

**COMPLIANCE WITH TELEVISION OWNERSHIP RULES AND REQUEST FOR
TEMPORARY WAIVER OF SECTION 73.3555(b) OF THE COMMISSION'S RULES**

I. INTRODUCTION

This Exhibit 17 supplements Section IV, Item 8, of the Application for Consent to Transfer Control ("Application") of Telemundo Communications Group, Inc. ("Telemundo") and its broadcast licensee subsidiaries.¹ The transfer of control proposed herein will be effected through a merger of Telemundo with and into TN Acquisition Corp., a wholly owned subsidiary of General Electric Company ("GE"), which is the parent corporation of NBC. Through the merger, GE will acquire indirectly 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.²

Spanish-language broadcasting is the fastest growing segment of the U.S. television industry, targeting 35 million Hispanic viewers with an estimated \$500 billion in spending power.³ This niche market currently is dominated by Univision Communications, Inc. ("Univision"). Although Telemundo has been gaining strength as a competitor in recent years, in each of the eight markets where Univision and Telemundo-owned and operated stations compete,⁴ the Univision stations garner

¹ NBC and Telemundo seek the Commission's consent to the transfer of control of the licenses of the following full power television stations: (1) WNJU, Linden, New Jersey; (2) KVEA, Corona, California; (3) KWHY-TV, Los Angeles, California; (4) WSNS, Chicago, Illinois; (5) KSTS, San Jose, California; (6) KXTX-TV, Dallas, Texas; (7) WSCV, Fort Lauderdale, Florida; (8) KVDA, San Antonio, Texas; (9) KTMD, Galveston, Texas; (10) KMAS-TV, Steamboat Springs, Colorado; and (11) WKAQ-TV, San Juan, Puerto Rico.

² Although TN Acquisition Corp. is the transferee of control in this application, NBC is referred to as the acquiring party for ease of reference in this exhibit.

³ See Steve McClellan, *Lo Mas Grande Deal de NBC*, BROADCASTING & CABLE, Oct. 15, 2001, at 6.

⁴ These markets are New York, Los Angeles, Chicago, Dallas, Miami, San Francisco, Houston, and San Antonio.

a substantially greater audience share than the Telemundo stations.⁵ Univision also dominates in the competition for advertising dollars.⁶ As the Commission recognizes, vigorous competition among video services providers in a market is the key to programming diversity and enhanced service to the public. By combining the resources of Telemundo and NBC, the proposed merger will result in Telemundo emerging as a more effective competitor to Univision, which will in turn directly benefit the large and rapidly growing Hispanic segment of the U.S. population.

As demonstrated in Section II below, the proposed combination of the NBC and Telemundo-owned and operated stations complies fully with the national ownership limits set forth in Section 73.3555(e)(1) of the Commission's rules.⁷ Section III of this Exhibit demonstrates that the permanent duopolies proposed in the New York, Los Angeles, Chicago, Dallas, and Miami Designated Market Areas ("DMAs") also comply fully with the television local ownership rules. NBC's proposed acquisition of Telemundo, however, will result in the common ownership of three television stations in the Los Angeles DMA: Station KNBC, Los Angeles, and Telemundo's Spanish-language duopoly in the Los Angeles DMA, comprised of Stations KVEA, Corona, and KWHY-TV, Los Angeles. Although Section III demonstrates that a combination of KNBC and one of these two Telemundo Stations complies fully with the duopoly rule, the common ownership of three stations in the Los Angeles DMA does not comply with the current rules. Accordingly, based on well-established precedent developed in the context of large corporate mergers resulting in temporary conflicts with the local ownership rules, NBC respectfully requests a temporary waiver for a period of 12 months in which to divest one of the Telemundo stations in the Los Angeles DMA or otherwise comply with the

⁵ See *infra* and Attachment 2.

⁶ See *infra*; see also Phyllis Furman, *Univision's Advertising Sales Stand Out in Industrywide Slump*, DAILY NEWS, Oct. 2, 2001 (reporting that Univision earned \$550 million in advertising dollars during the pre-season sales period, an increase of 10 percent over last year's earnings).

⁷ 47 C.F.R. § 73.3555(e)(1) (2000).

local ownership rules. As demonstrated in Section IV of this Exhibit, a temporary waiver will not decrease economic competition or programming diversity and therefore will not frustrate the goals of the local ownership rules. Further, a temporary waiver will serve the public interest by preserving a Spanish-language outlet while allowing an orderly disposition of one of the Telemundo-owned stations in the Los Angeles DMA, which will substantially enhance the possibility that the station will be sold to a qualified buyer who will appreciate and foster the unique characteristics of the divested station.

II. THE PROPOSED TRANSACTION COMPLIES FULLY WITH THE NATIONAL OWNERSHIP RULES

The proposed combination of the NBC and Telemundo-owned and operated stations complies fully with the national audience reach limitation set forth in Section 73.3555(e)(1) of the Commission's rules. All of Telemundo's stations located in Nielsen DMAs and three of NBC's stations are UHF stations. Under Section 73.3555(e)(2)(i) of the rules,⁸ the audience reach of these stations is discounted by 50 percent. In the markets where a duopoly will result (i.e., the New York, Los Angeles, Chicago, Dallas, and Miami DMAs), the percentage of television households in each market is counted only once under the Commission's rules.⁹ The combined NBC/Telemundo national audience reach in the duopoly markets is 18.70 percent. Telemundo's owned and operated stations in the Telemundo-only markets contribute 3.92 percent to the combined NBC/Telemundo national audience reach. This figure includes all of the television households in Puerto Rico, where Telemundo's only VHF station, WKAQ-TV, is licensed.¹⁰ NBC's owned and operated stations in the

⁸ See 47 C.F.R. § 73.3555(e)(2)(i) (2000).

⁹ See *Broadcast Television National Ownership Rules; Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules*, 16 FCC Rcd 1063, 1064 (2000).

¹⁰ WKAQ-TV is licensed to San Juan. Television stations licensed to communities in Puerto Rico are not assigned to DMAs. The rule setting forth the national audience reach limit requires a party making a showing for an area not
Footnote continued on next page.

NBC-only markets contribute 8.03 percent to the combined NBC/Telemundo national audience reach. Accordingly, the combined total audience reach of NBC and Telemundo will be 30.65, which is well below the 35 percent cap and thus fully consistent with the national ownership rules.¹¹

III. THE PROPOSED PERMANENT DUOPOLIES COMPLY FULLY WITH THE TELEVISION LOCAL OWNERSHIP RULES

Section 73.3555(b) of the Commission's rules permits the common ownership of two full-power television stations in the same DMA if eight independently owned and operating full-power commercial and noncommercial television stations will remain post-merger, and at least one of the two stations to be commonly owned is not ranked among the top four television stations in the DMA based on the most recent all-day (9:00 a.m.-midnight) audience share as measured by Nielsen Media Research ("Nielsen").¹² The transaction proposed in this application will result in the creation of duopolies in five DMAs: New York, New York (WNBC and WNJU); Los Angeles, California (KNBC and KVEA or KWHY-TV); Chicago, Illinois (WMAQ-TV and WSNS); Dallas, Texas (KXAS-TV and KXTX-TV); and Miami, Florida (WTVJ and WSCV).¹³

Attachment 2 to this Exhibit demonstrates that in each of these duopoly markets, the Telemundo-owned and operated stations rank below the top four stations based on Nielsen ratings for

assigned to a DMA to make a showing "as to the number of television households in its market." See 47 C.F.R. § 73.3555(e)(2)(i). The Commission has recently reaffirmed that for purposes of the television duopoly rule, Puerto Rico should be treated as a single television market. See *Paxson Communications of San Juan, Inc. (Transferor) and LIN Television Corporation (Transferee)*, 16 FCC Rcd 14139 (2001) (citing *Milton S. Maltz*, 13 FCC Rcd 15527 (1998); *JEM Communications, Inc.*, 9 FCC Rcd 4874 (1994) and *Hector Nicolau*, 5 FCC Rcd 6370 (1990)). NBC has followed that approach in calculating the national audience reach percentage contributed by WKAQ-TV and has included all 973,000 Puerto Rico television households in the national audience reach calculation. See *INFORMA MEDIA TBI YEARBOOK 2001*.

