attributes this fact to, *inter alia*, "cultural/linguistic barriers."[20]

The nature of Spanish-language advertising budgets is another substantial impediment to entry by existing English-language broadcasters. Spanish-language advertising budgets are often totally separate from English-language advertising budgets,[21] and are frequently administered by ad agencies dedicated to the Spanish-language market.[22] These budgets are a relatively small piece of the total advertising pie, such that "[t]here is no compelling economic rationale today that would convincingly argue for an English-language operator to dedicate valuable capital resources to experiment against

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18 *See* SBS June 20 Letter at 4-6.

19 Dan Mason Letter at 2.

20 SBS June 23 Letter, Attachment at 1.

21 *See id.*; *see also* Sokol Declaration at ¶13.

22 *See* Sokol Declaration at ¶ 13 ("About fifty percent of the advertising money spent on Spanish-language television is placed by advertising agencies that specialize in Spanish-language media.").

established and well-entrenched competitors who super-serve this specialized niche market."[23] Competitive entry into the Spanish-language radio market by existing English-language broadcasters simply is not a viable option.

DOJ recognized this reality in reviewing this very transaction. Contrary to Univision's and HBC's position here that reformatting between English and Spanish-language is easy, DOJ concluded:

> Reformatting is an expensive endeavor that involves the loss of the station's existing audience, a significant expense to attract new listeners, and no assurance of attracting a significant listening base to justify the costs involved . . . . An increase in the price of advertising rates charged by existing stations serving a specific format does not in itself provide assurance that a newly formatted station would attract a sufficient audience base, particularly if there are strong incumbents already in that format.[24]

The DOJ's analysis on this point is apt and deserves emphasis. Even for existing Spanish-language broadcast groups, entry through the purchase of an existing station and converting it to Spanish-language requires sacrificing the existing audience of the station when it is converted from English to Spanish. The broadcaster must then create an audience from whole cloth by, *inter alia*, advertising heavily on other Spanish-language broadcast media in the market. The costs and risks of repositioning a station from English to Spanish are thus high and comprise an entry barrier.[25] Moreover, the merger raises these already high entry barriers because, as explained below, promotion of a radio station on television (and *vice versa*) is a critical means of seeking to surmount them. By bringing together the dominant Spanish-language television and radio broadcasters under common ownership, the merger enhances Univision's incentive to discriminate against HBC's radio rivals in the placement of advertising (and HBC's incentive to discriminate against Univision's rivals in television), thus making future entry even less likely than it already is.

DOJ has also recognized that reformatting is difficult and risky with respect to television stations. For instance, in *United States v. The News Corp. Ltd., Fox Television Holdings, Inc., and*

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[23] Dan Mason Letter at 2.

[24] Competitive Impact Statement, *United States v. Univision Communications, Inc., and Hispanic Broadcasting Corp.*, No. 1:03 CV00758, at 9 (D.D.C. May 7, 2003), *available at* http://www.usdoj.gov/atr/cases/f201000/201006.htm.

[25] *See generally* AREEDA ¶ 421g, at 72 (the need by new entrants to advertise more than incumbents raises the cost of entry).

Chris-Craft Industries, Inc.,[26] DOJ filed suit to block a transaction between Fox Television and an ABC affiliate on the grounds that the two entities would have combined to control 40 percent of the "broad television spot advertising revenue in the Salt Lake City market." *Id.* at 1. In its Competitive Impact Statement settling that case, DOJ explained that:

> entry is unlikely to be timely, likely, or sufficient to restore the competition lost through the acquisition. Other broadcast television stations in the Salt Lake City [designated market area] would not change their programming in response to a price increase imposed by News Corp after the acquisition. Programming schedules are complex and carefully constructed taking many factors into account, such as audience flow, station identity, and program popularity. As a result, a television station is unlikely to risk repositioning simply to capitalize on a small but significant price increase by News Corp after the acquisition. *Id.* at 7.

