Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

DEC 04 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RECEIVED

~~DEC 03 2001~~

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of)
)
Telemundo Communications Group, Inc., et al.)
(Transferors))
) BTCCT – 20011101ABW
and)
)
TN Acquisition Corporation)
(Transferee))
)
For consent to transfer of control of)
Estrella License Corporation,)
Licensee of KVEA-TV, Corona, California))
)
TO THE COMMISSION

PETITION TO DENY

and

MOTION TO DISMISS

Juan A. Figueroa, Esq.
President & General Counsel
Puerto Rican Legal Defense and Education Fund, Inc.

Jenny Rivera, Esq.
99 Hudson Street, 14th Floor
New York, NY 10013-2815
(212) 219-3360

Counsel for
Puerto Rican Legal Defense and Education Fund, Inc.
National Council of La Raza
League of Latin American Citizens
National Hispanic Media Coalition
NOSOTROS
Mexican American Grocers Association
National Puerto Rican Coalition
National Association of Hispanic Publications

December 3, 2001

TABLE OF CONTENTS

In re Application of)
)
Telemundo Communications Group, Inc., et al.)
(Transferors))
) BTCCT – 20011101ABW
and)
)
TN Acquisition Corporation)
(Transferee))
)
For consent to transfer of control of)
Estrella License Corporation,)
Licensee of KVEA-TV, Corona, California))

TO THE COMMISSION

PETITION TO DENY and MOTION TO DISMISS

The Puerto Rican Legal Defense and Education Fund, Inc., National Council of La Raza, League of Latin American Citizens, National Hispanic Media Coalition, NOSOTROS, Mexican American Grocers Association, National Puerto Rican Coalition, and the National Association of Hispanic Publications, pursuant to §§308 and 309 of the Communications Act, respectfully request that the Commission dismiss this application as incomplete. In the alternative, the Commission should require NBC to supplement the application by providing the missing information, then open a new period for public comment on the newly supplied information. If this new information fails to demonstrate that grant of the application serves the public interest, the application should be designated for hearing, and if the evidence so warrants, it should be denied.

SUMMARY

This proposed transaction illuminates the tension between concentration and diversity in a manner that begs for Commission review. Although NBC is qualified to operate and to serve as the transferee of broadcast licenses, insufficient information is provided to allow the Commission to grant this transfer on a public interest determination. Since the applicant has failed to meet their burden to show that the transfer is in the public interest, this application should be dismissed.

Understandably, NBC is enthusiastic to buy its way into the Latino broadcast community. As vanguards of the Latino community, we recognize the Latino population's emergence as a growing advertising base in this country. There are some 35.3 million Latino viewers nationwide representing 14 per cent of American viewers.

However, current industry developments have paved the way for the economic and programming dilution of Telemundo. With the rapid relaxing of ownership rules, it is imperative that every transfer, especially involving major market television programming, is afforded high scrutiny. It is upon that very notion that we raise issues that ensure operation in the public interest, not in the best interests of the bottom line.

This application is silent on core considerations swirling around a transfer of this significance - not the least of which is a true commitment to its broadcast operations. Besides failing to properly address multiple ownership and concentration of control issues, this application is defective because it contains no significant showing on how the transaction promotes diversity. It is necessary to present a plan that preserves the integrity of ethnic programming.

We oppose the grant of this application unless and until the Commission is given sufficient information to fulfill public interest standards.

We further oppose granting a waiver that would permit NBC to come into compliance beyond the six months normally granted. The Commission's allowance of a twelve- month waiver would not only be unprecedented, but especially extraordinary for an applicant owning a same-market triopoly. It would be inconsistent with its keen interest in balancing its intention to avoid a forced sale with its diversity and competition concerns.

