

Radio Multiple Ownership Waiver Request

The proposed assignee, International Broadcasting Corporation (“IBC”), hereby requests waiver, in accordance with 47 C.F.R. §1.3, of the application of 47 C.F.R. §73.3555 relating to the total number of radio broadcast facilities which any one entity or individual may hold an attributable interest in any particular “market” and, in particular, the definition of “market” under the current Commission rules.

IBC and the principals of IBC, Angel Roman Lopez and Ruth Roman Lopez (the “Principals”), have attributable interests, as that term is defined for purposes of the FCC’s radio ownership rules, in five (5) AM radio stations and one (1) FM radio station in Puerto Rico, which complies with the FCC’s limitations on radio ownership pursuant to Section 73.3555(a)(1)(i).¹ IBC, licensee of five (5) total stations and thus itself in compliance with the ownership limits, proposes to purchase from the assignor and its affiliate a total of three (3) FM radio stations. The proposed transaction would increase the stations attributable to IBC to a total of eight (8) – 4 AM and 4 FM –, thus IBC will remain in compliance with the rule in Section 73.3555(a)(1)(i) permitting a single entity to have attributable ownership interests in up to eight (8) station in a single market with more than 45 stations, provided that the entity owns not more than five (5) stations in a single service.

For IBC’s Principals, however, the proposed assignment will increase their attributable Puerto Rico market stations to a total of nine (9) stations – 5 AM and 4 FM. Under the policies adopted in the Commission’s 2003 Broadcast Ownership Order (FCC 03-127), this acquisition would result in an impermissible number of commonly owned station in a single Arbitron “market”. However, the proposed transaction complies with the Commission’s multiple ownership restrictions with regard to the Principals when analyzed in accordance with the contour overlap methodology previously adopted by the Commission.

¹ This statement of interests assumes the FCC grant pending assignment applications (and consummations thereof) for WGIT(AM), Canovanas (FCC File No. BAL-20141229ACU) and WGYA(AM), Guyama (File No. BAL-20130827ABD) to be sold to unrelated third parties.

For purposes of its market rankings, Arbitron treats the island of Puerto Rico as one Arbitron Metro market. Because this market definition does not reflect the true geographic make-up of this island, IBC requests waiver of the use by the Commission of the Arbitron Metro standard in this unique situation in Puerto Rico in favor of the use of the contour overlap methodology to find that the proposed transaction complies with the Commission's multiple ownership rules. There is good cause to approve this request.

When the Commission adopted the Arbitron Metro Survey Area as the definition of a radio market for the purpose of determining compliance with the radio ownership rules, it thought it sensible to rely on that market definition when applying the rules, because Arbitron (now Nielsen), as the principal ratings service, had defined radio markets for most of the more populated areas of the country. The Commission recognized that the Arbitron Metro was based on the Metropolitan Statistical Areas (MSAs) established by the Office of Management and Budget (OMB) and concluded that people in the United States tend to be clustered around specific population centers. As a result, the FCC concluded that the Arbitron Metro was the appropriate standard to use in assessing compliance with the local radio multiple ownership rules.²

This conclusion may be correct for most of the country but it is inapplicable to the island of Puerto Rico. If one were to accept the Arbitron definition of Puerto Rico as one Metro market, an individual entity or person could have cognizable ownership in no more than eight (8) radio stations on the entire island. According to BIA's FCC Geographic Market Definition for Puerto Rico (appended hereto), there are 132 full-power radio stations serving Puerto Rico – 115 commercial stations, 17 noncommercial stations, and dozens of separate owners. The mere fact that there are this many radio stations competing in and serving the population of this single "market" supports a waiver of the Arbitron-based ownership limits. In fact, OMB has determined that the island, which is roughly equivalent in size and population to the state of Connecticut, has *eight* Metropolitan Statistical Areas and *three* Combined Statistical Areas, which are larger population areas comprised of combinations of MSAs and/or Micropolitan Statistical Areas (Micro SAs).³

² 2002 Biennial Regulatory Review, Report and Order and Notice of Proposed Rule Making, 18 FCC Rcd 13620, 13724-13725 (2003).

³ See OMB Bulletin No. 13-01 (2013), available at:

Thus, Arbitron's delineation of Puerto Rico as a single Arbitron Metro market is inconsistent with its practice on the mainland where its definition of Metro markets coincides with OMB's selection of MSAs – for example, Connecticut has *four* MSAs, each of which is treated as a separate Metro market by Arbitron.

Moreover, even Arbitron (Nielsen) acknowledges that Puerto Rico has at least six distinct “regions—San Juan, West, South, East, North and Northeast—that have important population centers with their own characteristics, such as Mayagüez, Ponce, Humacao, Fajardo, and San Juan.” *Puerto Rico Radio Today* (2013 ed.), available at <http://wargod.arbitron.com/downloads/PuertoRicoRadioToday13.pdf>. In fact, Arbitron provides radio format ratings data broken out according to region, suggesting acknowledgement that its *own* treatment of Puerto Rico is untenable. *Id.* at pp. 17-22. As the Commission itself has noted, “[t]he 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 areas, San Juan, Ponce, and Aguadilla-Mayaguez. 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.” *MSG Radio, Inc.* (DA 12-973), 27 FCC Rcd 7066 (2012) (citations omitted).

There is precedent for waiver of the use of the Arbitron Metro standard in Puerto Rico going back decades. *See, e.g., MSG Radio, Inc., supra; Luis A. Soto*, 22 FCC Rcd 2549 (2007); and *St. Croix Wireless Co., Inc.*, 8 FCC Rcd 7329 (1993). Indeed, the Commission has declared that the unique characteristics of the Puerto Rico Arbitron Metro present a compelling case for departing from the Arbitron Metro as the presumptive definition of the local market in determining whether the transaction complies with the local radio station ownership rule. *See Luis A. Soto*, 22 FCC Rcd at 2553. More recently, the Commission noted that, “[w]hile there are other Arbitron markets that comprise more than one MSA, Puerto Rico is the only such market that has the additional factors of geographic size, topography, and sheer numbers of radio stations and station owners” to support a waiver of the local radio ownership rule. *MSG Radio, Inc., supra.*

<http://www.whitehouse.gov/sites/default/files/omb/bulletins/2013/b-13-01.pdf>.

The FCC must therefore apply the same analysis to the situation presented here and accept a contour analysis approach in determining whether a waiver of the local ownership rules is appropriate.

The attached technical analysis prepared by FCC Consulting Engineer, Grafton Olivera, demonstrates by contour analysis that the stations which will be attributable to the IBC and the Principals post-transaction are found in three distinct “markets” as defined by overlapping principal community contours. Each of these markets is served by at least 45 full-power radio stations. Thus, under such analysis, IBC and its Principals would be permitted cognizable interests in up to eight (8) stations in *each* market. Because the proposed transaction would result in no single market in which IBC or its Principals would have attributable interests in more than seven (7) stations in any of the given markets, waiver of Section 73.3555(a) is appropriate in this instance.