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INTER-AMERICAN COURT OF HUMAN RIGHTS

Marcel Granier and others,

vs.

The Bolivarian Republic of Venezuela.

Case 12.828

BRIEF OF THE NEW YORK CITY BAR ASSOCIATION AND THE COMMITTEE TO PROTECT JOURNALISTS, AS *AMICI CURIAE*, IN SUPPORT OF PETITIONERS MARCEL GRANIER AND OTHERS

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Pursuant to article 44 of the Rules of Procedure of the Inter-American Court of Human Rights, the New York City Bar Association (the "Association") and the Committee to Protect Journalists ("CPJ"), as *amici curiae*, submit this brief to urge the Court to grant the application of the Inter-American Commission on Human Rights (the "Commission"), and find the Bolivarian Republic of Venezuela ("Venezuela") responsible for violating Article 13 of the American Convention on Human Rights (the "American Convention").[1]

[1] For full list of petitioners, *see* Granier v. Bolivarian Republic of Venezuela, Brief of the Inter-American Commission on Human Rights, Inter-Am. Ct. H.R. No. 12.282, ¶ 1 (Feb. 17, 2010).

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PRELIMINARY STATEMENT

The *amici curiae* urge the Court to hold that Venezuela's May 2007 refusal to renew the broadcast license of Radio Caracas Televisión ("RCTV") was an improper act of retaliation against RCTV's editorial stance, and thus a violation of settled inter-American principles of freedom of speech and the rule of law.[2] As the Commission noted in its report, undisputed statements by high-ranking Venezuelan government officials make clear that the administration of the late President Hugo Chávez was not prepared to tolerate the views aired by RCTV.[3] The denial of RCTV's license is thus a textbook example of retaliatory content-based censorship, which has long been recognized as a particularly pernicious form of restriction on speech.

Venezuela's argument that its actions were motivated by a desire to promote media pluralism lacks merit.[4] Media pluralism is quite clearly reduced, not promoted, when a government undertakes the actions Venezuela has in this case, shutting down an independent station and putting in its place a channel owned and controlled by that same government. True pluralism is achieved by increasing the diversity of views and

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[2] Article 13 of the American Convention provides that "[e]veryone has the right to freedom of thought and expression," which "may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies [. . .] or by any other means tending to impede the communication and circulation of ideas and opinions." American Convention on Human Rights, art. 13 (emphasis added), O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978.

[3] *Granier v. Bolivarian Republic of Venezuela*, Commission's Report No. 112/12, Inter-Am. Ct. H.R. No. 12.282, ¶ 151, Nov. 9, 2012 (the "Report") (holding that "the State's decision not to renew RCTV's concession was taken with regard to [its] editorial slant").

[4] Report, *supra* note 3, ¶ 137 (noting that Venezuela has argued the need to "allow for the democratization of the use of broadcast media and the plurality of messages and content"); ¶ 149.

opinions in circulation, not limiting them. Venezuela's argument in this respect is inconsistent with (*i*) a genuine effort to encourage diversity and pluralism; (*ii*) the holdings of this and other human rights courts regarding the freedom of speech; and (*iii*) the practice of other democratic nations such as Spain, Mexico, Colombia, Germany, the United Kingdom and the United States. These countries are also bound to protect, and refrain from interfering with, the freedom of speech and – unlike Venezuela – have implemented robust regulatory systems for issuing, monitoring, and renewing broadcast licenses in a neutral fashion that avoids punishing stations for their editorial stances.

This Court should reinforce the rule of law and conclude that Venezuela violated the right enshrined in Article 13 of the American Convention, to the detriment of Petitioners, when it reacted to RCTV's adversarial editorial stance by refusing to renew RCTV's broadcast license.[5]

[5] Pursuant to Article 78(2) of the American Convention, Venezuela's September 2012 denunciation of the American Convention does not release Venezuela from its obligations under that treaty for acts taken before the denuntiation's effective date. American Convention, *supra* note 2.

STATEMENT OF INTEREST

The *amici* recognize the efforts made in the Americas to create a legal regime that (*i*) enforces the rule of law; and (*ii*) more effectively protects freedom of speech. These two values are inextricably linked. Freedom of speech is widely recognized as a fundamental human right, and it also is widely recognized that free speech cannot flourish without the rule of law. Government oversight of matters like broadcast licenses must be carried out faithfully, neutrally, and without regard to whether a press organization is supportive of the government. If such matters instead are handled arbitrarily and on the basis of a press organization's editorial stance, then the rule of law is diminished and free speech with it. In this brief, the *amici* hope to assist the Court by describing these issues from an international perspective, including the efforts of a number of democratic nations to protect and promote freedom of speech by ensuring that the media give voice to a wide range of opinions and lines of thought.

The New York City Bar Association

The Association, founded in 1870, is a leading international bar association that has long been committed to promoting both the rule of law and independent, effective judiciaries all over the world, thereby more strongly protecting human rights. It is a purely voluntary, independent, and nonpartisan organization that exists solely to serve the public interest.

The Association was founded by lawyers who gathered to protect the independence of the judiciary and the integrity of the legal profession in New York at a time when powerful forces were trying to turn judges and lawyers into extensions of the political apparatus. Its members today include over 24,000 members of the legal profession from more than 50 countries.

Reports and legal analyses of the Association have consistently enjoyed a high level of credibility with policymakers because of the independent and non-partisan nature of the organization. In pursuing its mission, the Association historically has sought to persuade governments around the world to adopt changes favoring the rule of law. For example, the Association delegations have visited Northern Ireland, Turkey, and South Africa to promote legal change and greater respect for the rule of law. Notably, the Association has opposed the actions of the United States government in depriving detainees at Guantánamo Bay of the right to judicial protection via *habeas corpus* review. The Association also has declared its support for the reinstatement of the rule of law in Pakistan and backed fair trials for members of the political opposition in Uganda.[6]

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[6] *See, e.g.*, Bar Association, Task Force on National Security and the Rule of Law, http://www.nycbar.org/NationalSecurity_Rule_Law.htm (providing reports of Bar Association's efforts in the area of security and the rule of law); Bar Association, Letter to Sen. Leahy et al. re: Restoration of Habeas Corpus and Judicial Enforcement of the Geneva Conventions (Mar. 6, 2007), *available at* http://www.nycbar.org/pdf/report/Restoration_Habeas_Corpus.pdf; Bar Association, Letter to President Musharraf of Pakistan (January 2008), *available at* http://www.nycbar.org/pdf/report/0446_001.pdf (urging that the rule of law be restored); Bar Association, Letter to the President of Uganda, *available at* http://www.nycbar.org/pdf/report/Uganda_Dec8.pdf (expressing grave concern over the arrest and detention of political opposition leader Dr. Kizza Besigye).

The Committee to Protect Journalists (CPJ)

Founded in 1981, CPJ is a nonprofit organization that has been recognized worldwide as both an advocate and an expert on issues of press freedom.[7] CPJ promotes press freedom worldwide by defending the right of journalists to report the news without fear of reprisal.

In performing its mission of defending journalists, CPJ collects information about individual cases where press freedom is threatened. CPJ issues statements of protest and engages government officials on behalf of journalists who are threatened with criminal or civil sanctions, under actual attack, or in jail because of their work.[8] CPJ publishes an annual report entitled *Attacks on the Press* that details threats to press freedom worldwide. CPJ also maintains a website where it publishes stories of violations of freedom of the press.[9] CPJ bestows the annual International Press Freedom Award on heroic journalists who have fought for freedom of expression against oppressive governments and other threats.

Since its founding, CPJ has monitored violations of press freedom throughout the world, worked with journalists and legal scholars, and advocated to governments

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7 *See*, Sherry Ricchiardi, *Journalism's Red Cross*, AM. JOURNALISM REV. (Dec. 1997), www.ajr.org/Article.asp?id=1510 ("What the International Red Cross is to victims of famine and floods, the Committee to Protect Journalists has become to hundreds of reporters and editors operating under siege in the deadliest spots for the media around the globe.").

8 *See, e.g.*, Joel Simon, Executive Director, Committee to Protect Journalists, Letter to President Lukashenko of Belarus (Mar. 6, 2008), https://cpj.org/protests/08ltrs/europe/belarus06mar08pl.html (attempting to "draw to [the President's] attention [his] government's selective use of politically motivated civil libel lawsuits against critics").

throughout the Americas to reform repressive laws and practices directed at the gathering and reporting of news – including in the United States. For instance, in October 2013, CPJ issued a special report titled "The Obama Administration and the Press" concerning leak investigations, surveillance, and related issues, noting that CPJ is "disturbed by the pattern of actions by the Obama administration that have chilled the flow of information on issues of great public interest, including matters of national security" and recommending, among other things, that the United States "end the practice of bringing espionage charges against people who leak classified information to journalists, which could create a severe chilling effect and thwart the free flow of information on matters of public interest."[10]

CPJ has also submitted numerous *amicus* briefs to national courts and international human rights organizations addressing violations of freedom of expression. For example, in March 2001, CPJ submitted an *amicus* brief in the case of *Matus Acuña v. Chile* before the Commission. In February 2004, CPJ and several news organizations submitted a brief in the *Herrera Ulloa v. Costa Rica* case before this Court; and in

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9 Committee to Protect Journalists, *Defending Journalists Worldwide*, www.cpj.org (last visited Jan. 6, 2014).

