Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 06-121
	)	
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	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

REPLY COMMENTS OF NBC UNIVERSAL, INC. AND NBC TELEMUNDO LICENSE CO.

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TABLE OF CONTENTS

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I. INTRODUCTION AND SUMMARY

At the Nashville public hearing on media ownership last December, Chairman Martin stated that the Commission's review of the media ownership rules must include an understanding of the competitive realities of the media marketplace.[1] The Chairman observed that some of the rules may no longer reflect current media realities, and he emphasized that the Commission's task in this proceeding is to ensure that the local ownership rules take into account the competitive environment in which broadcasters must operate. [2] These observations reflect a clear understanding of Congress's regulatory reform mandate in Section 202 of the Telecommunications Act of 1996, which directed the Commission to determine, in these

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1 *See* Opening Statement of Chairman Kevin J. Martin, Public Hearing on Media Ownership, Nashville, Tennessee, December 11, 2006.

2 *Id.*

periodic reviews, whether its regulations in the broadcast and other services are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such service." [3]

Just as Section 202 changed the legal standard against which the Commission must assess the continuing need for its broadcast ownership rules, the revolutionary changes in the media marketplace over the past decade have transformed the factual context in which the local television ownership rule must be analyzed. The opening comments filed by NBC Universal, Inc. and NBC Telemundo License Co. (collectively, "NBC Telemundo") in this proceeding[4] demonstrated, through the presentation of hard data, that consumers today are presented with a wealth of constantly expanding options for accessing news, information and entertainment and that they enthusiastically embrace the diverse forms of video media available to them. As a result, owners of television stations face unprecedented levels of competition from cable and the Internet for both viewers and advertisers.

The data placed in the record by NBC Telemundo prove that the era of "meaningful economic competition" among the providers of video programming services has arrived. None of the comments filed by other parties to this proceeding have shown the contrary, and recent events simply underscore the continuing – and accelerating – competitive trends in the media marketplace. Accordingly, the Commission is bound by Section 202 to reform the local television ownership rules in this proceeding to more appropriately reflect these competitive realities.

II. RECENT EVENTS UNDERSCORE THE GROWING COMPETITIVE IMPACT OF THE INTERNET AND CABLE ON FREE, OVER-THE-AIR TELEVISION

The NBC Telemundo Comments, supported by a comprehensive analysis by Booz Allen Hamilton of media marketplace data and trends, demonstrated how cable television and the Internet over the past several years have become readily accessible sources for diverse and locally focused video as well as

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3 *See* Section 202 of the Telecommunications Act of 1996, *codified at* 47 U.S.C. § 161.

4 *See* Comments of NBC Universal, Inc. and NBC Telemundo License Co. (submitted October 23, 2006) ("NBC Telemundo Comments").

substantial competitors for local advertising revenues that formerly went to television stations. Events that have occurred since the opening comments were filed in this proceeding confirm that these trends are accelerating. As one example, just two months ago, Nielsen Media Research and NetRatings announced the formation of a National TV/Internet Fusion database intended to give a comprehensive picture of "TV and online viewing habits."[5] The database will capture viewing habits of not just those watching broadcast or cable television, but those accessing Internet video from "pure-play" Internet video sites, who, according to Nielsen, "tend to watch less television than average viewers." The implication is evident: the companies that measure consumer media use have recognized that television and the Internet are competing for consumers as well as for the advertisers who shape their buying decisions based on such consumer use data.

As another example, political candidates in the just-concluded election cycle spent unprecedented sums on Internet and cable advertising, despite the unavailability on these platforms of the guaranteed lowest unit rates to which qualified candidates are entitled on local television stations.[6] Many political campaigns directly used the Internet in another way – as a low-cost means for campaigns to disseminate candidate information, including video programming, to the millions of Americans who routinely access the web.[7] Just in the past few weeks, former Democratic vice-presidential candidate John Edwards announced his candidacy for the 2008 presidential election in a video that was first posted online at YouTube before

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[5] *See* "Mass Media Notes," Communications Daily at 9 (Nov. 27, 2006). *See also* Press Release, Nielsen and NetRatings Launch National TV/Internet Fusion Database (released Nov. 1, 2006) (available at *http://phx.corporate-ir.net/phoenix.zhtml?c=82037&p=irol-newsArticle&ID=925719&highlight*=*)* (last viewed January 9, 2007).

