

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In re Applications of )  
 )  
**TELEMUNDO COMMUNICATIONS** )  
**GROUP, INC.,** )  
 )  
Transferor )  
 )  
and ) File Nos. BTCCT-20011101ABK, *et seq.*  
 )  
**TN ACQUISITION CORP.,** )  
 )  
Transferee )  
 )  
For Transfer of Control of Station KSTS (TV) )  
Facility ID No. 64987 )  
San Jose, California, *et al.* )

To: The Mass Media Bureau

**OPPOSITION TO PETITION TO DENY  
FILED BY THE PUERTO RICAN LEGAL DEFENSE  
AND EDUCATION FUND, INC., et al.**

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**TABLE OF CONTENTS**

I. INTRODUCTION AND SUMMARY ..... 2

II. THE TRANSFER APPLICATION COMPLIES WITH THE COMMISSION’S RULES AND DEMONSTRATES THAT THE MERGER IS IN THE PUBLIC INTEREST..... 4

    A. The Telemundo/NBC Application Complies Fully With Section 73.3566(a) Of The Rules..... 4

    B. The Application Meets The Commission’s Public Interest Standard ..... 5

        1. The Latino Coalition’s Allegations Concerning Programming And Employment Are Not Within The Scope Of The Commission’s Public Interest Evaluation ..... 6

        2. NBC Has Demonstrated That The Proposed Merger Is In The Public Interest..... 9

III. THE REQUEST FOR A TWELVE MONTH WAIVER PERIOD WILL FACILITATE AN ORDERLY DISPOSITION OF THE STATION CONSISTENT WITH COMMISSION PRECEDENT ..... 10

    A. NBC Has Met The Requirements For A Waiver Of Section 73.3555 Of The Commission’s Rules ..... 11

    B. The Los Angeles Market Is Very Diverse And Common Ownership Of The Stations Will Not Diminish Competition ..... 11

    C. A Twelve Month Divestiture Period Is Reasonable In Light of Current Economic Conditions And Is Consistent With Past Commission Decisions..... 14

IV. CONCLUSION..... 18

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National Broadcasting Company, Inc. ("NBC"), pursuant to Section 73.3584(b) of the Federal Communications Commission's ("FCC" or "Commission") Rules,<sup>1</sup> hereby submits its opposition to the Petition to Deny ("Petition") filed on December 4, 2001,<sup>2</sup> by the Puerto Rican Legal Defense and Education Fund, Inc., the National Council of La Raza, League of Latin American Citizens, the National Hispanic Media Coalition, NOSOTROS, the Mexican American Grocers Association, the National Puerto Rican Coalition, and the National Association of

<sup>1</sup> 47 C.F.R. § 73.3584(b) (2000).

<sup>2</sup> The FCC's public reference room copy of the Petition bears two different date stamps from the Secretary's office—December 3, 2001, and December 4, 2001. The earlier date has been crossed out and initialed by Commission staff, but the December 4, 2001, date has not been crossed out. The Secretary's Office has advised us that the December 4, 2001, date should be used to determine the deadline for filing responsive pleadings. Accordingly, this Opposition is timely filed.

Hispanic Publications (collectively, "Latino Coalition" or the "Coalition"), in which the Latino Coalition asks the Commission to deny the above-referenced application for consent to the transfer of control of Telemundo Communications Group, Inc. ("Telemundo") from the shareholders of Telemundo to TN Acquisition Corp.<sup>3</sup> As we show below, the Commission should deny the Petition and promptly grant the application.

## I. INTRODUCTION AND SUMMARY

Although the Latino Coalition acknowledges on the first page of its pleading "that NBC is qualified to operate and serve as the transferee of broadcast licenses," the Petition nevertheless asserts that NBC's application is incomplete and fails to demonstrate that a grant of its application is in the public interest. This assertion is primarily based on the Latino Coalition's contention that the parties have failed to show how the transaction will preserve ethnic programming and promote workforce diversity.<sup>4</sup> NBC agrees with the Coalition that these are worthy goals. Indeed, NBC's firm commitment to both programming and workforce diversity is evidenced by its desire to improve and expand Telemundo's operations through its ownership of

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<sup>3</sup> TN Acquisition Corp. is a wholly owned subsidiary of General Electric Company ("GE"), which is the parent corporation of NBC. Through the transfer of control, TN Acquisition Corp. will acquire all of the broadcast stations licensed to subsidiaries of Telemundo, as well as the Spanish-language television network owned and operated by Telemundo. Following consummation of the merger, NBC and TN Acquisition Corp., which will be renamed Telemundo, will be under the common ownership and control of GE. Although TN Acquisition Corp. is the transferee of control in the applications, NBC is referred to as the acquiring party for ease of reference.

