

Satellite Exemptions

Upon grant of the subject transfer of control application and concurrently filed transfer of control applications (collectively, the "315 Applications"), the transferee, Broadcasting Media Partners Inc. ("BMPI" or the "Transferee"), and its shareholders will have attributable interests in broadcast stations licensed to subsidiaries of Univision Communications Inc. ("Univision"). The Transferee has certified "No" to Question 8(b) of Section IV on each of the 315 Applications because, in certain of the Univision markets, the transaction will implicate the Commission's multiple ownership and cross-ownership rules, 47 C.F.R. Section 73.3555. Those instances are detailed in Transferee's Exhibits 18-A, 18-B and 18-C, which, for convenience, are attached to each of the 315 Applications.

Two of the Univision stations – WSUR-TV, Ponce, Puerto Rico, and WFTY-TV, Smithtown, New York – are "satellite" stations that are exempt from the ownership restrictions of Section 73.3555 of the Commission's rules, 47 C.F.R. § 73.3555, pursuant to Note 5 of that section (the "Note 5 Satellite Exemption"), which reflects the criteria set forth in the Commission's *Report and Order, Television Satellite Stations*. 1/

In *Television Satellite Stations*, the Commission stated that applicants seeking to transfer or assign a television satellite station must justify a continued exemption from Section 73.3555 of the Commission's rules by satisfying the three-part "presumptive" standard applicable to new satellite stations. 2/ Under this standard, the presumption is established if (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. 3/ If an applicant does not qualify for the presumption, the Commission has discretion to evaluate the proposal on an *ad hoc* basis, and to reauthorize an exemption if it determines that compelling circumstances warrant approval. 4/

As demonstrated below, both WSUR-TV and WFTY-TV warrant reauthorization of their existing Note 5 Satellite Exemptions.

I. WSUR-TV, PONCE, PUERTO RICO

WLII/WSUR License Partnership, G.P., a subsidiary of Univision, is the licensee of two full-power television stations in Puerto Rico with overlapping Grade B contours, WLII(TV), Caguas, and WSUR-TV, Ponce. When Univision applied in 2005 for Commission

1/ 6 FCC Rcd 4212 (1991) (subsequent citations omitted).

2/ *Id.* at 4215-16, para. 24.

3/ *Id.* at 4213-14, para. 12.

4/ *Id.* at 4214, para. 14.

consent to the transfer of control to it of the licensee of WLII(TV) and WSUR-TV, it requested, and was granted, the reauthorization of the Note 5 Satellite Exemption for WSUR-TV. ^{5/} In connection with the instant proposed transfer of control, BMPI respectfully requests that the Commission authorize the continued operation of WSUR-TV as a satellite of WLII(TV) pursuant to the Note 5 Satellite Exemption.

In the 2005 Satellite Grant, the Video Division considered Univision's request for continued satellite authority filed with the 2005 Transfer Application (the "2005 Satellite Request"). ^{6/} The Division found that the 2005 Satellite Request showing justified continuation of the satellite status of WSUR-TV under the *ad hoc* satellite policy in that "the unique terrain and economic obstacles to full-service operation in Puerto Rico constitute 'compelling circumstances' warranting satellite status." ^{7/}

BMPI respectfully submits that the same compelling circumstances that warranted continuation of the WSUR-TV satellite status in 2005 continue to exist and therefore justify continuation of the satellite exemption in connection with the proposed transfer of control. Specifically, the terrain, economic and competitive dynamics described in the 2005 Satellite Request continue to reflect market conditions in Puerto Rico today. ^{8/} Neither the transferee, nor parties to the transferee, have attributable interests in broadcast media in Puerto Rico. Consequently, for the reasons set forth in the 2005 Satellite Request and the 2005 Satellite Grant, the Commission should authorize the continued operation of WSUR-TV as a satellite of WLII(TV) pursuant to the Note 5 Satellite Exemption.

^{5/} See FCC File No. BTCCT-20050112ADG (the "2005 Transfer Application"); Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to Univision Communications Inc. (May 23, 2005) (the "2005 Satellite Grant") (attached hereto at Appendix A).

^{6/} A copy of the 2005 Satellite Request is attached hereto at Appendix B and is incorporated herein by reference.

^{7/} 2005 Satellite Grant at 4.

^{8/} Only a few of the background factors set forth in the 2005 Satellite Request require updating. Of course, with the consummation of the 2005 transfer, Univision, instead of Raycom Media, Inc. ("Raycom"), now controls WLII(TV) and WSUR-TV; furthermore, at the time of consummation, Univision stepped into the shoes of Raycom in supplying programming (under two grandfathered agreements) to WORA-TV, Mayaguez, and, for a significant portion of its schedule, WSTE-TV, Ponce. At present, Univision has pending an application for Commission consent to acquire AM radio station WAEL, Mayaguez, Puerto Rico. See FCC File No. BAL-20060616ABD. In late 2005, one of the full-power commercial television stations licensed to Ponce, WVOZ-TV, went dark, so that besides WSUR-TV and noncommercial station WQTO(TV) (a satellite of WMTJ(TV), Fajardo), there are at present only three operating television stations licensed to Ponce. As noted in the 2005 Satellite Request, none of these Ponce stations is independently programmed, with WSTE-TV under a programming agreement, and the other two commercial stations operating as satellites of San Juan stations.

