

**Multiple Ownership Compliance**

Upon grant of the subject transfer of control application and concurrently filed transfer of control applications (collectively, the "315 Applications"), the transferee, Broadcasting Media Partners Inc. ("BMPI" or the "Transferee"), and its shareholders will have attributable interests in broadcast stations licensed to subsidiaries of Univision Communications Inc. ("Univision"). The Transferee has certified "No" to Question 8(b) of Section IV on each of the 315 Applications because, in certain of the Univision markets, the transaction will implicate the Commission's multiple ownership and cross-ownership rules, 47 C.F.R. Section 73.3555. Those instances are detailed in Transferee's Exhibits 18-A, 18-B and 18-C, which, for convenience, are attached to each of the 315 Applications.

BMPI has no attributable media interests within the meaning of Section 73.3555 of the Commission's rules. However, certain principals of two of BMPI's shareholders – Providence Equity Partners, Inc. (together with its principals, "PEP") and Thomas H. Lee Partners, L.P. (together with its principals, "THL") – through commonly-controlled investment funds, hold minority, non-controlling attributable interests in media outlets that, as a result of the proposed transfer of control, would cause them to exceed one or more of the limits set forth in the following Commission rules in eight of the 27 television and 21 radio markets in which Univision operates: (1) Section 73.3555(a) (the "Local Radio Ownership Rule"); 1/ (2) Section

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1/ 47 C.F.R. § 73.3555(a). Specifically, *see id.* at § 73.3555(a)(1)(i) ("In a radio market with 45 or more commercial radio stations, a party may own, operate, or control up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM)").

73.3555(c) (the "Radio-Television Cross-Ownership Rule"); 2/ and (3) Section 73.3555(d) (the "Daily Newspaper Cross-Ownership Rule") 3/ (collectively, the "Multiple Ownership Rules").

BMPI respectfully requests a limited waiver for a period of six months following consummation of the proposed transfer of control in order to address compliance by its attributable parties with the Multiple Ownership Rules in these eight markets.

In addition, Univision's provisionally grandfathered ownership of five FM radio stations in the Albuquerque, New Mexico, Arbitron metro market implicates the Local Radio Ownership Rule. Accordingly, as explained more fully below, BMPI requests a period of six months from the later of (i) action on the pending waiver request of the Local Radio

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2/ 47 C.F.R. § 73.3555(c). Specifically, *see id.* at § 73.3555(c)(2) ("An entity may directly or indirectly own, operate, or control up to two commercial TV stations (if permitted by paragraph (b) of this section, the local television multiple ownership rule) and 1 commercial radio station situated as described above in paragraph (1) of this section. An entity may not exceed these numbers, except as follows: (i) if at least 20 independently owned media voices would remain in the market post-merger, an entity can directly or indirectly own, operate, or control up to (A) Two commercial TV and six commercial radio stations (to the extent permitted by paragraph (a) of this section, the local radio multiple ownership rule); or (B) One commercial TV and seven commercial radio stations (to the extent that an entity would be permitted to own two commercial TV and six commercial radio stations under paragraph (c)(2)(i)(A) of this section, and to the extent permitted by paragraph (a) of this section, the local radio multiple ownership rule). (ii) If at least 10 independently owned media voices would remain in the same market post-merger, an entity can directly or indirectly own, operate, or control up to two commercial TV and four commercial radio stations (to the extent permitted by paragraph (a) of this section, the local radio multiple ownership rule).").

3/ 47 C.F.R. § 73.3555(d) ("No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in: (1) The predicted or measured 2 mV/m contour of an AM station, computed in accordance with § 73.183 or § 73.186 [of the Commission's rules], encompassing the entire community in which such newspaper is published; or (2) The predicted 1 mV/m contour for an FM station, computed in accordance with § 73.313 [of the Commission's rules], encompassing the entire community in which such newspaper is published; or (3) The Grade A contour of a TV station, computed in accordance with § 73.684, encompassing the entire community in which such newspaper is published.").

Ownership Rule, and (ii) the date of consummation of the transfer of control, to address compliance in Albuquerque.

Grant of a six month waiver as requested here would serve the public interest by facilitating the timely and efficient consummation of the transaction without disruption to shareholders, while permitting the orderly adjustment of the overlapping interests of PEP and THL with existing Univision stations. The Commission routinely has granted such waivers for multi-station, multi-market transactions, reasoning that “the overall benefits of allowing time for an orderly divestiture . . . outweigh any temporary impact on diversity and competition from common ownership.”<sup>4/</sup> It should do so here for the same reason.

## **I. INTRODUCTION AND BACKGROUND**

Univision, together with its direct and indirect wholly-owned subsidiaries, is a U.S.-based, multi-faceted Spanish-language media company: Univision owns two national broadcast networks (Univision and TeleFutura) and the Galavisión cable television network, 41 full-power television stations or permits in 27 DMAs and 73 full-power radio stations in 21 radio markets. Additionally, Univision owns a music recording and publishing business and operates an Internet portal, “Univision.com,” which provides Spanish-language content directed at Hispanics in the United States, Mexico and Latin America.

PEP, through commonly-controlled investment funds, has an approximately 16 percent, non-controlling attributable interest in Freedom Communications, Inc. (“Freedom”),

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<sup>4/</sup> *Telemundo Communications Group, Inc.*, 17 FCC Rcd 6958, 6978, para. 51 (2002) (“NBC/Telemundo”), citing *UTV of San Francisco*, 16 FCC Rcd 14975 (2001) (“Fox/Craft”), *aff'd*, *Office of Communication of the United Church of Christ v. Fed. Communications Comm’n*, 2002 WL 31596407 (2002).

the parent of television station licensees and the publisher of English-language daily and weekly newspapers. THL, through commonly-controlled investment funds, has a 25 percent, non-controlling attributable interest in Cumulus Media Partners, LLC ("CMP"), which owns and operates radio stations in 11 markets.

