



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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November 20, 2007

**MEDIA BUREAU SEEKS COMMENT ON PROPOSED CHANGE TO CONDITION
CONTAINED IN PARAGRAPH 47 OF *UNIVISION COMMUNICATIONS, INC.*, 22 FCC
Rcd 5842, 5848, 5860 (2007)**

Comments Due: December 4, 2007
Reply Comments: Waived

On March 27, 2007, the Commission conditionally approved the acquisition of Univision Communications, Inc. (“Univision”), by Broadcasting Media Partners, Inc. (“BMPI”), an investor group that includes investment funds controlled by Providence Equity Partners, Inc. (“PEP”), and Thomas H. Lee Partners, L.P. (“Lee”).¹ As a result of the *2007 Univision Order*, PEP and Lee hold 19% and 23.3% interests in Univision, respectively. In addition, as further noted in the *2007 Univision Order*, PEP holds a 16% interest in Freedom Communications Holdings, Inc. (“Freedom”), and Lee holds a 25% interest in Cumulus Media Partners, LLC (“Cumulus”).

PEP’s interests in Univision and Freedom resulted in violation of Section 73.3555(d) of the Commission’s Rules (the “newspaper/broadcast cross-ownership rule”) in five markets,² while Lee’s interest in Cumulus resulted in violation of Section 73.3555(c) (the “radio/television cross-ownership rule”) and Section 73.3555(a) (the “local radio ownership rule”) in three markets. Therefore, in Paragraph 47 of the *2007 Univision Order* the Commission required PEP and Lee to take specific steps to come into compliance with the newspaper/broadcast cross-ownership rule within six months of consummation of the Univision/BMPI transaction. The post-merger Univision was given the choice of divesting, within six months of consummation, either the necessary broadcast stations in those markets where PEP’s interest in Freedom resulted in violation of the broadcast/newspaper cross-ownership rule, or divesting PEP’s minority interest in Freedom.³ Likewise, the post-merger Univision was given the choice of divesting within six months of consummation, the necessary radio and/or television stations in those markets where Lee’s interest in Cumulus resulted in violation of the radio/television cross-ownership and/or the local radio ownership rules, or divesting Lee’s interest in Cumulus.⁴

¹ See *Shareholders of Univision Communications, Inc.*, 22 FCC Rcd 5842 (2007) (“*2007 Univision Order*”). As described in the *2007 Univision Order*, PEP was one of five entities that invested in BMPI, which was created to purchase Univision.

² 47 C.F.R. §73.3555(d) (2002).

³ *2007 Univision Order*, 22 FCC Rcd at 5860.

⁴ *Id.* at 5860-5861.

BMPI consummated its acquisition of Univision on March 29, 2007, and, as a result, September 29, 2007, became the deadline for meeting this divestiture condition. On June 25, 2007, PEP and Lee filed letters notifying the Commission that they intended to divest their respective interests in Freedom and Cumulus by September 27, 2007.⁵ Subsequently, on September 25, 2007, PEP requested, and the staff granted, a 30-day extension of the deadline through October 29, 2007. Lee requested and obtained a waiver until October 31, 2007.

On November 8, 2007, PEP filed a Request for Clarification seeking a determination that it will have complied with Paragraph 47 of the *2007 Univision Decision* by conversion of its current voting interest in Freedom “into a non-voting interest that is classified as ‘nonattributable’ under Section 73.3555 of the rules and Notes thereto.”⁶ PEP states that “the FCC’s rules, policies and past precedent would not have required BMPI to seek [] a waiver had PEP’s interest in Freedom been “nonattributable” under the rules,” and that “holding of a nonattributable interest in Freedom would not even have been reportable.”⁷ PEP states that it intends to exchange its voting shares for non-voting shares; relinquish its right to designate any member to the Freedom board of directors; and ensure that any board member previously designated by PEP resigns.⁸

On November 16, 2007, Lee filed a Request for Clarification seeking a determination that it will have complied with Paragraph 47 of the *2007 Univision Decision* by converting its current attributable interest in BMPI into a form that Lee alleges is not attributable under the Commission’s rules. On October 22, 2007, BMPI notified the Commission that Lee had converted its voting stock in BMPI into non-voting stock; and relinquished its right to designate members of the BMPI Board of Directors or any of its subsidiaries, including Univision. BMPI also stated that members of the BMPI and Univision boards previously designated by Lee had resigned.⁹ Lee contends that, by rendering its interest in BMPI nonattributable, it “eliminated the factual predicate on which the *Univision Condition* was based and thereby fully resolved the concerns identified by the Commission in the *2007 Univision Order*.”¹⁰

