

Request for Continued Satellite Exemption

The applicants hereby respectfully request that the Commission continue to waive the provisions of Section 73.3555(b) in accordance with Note 5 thereto, and grant the instant application for consent to assignment of licenses. This request represents nothing more than a continuation of the *status quo* after the proposed assignment. The stations subject to this application currently are operated with WTCV as the parent station and WVEO and WVOZ-TV as satellite stations. This combination of stations was initially approved by the Commission in 1993. *See, Canal 48, Inc.*, 8 FCC Rcd 2193 (1993). The satellite waiver was later reaffirmed in 2001. *Esperanza Television, LLC*, 1800E1-DB, released July 23, 2001. While the latter proposed assignment was never consummated, the rationale and circumstances underlying approval of a satellite waiver in 1993 and its continuation in contemplation of an assignment of license in 2001 remain essentially unchanged. Continuation of the current satellite status for WVEO and WVOZ-TV will allow the continued provision of high-quality programming to residents living beyond the Puerto Rican economic center of San Juan and thus will serve the public interest.

In *Television Satellite Stations*, 6 FCC Rcd 4212 (1991), the Commission adopted a presumption that satellite operations are in the public interest if an applicant can satisfy the following public interest criteria: (1) there is no city-grade overlap between the parent station and the proposed satellite station; (2) the proposed satellite station would provide service to an underserved area; and (3) no alternative operator is “ready and able” to construct or to purchase and operate the satellite as a full-service stand-alone facility. 6 FCC Rcd at 4213-14.

Applications that qualify for the presumption and are unrebutted will be viewed favorably by the Commission. *Id.* at 4214. Where an applicant is unable to qualify for the presumption, the

proposal will be evaluated on an *ad hoc* basis and granted if other circumstances warrant approval. *Id.*

In this instance, the proposed continued satellite status satisfies the first and third criteria for a presumption in favor of grant of such status. As demonstrated in the attached Engineering Statement, originally prepared for Esperanza Television, LLC,¹ there is no overlap between the city grade contours of the parent station WTCV (formerly WAVB-TV) and either of the satellite stations, WVEO or WVOZ-TV. In fact, even the Grade B contours of WTCV and WVEO do not overlap. There is, however, some slight overlap between the city-grade contours of the two satellite stations.

Neither WVEO nor WVOZ-TV fully fits the Commission's definition of a station which serves an underserved area. Accordingly, the presumption in favor of a satellite exemption does not strictly apply in this instance. Nonetheless, the Commission has twice previously found on an *ad hoc* basis that the combination proposed herein serves the public interest and has therefore approved it. There has been no change in circumstances which would warrant a change in the conclusion reached.

The Commission has long recognized the unique set of challenges facing television broadcasters in Puerto Rico, and that the terrain and economic conditions, combined with the small geographic size of the island, make satellite and other rebroadcast arrangements among television stations an economic necessity. *See, e.g., T. Michael Whitney*, 16 FCC Rcd 2297 (2001); *Milton Maltz*, 13 FCC Rcd 15527 (M.Med.Bur.1998); *JEM Communications, Inc.*, 9 FCC Rcd 4874 (1994); *Canal 48*, 8 FCC Rcd 2193; *Hector Nicolau*, 5 FCC Rcd 6370 (1990).

¹ While this Engineering Statement was prepared and submitted to the Commission in 2001, the engineering information included remains unchanged, as the Commission's Consolidated Data Base System ("CDBS") shows no technical changes in the operations of the stations since that time.

The island of Puerto Rico is only about 125 miles long (east to west) and 30 miles wide (north to south). The topography is dominated by the Cordillera Central Mountain Range, which bisects the island east to west and effectively blocks television signals originated on one side of the island from being received on the other. This terrain has a “significant limiting affect [sic] on the actual over-the-air coverage of television stations operating on the island.” *Hector Nicolau*, 5 FCC Rcd at 6371. In the instant case, WTCV is licensed to San Juan, on the northeast coast; WVOZ-TV is licensed to Ponce, on the south coast; and WVEO is licensed to Aguadilla, on the northwest coast.

Nonetheless, while the communities of Puerto Rico are not included in any Nielsen Designated Market Area (“DMA”), the Commission has repeatedly treated Puerto Rico as a single market for purposes of multiple ownership rules. *See, e.g., Paxson Communications of San Juan, Inc.*, 16 FCC Rcd 14139 (2001); *Milton Maltz*, 13 FCC Rcd 15527. Likewise, advertisers expect to be able to reach the entire island market with their messages. As noted above, however, the terrain of the island makes achievement of that goal with a single station a virtual impossibility. Furthermore, the poor cable penetration on the island precludes any significant additional audience reach from that source. *See, Television and Cable Factbook* at F-3 (2006) (stating that there are 345,0000 subscribers to basic cable in Puerto Rico, which equates to approximately 25 percent penetration).

The small size and concentrated nature of the market add further complications. A review of CDBS shows that, on an island that is only approximately 125 miles by 30 miles, there are in excess of 30 television stations authorized and more than 100 radio stations. The result is an intense level of competition among broadcast stations for advertising dollars to allow for the continued operations of their stations. Moreover, the generally poor economic condition of

Puerto Rico outside of San Juan makes the generation of sufficient revenue to survive quite difficult.

As a result, a symbiotic relationship between stations in San Juan, the economic center of the island, and stations in poorer, outlying areas has developed. These relationships, whether through satellite status or time brokerage/rebroadcast agreements, allows the San Juan stations to achieve the island-wide coverage that advertisers demand while providing the stations in more remote communities the economic support and quality programming that they need to survive. The Commission has long recognized that areas outside the San Juan population center lack the economic basis to sustain full-power operations. *See, e.g., T. Michael Whitney*, DA 01-189 at ¶ 5; *JEM Communications, Inc.*, 9 FCC Rcd at 4875; *Canal 48, Inc.*, 8 FCC Rcd at 2194.

As a result of these economic realities, it is clear that no alternative operator is available to acquire either or both of the satellite stations as stand-alone operations. This fact is reflected in the many joint station operations, whether through combined ownership or other agreements, throughout Puerto Rico. Indeed, the recent LIN TV Corp. ownership report, File No. BOS-20060804ADA, *et seq.* shows ownership interests in no less than seven television stations in Puerto Rico, with two primary stations and five satellites. Without such arrangements, the areas of Puerto Rico outside of San Juan would suffer from a lack of television broadcasts, as the economics prevent those communities from sustaining independent television stations, and the topography prevents San Juan stations from reaching them.

As a further illustration of this point, both of the satellite stations concerned herein, WVOZ-TV and WVEO, were purchased by the principal of the current licensee at a time when each of the stations had been dark for a significant period of time (three years and five years, respectively). *See, Hector Nicolau*, 5 FCC Rcd at 6371; *Canal 48*, 8 FCC Rcd at 2193-94. The

stations then were returned to operation, have each established a local main studio, and have each operated with some local programming throughout the years. It is the proposed assignee's plan to continue such operation.

Considering all of these factors, it is clear that a continuation of the current satellite status for WVOZ-TV and WVEO would serve the public interest.