Background

This is one of several applications seeking Commission approval to assign the licenses of television stations presently owned by Telemundo Communications Group, Inc., et al., to TN

Acquisitions, pursuant to a Merger Agreement entered into by Telemundo, with and into TN Acquisitions, National Broadcasting Company, Inc., ("NBC") parent corporation General Electric, and SPE Mundo. Telemundo is currently the nation's second-largest Hispanic programmed broadcast company. Eleven of the twenty-seven stations are full-power stations. TN Acquisitions would serve as the surviving entity of the merger, and would be renamed Telemundo. Included in the acquisition are two Los Angeles stations located to the largest Hispanic market in the United States. Both stations to be acquired pursuant to the merger provide mainly Spanish broadcasting. The Commission has been presented with a waiver request of the duopoly rule to allow NBC to own three stations in this market for a period of 12 months. Pursuant to TN Acquisition's preference as stated in its application, for reference consistency NBC will be referred to as the acquiring party. [1]

In its review of the application, petitioners found that NBC has not provided sufficient information to enable the public and the Commission to evaluate whether NBC will provide service in the public interest.

Jurisdiction

The Commission has personal jurisdiction over NBC, 47 U.S.C. §§308 and 309, and it has subject matter jurisdiction over petitioners' comments pursuant to 47 U.S.C. §309 (d)(1), 47 CFR §0.283, 47 CFR §73.3555 (b), 47 CFR §73.3566, and 47 CFR §73.3568.

The allegations herein, with the exception of those upon which official notice may be taken, are supported by the declaration under penalty of perjury of persons with knowledge of the facts alleged. 47 U.S.C. §309 (d) (1). The members and representatives of the minority organizations referred to herein are viewers and listeners of KVEA-TV. Attached hereto are declarations from

[1] Application for Consent of Control, Exhibit 17, fn. 2.

Joe Hernandez, an authorized member of petitioner Mexican American Grocers Association (MAGA), and Marta Samano, an authorized member of petitioner

National Hispanic Media Coalition (NHMC). Thus, petitioner organizations have standing. See Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application, 82 FCC2d 89 (1980), United Church of Christ v. FCC 359 F. 2d 994 (D.C. Cir. 1966).

In addition, this petition complies fully with the Commission's rules governing practices and procedures, 47 CFR Sec. 73.3584(a), 47 CFR §1.939(a), 47 CFR . §1.45,and 47 CFR §1.4(j). Thus, Petitioners have met all jurisdictional requirements for its allegations to be considered on the merits.

I. THE APPLICATION IS INCOMPLETE, AND THEREFORE SHOULD BE DISMISSED

A. On its face, the application has failed to make such a showing that this transfer would serve the public interest.

When it comes to the transfer of control of a broadcast property, multiple ownership and concentration of control are areas recognized as a "special concern" by the Commission. 47 CFR 0.283(a) (1). As representatives of a cross-section of Latino communities across the nation, we share that concern, and hereby raise the following issues for the Commission's consideration. Citizens for Jazz on WRVR, Inc. v. FCC, 775 F2d 392, 397 (D.C. Cir. 1975), (recognizing that the sole obligation of petitioners to deny is to raise substantial and material questions of fact).

The Telecommunications Act provides that before merger approval can be granted, the Commission must make an affirmative determination that the public interest would be served. 47 USC §208 (b)(2), 218, 219(b) and 3091. Moreover, pursuant to Section 310(d) of the Communications Act, the Commission may grant its consent to a proposed transfer only if it is determined that the public interest, convenience, and necessity will be served thereby.

The Commission has recognized as a public interest standard the complexity and rapidity of change in the industry. NYNEX Corporation and Bell Atlantic Corporation M&O,12 FCC Rcd 19985(1997). In the wake of increasing industry concentration, the Federal Communications Commission stands as our sole forum for public interest concerns. It is critical that, instead of a rubber-stamp approach in the name of "marketplace forces," careful examination be given towards milestone mergers of this kind.

NBC also asserts:

> "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." [2]

We can think of no greater assurance of vigorous competition than if NBC diversifies its own programming and management structure so as to attract Latinos—whether Spanish or English speaking. As anyone who has studied the Latino population and the market can attest, Latinos are known for their cultural and linguistic crossover habits. Thus, a full range of competition for the Latino viewing population is more likely to result in programming diversity and enhanced service to the public, than merely increasing the competitive edge of one competitor in the Spanish-language sector of the industry.

