

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

In re Applications of)
)
TELEMUNDO COMMUNICATIONS) File Nos. BTCCT-20011101ABK, et al.
GROUP, INC.,)
Transferor)
)
and)
)
TN ACQUISITION CORP.,)
Transferee)
)
For Transfer of Control of Telemundo)
Communications Group, Inc. and Certain)
Subsidiaries, Licensees of KSTS(TV),)
San Jose, CA, *et al.*)

To: Chief, Mass Media Bureau

CONSOLIDATED OPPOSITION TO PETITIONS TO DENY

December 19, 2001

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CONSOLIDATED OPPOSITION TO PETITIONS TO DENY

Telemundo Communications Group, Inc. ("Telemundo"), by its attorneys, hereby opposes two Petitions to Deny filed on December 4, 2001. The two petitioners – Paxson Communications Corporation ("Paxson") and a coalition of Latino groups representing various Latino interests (the "Latino Coalition")¹ – oppose the proposed merger of Telemundo into TN Acquisition Corp., a wholly owned subsidiary of the General Electric Company, which is also the parent of National Broadcasting Company, Inc. (collectively, "NBC").

¹ The Latino Coalition consists of the Puerto Rican Legal Defense and Education Fund, Inc., National Council of La Raza, League of Latin America Citizens, National Latino Media Coalition, Nosotros, Mexican American Grocers Association, National Puerto Rican Coalition and the National Association of Latino Publications.

It is important to note that neither Petition to Deny raises any questions about the qualifications of Telemundo or its shareholders as transferees. This Opposition therefore primarily focuses on the question raised by the Latino Coalition about the completeness of the NBC/Telemundo applications, the public interest benefits of the merger and the need for the FCC to act quickly on the pending NBC/Telemundo applications. In addition, this Opposition points out that in no event should the FCC defer action on the NBC/Telemundo applications pending resolution of Paxson's contractual dispute with NBC.

I. SUMMARY

In this Opposition, Telemundo submits additional information about the public interest benefits of the NBC/Telemundo merger. In brief, some of the major benefits are as follows:

- The merger will give Telemundo the resources to compete effectively with Univision, which is the dominant Spanish-language television broadcaster in the United States.
- By raising the bar for competition, the merger will require both Univision and Telemundo to improve the quality of their programming and therefore their level of service to the Spanish-speaking Latino community.
- The merger will result in an improvement in Telemundo's news and information programming, both at the network and local station level.
- As members of the GE/NBC family, Telemundo's employees will have greater opportunities for career advancement and training.
- The merger will also benefit NBC's English-only audience by creating new possibilities for the cross-fertilization of ideas and viewpoints between the Latino and English-speaking cultures.

Because of the public interest benefits of the merger, Telemundo urges the Commission to act quickly on the pending applications for consent to the merger. The timing of

the merger is critical to the health of Telemundo. Putting aside the fact that Telemundo has limited resources and that the broadcast television industry has been particularly hard-hit by the current state of the U.S. economy and the events following the September 11 terrorist attacks, during the pendency of the merger, Telemundo is in a "holding pattern," which means that it is unable to finalize important programming plans and acquisitions and long-term strategic alliances. If the merger is unduly delayed, these programming and strategic alliance opportunities may be lost forever.

It is the Commission's policy not to defer action on transfer applications pending the resolution of private litigation. The Commission should therefore reject Paxson's request that it withhold action on the NBC/Telemundo applications. As explained above, the public interest is best served by completion of the merger as soon as possible.

II. THE MERGER OF TELEMUNDO INTO NBC WOULD DIRECTLY PROMOTE THE PUBLIC INTEREST.

In its Petition to Deny, the Latino Coalition stipulates that "NBC is qualified to operate and serve as the transferee of broadcast licenses," but adds that the transfer-of-control application does not contain sufficient information to allow the Commission to make a determination that grant of the application is in the public interest. *See* Latino Coalition Petition to Deny at 1.² As shown below, the NBC/Telemundo applications contain all the information necessary for the Commission to grant the applications under Section 310(d) of the

² The Latino Coalition also opposes NBC's request for a 12-month waiver of the local television ownership rule in the Los Angeles market, suggesting that the waiver should only be for 6 months. *Id.* at 2.

Communications Act. Nevertheless, Telemundo uses this occasion as an opportunity to expand upon the public interest benefits of the merger.

