

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC**

In re Applications of)
)
TELEMUNDO COMMUNICATIONS)
GROUP, INC.,)
Transferor)
)
and)
)
TN ACQUISITION CORP.,)
Transferee)
)
For Transfer of Control of)
Station KSTS(TV), San Jose,)
California, *et al.*)

File Nos. BTCCT-20011101ABK
et seq.

To: Chief, Mass Media Bureau

**CONSOLIDATED OPPOSITION TO PETITIONS TO DENY
AND REQUEST FOR EXPEDITED RESOLUTION**

Council Tree Hispanic Broadcasters II, L.L.C. ("Council Tree"), by its attorneys and pursuant to Sections 73.3584 and 1.45 of the Commission's rules, hereby opposes, and requests expedited resolution of, the Petitions to Deny filed by Paxson Communications Corporation ("Paxson") and The Puerto Rican Legal Defense and Education Fund, Inc., *et al.* ("PRLDEF") in the captioned proceeding.

As explained below, neither of the petitions raises issues that are appropriate for resolution by the Commission in the context of the instant proceeding. To the contrary, Paxson's petition is no more – and no less – than an inappropriate and untimely attempt to embroil the Commission in a private contractual dispute that currently is subject to an arbitration proceeding initiated by Paxson under the auspices of the American Arbitration Association. There is no reason to believe that the

arbitration, which generally entails discovery proceedings, will be short in duration. PRLDEF, meanwhile, has not raised a single issue within the FCC's jurisdiction. Therefore, Council Tree urges the Commission to dismiss or deny the petitions and grant the captioned applications.

Moreover, Council Tree asks the Commission to resolve these matters expeditiously because of the unique costs of delay – in particular, the denial of the benefits of expanded service to the Spanish-speaking community in the United States, and the financial hardship on Council Tree's nearly 27,000 Native American constituents.

1. BACKGROUND.

Council Tree, an investment entity that counts among its members five Alaska Native Corporations owned by nearly 27,000 Native Americans residing in all 50 states, assumed control of Telemundo Communications Group, Inc. ("Telemundo") pursuant to Commission consent in December 2000. ^{1/} The reorganization that occurred when Council Tree made its investment in Telemundo was designed to enable the network to compete more effectively in a crowded marketplace that includes Univision, the largest Spanish-language network in the United States. Telemundo's goal has been to provide diverse and competitive high-quality, national network programming to the Hispanic community – the fastest growing demographic segment in the United States.

At this time, Council Tree and the other owners of Telemundo have made the business judgment to divest their interests in Telemundo. One important factor in

^{1/} Council Tree is the managing member of Station Partners, LLC, the single majority voting shareholder of Telemundo. See File Nos. BTCCT-20000808ACC *et seq.*

this business judgment is that an expeditious sale to NBC will enable Telemundo to continue to strengthen its competitive position vis-a-vis Univision, which has announced plans to launch a second Spanish-language network, Telefutera, next month. ^{2/} Delays in the consummation of the instant transaction will disserve Spanish-speaking viewers, the Telemundo Network and the thousands of minority investors in the Council Tree ownership chain, many of whom are first-time investors in the communications sector and rely on distributions from these investments.

Council Tree has been a pioneer in its efforts to create and promote ownership diversity in the media industry. Among Council Tree's constituent investors are several entities that were formed pursuant to the Alaska Native Claims Settlement Act ("ANCSA") to administer the funds distributed to Native Americans in settlement of aboriginal claims:

- Sealaska Corporation, which is owned by 16,000 Native Americans who reside principally in Southeast Alaska, including remote villages.
- Arctic Slope Regional Corporation, which is owned by 7,500 Native Americans, most of whom reside on the North Slope of Alaska, including remote villages.
- The Kuskokwim Corporation, which is owned by 1,200 Native Americans who reside principally in the economically disadvantaged western portion of Alaska.
- Bethel Native Corporation, which is owned by 2,000 Native Americans who also reside principally in the economically disadvantaged western portion of Alaska.

^{2/} Telefutera is expected to make its debut on Jan. 14 and will air on stations owned by Entravision Communications Corp. (Univision's largest affiliate group) in 15 key Hispanic markets. See Barrera Diaz, C., *Entravision to launch Telefutera signal in 15 mkts*, Reuters, December 4, 2001, http://www.reuters.com/news_company.jhtml?storyid=NEWS.REUT.20011204.N04149060rtr&ticker=UVN&provider=companynews.

- St. George Tanaq Corporation, which is owned by 225 Native American shareholders who reside on the remote St. George Island in the Bering Sea.

