

Appendix B

Request for Continued Satellite Authority
Filed in FCC File No. BTCCT-20050112ADG
("2005 Satellite Request")

MULTIPLE OWNERSHIP

I. Request for Continued Satellite Authority Under 47 C.F.R. § 73.3555, Note 5

In the instant application, Univision of Puerto Rico Inc., a subsidiary of Univision Communications Inc. ("UCI") proposes to acquire the stock of WLII/WSUR Inc., the licensee of WLII(TV), Caguas, Puerto Rico and its satellite station, WSUR-TV, Ponce, Puerto Rico. The proposed transfer of control was previously approved by the Commission in 2001, however the parties did not consummate the transaction within the time period under that authorization. By this application, UCI once again seeks authorization to acquire control of WLII(TV) and WSUR-TV.¹

As the Commission is aware, WSUR-TV has operated as a satellite of WLII(TV) for more than 30 years.² In 2001, the Commission granted UCI permission to continue that satellite operation under its proposed ownership of WLII(TV) and WSUR-TV. To the extent necessary, UCI hereby requests that the Commission renew that authority to maintain the long-standing parent-satellite relationship of the stations under the Note 5 exemption to the grade B overlap prohibition included in Section 73.3555 of the Commission's Rules.

As the Commission has recognized on a number of occasions, the entire island of Puerto Rico constitutes a single television market.³ The island, and market, is approximately 125 miles long and 40 miles wide, with a central mountain range that separates Puerto Rico from east to west. For all practical purposes, Puerto Rico consists of three basic population centers: San Juan/Caguas/Fajardo, with a population of approximately 615,588 on the northeast coast; Ponce, with a population of approximately 186,475 on the southeast coast; and Aguadilla-Mayaguez, with a population of approximately 163,119 in western Puerto Rico.⁴ The mountainous spine which runs down the center of Puerto Rico severely limits signal propagation and prevents stations in the populous San Juan area from providing service to the two other, smaller population centers, and vice versa.

In addition to its unique terrain, the economics of television in Puerto Rico are significantly different from that of the continental United States. The Puerto Rico television market has a total population of 3,808,610,⁵ which is equivalent to the Miami Market, DMA No.

¹ See FCC File No. BTCCT-20010626AAX.

² See *Milton S. Maltz and Raycom Media, Inc.*, 13 FCC Rcd 15527 at ¶ 29 (1998).

³ *Id.* at ¶ 25.

⁴ See, e.g., *Canal 48, Inc.*, 8 FCC Rcd 2193, 2194 (1993). Population figures provided herein were taken from the 2000 U.S. Census.

⁵ See 2000 U.S. Census.

17.⁶ In contrast to its middle market size, there are approximately 30 television stations licensed or authorized to communities in Puerto Rico⁷ -- more than either of the largest domestic television markets -- New York and Los Angeles -- and roughly twice as many as are licensed to the Miami market.⁸

Because of these factors, operation of satellite-parent or equivalent relationships is common in Puerto Rico. The Commission has recognized that Ponce is significantly smaller and less economically developed than the San Juan area and cannot support a full-service television operation.⁹ Thus, while there are five commercial television stations in Ponce -- WSUR-TV, WVOZ-TV, WKPV(TV), WTIN(TV) and WSTE(TV) -- none is a true stand-alone station. Four are satellite stations: WSUR-TV has been the satellite of WLII(TV), San Juan, for 30 years; WVOZ-TV is the satellite of WTCV(TV), San Juan; WKPV(TV) is the satellite of WJPX-TV, San Juan, and WTIN(TV) is the satellite of WAPA-TV, San Juan. The fifth station, WSTE(TV), broadcasts using unusual technical facilities which employ a number of high power co-channel transmitters across Puerto Rico permitting essentially ubiquitous service throughout the island. However, even WSTE(TV) does not provide a separate, stand-alone programming service, as a significant portion of its programming is supplied by WLII(TV).

These satellite-parent relationships are not reserved for stations in Ponce. In 2001, the Commission granted a satellite waiver involving WNJX-TV, Mayaguez, Puerto Rico and WAPA-TV, San Juan, Puerto Rico.¹⁰ It is noted that the licensee of these stations not only owns those two stations, but also now owns WTIN(TV) in Ponce, the third major population area of the island,¹¹ thus signaling that the Commission recognizes that stand-alone operations in the remote areas of Mayaguez and Ponce continue to be impractical.

