

EMILY "SPICYBROWN" SANCHEZ

CANDIDATE FOR U.S. SENATE 2014

GREEN PARTY OF TEXAS

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October 22, 2014

KUVN LICENSE PARTNERSHIP, L.P.

5999 CENTER DRIVE

SUITE 4083

LOS ANGELES, CA 90045

3103483600 [phone]

Via regular U.S. mail


RE: Emergency Complaint filed for Violation of Equal Time Rule

Dear Sir or Madam:

Please find enclosed a copy of my Emergency Complaint against KUVN-DT, Channel 23, Garland, TX (Univision) that I filed with the FCC's Media Bureau office. My Emergency Complaint is based on KUVN's refusal to allow me to participate in their televised U.S. Senate general election debate on October 24, 2014 in Dallas, Texas or otherwise provide me with equal time.

If you have any questions please contact me at 830-282-5992 or emariesan@gmail.com. Thank you for your prompt attention to this matter.

Sincerely,

Handwritten signature of Emily Sanchez in cursive, followed by the initials "w/p" and a circled "DN".

Emily "Spicybrown" Sanchez

Candidate for U.S. Senate, Green Party of Texas

Before the
Federal Communications Commission
Washington, D.C. 20554

Emily "Spicybrown" Sanchez)
)
 Complainant,) Case No. _____
)
 v.)
)
 KUVN-DT, Channel 23, Garland, TX (Univision))
)
 Respondent.)

EMERGENCY COMPLAINT

TO: FCC, Media Bureau

Complainant challenges Respondent's refusal to allow Emily "Spicybrown" Sanchez, Green Party of Texas' candidate for U.S. Senate, to participate in Respondent's televised U.S. Senate general election debate on or about October 24, 2014 in Dallas, Texas. In support of her Emergency Complaint, Complainant Sanchez states and alleges as follows:

1. Complainant Emily "Spicybrown" Sanchez ("Sanchez") is a credible and serious candidate for the office of United States Senate. Ms. Sanchez has fully qualified for a place on the November 4, 2014 Texas General Election ballot and is actively campaigning throughout Texas. Her serious campaign efforts are shown by the following: having been unanimously nominated by the Green Party of Texas to represent the party in the General Election at their statewide nominating convention in April of 2014; recruiting over a dozen part-time volunteer campaign staff; obtaining over 430 campaign followers on Facebook; possessing a campaign bank account, printing and distributing campaign materials including t-shirts and law signs across Texas; having travelled across the State of Texas appearing, speaking, and engaging with the public as a serious candidate for U.S. Senate in,

among other places, the cities of Houston, Del Rio, and McAllen; in the next two weeks Complainant Sanchez will travel to campaign events in the cities of Bryan and Laredo, Texas; in the latest political poll which includes her candidacy, she is polling a strong 4% (7.8% including margin of error) which is significant for a Green Party of Texas candidate; Ms. Sanchez is unable to travel to events during the week because she works full time but she regularly posts campaign updates on her website/Facebook page and has participated in numerous print media and advocacy group questionnaires about her candidacy; and perhaps most significantly, Ms. Sanchez is a successful, serious candidate for U.S. Senate because she is a working class, Spanish-speaking Mexican-American woman, single mother, physical therapist assistant, Occupy Wall Street activist, and poet whose strong anti-war, anti-fracking, pro-single payer universal healthcare, and pro-immigrants rights messages are not championed by her general election opponents. From gender, national origin, and socio-economic background to these and other policy issues, Ms. Sanchez is the quintessential Texas majority-minority candidate and adds much needed diversity to this U.S. Senate race.

2. Respondent KUVN-DT Channel 23 (Univision) is a Garland, Texas based television broadcast station ("KUVN") licensed by the Federal Communications Commission (FCC) that principally provides Spanish language news and programming to the Dallas, Texas metro area. KUVN is co-sponsoring and televising a U.S. Senate general election debate in Texas including the democratic and republican party candidates and excluding the Green and Libertarian party candidates on Friday, October 24, 2014 from 6-8pm at Mountain View College in Dallas, Texas ("Debate"). The Debate will then be broadcast on KUVN and

other Univision broadcast stations in eight markets across Texas on Saturday, October 25, 2014 at 10:00 pm central time.

