

**EXHIBIT 16**

**DEMONSTRATION OF COMPLIANCE WITH LOCAL TELEVISION OWNERSHIP  
RULE AND REQUEST FOR CONTINUATION OF SATELLITE STATUS FOR  
STATIONS WIRS(TV), WKPV(TV), AND WJWN-TV**

**I. INTRODUCTION**

This is one of three applications being filed on the same day seeking consent to the assignment of licenses from each of CaribeVision Station Group, LLC (“CVSG”), S&E Network, Inc. (“S&E”), and Sherjan Broadcasting Company, Inc. (“Sherjan”) to America-CV Station Group, Inc. (“ACV”). CVSG is the licensee of WIRS(TV), Yauco, PR, WFUN-LP, Miami, FL, and WPXO-LD, East Orange, NJ. S&E is licensee of WJPX(TV), San Juan, WKPV(TV), Ponce, and WJWN-TV, San Sebastian, all in Puerto Rico. Sherjan is licensee of WJAN-CA, Miami, FL, and permittee of a digital low power companion channel, WJAN-LD, Miami.<sup>1</sup> In addition to demonstrating multiple ownership compliance, this exhibit is being filed with all three applications to request continued authority for the operation of Stations WKPV(TV), WJWN-TV, and WIRS(TV) as satellite stations of WJPX(TV), pursuant to the Note 5 exception to the local television ownership limitation contained in Section 73.3555(b) of the Commission’s rules. As demonstrated herein, the proposed ownership and operation of these stations as satellites is fully consistent with Section 73.3555 and related policies and is within well-established precedent which has recognized the unique and difficult competitive and geographic circumstances facing television broadcasters in Puerto Rico. The following is an updated discussion which, except for Section II, in large part repeats a showing made and approved by the Commission in 2008 regarding satellite operation of the same stations.

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<sup>1</sup> There is currently pending a displacement application for WJAN-LD (FCC File No. BDISDTL-20090630AHT).

## **II. TRANSACTION AND MULTIPLE OWNERSHIP**

### **A. Description of Transaction**

The proposed transaction seeks to assign from three separate licensees to a single licensee the following stations: four full-power television stations in Puerto Rico; one Class A television and one low-power television station in Miami, FL; and a low-power television station in East Orange, NJ. The proposed assignee is ACV, whose stock and voting rights (in parentheses) are held as follows: CaribeVision Holdings, Inc. (“CV Holdings”) (50%); Okeechobee Television Corp. (“Okeechobee”) (47%); and Orly Group, Inc. (“Orly”) (3%).

### **B. Multiple Ownership Compliance**

ACV’s 50% owner, CV Holdings, is the current 100% member and manager of CVSG, which in turn is the 100% owner of S&E. Therefore, the proposed transaction will neither add to nor subtract from the four Puerto Rican full-power TV stations with common ownership attribution. ACV itself has no other media interests; the only station attributable to AVC’s other owners, Okeechobee and Orly, is WJAN-CA, which is also among the stations for which assignment is sought. While the proposed assignment will result in a new combination of stations in the Miami, FL market under a single licensee, because these stations are a Class A television station (WJAN-CA) and a digital low power (WFUN-LP) – not full-power television stations –, no local multiple ownership concerns are implicated. Finally, no local ownership concerns are raised by the assignment of the New Jersey low-power station.

## **III. REQUEST FOR CONTINUATION OF SATELLITE STATUS**

### **C. Overview of the Puerto Rico Television Market**

The applicants seek permission to continue the ongoing satellite operations of stations WKPV(TV), WJWN-TV, and WIRS(TV), all of which currently rebroadcast the programming of and operate as satellites of WJPX(TV). The Commission reaffirmed in 2007 and 2008, in

connection with long-form applications for transfers of control, that all of these satellite relationships serve the public interest.<sup>2</sup> The Commission has likewise over the years authorized several other licensees to operate Puerto Rican TV stations as satellites.<sup>3</sup> The circumstances upon which this substantial precedent is based have not changed; if anything, the recent worsening of the Puerto Rico economy provides even greater support for satellite operations.<sup>4</sup> Accordingly, the instant request is simply a request for continuation of the *status quo*.