B. Application fails to show Section 73.3566(a) compliance, and is therefore defective.

NBC's application states that:

> "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 growing Hispanic segment of the U.S. population."[3]

[2]Exhibit 17 at pg. 2

[3]Exhibit 17, pg 2

Without benefit of even an outline of how this will happen, the Commission faces persuasion by the applicant that it is in the public interest, and in the Latino community's interests specifically, for NBC and Telemundo to merge and increase Telemundo's standing within the Spanish-language broadcasting sector of the industry. Thus, NBC implicitly argues that it best serves the United States Latino population by this merger. Contrary to NBC's view of the Latino population, and what would be in the best interest of the public and the Latino community as the fastest growing sector of the United States population, Latinos are best served by the broadest possible range of programming, in both English and Spanish.

NBC goes on to say:

> "To ensure that Hispanic Americans receive high-quality and innovative Spanish-language programming, the Commission's regulatory actions should foster competition among broadcasters." [Exhibit 17, pg. 14]

Yet again, it fails to address strategic matters like budgetary measures and timetables that would be taken to develop such programming. Mere assertions by NBC, without any supporting data or other information, that increased diversity in programming for the Latino community is a natural outgrowth of NBC's support of Telemundo's position as a Univision competitor are insufficient. NBC fails to make even a minimal showing of why the license transfer is more likely to promote and increase diverse programming than if NBC itself redeployed its staff and restructured its programming with an eye to the implementation of a more diverse programming menu for Latino viewers, and all other viewers.

NBC's application states that Spanish language broadcasting is the fastest growing segment of the U.S. television industry, targeting 35,000 million Hispanic viewers . . . (Ex. 17, pg. 1) NBC then argues that the combining of Telemundo's and NBC's resources in the proposed merger will strengthen Telemundo and position it as a more effective competitor to Univision" and ultimately result in "directly benefiting the large and rapidly growing Hispanic segment of the U.S.

population. (Ex. 17, pg. 2)

NBC states too much and too little with this argument. Certainly if NBC's resources are transferred and made available to Telemundo, the acquired station's position within the Spanish language sector of the television industry would be greatly enhanced increasing its competition capability and status vis-à-vis Univision, the largest market shareholder. However, that in and of itself is no guarantee that there would be increased diversity in programming in this industry sector. Indeed, attaching the market runner-up to a larger company only ensures that the public will be served by two monoliths. Thus, on its face, NBC's position is questionable and requires greater evidence and assurances of how such increased competition will translate into increased diversity and a range of broadcasting options for the Latino community. In fact, NBC's statements in support of the license assignment illustrate a narrow view of the Latino market and the Latino community. This further undermines its request as being in the public interest.

NBC's emphasis on competition also warrants assurances that aggressive competition will not be at the expense of programming dilution by limiting programming sources. See 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) ("the television local ownership rules interest is in programming sources as well as viewpoints in a local market.")

The applicant's references to its "consolidation of resources" could very well mean a "one-size fits all " approach, with heightened sensitivity to competitiveness, but little sensitivity to the spirit of local multiple ownership rules. The application also falls short of presenting alternative ways for NBC to serve a diverse audience.

The mere purchase of a television broadcast property in and of itself cannot indicate anything more than access to new viewers. NBC has not established that NBC itself, absent the transfer, could not apply its resources and human capital to enhance diversity so as to attract and serve the Latino population. Moreover, even a generous reading of the request fails to show consideration of how Telemundo, under GE and NBC, would provide an alternative to Univision or that NBC could not do so without the license transfer.

The Commission has not hesitated to conduct full document production requests in such instances. In its analysis of the Bell Atlantic merger it "would have been greatly assisted by a fuller description of (Bell Atlantic's) actual plans, even if Bell Atlantic believed these plans were irrelevant." NYNEX Corporation and Bell Atlantic Corporation M&O, FCC , 12 FCC Rcd 19985, Bell Atlantic/NYNEX Order at 113 §2430.

NBC may argue that the scope of such details warrants permission to provide at a later time. As one seeking acquisition of the nation's second largest Spanish speaking TV network, it does not have that luxury. Instead, it must meet its obligation to provide this information in expedient fashion. Without it, the application should be deemed incomplete and subject to dismissal.[4]

As indicated by trade reports, the industry is abuzz with speculation of this merger's role in the continuous media giant acquisition craze.[5]

NBC chimes in by placing much emphasis on competitive resources advantage of transaction, but little on any human resource advantages.