These entities represent, in the aggregate, 26,925 Native American shareholders, or approximately one out of every four Alaska Natives, with members residing in all 50 states. Of these Native American investors, one-third live below the poverty line and depend on the income stream from investments such as these to supplement their income for day-to-day living expenses. ^{3/}

Council Tree's efforts to promote minority investment will suffer a serious setback, and the reasonable expectations of tens of thousands of Native American investors will be frustrated, if the petitioners are permitted to delay grant of the captioned applications and consummation of NBC's proposed acquisition of Telemundo.

2. THE PAXSON PETITION DOES NOT RAISE ANY ISSUES APPROPRIATE FOR CONSIDERATION IN THE CONTEXT OF THE TELEMUNDO/NBC TRANSACTION AND THEREFORE DOES NOT JUSTIFY ANY DELAY IN PROCESSING AND APPROVAL OF THE APPLICATIONS.

Paxson's allegation that NBC has an attributable interest in the Paxson television stations (Paxson Petition at 3) is a red herring, designed only to bootstrap FCC jurisdiction over a dispute concerning a private contractual agreement gone sour. Although Council Tree is not in a position to respond to Paxson's factual allegations, Council Tree *is* in a position to protest, vigorously, this obvious attempt to hijack the Commission's processes to promote Paxson's objectives in a contractual dispute.

It is well established that the Commission will not become involved in private contractual disputes and will not permit its processes to be used to adjudicate

^{3/} Although the ANCSA entities' percentage of overall ownership in Telemundo is small (less than one percent), the net sales proceeds allocable to these entities in connection with the proposed transaction will be approximately \$7 million.

them. 4/ That general policy is particularly applicable where, as here, an appropriate judicial or other forum is available for consideration of the dispute. Paxson acknowledges that the very claims it purports to vindicate in the instant proceeding are subject to arbitration by the express terms of its agreements with NBC – and that it already has initiated an arbitration proceeding under the auspices of the American Arbitration Association. See Paxson Petition at 5. Paxson even admits, as it must, that “action by the arbitration panel may well moot this petition” *Id.* at 5-6 (noting that Paxson seeks an order in arbitration “enjoining NBC from proceeding with the Telemundo transaction”). Paxson should not be permitted to conjure its contract claims into an FCC petition by tacking on an admittedly speculative assertion that NBC may have an attributable interest in Paxson. 5/

Paxson’s gamesmanship is even more transparent in view of the fact that the behavior for which it now seeks Commission redress is alleged to have started in July 2000 – *fully one and one-half years before Paxson filed its petition*. Thus, the timing of Paxson’s filing only underscores its purpose: to frustrate an unrelated transaction (and, with it, as noted above, the expectations of Council Tree’s investors and other parties) in order to gain leverage in a dispute with NBC over arrangements entered into earlier still – in 1999. Rather than seeking to vindicate the public interest –

4/ See, e.g., *Cope Communications, Inc.*, 13 FCC Rcd 14564, 14567 (1998); *Decatur Telecasting, Inc.*, 7 FCC Rcd 8622, 8624 (MMB 1992); *John F. Runner, Receiver*, 36 RR 2d 773, 778 (1976); see also *Listener’s Guild, Inc.*, v. FCC, 813 F.2d 465, 469 (D.C. Cir. 1987) (noting longstanding Commission policy of refusing to adjudicate private contract law questions for which a forum exists in state court).

5/ Paxson’s position is confusing, at best, as it meanders between allegations concerning attribution, on the one hand, and control, on the other – as to which Paxson makes the impenetrable claim that NBC “has (unsuccessfully so far) asserted control over” certain of its corporate activities. Paxson Petition at 3. In any case, Paxson’s arguments are based entirely on allegations of past behavior by certain NBC-nominated directors that have been rendered moot by those directors’ resignation from Paxson’s Board.

the prescribed role of a petitioner 6/ – Paxson's plaintive (and patronizing) request that the Commission "withhold action on the NBC-Telemundo transfer applications until the arbitration proceeding is completed" (Paxson Petition at 6) merely attempts to stall Commission action on the captioned applications in the hope that, if Paxson is unsuccessful in the arbitration proceeding, it will someday have an opportunity to argue the same issues once again before the FCC. 7/ In fact, Paxson's ulterior motive for delaying this proceeding and diverting the Commission's limited resources is amply demonstrated in news interviews with Lowell Paxson himself. 8/

Yet, even assuming for the moment that its allegations can be credited, Paxson has failed to demonstrate how denial (or deferral) of the Telemundo/NBC applications would afford any meaningful redress of the injury it contends it has suffered in connection with its unrelated 1999 arrangement with NBC. See *California Association of Physically Handicapped v. FCC*, 778 F.2d 823, 825 (D.C. Cir. 1985) (petitioner lacks standing to challenge transfer of control application where "[petitioner] cannot fairly trace its ongoing injury – either in origin or endurance – to the transfer in question"). 9/ Paxson coincidentally appears to have standing to file a petition to deny

6/ *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988) (Commission must determine whether a petition raises a substantial and material question of fact as to whether grant of an application would serve the public interest).

