

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In re Applications of)	
)	
Shareholders of Univision Communications Inc.)	File Nos.
for Consent to Transfer Control of Stations)	[BTCCT-20060718AHS] ¹
[KSTR-TV;] KUVN-TV, Garland, Texas;)	BTCCT-20060718AIK
KDXX(FM), Benbrook, Texas; KTFQ-TV,)	BTCH-20060718AJQ
Albuquerque, New Mexico; and KQBT(FM),)	BTCCT-20060718AJF
Rio Rancho, New Mexico to Broadcasting Media)	BTCH-20060718AET
Partners Inc.)	

To: Office of Secretary
Attention: Chief, Media Bureau

OPPOSITION TO PETITION TO DENY

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Dated: September 20, 2006

SUMMARY

Univision Communications Inc. (“Univision”) hereby opposes the Petition to Deny (the “Petition”) filed by Rincon & Associates, Edward Rincon, and Conrad E. Gomez (collectively, the “Petitioners”). The Petition seeks to challenge the transfer of control of four Univision broadcast stations (the “Stations”) to Broadcasting Media Partners Inc. (“BMPI”). The Petition – which is untimely, unsupported by any declaration attesting to the accuracy of the facts in the Petition, and which the Petitioners lack standing to file – fails to make a *prima facie* case that grant of the applications would be inconsistent with the public interest, convenience, and necessity. The Petitioners are unable to cast the slightest doubt upon the basic qualifications of either Univision or BMPI, and thus fail to provide any basis for denying the applications or designating them for hearing.

The Petition makes numerous misstatements of fact in a fruitless effort to construct a cognizable argument against approval of the transfers. Reduced to its essence, however, the Petition contains nothing but broad, unsubstantiated allegations that the Stations’ programming is not responsive to their local communities because some of it is foreign-produced, and that Univision has “lost opportunities” to program the Stations the way the Petitioners would prefer. Section 326 of the Communications Act of 1934 makes clear, however, that licensees have broad discretion in selecting programming to serve their communities, and the Petitioners fail to demonstrate that their allegations are relevant to the transfer applications in any event.

Finally, the Petitioners advance the novel argument that the Commission should establish a “higher standard” of review for the proposed transfer of Univision’s Spanish-language stations, but provide no legal or factual basis for applying such a standard to the transfer of four Spanish-language stations to an entity that currently has none. Accordingly, the Petition should be promptly dismissed or denied, and the applications granted.

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To: Office of Secretary
Attention: Chief, Media Bureau

OPPOSITION TO PETITION TO DENY

Univision Communications Inc. (“Univision”), by its counsel, hereby files this Opposition to the Petition to Deny filed by Rincon & Associates, Edward Rincon, and Conrad E. Gomez (collectively, the “Petitioners”) in connection with the above-captioned applications (the “Applications”) on September 5, 2006 (the “Original Petition”). The Petitioners filed a “corrected version” of the Petition to Deny on September 11, 2006 (the “Corrected Petition,” and together with the Original Petition, the “Petition”).² The Petition urges the Commission to deny the

¹ The Petitioners submitted a revised pleading and requested that it be accepted *nunc pro tunc* for their original document. The revised pleading deletes KSTR-TV and its file number from the caption, apparently indicating that it originally had been included in error, as the station is not mentioned anywhere else in the Petition. Unless otherwise noted, page and footnote citations herein refer to the Corrected Petition.

² According to the cover letter submitting it to the Commission, the substance of the Corrected Petition is “entirely the same” as the Original Petition, and merely repairs several footnotes that were “misaligned because of a word processing encoding error.” See Letter from Jeneba Jalloh Ghatt to Marlene H. Dortch (Sep. 11, 2006). That is not the case, however, as: (i) of the Corrected Petition has been altered to delete any reference to KSTR-TV and its file number (ii) the Corrected Petition inserts new sources where the Original Petition only included placeholders marked “[CITE]”; (iii) the Corrected Petition adds citations where no citations or placeholders had appeared in the Original Petition; and (iv) language in the main text of the Petition was modified. See, e.g., Corrected Petition at 12 n.16 as compared to Original Petition at 13 n.17 (new sources inserted in place of “[CITE]”); Corrected Petition at 14 nn.24 and 25 as compared to Original Petition at 16 n.45 and 17 n.46 (entirely new citations added); Corrected Petition at 9, line 9 as

