FCC Form 314
Section III – Assignee Response to
Question 6A
Pegasus Satellite Communications, Inc.
May 2004

ASSIGNEE'S EXHIBIT 14

By this application, Pegasus Communications Corporation ("Pegasus"), the ultimate owner of WOLF License Corp., licensee of station WOLF(TV), channel 56, Hazleton, Pennsylvania, proposes to acquire WSWB(TV) channel 38, Scranton, Pennsylvania, from KB Prime Media, LLC ("KB"). Both WOLF and WSWB operate in the Scranton Wilkes-Barre DMA and the Grade B contours of the stations overlap. Because the Scranton Wilkes-Barre DMA does not have eight independently owned and operated television stations, Pegasus respectfully requests a failing station waiver of the local television multiple ownership rules to permit the common ownership of WOLF and WSWB. See 47 C.F.R. § 73.3555(b) and Note 7. Pegasus, through WOLF License Corporation, currently provides programming to WSWB pursuant to a grandfathered Time Brokerage Agreement ("TBA"). As demonstrated more fully below, the requested waiver is decidedly in the public interest.

Pursuant to the Federal Communications Commission's decision in the Local Television Ownership Report & Order, Pegasus submits this waiver request based on the circumstances that existed at the time that KB commenced operating WSWB as a separately-programmed station in late 1998, thus triggering the TBA. See Review of the Commission's Regulations Governing Television Broadcasting, 14 FCC Rcd. 12903, 12964 (1999) ("Local Television Ownership Report & Order"). Pegasus further confirms that other than WOLF, it does not directly or indirectly own, operate or control another station in the Scranton Wilkes-Barre DMA.

Applicable Waiver Standard: The Television Ownership Report & Order identified a four-part test for failing station waivers. See Local Television Ownership Report & Order, 14 FCC Rcd. at 12941 (¶ 86).[1] An applicant must demonstrate that: (1) at least one of the merging stations had a low all-day audience share (4% or lower); (2) the financial condition of one of the stations is poor; (3) whether the merger will produce public interest benefits and (4) that an in-market buyer is the only reasonably available candidate willing and able to acquire and build the station and selling to an out-of-market buyer would result in an artificially depressed price. See id. The Commission later excused the fourth requirement for stations with contractual relationships entered into prior to the release of the Television Ownership Report & Order on August 5, 1999. See Review of the Commission's Regulations Governing Television Broadcasting, Memorandum Opinion and Second Order on Reconsideration, 16 FCC Rcd. 1067, 1077 (¶ 28) (2000) ("Local Television Ownership Second Reconsideration Order"). Thus, a waiver applicant seeking to acquire a station with which it formed a TBA prior to August 5, 1999 (as is the case here) does not have to prove that it was the only buyer willing and able to operate the station and the sale of the station to an out-of-market buyer would result in an artificially depressed price.

Facts: Pegasus acquired what were then WOLF-TV, channel 38, in Scranton and WWLF, channel 56, in Hazleton in 1993. *See* FCC File No. BALCT-19921203KW. At the time, WOLF on channel 38 operated as the Fox affiliate in the market and WWLF on channel 56

---

[1] Although the FCC's local television ownership rule requiring eight independently owned and operated stations was remanded by the D.C. Circuit, the Court did not vacate the rule so the three

operated as a satellite of WOLF. *See* Declaration of Jon Cadman ("Cadman") ¶¶ 2-4 (Attachment 6 hereto).

Although WOLF on channel 38 was technically operated as the main station, WOLF would not have been able to compete in the market without the coverage provided by WWLF. Cadman ¶ 2; Letter to Marshall Pagon ("Hepburn Letter") attached to Declaration of Ted Hepburn (Attachment 3 hereto).[2] As explained in the Hepburn Letter, the WOLF channel 38 coverage impediment was due to its unfavorable transmitter site in the northern part of the market due to short spacing limitations.

The WOLF channel 38 site was 30 miles north of Penobscot Mountain, the transmitter site for the ABC, CBS and NBC stations in the market. Cadman ¶ 3. Penobscot Mountain is part of a mountain range that cuts through the Scranton Wilkes-Barre market and is one of the highest points in the market. *Id.* For this reason, the coverage of WOLF on channel 38 was very poor to the south of Penobscot Mountain. *Id.* WWLF, on the other hand, provided relatively good coverage of the southern part of the market. *Id.*

In 1995, Pegasus filed an application to relocate the transmitter site of WWLF channel 56 to Penobscot Mountain. *See* FCC File No. BPCT-19951215KF; Cadman ¶ 5. The Commission granted the application in 1997 and a new transmitter facility for WWLF on channel 56 was ultimately constructed on Penobscot Mountain in 1998. Cadman ¶ 5. Because

---

waiver criteria remain in place. See Sinclair Broadcast Group, Inc. v. FCC, 284 F.2d 148, 162 (D.C. Cir. 2002).