10 Committee to Protect Journalists, *Special Report: The Obama Administration and the Press* (Oct. 10, 2013), *available at* http://cpj.org/reports/2013/10/obama-and-the-press-us-leaks-surveillance-post-911.php; *see also* Committee to Protect Journalists, *Special Report: CPJ's Recommendations on the Obama Administration* (Oct. 10, 2013), *available at* http://cpj.org/reports/2013/10/obama-and-the-press-us-leaks-surveillance-post-911-recommendations.php.

November 2009, it joined other *amici* in submitting written comments to the European Court of Human Rights in the case of *Sanoma Uitgevers B.V. v. the Netherlands*.[11]

STATEMENT OF FACTS

In its Report, the Commission provided a detailed description of established facts. The *amici* have relied on those facts for the purposes of this brief. A brief summary of certain key events, however, is relevant to the argument below.

From 1953 until May 27, 2007, RCTV operated as a privately-owned television station with nationwide coverage under a "concession to operate as a free-to-air television station."[12] As noted by the Report, RCTV broadcasted a variety of content, including programs whose editorial stance was "critical of the government of President Chávez."[13]

On June 12, 2000, Venezuela enacted a new regulatory framework that provided for the transformation of concessions granted under previous legislation into a new form of concession.[14] Under Article 210 of the new Organic Law on Telecommunications ("LOTEL"), the National Telecommunications Commission (CONATEL) was to set up special schedules to transform the concessions granted under the previous legislation into the administrative authorizations, concessions, notification obligations, or registrations

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11 *Amicus* brief are *available* at http://cpj.org/news/2001/Chile_matus.pdf; https://cpj.org/2004/02/cpj-submits-brief-to-interamerican-court-of-human.php; and http://www.article19.org/data/files/pdfs/letters/sanoma-uitgevers-b.v.-v-the-netherlands.pdf

12 Report, *supra* note 3, ¶ 67, 72.

13 *Id.* ¶ 67.

14 *Id.* ¶ 73.

established in the new law.[15] On the basis of this new regulation, on June 5, 2002, RCTV applied to have its concession transformed to conform to the new legal regime under LOTEL.[16]

In 2002 and 2003, Venezuela's political climate became progressively more agitated. Nationwide protests and strikes in April 2002 led to a military *coup d'état* whereby President Hugo Chavez was temporarily deposed.[17] Later that year, and also in 2003, several opposition parties, organizations, and unions organized a general oil strike that was ultimately defeated by the Venezuelan government.[18]

Venezuelan government officials accused RCTV – and the private media generally – of encouraging those events. As the Commission established, RCTV was "singled out by high government officials as one of the private television stations that played an active political role in national upheavals in Venezuela, such as the *coup d'état* and the work stoppage in April and December 2002, respectively."[19] Venezuela "alleges that on April 11 to 13 [2002,] RCTV was involved in an attack on the constitutional and legal order, [and] on the collective right of users to receive timely, objective and true

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15 *Id.*

16 *Id.* ¶ 74.

17 *Venezuela General Strike Extended*, BBC NEWS, Apr. 9, 2002, *available at* http://news.bbc.co.uk/2/hi/americas/1918189.stm; *see also, Venezuela en la Encrucijada*, El Mundo, *available at* http://www.elmundo.es/especiales/2002/04/internacional/venezuela/golpista.html

18 *Venezuela Opposition Plans General Strike*, N.Y. TIMES, Nov. 30, 2002, *available at* http://www.nytimes.com/2002/11/30/international/americas/30VENE.html; *see also Venezuela's oil strike may be over, but industry faces high hurdles*, The CHRISTIAN SCIENCE MONITOR (February 19, 2003), *available at* http://www.csmonitor.com/2003/0219/p07s01-woam.html.

information."[20] Specifically, Venezuela argued that "after a three-day bombardment of constant news broadcasts, RCTV changed its programming" to "cartoons and movies."[21] It also argued that RCTV banned distribution of the news of the detention of President Chávez.[22]

The Commission also noted a number of undisputed statements made by senior Venezuelan government officials against the news media – and against RCTV directly – between 2002 and 2006, stemming from the aforementioned events. For example, President Chávez stated:

> There'll be no new concession for that *coup*-supporting television channel that calls itself *Radio Caracas Televisión* . . . the order is already drafted. So go ahead . . . start shutting down the equipment. No media outlet that supports government overthrow, that is against the people, against the Nation, against national independence, against the dignity of the Republic will be tolerated here.[23]

On January 12, 2003, President Chávez announced:

> In this case it is *fascist subversion egged on by the media*, by those gentlemen whom I have mentioned and others whom I will not. *So I am letting Venezuela know. I have ordered a review of all the legal procedures by which these gentlemen obtained concessions.* We are reviewing them and *if they do not resume their normal use, if they continue to use the concessions to try to disrupt the country, or*

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19 Report, *supra* note 3, ¶ 68.

20 *Id.* ¶ 39.

21 *Id.* ¶ 75.

22 *Id.* ¶ 44.

23 *Id.* ¶ 80(a) (emphasis in original).

> *overthrow the government, then I would be compelled to revoke their concessions* to operate television networks.[24]

In a public speech on June 14, 2006, President Chávez said:

> We cannot be so irresponsible as to continue to grant concessions to a handful of people who, availing themselves of the spectrum that is the property of the State – and by that I mean the people – then operate those stations *and use them against us, functioning like a fifth column, under our very noses*. I couldn't care less what the oligarchs of the world say! . . . We have to act and have to enforce the Constitution . . . to protect our people, to protect national unity, because that is what we are called to do every day. *Messages that incite hatred, disrespect for our institutions, doubts about each other, rumors, psychological warfare waged to divide the Nation, to weaken and destroy [the Nation] . . . This is an imperialist plan.* These are Trojan horses right under our very noses.[25]

Against this backdrop, in December 2006 Venezuelan government officials announced that RCTV's concession would not be renewed.[26] William Lara, then Minister of Communications, stated that RCTV had violated the law by scheduling adult programming in the viewing time reserved for children's programming.[27] RCTV was accused of favoring "political actors" and that by "manufactur[ing] its messages," RCTV had "violated freedom of information" and "incited civil war."[28] Notably, although Venezuela maintains that certain actions taken by RCTV in April 2002 "violated laws in force at the time" (including laws imposing fines, and the temporary or definitive

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24 *Id.* ¶ 75(c) (emphasis added).

25 *Id.* ¶ 76 (emphasis added).

26 *Id.* ¶¶ 80(a)-(d).

27 *Id.* ¶ 81

28 *Id.* ¶ 82 (quoting *Libro Blanco sobre RCTV*, March 2007).

suspension of broadcasting), those laws were "not applied," meaning that the non-renewal of RCTV's license was not premised on those alleged infringements.[29]

Venezuela took active steps to convey its side of the story. In March 2007, Venezuela published "The White Book on RCTV" (*Libro Blanco sobre RCTV*). That publication claims that the non-renewal of RCTV's concession was driven by "the demands of Venezuelan civil society in protest of RCTV's egregious breaches of its social responsibility," on the basis that RCTV allegedly had "served as a stand-in for political actors" to create a "*coup d'état*," "attempt[ing] to undermine the balance of powers," and "establish[ing] economic cartels, and engaged in other conduct alien to the social responsibility that the State and society demand of it."[30]

Shortly thereafter, on March 28, 2007, CONATEL issued Communication N° 0424, containing the decision not to renew RCTV's concession.[31] CONATEL's ruling stated that the decision was not a penalty but merely the natural effect of the expiration of RCTV's concession.[32] Communication N° 0424 also noted that the non-renewal of RCTV's license would "allow for the *democratization* of the use of the broadcasting medium and the *plurality of messages and content*" through the creation of a free-to-air public TV channel.[33] Venezuela also reserved RCTV's allotted frequency for itself to

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29 *Id.* ¶¶ 43, 47.

30 *Id.* ¶ 82 (quoting *El Libro Blanco Sobre RCTV*, March 2007).

31 *Id.* ¶ 85.

32 *Id.*

33 *Id.* ¶ 149 (emphasis added).

"enable democratization of the use of the radioelectric spectrum and make it available to a wide range of messages and content."[34]

RCTV's signal was cut off at midnight on May 28, 2007. Immediately thereafter, state-owned television network TVes began broadcasting on RCTV's frequency.[35]

On November 9, 2012, the Commision found that "the nonrenewal of RCTV's franchise was motivated [. . .] by the Venezuelan Government's disagreement with the station's editorial stance.[36] The Commission recommended that Venezuela (*i*) initiate proceedings to allocate a free-to-air nationwide television frequency in which RCTV is able to participate under conditions of equality; (*ii*) make reparations to the victims; and (*iii*) adopt the measures necessary to guarantee that radio and television frequencies are granted and renewed in accordance with Venezuelan international obligations on freedom of expression.[37] After Venezuela failed to implement the Commission's recommendations, this case was elevated before this honorable Court.

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34 *Id.* ¶ 86.

35 *Id.* ¶ 94.

36 *Id.* ¶ 153.

37 *Id.* ¶ 223.