Interested parties may file comments regarding the above Requests for Clarification by December 4, 2007. Given the time-sensitive nature of the requests, we are waiving Section 1.45 of the Commission’s rules insofar as it permits reply comments. In accordance with Section 1.51(c) of the Commission’s rules, an original and four copies of all pleadings must be filed with the Commission’s Secretary, Marlene H. Dortch, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. Hand-delivered or messenger-delivered copies must be sent to: Federal Communications Commission, Office of the Secretary c/o Natek, Inc., 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail) must be sent to: Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. In addition, one copy of each pleading should be filed with David Brown, Media Bureau, 445 12th Street, S.W., Room 2-C828, Washington, DC 20554.

⁵ Letter from Mace J. Rosenstein, Esq., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated June 25, 2007.

⁶ PEP Request for Clarification, at 1-2.

⁷ *Id.* at 2.

⁸ A copy of the PEP Request for Clarification is attached as Exhibit A.

⁹ Letter from Mace J. Rosenstein, Esq., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated October 22, 2007.

¹⁰ Lee Request for Clarification, at i. A copy of the Lee Request for Clarification is attached as Exhibit B.

EXHIBIT A

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

In the Matter of)	
)	
Shareholders of Univision Communications Inc.)	
(Transferor))	
)	BTCCT-20060718AGO <i>et al.</i>
and)	
)	
Broadcasting Media Partners Inc.)	
(Transferee))	
To:		The Commission

REQUEST FOR CLARIFICATION

Providence Equity Partners Inc. (“PEP”), as a minority attributable owner of Broadcasting Media Partners Inc. (“BMPI”), the controlling parent of Univision Communications Inc. (“Univision”), hereby requests clarification of paragraph 47 of the Commission’s decision granting consent to the transfer of control of the licensee subsidiaries of Univision to BMPI.¹ to reflect that PEP would, in the terms of the Univision condition, have “come into compliance with the newspaper/broadcast cross-ownership rule” by divesting its minority but “attributable” interest in Freedom Communications Holdings, Inc. (“Freedom”) through the conversion of that interest into a non-voting interest that is classified as “nonattributable” under Section 73.3555 of the rules and the Notes thereto (the “Rules”).

At the time of the *Univision Decision*, certain principals of PEP, through commonly-controlled investment funds, held a limited noncontrolling but attributable interest in Freedom, a closely-held, family-controlled entity that is the parent of television station licensees and the publisher of English-language daily newspapers. Because BMPI, indirectly through Univision, has attributable interests

¹ *Shareholders of Univision Communications Inc.*, 22 FCC Rcd 5842, 5860 ¶ 47(1) (rel. Mar. 27, 2007) (“*Univision Decision*”). Paragraph 47(1) provides, *inter alia*, that: “The post-merger Univision shall come into compliance with the newspaper/broadcast cross-ownership rule in the affected markets within 6 months of consummation by Providence Equity Partners, Inc. either divesting its interest in Freedom Communications Holdings, Inc. or the post-merger Univision divesting those broadcast station licenses implicating the newspaper/broadcast cross-ownership rule in the Los Angeles, Phoenix, Fresno-Visalia, Harlingen-Weslaco-Brownsville-McAllen and Odessa-Midland markets.”

which, if held in common with an attributable interest in Freedom, would result in nonconforming combinations under the newspaper/broadcast cross-ownership rule in certain of the Univision markets, the *Univision Decision* granted a temporary waiver of the rule, concluding that the public interest would be served by providing a period of time following consummation of the Univision transaction for PEP to achieve compliance with the rule. *Id.* at 5848.

The FCC's rules, policies and past precedent would not have required BMPI to seek such a waiver had PEP's interest in Freedom been "nonattributable" under the Rules. In fact, PEP's holding of a nonattributable interest in Freedom would not even have been reportable.² Accordingly, consistent with the FCC's rules and past precedent, PEP proposes to make its interest in Freedom nonattributable.³ Specifically, PEP intends to eliminate its minority attributable interest by (i) the exchange of its voting shares in Freedom for non-voting shares; (ii) the relinquishment of its right to designate any member of the board of directors of Freedom; and (iii) the resignation of any board member of Freedom who formerly had been designated by PEP. Once these steps are fully implemented, PEP will no longer hold any interest in Freedom that is attributable under the Rules, and, thus, it will have achieved full and complete compliance with the newspaper/broadcast cross-ownership rule.