A. The NBC/Telemundo Applications Were Complete As Filed.

While it is true that under Section 310(d) of the Communications Act the Commission may grant its consent to a proposed transfer of control of broadcast licensee only if it determines that “the public interest, convenience and necessity will be served thereby,” the Commission has adopted application forms by which it requests the information it requires to make that determination. The prescribed application form for transfer-of-control applications is FCC Form 315, which the Commission substantially modified in connection with the transition to electronic filings. *See 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes*, 13 FCC Rcd 11349, 11360-11369 (1998). For example, with respect to programming, FCC Form 315 requires that the transferee certify that it is “cognizant of and will comply with its obligations as a Commission licensee to present a program service responsive to the issues of public concern facing the stations’ community of license and service area.” *See* FCC Form 315, Section IV, Item 13 (April 2001 ed.). *See also Request for Declaratory Ruling Concerning Programming Information in Broadcast Applications for Construction Permits, Transfers and Assignments*, 3 FCC Rcd 5467 (1988) (rejecting a proposal that applicants be required to make a more detailed programming showing); *Wometco Enterprises, Inc.*, 55 R.R. 2d 1545, 1551 (Mass Media Bureau 1984) (“The instructions to the applications specifically state what agreements are to be filed and the extent of the information needed to review the legal qualifications of the applicant.”).

The Telemundo/NBC applications contained all required certifications and were complete as filed. There is, therefore, no basis for the Latino Coalition's contention that the application is defective and should be dismissed pursuant to Section 73.3566 of the Commission's Rules.

With the filing of an application that meets the Commission's requirements on its face, Sections 309(d) and (e) of the Communications Act place the burden on a petitioner to deny to demonstrate the existence of a substantial and material question of fact concerning whether grant of the application will serve the public interest. To do so, the petitioner must allege specific facts supported by affidavits of persons with personal knowledge. Speculation will not suffice. The Latino Coalition's petition does not meet its burden.

With that said, as the Latino Coalition itself notes, Exhibit 17 to the NBC/Telemundo applications summarizes the major public interest benefits of the merger – most importantly that “[b]y 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 Latino segment of the U.S. population.” These benefits are real and substantial.

B. The NBC/Telemundo Merger Will Result in Improved Service To the Spanish-Speaking Latino Community.

The NBC/Telemundo merger will serve the public interest because it will result in improved service to the Spanish-speaking Latino community. By merging with NBC, Telemundo will become a stronger competitor in the Spanish-language broadcast television marketplace currently dominated by Univision. By raising the competitive bar, the merger will

force both Univision and Telemundo to improve the quality of their programming and the level of service to the Spanish-speaking Latino community.

The Latino Coalition suggests that NBC and Telemundo should be required to demonstrate the public interest benefit to the English-speaking audience as well. Telemundo, however, serves a Spanish-speaking audience. Of the 35,000,000 Latinos in the United States, over 50% – approximately 18,000,000 – are primarily Spanish speakers. This is the fastest growing segment of the U.S. population. The Latino community is growing at six times the national average.

The 35,000,000 Latinos interested in Spanish-language television currently have only two real broadcast television choices – Univision and Telemundo. While Telemundo is pleased with the progress that the Telemundo Network and its owned-and-operated stations have made during the last couple of years, the fact remains that Telemundo continues to run a distant second to Univision. Univision is the fifth largest television network in the United States (behind NBC, CBS, ABC and Fox). Despite Telemundo's progress, the Telemundo Network drew only 18% of the Spanish-language prime-time television audience during the recently ended Nielsen sweeps, versus Univision's 82%. As recently as July 2001, Telemundo's share of the prime-time Spanish-language television audience was only 11%.³

Univision, which is the older of the two networks, has several inherent advantages over Telemundo. First, Univision has a substantial coverage advantage. Univision owns and operates 12 full-power stations that carry Univision network programming. Telemundo owns

³ Adults 18-49, Monday – Friday, according to Nielsen Media Research National Hispanic Television Index.

only 9 of its network affiliates.⁴ Univision has an additional 17 full-power affiliates, all of which are licensed to Entravision Communications Corporation, in which Univision holds a substantial economic interest. In contrast, Telemundo has only 10 full-power affiliates. Moreover, Univision recently paid approximately \$1.1 billion to acquire 13 full-power television stations and a minority interest in 4 other stations from USA Networks, as a result of which Univision now has duopolies in 7 of the top 8 Latino markets. Univision intends to use these stations to launch a second network, called "Telefuturo," in January, 2002, on 15 stations (14 owned by Univision and one by Entravision). In contrast, Telemundo owns only one duopoly, which is in Los Angeles, where Telemundo recently acquired KWHY-TV, a Spanish-language independent.