7/ It also is unsupported by Commission precedent. See, e.g., *George Bouris*, 14 FCC Rcd 19929 (1999) (the Commission can subsequently accommodate a local court ruling on the merits); *Tsooris Corporation*, 12 FCC Rcd 1675, 1678-79 (1997) (the Commission can take whatever steps are necessary to accommodate a local court's ruling); *Dale J. Parsons, Jr.*, 10 FCC Rcd 2718, 2719-20 (1995) *aff'd per curiam*, 93 F.3d 986 (1996).

8/ Diane Mermigas, *Profile: Lowell "Bud" Paxson*, *Electronic Media*, December 10, 2001, at 13, 2001 WL 6914725 ("I'm happy to get the NBC documents corrected and the relationship worked out. Otherwise, they should let me go. If I can find another strategic partner and sell to become a shareholder in someone else's company, that's OK.").

9/ Paxson proceeds from false premises in arguing that the Telemundo transaction should be disallowed because it might affect NBC's ability in the future to exercise certain rights to acquire control of

as a market competitor, but the underlying premise of the *California Association* case applies here: petitioners should not be permitted to use an FCC transfer proceeding to air issues that are properly resolved in another forum – or, as Paxson has acknowledged would be appropriate in its case, before a panel of arbitrators.

3. PRLDEF'S PETITION TO DENY DOES NOT RAISE ANY ISSUES WITHIN THE FCC'S JURISDICTION AND THEREFORE DOES NOT JUSTIFY DENIAL OR DISMISSAL OF THE APPLICATIONS.

PRLDEF argues that the captioned applications should be dismissed or denied variously because they are incomplete or violate Commission rules. In each case, however, PRLDEF either misapprehends applicable FCC rules and policies or asserts a position that has been overtaken by events.

Although PRLDEF recognizes that "NBC is qualified to operate and to serve as the transferee of broadcast licensees" (PRLDEF Petition at 1), it nevertheless contends that NBC has failed to make an adequate public interest showing in order to support grant of the applications in general or of NBC's request for a limited, temporary waiver of the television duopoly rule in Los Angeles. See PRLDEF Petition at 4-5. However, a transfer of control application demonstrating that the proposed transaction will comply with Commission rules is presumptively deemed to be in the public interest. ^{10/} Neither the rules nor the pertinent application form requires applicants to make a public interest showing independent of this well-established standard. Similarly, NBC's showing in support of its temporary Los Angeles duopoly waiver request is

Paxson. See Paxson Petition at 5-6. Whether, at some time in the future, NBC would choose, and under the Commission's rules would be qualified, to acquire Paxson's television stations clearly is not a question ripe for Commission review at this time.

^{10/} As Chairman Powell observed in a recent decision: "A transaction that complies with structural rules designed to advance the public interest (when they exist), should not be subject to further ad hoc

adequate under the standards set forth in recent cases in which multiple station acquisitions have triggered divestiture requirements. 11/

PRLDEF also challenges the applications on the ground that they do not contain information regarding NBC's plans to employ Hispanics at the Telemundo stations. See PRLDEF Petition at 8-9. But transfer applicants are not required to make any employment-related showing; nor are there any Equal Employment Opportunity ("EEO") rules in place by which the Commission could evaluate such a submission if it were made. The only case cited by PRLDEF in support of its contention dates from 1980 and refers to EEO rules that have since twice been vacated by the United States Court of Appeals for the District of Columbia Circuit. 12/ There is no merit to PRLDEF's claim that the application is "incomplete and ungrantable" because the proposed transferee does not include a description of its plans for future employment at the Telemundo stations (PRLDEF Petition at 9) – because there is no requirement under the Communications Act or FCC Rules that it do so. 13/

review; otherwise the exalted benefits of such rules would be eviscerated." See *UTV of San Francisco, Inc. et al.*, 16 FCC Rcd 14,975, 14,995 (2001) (Separate Statement of Chairman Powell).

11/ See, e.g., *Shareholders of CBS Corporation*, 15 FCC Rcd 8230, 8236 (2000) ("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.").