As explained below, grant of the proposed transfer of control would cause (a) PEP to have attributable interests that are inconsistent with the Daily Newspaper Cross-Ownership Rule in Los Angeles, California; Phoenix, Arizona; Fresno-Visalia, California; Harlingen-Weslaco-Brownsville-McAllen, Texas; and Odessa-Midland, Texas; and (b) THL to have attributable interests that would exceed the limitations of the Local Radio Ownership and Radio-Television Cross-Ownership Rules in San Francisco, California; and Dallas-Fort Worth, Texas; and the Local Radio Ownership Rule and, contingent on a proposed modification, the Radio-Television Cross-Ownership Rule in Houston-Galveston, Texas.

As demonstrated below and in Appendices A through H, each of these markets is highly diverse and competitive, and the number of broadcast stations triggering the prohibited overlap is limited. Meanwhile, each of PEP's interest in Freedom and THL's interest in CMP is a minority, non-controlling financial stake. Albuquerque, too, is a diverse and competitive radio market, and, given the transfer of control, BMPI should be permitted a reasonable period to bring Univision's radio operations in that market into compliance with the Local Radio Ownership Rule if so necessitated by a decision on Univision's pending waiver request. In short, grant of the requested limited relief would neither reduce diversity nor impede competition in any of the affected markets, and is in the public interest.

**A. Markets in Which the Transfer of Control Implicates the Daily Newspaper Cross-Ownership Rule**

**1. Los Angeles, California**

Freedom publishes the *Orange County Register*, an English-language daily newspaper, in Santa Ana, California. The proposed transfer of control implicates the Daily Newspaper Cross-Ownership Rule because the political boundary of Santa Ana is encompassed entirely by the relevant service contours of certain Univision broadcast stations; specifically, (i) the Grade A contour of KMEX-TV, Los Angeles, and of KTFR-TV, Ontario, California; (ii) the 1 mV/m contour of KLVE(FM), Los Angeles, and of KSCA(FM), Glendale, California; and (iii) the 2 mV/m daytime contour of KTNQ(AM), Los Angeles, California. 5/

**2. Phoenix, Arizona**

Freedom publishes the *East Valley Tribune/Scottsdale Tribune*, an English-language daily newspaper, in Mesa, Arizona. The proposed transfer of control implicates the Daily Newspaper Cross-Ownership Rule because the political boundary of Mesa is encompassed entirely by the relevant service contours of certain Univision broadcast stations; specifically, (i) the Grade A contour of KTVW-TV, Phoenix, Arizona; and (ii) the 1 mV/m contour of KHOT-FM, Paradise Valley, Arizona. 6/

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5/ The relevant service contours of the other Univision stations in the Los Angeles area – KRCD(FM), Inglewood, and KRCV(FM), West Covina, California – do not encompass the entire community of publication of the *Orange County Register* and therefore do not trigger the Daily Newspaper Cross-Ownership Rule.

6/ The relevant service contours of the other Univision stations in the Phoenix area – KFPH-TV, Flagstaff, KHOV-FM, Wickenburg, KOMR(FM), Sun City, and KQMR(FM), Globe, Arizona – do not encompass the entire community of publication of the *East Valley Tribune/Scottsdale Tribune* and therefore do not trigger the Daily Newspaper Cross-Ownership Rule.

**3. Fresno-Visalia, California**

Freedom publishes *The Porterville Recorder*, an English-language daily newspaper, in Porterville, California. The proposed transfer of control implicates the Daily Newspaper Cross-Ownership Rule because the political boundary of Porterville is encompassed entirely by the relevant service contours of certain Univision broadcast stations; specifically, (i) the Grade A contour of KTFF-TV, Porterville, California; and (ii) the 1 mV/m contour of KRDA(FM), Hanford, California. 7/

**4. Harlingen-Weslaco-Brownsville-McAllen, Texas**

Freedom publishes the *Brownsville Herald* in Brownsville, Texas, the *Valley Morning Star* in Harlingen, Texas, and *The Monitor/La Frontera* in McAllen, Texas; all are English-language daily newspapers. The proposed transfer of control implicates the Daily Newspaper Cross-Ownership Rule because the political boundaries of Brownsville, Harlingen and McAllen each are encompassed entirely by the relevant service contours of certain Univision broadcast stations. Specifically, Harlingen and McAllen are encompassed entirely within (i) the Grade A contour of KNVO(TV), McAllen, Texas, a station owned by Entravision Communications Corporation, in which Univision is deemed to have an attributable interest; 8/

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7/ The relevant service contours of the other Univision stations in the Fresno-Visalia area – KFTV(TV), Hanford, KLLF(FM), North Fork, and KOND(FM), Clovis, California – do not encompass the entire community of publication of *The Porterville Recorder* and therefore do not trigger the Daily Newspaper Cross-Ownership Rule.

8/ The licensee of KNVO(TV) is Entravision Holdings, LLC. Pursuant to the Commission's decision in *Shareholders of Hispanic Broadcasting Corporation*, 18 FCC Rcd 18834 (2003) ("*HBC/Univision*"), Univision is deemed to have an attributable interest in television stations owned by Entravision if (a) they are affiliated with a Univision network and (b) Univision has the right to approve the sale of the stations. Under this standard, Univision has a non-controlling attributable interest in KNVO(TV).

