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CaribeVision Station Group, LLC
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Re: Application for Consent to Transfer Control of S&E Network Inc.
WJPX(TV), San Juan, PR; Fac. ID No. 58340
WKPV(TV), Ponce, PR; Fac. ID No. 58341
WJWN-TV, San Sebastian, PR; Fac. ID No. 58342
File No. BTCCT-20080502AAR
Application for Consent to Transfer Control of CaribeVision Station Group, LLC
WIRS(TV), Yauco, PR, Fac. ID No. 39887
File No. BTCCT-20080502AAM
Requests for Continuing Satellite Authorization
WKPV(TV), WJWN-TV, WIRS(TV)

Dear Counsel:

This concerns the above-referenced applications seeking Commission consent to: (1) transfer control of S&E Network, Inc., licensee of WJPX(TV), San Juan, Puerto Rico, WKPV(TV), Ponce, Puerto Rico, and WJWN-TV, San Sebastian, Puerto Rico from Carlos Barba as sole stockholder to Carlos Barba and his wife, Teresa Barba, as co-equal stockholders; and to (2) transfer control of CaribeVision Station Group, LLC, licensee of WIRS(TV), Yauco, Puerto Rico from Carlos Barba as sole stockholder to himself and his wife as co-equal stockholders.¹ As part of these transactions, the parties request continuing satellite authority for WKPV(TV), WJWN-TV, and WIRS(TV), all of which rebroadcast the programming of WJPX(TV).²

¹ The applicants explain that the only change proposed is at the level of the ultimate parent company and involves only a transfer of 50 percent from a husband to his wife, who is already Secretary and Treasurer of the parent company. The applicants assert that no new parties will be introduced.

² 47 C.F.R. § 73.3555, Note 5.

In *Television Satellite Stations*³ the Commission established the requirement that all applicants seeking to transfer or assign satellite stations justify continued satellite status by demonstrating compliance with a three-part "presumptive" satellite exemption standard applicable to new satellite stations. The presumptive satellite exemption is met if the following three public interest criteria are satisfied: (1) there is no City Grade overlap between the parent and the 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.⁴ If an applicant does not 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.⁵

The applicants note that the Commission recently reaffirmed that all of these satellite relationships serve the public interest.⁶ Moreover, these stations have previously been approved as satellites by the Commission at various times over a number of years.⁷ The applicants assert that since those decisions, and in particular the most recent decision which was released less than a year ago, the facts upon which those findings were based, and in particular the economic circumstances in Puerto Rico, have not changed. The applicants further note that the Media Bureau's recent approval involved common ownership by the same companies of precisely the same stations included in the instant application. The applicants assert that since no new parties without a prior attributable interest are involved, the proposed transfers will do nothing more than maintain the *status quo*. In addition, the applicants state that continuation of the stations' satellite status will permit them to continue making high-quality programming available to residents living beyond the economic center of San Juan by maintaining signal coverage on the island generally equivalent to that enjoyed by the stations' major competitors.

WIRS(TV). As part of its most recent decision, the Commission approved the continued operation of WIRS(TV) as a satellite to WJPX(TV). The applicants maintain that 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 television station licensed to that community. Second, the applicants point out that there is substantial and long-standing evidence of the station's inability to operate as a full-service, stand-alone station. The applicants maintain that WIRS(TV) does not generate any revenues through the sale of local advertising time. Thus, the applicants contend that in the absence of the rebroadcast arrangement with station WJPX(TV), WIRS(TV) would lack the financial wherewithal to continue operations. The applicants note that there is an area of City Grade overlap between the 80 dBu signal contours of the stations on the northeast coast in the vicinity of San Juan and small pockets of overlap on the north-central coast. However, the applicants note that the Commission has concluded that the central mountain range that separates Yauco and San Juan, the communities of license of WIRS(TV) and WJPX(TV), "cause significant signal blockage," thus warranting grant of satellite status to stations located on the

³ 6 FCC Rcd 4212, 4215 (1991) (subsequent citations omitted).

⁴ *Id.* at 4213-14.

⁵ *Id.* at 4212.

⁶ *CaribeVision Station Group, LLC*, 22 FCC Rcd 16896, released September 20, 2007.

⁷ *Id.*

opposite side of the mountain range from their parent stations.⁸

WKPV(TV) and WJWN-TV. The applicants assert that, in 1994, the Commission granted authority to operate stations WKPV(TV) and WJWN-TV as satellites to WJPX(TV), San Juan. They assert that this authority was continued in 1996, 2001, and twice in 2007. There is no City Grade overlap between WJPX(TV) and either WKPV(TV) or WJWN-TV. Although the predicted City Grade contours of the two satellites overlap, the applicants explain that the Commission has concluded in the past that no actual overlap exists between the two stations when terrain is considered. Moreover, 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. While Ponce, to which WKPV(TV) is licensed, does not qualify as “underserved,” the applicants argue that due to the stringent economic circumstances and the unusually severe terrain conditions on the island, the Commission has not previously considered this fact to be an obstacle to satellite status. The applicants assert that neither WKPV(TV) nor WJWN-TV would be economically viable as a stand-alone station. In this regard, neither station generates any revenues through the sale of local advertising. Thus, the applicants contend that the continued satellite operations of these facilities are crucial to the stations’ financial viability.