[6] *See* *http://www.multichannel.com/article/CA6394537.html* (last viewed Dec. 15, 2006) (noting that some cable systems claimed political ad share "in the high teens or low twenties"); 47 U.S.C. § 315; 47 C.F.R. § 73.1942 (requiring television broadcasters to offer lowest unit rates that are not required of Internet or cable network platforms). This lowest-unit-rate requirement may apply to certain locally originated cable programs, but has not been applied to national cable networks. *See* 47 C.F.R. § 76.206.

[7] *See, e.g.*, http://www.youtube.com/results?search_query=congress+candidate (YouTube search including more than 400 entries) (last viewed January 9, 2006).

appearing on television because, as Edwards said during a video interview made available through Internet blog Rocketboom.com, "one of the best ways of reaching people . . . is through the net." [8] These developments evidence the kind of "meaningful economic competition" Congress envisioned when it directed the Commission to engage in periodic regulatory reform based on changes in the marketplace.

III. THE ATTACKS ON PERMITTING A POTENTIAL THREE-STATION COMBINATION IN A MARKET AS COMPETITIVE AS LOS ANGELES ARE UNWARRANTED AND CONTRARY TO GOOD PUBLIC POLICY

Several commenters attacked NBC Telemundo's three-station group (consisting of a duopoly and a third television station owned pursuant to a temporary waiver) in Los Angeles as harmful to competition and diversity.[9] These comments lack validity, however, because they disregard the highly competitive and diverse nature of the Los Angeles market. The facts show that Los Angeles has remained one of the nation's most competitive media markets, with diversity flourishing in the four years since the Commission last conducted its periodic review of ownership rules. Even long-time opponents of any relaxation of the media ownership rules – including those who refuse to acknowledge the effect of cable and the Internet on local television stations – concede what the numbers show: Los Angeles continues to be "one of the least concentrated" of all U.S. media markets.[10]

Since 2002, television choices available to Los Angeles consumers and advertisers have multiplied. As of November 2006, the median Los Angeles household has access to 137 broadcast and

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8 *See* Communications Daily at 6-7 (rel. December 29, 2006). *See also* http://www.rocketboom.com/vlog/archives/2006/12/rb_06_dec_28.html (last viewed January 9, 2006) (in internet video, noting unprecedented nature of YouTube announcement of candidacy by John Edwards).

9 *See, e.g.*, Comments of American Federation of Labor and Congress of Industrial Organizations and the Department for Professional Employees, MB Docket No. 06-121, at 30-32 (submitted Oct. 23, 2006) ("AFL-CIO Comments"); Comments of American Federation of Television and Radio Artists, MB Docket No. 06-121 at 24 (submitted Oct. 23, 2003); Comments of Communications Workers of America, *et.al*, MB Docket No. 06-121 at 13-14 (submitted Oct. 23, 2003) ("CWA Comments").

10 *See* Attachment to Consumers Union Comments, MB Docket No. 06-121, "How Bigger Media Will Hurt California" at 494-95 (submitted October 23, 2006) (study ignoring impact of cable and internet on Los Angeles television market).

cable channels, an increase of more than 70 percent over the 80 channels available to the median Los Angeles TV household in November 2002 (and up more than 150 percent from the 54 available just ten years ago.) [11] Approximately 81 percent of Los Angeles TV households now have access to DBS or cable programming, an increase of several percent from November 2002.[12] The growth in television choices extends to minority audiences as well: for example, the number of full-power television stations in Los Angeles that air Spanish-language programming has increased since early 2002, with eight stations – including two Spanish-language duopolies – currently providing Spanish-language programming choices. [13] Of these eight stations, six deliver Spanish-language video programming for much of their broadcast day. For advertisers, television options also abound: according to recent estimates, Los Angeles has 64 cable or broadcast television channels that accept local advertising.