(ii) the 1 mV/m contour of KBTQ(FM), Harlingen, and of KGBT-FM, McAllen, Texas; and  
(iii) the 2 mV/m daytime contour of KGBT(AM), Harlingen, Texas. Brownsville is encompassed entirely within the applicable service contours of each of the foregoing radio stations, but is not encompassed by the Grade A contour of KNVO(TV), McAllen, Texas.

**5. Odessa-Midland, Texas**

Freedom publishes the *Odessa American*, an English-language daily newspaper, in Odessa, Texas. The proposed transfer of control implicates the Daily Newspaper Cross-Ownership Rule because the political boundary of Odessa is encompassed entirely by the Grade A contour of KUPB(TV), Midland, Texas, a station owned by Entravision Communications Corporation, in which Univision is deemed to have an attributable interest. 9/

**B. Markets in Which the Transfer of Control Would Exceed the Limits of the Local Radio Ownership and/or Radio-Television Cross Ownership Rules**

**1. San Francisco, California**

As detailed in Transferee's Exhibit 18-A, five Univision radio stations (one AM/four FM) are licensed to, or are reported by BIA Financial Network, Inc. ("BIA") as "home" to, the San Francisco, California Arbitron "Metro," which is the fourth-ranked radio market. 10/ THL, through its 25 percent non-controlling interest in CMP, has an attributable interest in five other radio stations (two AM/three FM) in the San Francisco Arbitron Metro. 11/ Including the subject stations, and excluding those stations not listed by BIA as home to this

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9/ See *supra*, note 8. Entravision Holdings, LLC, also is the licensee of KUPB(TV).

10/ The five Univision radio stations are KBRG(FM), San José; KLOK(AM), San José; KSOL(FM), San Francisco; KVVV(FM), Santa Clara; and KVVZ(FM), San Rafael, California.

11/ The five CMP radio stations are KFFG(FM), Los Altos; KFOG(FM), San Francisco; KNBR(AM), San Francisco; KSAN(FM), San Mateo; and KTCT(AM), San Mateo, California.

Arbitron Metro for at least two years, BIA identifies 103 full-power radio stations as licensed to or reported as home to this Arbitron Metro. 12/ Pursuant to the Local Radio Ownership Rule, the maximum number of attributable radio stations permitted in an Arbitron Metro of 45 or more radio stations is eight radio stations, of which no more than five may be in the same service (AM or FM). Thus, the common attributable interests of THL as a result of its present attributable interest in CMP, and its proposed attributable interest in Univision, in a total of ten radio stations (three AM/seven FM) in the San Francisco Arbitron Metro would exceed the Local Radio Ownership Rule limits by two FM radio stations (including two FM stations over the same service cap). 13/

Univision also owns two full-power television stations licensed to communities within the San Francisco Arbitron Metro: KDTV(TV), San Francisco; and KFSF-TV, Vallejo, California. Relevant here are two Arbitron Metro radio markets: San Francisco, and, embedded within the San Francisco Metro, the San José Metro (Santa Clara County). The Grade A contours of KDTV(TV) and KFSF-TV both encompass entirely the communities of license of three of the Univision and five of the CMP radio stations licensed to or listed as home to the San Francisco Arbitron Metro, constituting a two TV/eight radio combination. 14/ Separately,

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12/ See BIA *FCC Geographic Market Definition* for San Francisco (at Appendix A to Exhibit 18-A).

13/ Three of these Univision stations and one of the CMP stations are also reported in the San José Arbitron Metro. As set forth in Transferee's Exhibit 18-A, the resulting attributable interest of THL in one AM/three FM in this 22 station market complies with the Local Radio Ownership Rule limit of six stations/four same service.

14/ The stations in this two TV/eight radio combination in San Francisco are KDTV(TV), San Francisco; KFSF-TV, Vallejo; KSOL(FM), San Francisco; KVVV(FM), Santa Clara; KVVZ(FM), San Rafael; KFFG(FM), Los Altos; KFOG(FM), San Francisco; KNBR(AM), San Francisco; KSAN(FM), San Mateo; and KTCT(AM), San Mateo, California. The

the Grade A contour of KDTV(TV) encompasses entirely the communities of license of all ten of the Univision and CMP radio stations that are licensed to or listed as home to the San Francisco Arbitron Metro, constituting a one TV/ten radio combination. 15/

As to the San José Arbitron Metro, four of the subject radio stations are licensed to communities geographically located within that Metro. 16/ Two television-radio combinations are formed in the San José Arbitron Metro. One is formed by the Grade A contours of both KDTV(TV) and KFSF-TV encompassing entirely the communities of license of two of the San José radio stations, creating a two TV/two radio combination. 17/ The other

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Commission has clarified that “for purposes of the radio/TV cross-ownership rule, we generally do not count radio stations located in one Arbitron radio market toward the limits on the number of radio stations a party may own in another Arbitron radio market, even when the radio stations in the different markets fall within the Grade A contour of a commonly owned TV station.” *Review of the Commission’s Regulations Governing Television Broadcasting Television Satellite Stations Review of Policy and Rules*, 16 FCC Rcd 1067, 1081-81, para. 41 (2001). Here, two of the radio stations in this combination that are geographically located within the San José Arbitron Metro (KFFG(FM), Los Altos; KVVV(FM), Santa Clara) do not encompass the television stations’ communities of license with their respective 1 mV/m contours. Nevertheless, because these two San José Arbitron Metro radio stations are also listed as home to the San Francisco Arbitron Metro, and because the San José Arbitron Metro is geographically subsumed within the San Francisco Arbitron Metro, in an abundance of caution, these stations are being counted towards the television/radio limit for the purpose of this combination.