¹¹ See Attachment 1; see also 47 C.F.R. § 73.3555(e)(1) (2000).

¹² 47 C.F.R. § 73.3555(b) (2000); see also *Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12932-12933 (1999) [hereinafter, "*Television Ownership Rules*"].

¹³ Telemundo currently has a local marketing agreement with Station WEYS, Key West, Florida (also part of the Miami-Ft. Lauderdale DMA), pursuant to which Telemundo provides more than 15 percent of the total weekly programming to the station. However, the Grade B contour of Station WEYS does not overlap with the Grade B contour of the NBC or Telemundo Miami stations.

the July 2001 sweeps period.¹⁴ Specifically, according to the Nielsen data, Telemundo's audience share ranked sixth in the Miami DMA, eighth in the Dallas and New York DMAs, eighth (KVEA) and ninth (KWHY-TV) in the Los Angeles DMA, and ninth in the Chicago DMA.

Attachment 3 also demonstrates that in each of the markets where a duopoly will result, more than eight independent stations will remain post-merger, as required by the duopoly rule.¹⁵ Specifically, excluding the NBC and Telemundo stations in each DMA, 17 independent commercial and noncommercial television stations will remain in the New York DMA, 19 in the Los Angeles DMA, 13 in the Chicago DMA, 12 in the Dallas DMA, and 9 in the Miami-Ft. Lauderdale DMA.¹⁶ Accordingly, the permanent duopoly proposed in each of these markets complies fully with the Commission's rules.

IV. THE REQUESTED TEMPORARY WAIVER OF THE DUOPOLY RULE IS FULLY CONSISTENT WITH THE OBJECTIVES OF THE LOCAL OWNERSHIP RULES

As noted above, following the proposed merger, NBC's owned and operated Los Angeles station, KNBC, will be commonly owned with Telemundo's Spanish-language duopoly in the Los Angeles DMA, comprised of Stations KWHY-TV, Los Angeles, and KVEA, Corona.¹⁷ Because the Commission's rules currently permit the common ownership of only two television stations in a qualifying DMA such as Los Angeles, the proposed transaction is not consistent with Section

¹⁴ See, e.g., 47 C.F.R. § 73.3555(b)(2)(i) (2000).

¹⁵ See, e.g., 47 C.F.R. § 73.3555(b)(2)(ii) (2000).

¹⁶ The calculation for Miami-Ft. Lauderdale does not include as independent voices the stations licensed to Key West as directed by the Commission in its order on reconsideration in the television broadcast ownership proceeding. See *Broadcast Television National Ownership Rules, Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules* 16 FCC Rcd 1063, 1072-73 (2001).

¹⁷ The Commission granted an application for assignment of Station KWHY-TV from Harriscope of Los Angeles, Inc. to Telemundo by Public Notice released May 2, 2001 (Broadcast Actions, Report No. 44976). The parties consummated the transaction on June 1, 2001. The purchase of Station KWHY-TV by Telemundo represented the first Spanish-language duopoly under the Commission's revised television local ownership rules. See *Television Ownership Rules*; see also Karissa S. Wang, *Local Listings*, ELEC. MEDIA, June 11, 2001.

73.3555(b) of the Commission's rules.¹⁸ NBC therefore requests a temporary waiver of 12 months in which to effectuate an orderly disposition of one of the two Telemundo stations or otherwise comply with Section 73.3555(b). Although the parties recognize that the Commission has not been called upon previously to grant a waiver authorizing the temporary combination of three stations in the same DMA, the facts and circumstances in support of the requested waiver are fully consistent with prior duopoly waivers, with the objectives of the local ownership rules, and with the public interest.¹⁹

The stated objectives of the FCC's television local ownership rules are two-fold: (1) "to promote diversification of programming sources and viewpoints" in a local market and (2) "to prevent an undue concentration of economic power."²⁰ In weighing the merits of a request for a temporary waiver of the duopoly rule, the Commission therefore evaluates whether a grant of a temporary waiver would undermine its "goals of diversity and competition in the broadcast marketplace."²¹ As explained more fully below, a temporary waiver is amply justified in this case and would be consistent with well-established Commission precedent of accommodating multi-

¹⁸ The parties acknowledge that the Grade B contours of these stations overlap substantially. Accordingly, there is no need to submit engineering studies. The Commission has granted a temporary waiver of the duopoly rule in comparable circumstances. In the decision approving the acquisition of ABC by Disney, for example, 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, and that neither station claimed to be experiencing financial difficulties. *See Capital Cities/ABC, Inc. (Transferor) and the Walt Disney Company (Transferee)*, 11 FCC Rcd 5841, 5873-74 (1996) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (1969) and *Knoxville Channel 8 Limited Partnership*, 4 FCC Rcd 4760, 4761 (1989); *Park Communications, Inc.*, 10 FCC Rcd 3869, 3870 (1995); *Citadel Communications Company, Ltd. (Assignor) and Act III Broadcasting of Buffalo, Inc. (Assignee)*, 5 FCC Rcd 3842, 3844 (1990)) [hereinafter, "Disney"]. The Commission nevertheless granted Disney a temporary waiver of the duopoly rule (at a time when same-market duopolies were not permitted), 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 anti-competitive effects of the combination during the waiver period. *See id.* at 5871-74.

¹⁹ The Commission has "authority to waive its rules based on 'special circumstances' and where an applicant makes a proposal 'that will not undermine the policy served by the rule.'" *Disney*, 11 FCC Rcd at 5872.

²⁰ *NWCG (Parent) Holdings Corp. & NWCG Holdings Corp. (Transferor) and Fox Television Stations, Inc. (Transferee)*, 11 FCC Rcd 16318, 16322 (1996) (citing *Multiple Ownership Rule*, 22 FCC 2d 306, 307 (1970)).

²¹ *UTV of San Francisco, Inc., KCOP Television, Inc., UTV of San Antonio, Inc., Oregon Television, Inc., UTV of Baltimore, Inc., WWOR-TV, Inc., and UTV of Orlando, Inc. and United Television, Inc. (Assignors) and Fox Television Stations, Inc. (Assignee)*, FCC 01-209, ¶ 31 (rel. July 23, 2001) (citing *Lint Co.*, 15 FCC Rcd 18130, 18133 (2000); *Shareholders of CBS Corporation*, 15 FCC Rcd 8230, 8243 (2000)) [hereinafter, "Chris-Craft/Fox"].

station transactions where the conflicts are incidental to the proposed merger.²² First, any concerns regarding the temporary common ownership of the three stations are diminished by the tremendous diversity of media outlets in the Los Angeles DMA. Second, grant of the temporary waiver will not have an adverse impact on economic competition in the Los Angeles market, because the NBC and Telemundo stations serve very distinct audiences and do not compete for advertising dollars. Third, NBC pledges to operate Station KNBC independently of Stations KVEA and KWHY-TV during the period of common ownership. Finally, a temporary waiver will serve the public interest by avoiding a forced sale in a very difficult economic climate, which will in turn enhance the likelihood that a suitable buyer will be found who will value and preserve the unique characteristics of one of the nation's oldest Spanish-language television stations.

A. The Waiver Will Have no Adverse Impact on the Diversity of Voices in the Los Angeles DMA

Los Angeles is the second-largest broadcast market in the United States and is served by a tremendously diverse number of media outlets, including radio and television broadcast stations, cable, Direct Broadcast Satellite ("DBS"), and newspapers.²³ Excluding the NBC and Telemundo stations, the Los Angeles DMA currently is served by a total of 92 broadcast stations, including 69 radio stations and 23 full-power commercial and noncommercial television stations. Of the 23 television stations licensed to the market, 19 qualify as independent television voices for purposes of this application, the largest number of independently owned full power television stations of any market in the country. Of the 92 broadcast stations operating in the Los Angeles market, 18 radio stations target the Hispanic community, and Station KMEX-TV, which is owned by Univision, and

²² See *Chris-Craft/Fox* at ¶ 31; see also *Shareholders of CBS, Inc. (Transferor) and Westinghouse Electric Corporation (Transferee)*, 11 FCC Rcd 3733 (1995) [hereinafter, "*Westinghouse*"].