In addition to Univision's coverage advantage, Univision also enjoys a substantial programming advantage. Much of Univision's programming success results from its strategic partnerships with Televisa, which is the dominant Mexican television broadcasting company, and Venevision, which is a leading South American television broadcaster. Univision has a long-term de facto exclusive programming agreement with Televisa, which is the world's largest producer of Spanish-language programming. The agreement runs through 2017, giving Univision an enormous programming advantage for the foreseeable future. During the past five years, the lowest-rated Televisa-supplied prime-time series on Univision received a higher audience rating than the highest-rated Telemundo prime-time series.

⁴ Nine of Telemundo's 11 full-power television stations are affiliated with the Telemundo Network. The two other stations – WKAQ-TV in San Juan and KWHY-TV in Los Angeles – are Spanish-language "independents."

As a result of Univision's coverage and programming advantages, Univision enjoys a financial advantage over Telemundo. Not only was Univision's prime-time audience over four times Telemundo's during the recently ended Nielsen sweeps, but there is similar disparity in revenues and operating income. For calendar year 2000, Univision reported revenues of \$864 million,⁵ which was almost three times the combined revenues of the Telemundo station group and the network. For the year 2000, Univision had operating income of \$261,290,000,⁶ whereas Telemundo experienced a combined loss during the same period.

This reality – that despite the financial and other resources of its current shareholders, Telemundo has been unable to become fully competitive with Univision – led Telemundo to the inevitable conclusion that it needed the resources of a major United States broadcaster in order to compete effectively with Univision. It goes without saying that as part of the GE/NBC family, Telemundo will have access to greater resources on many levels beneficial to its broadcast operations. These resources include production, programming, news, sports and promotional, as well as financial, resources. With access to these resources, Telemundo will be able to acquire or produce better programming, acquire additional stations and improve its affiliate base.

By increasing the quality of Telemundo's programming and by providing Telemundo with the resources to expand and strengthen its affiliate base, the merger with NBC

⁵ See Univision's SEC Form 10-K available at www.sec.gov/Archives/edgar/data/1017008/00009120570150903/0000912057-01-505903.txt (visited December 19, 2001).

⁶ *Id.*

will create a stronger, more competitive Spanish-language broadcast television marketplace. As a result of the merger with NBC, Telemundo will be able to offer better and more varied programming choices to the Spanish-speaking community. Once Telemundo becomes a stronger competitor, Univision will also be compelled to improve its program offerings. The result is that the NBC/Telemundo merger will lead to improved programming and better service to the Spanish-speaking community.

C. The Merger With NBC Will Enable Telemundo To Improve Its News Offerings.

Telemundo is proud of the success of its award-winning news operations, but the merger with NBC will vastly increase Telemundo's news resources. The Telemundo Network currently provides 18 ½ hours of news and information programming a week, which represents a substantial increase over the past few years. Following the events of September 11, Telemundo broadcast 133 straight hours of news programming, more than any other broadcast-television network, English or Spanish. Telemundo's owned-and-operated stations in the larger markets provide an average of 19 ½ hours of local news each week, more than Univision's stations. Just three years ago, these Telemundo stations broadcast only five hours per week of local news programming.

Telemundo's news operations have enjoyed numerous awards. In 2000 and 2001 alone, the Telemundo Network received four Emmy awards for news and public affairs programming, and four for art direction, direction, editing and talent. Telemundo's owned-and-operated stations in the New York, Los Angeles, Miami and San Juan markets also received 10 Emmy awards for local news and public affairs programming.

Despite these successes, Telemundo's news operations are hampered by Telemundo's relatively limited resources. The merger with NBC will vastly increase the news resources available to Telemundo. For example, after the merger with NBC, Telemundo will be able to send its reporters abroad with NBC production crews at a relatively low marginal cost. Telemundo's reporters will be able to report news from abroad directly targeted to its audience's needs and interests.

News and public affairs coverage at Telemundo's owned-and-operated stations will similarly benefit from their co-ownership with local NBC stations. Local Telemundo news operations will gain access to local NBC production crews, video footage, improved weather forecasting technology and other resources, such as news helicopters, which have previously been unavailable to Telemundo due to its comparatively limited budget.

