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July 30, 2003

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.'s ("SBS") response to the letter from Scott R. Flick, Counsel to Univision Communications Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket 02-235 (July 23, 2003) will be submitted soon. In the meantime, we believe it is useful to reflect on the recently released media ownership Order and its direct relevance to a surprisingly negative aspect of the proposed Univision/HBC merger. Specifically, SBS has submitted several filings for the record of this proceeding demonstrating that the proposed Univision/HBC merger threatens to dramatically reduce the diversity of Spanish-language broadcast voices available to most Hispanic Americans. Such a reduction in diversity is utterly inconsistent with the media ownership Order which plainly reaffirms and repeatedly endorses the Commission's dedication to promote and protect diversity.¹

¹ See generally 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 (rel. July 2, 2003) ("Order") (employing the term "diversity" nearly 600 times in the text of the decision).

Over the decades, diversity, competition, and localism have come to be understood as the three paramount values guarded by the FCC in the context of its broadcast ownership regulations.² Indeed, these values are the foundation of the FCC's responsibility to serve the public interest. Although the FCC has periodically revised its ownership rules, its traditional dedication to diversity has been retained and restated. It has long been, and remains "a basic tenet of national communications policy that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."³

Moreover, each Commissioner has individually endorsed the importance of diversity, specifically its importance to our system of government:

- Chairman Powell informs us that the Commission "continues to rely on the preservation of multiple independent owners as the best way to ensure a robust exchange of news, information and ideas among Americans."⁴
- Commissioner Martin proclaims that "the opportunity to express diverse viewpoints lies at the heart of our democratic system."⁵
- According to Commissioner Copps, "[s]ince the earliest days of our nation, access to a diversity of viewpoints on issues of public importance has been considered essential to democracy. Maximizing the number of independent owners increases the likelihood of a wider range of viewpoints."⁶
- Commissioner Abernathy states that "[i]t goes without saying that *none* of us wants to see media ownership concentrated in the hands of a few."⁷
- Commissioner Adelstein elaborates, stating that "[a] diverse, independent media is a steward of democracy. The viewing and listening public have an overriding right to be informed by a diversity of viewpoints concerning matters in their local communities, across the nation, and in

² See *id.* ¶ 8 (stating "the modified broadcast ownership structure we adopt today will serve our traditional goals of promoting competition, diversity, and localism").

³ *Id.* ¶ 19 (citing *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 663-64 (internal quotation marks omitted) (quoting *United States v. Midwest Video Corp.*, 406 U.S. 649, 668 n.27 (1972) (plurality opinion) (quoting *Associated Press v. United States*, 326 U.S. 1, 20 (1945))).

⁴ *Id.* Statement of Chairman Powell at 5.

⁵ *Id.* Statement of Commissioner Martin at 1.

⁶ *Id.* Statement of Commissioner Copps at 16.

⁷ *Id.* Statement of Commissioner Abernathy at 4 (emphasis in original).

the global community. Without a diverse, independent media, citizen access to information crumbles, along with political and social participation.”⁸

SBS has submitted evidence that the proposed merger will significantly harm diversity in Spanish-language broadcasting. A highly reputable research group has found that of the estimated 38.8 million⁹ Hispanic Americans living in the United States today, approximately 50% are “Spanish Dominant,” meaning they “predominantly speak Spanish.”¹⁰ The Pew/Kaiser Survey found that 47% of Hispanics are Spanish-Dominant, while an additional 28% of Hispanics are bilingual.¹¹ Importantly, among the survey’s findings were 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 watch Spanish-language news programs, including one in four [25%] who *only* tune into Spanish language broadcasts.”¹² In sum, 38% of Hispanics (14.7 million people) rely predominantly on Spanish-language news programs, and 25% (9.7 million people) rely exclusively on Spanish-language news programs.¹³ This substantial population deserves to be served by a diverse

⁸ *Id.* Statement of Commissioner Adelstein at 5.

⁹ 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>>. Due to rapid population growth and a potentially underinclusive census, this figure is likely understated.

¹⁰ “2002 National Survey of Latinos,” Pew Hispanic Center/Kaiser Family Foundation, Summary of Findings, Dec. 2002, at 16 (“Pew/Kaiser Survey”). Other authorities conclude that approximately 50% of Hispanic Americans live in “homes where only Spanish or mostly Spanish is spoken.” *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, at 2-3 (June 20, 2003) (“SBS June 20 Letter”).

¹¹ *See* Pew/Kaiser Survey at 16. Survey respondents were divided into three language groups (English dominant, bilingual, and Spanish dominant). *See id.* As part of this process, the Survey asked whether respondents could carry on a conversation (both understanding and speaking) in English, with 9% of Hispanics answering that they could “pretty well”, 29% “just a little”, or 11% “not at all”. *See id.* at 44.

¹² *See id.* at 45 (emphasis in original).