The assignments contemplated herein are to an entity to be owned 50% by CVH, the ultimate parent of the existing licensees of the Puerto Rico stations at issue, and 50% by Okeechobee and Orly (combined) as new owners. The capital to be provided by the new owners is necessary to secure the current financial stability and future viability of all of the subject stations. Neither Okeechobee or Orly have any interest in purchasing and/or operating any of the subject

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<sup>2</sup> See *S&E Network, Inc.*, 23 FCC Rcd 13295 (rel. Sept. 10, 2008) (“*S&E*”) (granting consent to transfers of control of S&E Network and CaribeVision Station Group, LLC, and approving continuing satellite status for WKPV(TV), WJWN-TV, and WIRS(TV)); and *CaribeVision Station Group, LLC*, 22 FCC Rcd 16896 (Med. Bur. 2007) (“*CaribeVision*”).

<sup>3</sup> See, e.g., *Televicentro of Puerto Rico, LLC*, 22 FCC Rcd 2176 (Med. Bur. 2007) (granting consent to transfer of control of S&E Network, Televicentro, and WNJX-TV, Inc. to InterMedia Partners VII and approving continuing satellite status for WKPV(TV), WJWN-TV, WIRS(TV), WTIN(TV), and WNJX-TV); *Application of T. Michael Whitney and LIN Television of San Juan, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 2297 (2001) (“*Whitney*”) (granting LIN’s request to operate WNJX-TV as a satellite of WAPA-TV); *Applications of Paxson Communications of San Juan, Inc. and LIN Television Corporation*, Memorandum Opinion and Order, 16 FCC Rcd 14139 (2001) (“*Paxson*”) (permitting LIN to continue its attributable rebroadcasting agreement with WTIN(TV), which at the time was not licensed to LIN, and granting continued satellite exceptions for WKPV(TV) and WJWN-TV); *Broadcast Actions*, Public Notice, Report No. 45633 (Dec. 16, 2003) (approving the assignment of WIRS(TV) to Televicentro and approving its operation as a satellite of station WJPX(TV)).

<sup>4</sup> According to the U.S. Bureau of Labor Statistics, the unemployment rate in Puerto Rico was 15.1% as of August 2009, well above the typical mainland level. U.S. Bureau of Labor Statistics, *Economy at a Glance: Puerto Rico*, available at <http://www.bls.gov/eag/eag.pr.htm> (last visited Nov. 12, 2009) (“*Bureau of Labor Statistics*”).

Puerto Rico stations individually; their business interest in these stations is only in the operation of the stations as a group with three acting as satellites of WPJX, in concert with the current parent organization, CVH, who brings institutional knowledge of the Puerto Rico broadcasting marketplace. The proposed transaction therefore does not represent the entry of a new, alternative station operator to the Puerto Rico broadcasting marketplace who could operate the satellite stations independently. As demonstrated herein, economic conditions in Puerto Rico, along with the fact that none of the satellite stations generates its own advertising revenue, make it clear that no alternative operator could be reasonably expected to acquire the stations and/or operate them as stand-alone stations. Continuation of the stations' satellite status, on the other hand, will foster the continued viability of the stations, by facilitating the delivery of high-quality programming to residents living beyond the island's economic center, San Juan, and by maintaining signal coverage on the island generally equivalent to that enjoyed by the stations' major competitors.

Television stations licensed to communities on Puerto Rico are not ranked as part of United States television Designated Market Areas ("DMAs"). On numerous occasions, however, the Commission has treated Puerto Rico as a single market for purposes of the media ownership rules.<sup>5</sup> Moreover, advertisers who buy time consider the island to be a single market.<sup>6</sup> Thus, the financial viability of television stations licensed to Puerto Rican communities remains dependent upon achieving reliable island-wide coverage. Yet, as the Commission is aware, Puerto Rico's mountainous topography prevents such coverage in practice. Recognition of these facts has led

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<sup>5</sup> See *Paxson* ¶ 4; *Applications of Milton S. Maltz and Raycom Media, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 15527 (1998); see also *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, n.399 (2003) ("*Broadcast Ownership Order*").

<sup>6</sup> See *Paxson* ¶5.