Applications, which seek authority from the Commission to transfer control of the licenses of KUVN-TV, Garland, Texas; KDXX(FM), Benbrook, Texas; KTFQ-TV, Albuquerque, New Mexico; and KQBT(FM), Rio Rancho, New Mexico (collectively, the “Stations”) from the current shareholders of Univision to Broadcasting Media Partners Inc. (“BMPI”). The Petition is procedurally defective, as it (i) is not supported by any affidavit or declaration as required by Section 309(d) of the Communications Act of 1934, as amended (the “Communications Act”); (ii) fails to establish the Petitioners’ standing as parties in interest; and (iii) is untimely filed. The Petition contains numerous misstatements of fact, raises no substantial and material questions of fact relating to the Applications, and fails to present the required *prima facie* case that grant of the Applications would be inconsistent with the public interest, convenience, and necessity. See 47 U.S.C. § 309(d). Accordingly, the Commission should promptly dismiss or deny the Petition and grant the Applications.³

compared to Original Petition at 10, line 11 (modifications to text). The full extent of the changes in the Corrected Petition is difficult to gauge given the length of the Petition, the renumbering of the footnotes, and the Petitioners’ failure to comply with the Commission’s requirements as to the form of pleadings. See generally 47 C.F.R. § 1.49.

³ Univision notes that the defects in the Petition are fatal and cannot be remedied in Petitioner’s reply. The Commission has held that enforcement of its procedural rules “is necessary in order to manage our decision making process in an efficient manner” and “promotes orderliness and finality in the administrative process and thereby contributes towards the public interest, convenience, and necessity.” *Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, 15 FCC Rcd 10565, 10566 (2000). Indeed, the U.S. Court of Appeals for the District of Columbia Circuit has counseled the Commission against accepting such untimely submissions. *BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1184 (D.C. Cir. 2003) (“[T]his Court has . . . gone so far as to discourage the Commission from entertaining late-filed pleadings It follows that the Commission did not abuse its discretion by dismissing the untimely arguments.”). See also *Southern Broadcasting Corp. of Sarasota*, 16 FCC Rcd 3663, 3666 (MMB 2000) (allegations first made in a reply do not cure a failure to make a prima facie case in a petition to deny), *aff’d* 16 FCC Rcd 3655 (2001).

I. THE PETITION IS PROCEDURALLY DEFECTIVE

A. The Petition Is Not Supported By Affidavit or Declaration

Section 309(d)(1) of the Communications Act provides that a petition to deny a transfer of control application “shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent” with the public interest, convenience, and necessity. 47 U.S.C. § 309(d)(1). Further, “[s]uch allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof.” *Id.* The Petition utterly fails to meet these requirements.

Neither the Original Petition nor the Corrected Petition is “supported by” any affidavit or declaration. Both declarations attached to the Original Petition (none are included with the Corrected Petition) assiduously avoid attesting to the accuracy of the factual assertions in the Petition. The Petitioners were clearly conscious of this, as they attempt to disguise the problem by including in the declaration of Conrad E. Gomez the following statement:

I have reviewed the factual assertions contained in the Petition to Deny and I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing *Declaration* is true and correct.⁴

As the declaration of Edward Rincon also attests only to the accuracy of his declaration, the requirements of Section 309(d)(1) are clearly unsatisfied.⁵ Neither declarant provides “specific allegations of fact” based upon “personal knowledge” as required by Section 309(d)(1), but instead offers only conclusory statements of opinion regarding the programming offered by a

⁴ Original Petition Exhibit 1 at ¶ 7 (emphasis added).

⁵ Original Petition Exhibit 2 at 2.

Univision television station in his community.⁶ That is a far cry short of presenting the *prima facie* case necessary to obtain Commission review of the Petition, and even a farther cry short of meeting the Petitioners' burden under *Jefferson Radio* to demonstrate that Univision is fundamentally unqualified to hold or transfer its licenses.⁷ The Petition should therefore be dismissed as fatally defective.

B. The Petition Does Not Establish the Petitioners' Standing

Under Section 309(d)(1) of the Communications Act, the Petitioners must establish that they are "parties in interest" in order to obtain review of their petition. The Petitioners must therefore demonstrate that grant of the challenged application would cause them to suffer a direct injury.⁸ Further, they must establish a causal link between the claimed injury and the grant of the Applications.⁹ Finally, the Petitioners must show that it is likely, as opposed to merely speculative, that the injury would be prevented or redressed by denying the Applications.¹⁰

The Petitioners identify no direct injury they would suffer as a result of the Commission's grant of the Applications. Even accepting the Petitioners' unsubstantiated claims that Univision is inadequately serving them, the Petitioners identify no transaction-specific harm that would flow

⁶ Edward Rincon's attempt in his declaration to substitute his "professional opinion" for specific allegations of fact based upon personal knowledge is patently inadequate to meet the requirements of Section 309. Original Petition Exhibit 2 at ¶ 2.

⁷ *Jefferson Radio Co. v. FCC*, 340 F.2d 781 (D.C. Circ. 1964) (holding that a transfer or assignment application cannot be granted where there are unresolved issues concerning the seller's basic qualifications).