PEP respectfully requests that the Commission rule that these steps will suffice to resolve the Univision condition because PEP would have "divested" any interest in Freedom which would implicate the newspaper/broadcast cross-ownership rule. By doing so, PEP would have obviated the basis for BMPI's initial request for temporary newspaper/broadcast cross-ownership waiver. Most

² See, e.g., FCC Form 323, "Ownership Report for Commercial Broadcast Stations," Section II, Question 9(b).

³ As the Commission is aware, PEP had initially intended to comply with the paragraph 47 requirement by way of the redemption of its attributable interest in Freedom by the company. Despite their diligent and continuing efforts, PEP and Freedom, due to extraordinarily volatile conditions in the credit market and the newspaper industry in general, have not yet been able to obtain the financing necessary to conclude the transaction. The parties, however, continue their efforts to obtain the financing and have now signed commitment papers for such financing. The Commission previously has noted that, as a closely-held and family-controlled entity, Freedom does not have a public market for its shares; as a result, any redemption of PEP's interest must be undertaken by way of a recapitalization of the company utilizing the capital markets for debt financing. See pending October 31, 2007 Motion for Extension of Time to comply with Univision condition.

fundamentally, PEP would, in the terms of the Univision condition, have “come into compliance with the newspaper/broadcast cross-ownership rule.”⁴

For the foregoing reasons, PEP respectfully requests a ruling that the conversion of its minority interest in Freedom to one that is nonattributable under the Rules will resolve the condition set out at paragraph 47(1) of the *Univision Decision*.

Respectfully submitted,

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Its Attorneys

November 8, 2007

⁴ PEP, therefore, would not have to take the further step, under the Univision condition, of divesting the Freedom shares that would have become nonattributable interests under the Rules.

EXHIBIT B

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

In the Matter of)
)
 Shareholders of Univision Communications) BTCCT-20060718AGO *et al.*
 Inc.)
 (Transferor))
)
 and)
)
 Broadcasting Media Partners, Inc.)
 (Transferee))
)
 For Transfer of Control of Univision)
 Communications, Inc., and Certain Subsidiaries,)
 Licensees of KUVU-TV, Green Valley, Arizona *et*)
 al.)

To: The Commission

REQUEST FOR CLARIFICATION

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THOMAS H. LEE PARTNERS, L.P.

November 16, 2007

SUMMARY

Thomas H. Lee Partners, L.P. (“THL”), by its attorneys, hereby requests clarification that the conversion of its interest in Broadcast Media Partners Inc. (“BMPI”) to non-attributable form fully satisfies (or renders moot) the condition in paragraph 47 (the “*Univision Condition*”) of the Commission’s decision consenting to the transfer of Univision Communications, Inc.

(“Univision”).¹ The *Univision Condition* directed Univision to “come into compliance with the radio-television cross-ownership rules in the affected markets within 6 months of consummation by Thomas H. Lee Partners, L. P. either divesting its interest in Cumulus Media LLC, or the post-merger Univision divesting those broadcast station licenses in the . . . markets that exceed the numerical ownership limits of the radio/television cross-ownership or radio ownership rules.”²

By relinquishing its attributable interest in BMPI, THL eliminated the factual predicate on which the *Univision Condition* was based and thereby fully resolved the concerns identified by the Commission in the *Univision Order*. The Commission imposed the *Univision Condition* because THL held attributable broadcast interests in both BMPI and Cumulus Media Partners, LLC (“CMP”) and the combination of those interests in certain markets exceeded the ownership limits set forth in the Commission’s rules. If THL had not held an attributable interest in BMPI in the first place, the Commission would have had no reason to impose the *Univision Condition* and the transaction could have proceeded unconditionally in full compliance with the Commission’s rules.

By divesting its attributable interest in BMPI, THL achieved compliance with the Commission’s radio/television and local radio ownership rules and fully satisfied the underlying purpose for the *Univision Condition*. Now that THL no longer holds an attributable interest in

¹ Shareholders of Univision Communications, Inc., *Memorandum, Opinion & Order*, 22 FCC Rcd 5842, ¶ 47 (2007) (the “*Univision Order*”).

² *Id.* at ¶ 47.