II. WFTY-TV, SMITHTOWN, NEW YORK

Univision New York LLC, a subsidiary of Univision, is the licensee of full power television stations WFUT-TV, Newark, New Jersey, and WFTY-TV, Smithtown, New York. WFTY-TV has been operated as a satellite of WFUT-TV for more than 25 years, and its satellite authority has been repeatedly reviewed and reauthorized by the Commission, most recently in 2001. ^{9/} Throughout this period and to this day, the material circumstances underlying the original grant of satellite authority for WFTY-TV have not changed. In connection with the proposed transfer of control, BMPI therefore respectfully requests that the Commission authorize the continued operation of WFTY-TV as a satellite of WFUT-TV pursuant to the Note 5 Satellite Exemption.

WFTY-TV initially was authorized to operate as a stand-alone station in 1971, and began operation in 1973. ^{10/} But in its first 20 months of operation, the station lost more than \$5.1 million dollars (more than \$22 million in 2005 dollars) and was forced to cease operation in 1975. ^{11/} The station remained dark for four and one-half years, during which time its owner, Suburban Broadcasting Company ("Suburban"), filed a petition for bankruptcy and tried unsuccessfully for two years to sell the station. ^{12/} The station resumed operation only in December 1979, after Suburban was able to enter into a franchise agreement with a subscription television company. This arrangement was short-lived, however. The following year, Suburban transferred control of the station to Wometco-Long Island, Inc. ("Wometco"), and the Commission in 1980 authorized Wometco to operate the station as a satellite of WFUT-TV (then with the call sign WWHT(TV)), Newark, New Jersey. ^{13/}

Since that time, and through two subsequent transfers of control, WFTY-TV has continued to be operated as a satellite. ^{14/} Indeed, the Commission has reviewed and reauthorized WFTY-TV to be operated as a satellite on several occasions – in 1984, 1985, 1996, and 2001 – and each time has concluded that the public interest would be served by the station's continued operation as a satellite. ^{15/} In 1996, for example, when addressing the three-part

^{9/} See *WQHS-TV, Cleveland*, 16 FCC Rcd 10904, 10907 (MMB 2001); *Roy M. Speer*, 11 FCC Rcd 14147, 14165-66, paras. 41-45 (1996); *Wometco Enterprises, Inc.*, 55 RR 2d 1545 (MMB 1984), *rev. denied*, 57 RR 2d 1033 (1985); *Robert Rosen*, 83 FCC 2d 359, 370 para. 25 (1980). The station previously was assigned the call signs WHSI-TV and WSNL-TV.

^{10/} *Robert Rosen*, 83 FCC 2d at 361, para. 6.

^{11/} *Id.*

^{12/} *Id.*

^{13/} *Id.* at 360, para. 4, and 370, para. 25.

^{14/} Control of WFTY-TV was transferred to Silver Management Company in 1996, and to Univision in 2001. *WQHS-TV, Cleveland*, 16 FCC Rcd at 10907-08; *Roy M. Speer*, 11 FCC Rcd at 14166, para. 45.

^{15/} See *supra*, note 9.

presumptive exemption standard set forth in *Television Satellite Stations* to WFTY-TV, the Commission held:

[Transferee] Silver Management Company clearly satisfies the first two criteria. As for the third, that no party is ready and able to operate the satellite as a full-service station, we are persuaded that UHF television station WHSI-TV [now WFTY-TV], broadcasting from Smithtown and reaching fewer than ten percent of the households within the DMA, renders infeasible the operation of WHSI-TV as a financial viable stand-alone station. Accordingly, we shall grant continued satellite status to WHSI-TV, Smithtown. 16/

More recently, in 2001, the Bureau made similar findings and authorized the continued operation of WFTY-TV as a satellite on an *ad hoc* basis, holding that the station's "long history as a satellite, and its inability to serve large portions of the New York DMA, constitute 'compelling circumstances' warranting satellite status." 17/

WFTY-TV continues to qualify for the Note 5 Satellite Exemption. Specifically, as demonstrated below, (1) there is no City Grade overlap between the parent, WFUT-TV, and the satellite, WFTY-TV; (2) WFTY-TV provides service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate WFTY-TV as a full-service station.

(1) There is No City Grade Overlap: As demonstrated at Figure 1 to Appendix C hereto, as was the case in 2001, there is no overlap between the predicted City Grade contours of WFUT-TV and WFTY-TV.