⁸ See, e.g., *Letter to Sweetwater Broadcasting Company from Donna C. Gregg, Chief, Media Bureau*, 20 FCC Rcd 13034, 13037 (MB 2005) ("Party in interest status is deemed to exist when a petitioner demonstrates that the grant of the petitioned application will cause the petitioner a direct injury.") (citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972); *National Broadcasting Co.*, 37 FCC 2d 897, 898 (1972)).

⁹ *Id.*

¹⁰ *Id.*

from the proposed transfer.¹¹ To the extent that the Petitioners discuss BMPI, the proposed transferee, they merely speculate that BMPI *may* be inadequate as compared to some other, hypothetical entity.¹² Such speculation is insufficient to support standing.¹³ Further, the Petitioners fail to show that denial of the Applications will prevent or redress any harm they allege. If the Applications are denied, Univision will retain control of the Stations, leaving the Petitioners in no better position than they are now. In short, the Petitioners provide no basis for concluding that they would be injured by grant of the Applications, or that an injury would be avoided by the denial of the Applications. They therefore lack standing to file the Petition, requiring its dismissal by the Commission.

¹¹ The Petitioners appear to claim “viewer” standing because (i) Rincon resides in the Dallas-Fort Worth DMA, and claims to be a regular viewer of KUVN-TV (Original Petition Exhibit 2 at ¶ 7); and (ii) Gomez resides in Albuquerque, New Mexico and claims to be a regular viewer of KTFQ-TV (Original Petition Exhibit 1 at ¶¶ 3-4). Petition at 7-8. As an initial matter, neither Petitioner claims to listen to KDXX(FM) in Dallas, or KQBT(FM) in Albuquerque, and thus cannot even *assert* a claim to “listener” standing with respect to those stations. Petitioners therefore lack any standing to claim that Univision has violated the local radio ownership rule in Albuquerque, having failed to demonstrate standing with regard to any of Univision’s Albuquerque radio stations.

In addition, an individual’s status as a viewer or listener of a given station is insufficient to establish standing absent a showing of actual injury. The Commission has explained that “in determining whether a petitioner qualifies as a ‘party in interest,’ we must apply judicial standing principles.” *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, 82 FCC 2d 89, at ¶ 19 (1980). The Commission’s historical recognition of “viewer” and “listener” standing flows directly from its conclusion that “[j]udicial precedent recognizes that listeners and viewers, or groups representing them, have standing to contest broadcast licensing decisions,” as represented by the “seminal” case of *United Church of Christ v. FCC*, 359 F. 2d 994 (D.C. Cir. 1966). *Id.* at ¶¶ 19, 21. Recently, however, the D.C. Circuit has clarified that “in *UCC* . . . [w]e did not . . . purport to apply a more relaxed standard to audience members than to other litigants seeking to demonstrate their standing under Article III,” and that “[i]t was perfectly clear in *UCC* that the appellants would be injured, and substantially so, by the Commission’s grant of the renewal license.” *Rainbow/PUSH Coalition v. FCC*, 330 F.3d 539, 543 (D.C. Cir. 2003). As the Commission grounds its standing requirements in judicial standards, it follows that the Petitioners cannot maintain party in interest status without demonstrating actual injury, which they have not done here.

¹² Such speculation is not cognizable by the Commission in any event, since in disposing of transfer applications “the Commission may not consider whether the public interest . . . might be served by . . . disposal of the permit or license to a person other than the proposed transferee . . .” See 47 U.S.C. § 310(d)(1). It is undisputed that BMPI possesses the requisite financial and character qualifications to serve as a Commission licensee.

¹³ See *Sweetwater Broadcasting*, 20 FCC Rcd 13034, 13037 (MB 2005).

C. The Petition Is Untimely

Section 73.3584(a) of the Commission's Rules provides that petitions to deny a transfer of control application must be filed within 30 days of the public notice announcing that the application has been accepted for filing. 47 C.F.R. § 73.3584(a). The Applications were filed on July 18, 2006 and placed on public notice on July 24, 2006. Thus, the Petitioners were required to file the Petition by August 23, 2006. However, the Petitioners did not file the Original Petition until September 5, 2006, and did not file the Corrected Petition until September 11, 2006. Consequently, the Petition is untimely, and should be dismissed.

The Petitioners attempt to avoid the consequences of their tardiness by asserting that the Commission "granted a ten day extension for broadcast applicants, permittees and licensees needing to file pleadings" because of technical difficulties experienced by the Commission's Consolidated Database System ("CDBS") during a brief period in late July and early August 2006.¹⁴ The Commission granted no such extension. Instead, the Media Bureau granted a limited ten-day extension for the filing of three specific FCC application forms (license renewal applications, EEO reports, and ownership reports) that were required to be filed through CDBS by August 1, 2006.¹⁵ The extension did not apply to *any* other form or filing, did not apply to filings not due on August 1, 2006, and required that filings subject to the extension be filed by August 11, 2006.¹⁶ The Petition fails on all three points, making its claim to timeliness disingenuous.