ARGUMENT

A. The refusal to renew RCTV's license was an act of retaliation

Venezuela plainly violated Article 13 of the American Convention. *First*, the legal standard is straightforward. Freedom of speech "may not be restricted by indirect methods or means, such as the abuse of government or private controls over. . . radio broadcasting frequencies . . . or by any other means tending to impede the communication and circulation of ideas and opinions."[38]

According to the Declaration of Principles on Freedom of Expression ("Principles"), the prohibition of government interference on free speech means that:

> The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, *with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law*. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information *are incompatible with freedom of expression*.[39]

These Principles were drafted "out of recognition of the need for a legal framework" to effectively protect freedom of speech in the hemisphere in a manner that

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[38] American Convention, *supra* note 2, art. 13.

[39] Office of the Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Declaration of Principles on Freedom of Expression, Principle 13 (2000), *available at* http://www.oas.org/en/iachr/expression/showarticle.asp?artID=26&lID=1 (emphasis added).

would "incorporate the principal doctrines set forth in different international instruments."[40] The Principles were also adopted "recognizing that freedom of expression is essential for the consolidation and development of democracy, and convinced that any obstacle to the free discussion of ideas and opinions limits freedom of expression and the effective development of the democratic process."[41] Free speech is thus essential to democracy, particularly when the speech has political content.

In line with this common understanding, this Court has held that the American Convention was specifically drafted to ensure that the permissible restrictions stated in Article 13 are not misused as indirect methods of restricting speech.[42] It is thus clear that a government's retaliation or punishment of a broadcaster on the basis of political opinion is a particularly pernicious and disfavored form of censorship.[43]

This Court already has ruled on this fundamental principle of law, in the case of *Luisana Ríos v. Venezuela*, which is closely related to this case. The Court stated that the Venezuelan government declarations

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[40] Office of the Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Background and Interpretation of the Declaration of Principles, *available at* http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=132&lID=2.

[41] *Id*., A(4) (emphasis added).

[42] *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 of the American Convention on Human Rights), Advisory Opinion OC-5/85, 5 Inter-Am. Ct. H.R. (ser. A) ¶ 47 (1985).

[43] The European Court of Human Rights has held that political speech is protected even when its content is polemic and sarcastic. *See Katrami v. Greece*, App. No. 19331/05, Eur. Ct. H.R. (Dec. 6, 2007); *Sanocki v. Poland*, App. No. 28949/03, Eur. Ct. H.R. (July 17, 2007); *Kim v. Republic of Korea*, U.N. H.R. Comm'n, CCPR/C/64/D/574/I994, 64th Sess., ¶ 12.5 (Jan. 4, 1999). *See also Canese v. Paraguay*, 11 I Inter-Am. Ct. H.R. (ser. C) ¶ 94 (2004) (holding that "there should be a wider margin of tolerance *vis-avis* statements and opinions made in the course of public debate o over matters of public interest.")

> [C]ontain opinions over the alleged acts and participation of RCTV, or of persons connected to it, in events that occurred under circumstance of high political division and social confrontation in Venezuela, which is outside of the scope of this case. [. . .] Regardless of the situation or motives behind those declarations, in a State that abides by the rule of law conflictive situations must be addressed using the means set forth in the domestic legal framework and in accordance with applicable international standards.[44]

The Court held that Article 13.3 of the American Convention "specifically protects the communication, broadcast and circulation of ideas and opinions" in such a way that the use of "indirect ways or means to restrict them is prohibited."[45]

Second, the facts of this case are equally clear. Undisputed statements made by senior Venezuelan government officials between 2002 and 2006 indicate that Venezuela decided not to renew RCTV's concession precisely because it was not prepared to tolerate RCTV's editorial position.[46] Indeed, the Commission found in its report that it had been "proven . . . that the nonrenewal of RCTV's franchise was motivated not by the presumptively legitimate reasons officially given by the State but by the Venezuelan Government's disagreement with the station's editorial stance."[47] After analyzing the evidence, the Commission concluded that Venezuela "is internationally responsible for having violated," article 13 of the American Convention.[48] The *amici* concur.

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44 *Luisana Ríos v. Bolivarian Republic of Venezuela, Judgment*, Inter-Am. Ct. H.R. (ser. C) No. 194 (Jan. 28, 2009) (emphasis added), ¶ 341.

45 *Id*. ¶ 340.

46 *See* Statement of Facts; for a more complete description of statements, *see* Report, *supra* note 3, ¶¶ 72-88..

47 *Id.* ¶ 153.

48 *Id*. ¶ 222.

In light of the undisputed statements by top Venezuelan government officials attacking the editorial stance of several media outlets, including RCTV specifically, it is impossible to view Venezuela's refusal to renew RCTV's broadcast license as anything other than a violation of the freedom of speech and press.

B. The Court should not credit Venezuela's media pluralism argument

Venezuela's argument that by refusing to renew RCTV's license it was seeking to ensure a more pluralistic and diverse media should not be credited by the Court because Venezuela's conduct (*i*) is inconsistent with a genuine effort to encourage diversity and pluralism; (*ii*) runs counter to the holdings of this and other human rights courts; and (*iii*) cannot be reconciled with the practices of other democratic nations.

As noted above, Communication N° 0424 of CONATEL contains the official explanation for Venezuela's refusal to renew RCTV's concession.[49] That communication says that Venezuela "decided to set aside the signal used by RCTV to fulfill the constitutional requirement *to guarantee public television services with the purpose of allowing universal access to information* pursuant to the National Telecommunications, Information Technology and Postal Services Plan."[50] Communication N° 0424 also claims that Venezuela needed "a frequency that allows it to have a free-to-air television network with national reach like the one that will be available on the expiration of

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49 Communication N° 0424 of the Minister of the People's Power for Telecommunications and Information Technology (Mar. 29, 2000).

50 Report, *supra* note 3, ¶ 137 (citing Communication No. 0424) (emphasis added).

RCTV's concession" to "allow for the *democratization of the use of broadcast media and the plurality of messages and content*."[51] That argument, however, is unpersuasive.

1. Venezuela's actions are incompatible with a genuine effort to encourage diversity and pluralism

Forcing a television network off the air in order to allow another station to broadcast government viewpoints, already circulated, cannot possibly promote media pluralism. Such a goal is achieved by promoting dissenting opinions, not by expanding the reach of the government's message in the media. It is well established that freedom of speech includes the "freedom to seek, receive, and impart *information and ideas of all kinds* . . . ."[52] Inclusiveness is, therefore, a fundamental component of a pluralistic media, which should "offer a wide range of different views and opinions reflecting the diversity of a country's population."[53]

As the Commission noted, "a comprehensive policy on the subject of freedom of expression must incorporate measures that aim to foment diversity and pluralism in democratic debate" and in this context "media outlets that are *independent of the government* are . . . useful for this purpose."[54] Venezuela certainly did not incorporate measures that aimed to foment diversity and pluralism. To the contrary, Venezuela effectively quashed the opinion of independent media outlet RCTV.

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51 *Id*. (emphasis added).

52 American Convention, *supra* note 2, art. 13 (emphasis added).

53 European Union, Report of the High Level Group on Media Freedom and Pluralism, A Free and Pluralistic Media to Sustain European Democracy 12 (Jan. 2013), *available at* http://ec.europa.eu/digital-agenda/sites/digital-agenda/files/HLG%20Final%20Report.pdf.

54 Report, *supra* note 3, ¶ 150.

As the European Union's High Level Group on Media Freedom and Pluralism noted in its January 2013 report, media pluralism "encompasses all measures that ensure citizens' access *to a variety of information sources and voices*, allowing them to form opinions without the undue influence of one dominant opinion forming power."[55] Had Venezuela taken measures ensuring access to a "variety of information sources and voices," then RCTV's viewpoint would still be available, and freedom of speech in Venezuela would have been protected. When Venezuela refused to renew RCTV's broadcast license because of its opposition editorial stance, Venezuela's media became less diverse, and freedom of speech was violated in breach of Article 13 of the American Convention.

What happened in reality is fundamental to this case, because Venezuela failed to create the pluralistic and successful television network it originally promised. Not long after RCTV was stripped of its television frequency, the ratings of Channel 2 (using RCTV's old open-air frequency) plunged from 28%[56] to about 2%.[57] This dramatic decrease even attracted the attention of President Chávez, who in January 2008 stated in a television show that "almost no one watches" TVes, and noted that "it hurts to admit it,

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55 European Union Report, *supra* note 53, at 13 (citing EU Media Futures Forum, Final Report – September 2012, 'Report for European Commission Vice-President Neelie Kroes') (emphasis added).

56 *Petitioners' Brief containing Motions, Arguments and Evidence* (Aug. 12, 2013), filed before this Inter-American Court of Human Rights in *Marcel Granier and others (Radio Caracas Television) v. Venezuela*, ¶ 13.