²³ See Nielsen Media Research (visited Oct. 17, 2001) <<http://www.nielsenmedia.com>>. Los Angeles ranks in second place with 5,303,490 television households, after New York City.

Station KAZA-TV, which is owned by Pappas Southern California License, LLC, offer Spanish-language programming.²⁴ Stations KRCA and KJLA also air Spanish-language programming.²⁵ In addition, Univision's second Los Angeles station, KSHC-TV, is currently a Home Shopping Network affiliate which will become affiliated with Univision's second Spanish-language network, Telefutera, when the network launches on January 14, 2002. The other remaining television stations include affiliates of all of the major television networks, as well as an exceptionally large number of independent stations.

In addition to residing in the second-largest broadcast market in the nation, residents of the Los Angeles market also have access to numerous other information sources. Of the total television homes in the Los Angeles DMA, approximately 65 percent (3,482,860 households) receive cable service.²⁶ These cable services provide residents with access to a broad range of programming options, including channels for news, public affairs, documentaries, children's programming, sports, movies, weather, and foreign language programming. The area is also served by DBS operators, which provide a strong multichannel competitor to cable in the Los Angeles market. The Los Angeles market also has at least 29 daily newspapers²⁷ (including "La Opinion," which is a Spanish-language daily and Los Angeles' second most widely read newspaper).²⁸

As the foregoing demonstrates, the Los Angeles market is exceptionally diverse and well served by media outlets. Moreover, even if the Commission were to consider only broadcast outlets

²⁴ See Dan Trigoboff, *Not so Fast, Pappas; Before Launching, Azteca America Net Still Needs Stations in Key Markets*, BROADCASTING & CABLE, July 2, 2001, at 10. KAZA-TV began offering Spanish-language broadcasting on July 28, 2001. See Claudia Peschiutta, *Azteca Network Settles for Quiet Station Launch; Azteca America, Inc. Launches KAZA-TV in Los Angeles*, LOS ANGELES BUS. J., Aug. 6, 2001.

²⁵ See, e.g., Dom Serafini, *Is There Room for a 5th Hispanic TV Net? Statistical Data Included*, VIDEO AGE INT'L (Jan. 1, 2001); see also TV Guide Online (visited Oct. 30, 2001) <<http://www.tvguide.com>>.

²⁶ BROADCASTING & CABLE YEARBOOK at C-4 (2001).

²⁷ See EDITOR & PUBLISHER 2001.

²⁸ See *Hispanic-Press LA Opinion Named Top Spanish-Language Paper in U.S.*, EFE NEWS SERVICE, Oct. 4, 2001.

(without including the vast array of other media voices), the Los Angeles market would still be extremely diverse, offering its residents at least 45 separately owned radio and television voices. The Commission has previously characterized this level of media diversity as “tremendous.”²⁹

Further, the stations at issue, while not physically separated from each other by geography, are very distinct from each other because they are targeted to and serve very different audiences. Telemundo’s Stations KVEA and KWHY-TV cater exclusively to the Hispanic community in the Los Angeles market. Nearly all of the programming broadcast by these stations is in Spanish, and their news programs make a special effort to address matters of concern to the Hispanic community, both locally and nationally. In contrast, KNBC broadcasts to a wider audience exclusively in English. Because NBC intends to maintain the Telemundo stations as Spanish-language outlets with programming specifically designed to meet the needs and interests of the Hispanic community, this “separateness” will be preserved throughout the period of the temporary waiver.

B. Competition in the Los Angeles DMA Will Not Be Diminished by the Temporary Duopoly Waiver

In reviewing the concentration of economic power resulting from a proposed duopoly, the FCC evaluates whether the temporary waiver will diminish competition in the market.³⁰ Here, the proposed temporary waiver will not result in an undue concentration of economic power and thus will not have an adverse impact on competition.³¹ The Commission has acknowledged in past

²⁹ See *Amendment of Section 73.3555 of the Commission’s Rules, Broadcast Multiple Ownership Rules*, 4 FCC Rcd 1741, 1744 (1989) (commenting on the growth in diversity in large markets and characterizing the degree of diversity in New York as tremendous with a total of 19 television stations, 47 commercial radio stations, and 41 total newspapers). Moreover, any concerns regarding diminished diversity are mitigated by NBC’s pledge to operate the Telemundo stations independently from KNBC during the waiver period, a factor which the FCC has found persuasive in granting temporary waivers. See *Westinghouse* at 3761-62; *Disney* at 5874.

³⁰ See *Telemundo Group, Inc., Debtor-in-Possession (Transferor) and Telemundo Group, Inc., (Transferee)*, 10 FCC Rcd 1104, 1106 (1994) [hereinafter, “*Telemundo*”]; see also, e.g., *Westinghouse* at 3763.

³¹ See *Telemundo* at 1106.

proceedings that the Los Angeles DMA is very diverse.³² As described in more detail above, KNBC and the two Telemundo stations operate in a market with the largest number of independently owned full-power television stations of any market in the country. Further, the Telemundo stations, which rank in eighth and ninth place in the Nielsen ratings, do not dominate even in the very specialized niche of Spanish-language programming. Rather, that distinction is held by Univision, whose Spanish-language station in the Los Angeles DMA, KMEX-TV, ranks third – surpassing CBS, UPN, Fox, and the WB networks. Univision's dominant position in the Los Angeles DMA undoubtedly will be strengthened when Univision launches its second network, Telefutera, in January 2002, and its second station in the market, KHSC-TV, becomes affiliated with that new network. Telefutera is expected to target the Hispanic population.³³

Further, Stations KVEA and KWHY-TV have limited economic power in the Los Angeles DMA. Estimated figures for the year 2000 reflect that the Telemundo stations together earned a 3.18 percent share of the advertising revenues generated by the seven VHF stations licensed in the DMA, Univision's Spanish language outlet, KMEX-TV, and the two Telemundo stations. (In contrast, KMEX-TV alone earned 8.97 percent of the revenues attributable to these ten stations, which is nearly three times the revenues of the combined Telemundo stations.) If KNBC's advertising revenues are added to this calculation, the combined NBC/Telemundo advertising revenues comprise approximately 20.95 percent of the total advertising revenues earned by these ten stations. This percentage is less than the combined advertising revenues of the two Los Angeles stations at issue in the transfer of control of Capital Cities/ABC, Inc. from its shareholders to The Walt Disney Company.³⁴ In that case, in which the Commission approved a temporary waiver of the duopoly rule,

³² See *Disney* at 5871.

³³ See Univision.com (visited Oct. 23, 2001) <<http://noticias.univision.com/content/es0059D95F.html>>.

³⁴ See *Disney* at 5871-72.

the combined share of local television advertising revenue in the Los Angeles market attributed to ABC and Disney – both English language stations – equaled 25 percent.³⁵

Finally, competition for advertising revenues between KNBC and the two Telemundo stations will not be diminished during the period of common ownership. The Spanish-language format of the Telemundo stations means that NBC and Telemundo do not directly compete for the same advertising dollars in the Los Angeles market. Further, each of the two Telemundo stations attracts a different blend of advertisers. Station KWHY-TV, which has a long and illustrious history in the Hispanic community, attracts more local Hispanic business owners as advertisers than KVEA, the Telemundo network-affiliated station in Los Angeles. KVEA, on the other hand, targets national advertisers who want to reach the sizable Spanish-speaking audience in Los Angeles. KNBC similarly targets national advertisers who seek to reach the English-speaking audience in the market. Because NBC intends to preserve the distinctive formats of all three stations during the waiver period, competition for advertising revenues will be unaffected by the combined ownership.