Puerto Rico broadcasters to enter into various collaborative relationships with other island stations – rebroadcast agreements, satellite arrangements, and local marketing agreements (“LMAs”)<sup>7</sup> – or to implement unusual engineering solutions<sup>8</sup> to achieve necessary signal coverage. Such arrangements repeatedly have been approved by the Commission.<sup>9</sup>

**D. The Commission Has Tailored Its Regulation of Television Ownership in Puerto Rico to the Unique Nature of the Broadcast Market.**

In its licensing and regulation of television stations located on Puerto Rico, the Commission has repeatedly recognized that the island is a geographically small and highly concentrated and competitive broadcast market (approximately 100 radio stations and 30 television stations located on an island that is only 125 miles long and 30 miles wide), which presents uniquely difficult challenges to television broadcasters.<sup>10</sup> These challenges stem from the island’s extreme topography and generally poor economic conditions, as well as from the unusually large number of broadcast stations licensed to a comparatively small geographic area. The Commission has responded to these challenges by developing a unique body of law applicable to Puerto Rico which recognizes the necessity of rebroadcasting or satellite arrangements among the island’s television stations.

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<sup>7</sup> “Because no single station can reach the entire island, Puerto Rico television stations have a long-standing practice of either utilizing satellite stations or entering into rebroadcast arrangements with other stations on the island.” *Televisentro*, 22 FCC Rcd at 2177-78.

<sup>8</sup> See *Siete Grande Television, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 5299 (1992) (granting waivers of technical rules to permit an unusual set of full power boosters to support a Ponce station).

<sup>9</sup> *Paxson* ¶¶ 9, 14-15.

<sup>10</sup> See *Paxson* ¶¶ 14-15; *Whitney* ¶ 4. See also *Applications of JEM Communications, Inc., (Assignor) and Interstate General Properties Limited Partnership, S.E. (Assignee)*, Memorandum Opinion and Order, 9 FCC Rcd 4874, ¶ 9 (1994) (“*JEM Communications*”); *Canal 48, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 2193, ¶ 7 (1993) (“*Canal 48, Inc.*”); *Hector Nicolau*, Memorandum Opinion and Order, 5 FCC Rcd 6370, ¶ 10 (1990) (“*Nicolau*”); *Seglares Iglesia Catolica, Inc.*, Memorandum Opinion and Order, 2 FCC Rcd 7539, ¶¶ 6-7 (1987).

## **1. Puerto Rico's Mountainous Terrain Prevents Island-Wide Coverage.**

Puerto Rico's topography is dominated by a central mountain range which runs east to west along the island. As the Commission previously recognized, the extension of analog Grade B service by television stations located in Puerto Rico was constrained by the island's mountainous terrain, which has a "significant limiting affect [sic] on the actual over-the-air coverage of television stations operating on the island."<sup>11</sup> In a 1993 decision, the Commission described the impact of terrain on Puerto Rico broadcasters as follows:

Puerto Rico is a highly concentrated broadcast market having more than 100 radio stations and more than 30 licensed or authorized television stations, with San Juan dominating the island's economy. Puerto Rico, as an island, is approximately 125 miles long (east to west) and thirty miles wide (north to south), bisected east to west by a central mountain range which effectively blocks television signals directed across its heights.... In fact, we have previously determined that useful television service for stations in Puerto Rico usually does not extend beyond the Grade A contour and is sometimes not satisfactory within that area.<sup>12</sup>

Despite these extreme limitations to over-the-air coverage and low MVPD penetration on the island,<sup>13</sup> advertisers expect their messages to reach all of the island's population centers.

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<sup>11</sup> *Nicolau* ¶ 10; *see also Canal 48, Inc.* ¶ 7 (noting that "the area between the stations is mountainous, and none of the stations is likely to be received much beyond their immediate communities of license").

<sup>12</sup> *Canal 48, Inc.* ¶ 7.

