

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of)
)
T. Michael Whitney)
 (Transferor))
)
 and) File No. BTCCT-19991124ACB
) FIN: 7336
LIN Television of San Juan, Inc.)
 (Transferee))
)
 For Consent to the Transfer of Control of)
 WNJX-TV, Inc.)
 Licensee of Television Station)
 WNJX-TV, Mayaguez, Puerto Rico)

MEMORANDUM OPINION AND ORDER

Adopted: January 25, 2001

Released: January 26, 2001

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned application seeking consent to the transfer of control of WNJX-TV, Inc., licensee of WNJX-TV, Channel 22 (IND), Mayaguez, Puerto Rico, from T. Michael Whitney to LIN Television of San Juan, Inc. (LIN). Through a wholly owned subsidiary, LIN is the licensee of WAPA-TV, Channel 4 (NBC), San Juan, Puerto Rico. LIN also has an attributable interest in WTIN(TV), Channel 14 (IND), Ponce, Puerto Rico, through its LMA with that station.¹ LIN proposes to operate WNJX-TV as a satellite of WAPA-TV pursuant to the Note 5 exemption set forth in the Commission's broadcast multiple ownership rule. *See* 47 C.F.R. § 73.3555(b) Note 5.² For the reasons set forth below, we grant LIN's satellite request and the WNJX-TV transfer of control application.

REQUEST FOR SATELLITE STATUS

2. Pursuant to the Commission's television satellite policy, as set forth in *Television Satellite Stations*, 6 FCC Rcd 4212 (1991) (subsequent citations omitted), 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

¹ *See* Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket No. 94-150, *Report and Order*, 14 FCC Rcd 12559 (1999), *recon. pending*.

² We do not here decide whether Mayaguez and San Juan are in the same or separate television markets.

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. *Id.* at 4213-14. 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. *Id.* at 4214. LIN contends that its proposed operation of WNJX-TV as a satellite of WAPA-TV meets the first and third criteria but not the second criterion of the presumptive standard. However, LIN argues that the Commission frequently has recognized the special characteristics of Puerto Rico that warrant grant of parent-satellite status to island stations even where the presumptive criteria are not met. These characteristics, LIN argues, include the unusually mountaineous terrain that severely limits signal propagation from the San Juan-Caguas-Arecibo area to the two other main areas of the island – the Ponce area on the south-central coast and the Aguadilla-Mayaguez-San Sebastian area on the west coast, as well as, the economic obstacles faced by stations in those outlying areas. See *Milton Maltz*, 13 FCC Rcd at 15527; *JEM Communications, Inc.*, 9 FCC Rcd at 4874; and *Canal 48, Inc.*, 8 FCC Rcd 2193 (1993).³

3. Regarding the first criterion, LIN submits a technical statement which demonstrates that no City Grade contour overlap exists between station WNJX-TV, Mayaguez, and WAPA-TV, San Juan, even when considering the outstanding construction permit (File No. BMPCT-990319KE) to permit WNJX-TV to operate with increased power, or the pending application to modify that permit (File No. BMPCT-990908AA). Based on this showing, we find that LIN has satisfied the first criterion of the presumptive satellite standard.

4. For the purposes of the second criterion, an area is deemed underserved if, under the “transmission test,” there are two or fewer full-service stations already licensed to the proposed satellite community of license, or, 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. *Television Satellite Stations*, 6 FCC Rcd at 4215. Here, LIN notes that there are currently four full-service television stations licensed to Mayaguez, Puerto Rico, therefore, it is not able to meet the transmission test.⁴ However, we note that none of the three existing Mayaguez stations originates its own programming and all rebroadcast the programming of another television station in a larger Puerto Rico market, including WNJX-TV which is currently rebroadcasting the programming of WAPA-TV. Furthermore, more than four stations provide predicted Grade B service to areas served by

³ We note that there is Grade A overlap between WTIN(TV) and WNJX(TV).

⁴ Our records indicate that the license for one of these stations, WTRA(TV), Mayaguez, Puerto Rico, has been rescinded. See Letter to John A. Borsari, Esq. from the Chief, Video Services Division, released November 14, 2000. Therefore, there are currently only three full service television stations licensed to Mayaguez, Puerto Rico. We note, however, that there is a pending application for a new station to replace WTRA(TV). See File No. BPCT-920102KE.

