



Federal Communications Commission
Washington, D.C. 20554

December 29, 2015

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Re: International Broadcasting Company, Inc. and
Spanish Broadcasting Systems, Inc., File Nos.
BALCDT-20150810ADK and BALH-20150810ADQ, *et
seq.* (respectively)

Dear Counsel

By this letter we simultaneously grant the uncontested applications for consent to assign the licenses of Stations WTCV(TV), San Juan, Puerto Rico, WVEO(TV), Aguadilla, Puerto Rico, and WVOZ-TV, Ponce, Puerto Rico from International Broadcasting Corporation, Inc., to Spanish Broadcasting Systems, Inc. ("SBS") and WIOA(FM), San Juan, Puerto Rico, WIOC(FM), Ponce, Puerto Rico, and WZET(FM), Hormigueros, Puerto Rico from SBS to IBC.¹ In addition, we grant the following requests for waiver of the Commission's multiple ownership rules: (1) a satellite television exemption to SBS to continue operating WVEO(TV) and WVOZ-TV as satellite stations of WTCV(TV), pursuant to Note 5 of Section 73.3555 of the Commission's Rules ("Rules");² and (2) waiver of Section 73.3555(a) of the Rules³ (the "local radio ownership rule") to IBC.⁴

Background. On September 1, 2014, IBC entered into an agreement with SBS providing SBS with an option to acquire Stations WVEO(TV), WVOZ-TV, and WTCV(TV). If SBS exercised its option, IBC would receive both monetary compensation and acquire Stations WIOA(FM), San Juan,

¹ File Nos. BALH-20150810ADQ et al. ("Radio Assignment Applications") and BALCDT-20150810ADK et al. ("Television Assignment Applications").

² 47 C.F.R. § 73.3555, Note 5.

³ 47 C.F.R. § 73.3555(a).

⁴ Following consummation of the proposed transaction both SBS and the primary interest holders in IBC will hold interests in television and radio stations. As discussed in greater detail below, SBS will have an interest in eight FM radio and one television station (as well as two television satellites) and the primary interest holders in IBC will have an interests in nine radio stations (five AM and four FM) and one television station. As demonstrated in both SBS and IBC's applications these holdings would comply with the Commission's limits on TV-radio cross-ownership. 47 C.F.R. § 73.5555(c); Radio Assignment Applications at Attachment 18 ("Radio-TV Cross Ownership Exhibit"); Television Assignment Applications at Attachment 18 ("Exhibit 18").

requires that the applications be designated for hearing.¹³ Having reviewed the application and other facts before us, we conclude that grant of the applications will serve the public interest, convenience and necessity, as required by Section 310 of the Act.

SBS Satellite Exemption. In *Television Satellite Stations*,¹⁴ the Commission stated that applicants seeking to transfer or assign a television satellite station are entitled to a “presumptive” exemption from Section 73.3555(b) of the Commission’s rules if the parent/satellite combination meets three criteria: (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 satellite as a full-service station.¹⁵ Applications meeting these three criteria, when un rebutted, will be viewed favorably by the Commission. If an applicant cannot qualify for the presumption, the Commission will evaluate the proposal on an *ad hoc* basis, and grant the application if there are compelling circumstances that warrant approval.¹⁶ No objections have been filed against the requested continued “satellite” exemptions for stations WVEO(TV) and WVOZ-TV.

With respect to the first criterion, we note that following the digital transition full-power television stations have a digital Principal Community contour that serves a much larger area than their former analog City Grade contour. Thus, the principal community contour is not an equivalent standard to use in determining whether a satellite qualifies for the presumptive satellite exemption to the duopoly rule. Because the first criterion of the presumptive exemption no longer applies, we must evaluate this “satellite” exemption request according to the *ad hoc* standard.

We find that the unique topographical characteristics and economic conditions of Puerto Rico warrant approval of the “satellite” exemption. SBS argues, and the Commission has long held, that the mountainous terrain that divides the island limits signal propagation and effectively prevents stations serving San Juan from reaching other areas of the island.¹⁷ SBS also contends that economic conditions, including the concentration of the broadcast market in Puerto Rico and serve economic conditions within Puerto Rico, necessitate the continued treatment of WVEO(TV) and WVOZ-TV as satellites.¹⁸ SBS discusses how the use of satellite stations has been critical to ensuring the survival of stations outside of San Juan, which is both the economic and population center of the island, as well as ensuring that viewers in poorer outlying areas receive high quality public interest television programming. SBS contends that

¹³ 47 U.S.C. § 309(e).