The same conclusion is warranted here. The experience of Telemundo bears this out. Many of the entry barriers to Spanish-language radio are barriers to Spanish-language TV as well. For example, limited availability of stations, lack of ability to identify, recruit and retain talent, need for specialized knowledge of and contacts with the Spanish-language advertising community, including even lack of experience with specialized sales techniques.[27] Dedicated and relatively limited Spanish-language ad budgets are similarly a substantial impediment. *See id.* An entry barrier to Spanish-language television generally, but with special significance for this merger, is Univision's exclusive right to broadcast in the U.S. all programming produced by Televisa and Venevision until 2017.[28] Generally acknowledged to be the best programming being produced in Latin America and historically overwhelmingly popular among Hispanic Americans, even Televisa and Venevision programming <u>not carried</u> by Univision is not available to other stations.[29] In addition, and partly because of the dominance of Univision programming, the costs of and risks associated with producing totally new programming for the Hispanic audience are very great. *See id.* Following the Univision/HBC acquisition, it is exceedingly unlikely that new Spanish-language television stations will enter the market when the newly-merged firm seeks to exercise enhanced market power.

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26 No. 1:01CV00771 (D.D.C. May 14, 2001), *available at* http://www.usdoj.gov/atr/cases/f8300/8374.htm.

27 *See* Sokol Declaration at ¶ 14; *passim*.

28 *See* Univision Communications, Inc., SEC Form 10-K Annual Report for the year ended Dec. 31, 2002, at 10 (filed Mar. 24, 2003).

29 *See* Sokol Declaration at ¶ 11.

The presence of high entry barriers indicates that Univision's hold on Spanish-language broadcasting will not dissipate in the foreseeable future. To the contrary, rivals have faced increasing losses in the wake of Univision's control over essential television programming, extensive distribution networks, and now the attempt to acquire a major competitor, HBC. Press reports establish that Telemundo, even owned by the deepest of pockets, General Electric, is experiencing significant financial hardship,[30] demonstrating the difficulties of succeeding in a business dominated by Univision. The immediate past Chief Operating Officer of Telemundo reports that Telemundo's sales force often encountered situations in which Univision required customers to advertise exclusively with Univision or risk being "blackballed": Univision would refuse to carry any of their ads.[31] Similar acts include denying exposure on Univision to celebrities that appear on competitors' stations and refusing to air ads on its television network for competing Spanish-language web portals until its web portal debuted. *See id.* All of these acts constitute substantial entry barriers. Unsurprisingly, the Lehman Brothers Report (SBS June 23 Letter, Attachment at 2) describes Univision as "a clear market leader *providing pricing leadership,*" an unmistakable euphemism for monopoly power.

Even if one were to consider the effects of the merger on Spanish radio or television separately, the public interest is greatly threatened. It is critical to understand that successful operation in Spanish radio requires material engagement with Spanish television as well, and *vice versa*. Indeed, several of SBS's stations only succeeded after pursuing expensive television advertising campaigns, and Telemundo currently spends several million dollars advertising on HBC and SBS. However, after its acquisition of HBC, Univision—which dominates Spanish-language television—will have an incentive to refuse to deal with, or discriminate against, Spanish-language radio competitors who seek to advertise through Univision in order to advantage HBC. Similarly, the merger will give Univision increased incentive and ability to harm its existing television competitor, Telemundo, by denying carriage of Telemundo's radio ads or raising the price of such ads.[32] Additionally, after the merger, Univision/HBC will have the power to insist that Spanish-language advertisers who wish to advertise through both radio and television purchase time from both Univision and HBC rather than from the merged firm's rivals, including SBS.[33] Such difficult-to-detect and subtle tying arrangements or refusals to deal—realistic possibilities here—impair competition. *See, e.g.*, *Lorain Journal Co. v. United States*, 342 U.S. 143 (1951). Thus, regardless of whether a combined Spanish-language TV and radio market is considered or whether they are viewed separately, harm to a significant media market is evident.

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30 "Telemundo Fall Short of GE's Expectations" Eduardo Porter and Kathryn Kranhold, Wall Street Journal Online, June 2, 2003 (noting Telemundo's continuing loss of market share to the market leader, Univision).