<sup>4</sup> The declarations filed to establish standing of the Latino Coalition's members to file the Petition all seek to establish standing as viewers of Telemundo Station KVEA. We note, however, that former Congressman Esteban E. Torres, who is a director of the National Council of La Raza, is also a director of Entravision Communications Corporation ("Entravision"). Entravision holds 21 television licenses in the top 50 Latino markets, is "the largest affiliate television group of the top-ranked Univision television network" and is a direct competitor of Telemundo. Entravision Communications Corporation Website, *Company Overview*, (visited Dec. 14, 2001) <<http://www.entravision.com>>; see also Entravision Communications Corporation Ownership Report for Commercial Broadcast Stations (FCC Form 323) (filed Feb. 7, 2001); Entravision Communications Corporation, Notice of 2001 Annual Meeting of Stockholders, Securities and Exchange Commission Form 14A (filed Apr. 9, 2001). Accordingly, the Petition may have been commercially motivated as well.

the network and, contrary to the Coalition's assertions, by the strong public interest showing in the application.

NBC, however, strongly disagrees with the premise underlying the Petition: that the Commission must evaluate a transferee's specific programming proposals (including budgets and timetables) and the ethnic and racial make-up of its proposed post-merger workforce in order to determine whether grant of the application would serve the public interest. These are not the standards employed by the Commission to evaluate the public interest benefits of a proposed merger. Moreover, a public interest evaluation based on these standards would be constitutionally suspect. Instead, the Commission's analysis is focused on a more fundamental assessment of whether the proposed merger complies with the FCC's ownership rules, which embody the Commission's public interest goals of limiting the effect of market power and promoting diversity of viewpoint in the market. The application demonstrates that both of these key elements of the public interest standard will be fostered by the merger. Accordingly, the Petition should be denied.

The Latino Coalition also alleges in its Petition that the Commission should deny NBC's request for a twelve-month waiver of the duopoly rule<sup>5</sup> because NBC has failed to justify the request. Contrary to this allegation, NBC has provided ample support for its request for a twelve-month period in which to divest one of the Telemundo-owned and operated television stations. As shown in the waiver request and herein, the Los Angeles Designated Market Area ("DMA") is very diverse, and NBC's common ownership of the two Telemundo stations

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<sup>5</sup> Applications of the National Broadcasting Company, Inc. and Telemundo Communications Group, Inc. for Consent to Transfer Control of Licenses and Authorizations, File Nos. BTCCT-20011101ABK, *et seq.*, Exhibit 17, Compliance With Television Ownership Rules and Request for Temporary Waiver of Section 73.3555(b) of the Commission's Rules, at 5 [hereinafter, "Waiver Request"].

licensed to the Los Angeles DMA pending divestiture will not adversely affect competition in the market. The market has a large number of media outlets, many of which cater to the Latino community. In view of the current dire condition of the capital markets, the additional time that NBC has requested to divest the station may be necessary to allow prospective purchasers (especially minority and other independent operators) to secure and arrange the financing needed to purchase the station.

Grant of NBC's application and waiver request would be in the public interest. As NBC's application and waiver request show, Telemundo is the country's second largest Spanish-language network, but falls well below Univision Communications, Inc. ("Univision") in audience ratings, as compiled by Nielsen Media Research ("Nielsen"). The merger of NBC and Telemundo will introduce NBC to the vibrant and growing Spanish-speaking community and provide Telemundo access to the financial resources, management expertise and operational infrastructure that it needs to more effectively compete with Univision for Latino viewers. Accordingly, for the reasons set forth herein and in the application, the Commission should deny the Latino Coalition's Petition and expeditiously grant the transfer application.

## **II. THE TRANSFER APPLICATION COMPLIES WITH THE COMMISSION'S RULES AND DEMONSTRATES THAT THE MERGER IS IN THE PUBLIC INTEREST**

Contrary to the Latino Coalition's claims, the transfer application is complete in all respects, demonstrates on its face how the merger will serve the public interest and should be granted expeditiously.

### **A. The Telemundo/NBC Application Complies Fully With Section 73.3566(a) Of The Rules**

The Latino Coalition claims that the transfer application should be dismissed or denied because the application "fails to show Section 73.3566(a) compliance, and is therefore

defective.”<sup>6</sup> Section 73.3566(a) states that:

[a]pplications which are determined to be patently not in accordance with the FCC rules, regulations, or other requirements, unless accompanied by an appropriate request for waiver, will be considered defective and will not be accepted for filing . . . . Requests for waiver shall show the nature of the waiver or exception desired and shall set forth the reasons in support thereof.<sup>7</sup>

The Telemundo/NBC application complies fully with this standard. The application is complete on its face. The proposed combination of the Telemundo-owned stations and NBC-owned stations will require only a single temporary waiver of the local ownership rules. As required by Section 73.3566(a), NBC has requested a waiver of the television duopoly rule, which it has amply supported. Accordingly, the Latino Coalition is simply wrong in its assertion that the application is patently defective.