<sup>13</sup> According to the Telecommunications Regulatory Board of Puerto Rico, as of July 2007, 287,304 Puerto Rico households subscribed to cable television and an estimated 241,000 more subscribed to DBS service, for a total of 528,304 MVPD subscriber households in Puerto Rico. *Comments of the Telecommunications Regulatory Board of Puerto Rico*, MB Docket No. 07-148 (Sept. 17, 2007). Thus, out of 1,261,325 occupied households in Puerto Rico, only 42% subscribe to an MVPD service. *See id.* (citing U.S. Census figures for number of occupied households). By contrast, nearly 87% of the 110.2 million total American television households subscribe to an MVPD service; of those MVPD subscriber households, 68.2% receive cable and 29.2 percent receive DBS service. *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, Thirteenth Annual Report*, FCC 07-206, ¶ 8 (rel. Jan. 16, 2009) ("2009 Video Competition Report") (figures cited are as of June 2006).

Because no single station can reach all or even most of the island, Puerto Rico television stations have developed a long-standing practice of entering into satellite arrangement or rebroadcast agreements to provide service to the entire market. These symbiotic relationships are intended to provide the island-wide coverage demanded by advertisers while providing the economic and programming support needed by non-San Juan stations to survive. As a result, the generally stronger stations in the eastern section of the island have for many years been teamed with – and provided financial and technical support to – the generally weaker stations in the other parts of the island.<sup>14</sup>

## **2. Puerto Rico’s Unique Conditions Necessitate Rebroadcast Arrangements.**

Physical constraints on broadcast station viability created by Puerto Rico’s mountainous terrain are aggravated by the exceedingly poor economic conditions on the island and, more specifically, in the population centers beyond San Juan. While the median per capita income in San Juan in 1999 was \$12,437, the median per capita income in Ponce was \$7,276, in San Sebastian was \$5,681, and in Yauco was \$6,434.<sup>15</sup> The gross national income per capita, a measurement of the income actually accruing to residents of the island, is only about 30 percent of the United States’ average.<sup>16</sup> And, the average wage earned by island residents is a mere 54 percent of the average

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<sup>14</sup> Paxson ¶¶ 16-19.

<sup>15</sup> See United States Census Bureau, *Puerto Rico -- Municipio GCT-P14. Income and Poverty in 1999*, U.S. Census Bureau American FactFinder (2000), available at [http://factfinder.census.gov/servlet/GCTTable?-geo\\_id=04000US72&-mt\\_name=DEC\\_2000\\_SF3\\_U\\_GCTP14\\_ST2&-ds\\_name=DEC\\_2000\\_SF3\\_U](http://factfinder.census.gov/servlet/GCTTable?-geo_id=04000US72&-mt_name=DEC_2000_SF3_U_GCTP14_ST2&-ds_name=DEC_2000_SF3_U).

<sup>16</sup> Barry P. Bosworth and Susan M. Collins, Economic Growth, in *The Economy of Puerto Rico* 18 (Susan M Collins, Barry P. Bosworth, and Miguel A. Soto-Class eds., 2006) (noting that income per capita “rose from a little more than 20 percent of the U.S. average in 1950 to roughly 40 percent by the early 1970s. But it has drifted down to only about 30 percent in recent years.”).

earned by mainland residents.<sup>17</sup> The Commonwealth of Puerto Rico also “stands out for the extraordinarily low proportion of its population that is employed.”<sup>18</sup> In the year 2000, the percentage of the island’s jobless population was 10.1 percent;<sup>19</sup> as of August 2009, the island’s unemployment rate had reached 15% and was projected to reach more than 16% in September.<sup>20</sup> Added to these factors particular to Puerto Rico is the economic downturn affecting the United States as a whole. Rising wholesale and transportation costs can only serve to limit the amount of television advertising that local businesses will be able to afford to purchase.

These factors considered, the Commission’s previous conclusions that “economic conditions existing in Puerto Rico indicate that satellite operations or rebroadcast arrangements are a necessity,” even in cases where the stations’ communities of license and their surrounding areas are not technically unserved or underserved, remain well-supported.<sup>21</sup> The Commission has recognized that the satellite arrangements are necessary to bring service to all residents of the island, as “without the use of satellite operation or rebroadcast arrangements, television operations and programming choices beyond San Juan would be limited.”<sup>22</sup> This recognition continues to be valid today.

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<sup>17</sup> *Id.* at 45.

<sup>18</sup> *Id.* at 18.