C. The Telemundo and NBC Stations will be Operated Independently During the Period of Common Ownership

The Commission has ruled in prior waiver decisions that an applicant's pledge to operate the stations separately during the waiver period weighs in favor of granting the requested waiver.³⁶ In *Disney*, for example, the Commission stated that any "anti-competitive effects . . . would be diminished by the continued separate operations of the stations as pledged by the applicant."³⁷ The Commission understood that pledge to mean that the two stations would compete in the overlap area and would refrain from engaging in joint sales within that area.³⁸

³⁵ *Id.* at 5871-72.

³⁶ *See id.* at 5872.

³⁷ *Id.* at 5872.

³⁸ *Id.*

In support of its waiver request, NBC pledges to operate Station KNBC independently from Stations KWHY-TV and KVEA, to maintain the stations' separate programming strategies, to continue competing in the Los Angeles market, and to refrain from engaging in joint sales in that market. Accordingly, the grant of NBC's waiver request would be fully consistent with Commission precedent.³⁹

D. The Merger Will Yield Affirmative Public Interest Benefits that Outweigh Any Potential Anticompetitive Effects of the Temporary Waiver

In evaluating a request for a temporary waiver of its rules, the Commission considers, in addition to the factors outlined above, any public interest benefits emanating from the proposed combination that outweigh any potential anticompetitive effects of the waiver.⁴⁰ The Commission has recognized repeatedly that multi-station transactions such as this one provide a "compelling circumstance weighing in favor of a temporary waiver"⁴¹ and that "facilitating such a transaction by temporary waiver of our multiple ownership rules will 'promote commerce, encourage investment in the broadcast industry, and allow for the free transferability of broadcast licenses.'"⁴² Based on these policy considerations, the Commission has routinely granted waivers of its various ownership rules, including a 24-month waiver of the newspaper/broadcast cross-ownership rule,⁴³ a 12-month waiver of the national ownership cap,⁴⁴ and a six-month waiver of the duopoly rule.⁴⁵ The merger proposed in this application presents a unique constellation of public interest benefits, derived primarily from

³⁹ See *id.*; *Westinghouse* at 3762-63; see also *Telemundo* at 1107.

⁴⁰ See *Telemundo* at 1106.

⁴¹ See *Guy Gannett Communications (Assignor) and WGME Licensee, LLC, WTVG Licensee, LLC, WOKR Licensee, LLC, WICS Licensee, LLC, WICD Licensee, LLC, WGGB Licensee, LLC, KGAN Licensee, LLC (Assignees)*, 14 FCC Rcd 6204 (1999) [hereinafter, "*Guy Gannett*"]; see also *Chris-Craft/Fox* ¶ 31.

⁴² *Id.* at 6216 (citations omitted).

⁴³ See *Chris-Craft/Fox* ¶¶ 42-45.

⁴⁴ *Id.*

⁴⁵ *Id.*; see also *Disney*.

the substantial boost that NBC will give to Telemundo as a competitor in the Hispanic broadcasting market. These benefits, described more fully below, amply justify a 12-month waiver of the television local ownership rules.

NBC believes that Telemundo has enormous potential for growth in the Hispanic broadcasting market. As demonstrated in the following table, while Telemundo has been steadily gaining market share, Univision continues to dominate in this niche market and outpaces Telemundo in each of the eight markets where both companies own and operate television stations.

Markets	Univision		Telemundo	
	Percent Audience Share ⁴⁶	Ranking in Market	Percent Audience Share	Ranking in Market
1. New York, NY	4.0	7	2.7	8
2. Los Angeles, CA	7.5 ⁴⁷	3	3.9 ⁴⁸	8 & 9
3. Chicago, IL	3.0	7	1.5	9
4. San Francisco, CA	2.9	7	1.4	10
5. Dallas, TX	4.4	6	2.2	8
6. Houston, TX	6.2	6	1.3	8
7. Miami, FL	11.0	1	6.9	6
8. San Antonio, TX	7.5	4	2.1	7

The proposed merger will benefit Hispanic viewers by making available to them NBC's programming, production and administrative capabilities and resources, thereby improving the quality of Telemundo's news and entertainment programs, upgrading Telemundo's distribution mechanisms, increasing sales of advertising, and capitalizing on the substantial operating efficiencies to be derived from the eventual combination of certain operations. By strengthening Telemundo as a competitor to Univision and other Spanish-language broadcasters, the proposed merger will in turn bring greater programming choices to Spanish-speaking Americans and distribution alternatives for

⁴⁶ Nielsen Media Research (July 2001 Sweeps).

⁴⁷ When Univision's second Los Angeles station begins airing Univision's new network offerings, Univision's grip on the market is expected to tighten.

⁴⁸ This figure represents the combined audience share of Telemundo's two Los Angeles stations, KWHY-TV and KVEA.

advertisers seeking to reach the growing Hispanic population.

The Commission has long recognized that competition in a broadcast market is the key to programming diversity and innovation. Therefore, to ensure that Hispanic Americans receive high-quality and innovative Spanish-language programming, the Commission's regulatory actions should foster competition among broadcasters who target the Hispanic population. Accordingly, grant of a temporary waiver to facilitate the consummation of the NBC/Telemundo merger will serve the public interest.

Further, the special circumstances of this case justify a 12-month waiver period in which to divest one of the Telemundo stations. Even under normal market conditions, Commission policy disfavors forced sales of broadcast stations in merger transactions because such sales "restrict the value of the stations to be divested and could artificially limit the range of potential buyers."⁴⁹ The Commission has stated that "by permitting a reasonable time to find qualified buyers . . . we encourage diversity in the ownership of mass media."⁵⁰

Regrettably, these are not ordinary economic times. Prior to the September 11 attacks, it was widely reported that the slowing economy had decimated the earnings of broadcast stations all around the country, including the major markets.⁵¹ The decline in advertising revenues, in turn, has depressed station values and station sales and has led to diminished availability of capital to finance station acquisitions. The economic and political uncertainties caused by the attacks have exacerbated

⁴⁹ *Chris-Craft/Fox* ¶ 33 (citing *Multimedia, Inc. (Transferor) and Gannett Co., Inc. (Transferee)*, 11 FCC Rcd 4883, 4885 (1995)).

⁵⁰ See *Multimedia/Gannett* at 4887 (citing *Metromedia Radio and Television, Inc.*, 102 FCC 2d 1334, 1351 (1985); *Twentieth Holdings Corporation*, 1 FCC Rcd 1201 (1986)).

⁵¹ See, generally Mike Reynolds and Jim Forkan, *Basic Nets' Ad Loss Adds Up to \$32M*, MULTICHANNEL NEWS (Oct. 8, 2001) (calculating that the television market sustained a \$313.2 million loss in advertising revenues as a result of the September 11 attacks and noting that this loss is in addition to the already weakened advertising market due to the dot-com bubble burst and the shrinking economy).

this downward trend.⁵² Further, the unique format and focus of these Spanish-language stations means that it likely will take longer to find a suitable buyer, particularly if the Spanish-language format is to be maintained. Under these circumstances, equity and the public interest favor a 12-month waiver.

Allowing NBC to retain ownership of the two Telemundo stations during an interim waiver period also would avoid any disruption in programming to the Los Angeles-based Hispanic community.⁵³ Each of Telemundo's Los Angeles stations has an illustrious history of service to the Hispanic community and each has made a unique contribution to that community over the years. Station KVEA commenced broadcasting in Spanish in 1985 and has maintained its Spanish language format since that time.⁵⁴ The station currently operates as an affiliate of Telemundo's national television network, broadcasting Telemundo's national newscasts and entertainment programming. Station KWHY-TV was the first independently owned station providing localized Spanish-language news and entertainment programming targeted to the Hispanic population in the Los Angeles DMA.⁵⁵ Telemundo acquired Station KWHY-TV on June 1, 2001.

⁵² See Dan Trigoboff, *Sellers Face Big Obstacles*, BROADCASTING & CABLE (Oct. 15, 2001), at 30 (reporting that in addition to the impact of the September 11 terrorist attacks and an overall weak advertising market, "station sales have been depressed by a host of other problems, including programming costs, the cost of DTV conversion (particularly in small markets), changes in network compensation and ethnic shifts in larger markets").