Unfortunately, the Commission has not been provided with strategic planning information on this critical area. It is also reported that the networks plan to "exploit lots of operating

---

[4] *See* Stone v. FCC, 466 F 2d 316, rehearing denied, 466 F. 2d 331, 332 (D.C. Cir. 1972), (public entitlement to sufficient information upon which to evaluate all public interest aspects of a transaction.)

[5] See ***Lo mas grande deal de NBC,*** BROADCASTING & CABLE,October 15, 2001, at 1, which inks "the deal prompted speculation" network.

efficiencies, savings that will go directly to the bottom line."[6]

While cutbacks attendant to a merger almost always occur, here one of the entities mostly employs Latinos. The application is silent on how NBC will ensure that where functions are duplicated between KNBC and the acquired stations, the persons getting the pink slip will be selected based upon who can do the job best for the combined operations, and not based upon who's in the newly acquired station, which would result in almost exclusively Latinos being terminated.

Even with relaxing of EEO rules, attention must be paid to potential for discrimination. NBC may actually take exception that the mere specter of discrimination is being raised, in light of its well-documented efforts to address diversity matters. The network may contend that, based upon its improving track record, it should be obvious that it will comply. Indeed it is not. Already, the actions taken, or lack thereof, indicate that this issue has been overlooked. Walton Broadcasting, Inc. 78 FCC 2d 857 (1980) properly sets out the Commission's recognition of its authority to prevent discrimination in all forms. In Walton, an operator relied substantially on the "Good-ol boy" system of its mostly all-white staff to recruit employees. Through its Chairman Ferris, the Commission held that such "word of mouth referral from a predominately white work force, while unintended, effectively discriminated against minority group employment." Id. at 875 §48

In sum, the application contains no description of the facts most directly essential to a public interest evaluation of this transaction – specifically, what will happen to the Latino employees when the stations' operations are eventually combined. Absent that showing, this application is incomplete and ungrantable.

[6] See ***Lo mas grande deal de NBC,*** BROADCASTING & CABLE,October 15, 2001, at 2.

II. APPLICANT'S WAIVER REQUEST FAILS TO MAKE A "SPECIAL CIRCUMSTANCES SHOWING," AND SHOULD BE DENIED

A. Despite Market Conditions, this divestiture does not warrant a forced sale by NBC

NBC is requesting a temporary waiver for a period of one year in which to divest of one of the Telemundo stations. NBC states:

> "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." Exhibit 17, pg. 6.

It goes on to say that a temporary waiver is amply justified in the Los Angeles market based upon 1) the "tremendous diversity of media outlets; 2) not having an adverse impact on economic competition in that market; 3) its pledge to operate KNBC independently of KVEA and KWHY-TV during the common ownership period, and finally, its service to the public interest by avoiding a forced sale in a very difficult economic climate." Exhibit 17,pg. 7.

This rationale falls short of the special circumstances called as justification for such a request. Capital Cities/ABC, Inc. (Transferer) and the Walt Disney Company (Transferee) ("Disney"), 11 FCC Rcd 5841, 5872. First, it contends that such an extension would "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." Exhibit 17, pg. 3. It is unlikely that any seller would experience distress or forced sale conditions in marketing for sale a full power commercial television station in the second largest market in the nation. This is beachfront property, and NBC has undoubtedly already received inquiries from other broadcasters. It certainly has not claimed otherwise. The idea that it needs more than a few minutes to attract buyers to avoid selling at a distress price is absurd.

Secondly, NBC's market conditions documentation in support of this request is internally contradictory. NBC states that the industry has been facing a slowing economy which "decimated the earnings of broadcast stations all around the country . . . ," and that the events of September 11, 2001 "have exacerbated this downward trend." (Ex. 17, pp. 14-15). However, NBC also acknowledges that Telemundo acquired KWHY-TV on June 1, 2001. (Ex. 17, p. 15). NBC fails to explain how in the middle of the dotcom crash and a slowing economy Spanish-language stations and programming continue to be marketable and sought after. Indeed, NBC is investing significant money in this market at a time it characterizes as uncertain. Thus, NBC fails to harmonize in its Exhibit 17 its position regarding the uncertainty of the market with its own interests in this market.

