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September 8, 2003

BY HAND DELIVERY

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, D.C. 20554

Re: ***Ex Parte Presentation – MB Docket No. 02-235***

Dear Madam Secretary:

The recent filing by Univision Communications, Inc. (“Univision”) and Hispanic Broadcasting Corporation (“HBC”) is far more telling for what it ignores than for what it says.¹ It tries to create a diversion by seeking to focus on the resources available to Telemundo Communications Group, Inc. (“Telemundo”).

Let us summarize the specific matters set forth in Telemundo’s August 21 filing (the “Telemundo *Ex Parte*”) that are uncontested:

- Univision does not dispute that there are millions of U.S. consumers who rely on Spanish-language media for their information and entertainment.²
- Univision does not dispute that Univision affirmatively alters its news coverage to delete all references to Telemundo.

¹ See Univision *Ex Parte* Filing (submitted August 27, 2003).

² Univision attempts to focus on those consumers who can access both English- and Spanish-language consumers. However, the Commission also must consider diversity for those millions of consumers who speak only or rely exclusively on Spanish-language media. According to 2003-04 Nielsen data, there are 6.5 million U.S. Hispanics who speak only Spanish in the United States. See Nielsen Universal Estimate Data 2003-2004. Even if the Commission concludes that these consumers do not constitute a distinct market that should not mean that the Commission should ignore their unique concerns.

- Univision neither denies that Univision's talent – and the talent under contract with Univision's stakeholders Grupo Televisa and Venevision – has been commanded not to appear on Telemundo nor challenges the effect such bans have had on program and viewpoint diversity for Spanish-only consumers. Univision also does not state that it does not intend to subject HBC personnel to this same ban.³
- Univision never denies that its exclusive control over its stakeholders' programming denies much Televisa and Venevision programming from ever reaching the U.S. audience.⁴

³ Instead, faced with proof of its efforts to limit its talent's special appearances, Univision contends that, first, most of Telemundo's arguments relate to "non-Univision" (i.e., Televisa and Venevision) talent. This is neither true nor relevant. Telemundo provided sworn statements relating to Univision's own corporate practices from a former employee and the resultant uniform refusal of Univision talent to appear on Telemundo. It is also implausible that Univision is an innocent bystander in the exclusionary practices of long-time Univision stakeholders Televisa and Venevision. Univision's second argument – that the proposed condition is unworkable – is an assertion with no foundation. At the very least, the condition will ensure Telemundo access to Univision or Televisa talent on the same basis that other networks (including, ironically, NBC) currently enjoy.

⁴ Univision does not claim that its exclusive agreement with Televisa is necessary to the public interest. Univision instead argues that it will not help U.S. Spanish-language programming diversity for other broadcast networks to have access to Televisa and Venevision programming. To the contrary, it is Univision's absolute control as to what Televisa programming can appear in the United States that limits programming diversity. Univision then remarkably asserts that Televisa programming is not critical to Univision or Telefutera's success. Televisa is not one among many producers – it is the largest producer of television-quality Spanish-language programming in the world, dwarfing all independent Mexican competitors. As roughly two-third of all U.S. Hispanics are of Mexican descent and many have recently arrived here from Mexico, the by far most popular Mexican programming should be a major part of any U.S. Spanish-language programmer. Indeed, the Puerto Rico market demonstrates the pull of the programming (even though Puerto Rico's Spanish-language population has far weaker ties to Mexico). Univision cannot deny that access to Televisa programming by the Telemundo station in Puerto Rico is critical to that station's established leadership of this highly competitive Spanish-language market. First, contrary to Univision's assertions, Telemundo's station currently leads the Puerto Rico market in the critical Monday through Friday ratings. *See* Affidavit of Luis Roldan (attached). Second, Univision boasts of the success of the station it operates and has an option to acquire (the "Univision station"), but fails to mention a critical fact: the Telemundo station only has right of first refusal to Televisa programming; the Univision station has aired substantial Televisa programming in the market since it has entered the scene. Third, Univision's own claims only emphasize how important Univision itself views its exclusive Televisa (and Venevision) relationships. Univision notes that, until very recently, it has not chosen to compete in Puerto Rico. The clear conclusion is that even Univision is