⁵³ See, e.g., Allison Romano, *Checking the Census; Cable Recognizes Growing Clout of Spanish-speaking Viewers*, BROADCASTING & CABLE, Oct. 1, 2001, at 32. *Broadcasting & Cable* reports that cable penetration among Hispanics (61 percent) is much lower than mainstream America (81 percent), which demonstrates the dependence on over-the-air broadcasting by the Hispanic population. See also, e.g., *Amendment of § 73.658(i) of the Commission's Rules, Concerning Network Representation of TV Stations in National Spot Sales; Request of Spanish International Network (SIN) for Waiver of § 73.658(i); Request of Telemundo Group, Inc. for Waiver of § 73.658(i); Request of Latin International Network Corporation for Waiver of § 73.658(i)*, 5 FCC Rcd 7280, 7281 (1990) (granting applicants a waiver of the network representation rule and noting that the waiver grant is part of the Commission's long-standing goal of fostering foreign-language programming).

⁵⁴ See Telemundo (visited Oct. 19, 2001) <<http://www.telemundo.com>>; see also Mimi Whitefield and Daniel Chang, *Telemundo Enters Another Transition Period After Offer from NBC*, THE MIAMI HERALD, Oct. 14, 2001.

⁵⁵ See, e.g., Eliot Tiegel, *L.A. Spanish Stations Thrive; 14 Radio, 2 TV Outlets Serve a Diverse Hispanic Audience*, ELEC. MEDIA, Dec. 18, 1995, at 20D.

Although there has been some integration of the two stations' operations since the purchase of KWHY-TV, Telemundo has preserved their distinctive programming formats. Thus, KWHY-TV is not operated as an affiliate of the Telemundo network, but rather as a fully independent Spanish-language station targeted to a local audience. The station carries a substantial amount of locally produced news⁵⁶ and derives the bulk of its advertising revenues from Hispanic-oriented local businesses. The station also produces and broadcasts every weekend a unique academic competition program for Hispanic high school students in the area. In addition to its pledge to operate these two Spanish-language stations independently from Station KNBC during the waiver period, NBC also intends to maintain the unique characteristics that distinguish these two stations from each other.

V. CONCLUSION

For the foregoing reasons, the Commission should find that the temporary waiver is in the public interest and grant NBC a period of 12 months in which to divest one of the Telemundo Los Angeles stations or otherwise comply with Section 73.3555(b) of the rules.

⁵⁶ The station airs one half-hour of local news on weekdays at 4:00 p.m., 4:30 p.m., and 7:00 p.m. and a full hour at 10:00 p.m.

Attachment 1:

National Audience Reach

Attachment 1: National Audience Reach^{1/}

	Percent of Television		Call Sign(s)	Channel(s)
	Households	FCC Reach		
Duopoly Markets				
New York, NY	6.92	6.92	WNBC & WNUJ	4 & 47
Los Angeles, CA	5.03	5.03	KNBC, KWHY-TV, & KVEA	4, 22, & 52
Chicago, IL	3.19	3.19	WMAQ-TV & WSNS-TV	5 & 44
Dallas, TX	2.09	2.09	KXAS-TV & KXTX-TV	5 & 39
Miami, FL	1.47	1.47	WTVJ & WSCV-TV	6 & 51
Total Percent Duopoly Markets				
		18.70		
NBC-Only Markets				
Washington, DC	2.02	2.02	WRC-TV	4
Philadelphia, PA	2.66	2.66	WCAU	10
Goldstboro, NC	0.89	0.45	WNCN	17
Columbus, OH	0.77	0.77	WCMH-TV	4
Providence, RI	0.57	0.57	WJAR	10
Birmingham, AL	0.65	0.65	WVTM-TV	13
San Diego, CA	0.93	0.46	KNSD	39
New Britain, CT	0.90	0.45	WVIT	30
Total Percent NBC-Only				
		8.03		
Telemundo-Only Markets				
San Francisco, CA	2.30	1.15	KSTS	48
San Antonio, TX	0.67	0.34	KVDA	60
Houston, TX	1.74	0.87	KTMD	48
Denver, CO	1.31	0.66	KMAS	47
San Juan, PR	0.91	0.91	WKAQ-TV	2
Total Percent Telemundo-Only				
		3.92		
TOTAL				
		30.65		

^{1/}Nielsen Media Research, 2001-2002 DMAs (visited Oct. 24, 2001) <<http://www.nielsenmedia.com/DMAs.html>>.

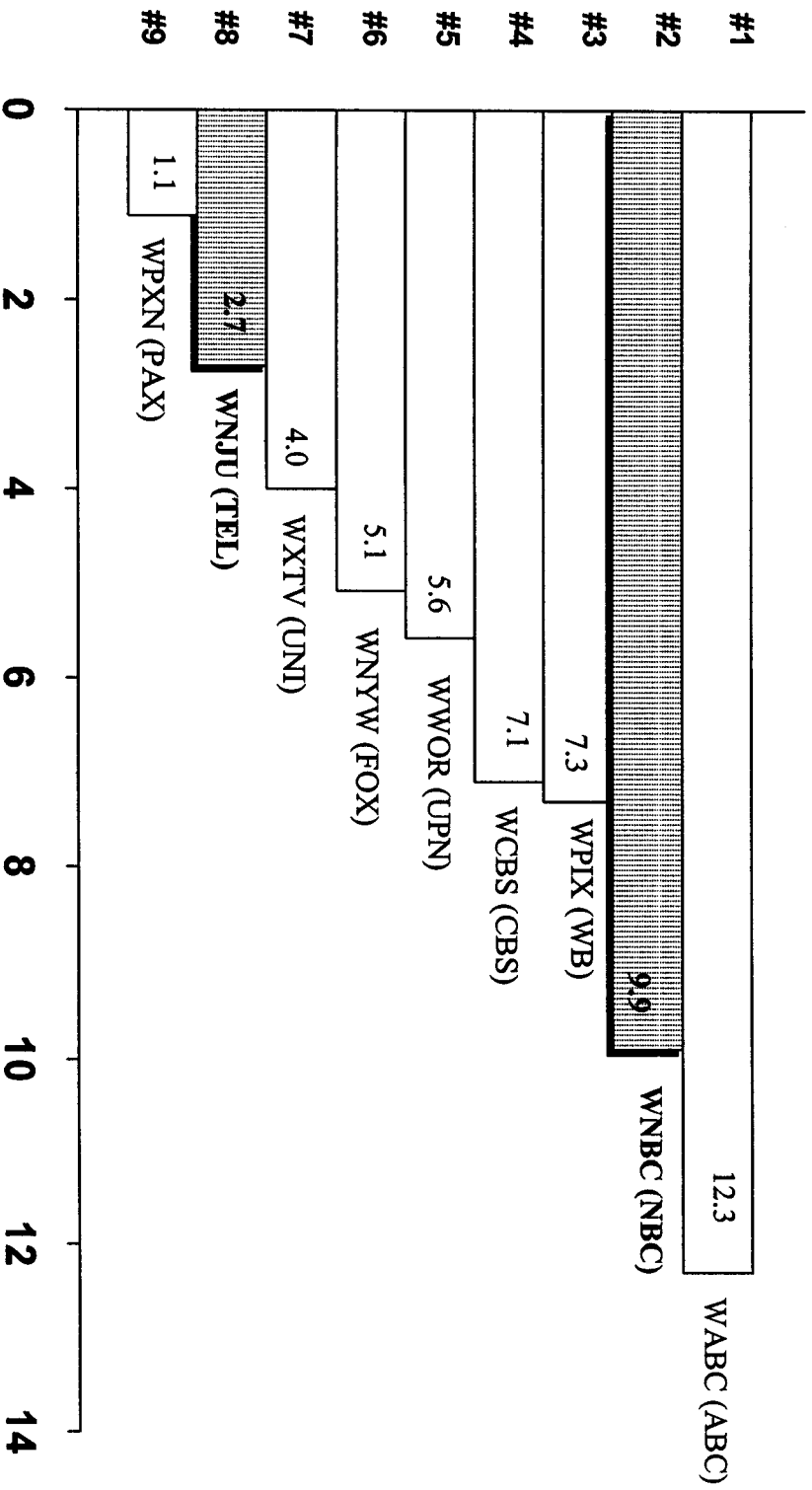
Attachment 2:

Audience Share for the Following Designated Market Areas

- **New York, New York**
- **Los Angeles, California**
- **Chicago, Illinois**
- **Dallas, Texas**
- **Miami, Florida**

New York, New York -- Audience Share

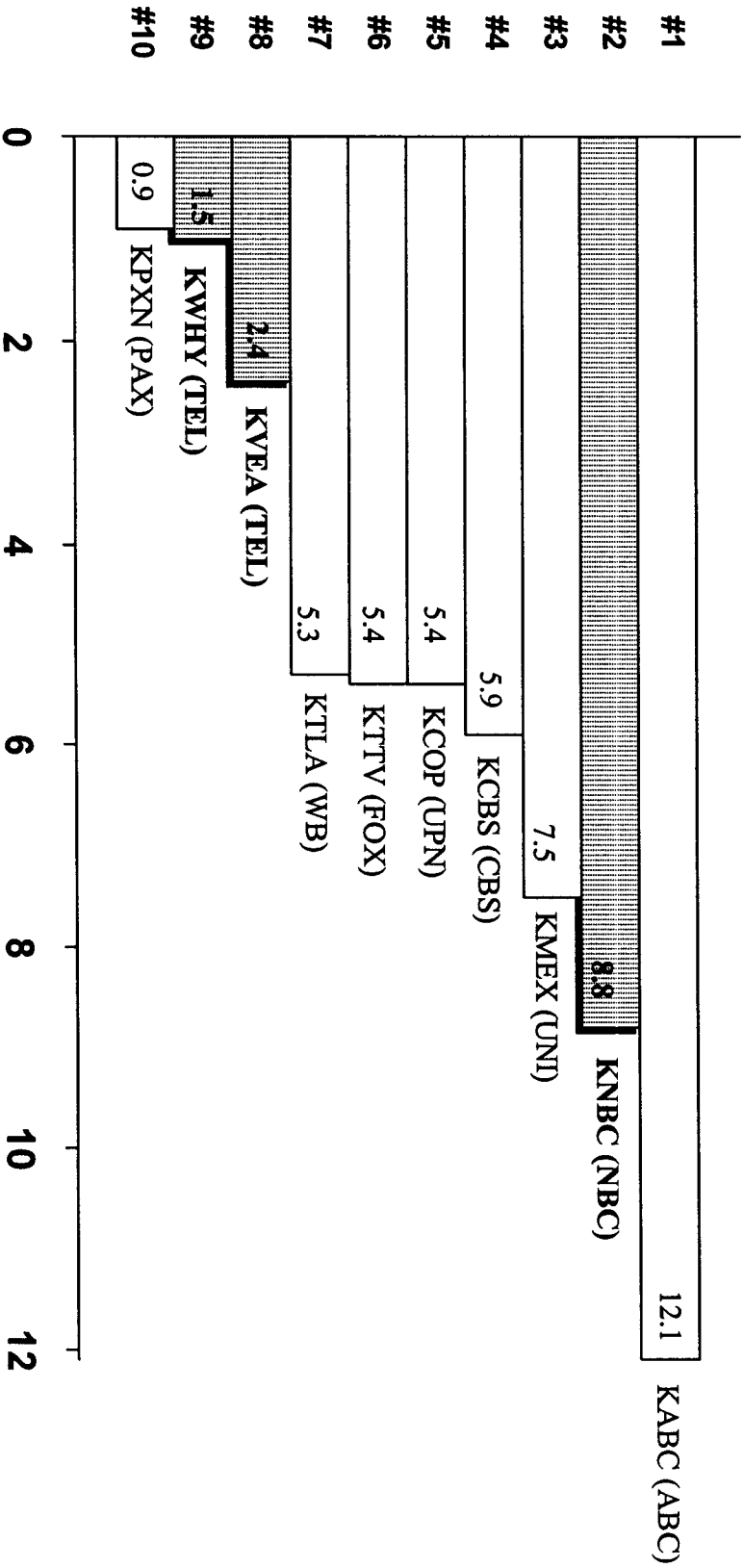
Households 9:00 a.m.-Midnight (July 2001 Sweeps)^{1/}



In New York NBC Ranks #2...
Telemundo Ranks #8

Los Angeles, California -- Audience Share

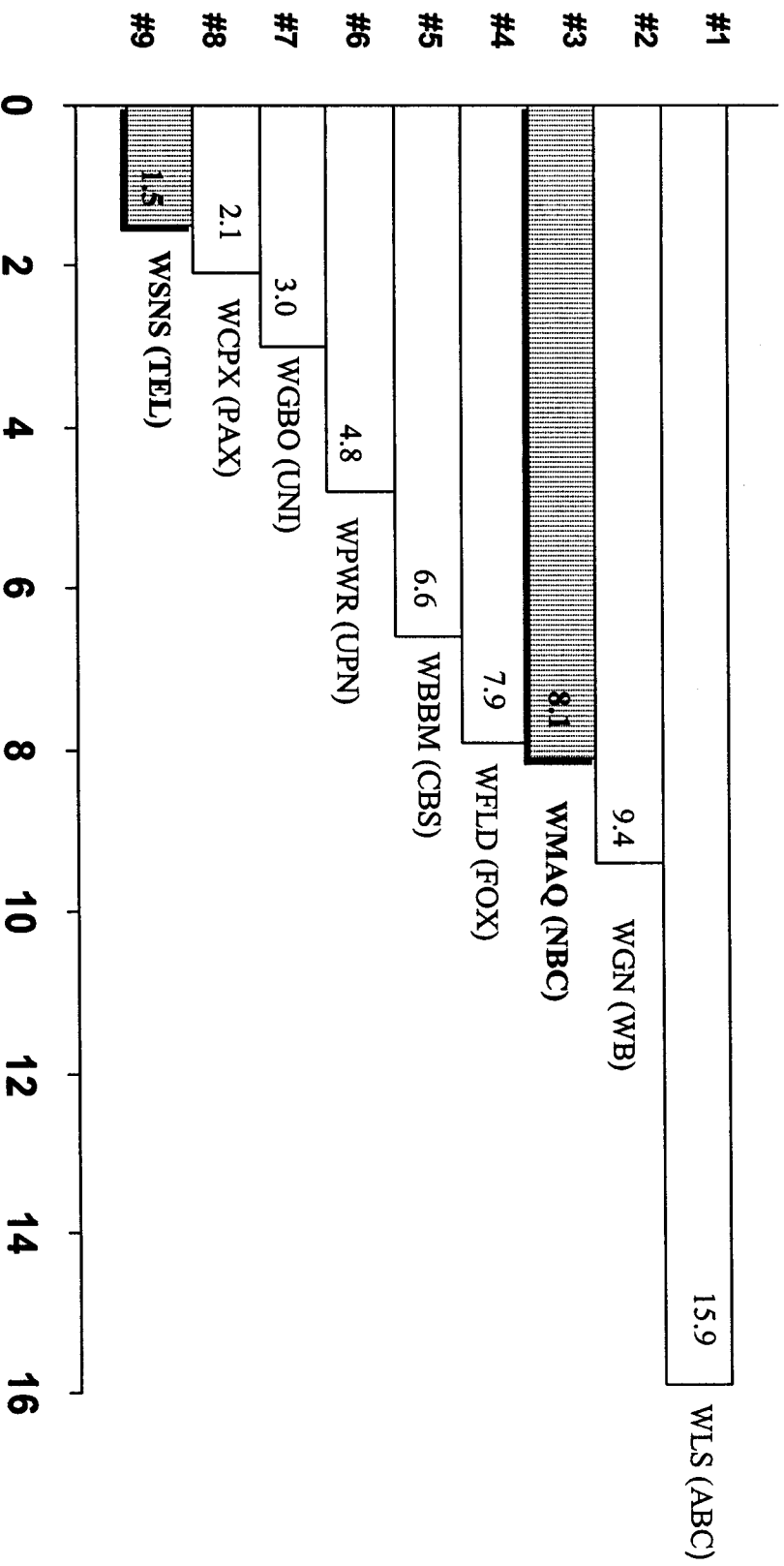
Households 9:00 a.m.-Midnight (July 2001 Sweeps)^{1/}



