

**Appendix A**

Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau  
(May 23, 2005)  
("2005 Satellite Grant")



Federal Communications Commission  
Washington, D.C. 20554

MAY 23 2005

Univision Communications, Inc.  
1999 Avenue of the Stars,  
Suite 3050  
Los Angeles, California 90067

Re: Applications for Renewal of License  
and Transfer of Control of Stations  
WLII(TV), Caguas, PR  
WSUR-TV, Ponce, PR  
File Nos. BRCT-20040927AJH and  
AJR and BTCCT-20050112ADG  
and ADH  
FIN: 19776 & 19777

Dear Transferee:

This letter concerns the above-referenced applications seeking renewal of license and consent to the transfer of control of WLII/WSUR, Inc., licensee of WLII(TV), Channel 11, Caguas, Puerto Rico; and WSUR-TV, Channel 9, Ponce, Puerto Rico; from Intangibles Holding Corporation (IHC) to Univision of Puerto Rico, Inc. (Univision). In connection with the acquisition, Univision proposes to continue operating WSUR-TV as a satellite of WLII(TV) pursuant to Note 5 of Section 73.3555 of the Commission's Rules, which exempts satellite stations from application of the local television multiple ownership rule.<sup>1</sup> WSUR-TV has operated as a satellite station of WLII(TV) for over thirty years and the Commission has renewed that status on several occasions.<sup>2</sup> Alianza de Artistas Puertorriqueños y Grupos Amigos (APAGA) filed petitions to deny the renewal and transfer applications. For the reasons set forth below, we deny APAGA's petitions to deny, grant the renewal and transfer applications, and permit Univision to continue operating WSUR-TV as a satellite of WLII(TV) pursuant to the Note 5 exemption.

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<sup>1</sup> 47 C.F.R. §73.3555, Note 5.

<sup>2</sup> See, e.g., FCC File No. BTCCT-20010626AAX; *Milton S. Maltz*, 13 FCC Rcd 15527 (1998); and *Zaida Perez*, FCC 85-831, released July 26, 1985; *aff'd sub nom., Telemundo v. FCC*, 802 F. 2d 513 (D.C. Cir. 1986).

*APAGA Petitions.* APAGA is “an alliance of groups and individuals concerned with the effects of changes in broadcasting on the culture, language and people of Puerto Rico.”<sup>3</sup> APAGA opposes the renewal and transfer applications for three reasons. First, APAGA argues that, “because Univision bases their network operations upon programming from Mexico and Venezuela (with news based in Miami, Florida), they have discriminated against Puerto Rican Spanish speaking actors and news presenters.” Second, APAGA alleges that the stations have aired obscene material. Finally, APAGA alleges that one of its members was denied access to the stations’ public inspection file.

Section 309(k) of the Communications Act states that the Commission shall grant a license renewal if it finds, with respect to that station, during the preceding license term, that: (1) the station has served the public interest, convenience and necessity; (2) there have been no serious violations by the licensee of the Communications Act or the Commission’s rules; and (3) there have been no other violations of the Act or the Commission’s rules which, taken together, would constitute a pattern of abuse.<sup>4</sup> We find that APAGA has failed to demonstrate that IHC’s operation of WLII and WSUR-TV did not serve the public interest, convenience and necessity. APAGA also failed to show that IHC committed serious violations of the Act or the rules or that the stations engaged in any other violations that constitute a pattern of abuse. We also find that APAGA has failed to raise a substantial and material question of fact or law that the transfer of the stations to Univision would fail to serve the public interest.<sup>5</sup>

With respect to APAGA’s first argument concerning the source of the stations’ public affairs programming, including news, they do not allege that the stations failed to air such programming only that an insufficient amount of the programming was produced locally. The Commission has no specific requirement that any fixed percentage of a station’s public affairs material be locally produced.<sup>6</sup> The Commission has recognized that licensees can rely on any programming (including from outside sources) which is responsive to local needs to serve its community of license.<sup>7</sup>

APAGA also complains that the stations aired Univision programming that contained the term “bicho,” which APAGA claims is considered an obscene term in Puerto Rico for the male sex organ. APAGA does not provide specific programs, dates or times when this term was alleged to have aired on the stations, but merely claims that such term was aired

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<sup>3</sup> APAGA included declarations with its petitions signed by two of its members who claim to be viewers of the stations. APAGA apparently is claiming standing to challenge the renewal and transfer applications because its members are viewers of the stations. See *United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966).

<sup>4</sup> See 47 U.S.C. § 309(k).

<sup>5</sup> See 47 U.S.C. § 309(d)(1); *Gencom Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); and *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1562 (D.C. Cir. 1988).

<sup>6</sup> See *Pillar of Fire*, 99 FCC 2d 1256 (Rev. Bd. 1984).

<sup>7</sup> See *United Broadcasting Co. (KBAY-FM)*, 93 FCC 2d 482, 498 (1983).

as part of Univision's programming. Without specific information as to the programs and the dates, times and context in which such a term was allegedly aired, we cannot act on APAGA's complaint.