None of the essential facts underlying the existing operation of WSUR-TV as a satellite are changed by the instant application. Ponce remains distinct and separate from San Juan, and the San Juan area stations are unable to provide a quality signal to Ponce. The economy of Ponce, and its population base, have not increased to a level sufficient to support stand-alone stations. Moreover, it would be extremely unfair to require operation of WSUR-TV as the only stand-alone station in the Ponce market, while each of its four competitors have the economic advantage of operation as satellite, or quasi-satellite, stations.

⁶ See *BIAfn's Television Yearbook 2004* at 122 ("BIA TV Yearbook").

⁷ See *JEM Communications, Inc.*, 76 RR 2d 308 at ¶ 9 (1994).

⁸ See *BIA TV Yearbook* at 112, 122, 134.

⁹ See *JEM Communications, Inc.*, 76 RR 2d 308 at ¶ 9 (1994).

¹⁰ *Id.*

¹¹ *Id.* at ¶ 1.

The Commission's television satellite station policy sets forth three criteria under which continued operation as a satellite station is presumptively in the public interest:

- (1) there is no City Grade overlap between the parent and the satellite;
- (2) the proposed satellite would provide service to an underserved area; and
- (3) no alternative operator is ready and able to construct or to purchase and operate the proposed satellite as a full-service station.¹²

Moreover, if an applicant is unable to qualify for the presumption, the Commission will evaluate the satellite proposal on an *ad hoc* basis and grant the application if there are other compelling circumstances that warrant approval.¹³

In the instant case, continued satellite operation of WLII(TV) and WSUR-TV is warranted because no alternative operator is ready and able to purchase and operate WSUR-TV as a full-service station. Moreover, continuance of WSUR-TV's satellite status would serve the public interest and is consistent with established Commission precedent.

City Grade Overlap. Given the distance between Ponce and Caguas, predicted city-grade contour overlap exists between WLII(TV) and WSUR-TV. However, in granting WSUR-TV's waiver request in 1985, the Commission noted that due to the mountainous and rugged terrain in Puerto Rico, "useful television service from any given television station is limited, usually not extending beyond the Grade A contour and sometimes not being satisfactory within that contour."¹⁴ Thus, although the stations theoretically have overlapping contours, the Commission has found that the over-the-air coverage of WLII(TV) and WSUR-TV may actually be more limited than indicated by the predicted Grade A and B contours due to the island's geography.¹⁵ This unique geography has formed the basis for the Commission's grant of parent-satellite status for a number of stations in Puerto Rico, including repeated authorizations for WLII(TV) and WSUR-TV.

Underserved Area. WSUR-TV does not technically provide service to an underserved area. A satellite station's community of license is considered underserved if: (1) there are two or fewer full-service television stations licensed to it; or (2) 25% or more of the area within the satellite's Grade B contour, but outside the parent's grade B contour, receives four or fewer services, not including the satellite station's service.¹⁶ With respect to the first of these tests, the

¹² *Television Satellite Stations*, 6 FCC Rcd 4212, 4213-14 (1991) ("*Satellite Policy Statement*"),

¹³ *Id.* at 4214.

¹⁴ See *Zaida Perez Vda. De Perez Perry*, FCC 85-831, ¶ 11 (released July 26, 1985), *aff'd sub nom.*, *Telemundo V. FCC*, 802 F.2d 513 (D.C. Cir 1986).

¹⁵ *Id.*

¹⁶ See *Satellite Policy Statement* at 4215.

“transmission test,” four full-power television stations are licensed to Ponce.¹⁷ As noted above, however, of the stations licensed to Ponce, three operate as satellites of San Juan area stations and one operates under a unique television broadcast system utilizing a number of specially-authorized high power booster stations across the island.¹⁸ Thus, as the FCC has found, “it appears that satellite or rebroadcast arrangements are essential to the provision of programming choice to Ponce, a community that is effectively isolated from the island’s economic center in San Juan.”¹⁹ With regard to the second test, the “reception test,” the FCC has recognized that Puerto Rico is a geographically small and highly concentrated broadcast market.²⁰ Given the special characteristics of Puerto Rico, it is difficult for any Puerto Rico station to show a sufficient lack of predicted Grade B service to satisfy the test.

Availability of Alternate Operator. The third element of the presumptive test requires a showing that no alternative operator stands ready and able to purchase and operate the satellite station as a stand-alone station. WSUR-TV’s established history as a satellite, combined with the economic inability of the Ponce market to support stand-alone operations, conclusively demonstrate that WSUR-TV is not capable of operating as a stand-alone facility and that consequently no buyer is available to purchase and operate the station as such.²¹ WSUR-TV has operated as a satellite of WLII(TV) for more than thirty years due to the economic inability of the Ponce market to support full-service operations. Moreover, the FCC has repeatedly acknowledged that Ponce lacks the requisite economic base to sustain full-service operations,²² and found as much again in its recent 2001 satellite waiver decision.²³

¹⁷ These are stations WKPV, WVOZ, WTIN and WSTE.