In Los Angeles NBC Ranks #2...
Telemundo Ranks #8 & #9

Chicago, Illinois -- Audience Share

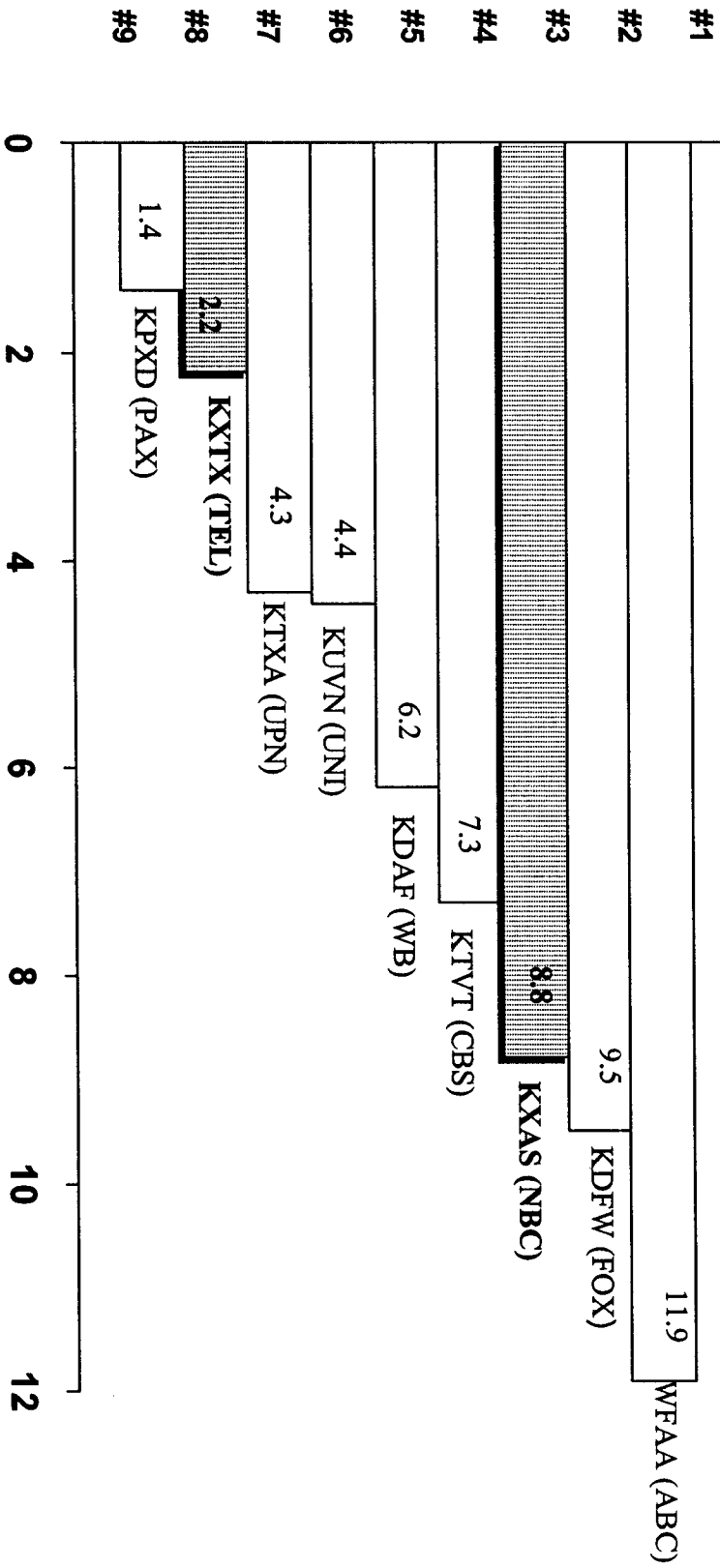
Households 9:00 a.m.-Midnight (July 2001 Sweeps)^{1/}



In Chicago NBC Ranks #3...
Telemundo Ranks #9

Dallas, Texas -- Audience Share

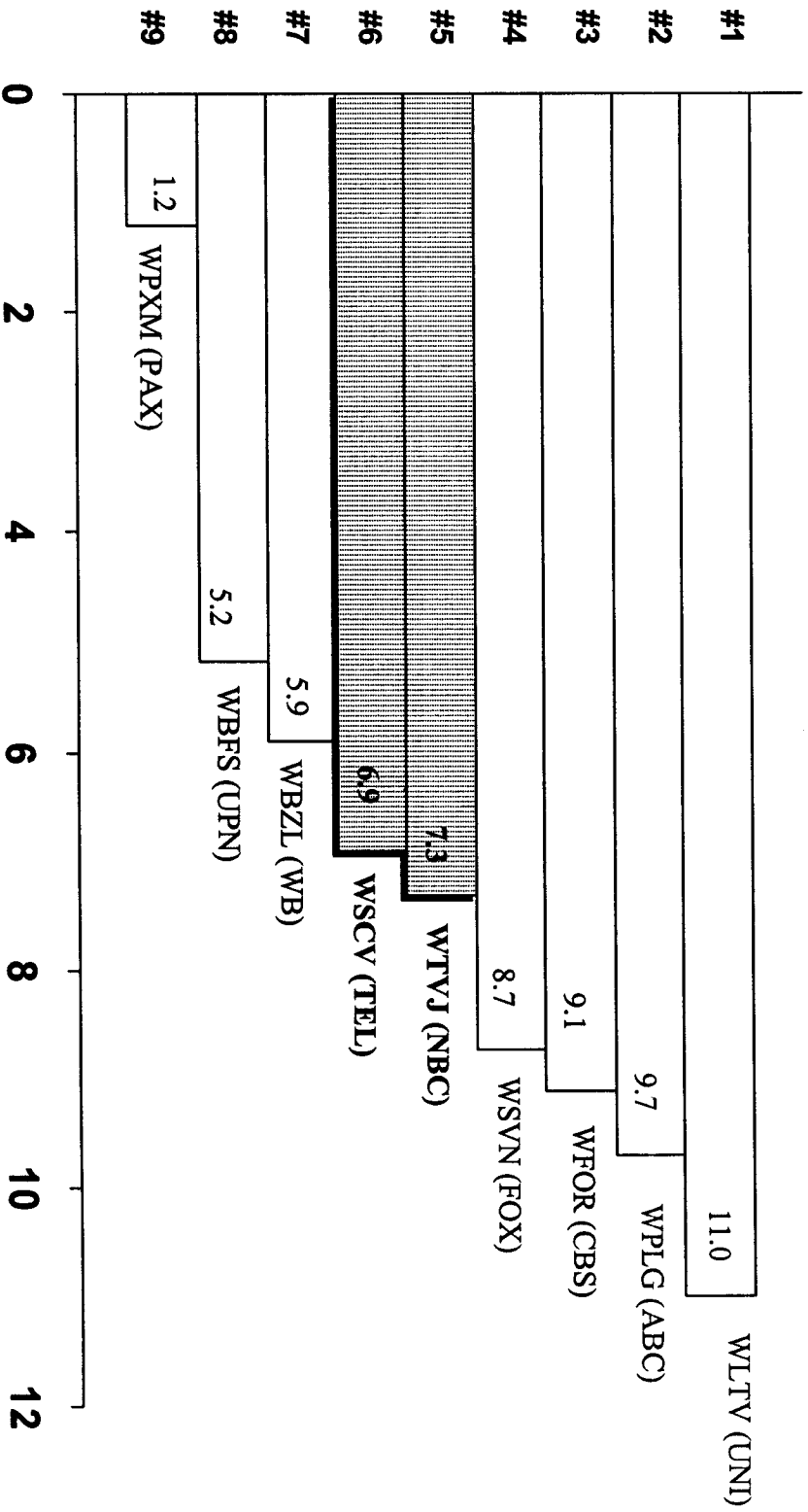
Households 9:00 a.m.-Midnight (July 2001 Sweeps)^{1/}