57 Compare *Petitioners' Brief, supra* note 56, ¶ 13 (Aug. 12, 2013) with *TVes cumple cinco años persiguiendo a la audiencia*, EL TIEMPO, May 27, 2012, *available at* http://eltiempo.com.ve/venezuela/medios/tves-cumple-cinco-anos-persiguiendo-a-la-audiencia/53764.

but it is true."[58] President Chávez then inquired as to why Venezuela was "underusing" the Channel 2 frequency, which he described as "the best channel from a radioelectric perspective," stating that "the indicators that TVes had a very small number of viewers was a very powerful sign" for the government.[59] In May 27, 2012, *El Tiempo*, a regional Venezuelan newspaper, reported that "out of 100 persons that tuned in to RCTV, only 8 tuned in to see TVes" after May 2007.[60]

The astonishing decline in Channel 2's ratings is consistent with the view that Venezuela had no real intentions of creating a balanced and diverse media. Esteban Trapiello, former President of TVes and current head of TV Aragua (a local government-owned television network) reportedly stated that Venezuela "never intended to create a balanced television network" and was quoted as admitting that "a state-owned media cannot be balanced when it depends solely on [the] State."[61] William Castillo – who became President of TVes following Trapiello's tenure and is currently the President of CONATEL – openly conceded in that same interview that "[o]bviously" the station was "part of a system," stating that they were the "*broadcasters of the achievements of the government and [they] will continue to do so*." Tellingly, Mr. Castillo stated that "*this*

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58 For an excerpt from the video in which President Chavez admits these facts, *see* Chávez reconoce que TVES es malísima, YOUTUBE, http://www.youtube.com/watch?v=IHVMGo1g0Yw.

59 *Id.*

60 *TVes cumple cinco años persiguiendo a la audiencia*, *supra* note 57.

61 *Id.*

public service thing was just an excuse to tear the signal away from RCTV. It was merely an alibi. Nothing else."[62]

On the basis of the foregoing, Venezuela's supposed pursuit of "media pluralism" clearly consists instead of a consolidation of government control over broadcast content in violation of Article 13 of the Convention.

2. Venezuela's actions run counter to the rulings of human rights courts

Venezuela's argument is also inconsistent with the holdings of this Court and other human rights tribunals in similar cases. For instance, in *Ivcher-Bronstein v. Peru* this Court considered the case of Baruch Ivcher, shareholder of an independent television station in Peru that, starting in 1996, began airing – in a program styled *Contrapunto* – investigative reports accusing Vladimiro Montesinos, head of Peru's national intelligence service of being connected to death squads and drug traffickers.[63] Mr. Ivcher owned about 54 % of the company's shares, while his partners, Samuel and Mendel Winter, owned 46%.[64]

As a result of *Contrapunto's* investigative reports, Mr. Ivcher was subjected to threatening actions, including a visit to the station offices by members of the Treasury Police Force Directorate, who recommended a change in the network's editorial stance; flights of alleged army helicopters over the installations of his factory, *Productos Paraíso*

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62 *Id.* (emphasis added). William Castillo was appointed General Director of CONATEL through Presidential Decree No. 767 published in Official Gazette No. 40.346 of January 31, 2014.

63 *Ivcher-Bronstein v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 74 (Feb. 6, 2001).

del Perú; and the opening of a proceeding against him by the National Directorate of Fiscal Police on May 23, 1997.[65] This Court found that, after attempts to bribe Mr. Ivcher with $19 million to allow government monitoring of the program, Mr. Ivcher's citizenship eventually was revoked and he was forced into exile. The Winter brothers then assumed control of the station, prohibited the *Contrapunto* journalists from entering the premises, and changed the station's editorial stance.[66]

On the basis of these facts, this Court found that Peru had violated Article 13 of the American Convention because it inhibited Mr. Ivcher's right to free expression and because it reduced the diversity of perspectives represented in the media.[67] On the latter point, this Court declared that "[b]y separating Mr. Ivcher from the control of Channel 2 and excluding the [. . .] journalists, the State not only restricted their right to circulate news, ideas and opinions, but also affected the right of all Peruvians to receive information, thus limiting their freedom to exercise political options and develop fully in a democratic society."[68]

In a different context, the European Court of Human Rights (the "ECtHR") has held that freedom of speech is aimed at protecting information and ideas – even if those

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64 *Id.* ¶ 76(g).

65 *Id.* ¶ 76(j).

66 *Id.* ¶ 76(v).

67 *Id.* ¶ 163.

68 *Id.*

ideas are offensive, shocking, or disturbing.[69] In 1992, Kamil Tekin Sürek, the majority shareholder and editor of a Turkish weekly review, published letters from readers that were sympathetic to Kurdish independence and nationalism. Following the publication of these letters, the Istanbul National Security Court tried and fined Mr. Sürek for "disseminating propaganda against the indivisibility of the State," and of "encourag[ing] violence and provok[ing] hostility and hatred among the different groups in Turkish society."[70] Mr. Sürek then sought relief from the ECtHR, arguing among other things that Turkey's conduct had violated Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms ("European Convention"), which guarantees freedom of speech. The Court held that the convictions and fines imposed on Mr. Sürek interfered with right of free expression protected by Article 10, and rejected Turkey's argument that its actions against Mr. Sürek were justified by Article 10(2)'s exception for limitations on free expression that are "prescribed by law," holding that such limitations must be "necessary in a democratic society."[71]

The ECtHR then restated previous rulings holding that Article 10 protects information and ideas even if they "offend, shock or disturb," holding that "such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society.'"[72] The ECtHR further determined that the letters objectively could

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69 *Sürek and Özdemir v. Turkey*, Eur. Ct. H.R., Ap. 23927/94, ¶ 57(i) (1999), *available at* http://echr.ketse.com/doc/23927.94-24277.94-en-19990708/.

70 *Id.* ¶¶ 12, 54.

71 *Id.* ¶ 43.

72 *Id.* ¶ 57(i).

not be seen as hate speech or promotion of violence; rather, there were legitimate news pieces, and the public had a right to their insights into the psychology of the Kurdish opposition in Turkey.[73]

Similarly, in the case of *Informationsverein Lentia and others v. Austria*, the government of Austria refused to grant broadcast licenses to five separate private organizations after the Austrian legislature had failed to implement an application procedure.[74] The ECtHR found Austria to be in violation of Article 10 because "the Austrian authorities were essentially seeking to retain their political control over broadcasting."[75]

The ECtHR further held that freedom of speech – the fundamental role of which is to share information and views of general interest – "cannot be successfully accomplished unless it *is grounded in the principle of pluralism, of which the State is the ultimate guarantor*. This observation is especially valid in relation to audio-visual media, whose programs are often broadcast very widely."[76] The ECtHR specifically rejected Austria's arguments that a government monopoly could promote objectivity and balance in reporting, noting that "[o]f all the means of ensuring that these values are respected, a

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73 *Id.* ¶ 61.

74 *Informationsverein Lentia and Others v. Austria*, Eur. Ct. H.R., Ap. 13914/88 (1993), *available at* http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57854#{%22itemid%22:[%22001-57854%22]}.

75 *Id.* ¶ 37.

76 *Id.* ¶ 38 (emphasis added).

public monopoly is the one which imposes the greatest restrictions on the freedom of expression."[77]

The aforementioned rulings demonstrate that Venezuela's argument that it sought to promote media pluralism by not renewing RCTV's license and awarding its frequency to a state-owned television station has no support in either the jurisprudence of this Court or that of the ECtHR.

3. Venezuela's actions cannot be reconciled with the practice of other democratic nations

The *amici* have also examined the efforts of other democratic countries to promote and protect media pluralism, and conclude that Venezuela's conduct simply cannot be reconciled with any genuine effort to promote diversity and pluralism. Although this Court may not necessarily be bound by the practice of those nations, their conduct goes to show that Venezuela's pluralism argument plainly is not credible.

In this section, the *amici* offer a brief discussion of the legal and regulatory frameworks of Spain, Mexico, Colombia, Germany, the United Kingdom, and the United States, all of which are democratic nations that either are parties to the American Convencion, or are bound by other treaties that contain provisions similar to Article 13 thereof. [78]

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77 *Id.* ¶ 39.

78 For instance, Mexico ratified the American Convention in 1981; Colombia signed the American Convention in 1969 and ratified it in 1973. *See* Organization of American States, *American Convention on Human Rights: Signatories and Ratifications*, *available at* http://www.cidh.oas.org/basicos/english/Basic4.Amer.Conv.Ratif.htm (last accessed Jan. 8, 2014). The United States signed the American Convention in 1977.

These six countries bear comparison because they are bound to protect freedom of speech and promote media pluralism in much the same way as Venezuela was in May 2007. Indeed, Article 19 of the International Covenant on Civil and Political Rights ("ICCPR"), to which all of the countries discussed below are parties, contains language that is virtually identical to Article 13 of the American Convention: "Everyone shall have the right to hold opinions *without interference*," and freedom of expression includes "freedom to seek, receive and impart information and ideas *of all kinds*."[79] Similarly, Article 10 of the European Convention, to which Spain, Germany, and the United Kingdom are parties, contains the same fundamental principle: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."[80]

The six democratic nations discussed below have consistently interpreted their national and international laws protecting freedom of speech in a manner that imposes

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[79] ICCPR art. 19, Dec. 19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 [hereinafter "ICCPR"] (emphasis added). Spain signed the ICCPR in 1976 and ratified it in 1977; Mexico acceded to the ICCPR in 1981; Colombia signed the ICPPR in 1966 and ratified it in 1969; Germany signed the ICCPR in 1968 and ratified it in 1973; the United Kingdom signed the ICCPR in 1968 and ratified it in 1976; the United States ratified the ICCPR in 1977 and ratified it in 1992. United Nations, *International Covenant on Civil and Political Rights: Status as at: 08-01-2014 05:00:56 EDT, available at* https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

[80] European Convention art. 10, Nov. 4, 1950, 213 U.N.T.S. 221. Spain signed the European Convention in 1977 and ratified it in 1979; Germany signed the European Convention in 1950 and ratified it in 1952; the United Kingdom signed the European Convention in 1950 and ratified it in 1951. *See* Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms, Status as of: 8/1/2014, available at*

affirmative obligations on the government to ensure that information and ideas of all kinds remain available to the public through the media. They are right to do so, as a pluralistic media serves an essential democractic function. In this respect, the European Union's Report of the High Level Group on Media Freedom and Pluralism has stated:

> A fundamental principle of democratic systems is that equal rights are accorded to all citizens, with the possibility of their direct or indirect participation in collective decision-making, especially through free elections, the choice of political representatives and the power to hold elected officials accountable. *If citizens are to exploit these rights to the fullest, however, they must have free access to information that will give them sufficient basis for making enlightened judgements and informed political choices.* If not, control over the flows of information and manipulation of public opinion can lead to a concentration of power, the ultimate form of which is seen in authoritarian and totalitarian systems, which use both censorship and propaganda as tools for staying in power.[81]

In the democratic traditions exemplified below, Venezuela's actions towards RCTV certainly would not be perceived as an effort to promote media pluralism and diversity.