¹⁴ *Television Satellite Stations Review of Policies and Rules*, Report and Order, 6 FCC Rcd 4212 (1991)(“*Television Satellite Stations*”).

¹⁵ *Television Satellite Stations*, 6 FCC Rcd at 4213-4214.

¹⁶ *Id.* at 4214.

¹⁷ TV Assignment Applications at Attachment 18, pg. 4 (“Satellite Exemption Request”). See, e.g., *Univision/BMPI Order*, 22 FCC Rcd at 5857, ¶33 (“[a] mountainous ‘spine’ separates the eastern and western portions of Puerto Rico that limits signal propagation, and effectively prevents stations serving San Juan from reaching other population centers on the island.”); *Paxson Communications of San Juan, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 14139, 14143, ¶14 (“The island's topography significantly obstructs local broadcast signals, and limits the ability of television stations in San Juan to provide service to portions of the island for which service would ordinarily be received.”).

¹⁸ Satellite Exemption Request at 4-5.

the economic realities of the broadcast market in Puerto Rico make clear that no alternative operator is either available to acquire or operate either satellite station.¹⁹

Based on a review of the facts and circumstances, we conclude that IBC has provided information sufficient to warrant continued satellite operation for WVEO(TV) and WVOZ-TV. These stations have been operated as satellites of WTCV(TV) since 1993²⁰ and was most recently were granted a continued “satellite” exemption on December 15, 2015.²¹ We see no evidence in the record that a continued “satellite” exemption will harm competition in the Puerto Rico. Accordingly, for the reasons above, we conclude that grant of a continuing “satellite exemption” for WVEO(TV) and WVOZ-TV to operate as a satellites of WTCV(TV) would be in the public interest.

IBC Local Radio Ownership Waiver. In the 2002 Ownership Order,²² the Commission adopted a new, geography-based definition of radio markets based on Nielsen Metro Survey Areas (formerly Arbitron), as reported by BIA.²³ This new market definition is used to determine compliance with the numerical limits under Section 73.3555(a) in Nielsen-rated markets, such as Puerto Rico. Under this new definition, the island of Puerto Rico constitutes a single Nielsen Metro and consists of 132 non-commercial and commercial radio stations.²⁴ Following consummation of the instant transaction, Mr. Lopez and Ms. Lopez would have an attributable interest in nine radio stations (5 AM and 4 FM).²⁵ In a local radio market with 45 or more radio stations, as in Puerto Rico, one owner may own up to eight commercial radio stations, not more than five of which are in the same service.²⁶ Therefore, absent a waiver, acquisition by IBC of the SBS radio stations proposed here would result in IBC exceeding the numerical limits imposed under the local radio ownership rule.

IBC requests waiver of the current Nielsen-based market definition and asks the Commission to review the proposed acquisition using the contour-overlap methodology that applies in non-Nielsen rated

¹⁹ *Id.* at 4.

²⁰ See *Canal 48, Inc.*, Letter Decision, 8 FCC Rcd 2193 (Vid. Div. 1993); *Esperanza Television, LLC*, Letter Decision (Vid. Div. rel. Jul. 23, 2001).

²¹ Letter from Barbara A. Kreisman to Davina S. Sashkin, Esq., Counsel for International Broadcasting Corp., Inc. (rel. December 15, 2015) available at: http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=62391.

²² See *2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13711-13747 (2003) (“*2003 Ownership Order*”), *aff’d in part and remanded in part, Prometheus Radio Project, et al. v. FCC*, 373 F.3d 372 (2004) (“*Prometheus Remand Order*”), *stay modified on rehearing*, No. 03-3388 (3d Cir. Sept. 3, 2004), *cert. denied*, 73 U.S.L.W. 3466 (U.S. June 13, 2005) (Nos. 04-1020, 04-1033, 04-1036, 04-1045, 04-1168 and 04-1177). See also *Prometheus Radio Project v. FCC*, No. 08-3078 (3d Cir. Jul. 7, 2011) (affirming Commission’s 2008 local radio ownership rule) (“*Prometheus Rehearing*”).

²³ See *2003 Ownership Order*, 18 FCC Rcd at 13724-13728. Although the Third Circuit Court of Appeals subsequently stayed the effective date of all the new rules set forth in the Ownership Order and continued that stay pending review of the Commission’s action on remand, see *Prometheus Remand Order*, 373 F.3d at 435, the court partially lifted the stay in response to the Commission’s Petition for Rehearing, such that the new local radio ownership rule took effect on September 3, 2004. *Prometheus Rehearing Order* at 2.