[2] The Hepburn Letter to Marshall Pagon was originally submitted to the FCC on March 30, 1993 as part of a supplement to the request of Pegasus for continued satellite status for WWLF. A copy of that filing is included with this waiver request as Attachment 2. The Hepburn Letter appears as the last exhibit in the March 30, 1993 filing. Because the copy included in this filing is virtually illegible, Mr. Hepburn has submitted a Declaration with a legible copy of the 1993 letter which is included with this waiver exhibit as Attachment 3.

the relocated WWLF on channel 56 now had far superior coverage to WOLF on channel 38, Pegasus switched the WOLF call sign to the channel 56 station. *Id.* Because the new WOLF on channel 56 had competitive coverage on its own given that it was now operating from the same site as the ABC, CBS and NBC affiliates, the old WOLF station operating on channel 38 was left to be separately-programmed. *Id.* Coverage maps for the new WOLF, the old WWLF and the old WOLF (now WSWB) are provided as Attachment 7 hereto.

Pegasus sold the old WOLF station on channel 38 to KB in 1998. *See* FCC File No. BALCT-19980526IA. Pegasus continued to provide programming and management services to the station pursuant to the TBA. Cadman ¶ 5. In late November 1998, the old WOLF on channel 38 began operating as WSWB, the new WB affiliate in the market. *Id.*

At the time WSWB commenced operating in late 1998, it would certainly have qualified as a failing station if any entity attempted to operate it as a stand alone station. A number of facts support this conclusion:

1. Because it was effectively a new station, WSWB had no ratings nor any track record it could sell to advertisers.

2. WSWB's poor signal to the south of the market significantly hampered its cable coverage. *See* Cadman ¶¶ 6-7. When WSWB commenced operating in late 1998, it was carried on cable systems reaching only 100,000 cable households despite the fact the market had over 466,000 cable households. *Id.* ¶ 6. Cable coverage was also complicated by the fact that there were over 40 different cable systems and over 70 head-ends in the market. *Id.* ¶ 7.

3. Although WSWB's cable carriage increased to 391,000 households by August 1999, the station was still not available to over 70,000 cable subscribers who did have access to its competitors. *Id.* ¶ 9. WSWB still operates at a cable carriage disparity when compared to other stations in the market.

4. Even when WSWB was carried, it often received poor and different channel positions, including channels 38, 98 and 68. *Id.* ¶ 9. These different channel positions made uniform promotion of the station impossible and undoubtedly confused the viewing audience. *See* Declaration of Bryan Byrnes, ("Byrnes") ¶ 10 (Attachment 4 hereto). Moreover, most of the cable systems that agreed to carry WSWB also carried distant WB stations, thus making it even more

difficult to attract an audience. *See* Cadman ¶ 9. The out-of-market WB station cable carriage problem continues to this day. *Id.*

5. In 1998, the Scranton market was dominated by three well-established, successful stations owned by well-financed broadcast companies — the New York Times (ABC), Nexstar Broadcasting (NBC) and Mission Broadcasting (CBS). Byrnes ¶ 6. These three extremely dominant stations in the Wilkes-Barre Scranton market would have made it practically impossible for a new station like WSWB to buy any popular syndicated programming because WSWB could not produce anywhere near the cash flow produced by the three dominant stations. *Id.* ¶ 7.

6. A start-up station like WSWB would also have had difficulty attracting qualified personnel, especially sales personnel, due to its weak financial position compared to its well-financed competitors. *Id.* ¶ 12. WSWB would even have had great difficulty finding a National Sales Organization to represent the station national advertiser due to its poor financial condition. *Id.* ¶ 13.

On the other hand, the combined operation of WSWB with WOLF has produced significant public interest benefits in the Scranton market. First, the combined operation has allowed a new network affiliate to begin operating in the market. As demonstrated throughout this exhibit, WSWB would not have survived as a stand alone station.