<sup>19</sup> *Id.* at 39.

<sup>20</sup> *Bureau of Labor Statistics.*

<sup>21</sup> *Nicolau* ¶ 10.

<sup>22</sup> *Id.*



### **3. Stations Operating Under Satellite Status on Puerto Rico Would Not Be Economically Viable on a Stand-Alone Basis.**

The Commission has acknowledged that satellite stations on Puerto Rico could not survive economically as stand-alone local commercial stations. “[S]atellite operations or rebroadcast arrangements are essential to the provision of programming choices” to communities that are “effectively isolated from the island’s economic center in San Juan.”<sup>23</sup> For the most part, advertisers who buy time on Puerto Rico broadcast stations expect to reach consumers across the island. Thus, as a general matter, time is not sold by the satellite stations on the island for local, targeted spots. As a result, none of the three satellite stations in this transaction generates any local revenues. Given that circumstance, as the Commission noted just last year, the “terrain and economic factors militat[e] against against successful full-service operation in Puerto Rico outside of San Juan,”<sup>24</sup> so it is clearly impossible for these stations to survive without affiliation with a more economically powerful San Juan station.

#### **IV. PROPOSED CONTINUED SATELLITE OPERATIONS OF STATIONS WIRS(TV), WKPV(TV), AND WJWN-TV**

Pursuant to the Commission’s general television satellite policy, a television applicant’s proposed satellite operation presumptively will serve the public interest upon the satisfaction of three criteria: (1) the proposed satellite will provide service to an underserved area; (2) no alternative operator is ready and able to construct or purchase and operate the satellite as a full-service station; and (3) no city grade overlap exists between the parent and the satellite.<sup>25</sup> The

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<sup>23</sup> *Canal 48, Inc.* ¶ 8.

<sup>24</sup> *S&E Network*, 23 FCC Rcd at 13298.

<sup>25</sup> *See Television Satellite Stations*, Report and Order, 6 FCC Rcd 4212, ¶ 12(1991) (“*Television Satellite Policy*”).

Commission also will evaluate satellite proposals on an *ad hoc* basis<sup>26</sup> and, in the case of stations licensed to Puerto Rico, on the basis of the discrete body of law developed by the Commission to foster television service on the island. Thus, an applicant who does not meet the “presumptive” satellite standard may nevertheless be permitted continued satellite operations because “the unique terrain and economic obstacles to full service operation in Puerto Rico constitute compelling circumstances.”<sup>27</sup>

The Commission already has performed multiple satellite analyses for stations WIRS(TV), WKPV(TV), and WJWN-TV, in each case finding the operation of the stations as satellites to stations located in San Juan to be in the public interest, and, ultimately, approving the common ownership of the stations together with their present full service television station partner. The most recent such decision, which involved precisely the same stations involved in the current applications, was released just over a year ago. In the very short time that has elapsed since that decision, the circumstances supporting the approval of continued satellite status for the stations remain unchanged. Thus, it is clear that the public interest would continue to be best served by permitting the stations’ satellite operations to go forward.

**WIRS(TV).** As a part of its recent decision, the Commission approved the continued operation of WIRS(TV) as a satellite to WJPX(TV).<sup>28</sup> The station’s circumstances warrant the continuation of this arrangement. First, Yauco, WIRS(TV)’s community of license, qualifies as an underserved area under the Commission’s transmission test because WIRS(TV) remains the only

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<sup>26</sup> *Id.* ¶ 14.

<sup>27</sup> *S&E Network*, 23 FCC Rcd at 13298.

<sup>28</sup> *Id.*

television station licensed to that community.<sup>29</sup> Second, there is substantial and long-standing evidence of the station's inability to operate as a full-service, stand-alone station. As has been demonstrated in previous applications, WIRS(TV) does not generate any revenues through the sale of local advertising time. Thus, in the absence of the rebroadcast arrangement with station WJPX(TV), WIRS(TV) would lack the financial wherewithal to continue operations.