In addition, NBC fails to establish how the economy will make a miraculous turn twelve months rather than six months later. Indeed, it is as likely that a buyer would have tremendous interest in purchasing now rather than later, as the Latino population and market continue to grow in visibility and strength.

The Commission has denied twelve month extensions in similar instances, where an applicant failed to provide evidence that market conditions warranted more than six months to come into compliance. 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), 16 FCC Rcd 14975 (2001), (citing Lint Co., 15 FCC Rcd 18130, 18133 (2000); Shareholders of CBS Corporation, 15 FCC Rcd 8230, 8243, (2000). Similarly, its remaining arguments yield little traction favorable to a waiver extension.

Nontheless, the Commission precedent do disclose one justification which might merit an award of additional time to complete a divestiture. As the Commission has recognized, minorities have particular difficulty accessing capital. Thus, the Commission has looked with favor on special voluntary efforts by divesting parties to recruit minorities and afford them sufficient time to raise the capital needed to support a sale at full market value. Stockholders of Infinity Broadcasting Corp., 12 FCC Rcd 5012, 5054 Sec. 91 (1997). However, no such commitment is contained here, despite the fact that the station to be sold is Spanish language in the largest Latino populated market in the country, and one of the ten largest in the world.

B. NBC's Diverse Market Argument is Challengeable

A blanket approval of NBC's strategy through its application for a license transfer relegates the industry and the Latino community to outdated approaches in defining a diverse television market.

In broadcasting jargon, diversity only has meaning relative to the public that it serves. NBC makes much of the notion of Los Angeles as a highly diversified market. In its application, it offers "Los Angles 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, table, Direct Broadcast Satellite (DBS), and newspapers. (Ex. 17 pg 7) Closer examination of recent growth patterns unveils a challenging take on this theory. Along with the country in general, Los Angeles has experienced rapid population growth among Latino Americans. Still, there remains a limited number of broadcasting outlets with programming catering to the Latino population.

The BIA Television Yearbook (2001) gives the DMA population for the Los Angeles television market in 2000 as 39.7% Spanish-speaking, 8.4% percent Black and 11.8% Asian. It also gives the DMA population in 2000 as 16,392,000. Four of the markets 20-odd television stations are noncommercial. At best, half a dozen of these provide some Spanish programming.

Contrast that to a market the size of Peoria, which has six television stations (one is noncommercial). It serves as the 112th market. It has a DMA population of 615,000 in 2000. Los Angeles has 16,392,000 residents served by 25 stations, or 655,680 per station - more than the entire DMA population of Peoria. Peoria has 615,000 people served by six stations, or 102,500 per station. Thus, Peoria's stations are far more capable of serving the needs of particular neighborhoods, or demographic groups, or non-universal public issues, than are stations in Los Angeles. By this measure, Peoria's television - relative to its viewers - is over six times as diverse as that of Los Angeles. If Los Angeles had the per-viewer diversity level that Peoria enjoys, Los Angeles would have 160 television stations. In essence, Latino population growth has out-paced available broadcasting outlets catering to the needs and interests of Latino citizens. With the largest number of foreign language speaking citizens, in a most majority minority-market, Los Angeles arguably has the most diverse population and the least diverse television industry relative to that population. The Latino community and the general public expect and deserve better. Justification for a waiver has to be that the market is diverse enough to accommodate such a request. Disney at 5872.

We are more than a little concerned about this transaction's grave effects on the number of choices available to consumers in an already under-served ethnic market.

C. NBC's Ratings Argument Fails to Alleviate Concerns about Market Concentration

Applicant claims that its temporary waiver will not diminish competition in the Los Angeles DMA, and cites Univision's present dominance in the market as a basis to assess the Telemundo station's limitations - and thus poses a minimal threat to competition. (Exhibit 17, pg. 10) Due to the volatile nature of ratings in general, and NBC's own projections in particular, and this argument fails to alleviate concerns about anti-competition. As mentioned in its application:

> "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 advertising, and capitalizing on the substantial operating efficiencies to be derived from the

eventual combination of certain operations" (Exhibit 17, pg. 13)

With these projections, a Telemundo station up and running full-throttle, could become a powerhouse that could easily attain higher ratings, and thus adversely impact the market.