¹³ *See* SBS June 20 Letter. Significantly, a recent survey of Hispanic Americans shows that 79% of Hispanic Americans rely on television and radio as their “primary source for news and information.” Of the respondents who chose to respond in Spanish, 92% reported they watch Spanish-language television and 79% said they listen to Spanish-language radio “regularly.” *See* “National Survey of Hispanic Adults,” *Opiniones Latinas*, Hispanic Reliance on Latino Media, March 2003, at 70, 72, 74 (“Opiniones Latinas Survey”) (emphasis added). The Opiniones Latinas Survey was conducted between March 3 and March 5, 2003 via telephone. Respondents were given the option of conducting the survey in English or Spanish and

media. Approval of the proposed merger simply cannot be reconciled with the recent ownership Order's concept that "[t]hose whose primary language is not English deserve the same protections of diversity and competition as do English speakers."¹⁴

As the SBS filings have demonstrated, the proposed merger would result in substantial concentration of ownership in the Spanish-language media in the largest Hispanic American markets.¹⁵ As the ownership Order explains:

owners of media outlets clearly have the ability to affect public discourse, including political and governmental affairs, through their coverage of news and public affairs. Even if our inquiry were to find that media outlets exhibited no apparent "slant" or viewpoint in their news coverage, media outlets possess significant *potential* power in our system of government. We believe sound public policy requires us to assume that power is being, or could be, exercised.¹⁶

Its analysis of this merger requires the FCC to assume that such power could be exercised in the Spanish-language media market. The FCC assures us that "[b]y ensuring that several competitors remain within each of the radio and television services, we also ensure that a number of independent outlets for viewpoint will remain in every local market, thereby ensuring that our diversity goal will be promoted."¹⁷ Currently, six firms have demonstrated the ability to operate successfully in the Spanish-language broadcasting market while remaining financially sound.¹⁸ The proposed merger would conjoin three of these viable players in whole or in part. Clearly, the concentration of ownership of Spanish-language media post-merger would not promote the FCC's diversity goal for the Spanish-language media dependent population of the United States.

interview selection was at random within predetermined population units. These units were structured to statistically correlate with the nation's adult Hispanic population according to the most recent national census. *See id.* at 3.

¹⁴ Order ¶ 458.

¹⁵ *See* SBS June 20 Letter at 3 and Attachment (stating "[i]ncluding Entravision, the merged entity would control more than 40% of the Spanish-language broadcast outlets in six of the top ten markets: Chicago, Houston, San Francisco, Dallas/Ft. Worth, San Antonio, and Phoenix, and more than 50% of the Spanish-language broadcast outlets in four of the top ten markets: Chicago, San Francisco, Dallas/Ft. Worth, and Phoenix").

¹⁶ Order ¶ 28 (emphasis in original).

¹⁷ *Id.* ¶ 129.

¹⁸ *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); Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket 02-235 (July 21, 2003).

Thus, the widespread reliance on Spanish-language broadcasting coupled with increased concentration of ownership of an already “thin” Spanish-language broadcast market¹⁹ cannot be squared with the Commission’s purported adherence to, and recent reaffirmation of its:

longstanding determination that the policy of limiting common ownership of multiple media outlets is the most reliable means of promoting viewpoint diversity. . . . A larger number of independent owners will tend to generate a wider array of viewpoints in the media than would a comparatively smaller number of owners. We believe this proposition, even without the benefit of conclusive empirical evidence, remains sound.²⁰

The Commission has stated that “[t]oday’s media marketplace is characterized by abundance. The public is better informed, better connected, and better entertained than they were just a decade ago. Traditional modes of media (e.g. newspapers, television, radio) have greatly evolved since the Commission first adopted media ownership rules in 1941, and new modes of media have transformed the landscape, providing more choice, greater flexibility, and more control than at any other time in history.”²¹ As SBS has demonstrated, this premise simply does not hold true for Spanish-language media.²² To allow Spanish-language media to grow and someday be “characterized by abundance,” the Commission must not allow the merger, as it would clearly impede—and potentially destroy—diversity in the Spanish-language media marketplace. Such damage cannot be tolerated, particularly when diversity is recognized as “a paramount objective of this Commission because the free flow of ideas under-girds and sustains our system of government.”²³

With the release of the ownership Order earlier this month each Commissioner—very eloquently—committed to protect the diversity in the media marketplace. This proposed merger substantially threatens the diversity of voices in the Spanish-language broadcasting market. It cannot be reconciled with the paramount values of the Communications Act or with each Commissioner’s commitment to protect diversity.

¹⁹ Indeed, an examination of the Spanish-language markets today shows that they are much more fragile than the “general” broadcast markets when the radio/television cross-ownership rule was first “relaxed” in 1989 to allow for waivers in the largest markets. *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 7 (July 3, 2003) (“SBS July 3 Letter”).

²⁰ Order ¶ 26, 27.

²¹ *Id.* ¶ 86 (internal citations omitted).

²² *See* SBS July 3 Letter.

²³ Order ¶ 32.

Respectfully submitted,

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