**B. The Application Meets The Commission’s Public Interest Standard**

Section 310(d) of the Act requires the Commission to determine whether grant of a transfer application would serve the public interest.<sup>8</sup> As recently explained by Chairman Powell:

In the context of mass media transactions, the Commission’s analysis is simplified by the extensive structural ownership rules Congress and the Commission have promulgated. The benefits of these prophylactic rules are that they are clear and provide some certainty to marketplace participants . . . . The extensive rulemaking proceedings used to develop the broadcast ownership rules take full account of the Commission’s diversity goals . . . . These rules squarely embody the Commission’s public interest goals of limiting the effect of market power and promoting diversity of viewpoints in the market. A transaction that complies with

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<sup>6</sup> Petition at 5.

<sup>7</sup> 47 C.F.R. § 73.3566(a) (2000).

<sup>8</sup> Section 310(d) of the Act provides that: “[n]o construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience and necessity will be served thereby.” 47 U.S.C. § 310(d) (2000).

structural rules to advance the public interest (when they exist), should not be subject to further ad hoc review; otherwise the exalted benefits of such rules would be eviscerated.<sup>9</sup>

In its Waiver Request, NBC has demonstrated that its acquisition of Telemundo promotes economic competition and furthers viewpoint diversity. As we show below, the Latino Coalition's attempt to rebut that showing relies on arguments and assertions that are either not relevant to the Commission's public interest analysis, not supported by the facts, or both.

**1. The Latino Coalition's Allegations Concerning Programming And Employment Are Not Within The Scope Of The Commission's Public Interest Evaluation**

The Latino Coalition demands that NBC: (1) diversify its own programming and management structure "so as to attract Latinos" rather than merge with Telemundo;<sup>10</sup> (2) be required to address "strategic matters like budgetary measures and timetables" to develop Spanish language programming;<sup>11</sup> and (3) explain what will happen to the "Latino employees when the stations' operations are eventually combined."<sup>12</sup> These inquiries are not within the scope of the Commission's public interest evaluation.

Programming

NBC is committed to operating the Telemundo stations as Spanish-language outlets and to providing an increased variety of Spanish language programming. The specific demands of the Latino Coalition, however, go far beyond the scope of the Commission's public interest evaluation:

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<sup>9</sup> *UTV of San Francisco, Inc.*, 16 FCC Rcd 14975, 14995 (2001) (Statement of Chairman Michael K. Powell) [hereinafter, "*Fox*"].

<sup>10</sup> Petition at 5, 6, 7-8.

<sup>11</sup> Petition at 6.

<sup>12</sup> Petition at 9.

An important element of public interest and convenience affecting the issue of a licensee is the ability of the licensee to render the best practicable service to the community reached by his broadcasts. That such ability may be assured... [Act] contemplates inquiry by the Commission, *inter alia*, into an applicant's financial qualifications to operate the proposed station. **But the Act does not essay to regulate the business of the licensee. The Commission is given no supervisory control of the programs, of business management, or of policy.** In short, the broadcasting field is open to anyone, provided there be an available frequency over which he can broadcast without interference to others, if he shows his competency, the adequacy of his equipment, and financial ability to make good use of the assigned channel.<sup>13</sup>

The Latino Coalition claims that NBC has failed to demonstrate why it could not meet the needs of the Latino community by diversifying its own programming and management structure instead of acquiring Telemundo. NBC is not required to make such a showing; nor does the Commission ever make such an inquiry of applicants. The Commission does not dictate or control a licensee's business or policy decisions. It leaves programming and operational decisions to the licensee: "there are no requirements that an applicant make any representations concerning its proposed entertainment programming" and "the Commission cannot direct a broadcaster on how its station shall be programmed."<sup>14</sup> Further, when evaluating an assignment or transfer application, the Commission is statutorily prohibited from considering whether the public interest would be better served by an assignment or transfer to a different party or by no assignment or transfer at all.<sup>15</sup> Rather, the Commission may only examine the qualifications of the parties to the application. Therefore, the Latino Coalition's request is not an appropriate inquiry for the Commission.

More importantly, however, the Latino Coalition's suggestion that the programming

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<sup>13</sup> *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940) (emphasis added).