In Dallas NBC Ranks #3...
Telemundo Ranks #8

Miami, Florida -- Audience Share

Households 9:00 a.m.-Midnight (July 2001 Sweeps)^{1/}



In Miami NBC Ranks #5...
Telemundo Ranks #6

Attachment 3:

Post-Merger Independent Voices and Los Angeles Revenues

New York -- TV Independent Voices ^{1/}

DMA	Voices	Owner	Affiliate	Call Sign	Channel
1	18				
		1 = Counted as independent voice			
		0 = Not counted as independent voice			
	1	ABC Inc	ABC	WABC-TV	7
	1	Board of Education	PBS	WNYE-TV	25
	1	CBS Television	CBS	WCBS-TV	2
	1	Connecticut Public	PBS	WEDW	49
	1	Educational Brothers	PBS	WNET	13
	1	Family Stations	EDU	WFME-TV	66
	1	Long Island ETV	PBS	WLIW	21
	1	Mountain Broadcasting	IND	WMBC-TV	63
	1	NBC	NBC	WNBC	4
	1	New Jersey Public	PBS	WNIN	50
	0	New Jersey Public	PBS	WNJB	58
	1	News Corp	FOX	WNYW	5
	0	News Corp	UPN	WWOR-TV	9
	1	Paxson Communications	PAX	WPXN-TV	31
	1	Shop At Home Inc	PAX	WSAH	43
	0	Telenundo Group	TEL	WNJU	47
	1	Tribune Broadcasting	WB	WPIX	11
	1	Trinity Broadcasting	TBN	WTBY	54
	1	Univision Communications	UNI	WXTV	41
	0	Univision Communications	HSN	WHSI-TV	67
	0	Univision Communications	HSN	WHSE-TV	68
	1	WLNY Inc	IND	WLNY	55
	1	WRNN-TV	IND	WRNN-TV	62

^{1/} Broadcasting and Cable Yearbook 2001.

Los Angeles -- TV Independent Voices ^{1/}

2000 Est.
Gross Rev.
(000's)

DMA	Voices	Owner	Affiliate	Call Sign	Channel		
2	Los Angeles	20					
	1 = Counted as independent voice	1	ABC Inc	ABC	KABC-TV	7	\$ 290,000
	0 = Not counted as independent voice	1	CBS Television	CBS	KCBS-TV	2	\$ 160,400
		1	Coast Community	PBS	KOCE-TV	50	
		1	Community TV	PBS	KCET	28	
		1	Entravision	IND	KHIZ	64	
		0	Entravision	HTV	KJLA	57	
		1	Golden Orange	IND	KDOC	56	
		1	International M	IND	KSCI	18	
		1	KVMD Acquisition	IND	KVMD	31	
		1	Liberman Broadcasting	IND	KRCA	62	
		1	Los Angeles University	PBS	KLCS	58	
		1	NBC	NBC	KNBC	4	\$ 281,800
		1	News Corp	FOX	KTTV	11	\$ 215,600
		0	News Corp	UPN	KCOP	13	\$ 116,800
		1	Pappas Telecasting	IND	KAZA-TV	54	
		1	Paxson Communications	PAX	KPXN	30	
		1	RPVB Lender, Inc	-	KRPA	44	
		1	San Bernardino	PBS	KVCR-TV	24	
		0	Telemundo Group	INS	KWHY-TV	22	\$ 16,500
		0	Telemundo Group	TEL	KVEA	52	\$ 34,000
		1	Tribune Broadcasting	WB	KTLA	5	\$ 180,400
		1	Trinity Broadcasting	TBN	KTBN-TV	40	
		1	Univision Communications	UNI	KMEX-TV	34	\$ 142,300
		0	Univision Communications	HSN	KHSC-TV	46	
		1	Young Broadcasting	IND	KCAL	9	\$ 148,000
Advertising Revenues (000's) of VHF Stations, Univision's KMEX-TV, and Telemundo's two stations in DMA ^{2/}							
NBC Share						\$ 1,585,800	17.8%
Telemundo Share						\$ 281,800	3.18%
Combined NBC/Telemundo Share						\$ 50,500	20.95%
Combined NBC/Telemundo Share						\$ 332,300	

^{1/} Broadcasting and Cable Yearbook 2001.

^{2/} Station Gross 2000 Revenue (in thousands) estimated by BIA.

Chicago -- TV Independent Voices ^{1/}

DMA	Voices	Owner	Affiliate	Call Sign	Channel
3	Chicago				14
	1 = Counted as independent voice				
	0 = Not counted as independent voice				
	1	ABC Inc	ABC	WLS-TV	7
	1	CBS Television	CBS	WBBM-TV	2
	1	Chicago Education	PBS	WTTW	11
	1	Community College	PBS	WYCC	20
	1	Jovon Broadcasting	IND	WJYS	62
	1	NBC	NBC	WMAQ-TV	5
	1	Fox	FOX	WFLD	32
	1	NewsWeb Corporation	UPN	WPWR-TV	50
	1	Northwest India	PBS	WYIN	56
	0	Telemundo Group	TEL	WSNS	44
	1	Paxson Communication	PAX	WCPX	38
	1	Tribune Broadcasting	WB	WGN	9
	1	Trinity Broadcasting	TBN	WWTO-TV	35
	1	Univision Communications	HSN	WEHS-TV	60
	0	Univision Communications	UNI	WGBO-TV	66
	1	Weigel Broadcasting	IND	WCIU-TV	26

^{1/} Broadcasting and Cable Yearbook 2001.

Dallas -- TV Independent Voices^{1/}

DMA	Voices	Owner	Affiliate	Call Sign	Channel
7	13				
	1 = Counted as independent voice				
	0 = Not counted as independent voice				
	1	Belo Corporation	ABC	WFAA-TV	8
	1	CBS Television	CBS	KTVT	11
	0	CBS Television	UPN	KTXA	21
	1	HIC Best Inc.	TEL	KFWD	52
	1	Hispanic Television	HTV	KLDT	55
	1	Lamb, Marcus D	REL	KMPX	29
	1	NBC	NBC	KXAS-TV	5
	1	New World Broad	IND	KTAQ	47
	1	News Corp	FOX	KDFW	4
	0	News Corp	IND	KDFI	27
	1	North Texas Public	PBS	KDTN	2
	0	North Texas Public	PBS	KERA-TV	13
	1	Paxson Communications	PAX	KPXD	68
	0	Telemundo Group	IND	KXTX-TV	39
	1	Tribune Broadcasting	WB	KDAF	33
	1	Trinity Broadcasting	TBN	KDTX-TV	58
	1	Univision Communications	UNI	KUVN	47
	0	Univision Communications	HSN	KSTR-TV	49

^{1/} Broadcasting and Cable Yearbook 2001.

Miami -- TV Independent Voices ^{1/}

DMA	Voices	Owner	Affiliate	Call Sign	Channel	
16	Miami	10				
	1 = Counted as independent voice	1	CBS Television	CBS	WFOR-TV	4
	0 = Not counted as independent voice	0	CBS Television	UPN	WBFS-TV	33
		1	Community TV of S. Fla.	PBS	WPBT	2
		1	NBC	NBC	WTVJ	6
		1	Paxson Communications	PAX	WPXM	35
		1	Post-Newsweek	ABC	WPLG	10
		1	School Board of Miami Dade	PBS	WLRN-TV	17
		1	Sunbeam Television	FOX	WSVN	7
		0	Telemundo Group	TEL	WSCV	51
		1	Tribune Broadcasting	WB	WBZL	39
		1	Trinity Broadcasting	TBN	WHFT-TV	45
		1	Univision Communications	IND	WAMI-TV	69
		0	Univision Communications	UNI	WLTW	23

^{1/} Broadcasting and Cable Yearbook 2001.