²⁴ Radio Assignment Applications at Attachment 18 (“BIA Market Report Puerto Rico”).

²⁵ *Supra* note 7.

²⁶ See 47 C.F.R. § 73.3555(a)(i).

markets.²⁷ The Commission's rules may be waived only for good cause shown.²⁸ An applicant seeking a rule waiver has the burden to plead with particularity the facts and circumstances that warrant such action.²⁹ The Commission must give waiver requests "a hard look," but an applicant for waiver "faces a high hurdle even at the starting gate"³⁰ and must support its waiver request with a compelling showing.³¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³² In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³³ However, waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.³⁴ Applying these standards, we find that waiver of Section 73.3555(a) is appropriate in this instance.

The island of Puerto Rico is approximately 125 miles long (east to west) and 35 miles wide (north to south), with a central mountain range that not only separates the island from east to west, but also divides it into three basic geographic areas, San Juan (in the north), Ponce (in the south), and Aguadilla-Mayaguez (in the west). Puerto Rico also is unique in that the entire island, which is roughly the same size as Connecticut, is treated as one market by Nielsen. Puerto Rico, however, consists of eight Metropolitan Statistical Areas ("MSAs"), five Micro Statistical Areas, and three Combined Statistical Areas.³⁵ MSAs generally approximate the boundaries around centers of economic activity.³⁶ Puerto

²⁷ IBC provides a Technical Statement it claims demonstrates compliance pursuant to the interim contour-overlap methodology, as discussed in the *2003 Ownership Order*, 18 FCC Rcd at 13729-30. See Radio Assignment Applications at Attachment 18 ("Radio Multiple Ownership Exhibit-Revised").

²⁸ 47 C.F.R. § 1.3.

²⁹ See *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968)).

³⁰ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) ("*WAIT Radio*"), cited in *Ownership Order*, 18 FCC Rcd at 13647. See also *Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983).

³¹ *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

³² See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northwest Cellular*") (citing *WAIT Radio*). See also 47 C.F.R. § 1.3 (stating that rule provisions may be waived "for good cause shown"). The Commission declined to adopt any specific waiver criteria relating to radio station ownership in the *Ownership Order*, but stated that "[p]arties who believe that the particular facts of their case warrant a waiver of the local radio ownership rule may seek a waiver under the general 'good cause' waiver standard in our rules." *2002 Ownership Order*, 18 FCC Rcd at 13746-47 (citing 47 C.F.R. § 1.3).

³³ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

³⁴ *NetworkIP, LLC v. FCC*, 548 F.2d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

³⁵ See OMB Bulletin 10-02, at <https://www.whitehouse.gov/sites/default/files/omb/assets/bulletins/b10-02.pdf>; see also Standards for Defining Metropolitan and Micropolitan Statistical Areas, 65 Fed. Reg. 82228 (2000). MSAs have at least one urbanized area of 50,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties. Micro SAs have at least one urbanized area of at least 10,000 but less than 50,000 population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties. Combined Statistical Areas are combined adjacent MSAs and Micro SAs.

³⁶ The Commission has previously used the U.S. Census Bureau's designation of MSAs to help define the applicable market for determining compliance with cross-ownership limits in Puerto Rico. See, e.g., *WLDI, Inc.*, Memorandum

Rico's eight MSAs suggest that the island may have more centers of economic activity than the Nielsen Metro implies in this instance. The Commission has previously found that the unique characteristics of the Puerto Rico Nielsen Metro, including the extreme topography and unusual economic circumstances, justify a waiver of the use of the Puerto Rico Nielsen Radio Metro as the presumptive market.³⁷ We find such unique characteristics to apply in this case and that the stations at issue cannot be heard, let alone compete across the entire island, especially in the western and southern portions of the island. Accordingly we will grant IBC's request for waiver of the local radio ownership rule and apply the contour-overlap methodology analysis standard in this transaction.

According to IBC's analysis, use of the Commission's contour-overlap methodology in the proposed transaction forms three separate radio markets that each comply with the local radio ownership limits.³⁸ In a local radio market with 45 or more radio stations, a single entity or individual may own up to eight commercial radio stations, but not more than five of which are in the same service, in a market.³⁹ In Market One, IBC would own three AM stations and one FM stations in a 81-station market.⁴⁰ In Market Two, IBC would own three AM stations and two FM stations in a 70-station market.⁴¹ In Market Three, IBC would own one AM station and two FM stations in a 74-station market.⁴² When evaluating the transaction using the contour-overlap methodology, we find IBC complies with the numerical limits set forth under the local radio ownership rule.