31 *See* Sokol Declaration at ¶ 16.

32 *See id.* at ¶ 18.

33 *See id.*

Finally, one must note that an analysis of the extent to which new entry can offset the likely anticompetitive effects of the proposed merger using antitrust learning does not tell us much about overcoming the loss of diversity. As the Commission has just noted, "the analogy between economic competition and diversity is not perfect."[34] Our antitrust models are essentially mechanistic. Demand for low prices and high quality are understood to be innate. Incumbents' poor performance in terms of prices or quality causes efficient competitors to enter. In competition analysis, entry is an effect. Conceptually, diversity is very different. It involves cause as much as effect. The demand for news, for information, or for commentary reflecting a particular political or philosophical perspective is not innate. It is contingent. In this light, any conclusion that actual or potential entry can be depended upon to protect diversity is utterly reckless. The promotion of diversity by the FCC is premised on the understanding that "basic to our form of government is the belief that 'the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.'"[35] The phrase "widest possible" is significant in this policy statement because only by ensuring the "widest possible" availability of "antagonistic sources" can we have any hope that important facts, opinions, beliefs and aspirations will find expression in the broadcast media. None of us, not even FCC Commissioners, has any *a priori* knowledge of how many diverse sources is enough to meet this goal, and none of us has any *a priori* knowledge of what facts, opinions, beliefs or aspirations will be important or significant in the life of our democracy.[36] The numerology of antitrust learning, from HHI's to entry thresholds, cannot adequately account for these matters. Thus, the Commission must proceed here with caution, because the access of Hispanic Americans to a diverse array of broadcast media is threatened by this merger to an extent that is unprecedented.

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34 2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets, MB Dkt. No. 02-277; MM Dkt. Nos. 01-235; 01-317; 00-244; and 03-130, *Report and Order and Notice of Proposed Rulemaking*, FCC 03-127, ¶ 393 (rel. July 2, 2003) ("Media Ownership Order").

35 *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, ¶¶ 16-17 (1970) (*citing Associated Press v. U.S.*, 326 U.S. 1, 20 (1945)).

36 *See* Media Ownership Order, ¶ 441 ("We also recognize that the tools that we are using to evaluate market diversity involve as much art as science. 'Diversity' is not susceptible to microscopic examination; it cannot be mapped with any known formal system or reduced to mathematical equations. Although we attempt to measure it and assign some quantitative value to it in order to understand relative diversity of different types of markets, we recognize that this process is inherently approximate.").

In sum, to meet its public interest review obligations under the Communications Act, the FCC must undertake a detailed analysis of diversity and competition specific to the Spanish-language broadcast markets implicated by this merger. In conducting this analysis, the Commission must take into account the fact that the dramatic increases in concentration and enhanced market power that will result from this merger, both in a competition and a diversity sense, simply will not be offset by new entry. Spanish-speaking Americans' access to meaningful communication in the form of news and information from a diversity of broadcast sources, as well as their interest in a competitive Spanish-language media market, will be significantly harmed by the proposed merger.

Respectfully submitted,

/s/ Philip L. Verveer

Philip L. Verveer
Sue D. Blumenfeld
Michael G. Jones
David M. Don
WILLKIE FARR & GALLAGHER
1875 K Street NW
Washington, DC 20006
Telephone: (202) 303-1000

and

Bruce A. Eisen
Allan G. Moskowitz
KAYE SCHOLER, LLP
901 15TH Street NW
Suite 1100
Washington, DC 20005

Attorneys for Spanish Broadcasting System, Inc.

cc: Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein
Susan M. Eid
Stacy R. Robinson
Jordan B. Goldstein
Catherine Crutcher Bohigian
Johanna Mikes
W. Kenneth Ferree
Robert Ratcliffe

David Brown
Scott R. Flick, Counsel for Univision Communications, Inc.
Roy R. Russo, Counsel for Hispanic Broadcasting Corp.
Harry F. Cole, Counsel for Elgin FM Limited Partnership
Arthur V. Belendiuk, Counsel for National Hispanic Policy Institute, Inc.