BMPI, there is no regulatory reason for the Commission to require THL or post-merger Univision to take any further steps.

The Commission should not ignore the context of the *Univision Condition* so as to render it inconsistent with standard Commission practice in dozens of other similar transactions. When the Commission has approved broadcast transactions subject to a condition requiring the divestiture of certain stations, the Commission has provided the divesting party with flexibility to achieve compliance in whatever manner it sees fit. The Commission should not interpret the *Univision Condition* to exclude for THL alternatives the Commission has afforded other similarly situated parties.

SUMMARY i

BACKGROUND 1

I. THE CONVERSION OF THL'S INTEREST IN BMPI TO NON-ATTRIBUTABLE FORM REMOVED THE PREDICATE ON WHICH THE UNIVISION CONDITION WAS BASED. 4

II. THE CONVERSION OF THL'S INTEREST IN BMPI TO NON-ATTRIBUTABLE FORM FULFILLED THE OBJECTIVES OF THE UNIVISION CONDITION. 6

III. REQUIRING ADDITIONAL DIVESTITURES BY THL PURSUANT TO THE UNIVISION CONDITION WOULD SERVE NO REGULATORY PURPOSE. 7

IV. FUNDAMENTAL FAIRNESS REQUIRES THE COMMISSION TO APPLY ITS RULES AND POLICIES EQUALLY TO ALL SIMILARLY-SITUATED LICENSEES. 8

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

In the Matter of)	
)	
Shareholders of Univision Communications Inc.)	BTCCT-20060718AGO <i>et al.</i>
(Transferor))	
)	
and)	
)	
Broadcasting Media Partners, Inc.)	
(Transferee))	
)	
For Transfer of Control of Univision)	
Communications, Inc., and Certain Subsidiaries,)	
Licensees of KUVB-TV, Green Valley, Arizona <i>et</i>)	
<i>al.</i>)	
To:		The Commission

REQUEST FOR CLARIFICATION

Thomas H. Lee Partners, L.P. (“THL”), by its attorneys, hereby requests partial clarification of paragraph 47 of the Commission’s decision granting consent to the transfer of control of the licensee subsidiaries of Univision Communications, Inc. (“Univision”) to Broadcasting Media Partners Inc. (“BMPI”) to confirm that the conversion of THL’s interest in BMPI to non-attributable form in accordance with the Commission’s rules satisfies condition (2) of that paragraph as it applies to THL.¹

Background

As reported in the above-referenced applications for transfer of control of Univision, THL held an attributable voting stock interest of 23.314% in BMPI, the proposed transferee of Univision. THL further reported that certain of its affiliates also hold a minority attributable interest in Cumulus Media Partners, LLC (CMP”), which owns and controls radio stations in certain markets in which Univision also operates.

On March 27, 2007, the Commission issued its *Univision Order* granting consent to the proposed transfer of control of Univision to BMPI. In view of THL’s attributable interests in CMP and Univision, the *Univision Order* granted a six-month waiver for THL and imposed a condition (the “*Univision*

¹ Shareholders of Univision Communications, Inc., *Memorandum, Opinion & Order*, 22 FCC Rcd 5842, ¶ 47 (2007) (the “*Univision Order*”).

Condition”) requiring THL and post-merger Univision to come into compliance with the applicable ownership rules within that time.²

THL is one of four limited liability company members of CMP – the other three members are Bain Capital (“Bain”), Cumulus Media, Inc., and Blackstone Capital (or their affiliates) – each of which holds a 25% minority attributable interest in CMP. The contractual arrangements among CMP members prevent any CMP member from selling or disposing of its membership interest, or even placing such interest in a trust, without the consent of the other CMP members. As of the end of the six-month waiver period specified in the *Univision Order*, THL had not concluded negotiations with the other members of CMP to address THL’s attributable interest in CMP. THL therefore sought and obtained from the Commission a thirty-day extension of the waiver period.