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http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=ENG.

[81] European Union, Report, *supra* note 53, at 10 (citations omitted) (emphasis added).

(a) Spain

Article 4 of Spain's General Audiovisual Communications Law provides that "everyone has the right to receive audiovisual communication through a variety of media – including public, commercial, or community-based media" and that this shall "reflect the society's ideological, political and cultural pluralism." The law further provides that everyone is entitled to audiovisual communication being delivered through "diverse sources and contents," and to have "different coverage, depending on [Spain's] territorial organization[,]" which shall "guarantee audiovisual communication that includes different genres, in response to society's various interests."[82]

The General Audiovisual Communications Law extended the life of television licenses from ten to fifteen years in order to strengthen the service provider's "security" and provided that "additional license renewals shall be automatic, and for the same period of time originally stipulated for its use."[83] Renewal is automatic if (*i*) the same conditions originally met to qualify as a provider are met at the time of renewal; (*ii*) there are no unforeseen and irreparable technical obstacles concerning the [radioelectric] spectrum for those licenses; and (*iii*) the service provider is current on the payment of fees.[84]

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82 Law 7/2010 of March 31 2010, General Audiovisual Communications Law, (B.O.E. 2010, 5292) (Spain), *available at* http://www.boe.es/boe/dias/2010/04/01/pdfs/BOE-A-2010-5292.pdf.

83 *Id*., art. 28(1), (2).

84 *Id*., art. 28(2).

The "automatic renewal" is not applicable only if radioelectric spectrum is exhausted; if a third party requests the concession and the petition is made at least 24 months before expiration of the license; *and* if the new petitioner complies with the requirements for the original petition.[85] If these conditions are present, then service providers would have to go through a process of public bidding.[86]

Television licenses also expire at the end of their period when there is no automatic renewal; when the legal entity that holds the license ceases to exist (except in the case of mergers or acquisitions); upon the death or incapacity of the licensee; upon cancellation; upon abandonment of the license on the part of the provider; and upon failure to pay the corresponding fees.[87] Spain can revoke a television license only in case of "very grave" infractions by the licensee. They include, for example, the "transmission of messages that grossly foment hatred, contempt or discrimination on the basis of birth, race, sex, religion, nationality, opinion, or any other personal or social circumstance," and the "transmission of commercial communications that violate human dignity or use women for humiliation or discrimination purposes."[88] In this case, broadcasters may lose their right to the automatic renewal of licenses.

There is no provision in Spanish law or custom that would support the type of punitive non-renewal of a license engaged in by Venezuela in this case. On the contrary, pursuant to the principles of media pluralism contained in the Law of Visual

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85 *Id.*, art. 28(3).

86 *Id.*

87 *Id.*, art. 30.

Communications, Spain recently took extraordinary steps to ensure that *Audiovisuales La Sexta S.A.* ("La Sexta"), a television network that had broadcast material critical of the administration of Prime Minister Mariano Rajoy, remained in business. [89]

In December 2011, La Sexta announced that it was being acquired by another television network, *Antena 3 de Televisión S.A.* ("Antena 3"). Antena 3's acquisition of La Sexta was supervised by Spain's Competition Commission, which in July 2012, imposed a number of conditions ensuring compliance with antitrust law as the acquisition moved forward.[90] Antena 3 and La Sexta, however, were unable to meet those conditions. This would have blocked the acquisition, which given La Sexta's economic position, would have resulted in La Sexta closing its doors and going off the air.[91]

Citing the right to a pluralistic and diverse media, Prime Minister Mariano Rajoy and the Council of Ministers intervened and approved the acquisition of La Sexta by relaxing the Commission's previously-imposed conditions.[92] In reaching its decision, the Council of Ministers held that "the need to find an adequate balance regarding political and information pluralism, *warrants the government's intervention to prevent the*

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88 *Id*., arts. 60, 57 (1), (2).

89 *El Gobierno de Rajoy salvó a La Sexta para garantizar el pluralismo en televisión*, ABC.ES, May 26, 2013, *available at* http://www.abc.es/espana/20130526/abci-gobierno-sexta-television-201305261217.html.

90 Resolución de Competencia, Jul. 13, 2013, Exp. C-0432 (Antena 3/La Sexta).

91 Council of Ministers, "Agreement Authorizing Merger Operation of Antena 3/ La Sexta and Imposing conditions on the same" at 6, *available at* http://www.mineco.gob.es/stfls/mineco/economia/ficheros/Texto_web_ACM.pdf.

92 *Id.*

disappearance of an editorial line."[93] The Council of Ministers further explained that "information pluralism" is the:

> confluence of various – potentially divergent and non-homogenized – instruments of communication, as well as the *free confluence of ideas and opinions* that mark the difference among operators. In this respect, the Council of Europe and European regulations provide that the idea of *pluralism implies a diversity of independent and autonomous means, as well as content, for the use of the public*. The [public's] choice would not be meaningful if [it] were not able to select programs that guarantee the expression of diverse trends.[94]

La Sexta was thus allowed to continue broadcasting despite the acquisition's potential regulatory infringements, in order to preserve the greater goal of media pluralism as enshrined in the Audiovisual Communications Law.

This is by all means remarkable. Had the government of Spain not intervened and instead allowed the acquisition to fail, La Sexta would have closed its doors, and freedom of speech in Spain would have suffered a significant blow as La Sexta's particular viewpoint would have disappeard. In an extraordinary effort to protect freedom of speech, however, Spain took steps to ensure La Sexta's continuous operation *precisely* because its opinions and ideas were contrary to the government's, thus strengthening the public's access to a plurality of views and opinion, and ultimately safeguarding freedom of speech.

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93 *Id*. at 19 (emphasis added).

94 *Id*. at 16 (emphasis added).

(b) Mexico

Article 6 of Mexico's Constitution provides that "everyone has the *right to freely access plural and timely information*, as well as to seek, receive and broadcast information and ideas through any mean of expression."[95] The Constitution further provides that "expression of ideas shall not be subject to any judicial or administrative investigation, unless it offends good morals, infringes the rights of others, incites crime, or disturbs public order."[96]

The Federal Law on Radio and Television provides that the right of information, of expression, and of reception through television shall not be subject to any judicial or administrative inquiries, or to any limitations or prior censure.[97] The Federal Law on Radio and Television also provides that television concessions shall be granted for a period of "20 years, renewable for equal periods."[98] The concessions for commercial television channels "shall be granted only to Mexican citizens or to entities owned by Mexican citizens."[99]

In 2007, Mexico's Supreme Court of Justice partially annulled article 16 of the Federal Law on Radio and Television, pursuant to which the radio and television

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95 Constitución Política de los Estados Mexicanos, art. 6 (emphasis added), *available at* http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf.

96 *Id*.

97 Ley Federal de Radio y Televisión, art. 58, *as amended*, Diario Oficial de la Federación, 19 de enero de 1960 (Mex.), *available at* http://www.diputados.gob.mx/LeyesBiblio/pdf/114.pdf.

98 *Id*, art. 20.

99 *Id*, art. 14.

operators were entitled to renew their concessions with preference over other third parties, without having to participate in further bidding processes, and without further payment to the State for having to use the radioelectric spectrum. Currently, therefore, there is no automatic renewal of television concessions, and operators seeking renewal must participate in a public bidding process.[100]

In that decision, the Supreme Court held that the "renewal" of the concession is not "unconstitutional" *per se*, but it determined that "giving preference" to the concession holder over third parties without a public bidding process would violate constitutional "principles of equality." The Supreme Court explained that "preference" should effectively be given to the current licensee "when there is a total balance or an absolute equality between several contenders regarding their capacity and the compliance of the legal requirements for the concesison."[101] In other words, Mexican law tends to favor the renewal of licenses and certainly does not support the punitive denial of a renewal of a licensee whose views are in tension with the government's.