15/ The stations in this one TV/ten radio combination in San Francisco are KDTV(TV), San Francisco; KBRG(FM), San José; KLOK(AM), San José; KSOL(FM), San Francisco; KVVV(FM), Santa Clara; KVVZ(FM), San Rafael; KFFG(FM), Los Altos; KFOG(FM), San Francisco; KNBR(AM), San Francisco; KSAN(FM), San Mateo; and KTCT(AM), San Mateo, California. The 1 mV/m contours of three of the radio stations in this combination that are geographically located within the San José Arbitron Metro (KBRG(FM), San José; KFFG(FM), Los Altos; KVVV(FM), Santa Clara) do not encompass San Francisco; however, these stations are being counted towards the television/radio limit. *See supra* note 14.

16/ The radio stations licensed to communities within the San José Arbitron Metro are KBRG(FM), San José; KFFG(FM), Los Altos; KLOK(AM), San José; and KVVV(FM), Santa Clara; California.

17/ The stations in this two TV/two radio combination in the San José Arbitron Metro are KDTV(TV), San Francisco; KFSF-TV, Vallejo; KFFG(FM), Los Altos; and KVVV(FM), Santa

results from the encompassment of the entire communities of license of four radio stations by the Grade A contour of KDTV(TV), forming a one TV/four radio combination. 18/

Both the San Francisco and San José Arbitron Metro radio markets would each continue to have at least 20 independently owned media voices following the proposed transfer of control. 19/ In such markets, the Radio-Television Cross-Ownership Rule permits television-radio combinations of up to two television and six radio stations (if otherwise compliant with the local television and radio ownership limits) or, if that combination is permissible, one television and seven radio stations. 20/

The combinations in the San José Arbitron Metro (two TV/two radio and one TV/four radio) comply with the Radio-Television Cross-Ownership Rule. However, the two combinations in the San Francisco Arbitron Metro market individually exceed the Radio-Television Cross-Ownership Rule limit: in the case of the one TV/ten radio combination, by three radio stations; in the case of the two TV/eight radio combination, by two radio stations.

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Clara, California. The 1 mV/m contours of these radio stations do not encompass San Francisco or Vallejo; however, these stations are being counted towards the television/radio limit. *See supra* note 14.

18/ The stations in this one TV/four radio combination in the San José Arbitron Metro are KDTV(TV), San Francisco; KBRG(FM), San José; KFFG(FM), Los Altos; KLOK(AM), San José; and KVVF(FM), Santa Clara; California. With the exception of KLOK(AM), the applicable service contours of these radio stations do not encompass San Francisco; however, these stations are being counted towards the television/radio limit. *See supra* note 14.

19/ *See* Appendix F, Table F-1 and Table F-2.

20/ There are at least eight independent television voices in the San Francisco-Oakland-San José DMA, *see id.*, so that television duopolies are permitted in this market. As set forth above, in the 45-plus radio station San Francisco Arbitron Metro, the radio limit is eight stations/five same service, and in the 22-radio station San José Arbitron Metro the radio limit is six stations/four same service.

**2. Dallas-Fort Worth, Texas**

Univision is the ultimate parent of the licensee of five radio stations (one AM/four FM) that are licensed to and listed by BIA as home to the Dallas-Fort Worth, Texas Arbitron Metro, the fifth-ranked radio market. 21/ THL, via its 25 percent non-controlling interest in CMP, has an attributable interest in six other radio stations (three AM/three FM) in the Dallas-Fort Worth Arbitron Metro. 22/ Including the subject stations, and excluding those stations not listed by BIA as home to this Arbitron Metro for at least two years, BIA list 79 full-power radio stations as licensed to or reported as home to this Arbitron Metro. 23/ As in the San Francisco Arbitron Metro, under the Local Radio Ownership Rule, the maximum number of attributable radio stations permitted in an Arbitron Metro of 45 or more radio stations is eight radio stations, of which no more than five may be in the same service (AM or FM). Consequently, THL's attributable interests via Univision and CMP in a total of eleven radio stations (four AM/seven FM) in the Dallas-Fort Worth Arbitron Metro would exceed the Local Radio Ownership Rule limits by three radio stations (including two FM stations over the same service cap).

Univision is also the ultimate parent company of the licensees of two full-power television stations in the Dallas-Fort Worth DMA, both of which are licensed to communities

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21/ See Transferee's Exhibit 18-A. The five Univision radio stations are KDXX(FM), Benbrook; KESS-FM, Lewisville; KFLC(AM), Fort Worth; KFZO(FM), Denton; and KLNO(FM), Fort Worth, Texas.

22/ The six CMP radio stations are KDBN(FM), Haltom City; KKLf(AM), Richardson; KLIF(AM), Dallas; KPLX(FM), Fort Worth; KTCK(AM), Dallas; and KTDK(FM), Sanger, Texas.

23/ See BIA *FCC Geographic Market Definition* for Dallas-Fort Worth (at Appendix A to Exhibit 18-A).

within the Dallas-Fort Worth Arbitron Metro: KSTR-TV, Irving; and KUVN-TV, Garland, Texas. The Grade A contours of these two television stations both encompass entirely the communities of license of four of the Univision and five of the CMP radio stations in the Dallas-Fort Worth Arbitron Metro, yielding a two TV/nine radio combination. 24/

The Dallas-Fort Worth Arbitron Metro has, and following the proposed transfer of control, will continue to have, at least 20 independently owned media voices. 25/ Consequently, the Radio-Television Cross-Ownership Rule permits television-radio combinations of up to two television and six radio stations or one television and seven radio stations (if otherwise compliant with the local television and radio ownership limits). 26/

Here, in the Dallas-Fort Worth Arbitron Metro, the combination of two TV/nine radio stations exceeds the Radio-Television Cross-Ownership Rule limit by three radio stations.