As was the case the last four times the Commission examined the satellite arrangement between WJPX(TV) and WIRS(TV), there was an area of city grade overlap between the analog 80 dBu signal contours of stations on the northeast coast in the vicinity of San Juan and small pockets of overlap on the north-central coast. However, the Commission concluded that the central mountain range which separates Yauco and San Juan, the respective communities of license of WIRS(TV) and WJPX(TV), "causes significant signal blockage," thus warranting grant of satellite status to stations located on the opposite side of the mountain range from their parent stations.<sup>30</sup> While traditional contour prediction methods show more overlap of digital than analog contours, the terrain obstacles remain and have not shrunk; and they continue to block TV signals in practice regardless of what computer programs may suggest. Thus WIRS(TV) will continue to best serve the interests of the residents of Puerto Rico as a satellite of WJPX(TV).

**WKPV(TV) and WJWN-TV.** The Commission first granted authority to operate stations WKPV(TV) and WJWN-TV as satellites of WJPX(TV), San Juan, in 1994. That authority was continued in 1996, 2001, twice in 2007, and again in 2008. As was the case in each of those

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<sup>29</sup> See Federal Communications Commission, Consolidated Data Base System Public Access, Station Search, available at [http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/sta\\_list.pl](http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/sta_list.pl) ("CDBS") (search terms "Community of License: Yauco; State of License: PR") (last visited Nov. 13, 2009). Under the transmission test, a community is deemed underserved if two or fewer full-service stations are licensed to it. See *Television Satellite Policy* ¶ 19.

<sup>30</sup> See *JEM Communications* ¶ 16. See also *Paxson* ¶ 10; *Hector Nicolau* ¶ 10.

instances, there was no analog city grade overlap between WJPX(TV) and either WKPV(TV) or WJWN-TV. Although the analog predicted city grade contours of the two satellite stations overlapped, the Commission concluded in the past that no actual overlap exists between the two stations when terrain is considered.<sup>31</sup> Again, while the traditional digital contour prediction method shows more theoretical overlap than was the case with analog service, the terrain obstacles have not changed and still result in the stations not having significantly duplicative coverage areas in actual practice.

With regard to the presumptive criterion for provision of service to an underserved market, the San Sebastian area to which WJWN-TV is licensed remains “underserved,” with that facility being the only full-service station licensed to that community.<sup>32</sup> Although, Ponce, to which WKPV(TV) is licensed, does not qualify as “underserved” by virtue of the number of stations licensed there, all of the commercial TV stations are commonly owned with TV stations in San Juan or nearby Caguas<sup>33</sup> Moreover, “due to the stringent economic circumstances and the unusually severe terrain conditions on the island,”<sup>34</sup> the Commission “has not previously considered this fact [that Ponce has multiple stations] to be an obstacle to satellite status.”<sup>35</sup> There is no independently owned commercial TV station in Ponce; and as has previously been demonstrated in earlier applications, neither WKPV(TV) nor WJWN-TV would be economically viable as a stand-alone

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<sup>31</sup> *Paxson* ¶ 18.

<sup>32</sup> *See* CDBS (search terms “Community of License: San Sebastian; State of License: PR”) (last visited Nov. 13, 2009).

<sup>33</sup> *See id.* (search terms “Community of License: Ponce; State of License: PR”) (last visited Nov. 15, 2009).

<sup>34</sup> *JEM Communications* ¶ 5. *See also Canal 48, Inc.* ¶ 7.

<sup>35</sup> *Paxson* ¶ 18.

station. As discussed above, neither station generates any revenues through the sale of local advertising, thus the continued satellite operations of these facilities are crucial to the stations' financial viability.

## **V. CONCLUSION**

As the foregoing demonstrates, the proposed continued satellite operation of stations WKPV(TV), WJWN-TV, and WIRS(TV) fully satisfies the criteria established by the FCC for satellite operation in Puerto Rico. Accordingly, authorizing continued operation of WKPV(TV) and WJWN-TV as satellites of WJPX(TV) will be consistent with Commission precedent and will serve the public interest. With approval of continued satellite status, the assignment contemplated herein will not result in any violation of the Commission's local television ownership rules. Accordingly, grant of this application, including approval of the continued satellite operations of stations WKPV(TV), WJWN-TV, and WIRS(TV) will be consistent with Commission rules and precedent, will serve the public interest, and is hereby requested.