

Overlap Markets. Advertisers that consider Spanish-language radio to be a particularly effective medium will find it difficult or impossible to "buy around" Univision/HBC and Entravision, *i.e.*, to effectively reach their targeted audience without using Univision/HBC and Entravision radio stations.

Entry of new Spanish-language radio stations into the relevant geographic markets would not be timely, likely, or sufficient to mitigate the competitive harm likely to result from this acquisition. In theory, entry could occur by obtaining a license for new radio spectrum or by reformatting an existing station. New radio spectrum acquisition is highly unlikely, however, because spectrum is a scarce and expensive commodity and reformatting by existing stations is unlikely to defeat a price increase by Univision/HBC or Entravision. Radio stations are unlikely to undertake a format change solely in response to small but significant increases in price being charged to advertisers by a firm such as Univision/HBC, and even given such a format change, radio stations that did change formats would be unlikely to attract enough listeners to provide sufficient alternatives to the merged entity. Reformatting is an expensive endeavor that involves the loss of the station's existing audience, a significant expense to attract new listeners, and no assurance of attracting a significant listening base to justify the costs involved. It generally occurs when a station believes that a particular format is not being sufficiently served or when a station finds a niche between existing formats. An increase in the price of advertising rates charged by existing stations serving a specific format does not in itself provide assurance that a newly formatted station would attract a sufficient audience base, particularly if there are strong incumbents already in that format.

### III. Explanation of the Proposed Final Judgment

The proposed Final Judgment is designed to preserve competition in the sale of advertising time on Spanish-language radio stations in the Overlap Markets by restricting Univision's ability to control or influence Entravision's radio business and by significantly reducing Univision's equity stake in Entravision. The proposed Final Judgment has three principal provisions: (1) Exchange of Univision's Entravision stock for a nonvoting equity interest with limited shareholder rights; (2) divestitures of a substantial portion of the defendants'

equity stake in Entravision; and (3) restrictions on the defendant's ability to interfere with the governance of Entravision's radio business. The proposed Final Judgment also has several sections designed to ensure its effectiveness and adequate compliance. Each of these sections is discussed below.

#### *A. Exchange of Shares for Nonvoting Equity*

Section IV of the proposed Final Judgment requires Univision to exchange all of its Entravision Class A and Class C common stock for a nonvoting equity interest with limited rights and to certify that the voting and director rights that Univision has held in connection with its Entravision stock has been eliminated. The limited rights to be associated with the new class of stock to be issued to defendants are set forth in a Certificate of Designations, Preferences and Rights of Series U Preferred Stock, which is attached to the proposed Final Judgment. The exchange of stock must occur prior to the closing of the Univision/HBC merger.

These provisions will significantly curtail Univision's ability to influence or control Entravision's business conduct. As part of the acquisition of a new class of stock, Univision will relinquish certain rights it previously had in connection with Entravision governance. First, Univision will relinquish all shareholder voting rights so that it will not be able to vote on any corporate matters. Second, Univision will relinquish its two seats on Entravision's Board of Directors so that it will no longer have access to confidential Entravision information or the ability to vote on matters before the Board. Third, Univision will relinquish certain "veto" rights over important Entravision decisions, namely Univision's rights under the Entravision Bylaws to veto Entravision's issuance of equity, incurrence of debt at certain levels, and acquisitions or dispositions of assets valued at greater than \$25 million. Retention of these rights would have allowed Univision to affect Entravision's strategic decision-making by preventing, or threatening to prevent, Entravision from making acquisitions or raising capital. Moreover, the continued existence of these veto rights would lessen competition even if they were not exercised because Entravision would have the incentive to constrain its normal competitive behavior against Univision/HBC to ensure that Univision/HBC would grant necessary approvals for future transactions subject to the veto rights.

The proposed Final Judgment does not require elimination of all shareholder rights that Univision currently possesses. As set forth in the Certificate of Designations, Univision will retain the modified right to veto any decision by Entravision to merge, consolidate, or otherwise reorganize Entravision with or into one or more entities that results in a transfer of all or substantially all of the assets of Entravision or a transfer of a majority of the voting power of Entravision.<sup>1</sup> Univision also retains the right to veto any Entravision dissolution, liquidation, or termination. Finally, Univision will also have the right to veto any disposition of any interest in any FCC license with respect to television stations that are affiliates of Univision. The proposed Final Judgment makes clear that these rights may be terminated if Entravision and the defendants choose not to do so. See Section VI.C. Defendants, however, are restrained from seeking to expand or modify these limited rights in any manner.

#### *B. Divestiture of Defendants' Entravision Holdings*

Section V of the proposed Final Judgment requires Univision to reduce its equity stake in Entravision so that it owns no more than 15 percent of all outstanding Entravision stock by March 26, 2006, and no more than 10 percent by March 26, 2009. The divestitures of this stock may be made by any combination of open-market sale, public offering, private sale, or repurchase by Entravision. The stock may not be sold by private sale or placement to any Spanish-language radio broadcaster other than Entravision unless the Department agrees to such a transaction in writing.

As explained above, if Univision/HBC owned a substantial, partial-ownership interest in Entravision, Univision/HBC would have an incentive to compete less aggressively. This is because Univision/HBC would receive some significant benefit even on sales it loses to Entravision. Reducing Univision/HBC's stake in Entravision to a much lower

<sup>1</sup> Section D(i) of the Certificate provides that without Univision's approval, Entravision will not "merge, consolidate or enter into a business combination, or otherwise reorganize this Corporation with or into one or more entities (other than a merger of a wholly-owned subsidiary of this Corporation into another wholly-owned subsidiary of this Corporation)." This approval right is identical to one that Univision possessed previously. Section VI.C of the proposed Final Judgment, however, limits Univision's rights in that it provides that Univision may not exercise its rights under D(i) unless the transaction at issue "results in a transfer of all or substantially all of the assets of Entravision or a transfer of a majority of the voting power of Entravision."