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24/ The stations in this two TV/nine radio combination in the Dallas-Fort Worth Metro are KSTR-TV, Irving; KUVN-TV, Garland; KDXX(FM), Benbrook; KESS-FM, Lewisville; KFLC(AM), Fort Worth; KLNO(FM), Fort Worth; KDBN(FM), Haltom City; KKLf(AM), Richardson; KLIF(AM), Dallas; KPLX(FM), Fort Worth; and KTCK(AM), Dallas, Texas. The other Univision and CMP stations in the Dallas-Fort Worth Arbitron Metro neither have their communities of license encompassed entirely by either of the these television stations' Grade A contours, nor do their applicable service contour (1 mV/m for FM; 2 mV/m for AM) encompass entirely either of the television stations' communities of license.

25/ See Appendix G, Table G-1.

26/ There are at least eight independent television voices in the Dallas-Fort Worth DMA, see Appendix G, Table G-1, so that two television stations may be under common control in this market. As set forth above, in the 45-plus radio station Dallas-Fort Worth Arbitron Metro, the radio limit is eight stations/five same service.

**3. Houston-Galveston, Texas**

As set forth in Transferee's Exhibit 18-A, six Univision radio stations (two AM/four FM) are licensed to and listed by BIA as home to the Houston-Galveston, Texas Arbitron Metro, the seventh-ranked radio market. 27/ THL, through its 25 percent non-controlling interest in CMP, has an attributable interest in three FM radio stations in the Houston-Galveston Arbitron Metro. 28/ Including the subject stations, and excluding those stations not listed by BIA as home to this Arbitron Metro for at least two years, BIA records 68 full-power radio stations as licensed to or reported as home to this Arbitron Metro. 29/ Like the other two markets discussed here, the maximum number of attributable radio stations permitted under the Local Radio Ownership Rule in an Arbitron Metro of 45 or more radio stations is eight radio stations, of which no more than five may be in the same service (AM or FM). Thus, THL's attributable interests through Univision and CMP in a total of nine radio stations (two AM/seven FM) in the Houston-Galveston Arbitron Metro would exceed the Local Radio Ownership Rule limits by two FM radio stations.

Furthermore, in this DMA, there are two Univision full-power television stations, both of which are licensed to communities within the Houston-Galveston Arbitron Metro: KXLN-TV, Rosenberg; and KFTH-TV, Alvin, Texas. The Grade A contours of these two television stations both encompass entirely the communities of license of four of the Univision

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27/ The six Univision radio stations are KLAT(AM), Houston; KLTN(FM), Houston; KOVE-FM Galveston; KPTI(FM), Crystal Beach; KPTY(FM) Missouri City; and KRTX(AM), Rosenberg/Richmond, Texas.

28/ The three CMP radio stations are KFNC(FM), Beaumont; KIOL(FM), La Porte; and KRBE(FM), Houston, Texas.

29/ See BIA *FCC Geographic Market Definition* for Houston-Galveston (at Appendix A to Exhibit 18-A).

and two of the CMP radio stations in the Houston-Galveston Arbitron Metro, constituting a two TV/six radio combination. 30/ In addition, the 1 mV/m contour of KOVE-FM, Galveston, Texas, encompasses entirely the political boundary of Alvin, the community of license of KFTH-TV, thereby forming a second combination with one TV/seven radio stations. 31/

At present, and following the proposed transfer of control, the Houston-Galveston Arbitron Metro is populated by at least 20 independently owned media voices. 32/ Consequently, the Radio-Television Cross-Ownership Rule permits television-radio combinations of up to two television and six radio stations or one television and seven radio stations (if otherwise compliant with the local television and radio ownership limits). 33/ The foregoing television-radio combinations in the Houston-Galveston Arbitron Metro (two TV/six radio and one TV/seven radio) comply with the Radio-Television Cross-Ownership Rule.

However, pending before the Commission is an application for a construction permit for modified facilities for a Univision radio station, 34/ which, if granted and implemented, would result in that radio station's 1 mV/m contour encompassing the entire community of license of KXLN-TV, thereby converting the two TV/six radio combination into a

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30/ The stations in this two TV/six radio combination are KXLN-TV, Rosenberg; KFTH-TV, Alvin; KLAT(AM), Houston; KLTN(FM), Houston; KPTY(FM) Missouri City; KRTX(AM), Rosenberg/Richmond; KIOL(FM), La Porte; and KRBE(FM), Houston, Texas.

31/ The stations in this one TV/seven radio combination are KFTH-TV, Alvin; KLAT(AM), Houston; KLTN(FM), Houston; KPTY(FM) Missouri City; KRTX(AM), Rosenberg/Richmond; KIOL(FM), La Porte; KRBE(FM), Houston, Texas; and KOVE-FM, Galveston, Texas.

32/ See Appendix H, Table H-1.

33/ There are at least eight independent television voices in the Houston-Galveston DMA, see Appendix H, Table H-1, so that two television stations may be under common control in this market. As set forth above, in the 45-plus radio station Houston-Galveston Arbitron Metro, the radio limit is eight stations/five same service.

34/ KOVE-FM, Galveston, Texas, FCC File No. BPH-20060322AEQ.

two TV/seven radio combination, one radio station in excess of the Radio-Television Cross-Ownership Rule limit. Consequently, BMPI hereby requests a contingent six-month waiver from consummation of the proposed transaction to come into compliance with the Radio-Television Cross-Ownership Rule in Houston-Galveston in the event the implementation of this proposed modification triggers the Radio-Television Cross-Ownership Rule. Since the temporary waiver of the Local Radio Ownership Rule already would cover two FM radio stations in Houston-Galveston, such a contingent waiver of the Radio-Television Cross-Ownership Rule for one radio station would not result in any additional attributable interests in excess of the limits during that brief period.