Unable to demonstrate that they timely filed, the Petitioners request a waiver of the petition deadline. However, they are unable to justify their request, having filed the Original Petition 43

¹⁴ Petition at 6 n.1.

¹⁵ See *Media Bureau Announces Extension of Certain Filing Deadlines*, DA 06-1571 (Aug. 1, 2006). The Petition is not a document that was required to be filed electronically, and the Petitioners in fact submitted it to the Commission in paper form.

¹⁶ See *id.*

days after the Commission's public notice, and the Corrected Petition 49 days after the public notice. Section 1.46 of the Commission's Rules sets forth clear-cut procedures for requests for extension of time, "which shall not be routinely granted." 47 C.F.R. § 1.46. Requests for extension must be submitted *prior* to the deadline in question, not weeks after the fact, as here. *See id.* In addition, the Petitioners entirely fail to satisfy the Commission's "good cause" standard for waivers – indeed, showing no cause whatsoever – for being unable to timely file *either* the Petition or a request for a waiver of the filing deadline. 47 C.F.R. § 1.3.

The Petitioners had ample notice that the Applications had been filed and were available prior to any technical difficulties experienced by CDBS, and even if the Petitioners had in fact been briefly unable to obtain copies of the Applications through CDBS, copies of the Applications were available in the public inspection files of the Petitioners' local Stations. 47 C.F.R. § 73.3526(e)(2). The Petitioners present no basis for filing their Petition thirteen days late, nor for waiting an additional six days (with yet additional delay caused by service by mail) – well into Univision's response period – to file a Corrected Petition with substantive changes. Pursuant to Section 73.3584(e) of the Commission's Rules,

Untimely Petitions to Deny, as well as other pleadings in the nature of a Petition to Deny, and any other pleadings or supplements which do not lie as a matter of law or are otherwise procedurally defective, are subject to return by the FCC's staff without consideration.

47 C.F.R. § 73.3584(e). As the Petition is *both* untimely and "otherwise procedurally defective," it should be dismissed without further consideration.

II. THE PETITIONERS FAIL TO PROVIDE ANY REASONABLE BASIS FOR THEIR FACTUAL CLAIMS AND MISSTATE MATERIAL FACTS

Section 1.17(a)(2) of the Commission's Rules provides that no person shall "provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading."¹⁷ 47 C.F.R. § 1.17(a)(2). The Petitioners fail to meet this standard repeatedly, making allegations that are incorrect and unsupported by any reasonable basis in fact. The Petition makes numerous assertions of fact that are not supported by any evidence¹⁸ and routinely mischaracterizes the substance of the very materials it references. While far too pervasive to enumerate exhaustively, examples of the Petitioners' failure to ensure the accuracy of their allegations include:

- The Petitioners claim that Univision has never sought a waiver of the Commission's local radio ownership rule with respect to the Albuquerque market. Petition at 12. In fact, such a waiver request was made in Univision's March 3, 2005 letter to the Commission.¹⁹ This letter is certainly known to the Petitioners, as it is cited (including the portions containing the waiver request) elsewhere in the Petition. *See, e.g.*, Petition at 12 n.17.
- The Petitioners claim that at the time Univision filed its March 3, 2005 letter to the Commission, KBAC(FM) "had not yet moved its transmitter site to Santa Fe" (Petition at 12 n.18), but that KBAC(FM) later "formally completed the move from the Albuquerque market, establishing firmly the 44-station count in Albuquerque," and undercutting Univision's position that a waiver might be unnecessary. Petition at 13. However, KBAC(FM) *never* moved from the Albuquerque market. Rather, KBAC(FM) was merely

¹⁷ *See also* Section 1.17(a)(1) of the Commission's Rules, which provides that no person shall "intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading." 47 C.F.R. § 1.17(a)(1).

¹⁸ For example, the Petitioners assert that "[s]tudies show that the processes of acculturation and assimilation are very distinct for Hispanic Americans," but fail to cite a single study in support of this assertion. Petition at 17. The Petitioners also assert, without any support, that Univision devotes "only 1 out of 6 hours" of primetime programming to news. Petition at 21.

¹⁹ *See* Letter from Scott R. Flick to Marlene H. Dortch at 2 (March 3, 2005), *included in* Applications, Exhibit 18-B.

reclassified by BIA, a reclassification which predated, and which Univision acknowledged in, the March 3, 2005 letter.