Because THL had not been able to render its CMP interest non-attributable and because THL, as a minority shareholder then holding a voting interest in BMPI of approximately 16%, could not cause BMPI to take any action (such as sell Univision stations), THL divested its attributable interest in BMPI to come into compliance with the media ownership rules. Accordingly, on October 22, 2007, BMPI notified the Commission that, by virtue of a conversion of voting stock to non-voting stock, THL and its

² The *Univision Condition* provided:

... (2). The post-merger Univision shall come into compliance with the radio/television cross-ownership and radio ownership rules in the affected markets within 6 months of consummation by Thomas H. Lee Partners, L.P. either divesting its interest in Cumulus Media LLC, or the post-merger Univision divesting those broadcast station licenses in the Dallas, San Francisco, and Houston-Galveston markets that exceed the numerical ownership limits of the radio/television cross-ownership and radio ownership rules. To ensure that the post-merger Univision no longer owns or controls properties in excess of the numerical ownership limit of the radio/television cross-ownership or radio ownership rules in the above markets following expiration of the 6-month period, the parties must ensure either that: (A) within 60 days of release of this order, THLP files evidence of a binding commitment to transfer its stock interest in Cumulus to a divestiture trust within 6 months of consummation, including a copy of the trust agreement, if full compliance with the radio/television cross-ownership rule or the radio ownership rule has not been achieved within 6 months of consummation; or (B) Univision files applications seeking to assign those broadcast licenses exceeding the numerical ownership limits of the radio/television cross-ownership rule and the radio ownership rule to a divestiture trust, along with a copy of the trust agreement, within 60 days of release of this order, which the Commission shall grant, if the applicants are so qualified, and full compliance with the radio/television cross-ownership rule or the radio ownership rule has not been achieved within 6 months of consummation

Univision Order at ¶ 47.

affiliates no longer held any attributable interest in BMPI or Univision.³ In connection with that conversion, THL also relinquished its right to designate members of the boards of directors of BMPI or of any of its subsidiaries, including Univision; and members of the BMPI and Univision boards formerly designated by THL resigned. As a consequence, THL no longer has any attributable interest in BMPI, Univision, or any Univision subsidiary. The Commission has long recognized that non-voting stock represents a non-attributable interest in broadcast properties: “we will continue to consider non-voting stock interests to be non-cognizable for purposes of the multiple ownership rules.”⁴

THL submits that, by converting its interest in BMPI to non-attributable form, THL removed the predicate for the *Univision Condition* and fully satisfied the objective of the *Univision Condition*, which is compliance with the Commission’s radio and television ownership rules. THL hereby requests confirmation that this understanding is correct or, in the alternative, an appropriate modification of the condition.

I. The Conversion of THL’s Interest in BMPI to Non-Attributable Form Removed the Predicate on Which the *Univision Condition* Was Based.

The Commission imposed the *Univision Condition* because THL held attributable broadcast interests in both BMPI and CMP and the combination of those interests in certain markets exceeded the ownership limits set forth in the Commission’s rules. If THL had not held an attributable interest in BMPI in the first place, the Commission would have had no reason to impose the *Univision Condition*, and the transaction could have proceeded unconditionally in full compliance with the Commission’s rules. By relinquishing its attributable interest in BMPI, THL eliminated the factual predicate on which the *Univision Condition* was based and thereby fully resolved the concerns identified by the Commission in the *Univision Order*.

The absence of a specific statement in the *Univision Order* that THL could resolve the *Univision Condition* by relinquishing its attributable interest in BMPI is neither surprising nor relevant. The

³ A copy of the BMPI letter to the Commission is attached hereto.

⁴ Corporate Ownership Reporting and Disclosure by Broadcast Licensees, *Report and Order*, 97 FCC 2d 997, ¶ 45 (1984) (“1984 Attribution”), *on reconsideration*, *Memorandum, Opinion & Order*, 58 R.R. 2d 604 (1985) (“Attribution Reconsideration”), *affirmed on further recon.*, 1 FCC Rcd 802 (1986).

Univision Condition set forth the terms and conditions ***under which THL could acquire and hold an attributable interest in BMPI***, which was the issue presented to the Commission in the application that was before it. Thus, in disposing of the Univision applications, the Commission necessarily assumed that THL would continue to hold an attributable voting stock interest in BMPI, and it therefore designated the terms and conditions under which THL could do so. Now, however, by making its BMPI investment entirely non-attributable, THL no longer holds an attributable voting stock interest in BMPI, no longer holds any right to appoint directors to the boards of BMPI or any of its subsidiaries, and no longer has any THL-appointed directors serving on any of those boards. Thus, the underlying facts have entirely changed, the rationale for imposing the *Univision Condition* in the first place no longer exists, and the policy objectives the *Univision Order* sought to accomplish have been fully achieved.

