

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of the Applications of)
)
Shareholders of Hispanic Broadcasting Corp.) Docket No. MB 02-235
(Transferor))
)
and)
) File Nos.:
Univision Communications, Inc.) BTC/BTCH-20020723ABL-ACC
(Transferee)) BTCH-20020723ACD-ACT
) BTCFTB-20020723ACU
For Consent to the Transfer of Control of Tichenor) BTCH-20020723ACV
Licensee Corporation, HBC License Corporation) BTCH-20020723ACW
HBC Houston License Corporation, WLXX-AM) BTC-20020723ACX
License Corporation, TMS License California,) BTCH-20020723ACY-ACZ
Inc., WADO-AM License Corporation, KTNQ-AM) BTCFTB-20020723ADA-ADB
License Corporation, KLVE-FM License) BTC/BTCH-20020723ADC-ADD
Corporation, WQBA-AM License Corporation,) BTC/BTCH-20020723ADE-ADH
WQBA-FM License Corporation, KECS-FM) BTCH-20020723ADK-ADP
License Corporation, KMRT-AM License) BTC-20020723ADQ
Corporation, KESS-AM License Corporation,) BTCH-20020723ADR
KICI-FM License Corporation, KHCK-FM)
License Corporation, KCYT-FM License)
Corporation, KLSQ-AM License Corporation,)
and HBC Investments, Inc.)

To: The Commission

MOTION TO DISMISS

The National Hispanic Policy Institute, Inc. (“NHPI”), by counsel, hereby moves to dismiss the above-referenced applications to transfer control of radio station authorizations from Hispanic Broadcasting Corporation (“HBC”) to Univision Communications, Inc. (“Univision”). As discussed herein HBC and Univision have

failed to comply with the basic reporting requirements of Section 1.65 of the Commission's Rules.

HBC and Univision filed their applications for transfer of control on July 23, 2002. During the pendency of these applications HBC amended the seller's portion of the applications to report that it had acquired additional radio stations.¹ Univision has never amended the buyer's portion of the transfer applications.

Since the above referenced applications were filed, Univision has acquired additional television stations. Some of these stations serve markets where HBC owns radio stations. Univision has never amended its applications for transfer of control to report that it has acquired additional television stations. Nor, has it amended the above referenced applications to submitted an updated multiple ownership study as required by FCC Form 315. NHPI, a party to this proceeding, has never had an opportunity to review or comment on a multiple ownership study that sets forth all the interrelationships between the stations licensed to Univision and HBC.

Without an amendment, NHPI cannot determine how many television stations Univision has acquired. A review of Univision's recent filings with the Securities and Exchange Commission provides some clues. For example, Univision's SEC Form 10-Q dated March 31, 2003, reports that on February 19, 2003, Univision acquired the assets of a full-powered television station in Fresno, California.² The SEC Form 10-Q also states that on March 31, 2003, Univision acquired the stock of a full-powered television station in Raleigh, North Carolina. Univision's SEC 10-Q dated June 30, 2003 reports that on May 30, 2003, Univision acquired a full-power television station in Albuquerque, New

¹ See letters from NHPI submitted in this docket on June 18, 2003 and August 6, 2003.

² Call letters, channel numbers, facility ID numbers or other identifying features are not provided in Univision's SEC reports.

Mexico. The Form 10-Q also reports that on April 17, 2003, Univision entered into an asset purchase agreement to acquire a full-power television station in Sacramento, California. Finally, Univision's SEC Form 10-Q states that it entered into an asset purchase agreement to acquire a full-powered television station in Tucson, Arizona. Thus, Univision has acquired or is in the process of acquiring at least 5 television stations. None of these acquisitions was reported in the context of the above referenced transfer applications.

HBC owns and operates radio stations in three of these five markets, Fresno, California; Albuquerque, New Mexico; and Sacramento, California. While HBC amended its application to notify the Commission that it had acquired additional radio stations, no amended multiple ownership study was submitted to demonstrate that HBC's newly acquired radio stations and Univision's newly acquired television stations would comply with the Commission's multiple ownership rule.³

Based on the record in this proceeding, there is no way for the Commission or the parties to determine whether the proposed Univision/HBC merger complies with the Commission's multiple ownership rule.⁴ Whether Section 73.3555, as amended by the *Media Ownership Order*, or the previous version of the rule is applied, no meaningful

³ As set forth in NHPI's letters of June 18, 2003 and August 6, 2003 HBC's amendment including additional radio stations to be transferred to Univision is a major amendment within the meaning of the FCC's rules. As such the amendment must be treated as a newly filed application which requires public notice and an opportunity for interested parties to comment.