D. Networks Program Separation Pledge Could Impact Markets Diversity of Voices

NBC's EEO record at its owned and operated stations is commendable. Yet, it is surprising and unfortunate that NBC has overlooked the consequences of program separation on program diversity at KNBC. In its efforts to secure a duopoly rule waiver, NBC emphasizes separation of programming between the two networks. In its application, it reiterates plans to operate KNBC independent of KVEA and KWHY during the period of common ownership. (Exhibit .17, pg. 9); to maintain separate programming strategies, and refrain from engaging in joint sales in that market (Exhibit 17, pg. 12) While understandable as a compliance matter, program separation can go too far. It is quite possible that such separation involves far more extensive a degree than necessary to achieve duopoly objectives. Program separation, except that expressly required by federal law, means program, staff and intellectual segregation. In this case, it means that the almost entirely Latino staffs of KWHY and KVEA will be deprived of an opportunity to interact with and influence the programmers at their sister station, KNBC. Ironically, the same diversity benefits - through a cross-fertilization of cultural resources - that might have been achieved, are expressly not to be provided.[7] Thus, even when well-intentioned, separation of operations of English and Spanish stations carries a risk of undermining the Commission's appreciation of industry diversity. (Review of Commission's Policies; Waters Broadcasting Co. 91 FCC 2d 1260, 1264-1265 §§8-9

---

[7] Sf. Waters Broadcasting Corp., 91 FCC 2d 1260, 1264-1265 Section 8-9 (1982), affirmed sub nom. West Michigan Broadcasting Co. v. FCC, 735 F.2d 601 (1984), cert.denied , 470 US 1027 (1984), acknowledging that a minority broadcaster could offer non-minority view points they are unlikely to receive elsewhere.

(1982).[8]

Moreover, this separation raises a different question regarding employment diversity within the network's operations. It is likely to limit employment opportunities for Telemundo employees with English language station KNBC, and vice versa. The program separation as stated here directly conflicts with both the letter and spirit of the FCC's non-discrimination rule. 47 CFR §73.2080(a). At the very least, if NBC's plan is going to require program separation, then the network should explain how they will ensure a fully-integrated employee force, with access to each other's intellectual and cultural capital embedded in its staffs.

CONCLUSION

With so much attention paid to " the next big media deal," we bring before the Commission an issue striking at the integrity of the broadcasting industry.

In its regulation of local television ownership rules, the Commission has maintained its interest in balancing video marketplace competition and the strengthening of the potential of broadcasters to serve the public interest. In the matter of review of the Commission's Regulations Governing TV Broadcasting; TV Satellite Stations Review of Policy and Rules, 14 FCC Rcd 12903 (1999).

The application presents the Commission with an opportunity to protect the interests of all viewers. It provides an opportunity for the Commission to ensure that NBC, and other industry members of its stature, base decisions on considerations that are supported by

[8] See In re Application of Independence Broadcasting Company, Inc., 53 FCC 2d 1161 (1975), in like manner it would have been unthinkable for Viacom to operate BET in a manner that prevents BET news staffers from interacting with CBS news staffers. Just such an operation existed thirty years ago, when Mutual Broadcasting Network operated the Mutual Black Network as a separate but unequal operation – airing no Black network stories on the general audience network and hiring no staff of the Black network to work for the general audience network.

accurate information about the viewing audience. It is an opportunity for the Commission to reject stereotypes about the Latino population and its viewing preferences. Indeed, this transfer request presents the Commission with the unique opportunity, perhaps for a significant time to come, to apply its prior and current nondiscriminatory ideals and demands in a way that will reverberate throughout the industry. The Commission is lacking information vital to a determination that merger would serve in the public interest. Simply put, NBC has not met the burden.

Admittedly, the network has made encouraging strides in the area of minority issues. Yet, as evidenced by this application, it still has a long way to go. It has failed to include basic information from which the Commission can make a determination that this transaction is indeed in the public interest.