**C. Univision Radio Station Ownership in Albuquerque, New Mexico**

As detailed in Transferee's Exhibit 18-A, five Univision FM radio stations are licensed to, or are reported by BIA as home to, the Albuquerque, New Mexico, Arbitron Metro. 35/ Neither the Transferee, nor parties to the Transferee, have any attributable media interests in the Albuquerque Arbitron Metro.

Including the subject Univision stations, BIA currently identifies 44 full-power radio stations as licensed to or reported as home to this Metro. 36/ Pursuant to the Local Radio Ownership Rule, the maximum number of attributable radio stations permitted in an Arbitron Metro of 30 to 44 radio stations is seven radio stations, of which no more than four may be in the

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35/ The five Univision radio stations are KIOT(FM), Los Lunas; KJFA(FM), Albuquerque; KKRK(FM), Santa Fe; KKSS(FM), Santa Fe; and KQBT(FM), Rio Rancho, New Mexico.

36/ See BIA *FCC Geographic Market Definition* for Albuquerque (Appendix A to Exhibit 18-A).

same service (AM or FM). 37/ Thus, while the existing Univision five-station complement in Albuquerque falls two stations short of the seven-station limit, it exceeds the four station same-service limit by one FM station. As discussed further below in Section II(C) of this exhibit, Univision has a pending request at the Commission regarding its five FM station holdings in Albuquerque. In the event that Univision's request is not granted or, if granted, is not made applicable to BMPI, BMPI hereby requests a waiver for a period of six months following the later of action on the request and consummation of the proposed transaction in order to address compliance with the Local Radio Ownership Rule in Albuquerque.

**II. GRANT OF A LIMITED, TEMPORARY WAIVER WOULD BE CONSISTENT WITH COMMISSION PRECEDENT AND WOULD SERVE THE PUBLIC INTEREST.**

Grant of a temporary waiver of the Multiple Ownership Rules with respect to the minority, non-controlling interests of PEP and THL and, to the extent necessary, the existing Albuquerque radio combination would serve the public interest. The Commission routinely has granted such waivers to facilitate the efficient and timely consummation of complex multi-station, multi-market transactions. The circumstances of this transaction warrant the same treatment.

The overlaps between the Freedom and CMP media properties, on the one hand, and the Univision broadcast stations on the other, are narrow and few. Moreover, because PEP and THL have only limited, non-controlling interests in Freedom and CMP, the effect of any

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37/ 47 C.F.R. § 73.3555(a)(1)(ii) ("A person or single entity (or entities under common control) may have a cognizable interest in licenses for AM or FM radio broadcast stations in accordance with the following limits: . . . (ii) In a radio market with between 30 and 44 (inclusive) full-power, commercial and noncommercial radio stations, not more than 7 commercial radio stations in total and not more than 4 commercial stations in the same service (AM or FM)").

such overlaps is attenuated. The few markets in which the Multiple Ownership Rule limits are exceeded by the proposed transfer of control clearly are incidental to the larger transaction. Each of these markets exhibits a substantial degree of media diversity and will continue to do so following consummation of the proposed transfer of control.

**A. Grant of a Limited, Temporary Waiver Would Be Consistent with Commission Precedent**

The Commission routinely has found that the public interest would be served by grant of a temporary waiver of its Multiple Ownership Rules in order to provide the parties to a multi-station, multi-market transaction adequate time and opportunity following consummation to resolve multiple or cross-ownership conflicts. 38/ Temporary compliance waivers under such circumstances have been granted for periods of 12, 18 and even 24 months. 39/ Here, BMPI is seeking a limited waiver of the Multiple Ownership Rules for only six months.

Grant of a temporary waiver is especially appropriate where, as here, it is necessary to facilitate the efficient completion of a complex transaction involving a public

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38/ See, e.g., *NBC/Telemundo*, 17 FCC Rcd at 6963, para. 10; *Fox/Chris-Craft*, 16 FCC Rcd at 14984, para. 33; *Chancellor Media/Shamrock Radio Licenses*, 15 FCC Rcd 17053, 17056, para. 7 (2000) (“*Chancellor/Cox*”); *Lint Co.*, 15 FCC Rcd 18130, 18133, para. 4 (MMB 2000) (“*Lint/Emmis*”); *Milton S. Maltz*, 13 FCC Rcd 15527, 15533-34, para. 20 (MMB 1998); *Capital Cities Communications, Inc.*, 11 FCC Rcd 5841, 5851, para. 6 (1996) (“*CapCities/ABC*”).

39/ See *Fox/Chris-Craft*, 16 FCC Rcd at 14989, para. 45 (24-month waiver); *CapCities/ABC*, 11 FCC Rcd at 5862, para. 33 (18-month waiver); *NBC/Telemundo*, 17 FCC Rcd at 6978, para. 51 (12-month waiver). Indeed, the Commission has approved longer waiver periods for smaller transactions involving fewer markets than the present transaction. In *NBC/Telemundo*, for example, NBC received a 12-month waiver in order to address its compliance with the television duopoly rule in a single market. *NBC/Telemundo*, 17 FCC Rcd at 6978, para. 51.

company. 40/ Where “mergers or transfers of multiple stations are involved . . . the benefits derived from such transactions support grant of a reasonable waiver period to effectuate the merger and permit time to come into compliance with [the Commission’s] rules.” 41/ The Commission has explained “[w]here mergers or transfers of multiple stations are involved, in general we believe that the benefits derived from such transactions support grant of a reasonable waiver period to effectuate the merger and permit time to come into compliance with our rules. . . . facilitating a merger or multiple-station transaction by waiving our multiple ownership rules for a temporary period . . . will promote commerce, encourage investment in the broadcast industry, and allow for the free transferability of broadcast licenses.” 42/