<sup>14</sup> *Metromedia Radio & Television, Inc.*, 102 FCC 2d 1334, 1343 (1985).

<sup>15</sup> See 47 U.S.C. § 310(d) (2000); see also *Univision Holdings, Inc.*, 7 FCC Rcd 6672, 6683, n.46 [hereinafter, "Univision"].

needs of the Latino community could be better met through diversification of the existing NBC network is simply wrong. As the application demonstrated, there is a sizeable, separate, and rapidly growing market for Spanish-language programming. The Spanish-speaking segment of the broadcast audience deserves multiple competing providers of Spanish-language and other programming tailored to their needs and interests.<sup>16</sup> The NBC television network, as an English-language outlet, cannot as effectively meet the needs of the Spanish-speaking viewers. The acquisition of Telemundo, however, will not adversely impact NBC's continuing commitment to diversity in its own programming.

#### Employment

The Telemundo merger will result in the addition of approximately 1,800 employees to NBC's workforce, of whom 1,500 are Latinos. NBC welcomes this additional diversity and recognizes that a corps of experienced, Spanish-speaking employees is essential to the success of the Telemundo network. But the Latino Coalition's suggestion that NBC is required to tell the Commission—as part of this application or otherwise—“what will happen to the Latino employees” when the merger is completed is wrong.

While the parties to the merger and the Commission recognize that mergers result in cost-saving efficiencies, NBC has made no decisions about the size of the Telemundo workforce, and it is clearly premature to do so at this time.<sup>17</sup> Therefore, the Latino Coalition's demand that NBC provide detailed information concerning its post-merger employment plans must be rejected.

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<sup>16</sup> The Petition acknowledges that the merger will enhance Telemundo's ability to compete with Univision: “Certainly if NBC's resources are transferred and made available to Telemundo, the acquired station's position within the Spanish language sector of the television industry would be greatly enhanced increasing its competition capability and status vis-à-vis Univision, the largest market shareholder.” Petition at 7.

<sup>17</sup> *Id.* The suggestion contained in the Petition that NBC might engage in intentional discrimination is so offensive, speculative, unsupported by the record and irresponsible that it does not warrant a further response. See Petition at 9.

## 2. NBC Has Demonstrated That The Proposed Merger Is In The Public Interest

The proposed merger will make available to Telemundo NBC's programming, production and administrative capabilities and resources. The proposed combination of NBC and Telemundo therefore will serve the public interest by bolstering Telemundo as a competitor to Univision (as the Coalition acknowledges) and by meeting the specific programming needs of the Spanish-speaking audience.

In the competitive race to bring Spanish-language programming to the country's growing Latino population, Univision dominates in audience ratings and advertising sales and has solidified its competitive edge over Telemundo in the past year.<sup>18</sup> Univision controls 70 percent of the Latino advertising market<sup>19</sup> and commands 80 percent of Latino television viewers.<sup>20</sup> In eight of the markets where Univision and Telemundo stations compete, Univision garners a substantially greater audience share than the Telemundo stations. In Los Angeles, Univision has garnered a 7.5 percent general market audience share in the July 2001 sweeps, finishing in third place in that market—ahead of CBS, UPN, Fox, and WB. According to Nielsen Hispanic Television data, in contrast, Telemundo's ratings during primetime hours have slipped by 30 percent overall in the last year and by 23 percent in the Los Angeles market.<sup>21</sup> This gap is likely to widen as Telemundo's programming is "stripped"<sup>22</sup> by a competitor that possesses a "superior

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<sup>18</sup> See Mimi Whitefield, *Spanish-Language TV Firms Set Up Stations in Miami, Other Areas*, THE MIAMI HERALD, May 20, 2001.

<sup>19</sup> See *id.*

<sup>20</sup> See Mary Sutter, *Telemundo Flying on Peacock's Feathers*, VARIETY, at A2, Nov. 19, 2001.

<sup>21</sup> See Daniel Chang, *Company Sources Say Telemundo to Lay Off 150*, THE MIAMI HERALD, Oct. 5, 2001.

<sup>22</sup> Meg James, *Univision Profit Slides 14% on Net, Music Unit Losses*, LOS ANGELES TIMES, Aug. 2, 2001; see also Phyllis Furman, *Univision's Advertising Sales Stand Out in Industrywide Slump*, DAILY NEWS, Oct. 2, 2001 (reporting how Univision "has snatched one of Telemundo's hottest shows, a hit novela called "Betty La Fea" ("Betty, the Ugly")).

distribution network and superior programming.”<sup>23</sup> With the launch of Telefutura next month, Univision’s market standings are expected to rise further.<sup>24</sup> The growing Spanish-speaking audience deserves a strong, well-financed and credible competitor to Univision. This merger offers just that and should therefore be approved expeditiously.