With so much at stake, this is not the time for "broad strokes," but a detailed plan consistent with NBC's articulated interest in diversity. The Commission should deny the transfer request because it is insufficient on its face to satisfy legislative and administrative standards. Moreover, parsed to its essential elements, the request directs the industry and public in the wrong direction, and it would be wrong for our federal government to place its imprimatur on such shortsighted, narrow, and ultimately costly thinking. It would be government for all of the people at its best, and in its truest form, for the FCC to deny this request. We respectfully request it to do so.

Request for Relief

We respectfully request that the Commission dismiss this application as incomplete. In the alternative, the Commission should require NBC to supplement the application by providing the missing information, then open a new period for public comment on the newly supplied information. If this new information fails to demonstrate that grant of the application serves the public interest, the application should be designated for hearing, and if the evidence so warrants, it should be denied.

Respectfully Submitted,

Jenny Rivera

Jenny Rivera, Esq.
99 Hudson St. 14th Floor
New York, NY 10013-2815
(212) 219-3360
Counsel for the Puerto Rican Legal Defense and Education Fund, Inc.
National Council of La Raza
League of Latin American Citizens
National Hispanic Media Coalition
NOSOTROS
Mexican American Grocers Association
National Puerto Rican Coalition
National Association of Hispanic Publications

I, Jenny Rivera, hereby certify that on this 3rd day of December, 2001, I have caused a copy of the foregoing "Petition to Deny" and "Motion to Dismiss" to be delivered by U.S. First Class Mail, postage prepaid, to the following:

Diane Zipursky, Esq.
National Broadcasting Corporation
1299 Pennsylvania Avenue 11th Floor
Washington, DC 20004

Elizabeth A. McGeary, Esq.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Washington, DC 20036

Linda G. Michaelson, Esq.
Akin Gump Strauss Hauer & Feld, LLC
2029 Century Park East Suite 2400
Los Angeles, CA 90067

Jenny Rivera

Jenny Rivera

Conclusion

We are not surprised by NBC's enthusiasm to lock into the Hispanic broadcast community.
Painfully aware of Hispanic's population's emergence as a growing advertising base in this country. With the rapid relaxing of ownership rules, it is imperative that every transfer, especially involving previously successful niche programming, is afforded high scrutiny.

CERTIFICATE OF SERVICE

I, Jenny Rivera, hereby certify that on this 3rd day of December, 2001, I have caused a copy of the foregoing "Petition to Deny" and "Motion to Dismiss" to be delivered to the following:

Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th St., S.W. Suite 8-B201
Washington, D.C. 20554

Honorable Kathleen Abernathy
Federal Communications Commission
445 12th St., S.W. Suite 8-B15
Washington, D.C. 20554

Honorable Michael Copps
Federal Communications Commission
445 12th St., S.W. Suite 8-A302
Washington, D.C. 20554

Honorable Kevin Martin
Federal Communications Commission
445 12th St., S.W. Suite 8-A204
Washington, D.C. 20554

Roy Stewart, Chief
Mass Media Bureau
Federal Communications Commission
445 12th St., S.W. Room 2-C337
Washington, D.C. 20554

Barbara Kreisman, Chief
Video Services Bureau
Federal Communications Commission
445 12th St., S.W. Room 2-A665
Washington, D.C. 20554

Jenny Rivera

Jenny Rivera

CERTIFICATE OF SERVICE

DECLARATION

Re: KVEA-TV Los Angeles, CA

My name is Marta Samano. I am a member of the National Hispanic Media Coalition ("NHMC"), and I am authorized to participate in this matter on behalf of NHMC. I am a 4th generation Mexican-American. I have been a resident of the Los Angeles area for 15 years.

I have carefully reviewed, and I hereby subscribe to the foregoing Petition to Deny on behalf of the NHMC. The facts stated therein are true to my personal knowledge except where identified as having been based upon official records such as material on file with the Federal Communications Commission.

I am a regular viewer of KVEA-TV.

I would be seriously aggrieved if the Petition to Deny is not granted, since as a consequence of its denial members of NHMC, including myself, would be deprived of employment opportunities and program service and diversity in the public interest.

This statement is true to my personal knowledge and is made under penalty of perjury under the laws of the United States of America.

Executed 11/30/01.

Marta Samano

10812 Indiana Street

Whittier, CA 90601