This is the very essence of the Commission's attribution rules. As the Commission has noted:

By the attribution rules the Commission evaluates whether or not a specific ownership or positional interest conveys a degree of influence or control to its holder sufficient to warrant limitation by the media multiple ownership rules. The attribution rules in essence constitute the means by which the media multiple ownership rules are implemented.⁵

For the Commission, non-attributable equals non-ownership when it comes to applying the Commission's radio and television ownership rules. As the Commission clearly stated:

[T]he attribution rules constitute the mechanism by which the multiple ownership rules are given practical effect. That is, they define what constitutes a cognizable interest for the purpose of applying the multiple ownership rules to specific situations. In that role, they represent the Commission's judgment regarding what ownership interest in or relation to a licensee will confer on its holder that degree of influence or control over the licensee and its facilities as should subject it to limitation by the multiple ownership rules.⁶

II. The Conversion of THL's Interest in BMPI to Non-Attributable Form Fulfilled the Objectives of the *Univision Condition*.

The Univision transfer necessitated a waiver of the Commission's ownership rules because "THL[]'s common attributable interests in [CMP] and BMPI will result in combinations violating the numerical ownership limits of both the radio/television cross-ownership rule and the local radio

⁵ *Attribution Reconsideration* at ¶ 2.

⁶ *1984 Attribution* at ¶ 2 (internal quotations and citations omitted).

ownership rule in the Dallas, Texas, San Francisco, California, and Houston-Galveston, Texas markets.”⁷

By granting a limited waiver to allow THL to come into compliance with its rules, the Commission achieved a balance between the policy underlying the ownership rules and the policy to “promote commerce, encourage investment in the broadcast industry, and allow for the free transferability of broadcast licenses.”⁸ The *Univision Condition* directed Univision to “come into compliance with the radio-television cross-ownership rules in the affected markets within 6 months of consummation by Thomas H. Lee Partners, L. P. either divesting its interest in Cumulus Media LLC, or the post-merger Univision divesting those broadcast station licenses in the . . . markets that exceed the numerical ownership limits of the radio/television cross-ownership or radio ownership rules.”⁹

The *Univision Order* identifies no policy basis for the *Univision Condition* other than to encourage THL and post-merger Univision to bring THL’s common attributable interests in CMP and BMPI into compliance with the rules at the earliest possible time. Similarly, although the *Univision Condition* described a divestiture trust as one means of ensuring that THL and Univision would come into compliance promptly, the *Univision Order* does not suggest any policy basis for interpreting the term “divestiture,” as used in the *Univision Condition*, as having any objective other than compliance with the Commission’s rules through the divestiture of attributable interests. Indeed, under the terms of the *Univision Condition*, the statements relating to placing THL’s CMP interest in a divestiture trust applied only “if full compliance with the radio/television cross-ownership rule or the radio ownership rule has not been achieved within six months of consummation”¹⁰ THL achieved full compliance with the Commission’s radio/television and local radio ownership rules when it divested its attributable interest in BMPI by transforming that interest into a non-attributable investment.

III. Requiring Additional Divestitures by THL Pursuant to the *Univision Condition* Would Serve No Regulatory Purpose.

⁷ *Univision Order* at ¶ 14.

⁸ *Id.*

⁹ *Id.* at ¶ 47.

¹⁰ *Id.*

Now that THL no longer holds an attributable interest in BMPI, there is no regulatory reason for the Commission to require THL or post-merger Univision to take any further steps. THL's conversion of its BMPI interest to non-voting stock, and the resignation of its appointees to the BMPI board, fully satisfies the *Univision Condition* by eliminating THL's attributable interest in BMPI and thereby removing the underlying purpose for which the condition was imposed.¹¹ The Commission imposed the *Univision Condition* to specify the terms on which THL could continue to hold its attributable interest in BMPI. THL concluded it would be unable (within the time specified by the Commission) to satisfy the conditions for holding an attributable interest in BMPI; and, rather than seek a further extension, THL relinquished its attributable interest in BMPI and came into compliance with the ownership rules as required by the *Univision Order*.