Commission precedent demonstrates that temporary waivers serve the public interest by allowing for resolution of multiple-ownership conflicts while avoiding the harms that likely would occur if owners were forced to restructure their investments hastily or undertake “fire sales” in markets where the multiple ownership limits are exceeded. 43/ The Commission is sensitive to these potential costs and utilizes the temporary waiver mechanism in order “to avoid any forced sale of station assets that could unnecessarily restrict the value of the stations to be divested and could artificially limit the range of potential buyers.” 44/

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40/ See, e.g., *Fox/Chris-Craft*, 16 FCC Rcd at 14984, para. 31; *Guy Gannett*, 14 FCC Rcd 6204, 6216, para. 36 (MMB 1999) (multi-station transactions are “a compelling circumstance weighing in favor of a temporary waiver”).

41/ *Multimedia, Inc.*, 11 FCC Rcd 4883, 4885, para. 5 (1995). See also *Chancellor/Cox*, 15 FCC Rcd at 17056, para. 7 (citing *Multimedia, Inc.*, *supra*).

42/ *Stockholders of CBS, Inc.*, 11 FCC Rcd 3733, 3755 (para. 44) (1995) (“*CBS/Westinghouse*”).

43/ *Fox/Chris-Craft*, 16 FCC Rcd at 14984, para. 32.

44/ *Id.* at 14984, para. 33 (citations omitted).

The Commission has been especially cognizant of the value of temporary waivers where, as here, “the waiver [is] incidental to the larger transaction.” 45/ Where the media properties at issue represent only a small portion of the properties subject to a large transaction like this one, the Commission has been particularly willing to grant temporary waivers to enable purchasers sufficient time to come into compliance with the rules. In *CBS/Westinghouse*, for example, the Commission granted 18 separate temporary or permanent waivers of the Multiple Ownership Rules to accommodate a strategic acquisition involving the transfer of control of 58 broadcast stations. 46/ By comparison, the temporary waiver requested here pertains to minority, non-controlling interests in a total of only eight markets affected by a transfer of control of 114 full-power broadcast stations in 27 television and 21 radio station markets.

**B. Grant of a Limited, Temporary Waiver Would Be in the Public Interest**

Grant of the temporary waiver requested here will not impede the twin goals of the Multiple Ownership Rules: to promote viewpoint diversity and economic competition. 47/ As demonstrated in Appendices A through H, attached hereto, each of the subject markets enjoys a substantial diversity of media voices and will continue to do so following consummation of the transfer of control. Meanwhile, the transfer of control of Univision to BMPI will not decrease the number of independently-controlled voices in any of the markets at issue here. The limited,

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45/ *Id.* at 14984, para. 31. *See also Lint/Emmis*, 15 FCC Rcd at 18133, para. 4 (citations omitted); *CBS/Westinghouse*, 11 FCC Rcd at 3755, para. 44.

46/ *See CBS/Westinghouse*, 11 FCC Rcd at 3736, para. 2.

47/ *See, e.g., NBC/Telemundo*, 17 FCC Rcd at 6974, para. 42; *CBS/Westinghouse*, 11 FCC Rcd at 3754, para. 42 (“[e]conomic competition and diversity are the dual objectives underlying our multiple ownership rules”).

non-controlling interests of PEP and THL in Freedom and CMP attenuates even further their ability to affect viewpoint diversity in these markets.

The five largest subject markets are each among the 15 top-ranked DMAs in the nation, and each of these markets offers residents an extraordinary selection of broadcast and non-broadcast media services. The Los Angeles DMA is the second largest in the nation, with 25 full-power broadcast television stations, 111 FM radio stations, 59 AM radio stations, dozens of cable systems, numerous daily newspapers and scores of local weekly publications. 48/ The San Francisco-Oakland-San José DMA (the sixth largest in the nation) has a total of 23 full-power television stations, 73 FM radio stations, 23 AM radio stations and eight daily and 50 weekly newspapers, plus a multi-channel video programming distributor penetration rate of nearly 80 percent. 49/ The Dallas, Houston and Phoenix markets are similarly diverse: the Dallas DMA has 18 full-power broadcast television stations, 52 FM radio stations, 33 AM stations, 92 cable systems and 23 daily and weekly newspapers; the Houston DMA has 17 full-power broadcast television stations, 44 FM radio stations, 27 AM stations, 76 cable systems and 38 daily and weekly newspapers; and the Phoenix DMA has 19 full-power broadcast television stations, 64 FM radio stations, 32 AM stations, 62 cable systems and 26 daily and weekly newspapers. 50/

The Fresno-Visalia, Harlingen-Weslaco-Brownsville-McAllen and Odessa-Midland DMAs also are very diverse. The Fresno-Visalia DMA, for example, includes a dozen full-power television stations owned by ten different entities, 67 FM radio stations, 23 AM radio

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48/ See Appendix A.

49/ See Appendix F.