Second, the efficiency and cost savings generated by the combined operation of the stations has enabled WSWB to launch and continue to air its own local public affairs program called "For the Community." Cadman ¶10. Without the efficiencies created by the joint operation, WSWB would not have been able to afford a local public affairs program. *Id.*

In addition to these public interest benefits, Pegasus commits to air two new public affairs programs if the requested waiver is granted. Pegasus will launch a second local public affairs program to be aired quarterly that will address issues not currently addressed by "For the Community." *Id.* In addition, Pegasus will air a new syndicated program ("Your Life with Doctor Anna Marie") that promotes health and fitness. *Id.*

To alleviate any doubt about WSWB's precarious financial health on a stand alone basis, this exhibit also provides more recent performance information. First, attachment 1 hereto includes excerpts of the past three Nielsen November ratings books. As demonstrated therein, WSWB's audience levels in November 2001 and 2002 fell below Nielsen's minimum standards to be calculated. WSWB did receive a 1 rating and a 2 share in November 2003.

WSWB would also have suffered losses of over $2.3 million if it had been operated on a stand alone basis over the last three years. Declaration of Jack Paris ("Paris") ¶ 5. WSWB's free cash flow from operations ("FCFO") would have been even worse, producing a deficit of over $5.4 million, because of the fixed assets that would have been incurred building out a separate station. *Id.*

The cost information for WSWB over the past three years reported in the Paris declaration is based on recent experience starting-up WB affiliates in Las Vegas and Gainesville, Florida. Paris ¶4. Both start-up operations required that costs be kept as low as possible while trying to ensure that the stations became competitive. *Id.* ¶3. To determine the projected costs for WSWB, the staffing levels from the Gainesville station were transferred on a department by department basis to the hypothetical WSWB staff and then certain adjustments were made based on competitive factors in a market the size of Scranton. *Id.* ¶ 4. The resulting staff levels were then costed out at Scranton prices based on the experience of WOLF. *Id.* These costs were then applied against the actual operating revenues earned by WSWB over the past three years. *Id.* ¶5. The results, as noted above, were losses of over $2.3 million. *Id.*

Given the competitive conditions in the Scranton market and the relatively low level of advertising revenue in the market, these results are not that surprising.[3] The ABC, CBS and NBC affiliates in the market collectively account for an overwhelming share of the audience and approximately 90 percent of the advertising revenue in the market. *Id.* ¶7. In order to reach break even in 2004, WSWB would have to increase its ratings between 50-100 percent to have a chance at attracting the higher percentage of the advertising revenue needed. *Id.* WSWB's slow progress in building up its audience share over the last three years vividly illustrates why it is extremely unlikely that a stand alone WSWB would reach break even in the short-to-medium term. For these reasons, there is no question that a stand alone WSWB operation today would clearly qualify as a failing station.

Argument: By any metric, WSWB would have constituted a failing station if it operated on a stand alone basis when it launched in late 1998. It had no measurable audience share (and did not have one until 2003) and the station had previously been operated with a satellite in the southern part of the market to compensate for its non-competitive market coverage. Due to its poor coverage, the station struggled to secure cable carriage and when it was carried, it often was given unfavorable channel positions. On top of all this, the station faced three well-financed, entrenched competitors in the market that dominated the advertising market.

Fast forward to today and the result is still the same. A stand alone WSWB would constitute a failing station if any entity attempted to operate it on a stand alone basis. A hypothetical, minimally-staff WSWB operation would have produced over $2.3 million in

---

[3] In 1998, the Scranton Wilkes-Barre DMA was ranked 51st in market size and yet 70th in revenue. Byrnes ¶4. This disparity continues today.

operating losses in the last three years and a cash flow deficit in excess of $5 million. These results are the product of the same competitive forces noted in 1998.

In addition, the other two other applicable elements in the failing station standard have also been met. First, WSWB had a low audience, in fact a 0 audience, when it launched in late 1998. Even if analyzed today, WSWB has far less than a 4 percent audience share. Second, there have been significant public interest benefits from the combined operation of WOLF and WSWB. This combined operation has enabled a new affiliate to launch in the Scranton market and enabled WSWB to launch its own local public affairs program. If the requested waiver is granted, WSWB will air two new public affairs programs.

<u>Conclusion</u>: For all these reasons, Pegasus submits it has more than satisfied the applicable criteria for a failing station waiver. WSWB could not have been operated on a stand alone basis in 1998 when it launched as the WB affiliate and it could not be operated on a stand alone basis today. Any attempt to do would convert WSWB into a failing station almost immediately given the difficult competitive and economic conditions in the Scranton market. On the other hand, the combined operation of WOLF and WSWB has enabled a new network affiliate to provide programming to the market and enabled WSWB to air its own local public affairs program. These benefits clearly outweigh any theoretical harm to the Commission's diversity and competition goals from common ownership of WOLF and WSWB. For these reasons, Pegasus respectfully submits that the requested failing station waiver for WSWB is in the public interest and should be granted.