There will also be some consolidation of resources that will enable Telemundo to improve service to the Latino community. For example, shortly before entering into the Merger Agreement with NBC, Telemundo acquired KXTX-TV in Dallas. Station KXTX-TV previously broadcast English-language reruns and infomercials. It did not have any news programming. KXTX-TV will become a Telemundo network affiliate as of January 1, 2002. Because KXTX-TV is essentially a start-up station, Telemundo did not at the time of the acquisition anticipate that a local news operation would be viable in the near term. But after entering into the Merger Agreement, Telemundo determined that one of the benefits of consolidating with NBC's KXAS-TV in the market would be the ability to launch a first-time local news service on KXTX-TV. This will dramatically hasten Telemundo's ability to launch a local news operation.

D. The Merger Will Benefit Telemundo's Employees.

The merger will also directly benefit Telemundo's employees. Approximately 87% of Telemundo's approximately 1,800 employees are Latino. As a result of the NBC/Telemundo merger, NBC's workforce will become more diverse overnight. Telemundo's employees, at all levels, will have previously unavailable opportunities for career training and advancement through the GE/NBC family. For example, a bilingual Telemundo reporter may end up covering news events for both Telemundo and NBC (or MSNBC or CNBC). Indeed, because a reporter who only speaks English will be unable to report news for the Telemundo Network, it is very likely that a bilingual Telemundo reporter will be favored in securing news assignments where only one reporter can be sent to cover an event.

E. The Merger Will Benefit NBC's English-Speaking Audience.

Although not relevant to the Commission's consideration of the NBC/Telemundo merger, the Latino Coalition questions how the merger of NBC and Telemundo will benefit NBC's English-speaking audience. Not only will Telemundo enjoy access to NBC's news resources, but NBC will also enjoy access to Telemundo's. We have already mentioned the possibility that Telemundo news people may also cover news events for NBC, MSNBC or CNBC. A similar potential for cross-fertilization exists in the area of entertainment programming, not just with respect to production capabilities, but among creative people as well.

Telemundo is a ground-breaking, award-winning producer of original entertainment programming. For example, Telemundo was the first Spanish-language network to produce U.S.-made Spanish-language comedies. Two of the Latino Coalition's members are

especially familiar with the quality of Telemundo's entertainment programming. In 2001, the National Council of La Raza awarded its Alma Award to Telemundo for outstanding Spanish-language comedy series. In 2000, the Nosotros Foundation awarded its Golden Eagle Award to Telemundo for outstanding Spanish-language sitcom.

Telemundo and NBC have already commenced discussions about ways in which Telemundo might create and produce programming for NBC. For example, Telemundo, which is the exclusive television broadcaster for the Billboard Latin Music Awards, is in discussions with NBC about the production of an English-language version of the awards ceremony.

III. THE FCC SHOULD ACT AS QUICKLY AS POSSIBLE ON THE NBC/TELEMUNDO APPLICATIONS.

Given the real and substantial public interest benefits of the NBC/Telemundo merger, Telemundo urges the FCC to act as quickly as possible on the pending applications. Every day of delay in the merger deprives the public of the benefits of the merger.

We have already discussed how the NBC/Telemundo merger will raise the level of competition in the Spanish-language broadcast television marketplace. The converse is also true. If the merger is not promptly approved, at a minimum Telemundo's plans will continue to be put on hold, and the opportunities to acquire programming and to expand its affiliate base may be irrevocably lost. Univision will remain the dominant competitor, and it will not have the same incentive to improve its program offerings. Thus, in the absence of the NBC/Telemundo merger, the Spanish-language television audience may actually suffer a diminution in service.

Telemundo's inability to make significant new programming investments pending the merger will adversely affect the 2002-03 season if the merger is delayed beyond March 2002.

As the Commission knows, broadcast television networks must make programming production commitments well in advance of the beginning of the broadcast season. In light of the pending merger, Telemundo is unable to finalize significant long-term commitments. Several strategic alliances with other programmers are similarly on hold pending the merger.

As is well known in the broadcast television network industry, a significant portion of network revenues is derived from the "upfront" sale of advertising in the network schedule. The "upfront" sales window for the 2002-03 season opens in May 2002. Unless Telemundo has programming commitments in place prior to the commencement of the upfront sales window, it will not be able to offer these programs to advertisers. Upfront advertising dollars for the 2002-03 season that are directed to other broadcasters, including Univision, will not even potentially be available to Telemundo until the 2003-04 season at the earliest and perhaps never.