Opinion and Order, 10 FCC Rcd 12150 (1995) (recognizing that the San-Juan Bayamon PMSA may be equivalent to a radio market and the San Juan-Caguas-Arecibo CMSA may be equivalent to a television market).

³⁷ See e.g., *See Luis A. Soto*, Letter, 22 FCC Rcd 2549 (MB 2007); *MSG Radio, Inc. c/o Lewis J. Paper, Esq, et al.*, Letter, 27 FCC Rcd 7066 (MB 2012). The Commission has previously acknowledged the severely limiting effect Puerto Rico's unique mountainous terrain has on signal propagation, which prevents stations in the more populous San Juan area from serving the two other main areas of the island (and visa-versa). See, e.g., *Canal 48, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 2193 (1993); *Paxson Communications of San Juan*, Memorandum Opinion and Order, 16 FCC Rcd 14139 (2001). See also 2014 Quadrennial Regulatory Review-*Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4411-12, para. 97 (2014)(acknowledging that the Commission has consistently waived the Nielsen Metro definition for applications in Puerto Rico and employed the contour-overlap methodology. Seeking comment on whether the Commission should redefine local radio markets for Puerto Rico).

³⁸ Radio Multiple Ownership Exhibit-Revised at pgs. 5-14. When applying the contour overlap methodology no market is formed involving Stations WZET(FM), Hormigueros, Puerto Rico and WIOC(FM), Ponce, Puerto Rico. *Id.* at 5.

³⁹ See 47 C.F.R. § 73.3555(a)(i).

⁴⁰ Radio Multiple Ownership Exhibit-Revised at pgs. 6-7, 9-10. This market includes Stations WQBS(AM), San Juan, Puerto Rico, WVOZ(AM), San Juan, Puerto Rico, WMTI(AM), Morovis, Puerto Rico, and WIOA(FM), San Juan, Puerto Rico.

⁴¹ *Id.* at 6-7, 11-12. This market includes Stations WQBS(AM), San Juan Puerto Rico, WVOZ(AM), San Juan Puerto Rico, WGIT(AM), Canovanas, Puerto Rico, WIOA(FM), San Juan Puerto Rico and WVOZ-FM, Carolina, Puerto Rico.

⁴² *Id.* at 6-8, 13-14. This market includes Station WIBS(AM), Guayama, Puerto Rico, WIOA(FM), San Juan, Puerto Rico, and WVOZ-FM, Carolina, Puerto Rico.

Conclusion. Having reviewed the application, pleadings, and other facts before us, we conclude that the parties are qualified to assign and hold the stations licensees and that grant of the applications will comply with Commission rules and will serve the public interest, convenience, and necessity.⁴³

ACCORDINGLY, IT IS ORDERED, That 47 C.F.R. §73.3555(a)(1)(i) of the Commission's Rules **IS WAIVED** with respect to all interests held by IBC and its officers, directors and stockholders in the authorization for Stations WIOA(FM), San Juan, Puerto Rico, WIOC(FM), Ponce, Puerto Rico, and WZET(FM), Hormigueros, Puerto Rico.

IT IS FURTHER ORDERED, That the applications for assignment of Stations WIOA(FM), San Juan, Puerto Rico, WIOC(FM), Ponce, Puerto Rico, WZET(FM), Hormigueros, Puerto Rico, and WIOA-FM1, Ceiba, Puerto Rico, to International Broadcasting Corporation, Inc., File Nos. BALH-20150810ADQ, BALH-20150810ADS, BALH-20150810ADV and BALFTB-20150810ADR, **ARE GRANTED.**

IT IS FURTHER ORDERED, That SBS's request for a continuing satellite exemption to operate WVEO(TV), Aguadilla, Puerto Rico, and WVOZ-TV, Ponce, Puerto Rico, as satellite stations of WTCV(TV), San Juan, Puerto Rico, pursuant to 47 C.F.R. § 73.3555, Note 5, **IS GRANTED.**

IT IS FURTHER ORDERED, That the applications for assignment of Stations WTCV(TV), San Juan, Puerto Rico, WVEO(TV), Aguadilla, Puerto Rico, and WVOZ-TV, Ponce, Puerto Rico, to Spanish Broadcasting Systems, Inc., File Nos. BALCDT-20150810ADK, 20150810ADL, and BALCDT-20150810ADM, **ARE GRANTED.**

Sincerely,



Barbara Kreisman
Chief, Video Division
Media Bureau

⁴³ Our grant is conditioned upon the representations to which the parties have certified by amendment filed on December 28, 2015. See File No. BALCDT-201508ADK at Exhibit 1.