DECLARATION OF ALAN SOKOL

1. In presenting this information at the request of Spanish Broadcasting System, I am drawing upon many years of experience as an executive in Spanish language broadcasting and general market television and other media. I was the Chief Operating Officer of Telemundo Communications Group, Inc. from August 1998 to May 2003. Telemundo is a television broadcast network that provides Spanish-language entertainment and news programming in the U.S. through its 13 full-power and nine low-power owned-and-operated stations and its 30 affiliates. As the COO of Telemundo, I was responsible for overseeing the company's finance, administration, human resources, legal and business affairs and affiliate relations departments. Before Telemundo, I was Senior Vice President of Corporate Development for Sony Pictures Entertainment where I was involved in a number of strategic ventures, including several international television acquisitions and the launch of AXN, an Asian regional cable television network. Prior to Sony, I was Senior Vice President of Savoy Pictures, Inc. where I was responsible for the motion picture and television business and legal affairs departments. Prior to my position with Savoy Pictures, I was in private law practice for nearly twelve years. I am a graduate of Stanford Law School, and I have a bachelor's degree from Cornell University.

2. I have been asked to share with you my observations of the Spanish-language broadcast market in the United States. First, there is a separate market for Spanish-language broadcasting, which is distinct from English-language broadcasting in the U.S. Second, Spanish language television and Spanish language radio compete with one another to secure the business of the majority of advertisers. Third, there are significant barriers for new entrants into the Spanish-language broadcast market. Fourth, Univision already has the power and incentive to act in an anticompetitive manner through its current relationships and has repeatedly done so. A

merger with Hispanic Broadcasting Corp. will extend Univision's ability and its incentives to exercise its market power. Based on its past performance, I anticipate that Univision will use the HBC assets to act in an anticompetitive manner post-merger.

I.

3. Hispanic men and women who exclusively or predominately speak Spanish are referred to by Nielsen Media Research, advertisers and television networks as "Spanish dominant." They constitute approximately fifty percent of all US Hispanics. As one would expect, they rely heavily upon Spanish-language broadcasting. Issues of language proficiency and preference make Spanish language broadcasting especially important for the consumption of news and information programming where comprehension of detail and nuance is most important.

4. Language alone is sufficient to demark Spanish-language broadcasting as separate from English-language broadcasting, but differences in content, which reflect differences in culture, also establish the separate nature of Spanish broadcasting. Hispanic audiences, naturally, seek entertainment and news programming that is produced with their specific interests and concerns in mind. For example, the news programming produced by Spanish-language broadcasters emphasizes events occurring in Latin American countries and in local Hispanic areas, and matters of particular relevance to Hispanic Americans, such as immigration issues. Similar stories are produced by English-language broadcasters much less often and are given much less exposure. Even when there is a news event that is covered by both the Spanish- and English-language broadcasters, the focus of the story tends to be very different. For example, the Iraq war was closely covered by Spanish-language broadcasters. Because a significant percentage of the U.S. military ground forces deployed in the Iraq War is Hispanic, the Spanish-language broadcasters' stories tend to focus on the experiences of Hispanic soldiers and their

families at home. This phenomenon was remarked upon by Univision in its release announcing its first quarter results:

> "Univision also demonstrated its position as the premier provider of essential news to the U.S. Hispanic Community with its news coverage of the war in Iraq. From the beginning of the war on March 19, 2003, through the end of the quarter, Univision's Network newscast "Noticiero Univision" (6:30 p.m. weekday) Adult 18-49 ratings increased 12% compared to the week before the war started."

5. Just this past week, the National Mexican elections provided the lead story on Telemundo's and Univision's network newscasts. Yet this story was virtually ignored by all of the English-language broadcast networks. Similarly, when President Bush was interviewed by a Telemundo news anchor, the questions he was asked related to issues of particular concern to Hispanics—immigration law reform, relations with Mexico and healthcare and education for immigrants. These are not issues English-language news anchors focus on when interviewing the President.