THL's relinquishment of its attributable interest in BMPI plainly obviated the need for any condition concerning the holding of an attributable interest in BMPI. THL currently has no attributable interest in BMPI. The *Univision Condition* has served its purpose by bringing THL into compliance with the media ownership rules within the permitted waiver period. Commission policy is to assess ownership attribution under codified "bright-line" rules rather than through *ad hoc* determinations.¹² There is no reason for the Commission to depart from the long-established and well supported application of its attribution rules to require THL to take any further actions pursuant to the *Univision Condition*. Moreover, any further enforcement of the *Univision Condition* now that it has been rendered moot would produce irrational results that cannot be reconciled with any objective under the Commission's rules, much less with the intended purpose set out in the *Univision Order*. The Commission does not prohibit the purchase, sale, or holding of non-attributable interests and does not even require that parties report

¹¹ See Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp. to AT&T Comcast Corporation, Transferee, *Memorandum Opinion and Order*, 17 FCC Rcd 23246, ¶ 85 (2002) (removing merger conditions because AT&T "divested Cablevision to a non-attributable level" and thus provided appropriate safeguards from public interest harms).

¹² Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, *Report & Order*, 14 FCC Rcd 12559 (1999).

those interests to the Commission. Requiring the sale of fully permissible interests serves no Commission policy or objective.

IV. Fundamental Fairness Requires the Commission to Apply Its Rules and Policies Equally to All Similarly-Situated Licensees.

The Commission should not read the *Univision Condition* so as to ignore its context and render it inconsistent with standard Commission practice in dozens of other similar transactions. As a fundamental notion of administrative law, an agency must treat similarly situated parties in a similar fashion.¹³ This principle applies to every aspect of the Commission’s adjudication, including how the Commission interprets its merger conditions.¹⁴ The *Univision Order* does not indicate that the Commission had any broader purpose for the *Univision Condition* than that of achieving full compliance with its rules. The Commission therefore should not interpret the *Univision Condition* to exclude for THL alternatives that the Commission has afforded other similarly situated parties. When the Commission has approved broadcast transactions subject to a condition requiring the divestiture of certain stations, the Commission has provided the divesting party with flexibility to achieve compliance in whatever manner it sees fit – provided, of course, that the party does, in fact, achieve compliance within the allotted period of time.¹⁵

To avoid disparate treatment of similarly situated parties, the Commission should apply the *Univision Condition* to provide THL with the same flexibility afforded other parties to achieve

¹³ See *Garrett v. FCC*, 513 F.2d 1056 (1975) (federal administrative agencies cannot “treat similar situations in dissimilar ways” (quoting *Herbert Harvey, Inc. v. NLRB*, 424 F.2d 770, 780 (1969))); *Melody Music, Inc. v. FCC*, 345 F.2d 730, 732-733 (1965).

¹⁴ Cf. *Stockholders of Renaissance Communications Corporation, Order*, 13 FCC Rcd 4717, ¶ 4 (1998) (recognizing that it would be “unduly harsh” not to provide Tribune with the same media ownership rule relief as granted to Disney in the Capital Cities merger); see also *Tribune Co. v. FCC*, 133 F.3d 61 (1998) (stating that it was “not unsympathetic to Tribune’s position” that the Commission acted in an arbitrary and capricious manner by treating Tribune differently than it previously treated similarly-situated Disney).

¹⁵ See, e.g., *Shareholders of the Ackerley Group, Inc., Memorandum Opinion and Order*, 17 FCC Rcd 10828, at ¶ 45 (2002) (conditioning the Ackerley-Clear Channel merger on filing “**the applications necessary** to bring it **into compliance** in all five markets” without limiting the methods of achieving compliance) (emphasis added). See also *id.* at n. 51 (“Consistent with our precedent, we will not specify which stations Clear Channel must divest to come into compliance with our rules”); *UTV of San Francisco, Inc., et al., Memorandum Opinion and Order*, 16 FCC Rcd 14975, at ¶ 48 (2001) (conditioning the Fox-Christ-Craft merger on filing “**any application or applications** that may be necessary **at that time**”) (emphasis added).

compliance with its rules. Indeed, when THL converted its interest in Univision to non-attributable form, it thereby achieved full compliance with the media ownership rules vis-à-vis THL's interest in CMP. THL's actions plainly would have been sufficient to comply with similar conditions in dozens of other transactions. It therefore should be sufficient to satisfy the *Univision Condition* or otherwise render it moot.

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In sum, the *Univision Condition* has been fully satisfied by THL's relinquishment of its attributable interest in BMPI, which eliminated the underlying reason for which the condition was imposed. Indeed, the purpose of the *Univision Condition* also has been fully achieved because THL, which no longer has any attributable interest in BMPI, is in full compliance with the media ownership rules in relation to its interest in CMP.

For the foregoing reasons, THL respectfully submits that the *Univision Condition* has been fully satisfied by conversion of its minority interest to non-attributable form and requires no further action by THL.