The context of this action by the Supreme Court of Justice is also important to this case. In 2006, Mexico's Congress enacted certain amendments to the Law on Radio and Television that primarily favored the two dominant Mexican television companies, Televisa and TV Azteca, by giving them newly-available digital channels free of charge,

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[100] Acción de Inconstitucionalidad (Decision), Supreme Court of Justice, Diario Oficial de la Nación, Novena Época, 20 agosto de 2007, Sección 15 (Mex.), *available at* http://www.dof.gob.mx/nota_detalle.php?codigo=4996806&fecha=20/08/2007; *see also* Corte Anula Concesiones Perpetuas en Radio y TV, La Cronica, 1 de junio de 2007, *available at* http://www.cronica.com.mx/notas/2007/304293.html.

[101] *Id.*

leaving other candidates without the ability to compete for access to those new channels.[102] It was reported that, as a result of those amendments, independent radio stations and television channels such as *Instituto Mexicano de la Radio* (Grupo IMER), *Once TV*, *Canal 22*, *Edusat*, and *TV UNAM* would eventually be forced off the air.[103]

In its 2007 decision, the Mexican Supreme Court declared the amendments unconstitutional, explaining that freedom of information is premised on a pluralistic media, and held that the government was under the obligation to guarantee that the broadcasting services provide "access to diverse flows of opinion . . ."[104]

The Supreme Court held that the amendments violated Article 13 of the American Convention by limiting freedom of speech through "indirect means," such as the abuse of official or private control of radio frequencies,[105] as well as Principle No. 12 of the Commission's Declaration of Principles on Freedom of Speech prohibiting media monopolies.[106] The Court also explained that "broadcasting should be the technological support of freedom of speech, and the right to access information," noting that it is precisely through the media that "*society is informed and ponders central issues of public and democratic life*," fostering the free flow of ideas to a point that "freedom of press and the right to access information are [presently] closely connected" with media

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102 Liliana Alcántara et al, *Campaña de resistencia por ley de medios*, EL UNIVERSAL, Mar. 30, 2006, *available at* http://www.eluniversal.com.mx/nacion/136744.html.

103 *Id.*

104 Acción de inconstitucionalidad, *supra* note 100.

105 *Id.*

106 *Id.*

regulation.[107] The Court concluded that "if the rights of freedom of expression and access to information . . . are implemented through the [media], then the conditions to access those services have a direct impact on the rights themselves."[108]

Mexico's judiciary, therefore, stepped in to ensure that Mexico did not form a media oligarchy but rather remained diverse and pluralistic. The Court understood its mandate – under the Mexican Constitution and the American Convention – to ensure that the law did not favor large media outlets at the expense of smaller companies.

(c) Colombia

Article 20 of Colombia's Constitution provides that "[e]very individual is free to express and convey thoughts and opinions, to transmit and receive true and impartial information, and to create mass communications media."[109] It also provides that broadcast frequencies shall be made available to broadcasters on an equal opportunity basis, and mandates that regulation encourage "genuine pluralism and competence" in the sector.[110] Colombia's Constitution also generally protects a free press and bans

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107 *Id.*

108 *Id.*

109 Constitution of Colombia, art. 20, *available at* http://www.procuraduria.gov.co/guiamp/media/file/Macroproceso%20Disciplinario/Constitucion_Politica_de_Colombia.htm.

110 *Id.*, art. 73.

censorship,[111] guaranteeing the freedom of political speech and securing access of political parties to the media to broadcast its messages.[112]

Law 1341 of 2009 provides that television licenses shall be granted for up to 10 years, and may be renewed at the request of the operator for equal periods of time.[113] Although not automatic, renewal of television licenses should be based on "reasonable" and "non-discriminatory" conditions. These conditions are to be "compatible with the technological development of Colombia, the service's continuity, and adequate incentives towards investment."[114] Television licenses may be renewed for a lesser period only when the public interest may be affected, when such reduction of time is necessary to reorganize the radioelectric spectrum, or to comply with international frequency regulations. There is no provision in law, nor any history, of denying a license renewal on the basis of the licensee's viewpoint.[115]

Recently, Colombia issued Decree 2044 specifically regulating the renewal of licenses for the use of the radioelectric spectrum.[116] This regulation implements a straightforward two-step process for renewing television licenses. *First*, operators must (*i*) have made efficient use of the license; (*ii*) have complied with the minimum

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111 *Id*., art. 75.

112 *Id*., art. 111.

113 Law 1341, July 30, 2009, Diario Oficial, No. 47.426, art. 30(b) (Colom.), article 12, *available at* http://web.presidencia.gov.co/leyes/2009/julio/ley134130072009.pdf.

114 *Id.*

115 *Id.*

116 Decreto 2044, septiembre 19 de 2013, Diario Oficial 48918., *available at* http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=54811#0

expansion plans, if any, dictated by the regulatory agency; (*iii*) have complied with their obligations at the time the renewal is granted; and (*iv*) be registered as service providers before the Network and Telecommunications Service Providers Registry.[117] *Second*, operators seeking renewal must comply with the non-discriminatory conditions, if any, set forth by the Ministry of Information and Communication Technologies ("MinTIC"), which should be based on, among other things, the following considerations: enhancing the service's minimum coverage, as determined by the MinTIC; improving the quality of the service; providing connectivity service to public institutions, as determined by the MinTIC; national security; and providing a cost-free service in cases of natural disaster or public calamities.[118] That Decree also prohibits granting a license to persons or entities whose previous license or concession has been cancelled or revoked.[119]

Colombian law carves out a special regime for television, which is governed by an autonomous agency.[120] There are several regulatory bodies with authority over the telecommunications sector, and the MinTIC has the broadest remit. Law 1341 of 2009, which reorganized the regulatory regime for telecommunications,[121] requires that both the MinTIC and the National Television Commission ("ANTV") – an independent agency responsible for regulating television – must transparently consider applications from all

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117 *Id*. art. 2.

118 *Id*. art. 3.

119 *Id*. art. 2(4); *see also* Law 1341, *supra* note 113, arts. 76-77.

120 Constitution of Colombia, arts. 76-77.

121 Ley 1341, *supra note* 113.

parties interested in access to the radioelectric spectrum, *with the goal of encouraging a plurality of interests*.[122]

Colombia's judiciary has also been sensitive to the significance of a pluralistic and diverse media as a fundamental component of freedom of speech. In August 1990, Colombia enacted Decree No. 1900, which provided that a broadcast license was required to use a radioelectric frequency.[123] Individual petitioner Antonio L. Atencia, however, asked the Constitutional Court to declare that certain provisions of that decree were unconstitutional, arguing that they infringed the right to establish mass media.[124]

In an April 1994 decision, the Colombian Constitutional Court dismissed the petition, holding that the provisions at issue were valid because the radioelectric spectrum is a public good, and thus it is subject to government control. However, the Court's decision expressly recognized that "[t]he freedom of access to mass communication is closely related to the freedom of speech, opinion and information, because such media are *effective instruments to spread ideas, thoughts and information*."[125] In connection with the government's power to regulate the media, the Constitutional Court cited a 1993 decision in which the Court held that "[Colombia's] power to intervene in connection with the use of the radioelectric spectrum is not unlimited," confirming that government is invariably "subject to the provisions of international treaties" that "guarantee the

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122 *Id.*, art. 72.

123 Decree 1900, August 19, 1990, Diario Oficial No. 39.507 (Colom.), *available at* http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=2581.

124 Corte Constitucional, April 19, 1994, Decision C-189/94, Gaceta de la Corte Constitucional (Colom.), *available at* http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=8304.

fundamental rights of the operator and of the audiences,"[126] and expressly referred to the limitations set forth in Article 13 of the American Convention.

The Constitutional Court's decisions of 1994 and 1993 are thus relevant for two reasons. First, they demonstrate that Colombia's Constitution, its regulatory framework, and its interpretation of its obligations under Article 13 of the American Convention, all recognize not only the public's right to media, but that that right is only meaningful when accompained by *effective instruments to spead ideas, thoughts and information*. Second, they recognize that any efforts by the government to intervene are always subject to the limitations set forth in the Constitution and international law.

(d) Germany

The basic rights of freedom of expression and communication in Germany are provided for in the German Constitution:

> Everyone has the right to freely express and disseminate his opinion in speech, writing, and pictures and to freely inform himself with generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films are guaranteed. There may be no censorship . . . [127]

Germany has a dual broadcasting system consisting of public service and commercial broadcasting. The principal regulatory framework for this dual system is

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125 *Id.* (emphasis added).

126 Corte Constitucional, February 23, 1993, Decision T-081-93, Gaceta de la Corte Constitucional (Colom.), *available at* http://www.corteconstitucional.gov.co/relatoria/1993/T-081-93.htm.