Regarding 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.⁹ However, applicants do not base satisfaction of the third criterion on efforts to sell the three satellite stations. In support of the continuing waiver request, the applicants contend that based on the economic conditions in Puerto Rico, it is clear that no alternative operator is available to acquire any of the satellite stations as stand-alone operations. As discussed above, none of the satellite stations generate any revenues through the sale of local advertising time. In addition, applicants assert that while the communities of Puerto Rico are not included in any Nielsen Designated Market Area (“DMA”), the Commission has repeatedly treated Puerto Rico as a single market for purposes of the multiple ownership rules. Likewise, the applicants explain that advertisers expect to be able to reach the entire island with their messages. However, the applicants reiterate that the terrain of the island makes achievement of that goal with a single station a virtual impossibility. Additionally, the applicants note that poor cable and DBS penetration on the island precludes any significant additional audience reach from these sources.

Moreover, the applicants contend that the small size and concentrated nature of the market add further complications. The applicants assert that while the island is only 125 miles by 30 miles, there are in excess of 30 television stations authorized and more than 100 radio stations. According to the applicants, the result is an intense level of competition among broadcast stations for advertising dollars. Moreover, the applicants explain that the generally poor economic condition of Puerto Rico outside of San Juan makes the generation of sufficient revenue to survive quite difficult. As a result, the applicants state that a symbiotic relationship has developed between stations in San Juan, the economic center of the island, and the stations in poorer, outlying areas. These relationships, whether through satellite status or time brokerage/rebroadcast agreements, allow the San Juan stations to achieve the island-wide coverage that advertisers demand while providing the stations in more remote communities the economic support and quality that they need to survive. The Commission has long recognized that areas outside the San Juan

⁸ *JEM Communications, Inc.*, 9 FCC Rcd 4874 (1994); *Hector Nicolau*, 5 FCC Rcd 6370 (1990).

⁹ 6 FCC Rcd at 4215.

population center lack the economic basis to sustain full-power operations.¹⁰ Moreover, applicants maintain that the problems caused by Puerto Rico's mountainous terrain are aggravated by the generally poor economic conditions on the island and, more specifically, in the population centers beyond San Juan. Specifically, the applicants explain that, according to the US Census Bureau, in the year 2000 the median per capita income in San Juan in 1999 was \$12,437. By contrast, the median per capital incomes for the communities of license for the stations involved in the instant transaction were dramatically lower. The 1999 median per capita income in Mayaguez was \$8,003, in Ponce was \$7,276, in San Sebastian was \$5,681, and in Yauco was \$6,434.¹¹

Based on our review of the materials submitted, we find that the applicants have set forth information sufficient to warrant continued satellite operations for WKPV(TV), WJWN-TV and WIRS(TV) under our *ad hoc* analysis. We agree that, given 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 these satellites as full-service stations. The factors upon which we based our most recent grant of satellite authorization for these stations, less than a year ago, have not changed to such an extent as to alter the determination here. Although the applicants' showing does not satisfy our "presumptive" satellite standard, the unique terrain and economic obstacles to full service operation in Puerto Rico constitute "compelling circumstances" warranting continued satellite status. Thus, we conclude that continued operation of WKPV(TV), WJWN-TV and WIRS(TV) as satellites of WJPX(TV), San Juan, Puerto Rico would serve the public interest. In view of the foregoing, and having determined that the applicants are qualified in all respects, we find that a grant of the above-referenced applications would serve the public interest, convenience and necessity.

ACCORDINGLY, the request for continued operation of WKPV(TV), Ponce Puerto Rico, WJWN-TV, San Sebastian, Puerto Rico, and WIRS(TV), Yauco, Puerto Rico as satellites of WJPX(TV), San Juan, Puerto Rico, pursuant to the satellite exception to the duopoly rule, Section 73.3555, Note 5, of the Commission's rules, **IS GRANTED**.

FURTHERMORE, the above-referenced applications for consent to: (1) transfer control of S&E Network, Inc., licensee of WJPX(TV), San Juan, Puerto Rico, WKPV(TV), Ponce, Puerto Rico, and WJWN-TV, San Sebastian, Puerto Rico from Carlos Barba as sole stockholder to Carlos Barba and his wife, Teresa Barba, as co-equal stockholders (File No. BTCCT-20080502AAR); and to (2) transfer control of Caribevision Station Group, LLC, licensee of WIRS(TV), Yauco, Puerto Rico from Carlos Barba as sole stockholder to himself and his wife as co-equal stockholders (File No. BALCT-20080502AAM) **ARE GRANTED**.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁰ See T. Michael Whitney, 16 FCC Rcd 2297 (2001); *JEM Communications, Inc.*, 9 FCC Rcd 4874 (1994).

¹¹ The gross national income per capita, a measurement of the income actually accruing to residents of the island, is currently only about 30 percent of the United States' average.