¹⁸ *Milton S. Maltz*, 13 FCC Rcd at ¶ 24.

¹⁹ *Canal 48, Inc.*, 8 FCC Rcd at 2194 (1993).

²⁰ *T. Michael Whitney*, 16 FCC Rcd at 2299.

²¹ As the Commission has recognized, WSUR-TV has a troubled financial history which resulted in a bankruptcy proceeding and a cessation of station operations in 1981. See *Milton S. Maltz* at ¶ 24. Subsequent to the bankruptcy proceeding, “the Commission granted the new licensee of station WSUR-TV continued satellite exemption status for that station, questioning its ability to operate independently when it had already failed as a satellite.” *Id.* See also, *T. Michael Whitney* 16 FCC Rcd at 2299 (satellite operations or rebroadcast arrangements are a necessity in Puerto Rico, which “is best exemplified by the fact that none of the full service stations in Mayaguez originates its own programming and must rely on other larger market stations”) (citations omitted).

²² See *Milton S. Maltz*, 13 FCC Rcd 15527 (1998); *JEM Communications, Inc.*, 9 FCC Rcd 4874 (1994); *Canal 48, Inc.*, 8 FCC Rcd 2193 (1993); *Hector Nicolau*, 5 FCC Rcd 6370 (1990).

²³ See Letter to Univision Communications Inc. from James J. Brown, Deputy Chief, Video Service, Division (August 20, 2001).

As shown in the attached statement from Brian Cobb, President of CobbCorp, a media brokerage firm, it is unreasonable to expect to find a qualified buyer who could purchase WSUR-TV and operate it as a stand-alone facility. As detailed in Attachment 1, Mr. Cobb has reviewed the current economic environment in Ponce and has determined that WSUR-TV continues to be unable to exist as a stand-alone facility in the market. The Commission has consistently reached the same conclusion as Mr. Cobb on the previous occasions it has reviewed the operations of WSUR-TV.²⁴ In each instance, the Commission determined that WSUR-TV lacks the viability to operate as an independent television station, and thus there is no alternative operator ready and able to operate the station as a stand-alone facility. As the Commission stated in *Milton S. Maltz*, "the record strongly indicates that Ponce, station WSUR-TV's community of license, lacks the population and economic base to sustain full-service operations, and must therefore rely on satellite authorizations ... for the provision of television programming it would otherwise not receive."²⁵ UCI submits that there have been no material changes in the Ponce market or the operation of WSUR-TV since the Commission's 1998 *Milton S. Maltz* decision or its 2001 decision involving Univision, and accordingly, WSUR-TV remains unable to exist as a stand-alone station. As a result, the continued satellite operation of WSUR-TV is presumptively in the public interest.

Ad Hoc Analysis. Pursuant to the *Satellite Policy Statement*, if an applicant is unable to qualify for the presumption that the proposed satellite operation is in the public interest, the Commission will evaluate the proposal on an *ad hoc* basis. In 2001, the Commission found that UCI had satisfied this test with respect to the continued operation of WSUR-TV as a satellite of WLII(TV). As shown above, no qualified buyer would purchase WSUR-TV for operation as a full-service, stand-alone station. WSUR-TV has operated as a satellite for more than thirty years due to the economic inability of the Ponce market to support full-service television operations. Accordingly, UCI submits that an *ad hoc* analysis continues to support grant of the instant satellite waiver request and continued operation of WSUR-TV to serve the residents of Ponce.

WSUR-TV is being assigned with WLII(TV) as part of a single transaction and no new satellite relationship will be created by the proposed transaction as WSUR-TV has operated as a satellite of WLII(TV) for more than three decades. Therefore, grant of UCI's request to continue operating WSUR-TV as a satellite station would not reduce competition or diversity in the Ponce market. In fact, Ponce residents have for many years received a number of substantial benefits from the parent-satellite operation of WSUR-TV and WLII(TV). Given this long history of providing service to the citizens of Ponce, continued operation of WSUR-TV as a satellite of WLII(TV) would clearly serve the public interest. For these reasons, UCI respectfully requests authority for continued authorization of WSUR-TV as a satellite of WLII(TV).