- The Petitioners attempt to impugn Univision’s programming by claiming that “Univision’s telenovelas feature actors that are almost always blonde or pale skinned,” and then stating that “[a] once popular afternoon telenovela had a comedian in blackface chasing madly after a light-skinned actress in skimpy attire.” Petition at 18. However, the article cited in support of this assertion makes no mention of Univision whatsoever, and is instead an editorial against Mexico putting such a character on a stamp. The article mentions in passing only that a similar character has appeared on Mexican television.²⁰
- The Petitioners state that “[s]ince 1961, the majority of Univision’s programming has been produced by Televisa, a Mexico based company that owns 25% of Univision.” Petition at 14. First, the Univision Network was not launched until 1978.²¹ Second, as discussed below, the majority of the Univision Network’s programming is currently produced in the U.S. Third, Televisa’s stock interest in Univision is 9.87%, not 25%.

As these examples indicate, the Petitioners have failed to exercise the level of diligence required by Section 1.17. This failure, together with the Petitioners’ failure to provide any declarations attesting to the accuracy of the facts in the Petition, prevents the Commission from relying upon the factual assertions in the Petition.

III. THE PETITION FAILS TO PRESENT A *PRIMA FACIE* CASE THAT GRANT OF THE APPLICATIONS IS INCONSISTENT WITH THE PUBLIC INTEREST

Under Section 309(d) of the Communications Act, the Commission employs a two-step approach in analyzing the substantive merits of petitions to deny. First, the Commission determines whether the petition sets forth specific allegations of fact which, if true, would demonstrate that grant of the subject application would be *prima facie* inconsistent with the public interest. Then, and only then, will the Commission determine, on the basis of the application, the

²⁰ See Earl O. Hutchinson, *IMDiversity.com*, “Mexican Officials Must Come Clean on Racism,” at http://www.imdiversity.com/villages/hispanic/dialogue_opinion_letters.html (Aug. 2006).

²¹ See *Amendment of Section 73.658(i) of the Commission’s Rules*, 5 FCC Rcd 7280 (1990) at ¶ 11.

pleadings filed, or other matters which may be officially noted, whether a substantial and material question of fact is presented requiring resolution in a hearing.²²

As discussed below, the Petitioners utterly fail to demonstrate that grant of the Applications would be *prima facie* inconsistent with the public interest.²³ The Petitioners rely on broad, conclusory generalizations about Univision's programming, but fail to make concrete, verifiable claims with respect to the individual Stations whose transfers are being challenged. As the Commission has held, "[a]llegations . . . that consist 'of ultimate, conclusionary facts or more general allegations on information and belief, supported by general affidavits . . . are not sufficient."²⁴ As such, the Petition should be dismissed or denied, and the Applications promptly granted.

The Petitioners attempt to impugn Univision's exemplary record of service in three ways: (i) the Petitioners allege that Univision has violated the Commission's local radio ownership rule in the Albuquerque market; (ii) the Petitioners claim that Univision has failed to serve Spanish-speaking viewers in the Albuquerque and Dallas markets; and (iii) the Petitioners allege that Univision has failed to meet some unspecified "higher standard" of review that they seek to apply to Univision's Spanish-language stations. As discussed in detail below, the Petitioners are unable to support any of these claims.

²² 47 U.S.C. § 309(d)(1) and (2); *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

²³ Although the Commission has no need to reach the second stage of its *Astroline* analysis in this proceeding, it should be noted that the Petitioners fail to identify any substantial and material question of fact that would require a hearing.

²⁴ *North Idaho Broadcasting Co.*, 8 FCC Rcd 1637, 1638 (1993).

A. The Petitioners' Claim That Univision Has Violated the Commission's Local Radio Ownership Rule in the Albuquerque Market Is False

The Petitioners assert that Univision has violated the Commission's local radio ownership rule with respect to its ownership of five FM stations in the Albuquerque market.²⁵ The Commission, however, approved Univision's acquisition of the Albuquerque stations in 2003 in connection with Univision's merger with Hispanic Broadcasting Corporation ("HBC").²⁶ The *HBC Merger Order* required that Univision either come into compliance with the quantitative limits in the new local radio ownership rule or request a waiver "within six months in the event that the stay pending appeal in *Prometheus Radio Project v. Federal Communications Commission* . . . is lifted or the local radio ownership rules adopted in the *2002 Biennial Review Order* otherwise go into effect."²⁷

Contrary to the Petitioners' claim that "Univision unilaterally ignored this requirement,"²⁸ Univision voluntarily stepped forward when the court only partially lifted the stay and filed a letter requesting that the Commission clarify whether it viewed the six-month period as having been triggered.²⁹ In that letter, Univision presented updated facts to the Commission indicating that a waiver might no longer be necessary given an increase in the number of radio stations in Albuquerque, and requested a waiver should the Commission nevertheless conclude that a waiver is necessary.³⁰ Univision's request remains pending before the Commission. The Petition's

²⁵ Petition at 12-13. As the Petitioners did not even attempt to demonstrate standing with regard to Univision's radio stations in Albuquerque, they are prevented from raising arguments with regard to those stations. *See supra* Note 11.