Moreover, contrary to the Coalition’s assertions, the merger will also enhance programming diversity by meeting the needs of a broad segment of the Spanish-speaking population. Univision’s programming primarily serves the interests of the Mexican-American segment of the audience,<sup>25</sup> while Telemundo’s network offerings are focused on a broader cross-section of the Latino community, including Mexican, Puerto Rican, and other Caribbean and Central-American communities.<sup>26</sup>

### **III. THE REQUEST FOR A TWELVE MONTH WAIVER PERIOD WILL FACILITATE AN ORDERLY DISPOSITION OF THE STATION CONSISTENT WITH COMMISSION PRECEDENT**

As demonstrated above and in the application, the proposed combination of NBC and Telemundo complies fully with the FCC’s ownership rules (with the exception of the Los Angeles DMA) and promises to yield significant public interest benefits. To address the single compliance issue raised by the merger, NBC filed and fully supported a request for a waiver, giving it twelve months in which to come into compliance with the Commission’s television local ownership rules. The waiver request demonstrates that the proposed NBC/Telemundo combination will not adversely affect competition or undermine the Commission’s diversity

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<sup>23</sup> Meg James, *NBC to Acquire Telemundo Network for \$1.98 Billion*, LOS ANGELES TIMES, Oct. 12, 2001.

<sup>24</sup> See *id.* (reporting that Univision expects its second network, Telefutura, to break even in year 2002).

<sup>25</sup> See Louis Chunovic, *Advertising has more of a Spanish accent*, ELEC. MEDIA, Oct. 15, 2001.

<sup>26</sup> See Mimi Whitefield, *Spanish-Language TV Firms Set Up Stations in Miami, Other Areas*, THE MIAMI HERALD, May 20, 2001 (reporting that Telemundo is purchasing second stations in strategic markets to gear its programming towards Caribbean and Central Americans).

goals. The grant of NBC's request for a twelve-month period in which to divest one of the Telemundo stations also will allow for an orderly disposition and give all interested parties a greater opportunity to arrange for financing and participate in the bidding. Contrary to the Latino Coalition's assertions, grant of NBC's request is, therefore, consistent with well-established Commission precedent and in the public interest.

**A. NBC Has Met The Requirements For A Waiver Of Section 73.3555 Of The Commission's Rules**

The temporary waiver requested by NBC will not impede the stated objectives of the FCC's television ownership rules: (1) to prevent concentration of economic power and (2) to promote diversity in programming sources and viewpoints.<sup>27</sup> NBC has shown that a grant of its waiver will not diminish competition in the Los Angeles market. The Telemundo-owned and operated stations lack economic power and do not garner significant advertising revenue in the general advertising market.<sup>28</sup> In fact, the Federal Trade Commission has already found that the merger—including the ownership of three stations in Los Angeles—is not anticompetitive and granted early termination of its merger review. The waiver request fully documents the number of media interests that will remain in Los Angeles during the waiver period, a number that the FCC has previously characterized as diverse. Therefore, contrary to the Latino Coalition's assertions, NBC has fully sustained its request for a waiver.

**B. The Los Angeles Market Is Very Diverse And Common Ownership Of The Stations Will Not Diminish Competition**

NBC's waiver request provided the Commission with all necessary documentation showing that the grant of waiver will have minimal impact on diversity. The Commission's

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<sup>27</sup> See *NWCG (Parent) Holdings Corp.*, 11 FCC Rcd 16318, 16322 (1996) (citing *Multiple Ownership Rule*, 22 FCC 2d 306, 307 (1970)).

<sup>28</sup> Waiver Request at 10.

assessment of whether a market is diverse focuses on the number of independent media voices that remain post-merger.<sup>29</sup> The Los Angeles market currently consists of 92 broadcast stations, including 69 radio stations and 23 full power commercial and noncommercial television stations.<sup>30</sup> The Los Angeles market is also home to 29 daily newspapers (including “La Opinion,” which is a Spanish language daily and Los Angeles’ second most widely read newspaper).<sup>31</sup> Of the 23 television stations licensed to the Los Angeles DMA, 19 qualify as independent voices. Moreover, the Commission has “historically held, in multiple station transactions, that the overall benefits of allowing time for an orderly divestiture of broadcast properties outweighs the impact on diversity and competition from common ownership during a reasonable period following the grant of the application.”<sup>32</sup>

The Latino Coalition’s attempt to rebut NBC’s diversity showing by comparing the Los Angeles market to Peoria, Illinois, is inconsistent with the Commission’s rules and misleading. The Coalition attempts to argue that Peoria is a more diverse market than Los Angeles because, on a per capita basis, fewer people are served by more stations. This argument is specious. First, the Commission does not measure diversity on a per capita basis, as the Petition suggests. Second, the comparison would only be remotely relevant if the Petition took the next step (which it does not) of calculating the number of broadcast outlets in Peoria serving that community’s ethnic and racial minorities and comparing them to the Los Angeles market. The Petition avoids this step because it would prove NBC’s point: the Los Angeles market is the largest Latino

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<sup>29</sup> See *Fox*, 16 FCC Rcd at 14982.