127 Grundgesetz für die Bundesrpublik Deutschland (Basic Law of Germany), May 23, 1949, BGBl. I, art. 5, ¶ 1 (Ger.).

established in the Interstate Broadcasting Treaty, or *Rundfunkstaatsvertrag* (the "Treaty"), which is a treaty ratified by all of the German states. The Treaty's preamble establishes *plurality as a mandate for both public-service and commercial broadcasting*, and states: "Public-service broadcasting and commercial broadcasting are committed to the free formation of individual and public opinion and the plurality thereof."[128]

Public service television in Germany consists of two broadcasting corporations, ARD and ZDF. Although the public service broadcasters are independent of the national and regional governments, they are bound under the Treaty to a policy of comprehensiveness, balance, mutual respect, and quality programming.[129] The Treaty outlines the public service broadcasters' obligation to pluralism in content:

> (1) Under their remit, the public-service broadcasting corporations are to act as a medium and factor in the process of the formation of free individual and public opinion through the production and transmission of their offers, thereby serving the democratic, social, and cultural needs of society. In their offers, the public-service broadcasting corporations *must provide a comprehensive overview of international, European, national, and regional events in all major areas of life*. In doing so, they shall further international understanding, European integration and the social cohesion on the federal and state

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128 Staatsvertrag über den Rundfunk im vereinten Deutschland (Interstate Broadcasting Treaty in Unified Germany) (Rundfunkstaatsvertrag - RStV) (Interstate Treaty on Broadcasting), Preamble, Aug. 31, 1991, *last amended by* 15 Rundfunkänderungsstaatsvertrag (15th Amendment to the Interstate Broadcasting Treaties), Jan. 1, 2013, *english translation available at* http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Gesetze_aktuell/15_RStV_english_01-01-2013.pdf.

129 Michael Libertus, *Essential Aspects Concerning the Regulation of the German Broadcasting System: Historical, Constitutional and Legal Outlines*, Arbeitspapiere des Instituts für Rundfunkökonomie an der Universität zu Köln, Working Paper No. 193, at 11 (2004), *available at* http://www.rundfunk-institut.uni-koeln.de/institut/pdfs/19304.pdf.

> levels. Their offers shall serve education, information, consultation and entertainment. They must in particular provide contributions on culture. Entertainment should also be provided in line with a public-service profile of offers.
>
> (2) The public-service broadcasting corporations in fulfilling their remit shall pay due respect to the principles of objectivity and impartiality in reporting, *plurality of opinion and the balance of their offers*.[130]

The Treaty further provides for transparency in the activities of the public service broadcasting corporations, requiring them to "enact statutes or directives detailing the execution of their respective remit as well as specifying the procedures governing the development of offer concepts and the procedure governing new or modified telemedia."[131] The statutes and regulations must be published and the public broadcasting corporations must also publish a report every two years on the fulfillment of their respective remit.[132]

To ensure that the public service broadcasters comply with legal requirements, the Treaty provides for broadcasting councils consisting of representatives of the major organized social groups (*e.g.*, labor, industrial management, churches), which represent the interests of the general public.[133] The broadcasting council's main task is to ensure monitoring independence and diversity in programming.[134]

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130 Treaty, *supra* note 128, art. 11 (emphasis added).

131 *Id.*, art. 11e(1).

132 *Id.*, art. 11e(1), (2).

133 ARD Brochure, at 2 (2011), *available at* http://www.ard.de/intern/die-ard/-/id=2429398/property=download/nid=8036/o9wvwf/ARD_Flyer_english.pdf.

134 Libertus, *supra* note 129, at 13.

Commercial broadcasters, in contrast to the two public-service broadcasters, require a license to provide broadcasting services, and the Treaty provides a transparent licensing process. A person or company seeking a national broadcast license must submit an application to the Commission on Licensing and Supervision ("ZAK") in accordance with the Treaty.[135] In addition to providing for a transparent licensing process, the Treaty contains provisions to ensure plurality of opinion in commercial broadcasting, stating:

> (1) The editorial content of commercial broadcasting shall convey plurality of opinion. *The major political, ideological, and social forces and groups shall be granted adequate opportunity for expression in the general channels; minority views shall be taken into account*. The possibility to offer thematic channels remains unaffected.[136]

The Treaty also contains provisions to guard against a single service "exert[ing] an exceedingly imbalanced influence on public opinion"[137] by acquiring "dominant power of opinion," [138] as determined by the Commission on Concentration in the Media ("KEK").[139] Indeed, if a commercial broadcaster reaches an annual average audience share of 30 percent of all viewers, "dominant power of opinion shall be assumed to be given[,]"[140] in which case the KEK may require it to either give up certain interests until

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135 Treaty, *supra* note 128, arts. 20, 20a, 21, 36(2), 37.

136 *Id.*, art. 25(1) (emphasis added).

137 *Id.*, art. 25(2).

138 *Id.*, art. 26(1).

139 The KEK consists of six experts in broadcast and commercial law and six legal representatives of the state media authority. Treaty, *supra* note 128, art. 35(5). *available at* http://www.die-medienanstalten.de/en/profile/organisation/the-commission-on-concentration-in-the-media-kek.html (last visited April 28, 2014).

140 Treaty, *supra* note 128, art. 26(2).

its audience share falls below the appropriate limit, or take certain steps to ensure plurality of opinion, such as granting broadcasting time to independent third parties.[141]

Although the Treaty does not specifically provide for a license renewal process, commercial broadcasters must comply with the measures proposed by the KEK. If a commercial broadcaster has acquired "dominant power of opinion" and does not agree with the KEK on measures to remedy the situation, or does not implement the measures within a reasonable period of time, the state media authorities may revoke the license, after the KEK has established the relevant facts. However, there is no basis in German law or practice for denying a license renewal on the basis of the licensee's viewpoint.[142]

In this context, every three years, the KEK must report on the development of concentration in the media and on measures *to ensure plurality of opinion* in the commercial broadcasting sector, taking into account (1) interdependencies between television and media-relevant related markets; (2) horizontal interdependencies between broadcasters in different areas of transmission; and (3) international interdependencies in the media sector.[143]

Germany has thus implemented a system that, *first*, mandates pluralism as a fundamental component of both public service and commercial broadcasting; *second*, mandates that government agencies in charge of granting broadcast licenses ensure that

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141 *Id.*, art. 26(4).

142 *Id.*

143 *Id.*, art. 26(6). The reports are available on the KEK's website, *available at* http://www.die-medienanstalten.de/en/profile/organisation/the-commission-on-concentration-in-the-media-kek.html (last visited April 28, 2014).

both public and private operators provide content that is comprehensive and diverse; and *third*, requires government agencies to monitor the concentration of media share, as well as measures to ensure plurality of opinion in the commercial broadcasting sector.

(e) United Kingdom

In the United Kingdom, freedom of expression was codified in the Human Rights Act of 1998, which references Article 10 of the European Convention,[144] and requires courts in the United Kingdom to have "particular regard to the importance of the [European] Convention right to freedom of expression."[145] Administrative Courts have noted that similar regulatory regimes have been deemed to "contribut[e] to the quality and balance" of available programs.[146]

Institutionally, the United Kingdom has ensured freedom of expression by establishing an independent regulator, the Office of Communications ("Ofcom"), whose determinations are only reviewable by courts for "real unfairness" or "a significant error of law."[147] Ofcom is charged with regulatory oversight of the television, radio and telecom sectors. It has a legislatively mandated duty to *ensure* a "wide range" of telecom

144 Human Rights Act, 1998, c. 42 § 12 (UK); European Convention, *supra* note 80.

145 Human Rights Act, 1998, c. 42 § 12(4) (UK).

146 *Wildman v. The Office of Communications*, [2005] EWHC 1573 (Admin), 2005 WL 1902452, ¶ 64 (Eng.) (citing *Demuth v Switzerland*, no. 38743/97, 2002-IX Eur. Ct. H.R. (2002), considering and approving a comparable Swiss licensing system).

147 *Id.*; *see also Associated Provincial Picture Houses Ltd v. Wednesbury Corp*, [1948] 1 KB 223 (Eng.) (courts "can only interfere with an act of executive authority if it be shown that the authority has contravened the law").

services and a "*sufficient plurality of providers*"[148] and is required to have regard for "an appropriate level of freedom of expression."[149]

Ofcom is required to establish content standards for radio and television programs consistent with the legislated objectives of, *inter alia*, protecting children, discouraging crime, and truth in advertising, as well as prohibitions on political advertising.[150] By statute, the government must take into account "the need, in relation to *every different audience* in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient *plurality of persons* with control of the media enterprises serving that audience."[151] It is also Ofcom's function "to do all that it can to secure within the [United Kingdom] a range and *diversity of local services*."[152]

In interpreting the meaning of the phrase "sufficient plurality of persons with control of … media enterprises" in section 58(2C)(a) of the 2002 Enterprise Act, a British Court of Appeals held that Ofcom cannot simply look at who controls media broadcasters, but must make a "broad qualitative assessment" when deciding whether a plurality of interests is represented in the market.[153]

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148 Communications Act, 2003, c. 21 § 3(2)(b), (c) and (d) (UK) (emphasis added).

149 *Id*. § 3(4)(g).

150 *Id*., § 319.

151 Enterprise Act, 2002, c. 40 § 58(2C)(a) (UK) (as amended by the Communications Act, 2003, c. 21 § 375 (UK) (emphasis added).

152 *Regina v. The Radio Authority, ex parte Francis Anthony Wildman*, [1999] EWCA Admin 90 (Civil) FC3 /1999/6717/C (UK), ¶ 3 (emphasis added).

153 *British Sky Broadcasting Group PLC v. The Competition Commission*, [2010] EWCA Civ 2 (S.C.), ¶ 120 (appeal taken from Eng.).