(2) Smithtown is an Underserved Area: Pursuant to the standard set forth in *Television Satellite Stations*, a satellite station's community of license is underserved if (1) there are two or fewer full-service television stations licensed to it; or (2) 25 percent 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. 18/ According to the

16/ Roy M. Speer, 11 FCC Rcd at 14166, para. 45.

17/ WQHS-TV, Cleveland, 16 FCC Rcd at 10907. In 2001, as at present, Univision was the ultimate parent of another full-power station licensed to the New York DMA, WXTV(TV), Patterson, New Jersey. This television duopoly complies with 47 C.F.R. Section 73.3555(b): neither WXTV(TV) nor WFUT-TV are ranked in the top-four for audience share in the New York DMA; and it is well established that New York, the top-ranked DMA in the nation, is home to more than eight independent television voices.

18/ *Television Satellite Stations*, 6 FCC Rcd at 4215, para. 19.

Commission's records, WFTY-TV is the only television station licensed to Smithtown, New York. 19/ Accordingly, it continues to satisfy the second prong of the satellite analysis.

(3) There is No Available Alternative Operator: WFTY-TV's early history as a failed stand-alone television station, its established history as a satellite and the highly competitive nature of the New York television market, together demonstrate that WFTY-TV is not capable of operating as a stand-alone facility, and, consequently, that no buyer stands ready and able to purchase and operate the station. Univision senior management has confirmed to BMPI that, since Univision acquired WFTY-TV in 2001, it has not received any offer from any party to acquire the station. This is not surprising. As demonstrated in Appendix D hereto, an assessment by Brian E. Cobb, President, CobbCorp, LLC who has extensive experience as an owner, manager and broker of broadcast properties, WFTY-TV lacks the essential attribute of a stand-alone television station in the New York DMA, namely, a signal that covers all of New York City, as well as most of the DMA. 20/

At Figure 2 to Appendix C is a map showing the City Grade, Grade A and Grade B contours of WFTY-TV. WFTY-TV's Grade B contour barely reaches the outskirts of New York City. Furthermore, a substantial portion of WFTY-TV's Grade B signal falls over the waters of Long Island Sound (to the north) and the Atlantic Ocean (to the south). Most of the New York DMA is outside of the station's Grade B contour. Specifically, as set forth in Appendix C, only 16.5 percent of the New York DMA Census households (constituting 17.7 percent of the DMA population) are served by WFTY-TV's Grade B signal.

In the opinion of Mr. Cobb, for a television station to be viable in the New York market, it must place an adequate signal over New York City and most of the DMA. Mr. Cobb states that due to WFTY-TV's inadequate signal and the dynamics of the New York market, the prospects of a meaningful network affiliation are remote. Consequently, if not authorized as a satellite, WFTY-TV would be forced to broadcast as an independent, competing against the high number of other independent stations that currently serve the New York market. The station's prospects of survival in this scenario are slim, particularly because WFTY-TV would have to invest in high-quality programming in order to compete with the quality programming of those other stations. Thus, Mr. Cobb concludes that WFTY-TV could not operate successfully as a stand-alone station.

19/ See CDBS station search, available at http://svartifoss2.fcc.gov/prod/cdbbs/pubacc/prod/sta_sear.htm.

20/ See Appendix D at 2. Mr. Cobb is particularly well-suited to assess the commercial viability of WFTY-TV given his familiarity with the station. The Commission relied on Mr. Cobb's assessment of the station in 1996 when it was persuaded that "no party is ready and able to operate the satellite as a full-service station" and that the grant of a continued satellite exemption was warranted. *Roy Speer*, 11 FCC Rcd at 14166, para. 45. Mr. Cobb also evaluated the station in 2001, when the Commission reauthorized the satellite exemption for WFTY-TV under the *ad hoc* standard. *WQHS-TV, Cleveland*, 16 FCC Rcd at 10907.

This overall assessment of WFTY-TV's non-viability as a stand-alone television station is similar to the evaluations provided by Mr. Cobb in 1996 and 2001 – on which the Commission relied in authorizing continued satellite exemptions for WFTY-TV on those occasions. In short, and consistent with the Commission's findings over the past 25 years, WFTY-TV cannot survive as a stand-alone, full-service outlet.

If the Commission finds that WFTY-TV does not meet the presumptive standard, it nevertheless should authorize WFTY-TV's continue operation as a satellite on an *ad hoc* basis based on compelling circumstances. As demonstrated above, the Smithtown community is underserved, and WFTY-TV is at a competitive disadvantage in its market due to its inability to serve significant portions of the New York DMA, including New York City. Absent continued satellite status, WFTY-TV would assuredly face financial hardships – or, worse, simply go dark, as it did in 1975.

The transfer of control of WFTY-TV as a satellite will preserve the *status quo* of two-and-a-half decades, during which residents within the station's service area have benefited from the continued operation of WFTY-TV by virtue of its status as a satellite of WFUT-TV. Given this long history of service and the non-viability of stand-alone operation, reauthorization of the Note 5 Satellite Exemption for WFTY-TV would serve the public interest.