<sup>30</sup> Waiver Request at 7.

<sup>31</sup> See Waiver Request at 8; see also *Hispanic-Press La Opinion Named Top Spanish-Language Paper in U.S.*, EFE NEWS SERVICE, Oct. 4, 2001.

<sup>32</sup> *Shareholders of CBS Corporation*, 15 FCC Rcd 8230 (2000).

broadcast market in the country and is well served by competitive media outlets.<sup>33</sup> Eighteen of the 69 radio stations in the market provide Spanish programming, and four television stations cater exclusively to the Latino market, providing round-the-clock Spanish language broadcasting to the Los Angeles Latino community.<sup>34</sup> Stations KRCA and KJLA also air Spanish-language programming.<sup>35</sup> No other market in the country—and certainly not the Peoria market with which the Latino Coalition compares Los Angeles—provides such a multitude of voices for the Latino community.

Common ownership of the stations by NBC during the waiver period will not adversely affect competition or create undue concentration in the Los Angeles DMA. As documented in NBC's waiver request, the Telemundo operated stations do not possess sufficient economic power in the Los Angeles DMA to warrant any competitive concerns. Moreover, the combined advertising revenues of the Telemundo and NBC stations fall well below the percentage recognized as acceptable in other cases where the Commission has granted a temporary duopoly waiver.<sup>36</sup> Given the competitiveness and diversity of the Los Angeles market and NBC's pledge to operate the stations independently during the short period of common ownership, any impact

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<sup>33</sup> See Dom Serafini, *Is There Room for a 5th Hispanic TV Net?*, VIDEO AGE INT'L., Jan. 1, 2001.

<sup>34</sup> See Waiver Request at 7-8. Univision's second Los Angeles station, KSHC-TV, is currently a Home Shopping Network that will become affiliated with Univision's second Spanish-language network, Telefutera, when it is launched on January 14, 2002. After launch of this station, the Los Angeles market will have five full-power television stations targeted specifically to serving the needs and interests of the Latino community in Los Angeles.

<sup>35</sup> See Waiver Request at 8.

<sup>36</sup> See *Capital Cities/ABC, Inc.*, 11 FCC Rcd 5841, 5871-72 (1996) [hereinafter, "*Disney*"]. In the decision approving the acquisition of ABC by Disney, the Commission found that the ABC and Disney stations overlapped "essentially 100%," that both stations were powerful VHF facilities licensed to the Los Angeles DMA, that the combined advertising revenues of the stations totaled 25 percent of the market, and that neither station claimed to be experiencing financial difficulties. The Commission nevertheless granted Disney a temporary waiver of the duopoly rule, noting that the substantial level of diversity within the Los Angeles market and the applicant's pledge to operate the stations independently during the waiver period outweighed any concerns over the potential short-term anticompetitive effects of the combination during the waiver period.

on competition and diversity is limited.<sup>37</sup>

**C. A Twelve Month Divestiture Period Is Reasonable In Light of Current Economic Conditions And Is Consistent With Past Commission Decisions**

The Latino Coalition, citing the *Fox, Disney, and Westinghouse*<sup>38</sup> cases, claims that NBC has not adequately justified its request for a twelve-month waiver of the duopoly rule. The Coalition is wrong. In each of the cases relied upon by the Coalition in which a six-month waiver was granted, the Commission acknowledged that it had granted twelve-month waivers in the past, but distinguished those cases on the basis of the facts presented. The facts and circumstances presented by NBC and Telemundo in this case amply justify a twelve-month waiver.

In determining the appropriate duration of a waiver, the Commission starts by acknowledging that a forced sale could unnecessarily restrict the value of the station to be sold and could artificially limit the range of potential buyers to only those with immediate access to the capital needed for such purchases, thereby precluding acquisition by local groups or by minority-owned or controlled entities.<sup>39</sup> Citing these two factors, the Commission in the *Multimedia* case granted Gannett a twelve-month period (rather than the 18 months requested) in which to sell one of the two affected stations, noting “[c]onsistent with our general rule, however, Gannett will be afforded a twelve-month period, rather than the 18 months initially

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<sup>37</sup> See *id.* at 5871-74. The Latino Coalition argues that NBC’s pledge to operate the Telemundo stations separately from KNBC during the waiver period will have a negative impact on programming and employment diversity because it will prevent “cross-fertilization of cultural resources” and limit employment opportunities for the employees of both Telemundo and NBC. Petition at 14-15. This argument is clearly based on a misunderstanding of NBC’s pledge, which is intended to be operative only during the waiver period.