Beyond broadcast and cable television, Internet options for residents of Los Angeles continue to grow. Approximately 66 percent of Los Angeles adults now have access to the Internet at home or at work, with nearly half of all adults (46 percent) having access to the broadband networks that have increased viewership of Internet video nationwide.[14] Accessing news over the Internet is the second most-common use of the Internet in Los Angeles – behind only e-mail – with roughly 34 percent of adults using the Internet for news (and another 29 percent using the Internet to access weather information). [15] Local news websites are numerous in Los Angeles – for just three of dozens of examples, see http://www.at-la.com/@la-news.htm, www.losangeles.com/news/ and www.laobserved.com.

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11 *See* Los Angeles Nielsen Data (Nov. 2006 Survey).

12 *See id.*

13 *See* Broadcasting & Cable Yearbook 2007 at B-126 (2007).

14 *See* Los Angeles Scarborough (Jan. 2006-Feb. 2006).

15 *See id.*

Economic competition among Los Angeles media also has flourished since 2002, demonstrating that a rule permitting permanent common ownership of three television stations in large markets would not be harmful to competition. Even now, several Los Angeles local media combinations are larger than NBC Telemundo's existing three-station group, whether those combinations are measured by their number of broadcast station outlets or by their 2005 local advertising revenues. In terms of broadcast outlets, at least three owners of commercial television stations in Los Angeles also own several radio stations in the market, giving them substantially more local outlets than NBC Telemundo's television station group. For example, Univision currently owns two television stations and five radio stations in the Los Angeles market,[16] while CBS owns two television stations and at least six radio stations in the market, and Liberman Broadcasting owns one television station and six radio stations in the Los Angeles market.[17] Similarly, in terms of local advertising revenues, three media companies that own television stations in Los Angeles – CBS, Fox and Tribune – generate more advertising revenues from their combined local media outlets than NBC Telemundo's station group, according to 2005 local revenue projections.[18] Indeed, Fox's television duopoly derived more local ad revenues in 2005 than NBC Telemundo's three-station group.[19]

The critics of NBC Telemundo's station group in Los Angeles have offered no evidence to support their allegations of speculative harm to consumers resulting from NBC Telemundo's three-station group or from any other media group in the Los Angeles market; [20] nor, in the face of the data cited above, can they

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16 Application for Consent to Transfer of Control, Transferee Exhibit 18-B, at 5 (FCC File No. BTCCT-20060718AIK).

17 *See* BOA-20050801BRO, Attachment 3, Fig. 1.

18 *See* BIA Financial Network - Media Access Pro (May 2006). In addition to CBS's radio-TV combination, Fox owns two Los Angeles television stations, and Tribune owns a Los Angeles TV station and a daily newspaper.

19 *Id.*

20 *See* AFL-CIO Comments at 31-33; CWA Comments at 13-14.

support such allegations. Instead, the unsupported criticisms appear to stem from assumptions that: i) every television station, regardless of size or economic condition, can afford to produce daily local newscasts; ii) stand-alone stations would offer local newscasts even if they cannot realize economies of scale through other local media ownership; and iii) more efficient station operation is the enemy of quality news coverage. In NBC Telemundo's experience, none of these assumptions is true.

Many smaller television stations do not air a daily newscast that focuses on local concerns. The reason is apparent – increasing costs, not consolidation, prevent many stations from producing locally focused news. As noted in the NBC Telemundo Comments, the "most striking finding" of a 2006 state of the news study is that less than half of the 1,223 stations surveyed report that they break even on non-national newscasts.[21] Indeed, the claim that consolidation is primarily responsible for the loss of newscasts is contradicted by data from markets where the current local television ownership rule bars most or all local television station combinations. Stations in these smaller markets – many of which do not have enough stations to allow even duopolies under the current local television rule – have reported that increasing costs and competitive pressures are limiting or eliminating local news coverage.[22] For these stations, the difficulty of sustaining local news operations results not from local station consolidation, which is precluded by the rule, but rather from the competition and cost pressures that confront all free, over-the-air television stations.