Telemundo is also unable to expand its affiliate base during the pendency of the merger. As mentioned above, Telemundo already suffers from coverage disadvantage to Univision, which, with its affiliated company, Entravision, continues to acquire more full-power stations for affiliation with either the main Univision network or the soon-to-be-launched Telefutera network. In contrast, Telemundo is unable to acquire stations during the pendency of the merger. In addition, stations are reluctant to affiliate with Telemundo while there remains uncertainty about the network's ownership.

As also mentioned above, Univision will launch a second Spanish-language broadcast television network, Telefutera, in January 2002. Telemundo, which is already a distant second to Univision, has an immediate and pressing need for the resources of a larger

television broadcasting company to respond to this competitive threat. Without immediate access to NBC's resources, Telemundo will continue to be at a competitive disadvantage, just as Univision is launching a second network.

IV. THE FCC SHOULD NOT DEFER ACTION ON THE NBC/TELEMUNDO APPLICATIONS.

Paxson has requested the Commission to withhold action on the NBC/Telemundo merger until the arbitration proceeding that Paxson has initiated against NBC is completed. But the Commission's law in this area is clear. It is the Commission's policy not to defer the consideration of outstanding matters pending the outcome of litigation involving private contractual matters.⁷ The Commission's consent to the NBC/Telemundo merger does not prejudice any remedy to which an arbitrator may ultimately determine Paxson is entitled. *See Sonderling Broadcasting Co.*, 46 R.R. 2d 890, 894 (1979).

V. CONCLUSION

The proposed merger of Telemundo into NBC will greatly strengthen the Telemundo Network and Telemundo's owned-and-operated stations, and help to ensure that Telemundo can continue to develop into a vigorous competitor to Univision in serving the rapidly growing Latino community and Spanish-language advertisers. Neither the Latino Coalition's Petition nor Paxson's filings provide any basis for delaying approval of the transfer

⁷ *Allegan Cellular, L.P.*, 14 FCC Rcd 20053, 20054 (Wireless Bureau 1999). *See also Sonderling Broadcasting Co.*, 46 R.R. 2d 890, 894 (1979) (Commission declined to defer action on application for approval of the merger of Sonderling Broadcasting Co. into Viacom International Inc. pending resolution of litigation alleging breach of fiduciary duty and fraud); *Cellular, Inc.*, 8 FCC Rcd 5091 (Wireless Bureau 1993) (Mobile Services Division concluded that there was no reason to withhold action on a transfer application pending the outcome of a private contractual matter); *Centel Corp.*, 8 FCC Rcd 1829, 1831 (Common Carrier Bureau 1993) (Common Carrier Bureau rejected petition to deny approval of Centel/Sprint merger based on allegation that merger violated partnership agreements between a subsidiary of Centel and a third party).

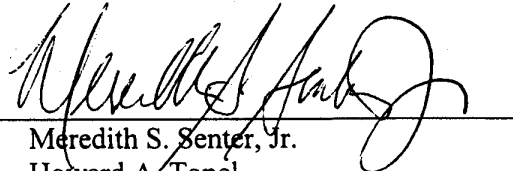
of control of Telemundo to NBC. To the contrary, Commission approval and consummation of the transaction will bring significant public interest benefits to the underserved Latino community.

Telemundo therefore urges the Commission to act as quickly as possible on the NBC/Telemundo applications.

Respectfully submitted,

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DECLARATION OF ALAN SOKOL

I, Alan Sokol, under penalty of perjury, hereby declare and state as follows:

1. I am Chief Operating Officer of Telemundo Communications Group, Inc.
2. I have participated in the preparation of the Consolidated Opposition to Petitions

to Deny to which this Declaration will be appended.

3. The facts stated therein are true and correct to the best of my knowledge and belief.

Signed and dated this 18th day of December, 2001.



Alan Sokol

CERTIFICATE OF SERVICE

I, Cristina L. Laudo, do hereby certify that a true copy of the foregoing Consolidated Opposition to Petitions to Deny was delivered by hand or transmitted by facsimile as indicated, this 19th day of December 2001, to the following:

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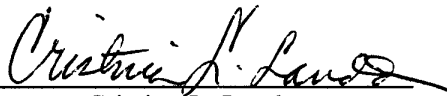
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