²⁴ See, e.g., *Milton S. Maltz*, 13 FCC Rcd 15527 (1998); *Zaida Perez Vda. De Perez Perry*, FCC 85-831, ¶ 11 (released July 26, 1985), *aff'd sub nom.*, *Telemundo v. FCC*, 802 F.2d 513 (D.C. Cir 1986).

²⁵ *Milton S. Maltz* at ¶ 29.

II. The Proposed Transaction Complies with Television-Radio Cross Ownership Rules

The instant application will create two radio-television combinations. As shown below, each complies with the Commission's radio-television cross-ownership rule.

The Commission's radio-television cross-ownership rule is triggered when the 2 mV/m contour of an AM radio station or the 1 mV/m contour of an FM radio station wholly encompasses the community of license of a television station to be commonly owned, or when the Grade A contour of a television station wholly encompasses the community of license of a radio station which is to be commonly owned with the television station.²⁶ Where the radio-television cross-ownership rule is triggered, a single entity may directly or indirectly own, operate, or control up to one commercial television and four commercial radio stations, if at least 10 independently owned media voices will remain in the market post-consummation.²⁷

Univision Radio Puerto Rico, Inc., a subsidiary ultimately owned by UCI, is the licensee of four radio stations in Puerto Rico, WKAQ(AM), San Juan, WKAQ-FM, San Juan, WUKQ(AM), Ponce, and WUKQ-FM, Mayaguez, Puerto Rico.

As shown in Attachment A, the Grade A contour of WLII(TV) fully encompasses San Juan, the city of license of WKAQ(AM) and WKAQ-FM. The 1mV/m contour of WKAQ-FM and the 2mV/m contour of WKAQ(AM) encompass the community of Caguas, the city of license of WLII(TV). The 1mV/m contour of WUKQ-FM and 2mV/m contour of WUKQ(AM) do not encompass the community of Caguas, nor does the Grade A contour of WLII(TV) encompass Ponce and Mayaguez. Accordingly, the cross-ownership rule is triggered only with respect to WLII(TV), WKAQ-FM and WKAQ(AM).

A single entity may own or control one television station and two radio stations where there are at least 10 voices remaining in the market post merger. As shown in Attachment A, there will be at least 21 voices remaining post merger. Accordingly, a sufficient number of voices is present to permit the common ownership of these stations.

²⁶ See 47 C.F.R. § 73.3555(c)(1).

²⁷ See 47 C.F.R. § 73.3555(c)(1)(ii)(B).

PUERTO RICO VOICE STUDY

No.	Licensee or Other Attributable Party	Call Sign	City, State
1.	Concilio Mision Cristiana Fuente de Agua Viva, Inc.	WQHA(TV)	Aguada, PR
2.	Pabellon Educational Broadcasting Inc.	WELU(TV)*	Aguadilla, PR
3.	Asociacion Evan. Cristo Viene Inc.	WCCV-TV	Arecibo, PR
4.	Western Broadcasting Corporation of Puerto Rico	WOLE-TV	Aguadilla, PR
5.	Raycom Media Inc. ¹	WLII(TV) WSUR-TV	Caguas, PR Ponce, PR
6.	Siete Grand Television Inc.	WSTE(TV)	Ponce, PR
7.	Bayamon Christian Network	WDWL(TV)	Bayamon, PR
8.	Caguas Educational TV, Inc.	WUJA(TV)*	Caguas, PR
9.	R & F Broadcasting Inc.	WRFB(TV)	Carolina, PR
10.	Ana G. Mendez Educational Foundation	WMTJ(TV)* WQTO(TV)*	Fajardo, PR Ponce, PR
11.	Catholic, Apostolic and Roman Church in Puerto Rico	WPRV-TV	Fajardo, PR
12.	Eastern Television Corp.	WRUA(TV)	Fajardo, PR
13.	Ebenezer Broadcasting Group Inc.	WIDP(TV)	Guayama, PR
14.	La Cardena del Milagro, Inc.	WVSN(TV)	Humacao, PR
15.	Puerto Rico Public Broadcasting Corp.	WIPM-TV WIPR-TV*	Mayaguez, PR San Juan, PR
16.	LIN Television ²	WAPA-TV	San Juan, PR

¹ WSUR-TV is a satellite of WLII(TV).

² WNJX(TV) and WTIN(TV) are satellites of WAPA-TV. WKPV(TV), WJWN-TV and WIRS(TV) are satellites of WJPX(TV).