Respectfully Submitted,

THOMAS H. LEE PARTNERS, L.P.

By: _____
John R. Feore
John S. Logan

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Its Attorneys

November 16, 2007

ATTACHMENT 1

Letter Notifying Commission of Conversion to Non-Attributable Status

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October 22, 2007

BY HAND DELIVERY

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Attn: Barbara A. Kreisman, Chief, Video Division

**Re: Shareholders of Univision Communications Inc.
(BTCCT-20060718AGO, et al.)
Notice Of Compliance With Condition**

Dear Ms. Dortch:

Broadcasting Media Partners Inc. ("BMPI"), on behalf of itself and its indirect subsidiary, Univision Communications Inc. ("Univision"), hereby provides notice that Thomas H. Lee Partners, L.P. ("THL") no longer holds any attributable interest in BMPI, thereby obviating the basis for BMPI's request for a temporary waiver of certain provisions of the Commission's multiple ownership rules, 47 C.F.R. § 73.3555 and Notes thereto (the "Rules"), with respect to THL's indirect interest in Cumulus Media Partners LLC ("CMP") and resolving the condition set out at paragraph 47(2) of the Commission's decision granting consent to the transfer of control of the licensee subsidiaries of Univision to BMPI. *Shareholders of Univision Communications Inc.*, 22 FCC Rcd 5842 (rel. Mar. 27, 2007) ("*Univision Decision*").

The *Univision Decision* noted that THL, through its proposed ownership of a minority voting stock interest in BMPI and its concomitant right to designate members of BMPI's board of directors, would be one of five entities holding an "attributable" interest in BMPI and thereby in Univision. The *Univision Decision* found that certain attributable principals of THL would indirectly have, through commonly controlled investment funds, a noncontrolling but attributable interest in radio stations owned by CMP. *Id.* Because BMPI, indirectly through Univision, has attributable interests which, if held in common with an attributable interest in CMP, would result in nonconforming combinations under the Rules in three markets (San Francisco-Oakland-San Jose; Dallas-Ft. Worth; and Houston), the *Univision Decision* granted a temporary waiver of the Rules with respect to THL's common indirect attributable interests in CMP and Univision, concluding that the public interest would be served in the instant circumstances by providing a period of time for THL to achieve compliance with

COVINGTON & BURLING LLP

Marlene H. Dortch, Esq.
October 22, 2007
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the Rules. *Id.* at 5848-52. A request for a one-month extension of the waiver period, until October 31, 2007, was timely filed.

The *Univision Decision* recognized that neither BMPI nor THL directly holds any media interests that would be attributable under the standards of the Rules and that any media interests of "nonattributable" owners of BMPI would not implicate the Rules. *Id.* at 5845. Effective October 19, 2007, the parties achieved full compliance with the Rules. On that date, THL eliminated its minority attributable interest in Univision by (1) the exchange of its voting shares in BMPI for non-voting shares; (2) the relinquishment of its right to designate any members of the board of directors of BMPI or any of its subsidiaries, including Univision; and (3) the resignation of the three board members of BMPI and its subsidiaries, including Univision, who formerly had been designated by THL. As a result of these actions, the voting interests of the remaining four attributable owners of BMPI increased on a *pro rata* basis. (THL holds a residual nonattributable 3.67% voting preferred stock interest in Broadcast Media Partners Holdings, Inc., a controlled intermediate subsidiary between BMPI and Univision, of which BMPI is the 82.62% single majority voting shareholder.)

Pursuant to Note 2 of Section 73.3555 of the Rules, THL no longer holds any interest in Univision that is attributable under the Rules. Thus, the indirect non-controlling interest of certain THL principals in CMP does not implicate the restrictions of the Rules with respect to Univision; indeed, the media interests of nonattributable investors are not reportable. *See, e.g.*, FCC Form 323, "Ownership Report for Commercial Broadcast Stations," Section II, Question 9(b). Accordingly, the condition set out at paragraph 47(2) of the *Univision Decision* with respect to THL has been resolved. *Id.* at 5860, ¶ 47(2).

Please contact the undersigned if you have any questions about this submission.

Respectfully submitted,

BROADCASTING MEDIA PARTNERS INC.

By: 
Mace J. Rosenstein
William H. Fitz

Its Attorneys

cc: John S. Logan, Esq.
Counsel for Thomas H. Lee Partners, L.P.