- Univision never denies that Entravision -- the only radio station group in which Univision has had an attributable interest -- has repeatedly blocked Telemundo's efforts to inform the millions of consumers who rely on Spanish-language media for information. It is noteworthy that while HBC already has publicly asserted that it will continue to accept Telemundo's advertising, Univision has not seen fit to reaffirm that commitment.⁵

reluctant to enter any market in which it does not have final say over all Televisa shows. Conversely, if Televisa programming is not critical to Univision's dominance, then Univision should have little problem promptly terminating its exclusivity agreement, since such extended exclusivity with a financially strong and (at least Univision would argue) independent company has no countervailing public interest benefit.) Finally, Univision resorts to a strained analogy between its long-term, exclusive arrangements with its long-time stakeholders and NBC's broadcast of the Olympics. Just taking one of Univision's long term exclusive relationships -- Televisa -- is sufficient to demonstrate that this comparison is absurd. Televisa is the largest producer of Spanish-language television programming in the world, and produces programming that Univision airs year-round. Univision has had sole control as to whether and which Televisa's programs are available to U.S. broadcast consumers every week of every year for the last dozen-plus years (except for a few anomalies like Puerto Rico). This extraordinary arrangement reflects Televisa's direct economic interest in Univision, which has persisted since Univision's founding. In contrast, each Olympics is a single sporting event that airs for a few weeks; the U.S. broadcast rights in every Olympics is subject to separate, generally open, arm's-length bidding process; NBC does not have a 30-plus-year ongoing exclusivity agreement with the Olympics; the International Olympic Committee does not own a stake in NBC.

⁵ Univision claims that it is not a Spanish-language gatekeeper, arguing that many Spanish-language speakers also listen to non-Spanish-language radio stations or other media. But Telemundo is directly concerned with the millions of U.S. Spanish-reliant consumers who, by definition, cannot access information from other radio stations. And Univision's claim that newspaper and cable are sufficient means to reach this market has no support. Indeed, the Justice Department's and the Commission's analysis has repeatedly deemed newspapers and cable as a separate market from radio. Also, Univision's argument that Entravision's decisions to block Telemundo's promotionals should not implicate Univision is baseless. As Univision does not own radio stations directly and has held an attributable position of influence in Entravision, Entravision's conduct -- informed by Univision's own conduct with regard to television competitors in other contexts -- is by far the best indicator of how Univision will handle its new acquisitions. And two instances of significant anti-consumer conduct -- each lasting for several months -- during just the last two years is more than sufficient reason to cause Commission concern, especially as the proposed transaction will result in Univision directly having critical holdings in additional Spanish-language markets. Finally, Univision's conclusion that future HBC or Entravision radio discrimination against Telemundo's promotionals is irrelevant to the public interest because Telemundo is a competitor is just wrong. Again, According to the Justice Department's and Univision's own theories of this transaction, Telemundo, a pure television operator, is not a competitor to HBC, a radio entity.

- *Univision fails to offer any reason why its potential "insider" knowledge of Entravision's television station advertising sales and of Telemundo's efforts to buy airtime on HBC's radio stations will not be contrary to the public interest post-merger.*⁶

In short, this deal is not about General Electric, NBC or Telemundo and their relevant resources. Nor is there any basis to Univision's claim that, by asking for specific conditions on Univision's proposed merger, Telemundo must oppose all Spanish-language media mergers. To the contrary, Telemundo fully appreciates that big does not equal bad. But this deal is not the merger of any Spanish-language radio station group and any Spanish-language television group; rather, it is the merger of the nation's leading Spanish-language television group,⁷ which has a long history of antidiversity, anticompetitive and anticonsumer practices, with the nation's leading Spanish-language radio group, which has (either combined with Entravision or independently) gatekeeper control (with regard to Telemundo promotionals) over access to Spanish-language broadcast consumers who do not already view Telemundo. It is a unique deal that demands unique Commission action in order to protect the media diversity available to the Spanish-language consumer.

⁶ Univision "refutes" Telemundo's joint sales and consent decree concerns by asserting that Entravision already conducts its own joint sales on the national and local level. However, Univision does not explain how Univision and Entravision coordinate such sales of time by Entravision with Univision's own sale of Entravision's stations national advertising or how the Consent Decree is likely to complicate such matters when the sales involve radio advertising as well. In addition, Univision says the public has no interest in whether Telemundo's promotional buys on HBC stations are kept secret from Univision and thus questions the need for separate sales staffs. But the public has an interest in full and fair competition between Telemundo and Univision. The sharing of Telemundo's proprietary information from HBC to Univision cannot help but risk that sort of competition. Without separate sales staffs, it will be impossible to keep Telemundo's proprietary information that will necessarily be shared with Univision's radio group from reaching personnel in Univision's television group.