²⁶ *See Shareholders of Hispanic Broadcasting Corp. and Univision Communications Inc.*, 18 FCC Rcd 18834 (2003) ("*HBC Merger Order*") at ¶ 11.

²⁷ *Id.*

²⁸ Petition at 3.

²⁹ *See* Letter from Scott R. Flick to Marlene H. Dortch at 2 (March 3, 2005), *included in Applications*, Exhibit 18-B.

³⁰ *Id.*

statement (and the basis for many of its arguments) that Univision “did not divest the station, nor apply for a waiver” is patently false.³¹

The Petitioners’ claim that Univision “has breached the Commission’s ownership limits on prior occasions and has been slow to notify the Commission of such overages”³² is similarly baseless. The Petition is unable to point to *any* such overage, and cites only a 2003 filing by the National Hispanic Policy Institute (“NHPI”) that was rejected by the Commission and did not even attempt to demonstrate an ownership violation.³³ As a result, the Petitioners are unable to point to any violation of the Commission’s multiple ownership rule – past or present – that would bring into question Univision’s qualifications to hold or transfer the Stations.

B. The Petitioners’ Attacks on the Stations’ Programming Are Unsupported and Irrelevant to the Applications

The Petitioners argue, without support, that the Stations have failed to serve their local communities, but point to no deficiencies beyond “lost opportunities” to provide programming more to the Petitioners’ liking.³⁴ Besides being unsupported, such attacks are irrelevant in the context of the Applications. As the Petitioners acknowledge,³⁵ to prevent Univision from transferring its stations pursuant to *Jefferson Radio*, they must demonstrate that Univision is unqualified to be a Commission licensee, despite Univision having been found qualified by the Commission to acquire or renew a broadcast license *over 275 times*. Merely saying that the

³¹ See Petition at 3.

³² *Id.* at 13.

³³ See Motion to Dismiss of National Hispanic Policy Institute, Inc., MB Docket 02-235 (Sep. 8, 2003). The NHPI filing claimed merely that Univision violated Section 1.65 of the Commission’s Rules by not amending its merger application to note the acquisition of a television station. However, as the acquired television station did not affect the application’s multiple ownership analysis, it was not a “substantial change” of “decisional significance” giving rise to a Section 1.65 obligation, and NHPI failed to demonstrate any violation of the multiple ownership rule.

³⁴ See Original Petition Exhibit 2 at ¶ 7.

³⁵ See Petition at 22 n.60 and accompanying text.

Petitioners do not like Univision's television programming falls abysmally short of meeting that burden.

Even if a transfer application were a suitable venue for reviewing a station's programming performance, the Commission has noted that "Section 326 of the Communications Act and the First Amendment to the Constitution prohibit any Commission action which would improperly interfere with the programming decisions of licensees."³⁶ With respect to a broadcaster's general issue-responsive programming obligation, the Commission has granted licensees broad discretion to choose which issues are of concern to the community and to choose the types of programming to address those issues.³⁷ Thus, a petitioner "has a heavy burden to show that the licensees have abused their discretion"³⁸

The Petitioners fail to meet this "heavy burden," and instead merely allege that "[t]he foreign programming which Univision predominantly supplies to local Hispanic communities neglects to address the unique and local needs of its audiences"³⁹ This argument fails on both

³⁶ *National Broadcasting Co.*, 14 FCC Rcd 9026 (1999) at ¶ 18.

³⁷ *Dr. Paul Klite*, 12 CR 79, 81-82 (MMB 1998).

³⁸ *Id.* at 82.

³⁹ Petition at 17. The Petitioners deride six foreign-produced telenovelas aired by *either* Telemundo, Azteca America, *or* Univision by claiming that they "feature actors that are almost always blonde or pale-skinned," and presenting such meaningless statistics as: "Light skinned characters (32.6%) were more likely to have blonde hair than dark skinned characters (2.6%)." Petition at 18. First, the fact that television actors may not be representative of the general population is hardly limited to foreign-produced telenovelas, and second, the Petitioners fail to demonstrate that the Stations whose transfer they challenge have not served the public interest merely because they air extremely popular telenovelas. As the Petitioners themselves admit, the vast majority of Hispanic viewers – including bilingual viewers – seek out this programming and would strongly disagree with any claim that it does not serve their needs and interests. *See* Petition at 17 ("This genre of programming has been the most popular format on Univision . . . appealing to a broader Spanish speaking audience, including males and viewers of all ages.").