Also contrary to the assumption that multi-station combinations do not benefit consumers, the Los Angeles example shows that a television station that is commonly owned with other local media is better positioned to air locally focused news. Based on a typical September 2006 weekly program schedule for local commercial full-power stations, <u>more than 90 percent</u> of local television news hours were broadcast

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21 *See* NBC Telemundo Comments at 20.

22 *See* Comments of Smaller Markets Broadcast Coalition, MB Docket No. 06-121 (submitted Oct. 23, 2006) ("Smaller Markets Comments").

by stations held by six companies that own multiple local media interests: Tribune, CBS, News Corp., NBC Telemundo, Disney/ABC and Univision.[23] That statistic should come as no surprise: in a market like Los Angeles that encompasses more than 40,000 square miles and 90 cities, only larger stations can afford the resources necessary to undertake the logistics, personnel, equipment and costs involved in serious news operations. [24]

That many of these stations also share resources or personnel in order to make more local news broadcasts possible is not a negative, but an example of how the efficiencies associated with same-market combinations serve the interests of consumers. The realities of Los Angeles corroborate long-established Commission policy – now affirmed by the Third Circuit – that efficient operations related to same-market combinations advance the public interest.[25] In Los Angeles, the NBC Telemundo stations' ability to draw on their combined resources – including shared personnel and equipment – has strengthened the stations' news operations. Despite rising costs, each of the stations continues to originate local newscasts – two in Spanish and one in English – that address content of importance to each station's unique audience. Further, the quantity of the three-station group's locally produced news has increased substantially since the last November sweeps before the merger was announced in 2001 – from approximately 45 hours per

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23 *See* Testimony of Paula Madison, President and General Manager, KNBC(TV), Los Angeles, California (submitted Oct. 12, 2006) ("KNBC Statement"). The analysis was based on Nielsen data and analog program schedules derived from a 20-day average for September 2006 and specific reports for the week beginning September 16, 2006. Among other stations reported by Nielsen as within the Los Angeles DMA and serving Los Angeles audiences with an over-the-air signal, the data included Stations KDOC, KPXN, KSCI, KJLA and KBEH. *See* Television & Cable Factbook 2007 at A-277. Such data also are consistent with the experience of broadcasters outside of Los Angeles. *See* Smaller Market Broadcast Coalition, Coalition Request for Data, MB Docket No. 06-121 (submitted Dec. 7, 2006).

24 *See* KNBC Statement at 2.

25 *See Prometheus Radio Project*, 373 F.3d 372, 415-16 (noting "findings that commonly owned television stations are more likely to carry local news than other stations and air a similar quality and quantity of local news as other stations"); *see, e.g.*, Applications of Capital Cities/ABC, Inc. for Consent to the Transfer of Control of Licenses of Broadcast Stations, 11 FCC Rcd 5841, 5877-5880 (1996) (discussion of efficiencies serving public interest resulting from Capital Cities/Disney merger).

week to more than 60 hours per week during November 2006. Moreover, one of the stations is contributing to the news and over-the-air programming diversity in neighboring markets by re-broadcasting its programming via low-power or translator stations.[26]

IV. INCREASED COMPETITION FROM OTHER VIDEO MEDIA IS COMPELLING COST CUTTING AND ENHANCED EFFICIENCY THROUGHOUT THE TELEVISION INDUSTRY

In October 2006, NBCU announced an initiative to streamline its operations and thereby realize significant cost-savings through cost and staff reductions. The initiative – NBCU 2.0 – responds to the dramatic decline in advertiser support for traditional television and affects all aspects of NBCU's business, including film, theme parks and broadcasting at the network and station levels. Through this initiative, NBCU is adapting its operations, as are many other major media companies, to create a more efficient business model amid today's unprecedented levels of competition affecting established media throughout the country. There is no other rational response to these competitive realities if free, over-the-air television is to be preserved as one of many media options available to consumers.

Some commenters have asserted that the initiative exemplifies the dangers of media consolidation, pointing primarily to changes in local station operations. [27] However, local consolidation is demonstrably not the cause of NBC Telemundo's current initiative.