Ofcom is also empowered to grant licenses for radio broadcasting, applying the same conditions and processes which were originally applicable to its predecessor, the (now defunct) Radio Authority.[154] Ofcom awards licenses via its Radio Licensing Committee,[155] which is required by statute to award the radio broadcasting license to the applicant who submits the highest cash bid,[156] provided that certain conditions are met, including that the proposed service would provide "a diversity of program[s] calculated to appeal to a *variety of tastes and interests*."[157]

Ofcom is required to grant a renewal for licenses "as soon as reasonably practicable" unless it invokes one of the statutorily identified grounds for denial.[158] The grounds for non-renewal are objective standards, including change of service area, lack of financial viability, incapacity to maintain similar programming, and (in the case of certain television broadcast licenses) failure to provide certain public service programming. There are no staturory support for denying the renewal of a broadcast license because of the licensee's political viewpoint.[159]

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154 Communications Act, 2003, c. 21, § 245.

155 *Wildman v. The Office of Communications*, [2005] EWHC 1573 (Admin), 2005 WL 1902452, ¶ 10 (Eng.); Ofcom, *Functions and Role, available at* http://www.ofcom.org.uk/about/how-ofcom-is-run/committees/radio-licensing-committee/functions-and-role/.

156 Broadcasting Act, 1990, c. 42, § 100(1) (creating the obligation for the now defunct Radio Authority).

157 *Id*., § 98(3)(a)(ii), (emphasis added); *see also id*. § 99(1)(a)(ii).

158 Communications Act, 2003, c. 21, § 216(8) (UK) ; *see* Broadcasting Act, 1990, c. 42, §§ 103A(84), 104A(11).

159 Communications Act, 2003, c. 21, § 216 (5), (6), (7); Broadcasting Act, 1990, c. 42, §§ 103A(4)(a), 104A(5)(a).

The United Kingdom has thus understood freedom of expression to mean taking specific steps – like the creation of an independent government agency to evaluate whether different audiences are being adequately represented – aimed at ensuring a pluralistic and diverse media throughout the country, and there is a strong inclination towards renewal of licenses.

(f) United States

The United States has built its legal framework on its Constitution and the decisions of the Supreme Court, and provides compelling guidance as to the manner in which media pluralism is interpreted in a democratic and developed country. Indeed, freedom of speech and freedom of the press are guaranteed under the First Amendment to the United States Constitution:

> Congress shall make no law . . . abridging the freedom of speech, or of the press . . . .[160]

Although "there is no 'unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish,'"[161] the United States Supreme Court has made clear that

> [T]he people as a whole retain their interest in free speech by radio *and their collective right to have the medium function consistently with the ends and purposes of the First Amendment*. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount. It is the purpose of the First Amendment to preserve an *uninhibited marketplace of ideas* in which truth

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160 U.S. CONST. amend. I.

161 *F.C.C. v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775, 799 (1978) (quoting *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 388 (1969)).

> will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee. *It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here*. That right may not constitutionally be abridged either by Congress or by the [Federal Communications Commission].[162]

In order to serve this "right of the public to receive suitable access," the Federal Communications Commission ("FCC"), which is charged with regulating broadcasters,[163] is prohibited from exercising censorship.[164] The Communications Act of 1934, from which the FCC derives its authority, demonstrates Congress's intent:

> to permit private broadcasting to develop with the *widest journalistic freedom* consistent with its public obligations. Only when the interests of the public are found to outweigh the private journalistic interests of the broadcasters will government power be asserted within the framework of the Act.[165]

The FCC was therefore created to regulate the radioelectric spectrum in a manner consistent with the public interest,[166] ensuring the orderly use of frequencies and preventing domination of the broadcasting arena by any particular party or group of

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[162] *Red Lion Broad. Co. v. F.C.C.*, 395 U.S. 367, 390 (1969) (emphasis added) (citations omitted.).

[163] Communications Act of 1934, 47 U.S.C.A. §§ 151, 154.

[164] 47 U.S.C. § 326 ("Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.").

[165] *Columbia Broad. Sys., Inc. v. Democratic Nat'l. Comm.*, 412 U.S. 94, 110 (1973) (emphasis added).

[166] *Nat'l Broad. Co., Inc. v. F.C.C.*, 516 F.2d 1101, 1110-11 (D.C. Cir. 1975).

parties. The FCC's regulatory authority is carried out primarily through the issuance and renewal of licenses. On this score, the Communications Act provides that

> Each license granted for the operation of a broadcasting station shall be for a term of not to exceed 8 years. Upon application therefor, *a renewal of such license may be granted from time to time* for a term of not to exceed 8 years from the date of expiration of the preceding license, *if the Commission finds that public interest, convenience, and necessity would be served thereby*.[167]

Once a broadcaster has been granted a license, it is considered to hold a "renewal expectancy."[168] Licenses will be renewed so long as the FCC finds that the licensee has served the public interest, convenience, and necessity and has not failed to follow the provisions of the Communications Act and FCC rules.[169]

Although the "public interest" standard applied in license grants, renewals, and other aspects of FCC regulation may include a content component[170] (relating, for example, to the FCC's content requirements with respect to obscenity or indecency)[171], the public's right of access to a diversity of viewpoints restrains the FCC from refusing

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167 47 U.S.C. § 307(c)(1) (emphasis added).

168 *See, e.g., Greater Boston Television Corp. v. F.C.C.*, 444 F.2d 841, 854 (D.C. Cir. 1970) (noting the "legitimate renewal expectancies implicit in the structure of the [Communications] Act").

169 *See, e.g., Greater Kampeska Radio Corp. v. F.C.C.*, 108 F.2d 5 (D.C. Cir. 1939) (affirming the FCC's decision to refuse a license renewal based in part on the broadcaster's "past conduct in disregarding the Communications Act and the Commission's rules").

170 *See Nat'l Broad. Co. v. U.S.*, 319 U.S. 190, 226-27 (1943) (refusing to find that the FCC was limited to regulating only the technical aspects of broadcasting, as "public interest" was held to encapsulate further considerations).

171 *See, e.g., CBS Corp. v. F.C.C.*, 663 F.3d 122, 138 (3d Cir. 2011) (noting that the FCC "retains authority to regulate obscene, indecent, or profane broadcast content") (citing 18 U.S.C. § 1464).

license renewal on the basis of the broadcaster's editorial stance. The FCC, therefore, has identified the diversification of the media as a component of the "public interest," an approach that has been upheld by United States courts.[172] As one United States court explained, "[i]t was feared that the effects of [a broadcasting] monopoly would be to silence a diversity of opinion, so the [FCC] determined that *diversity would be enforced by governmental regulations*."[173]

In one example of the FCC's strong presumption towards license renewal, in 2006, the FCC denied a request by television channel NBC Universal to deny the renewal of the broadcasting license of rival TV Azteca on the grounds that TV Azteca was allegedly "corrupt" and did not meet the moral "character" requirements for a license holder.[174] The FCC denied NBC's request and renewed TV Azteca's license, as "[the FCC] would not consider issues of misconduct [that were] outside the scope of its jurisdiction unless the behavior was 'so egregious as to shock the conscious and evoke almost-universal disapprobation.'"[175] No United States law or curtom would support the type of punitive non-renewal of a license engaged in by Venezuela in this case.

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172 *F.C.C. v. Nat'l Citizens Comm. for Broad.*, 436 U.S. at 798-802.

173 *Brandywine-Main Line Radio, Inc. v. F.C.C.*, 473 F.2d 16, 73-74 (D.C. Cir. 1972) (emphasis added).

174 Jorge Caballero, Piden en EU no renovar la licencia a canal de televisión que opera Tv Azteca, LA JORNADA, December 4, 2006, *available at* http://www.jornada.unam.mx/2006/12/04/index.php?section=politica&article=023n1pol.

175 Meg James, FCC Renews L.A. Station's License Despite Rival Protest, L.A. TIMES, April 17, 2007, available at http://articles.latimes.com/2007/apr/17/business/fi-azteca17 (quoting the FCC).

The United States demonstrates that the right to a pluralistic and diverse media is a critical component of freedom of speech, to be *enforced* – not limited – by government regulation. In the view of the *amici*, this is an effective way for "*an uninhibited marketplace of ideas*"[176] to flourish.

* * *

In sharp contrast to the manner in which freedom of speech has been interpreted by the aforementioned countries, Venezuela's actions towards RCTV should necessarily be viewed as a clear attack on media pluralism and unlawful restriction on freedom of speech. As demostrated by the practice of these six countries, television licenses should be renewed except in the precense of very limited circumstances, which seemingly do not apply to the case of RCTV. Simply put, in the democratic traditions exemplified by these countries, RCTV's license should have been renewed. Lastly, the sort of action taken by Venezuela certainly would not be perceived, in those countries, as an effort to promote media pluralism and diversity, but as a textbook example of retaliatory, and thus impermissible, content-based censorship.

[176] *Red Lion*, 395 U.S. at 390 (emphasis added).

CONCLUSION

Freedom of speech in Venezuela suffered a vital blow in violation of Article 13 of the Convention when Venezuela, with a view to censor RCTV's editorial stance, refused to renew its concesssion. The ability of individuals and the press to openly debate, discuss and criticize government policy is a fundamental component of any democratic society, and largely depends on the ability of the media to convey diverse strands of thought. Venezuela's actions have diminished that ability.

For the foregoing reasons, the Association and the CPJ, as *amici curiae*, respectfully support Petitioners' application and urge the Court to find that Venezuela violated Article 13 of the Convention.

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