50/ See Appendices B, G and H.

stations and six daily and seven weekly newspapers. 51/ In this context, it is significant to note that *The Porterville Recorder*, the newspaper at issue in this market, sells only 9,202, or 3.7 percent, of the 248,858 daily newspapers sold in the DMA – the second smallest circulation of the six published daily newspapers. 52/ In the Harlingen-Weslaco-Brownsville-McAllen DMA, each of the seven full-power television stations is owned by a different entity, and consumers in that market enjoy the services of nearly 30 radio stations, widespread access to cable and direct broadcast satellite service providers and 16 locally-published daily and weekly newspapers. The Odessa-Midland DMA provides residents with access to nine full-power broadcast television stations – the same number that serve larger markets like Baltimore, Maryland, the 24th largest DMA in the nation. 53/ Additionally, residents in the Odessa-Midland DMA are served by 27 local radio stations, 26 cable systems, and eight locally-published daily and weekly newspapers. 54/

**C. The Limited, Temporary Waiver Should Cover Univision's Existing Albuquerque Radio Operations, To the Extent Necessary**

As noted above, Univision owns five FM radio stations that are licensed to or listed as “home” to the Albuquerque Arbitron Metro. To the extent that the applicable station market count is 44 radio stations, the Univision station complement in Albuquerque, while two radio stations below the seven-station limit established by the Local Radio Ownership Rule, exceeds the Rule's four station same-service limit by one FM station.

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51/ See Appendix C.

52/ See *id.* at Table C-4.

53/ See Appendix E. See also *Television and Cable Factbook 2006*, at A-2.

54/ See Appendix E.

Univision acquired its Albuquerque radio stations when it acquired control of Hispanic Broadcasting Corporation (“HBC”) in 2003. 55/ During the pendency of the HBC/Univision transfer application, the Commission released the *2002 Biennial Review Order*, 56/ by which the Commission, *inter alia*, replaced the previous signal contour method for defining local radio markets with a new method based on Arbitron Metro radio markets. 57/ The *2002 Biennial Review Order* provided that, although the Commission would grandfather existing radio station combinations, it would require applicants to show compliance with the Local Radio Ownership Rule upon transfer of any grandfathered combination, unless the buyer of the combination is a small business as defined by the *Order*. 58/

At the time of the grant of the HBC/Univision transfer application, the rule changes adopted in the *2002 Biennial Review Order* were still subject to a stay by the U.S. Court of Appeals for the Third Circuit. 59/ In its order approving Univision’s acquisition of control of HBC, the Commission noted that, once the new Local Radio Ownership Rule became effective, HBC’s five FM stations in the Albuquerque Arbitron Metro would exceed the same-service limit under the new Metro-based methodology. 60/ The Commission granted the application subject

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55/ See *HBC/Univision*, 18 FCC Rcd 18834 (2003).

56/ *2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules*, 18 FCC Rcd 13620 (2003) (“*2002 Biennial Review Order*”), *aff'd in part and remanded in part, Prometheus Radio Project, et al. v. FCC*, 373 F.3d 372 (3d Cir. 2004), cert. denied, 125 S Ct 2902 (2005).

57/ *2002 Biennial Review Order*, 18 FCC Rcd at 13724, para. 274.

58/ *Id.* at 13809-11, para. 487-88.

59/ See *Prometheus Radio Project v. Federal Communications Commission*, No. 03-3388 (3d Cir. Sept. 3, 2003) (per curiam).

60/ *HBC/Univision*, 18 FCC Rcd at 18839, para. 11.

to the condition that, within six months after the Third Circuit stay was lifted or the Local Radio Ownership Rule adopted in the 2002 *Biennial Review Order* otherwise went into effect, Univision would either make the necessary radio station divestiture in Albuquerque, or demonstrate that a waiver of the Rule would be appropriate. 61/

After the Third Circuit lifted its stay as it applied to the Local Radio Ownership Rule, 62/ Univision filed with the Commission a request that, in the event the Commission deemed the six-month period to have commenced, the Commission either confirm that no waiver was then necessary due to intervening changes or, in the alternative, grant a waiver of the new Local Radio Ownership Rule to permit Univision to continue to own the fifth Albuquerque FM station. 63/ The Albuquerque Request remains pending at the Commission.

In the event the Commission grants the Albuquerque Request during the pendency of the subject 315 Applications, it is respectfully requested that the decision expressly be made applicable to Univision as proposed to be controlled by BMPI, as well as to Univision under its current ownership. In the event the Albuquerque Request has not been decided, it is respectfully requested that BMPI be afforded a six-month period from the later of (i) action on the Albuquerque Request, and (ii) consummation of the proposed transfer of control, in order to make any necessary radio station divestiture in Albuquerque should the Commission determine

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61/ *Id.* The six-month condition also applied to the one excess HBC FM station in the Houston-Galveston, Texas Metro. *Id.* That divestiture was subsequently made. *See* FCC File No. BALH-20041105ANF.

62/ *Prometheus Radio Project, et al. v. FCC*, No. 03-3388 (3d Cir Sept. 3, 2004).

63/ *See* Letter to Marlene H. Dortch, Secretary, from Scott R. Flick (March 3, 2005) ("Albuquerque Request") (copy at Appendix I hereto). The Albuquerque Request noted intervening changes such as the construction of two new radio stations in the Albuquerque market, bringing the market total to 45 stations, subject to the reclassification to another radio market of one station.

that Univision's Albuquerque interests do not comply with the Local Radio Ownership Rule. The Albuquerque Metro, the 70th ranked radio market, is a highly competitive market, with 17 radio owners in addition to Univision. 64/ Univision's radio station complement in Albuquerque does not exceed the total station limit for a 44-station market, but only the same service cap, and permitting it to remain intact for a six-month period after the later of the decision on the pending request and consummation would not decrease the number of independent radio voices in the Albuquerque Metro. Such a temporary waiver would serve the public interest by facilitating the orderly completion of this multi-station, multi-market transaction.

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In sum, grant of a temporary, six-month waiver of the Multiple Ownership Rules with respect to the minority, non-controlling interests of PEP and THL and the limited number of Univision stations in eight markets, as well as for the existing Albuquerque radio combination, would be consistent with precedent and serve the public interest.

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64/ See BIA FCC Geographic Market Definition for Albuquerque (Appendix A to Exhibit 18-A).