Forced to recognize that licensees enjoy broad discretion to select their programming under the anti-censorship provisions of the Communications Act and the First Amendment, the Petitioners attempt to claim that telenovelas represent a form of "color discrimination" that violates Section 151 of the Communications Act. Petition at 17-20. This argument is entirely frivolous, as Section 151 does not even

legal and factual grounds. The Commission long ago rejected the notion that where a program is produced is probative of whether that program serves community needs: “we can no longer presume that location [of production] alone is relevant to the provision of programming which is responsive to the interests and needs of the community.”⁴⁰ As a result, merely alleging, as the Petitioners have done here, that a station airs foreign-produced programming is irrelevant to whether that station is adequately serving its community. Instead, that responsiveness is far better evidenced by Univision’s excellent record of local service, resulting in numerous awards for coverage of vital health, education, and social issues.⁴¹ Univision also notes that, contrary to the Petitioners’ claims, **over 56%** of the programming aired on the Univision Network in 2006 was produced in the United States.

Finally, Univision notes that even had the Petition presented any specific allegations of fact to challenge the Stations’ community responsiveness, the Petitioners’ own statistics would undercut them. According to the Petition, 57% of *bilingual* viewers – viewers who can unquestionably choose any news source they wish – “watch only Spanish-language news.”⁴² The declaration of Edward Rincon attached to the Original Petition then separately declares that, among Latinos in Dallas, 56% prefer to get their news from the very Univision station whose

apply to licensees, much less their programming, but instead merely requires that the Commission seek to make communications services available to all members of the public without regard to color.

⁴⁰ *Amendment of Sections 73.1125 and 73.1130 of the Commission’s Rules*, 2 FCC Rcd 3215 (1987) at ¶ 40. This ruling also renders irrelevant the Petitioners’ claim that Univision’s use of foreign-produced programming has prevented domestic production of Spanish-language programming that is responsive to the needs of the Stations’ local communities. Petition 14-15. The Petitioners fail to explain why domestically-produced programming is necessarily community responsive or why programming produced abroad is necessarily unresponsive to community needs.

⁴¹ Univision has received two Peabody Awards (including an award for Univision’s ongoing “Salud es Vida . . . Enterate” public health campaign), Edward R. Murrow Awards from the Radio-Television News Directors Association, and Service to America Awards from the National Association of Broadcasters. In 2005, Univision received a National Impact Award for “Outstanding Service to the Latino Community” from the National Hispanic Media Coalition.

⁴² Petition at 24.

transfer he challenges, while 6% prefer to get their news from the local Telemundo station.⁴³ The undeniable conclusion to be drawn from these two facts is that viewers are freely choosing to watch Univision's news programming because it is vastly more responsive to their community's needs and interests.

In short, even if it were relevant to the Applications, the Petitioners have presented no evidence that the Stations' programming has failed to be responsive to their communities. To the contrary, the Petition demonstrates that viewers find the Stations extremely responsive to their needs and interests, as evidenced by their repeatedly choosing Univision programming over that offered by Univision's English-language and Spanish-language competitors.⁴⁴ While the Petitioners posit that some hypothetical broadcaster might better serve the Petitioners' unique needs, that is also irrelevant to the Commission's consideration of the Applications.⁴⁵

⁴³ Original Petition Exhibit 2 at ¶ 5. The Petitioners nonetheless fault Univision's news by citing a study indicating that a typical Univision newscast contained 1.5 minutes less election coverage than an ABC, CBS, or NBC newscast of equal length. Petition at 16 n.35. However, even if that network study were somehow relevant to the community responsiveness of the Stations at issue here, that same study indicated that Univision devoted substantially more attention to Latino election issues than the English-language networks, and had over 4 minutes more world affairs coverage than the English-language networks. See Martin Kaplan, Ken Goldstein, and Matthew Hale, *Spanish Language TV Coverage of the 2004 Campaigns* (Lear Center, Feb. 17, 2005). Offering a different mix of news stories than English-language stations, and focusing those stories on matters of interest to the Hispanic community, is the very essence of community responsiveness.

⁴⁴ The Petitioners note that "Hispanics have very positive views about the significant role of the Spanish-language media in advancing their interests in the U.S. in comparison to English-language media" (Petition at 15), and, while asserting that Univision is the "dominant" Spanish-language broadcaster, somehow miss the fact that their combined statements indicate that viewers/listeners believe Univision is doing a very good job of meeting their needs.

⁴⁵ See *WWOR-TV, Inc.*, 6 FCC Rcd 6569 (1991) at ¶ 12 n.13 ("[S]ection 310(d) of the Act directs us to consider only the qualifications of the seller and proposed buyer. There is no comparison between applicants and, accordingly, no need to establish a fixed factual base for comparative purposes.").