⁷ Univision never denies that its two Spanish-language broadcast networks dominate the U.S. Spanish-language television advertising and consumer market in a manner unrivaled by any operator in the English-language market. Univision spends paragraphs arguing Telemundo's single passing reference to the audience share of Univision's television networks. But Nielsen Hispanic Television Index data for the second quarter of 2003 confirms that the Univision network alone has 70-plus percent of Spanish-language television audience share during prime time for both households and adults 18-49. In the same quarter, Telefutura had a 12 share among the Spanish-language television audience. *See attached.* More to the point, even Univision cannot argue that it does not dominate the Hispanic television audience. According to its own 10-K, Univision had a "higher rating among Hispanic Households in prime time than its next four competitors combined in the 2001-2002 season." Univision Communications, Inc., SEC Annual Report at 3 (submitted March 24, 2003) ("Univision's 10-K").

Accordingly, Telemundo respectfully requests that the Commission adopt the proposed conditions in the event it decides to approve the proposed merger.

Respectfully submitted,



F. William LeBeau

Senior Regulatory Counsel
Telemundo Communications Group, Inc.

Attachments

cc: ITS
Chairman Michael Powell
Commissioner Kathleen Abernathy
Commissioner Kevin Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Paul Gallant, Media Legal Adviser to Chairman Powell
Stacy Robinson, Media Legal Adviser to Commissioner Abernathy
Tony Dale, Interim Media Legal Adviser to Commissioner Martin
Jordan Goldstein, Media Legal Adviser to Commissioner Copps
Johanna Mikes, Media Legal Adviser to Commissioner Adelstein
Kenneth Ferree, Media Bureau Chief
Robert Ratcliffe, Assistant Media Bureau Chief
David Brown, Media Bureau

COMMONWEALTH OF PUERTO RICO:

: ss.

COUNTY OF SAN JUAN:

AFFIDAVIT

LUIS ROLDAN, being duly sworn, and under penalty of perjury, deposes and says that the following statements are true and correct to the best of her personal knowledge and belief:

1. I am President and General Manager for WKAQ-TV, San Juan, Puerto Rico, which is the Telemundo-owned station in Puerto Rico.
2. I have been involved in the television business for the past 19 years, including the last five years at my current position.
3. WKAQ-TV has consistently led the Puerto Rican market in major ratings categories for the past several years, including ratings from Sign-On to Sign-Off Mondays through Fridays. From an advertiser's perspective, Monday through Friday is a more critical measure than Monday through Sunday, as M-F audience reach is so much larger.
4. According to Mediafax Overnights, WKAQ-TV again led the Puerto Rico television market in ratings from Sign-On to Sign-Off Mondays through Fridays in August 2003. Telemundo's station had a 12.8 rating; the Univision-operated station in the market - WLII(TV) -- had a 11.2 rating.
5. WLII(TV)'s recent ratings improvement is inextricably linked to its exclusive programming arrangements. Although, unlike in the continental United States, the Telemundo owned station has access to Grupo Televisa television programming, WLII(TV) has right of first refusal to all Venevision programming. In the past year, that meant that WLII has access to a 12-month Venevision novela, which was a substantial ratings success. Indeed, WKAQ-TV's ratings already have increased following the recent conclusion of that lengthy novela.
6. WLII(TV) also can attribute its recent improvement to its right to acquire substantial Televisa programming. As WKAQ-TV has only the right of first refusal to all Televisa broadcast television programming in Puerto Rico pursuant to an agreement that expires in 2005, WLII is able to acquire and air substantial Televisa programming, in addition to programming such as "The Simpsons" dubbed in Spanish, that would not be available to any broadcaster in the continental United States (for fear of eroding the English version of the same program).

7. It is my experience that access to Televisa programming is critical to both WKAQ-TV's and WLII(TV)'s success in the Puerto Rico market.



Luis Roldan

Aff. No. 569

Sworn to and subscribed before me this
5th day of September, 2003


Notary Public