First, the initiative is not a result of any new local station combinations: NBC Telemundo has not created a new station duopoly in more than four years. Indeed, NBC Telemundo recently has been a net seller of broadcast stations: in the 12 months immediately prior to the current initiative, NBC Telemundo

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[26] Two commenters assert that such rebroadcasts into markets *outside of Los Angeles* are harmful. *See* AFL-CIO Comments at 32; CWA Comments at 13. This assertion ignores that such broadcasts not only conform to the purpose of the translator service by adding to the news and other programming diversity available to viewers in these neighboring markets that may not receive similar over-the-air service from these markets' full-power stations, but that translators and low-power stations are not subject to the Commission's local ownership rules. Indeed, that commonly owned translators can add to actual consumer diversity without being subject to the Commission's ownership rules suggests that more expansive ownership regulations cannot be assumed to further the goals of competition and diversity.

[27] *See* AFL-CIO Comments at 31-32.

has sold or is in the process of donating to a noncommercial entity a total of five full-power stations, including four NBC affiliates in Top-60 markets, while it has acquired only a single UHF station.[28]

Second, the initiative does not change NBC Telemundo's long-standing commitment to serve the public interest. The new initiative is designed not to undermine the news programming that has been essential to NBC Telemundo's success, but to further modernize newsgathering operations while preserving the editorial values that have made NBC Telemundo a leading source of video news and information. As one telling example, of the approximately 7,000 employees that are supporting broadcasting at NBC Telemundo networks and stations, more than two-thirds of these employees will continue to remain devoted to news at the national, regional or local level following implementation of the new strategic plan.[29]

The initiative also maintains other strategies that have strengthened both NBC and Telemundo since their merger in April 2002. In just the four years following the NBC/Telemundo merger, Telemundo has been able to move from a program-acquiring business model – a middleman approach – to an original production business model, positioning Telemundo to deliver quality content at home and abroad. That effort has included the creation of hundreds of new jobs at Telemundo's new production studio in Miami. Company-wide, after the current initiative is implemented, Telemundo will have roughly 40 percent more employees than Telemundo had when it first merged with NBC. As to NBC's operations, the merger has

[28] *See* FCC File Nos. BALCT- 20060410AEK, *et.al* (selling NBC affiliates in Birmingham, Raleigh, Columbus, and Providence). NBC Telemundo is in the process of donating a fifth station – a Telemundo station in Steamboat Springs, Colorado – to a noncommercial entity. The sole acquisition has been the purchase of a single UHF station – KDEN(TV), Longmont, Colorado, which is intended to ensure the continued availability of full-power Telemundo service within the Denver, Colorado DMA upon the donation of the Steamboat Springs station.

[29] Other claims regarding NBCU 2.0 are similarly inaccurate: for example, the allegation that NBCU 2.0 requires stations in Los Angeles or other NBC Telemundo duopoly markets to operate under a single general manager is simply wrong. *See* AFL-CIO Comments at 59. In Los Angeles, for example, each of NBC Telemundo's stations has its own general manager. Also, allegations regarding NBC and Paxson – which changed its network name to i and its corporate name to Ion Media more than a year ago – do not accurately reflect the relationship between the two companies. *See id.* at 60-61.

brought new capabilities in covering stories throughout the United States and within specific communities. And together, NBC and Telemundo have worked to develop innovative programming, including new bilingual children's educational offerings, enhanced multi-platform and bilingual coverage of events with broad appeal such as the Olympics and a growing number of digital offerings, including localized weather programming.

Most importantly, the initiative reflects a reality that the Commission is statutorily bound to consider in this proceeding: technological innovations have transformed the video marketplace. What is driving NBCU 2.0 is not consolidation, but competition and NBC Telemundo's need to adapt its operations for long-term success in the face of ever-increasing challenges to attract consumers and advertisers.

V. CONCLUSION

For the foregoing reasons, NBC Telemundo urges the Commission to review the current media landscape not as it stood when only three networks competed for viewers, or even a decade ago when there were many fewer cable channels, negligible local cable advertising sales, and no Internet, but rather with an understanding – informed by the record in this proceeding – of the marketplace realities of today and tomorrow. Armed with this understanding, the Commission must conclude that the era of "meaningful economic competition" among the providers of video programming services has arrived and that its local television ownership rule must be reformed.

Respectfully submitted,

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