C. The Petitioners' Provide No Basis for Subjecting the Applications to a "Higher Standard" of Review

The Petitioners advance the novel argument that the Commission should establish a "higher standard" of review for the proposed transfer of Univision's Spanish-language stations.⁴⁶ In support of this contention, they claim that Univision "holds a monopoly in the Spanish-language broadcast market," as a result of its "sole ability to reach 98% of that market."⁴⁷ While citing the Univision Network's "reach" – which includes areas served by independent affiliates – is meaningless for a variety of reasons, it is particularly irrelevant here. Both Dallas and Albuquerque have competing Telemundo, Azteca America, ABC, CBS, NBC, Fox, and other stations, precluding any such claim of monopoly with regard to the Stations involved in the Applications here. Moreover, even if national network reach were somehow relevant, Univision notes that, according to their respective websites, Telemundo reaches 93% of Hispanic viewers, Azteca America reaches 87%, and ABC, CBS, NBC, and Fox each reach 98-99% of *all* television households, not just those with Hispanic viewers.

Moreover, the Commission has already repeatedly rejected the notion of a separate Spanish-language market and found in 2003 that Univision has numerous competitors for viewers and listeners that ensure diverse programming options for its audiences.⁴⁸ The Commission has clearly stated that the format – including language – of a station's programming is irrelevant to the Commission's consideration of an application to transfer that station. In *Brawley Broadcasting Company*, the Commission found that:

Although [petitioner] objects to Entravision's Spanish language programming, we note that the Commission does not regulate or scrutinize programming formats, nor

⁴⁶ See Petition at 20-21, 23-28.

⁴⁷ *Id.*

⁴⁸ *HBC Merger Order* at ¶ 58; *Spanish Radio Network*, 10 FCC Rcd 9954 (1995) at ¶¶ 8-10; *Brawley Broadcasting Company*, 13 FCC Rcd 21119 (1998) at ¶ 14.

does it take programming formats into consideration when considering assignment applications.⁴⁹

As a result, the Petitioners' claim that the Applications must be subjected to some undefined "higher standard" of review by the Commission because of the Stations' format lacks any legal or factual basis.

To the extent the Petitioners seek to have the Commission's rules "recast so as to prohibit broadcast concentration in a market defined by language comprehension, the appropriate course of action is to request that the Commission institute a generic rule making proceeding to change its current multiple ownership rules and policies."⁵⁰ The Petitioners here have not done so, and have no basis for challenging the Applications in this proceeding.

In any event, the challenged Applications merely propose the transfer of four Spanish-language broadcast stations to an entity that has none. It is difficult to imagine any conceivable harm to competition or diversity that such a transfer could create. The Petitioners' argument is therefore without merit.

Conclusion

The Petition is both procedurally and substantively defective, containing nothing more than broad, unsubstantiated and often internally inconsistent allegations. While claiming on the one hand that Univision has failed to be responsive to the needs of the Stations' communities, the Petitioners at the same time allege that that the Stations' programming, including news, is so preferred by the public that the Stations merit special regulatory discrimination by the Commission. There is of course no basis whatsoever for such treatment, whether it be in the form of the Petitioners' request for a hearing "to consider the unique needs of the Latino Spanish-

⁴⁹ *Brawley Broadcasting Company*, 13 FCC Rcd 21119 (1998) at ¶ 14 (citations omitted).

⁵⁰ *Spanish Radio Network*, 10 FCC Rcd 9954 (1995) at ¶ 9.

language market,” or the Petitioners’ request that a “higher standard” be applied to a licensee that voluntarily chooses to serve a minority audience. While the Petitioners’ wish list is long, their Petition is short on facts and law to support those desires. As the Petition fails to present a *prima facie* case that grant of the Applications would be inconsistent with the public interest, Univision urges the Commission to expeditiously dismiss or deny the Petition, and grant the Applications.

Respectfully submitted,



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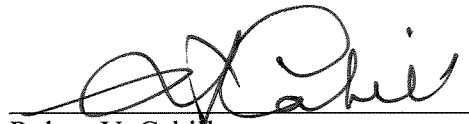
Counsel for Univision Communications Inc.

Dated: September 20, 2006

DECLARATION

I, Robert V. Cahill, do hereby declare under penalty of perjury that the following is true and correct:

1. I am Vice Chairman and Secretary of Univision Communications Inc.
2. I have reviewed the attached "Opposition to Petition to Deny." The facts stated therein, except those based on official records or other documents of which the Federal Communications Commission may take official notice, are true and correct.


Robert V. Cahill
Vice Chairman and Secretary

Dated: Sept 10, 2006

CERTIFICATE OF SERVICE

I, Sylvia Davis, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that copies of the foregoing "Opposition to Petition to Deny" were served via hand delivery on this 20th day of September, 2006 on the following:

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