<sup>38</sup> *Stockholders of CBS, Inc.*, 11 FCC Rcd 3733 (1995) [hereinafter, “*Westinghouse*”].

<sup>39</sup> *Multimedia, Inc.*, 11 FCC Rcd 4883, 4885 (1995) (citing *Midwest Communications*, 7 FCC Rcd 159, 160 (1991)) [hereinafter, “*Multimedia*”].

requested, within which to divest WMAZ-TV.”<sup>40</sup> The Commission stated further that it would entertain a request for a short extension of time if Gannett subsequently entered into a sales agreement with a minority purchaser who needed more time to obtain needed financing.<sup>41</sup>

In the cases cited by the Coalition in which the requested waivers were limited to six months, however, the Commission specifically cited to the following additional factors as justification for a shorter waiver period:

- the merger involved two financially healthy companies;
- the stations involved were both powerful VHF stations with nearly complete signal overlap;
- neither of the stations involved in the duopoly was experiencing financial difficulties; and
- no showing was made of difficult market conditions.<sup>42</sup>

While NBC and Telemundo have acknowledged that the signal contours of their Los Angeles stations overlap completely, the totality of the circumstances distinguishes this case from the *Fox*, *Disney*, and *Westinghouse* precedents.

With respect to the financial health of the two companies, NBC is financially healthy and clearly has the resources and desire to consummate this merger. Telemundo, on the other hand, acknowledges in its opposition filed concurrently that its limited resources have hampered its ability to compete effectively with Univision and that it needs the resources of a major U.S. broadcaster to do so. These facts distinguish this case from the cases relied upon by the Coalition. Further, the Telemundo stations involved in the duopoly waiver are both UHF stations – not the high-powered VHF stations at issue in the cases cited by the Coalition. The two UHF stations owned and operated by Telemundo, which ranked in eighth and ninth place in

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<sup>40</sup> *Multimedia*, 11 FCC Rcd at 4887 (emphasis added).

<sup>41</sup> *Id.* Gannett did not pledge to enter into such agreement, however.

<sup>42</sup> *See Fox; Disney; Westinghouse; Multimedia.*

the Nielsen July 2001 audience ratings, possess limited economic power. NBC's application documents that the Telemundo-owned stations collectively earned a 3.18 percent share of the advertising revenues in the Los Angeles DMA.<sup>43</sup> In contrast, Univision's station KMEX-TV alone earned 8.87 percent of the revenues attributable to the ten VHF stations in the market.<sup>44</sup>

A forced sale of the station would have a disruptive effect on programming to the Latino community. Both of the Telemundo-owned stations have a history of providing Spanish-language programming in Los Angeles. Station KVEA, for example, is an affiliate of Telemundo's national television network, commenced Spanish broadcasting in 1985 and has maintained its Spanish language format since that time. Station KWHY-TV, on the other hand, was the first independently owned station providing localized Spanish-language news and entertainment programming targeted to the Latino population in the Los Angeles DMA and it continues to provide such programming. Telemundo acquired Station KWHY-TV on June 1, 2001, in an attempt to counter Univision's dominant position in the Los Angeles DMA, which undoubtedly will be enhanced when Univision launches its second network, Telefutura, next month and its second station in the market, KHSC-TV, becomes affiliated with that new network.<sup>45</sup> The company paid a premium for the station, and an immediate forced sale could result in an artificially depressed sales price.

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<sup>43</sup> See Waiver Request at 10.

<sup>44</sup> *Id.*

<sup>45</sup> See Univision.com (visited Oct. 23, 2001) <<http://www.univision.com>>.