6. Another striking example of the content differences Spanish-language and English-language news coverage broadcasters involved the Gloria Trevi affair. Gloria Trevi, a major celebrity in the world of Mexican popular music, was arrested in 2000 on lurid criminal charges. Her arrest, trial, and conviction produced Spanish language coverage analogous to the O.J. Simpson case, including prime-time specials on Univision and Telemundo. It was barely covered in the English-language media.

7. The difference between the Spanish-language newscasts and English-language newscasts also is readily apparent in the sports segments of the broadcasts. The leading stories Spanish-language broadcasts typically concern Latin American soccer. Comparatively, English-language broadcasters rarely cover the soccer events Hispanics want to know about. Language comprehension is not as significant an issue in watching or listening to live sports events.

Nevertheless, Hispanic Americans' preference for Spanish-language broadcasts extends to this as well. To take a recent example, Hispanics overwhelmingly preferred to watch the World Cup on Spanish language television notwithstanding its simultaneous availability on English language television.

8. A similar phenomenon was observed with a televised musical event in 2001. In November 2001, NBC broadcast a Jennifer Lopez concert on its network. In February 2002, Telemundo broadcast that same concert, with some additional footage. The audiences viewing the concert on each network were almost entirely separate. There was only one percent (1%) overlap in the audience from those who watched the concert in November on NBC and those who watched it in February on Telemundo, confirming that Telemundo's core viewers largely limit their viewing to Spanish-language television.

9. Finally, the creative content of many of the ads seeking to reach the U.S. Hispanic audience are noticeably different from the creative aspects of ads designed to reach the general audience, focusing on Hispanics' sensitivities and cultural sensitivities.

10. Spanish language radio stations compete with Spanish language television stations for local advertising. Both Telemundo and Univision have presentations designed to show prospective advertisers the superiority of television over radio, and Spanish language radio broadcasters have presentations designed to show the reverse. In addition, Spanish language television stations take into account radio's advertising prices when setting their own. This was the case during my service as Telemundo's chief operating officer. When we were setting our advertising rates, we considered both the prices Univision was charging and the prices Spanish radio was charging. We did not give significant consideration to the rates being charged by

English-language radio and television broadcasters or the rates being charged by newspapers and Internet websites.

II.

11. For television, there are very high barriers for new entrants in the Spanish-language market. Obviously, the relatively limited number of available television stations and the high prices to acquire those stations are major obstacles, but the other big problem for Spanish-language television is the lack of available programming. Univision has locked up the best Spanish-language programming being produced in Latin America. Specifically, Univision has the exclusive right to broadcast in the U.S. all programming produced by or for Televisa, the dominant television network in Mexico, and Venevision, the dominant television network in Venezuela, through December 2017. Very significantly, even if Univision does not use a particular Televisa program, it is not available to other broadcasters.

12. Another difficulty faced by new entrants is the requirement to identify and retain a great deal of specialized talent. For example, on the business side of the operation, the advertising sales staff needs to be attuned to the Hispanic community and Spanish-speaking businesses. Many advertisers on Hispanic media, such as local supermarkets, furniture stores, auto dealers and restaurants, exclusively target Hispanics. Sales personnel need to be familiar with selling advertising time to businesses whose products focus on the Hispanic community, as well as to those companies who are trying to reach the Hispanic community. General market sales executives are not familiar with these advertisers or their needs.

13. Most national and regional advertisers have a separate Spanish-language advertising budget. About fifty percent of the advertising money spent on Spanish-language television is placed by advertising agencies that specialize in Spanish-language media. Even where advertising is handled by predominantly general market agencies, the Spanish-language

budget is often managed and administered by a separate Hispanic division. This structural separation requires that an entering Spanish-language broadcaster cultivate new relationships and expand its reach in order to sell advertising time. These facts effectively dictate that a new entrant seeking to convert an English-language station to Spanish-language replace its sales force. I am convinced that it is almost impossible for a new Spanish-language broadcaster to thrive given these hurdles. Indeed, we have not seen a successful new entrant in Spanish-language television to date. I do not believe that it will be viable for a new U.S. Spanish-language TV network to succeed for the foreseeable future.