3. The Federal Communications Commission ("FCC") is an independent United States government agency, established by the Communications Act of 1934, as amended ("Act"), and is charged with regulating interstate and international communications by radio, television, wire, satellite, and cable. The FCC's jurisdiction covers the 50 states, the District of Columbia and U.S. possessions.

4. On or about late September or early October 2014, KUVN announced it was hosting the Debate. The debate intentionally excluded Green Party candidate Emily "Spicybrown" Sanchez and Libertarian candidate Rebecca Paddock for the simple reason that they are not democrats or republicans. Among other things, KUVN's arbitrary and capricious debate inclusion criteria specifically excludes from broadcast all of the *female* candidates and the only *Spanish-speaking, Mexican-American* candidate (Complainant Sanchez) in the race.

5. The exclusion of Complainant Sanchez undermines the purpose of the Act, and is a blatant violation of the Act, including its equal time provisions, as it does not fall under any exemption found in Section 315(a). It cannot be characterized as a bona fide news event unless it covers all credible candidates including Complainant Sanchez.

6. KUVN's exclusion of Complainant also violates the public interest provisions of the Act under Section 315 by (1) it failing to operate in the public interest by excluding candidates with diverse socio-economic, national origin, language and political party backgrounds and (2) by not allowing for the reasonable opportunity and discussion of diverse and conflicting views of issues of public importance. KUVN's decision excludes all female candidates including Complainant who is a working class, Spanish-speaking

Mexican-American woman, single mother, physical therapist assistant, Occupy Wall Street activist, and poet with strong populist anti-war, anti-fracking, pro-single payer universal healthcare, and pro-immigrants rights messages that are of vital public importance and a stark contrast to what is being advocated by the candidates included in the Debate.

7. Section 315 of the Act (47 U.S.C. Section 315) requires KUVN to afford equal time to Complainant Sanchez unless the Debate is considered a (1) bona fide newscast, (2) bona fide news interview, (3) bona fide news documentary, or (4) on-the-spot coverage of bona fide news events.

8. Regardless of the exemptions, the Act commands that: "Nothing in the foregoing [exemptions] shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views of issues of public importance."

9. In *Aspen Institute*, the Commission used a two-part test when considering whether a program is a bona fide news event, (1) whether the format of the program reasonably fit within the news event exemption category and, (2) whether the decision to carry a particular event was the result of good faith news judgment. Moreover, the exclusion of a third-party candidate who, based on objective criteria such as polling results, showed the significance of his or her campaign, would call into question the bona fides of the broadcaster's selection of candidates. See *King Broadcasting Company*, 6 FCC Rcd 4998, 5000 (1991).

10. Complainant Sanchez recognizes that the Commission has generally found that debates between at least two competing legally qualified candidates fit within the first prong as a news event. However, this should not be the case here because if KUVN is permitted to exclude third party candidates under any circumstances (even arbitrary and capricious ones) and still call it "news," then no third candidate will have the ability to enforce the equal time requirement, essentially declaring two separate and unequal classes of candidates. Such an interpretation is inconsistent with the Act and Congress' intent to "foster a more informed electorate." See *King Broadcasting Company*, 6 FCC Rcd 4998, 5000 (1991).

11. KUVN also violates the second part of the test, whether the decision to co-sponsor, host and broadcast the debates is the result of good faith news judgment, because it excluded Complainant Sanchez based on her political party affiliation and not based on any objective criteria. This makes KUVN's decision arbitrary, capricious, unreasonable and made in bad faith.

12. However, even if KUVN claims that it based its decision on objective criteria such as political polling results, for example, the station still fails the second part of the test. A June 2014 University of Texas/Texas Tribune poll showed Complainant polling at 3% with a +/- margin of error of 2.83%. Significantly, a September 2014 Texas Lyceum poll shows Complainant gaining ground with 4% with a +/- margin of error of 3.8%. Adding the margins of error, Complainant polled 5.83% in June 2014 and 7.8% in September 2014. These polling numbers are more than significant and reflective of a serious, credible candidate spreading her message across Texas.