A waiver period of less than twelve months is also likely to limit substantially the range of potential buyers. Permitting a reasonable time for divestiture will allow for a more diverse group of prospective buyers, including local buyers and minorities who may need additional time to secure the financing necessary to formulate a bid for the station.<sup>46</sup> By giving NBC twelve months in which to sell the station, the FCC will increase the possibility that independent local entities or minorities may come forward, thereby furthering the Commission's policies of encouraging greater diversity in broadcast ownership.<sup>47</sup>

The current difficult economic conditions also support NBC's request for a twelve-month waiver. The economy officially is in recession and broadcast stations, especially, have been feeling the bite.<sup>48</sup> The advertising market has taken its worst hit since World War II,<sup>49</sup> and this condition has been exacerbated by the events of September 11.<sup>50</sup> Immediately after the attacks, many television stations—including those owned by NBC and Telemundo—across the country stopped airing advertising in order to provide continuous news coverage of the attacks in New

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<sup>46</sup> See *Fox*, 16 FCC Rcd at 14984. The Petition speculates that interested parties have already approached NBC and offered to buy one of the Los Angeles stations, but utterly fails to acknowledge the difficulty of obtaining financing in a recessionary economy characterized by virtually non-existent capital markets.

<sup>47</sup> See *Telemundo Group, Inc.*, 10 FCC Rcd 1104, 1106 (citing as examples *Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, Notice of Proposed Rulemaking, 10 FCC Rcd 2788 (1994); *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979 (1978); *Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting*, 92 FCC 2d 849 (1982)).

<sup>48</sup> See, e.g., Meg James, *NBC to Acquire Telemundo Network for \$1.98 Billion*, LOS ANGELES TIMES, Oct. 12, 2001 (reporting that "NBC executives estimated that Telemundo might have fetched 20% to 30% more earlier this year" and that the weakening economy and advertising market helped lower the price); see also Corie Brown, *Networks Scramble to Cut Costs*, LOS ANGELES TIMES, Oct. 10, 2001 (reporting that all four television networks are scrambling to cut production costs by phasing out deals, reducing the number of series in development, and airing movies on prime time).

<sup>49</sup> See *Worst Ad Market Since WW II Getting Better, Analysts Say*, COMMUNICATIONS DAILY, Dec. 4, 2001.

<sup>50</sup> The financial prospects of the television broadcasting business have been worsened by increased programming costs and a decrease in programming production by studios. See, e.g., Brian Lowry, *Sony To Trim Television Operations*, LOS ANGELES TIMES, Oct. 17, 2001 (reporting that "[r]ising programming costs—combined with a recent decline in the advertising market as the economy softened—have taken a toll on all of the TV industry").

York and Washington.<sup>51</sup> These events, and a general decrease in advertising revenues, caused many stations, including the Telemundo stations, to post double-digit revenue declines during the month of September.<sup>52</sup> To address the downturn, many stations have been forced to reduce staff, sell assets or merge with stronger entities. In view of these well-documented market conditions, it is cavalier for the Coalition to suggest that a Los Angeles UHF station is “beachfront property” requiring only a “few minutes” to attract buyers.<sup>53</sup> Accordingly, the Commission should grant NBC’s request for a twelve-month waiver.

#### IV. CONCLUSION

As the foregoing demonstrates, NBC’s transfer application is complete and in full compliance with the Commission’s rules. Further, NBC has amply justified a twelve-month period in which to come into compliance with the Commission’s duopoly rule. Accordingly, NBC respectfully submits that the Latino Coalition’s Petition should be denied and NBC’s

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<sup>51</sup> See *Worst Ad Market Since WW II Getting Better, Analysts Say*, COMMUNICATIONS DAILY, Dec. 4, 2001.

<sup>52</sup> See Daniel Chang, *Company Sources Say Telemundo to Lay Off 150*, THE MIAMI HERALD, Oct. 5, 2001.

<sup>53</sup> Petition at 10.

application to acquire Telemundo should be granted expeditiously so that the obvious public interest benefits of the proposed merger can be realized as soon as possible.

Respectfully submitted,

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## DECLARATION

I, Bruce L. Campbell, Vice President, Corporate Development, National Broadcasting Company, Inc., hereby declare under penalty of perjury that (i) I am integrally involved in the proposed acquisition of Telemundo Communications Group, Inc. and the planning for the transition and integration following the merger; (ii) I have read the foregoing "Opposition to Petition to Deny filed by Puerto Rican Legal Defense and Education Fund, Inc." ("Opposition"); and (iii) the facts contained in the Opposition are true and correct to the best of my knowledge and belief.

  
Bruce L. Campbell

Dated: December 19, 2001

**CERTIFICATE OF SERVICE**

I, Lilly A. Whitney, a secretary in the law offices of Morrison & Foerster LLP, do hereby certify that I have, on this 19th day of December, 2001, had copies of the foregoing "OPPOSITION TO PETITION TO DENY FILED BY THE PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND, INC., et al." sent via U.S. mail, postage prepaid, to the following:

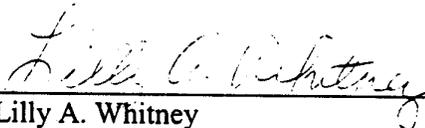
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