14. Many of these hurdles also exist for Spanish-language radio. While programming is not as expensive to produce for radio, radio still needs specialized on-air and production talent and a specialized sales force that understands and is familiar with local and regional advertisers targeting the Hispanic market. The specialization involves language skills and cultural awareness that are inapplicable in English-language stations. A new major market entrant in Spanish-language radio broadcasting would need to compete against both established radio stations and television stations to obtain advertising revenue. Among other things, it also would need to absorb the delays and concomitant start-up costs necessary to establish itself with listeners and secure ratings on the basis of which advertising could be sold.

15. The reasons described above provide some explanation. In addition, radio stations in large Hispanic areas are extremely expensive. In Los Angeles, a radio station already formatted to Spanish-language broadcasting costs well into nine figures. And we do not see struggling English-language radio stations switching over to Spanish-language programming. I believe this is a result of industry and financial community awareness of the substantial hurdles new entrants must overcome. The fact that we have not seen a significant Spanish-language

radio group enter successfully in many years evidences the huge barriers to creating any new Spanish-language radio competitor. The two most significant efforts to create new Spanish radio groups in recent history, Big City Radio and Radio Unica, have failed or are in a very tenuous financial position, respectively.

III.

16. I have had first-hand experience with the extensive power of Univision in Spanish-language television. With the addition of HBC, Univision would become a nearly complete gatekeeper to the Spanish-language audience. Eighty to 90 percent of the Spanish-speaking audience in the U.S. watches Univision; Univision owns the dominant Spanish-language record label and internet company, and one of Univision's major shareholders is affiliated with the dominant Spanish-language live-event company. Even without HBC, Univision has substantial ability to dictate the terms and prices for advertising on its network and other properties. Even today (without HBC), to reach the Spanish-speaking population, it is necessary for companies (including radio stations) to advertise on Univision. Our advertising sales force at Telemundo often encountered situations where Univision required companies to advertise their products and services exclusively or nearly so with it or risk being "blackballed" (*i.e.*, Univision would not carry any of their ads). Univision has engaged in similar acts with its Internet site. When its site was originally in development, the Univision broadcast network would not take ads from competing websites, in order to stunt the growth of those websites. I would expect Univision to act similarly with competing television and radio outlets.

17. Univision also has exerted its power to ensure that it is the only television network to cover major Latin American artists. For example, artists that appeared on Telemundo were blackballed from appearances on the Univision network or its affiliated stations. For example, after Ricky Martin appeared on Telemundo, Univision would no longer give him any

exposure. Univision already has put pressure on HBC to cease interviewing Telemundo personalities. Univision can similarly restrict music artists that record for competing labels from appearing on its television and radio outlets, while providing its own artists with preferred exposure. This is a significant problem for competitors, because Univision already owns the dominant Mexican regional record label and has the opportunity to increase its dominance by controlling HBC. I believe that through its dominant position in television, music and Internet, it is difficult for talent not affiliated with Univision to obtain the necessary exposure to compete.

18. I fully anticipate that if Univision acquires HBC it will increase its incentive and ability to harm competition in the Spanish-language broadcasting market. Telemundo currently spends several million dollars a year advertising its television network and stations on both HBC and SBS. In fact, I believe Telemundo is one of HBC's largest advertisers. In many markets, such as L.A., Dallas and Houston, it is impossible for Telemundo to adequately promote itself without advertising on the HBC stations. Under Univision's control, there is a great risk that Telemundo's ability to promote itself in these outlets will be substantially adversely affected. In addition, I anticipate that Univision will use the HBC stations to pressure advertisers who use radio and television to advertise exclusively with the Univision/HBC stations or risk no access at all to its media properties. This will make it even more difficult for the Telemundo stations to remain competitive.

/s/ Alan Sokol
Alan Sokol

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