Finally, APAGA also alleges that one of its members visited the station to view the public inspection file and was delayed access. IHC responds that the member was asked to make an appointment to view the file and access was provided a few days later. IHC acknowledges that it should not have requested that the person return another day to view the file and that it has taken steps to ensure that its public file is made accessible during regular business hours. Such a one-time denial of access to the public inspection file does not constitute grounds for the denial of a renewal or transfer application.<sup>8</sup> We, however, admonish IHC for failing to make its public inspection file available promptly upon request as set forth in the rules.<sup>9</sup>

*Satellite Exemption.* Pursuant to the Commission's television satellite policy, as set forth in *Television Satellite Stations*,<sup>10</sup> an applicant for satellite status is entitled to a presumption that the proposed satellite operation is in the public interest if it 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;<sup>11</sup> and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station. Applications meeting these 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.

Univision concedes that it does not meet the presumptive standard. Specifically, Univision notes that there is predicted City Grade contour overlap between WLII(TV) and WSUR-TV and that there are four full-power television stations licensed to Ponce. As to the third criterion, Univision argues that WSUR-TV's established history as a satellite, combined with the economic inability of the Ponce market to support stand-alone operations, conclusively demonstrate that WSUR-TV is not capable of operating as a stand-alone facility and that consequently no buyer stands available to purchase and operate the station as such.<sup>12</sup> Univision contends that grant of continuing satellite status

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<sup>8</sup> See *Telemedia Broadcasting, Inc.*, 17 FCC Rcd 14604, 14606 (2002).

<sup>9</sup> See 47 C.F.R. § 73.3526.

<sup>10</sup> 6 FCC Rcd 4212 (1991) (subsequent citations omitted).

<sup>11</sup> An area is underserved if, under the "transmission test," there are two or fewer full-service stations already licensed to the proposed satellite's community of license, or if, under the "reception test," 25 percent or more of the area within the proposed satellite's Grade B contour, but outside the parent's Grade B contour, receives four or fewer services, not including the proposed satellite service. *Id.* at 4215.

<sup>12</sup> In support of its contention, Univision provides a statement from Brian Cobb, President of CobbCorp, LLC, a media brokerage firm, wherein Mr. Cobb, who has reviewed the current economic environment in Ponce, concludes that WSUR-TV would be unable to exist as a stand-alone facility. This is

to WSUR-TV is appropriate given the Commission's recognition of the unique terrain and economic obstacles facing full-service television stations in Puerto Rico.<sup>13</sup> Univision maintains that operation of satellite-parent stations in Puerto Rico is common because of these economic and topographic factors. In fact, Univision notes, all of the other television stations in Ponce are operated as either satellites or they rebroadcast the programming of another television station. Therefore, Univision argues, it would be unfair to require it to operate WSUR-TV as the only stand-alone station in Ponce. Univision notes that the community of Ponce remains distinct and separate from San Juan, and the economy of Ponce and its population have not increased to a level sufficient to support a stand-alone station. Furthermore, Univision states, San Juan stations are unable to provide a quality signal to Ponce. Univision notes that the Commission has previously determined under an *ad hoc* analysis that satellite operation of WSUR-TV would be in the public interest.<sup>14</sup>

While Univision's showing does not meet our "presumptive" satellite standard, we believe that its showing is sufficient to justify continued satellite status for WSUR-TV under our *ad hoc* satellite procedures. We agree that, given the past history of the station, as well as the terrain and economic factors militating against successful full-service operation in Puerto Rico outside of San Juan, it does not appear likely that an alternative operator would be willing to operate WSUR-TV as a full-service station. The factors upon which we based our prior authorization of satellite status for WSUR-TV have not changed to such an extent as to alter that determination here. Although the showing does not meet the "presumptive" satellite standard, the unique terrain and economic obstacles to full-service operation in Puerto Rico constitute "compelling circumstances" warranting satellite status. Thus, we conclude, continued operation of WSUR-TV as a satellite of WLII(TV) would serve the public interest.

The above facts considered, we find the parties fully qualified and that grant of the renewal and transfer applications will serve the public interest, convenience, and necessity.

Accordingly, IT IS ORDERED, That the petitions to deny filed by APAGA ARE DENIED.

IT IS FURTHER ORDERED, That the request for continued operation of WSUR-TV as a satellite of WLII(TV) pursuant to the satellite exception to Section 73.3555 of the Commission's Rules, IS GRANTED.

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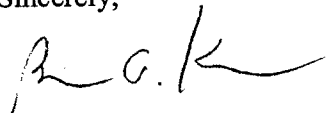
because Ponce lacks the population and economic base to sustain full-service operations, Mr. Cobb concludes.

<sup>13</sup> See *Paxson Communications of San Juan, Inc.*, FCC 01-207 (released July 19, 2001); *T. Michael Whitney*, 16 FCC Rcd 2297 (MMB 2001); *Milton Maltz*, 13 FCC Rcd 15527 (1998); and *JEM Communications, Inc.*, 9 FCC Rcd 4874 (1994).

<sup>14</sup> See *Milton Maltz*, *supra* and FCC File No. BTCCT-20010626AAX.

IT IS FURTHER ORDERED, That the applications for renewal and transfer of control of stations WLII(TV), Caguas, Puerto Rico; and WSUR-TV, Ponce, Puerto Rico (File Nos. BRCT-20040927AJH and AJR and BTCCT-20050112ADG and ADH) ARE GRANTED.

Sincerely,

A handwritten signature in black ink, appearing to read 'B.A.K.', with a stylized flourish extending to the right.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc: William H. Fitz, Esq. – Counsel for Intangibles Holding Corporation  
Scott R. Flick, Esq. – Counsel for Univision of Puerto Rico, Inc.  
Alianza de Artistas Puertorriqueños y Grupos Amigos