12/ See *MD/DC/DE Broadcasters Association v. Federal Communications Commission*, 236 F.3d 13 (D.C. Cir. 2001). On January 31, 2001, the Commission suspended Section 73.2080 (b) through (j) of the broadcast EEO Rule. See *Suspension of the Broadcast and Cable Equal Employment Opportunity Outreach Program Requirements*, 16 FCC Rcd 2872 (2001). On December 12, 2001, the Commission adopted a Notice of Proposed Rule Making seeking public comment on new EEO rules. See Press Release, *FCC Proposes New Equal Employment Opportunity (EEO) Rules For Broadcast And Cable* (released Dec. 13, 2001).

13/ In any case, the PRLDEF praises NBC's "commendable" historical EEO performance. PRLDEF Petition at 14.

Finally, PRLDEF offers several inconsistent arguments purporting to refute the applicants' assertion that a limited, temporary waiver of the duopoly rules in Los Angeles will not harm diversity. PRLDEF Petition at 12-15. On the one hand, PRLDEF argues that the Hispanic population in the Los Angeles market is not adequately served by existing media outlets. *Id.* at 12-13. On the other hand, in response to NBC's proposal to strengthen Telemundo so that it will be able to compete more robustly with Univision, PRLDEF professes anxiety that Telemundo will "become a powerhouse" and overtake Univision to such an extent that competition will be undermined. *Id.* at 13-14. Taken together, however, PRLDEF's arguments appear actually to support grant of the NBC/Telemundo applications -- if, as the petition claims, the Los Angeles Hispanic market currently is underserved, then an infusion of resources into one of the existing Telemundo outlets there to enable it to "[run] full-throttle" (PRLDEF Petition at 14) will improve the level of service there. 14/

One theme rings loud and clear throughout PRLDEF's petition: the Hispanic community -- which historically has been and continues to be under-served by the mainstream media -- is an important demographic segment, and the burgeoning Hispanic population in this country deserves the increased competition in the Spanish-language television market that inevitably will result from a reinvigorated Telemundo that is better able to challenge Univision's historical dominance of this market. Delays

14/ The argument that Telemundo will supplant Univision as the dominant Hispanic network in the Los Angeles market is not only speculative, but irrelevant. Univision, which has long dominated the Spanish-language television market nationally and in Los Angeles -- it captures approximately 80 percent of Hispanic viewers -- has a long-term programming agreement with Televisa of Mexico, and has only recently, pursuant to FCC consent, completed the acquisition of 13 major-market television stations from USA Broadcasting. See *Letter to Scott R. Flick, Esq.*, 16 FCC Rcd 10,904 (MMB 2001). Additionally, as described earlier, Univision has announced plans to launch Telefutera, a second Spanish language network, next month. Interestingly, PRLDEF failed to offer any opposition to the USA/Univision transaction.

in approval of the NBC/Telemundo transaction will substantially set back service to the Latino community.

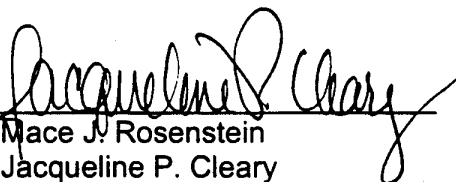
4. CONCLUSION: THE COMMISSION SHOULD ACT ON THE APPLICATIONS EXPEDITIOUSLY.

Any delay in the grant of the captioned applications and consummation of the transaction will disserve Spanish-speaking viewers, the Telemundo Network and Council Tree's thousands of minority investors, many of whom rely on distributions from these investments to meet their basic needs. Given that the petitions raise no *bona fide* issues germane to this proceeding, Council Tree urges the Commission to act quickly on these applications so as to avoid inviting such specious filings in the future.

Neither of the petitioners has raised issues that are appropriate for resolution in the captioned proceeding. Accordingly, Council Tree respectfully urges the Commission to dismiss or deny the petitions.

Respectfully Submitted,

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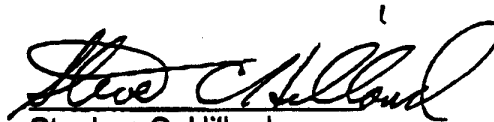
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Dated: December 19, 2001

DECLARATION

I, Stephen C. Hillard, Chief Executive Officer of Council Tree Hispanic Broadcasters II, L.L.C., hereby declare under penalty of perjury that I have read the foregoing "Consolidated Opposition to Petitions to Deny and Request For Expedited Resolution" and the facts contained therein are true and correct to the best of my knowledge and belief.


Stephen C. Hillard

Dated: December 19, 2001

CERTIFICATE OF SERVICE

I, Charlene Jones, a secretary in the law firm of Hogan & Hartson LLC hereby certify that on this 19th day of December, 2001, a copy of Consolidated Opposition to Petitions to Deny and Request for Expedited Resolution was hand delivered to:

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