WNJX-TV. Accordingly, WNJX-TV does not serve an underserved area as measured by either the transmission or reception test. Nevertheless, LIN argues, the Commission has recognized that Puerto Rico is a geographically small and highly concentrated broadcast market and that it is difficult for any Puerto Rico station to show a sufficient lack of predicated Grade B service to satisfy the reception test. LIN argues that, under real world circumstances, however, the availability of Grade B service is substantially less because of Puerto Rico's mountainous terrain. We agree. In a number of satellite cases involving stations on the island of Puerto Rico, we have taken the island's unique terrain into account when permitting satellite exemptions despite the fact that the reception test was not met. *See JEM Communications, Inc.*, 9 FCC Rcd at 4874; and *Canal 48, Inc.*, 8 FCC Rcd at 2193. As in those cases, we believe that it remains true that "the economic conditions existing in Puerto Rico indicate that satellite operations or rebroadcast arrangements are a necessity" even in cases where communities of license and their surrounding areas are not technically underserved or unserved. *See Hector Nicolau*, 5 FCC Rcd at 6371-2. This is best exemplified by the fact that none of the full service stations in Mayaguez originates its own programming and must rely on other larger market stations.

5. With respect to the third criterion, an applicant must show that no alternative operator is ready and able to construct, or to purchase and operate, the proposed satellite as a full-service station. *See Television Satellite Stations*, 6 FCC Rcd at 4215. LIN contends that there is substantial and long-standing evidence of the inability of WNJX-TV to operate as a full-service, stand-alone station and the unavailability of a qualified buyer to purchase WNJX-TV for full-service, stand-alone operation. For example, LIN notes that the Commission has previously recognized that the Ponce area on the south-central coast of Puerto Rico lacks the economic base to sustain full-service operations. *See JEM Communications, Inc.*, 9 FCC Rcd at 4875; *Canal 48, Inc.*, 8 FCC Rcd at 2194; and *Hector Nicolau*, 5 FCC Rcd at 6372. LIN notes further that the Mayaguez population is only 53% the size of the population of Ponce, thus placing Mayaguez within the range of small Puerto Rico communities that the Commission has previously regarded as economically appropriate for satellite status. We agree that the Commission has expressly recognized the difficulties faced by television stations operating on the island of Puerto Rico outside of the San Juan area.

6. LIN includes the declaration of T. Michael Whitney, the transferor and President of WNJX-TV, Inc., stating that WNJX-TV has sustained losses consistently since it began operations in 1986. From 1986 to 1990, WNJX-TV rebroadcast the programming of WLII-TV, Channel 11, San Juan, and was not able to generate enough local advertising revenues to sustain its operations during that time. Since 1990, WNJX-TV has not generated any significant revenues despite a cutback of staff and curtailment of capital expenditures. For several years during the 1990's, WNJX-TV rebroadcast the programming of WSTE(TV), Ponce, Puerto Rico, at no charge so it would have a no-cost programming source. As previously noted, the station is currently rebroadcasting WAPA-TV. Furthermore, Mr. Whitney states that the largest employer in Mayaguez, Star Kist Tuna, recently announced a reduction in employees which will have a serious economic impact on the area and make it even more difficult for the station to attract advertising dollars. We believe that the demonstrated economic conditions in the area and

WNJX-TV's prior history of broadcast operations are significant circumstances in support of LIN's satellite request.⁵

7. Additionally, Mr. Whitney states that he has been unable to sell WNJX-TV despite extensive efforts to locate a qualified buyer. Mr. Whitney states that he made unsuccessful attempts to sell the station to other broadcasters, such as Telemundo Group, Inc., and Malrite Communications Group, Inc. Mr. Whitney concludes that the only realistic opportunity for a sale is to find a buyer that also owns a television station serving a more populous portion of the island with an economic base sufficient to support WNJX-TV.

8. In sum, we find that, based upon its representations and showing set forth in its application, LIN has adequately supported an *ad hoc* determination that grant of satellite status to WNJX-TV is warranted. Thus, we find that the operation of WNJX-TV as a satellite of WAPA-TV, San Juan, Puerto would be in the public interest. In view of the foregoing, and having determined that the applicant is qualified to operate the station as proposed, we find that a grant of this application will serve the public interest, convenience and necessity.

CONCLUSION

9. Accordingly, IT IS ORDERED, That the request by LIN Television of San Juan, Inc., for the operation of station WNJX-TV, Mayaguez, Puerto Rico, as a satellite station, IS GRANTED.

10. IT IS FURTHER ORDERED, That the application for consent to transfer of control of WNJX-TV, Inc. (File No. BTCCT-19991124ACB) from T. Michael Whitney to LIN Television of San Juan, Inc., IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

⁵ LIN filed an amendment on October 13, 2000, wherein it stated that, although it intended to operate WNJX-TV as a satellite of WAPA-TV, following consummation of the transfer of control, it would maintain a main studio for WNJX-TV in compliance with Section 73.1125 of the Commission's Rules.