PRESS STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
DISSENTING

Re: Shareholders of Hispanic Broadcasting Corporation (Transferor) and Univision Communications, Inc. (Transferee) For Transfer of Control of Hispanic Broadcasting Corporation and Certain Subsidiaries, Licensees of KGBT(AM), Harlingen, TX et al.

Just three months ago, this Commission walked away from most of its media concentration protections, surrendering to a handful of corporations far too much power to determine what news, information, and entertainment every American will receive. Today's Order allows one of the Big Media conglomerates, Univision, to assume something close to monopoly power in the fast-growing Spanish-language media. Today we tell the millions of people in this country who receive their news, information, and entertainment from Spanish-language media that, sorry, localism, diversity and competition are not for you. We tell those who speak Spanish that they can listen to the English media if they want diverse media sources.

While this proceeding raised some new side issues for the Commission, there is nothing new about the bottom line of the proposed merger. In the end, it all comes back to putting too much power in one company's hands. It comes back to creating those opportunities for abuse that always accompany too much concentrated power. This merger has no business going forward. Permitting one company to have a hammerlock over the news and entertainment that America's fastest-growing minority population receives is in the interests of neither that minority nor anyone else in this country.

A Univision-HBC merger will take consolidation to new and threatening heights for those who receive their news and entertainment in Spanish. It involves not just TV, radio and cable, but Internet portals, recording labels and other promotional enterprises. Univision is already the fifth largest network and owns local stations reaching over 40 percent of the country. When the stations owned by Entravision, which the majority attributes to Univision, are added in, its reach is even greater. It owns the first and third largest Spanish-language networks. It owns the largest Spanish-language cable network. It owns the leading Spanish-language music provider. And it owns the largest Spanish-language Internet portal.

HBC is the nation's largest Spanish-language radio group with revenues roughly twice that of its next competitor. How does turning this radio group over to the Spanish-language television conglomerate help promote diversity? How does it promote competition to allow one entity to control two-thirds of Spanish-language advertising revenue?

Rather than allowing further media concentration by Univision and other media conglomerates, this Commission would be better advised to focus its attention on ways to promote minority participation in our media and to do it before the next wave of consolidation makes a complete mockery of that objective. Although they make up 13 percent of our population -- 38 million strong -- Latinos own only 1.8 percent of all radio stations and 0.1 percent of all television stations. Latinos are under-represented not only in boardrooms, but in newsrooms as well. And according to the National Association of Hispanic Journalists, those numbers continue to trend down. The record is clear on that and it is cause for alarm because additional consolidation can only reduce opportunities for Latinos and other minorities in this country.

One of the novel issues in this proceeding is whether the Spanish-language media market should be considered a separate product market for purposes of our competition analysis. The Department of Justice concluded that Spanish-language radio is a separate market from English-language radio and that, therefore, steps must be taken to prevent excessive concentration. Curiously, while the majority happily accepts the Department of Justice analysis that radio and television are separate markets for purposes of justifying their decision, the same majority rejects the Department of Justice conclusion on the existence of a separate Spanish-language market.

In truth, the record is inadequate to confirm or deny the existence of such a separate market. We simply have not compiled the data, done the requisite outreach or performed the strenuous analysis that is required to reach anything approaching a definitive conclusion here. I am disappointed that the majority failed to conduct in-depth analysis or public outreach before waving yet another green flag for consolidation. Here was an excellent opportunity for us to reach out and tap the expertise and the experience of those who do business with, and consumers who receive the services of, this segment of our media. Once again, we fail the grade in outreach, and it shows in the lack of analytical depth in this item. The separate market question brings with it a host of subset issues whose resolution would impact the business of this Commission in numerous important ways. I would have preferred to hold hearings on this transaction and its attendant issues, just as we did for other proposed media mergers such as America Online/Time Warner and AT&T/MediaOne.

Given that we have not done the requisite analysis here, I would have designated this transaction for a hearing to answer such critical questions. In any event, the Commission needs to examine the separate market issue even if it is too late to inform this particular decision, so that we can better deal with cases and issues going forward.

The Applicants claim that this merger will give it the scale and scope to compete more effectively with English-language media for advertising dollars. When all is said and done, however, any public interest benefits that may potentially arise from this concentration are vastly outweighed by the potential for significant harm to both consumers and competitors. The solution to any perceived lack of scale surely cannot be to allow ever greater concentration of economic power in the Spanish-language media that could freeze out competitors and deprive consumers of localism, competition, and diversity.

Competitors of Univision point out that the merged entity could use its dominance in Spanish-language media and cross-media advertising to lock up Spanish-language advertising revenue. Telemundo further argues that it will be frozen out of the radio advertising market – currently 74 percent of its advertising budget – to promote its programming. Indeed, Telemundo claims that Entravision, which is affiliated with Univision, has rejected Telemundo ads. Opponents further point to Univision's anti-competitive behavior with creative talent, claiming that Univision precludes any of its television or recording celebrities from appearing on any of its competitor's programming and that Univision alters its news coverage to excise any mention of its competitors' creative talent. Opponents contend that this merger will increase Univision's power to control creative talent and eliminate any incentive Univision has to end its exclusionary programming and distribution contracts.

This merger permits a level of concentration that should trouble even this Commission. Putting two-thirds of Spanish-language media revenue under the control of one company will stifle competition before it can take root. And once we confer additional size and power upon Univision, we will likely see advertising rates go up, small advertisers and entrepreneurs frozen out, and any pretense of diversity go by-the-boards.

The Order notes that the Commission's new media ownership rules were recently stayed by the Third Circuit Court of Appeals. Yet, under whichever rules this transaction is reviewed, the record simply does not demonstrate that this transaction serves the public interest. In every proposed transaction, the Commission has the statutory duty affirmatively to determine that the transaction serves the public interest. Tellingly, the majority fails completely to weigh and evaluate the public interest benefits and harms that could attend this transaction. The level of analysis done here doesn't even qualify as "public interest lite." It is time – past time – for the Commission to get serious about our public interest analysis. Instead of a single-minded rush to endorse deals such as Univision, we ought to begin focusing on Diversity Vision.

I simply cannot support this level of concentration by a single owner absent compelling public interest circumstances. In this instance, I search in vain for public interest benefits to outweigh the real and potential harms. I must therefore dissent from this decision.