⁴ See, Section 73.3555. The FCC amended Section 73.3555 in 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, Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area*, MB Dkt. Nos. 02-277 and 03-130; MM Dkt. Nos. 01-235; 01-317; and 00-244, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620 (2003) ("Media Ownership Order") the FCC amended Section 73.3555. The U.S. Court of Appeals for the Third Circuit imposed a stay of the new media ownership rules. See *Prometheus Radio Project v. Fed. Communications Comm'n*, No. 03-3388 (3d Cir. Sept. 3, 2003).

determination can be made concerning Univision/HBC's compliance with the Commission's rules without a properly prepared multiple ownership study.

Univision has failed to update the transfer applications as required by Section 1.65 of the rules. Section 1.65(a) of the Commission's rules provides:

Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application. Whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of his application so as to furnish such additional or corrected information as may be appropriate.

In this proceeding, NHPI and other commentators have challenged Univision and HBC's claims that the proposed merger will comply with the FCC's multiple ownership rule. FCC Form 315 calls for a detailed exhibit showing that the applicant complies with the multiple ownership rule. Yet Univision has failed to provide this very basic of required showings.

Univision and has failed to comply with the requirements of Section 1.65 of the rules. Under these circumstances, it is reasonable for the Commission to conclude that if Univision had submitted a complete multiple ownership study that study would show that the proposed merger would not comply with the Commission's multiple ownership rule in one or more markets.

As a party to this proceeding, NHPI has an absolute right to review Univision's entire merger proposal, not just the pieces Univision chooses to file. If in its totality the merger does not comply with the Commission's rules or is otherwise not in the public

interest, then NHPI has a right to file a petition setting forth the reasons NHPI believes the merger should not be granted. NHPI, as a party to this proceeding, has been denied its due process right to challenge the full Univision/HBC merger.

In past cases where an applicant has withheld significant information, the Commission has not hesitated to dismiss its application. See, e.g. *Garden State Broadcasting Ltd. Partnership v. FCC*, 996 F.2d 386 (D.C. Cir. 1993). In *Garden State* the Court found that the applicant had deliberately withheld information from the FCC. The Court affirmed that each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application. Further, the Court held that the FCC “is not expected to play procedural games with those who come before it in order to ascertain the truth.”⁵

In cases where an applicant has deliberately withheld information, the FCC has followed one of two paths. It has either dismissed the application or designated it for hearing on lack of candor or misrepresentation issues. Should the FCC decide not to designate this proceeding for hearing, dismissal of the merger applications is a reasonable option. If the pending applications are dismissed, Univision and HBC would not be barred from refiling the transfer applications. Refiling would give HBC an opportunity to list on an FCC Form 315 application(s) all the stations it seeks FCC consent to transfer. These stations would then be properly placed on public notice. Further, Univision will be able to submit a complete multiple ownership study, listing all the television stations it owns and all the radio stations it proposes to acquire. Such a course of action will secure NHPI’s procedural rights to review and comment on a complete and accurate merger application.

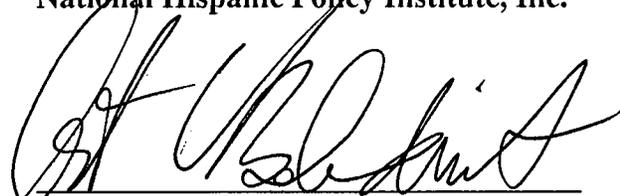
⁵ *Garden State*, at p. 392 citing *RKO General, Inc. v. FCC*, 670 F.2d 215, 229 (D.C. Cir. 1981).

Accordingly, NHPI respectfully requests that the FCC dismiss the above reference applications.

Respectfully submitted,

National Hispanic Policy Institute, Inc.

By:



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September 8, 2003

CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, do hereby certify that a copy of the foregoing "Motion to Dismiss" was mailed by First Class U.S. Mail, postage prepaid, or sent by E-Mail, as so indicated), this 8th day of September, 2003, to the following:

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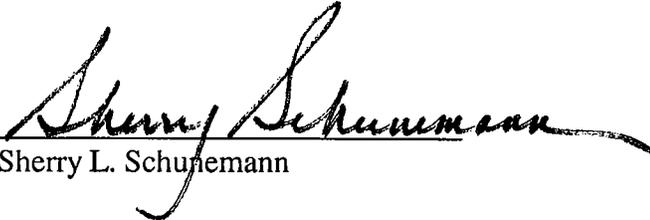
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