13. Moreover, there are currently 14,025,441 voters registered in Texas for the November 2014 general election. If four percent of those registered voters cast a ballot for Complainant she will have received 561,017 votes; if 7.8% cast a vote for Complainant she will have received 1,093,084 votes. These are large percentages and a huge number of potential votes and interested voters, especially for a third party candidate and even more clearly establishes Complainant as a credible and serious contender. Therefore, KUVN's decision is unreasonable and made in bad faith in violation of Section 315.

14. Complainant Sanchez recognizes that the FCC has in the past allowed the exclusion of candidates who did not obtain 7% in political polls. *Letter to George A. Lato, Esq.*, 6 FCC Rcd at 5841 (1991). However, this case is substantially different in several respects:

15. First, in *Lato* there were 12 candidates in one race. For a broadcast station hosting a debate to accommodate all 12 candidates would have been very difficult at best and unwieldy and unworkable at worst. Thus, the station in *Lato* chose the 7% polling bar to whittle the number of participating candidates down to four. That is reasonable under the circumstances. However, in this case, there are only four ballot qualified candidates total - of which, as far as Complainant is aware, only three out of four are seeking inclusion. Three is an extremely reasonable amount of candidates to host a debate with. Therefore, a polling level criteria would be inherently unreasonable in this case and would only serve to prevent the fostering of an informed electorate.

16. Second, no Green Party of Texas candidate has ever garnered more than 3% of the general election vote when competing against both a democrat and a republican in the same race. Therefore, a 7% polling standard for a Green candidate is extreme, unreasonable and further frustrates the purposes of the Act by excluding discussions of

diverse and conflicting views on issues of public importance. If a polling standard must be used, and the total field of candidates is four or less, then the standard should be one that shows the seriousness of the campaign but is also reasonable and achievable for growing third parties like, for example, one or two percent. Anything else would be unreasonable because hosting a debate with three or four candidates, as opposed to two, would not be unduly burdensome on the station but would, again, be a great detriment to fostering an informed electorate and inconsistent with the public interest provisions of Section 315 of the Act.

17. Alternatively, even if the FCC determines that the exclusion of Complainant Sanchez from the Debate falls under an exemption to the equal time requirement, KUVN nonetheless violates Section 315 and the equal time requirement because Complainant's exclusion fails to "afford reasonable opportunity for the discussion of conflicting views of issues of public importance." Complainant Sanchez's exclusion causes irreparable harm to the voting public, and in particular the Spanish-speaking voting public, by robbing them of the opportunity to hear her platform including her populist pro-peace, anti-fracking, pro-single payer universal healthcare, and pro-immigrants rights initiatives.

18. Further, KUVN has also violated Section 315 and the equal time requirement because Complainant Sanchez's exclusion is contrary to "the public interest." Being a working class, Spanish-speaking, Mexican-American woman, single mother, physical therapist assistant, Occupy Wall Street activist, Green Party member and poet, she has an extremely diverse background, worldview and platform. In particular, for KUVN to exclude the only female candidates, one of which is also the only Spanish-speaking Mexican-American candidate, from the Debate being broadcast in the Spanish language by a Spanish

language television station is unreasonable and a slap in the face to the millions of registered voters and viewers who might personally identify with Complainant Sanchez and/or her views and ideas.

19. Although KUVN would prefer only to report on easily described, well-known and major party candidates, and exclude credible, serious, and otherwise diverse third party candidates, the proper enforcement of the Federal Communications Act ensures American and Texas voters that they will have the ability to be informed about and vote for candidates with varied and new ideas and policies.

WHEREFORE, Complainant respectfully demands judgment including, but not limited to, ordering KUVN to allow Complainant Sanchez to fully participate in the KUVN televised U.S. Senate debate on October 24, 2014 in Dallas, Texas; and any other relief to which Complainant may be entitled to under the law.

Respectfully submitted,

 w/p 

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