No.	Licensee or Other Attributable Party	Call Sign	City, State
		WNJX-TV WJPX(TV) WJWN-TV WKPV(TV) WTIN(TV) WIRS(TV)	Mayaguez, PR San Juan, PR San Sabastian, PR Ponce, PR Ponce, PR Yauco, PR
17.	Telecinco, Inc.	WORA-TV	Mayaguez, PR
18.	Encuentro Christian Network	WECN(TV)	Naranjito, PR
19.	International Broadcasting Corp. ³	WTCV(TV) WVOZ-TV WVEO(TV)	San Jua, PR Ponce, PR Aguadilla, PR
20.	Telemundo of Puerto Rico	WKAQ-TV	San Juan, PR
21.	Aerco Broadcasting Corp.	WSJU-TV	San Juan, PR

* Non-commercial station

Sources

1. Television and Cable Yearbook 2004
2. FCC CDBS Database

Document #: 1150159 v.2

³ WVOZ-TV and WVEO(TV) are satellites of WTCV(TV).

December 23, 2004

Mr. Clay C. Pendarvis
Chief – Television Branch
Federal Communications Commission
Room 2-A662
445 12th Street S.W.
Washington, DC 20554

Re: Application for Transfer or Assignment of Control of: WSUR-TV, Ponce, Puerto Rico; WLII-TV, Caguas, Puerto Rico

Dear Mr. Pendarvis:

In regard to the above-referenced application, I have been requested by the parties thereto to comment on the continued operation of WSUR-TV as a satellite of WLII-TV. This letter addresses the feasibility of operating and marketing the stations as stand-alone operations, rather than continuing to use WSUR as a satellite.

By way of background, I have over thirty-five years of experience in the broadcast industry as an owner, manager and broker of broadcast stations. I am President of CobbCorp, a media brokerage, appraisal and merchant banking firm specializing in television transactions. I was a founding partner of Media Venture Partners, a nationally recognized media brokerage firm, and I was responsible for the brokerage and appraisal of television stations for Media Venture Partners. Over the past seventeen years, I have been involved in the brokerage of more television stations than any other media broker. I am a past President of the National Association of Media Brokers, in addition to belonging to NAPTE and NAB.

I have been involved in media transactions in Puerto Rico, as well as opining in 1996 on a similar satellite application involving San Juan and Ponce and these stations in 2001. I have been to the island, and am familiar with the topography and the economy. I have reviewed relevant data regarding the stations and the advertising environment. Accordingly, I am in a position to reach certain conclusions concerning WLII and its satellite's position in the market. Based on my experience, if our firm was asked to list WSUR for sale, I would have little interest in doing so. I would consider the listing on a stand-alone basis as having little, if any, market value, and I would not be comfortable offering a property that could damage the well-being of a prospective buyer. I also doubt that a ready, willing and able buyer would be available.

Puerto Rico is an island with significant mountainous terrain that prevents consistent reception of stations in many areas. The island's economy fluctuates tremendously and is affected not only by the normal ups and downs of a fledgling economy, but is heavily influenced by the weather, most notably hurricanes. San Juan is the dominant economic and cultural center for Puerto Rico, while Ponce is a much smaller community that has struggled economically. As a result, it would be extremely difficult for a stand-alone

station to succeed in Ponce. With the upcoming digital conversion by television stations, the additional financial encumbrance of this change would make it highly unlikely for a stand-alone operation to survive in Ponce.

Additionally, the mother station in San Juan without the satellite would be placed at a competitive disadvantage to other stations in the market that have satellites, not only in Ponce, but also in other outlying communities. Accordingly, continued satellite status for WSUR not only benefits the Ponce area, but also helps WLII compete in a difficult economic environment.

The FCC has acknowledged the circumstances in Puerto Rico, recently affirming the satellite status of WSUR, as well as other outlets on the island. In granting approval, the FCC acknowledged that it is unlikely that WSUR would survive as a stand-alone operation.

Since the time of the FCC's last approval of satellite status, there have been no significant changes in the market that would justify operating WSUR as a stand-alone station. It is highly probable that it would be financially unsuccessful.

WSUR is an ideal example of why some stations in certain cases should be satellites. They provide free over-the-air television to outlying communities, which otherwise would be deprived of such service, because they cannot economically support and sustain a stand-alone television station.

In sum, as a result of the economic and geographic environment where the station is located, it is my opinion that WSUR could not operate successfully as a stand-alone station. For the station to survive and provide quality service to its community, it must continue to operate as a satellite of a more viable facility.

In my opinion, it is necessary for WSUR to continue its satellite status to best serve the communities involved and for the station to be economically viable.

Sincerely,



Brian E. Cobb
Managing Director