

Federal Communications Commission
Washington, D.C. 20554

DA 10-479
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America-CV Station Group, Inc.
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Re: Application for Assignment of Licenses
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. BALCDT-20091123AKM

Application for Assignment of License
WIRS(TV), Yauco, PR, Fac. ID No. 39887
File No. BALCDT-20091123AKQ

Request for Continuing Satellite Authorization
WKPV(TV), WJWN-TV, WIRS(TV)

Dear Counsel:

This concerns the above-referenced applications to assign the licenses for WJPX(TV), San Juan, WKPV-TV, Ponce, and WJWN-TV, San Sebastian, all in Puerto Rico, from S&E Network, Inc. ("S&E") to America-CV Station Group, Inc. ("America-CV"), and to assign the license for WIRS-TV, Yauco, Puerto Rico, from CaribeVision Station Group, LLC ("Caribevision") to America-CV. S&E is a wholly-owned subsidiary of Caribevision. As part of these transactions, America-CV requests continuing satellite authority for WKPV(TV), WJWN-TV, and WIRS(TV), all satellites of WJPX(TV) pursuant to the satellite exemption to the duopoly rule.¹

In *Television Satellite Stations*² 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

¹ 47 C.F.R. § 73.3555, Note 5.

² *Television Satellite Stations Review of Policy and Rules*, MM Docket No. 87-8, Report and Order, 6 FCC Rcd 4212, 4215 (1991) ("Television Satellite Stations") (subsequent history omitted).

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.³ 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.⁴

WIRS(TV). As to the first criterion, historically there was an area of analog City Grade overlap between WIRS(TV) and WJPX(TV) on the northeast coast in the vicinity of San Juan, and small pockets of overlap on the north-central coast. However, America-CV notes that the Commission has traditionally concluded that the central mountain range that separates Yauco and San Juan, the 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.⁵ In the digital television era, however, there is no longer a concept of a City Grade contour. Regarding the second criterion, Yauco qualifies as an underserved area under the Commission’s transmission test because WIRS(TV) remains the only television station licensed to that community. On the third criterion, America-CV argues that there is substantial and long-standing evidence of the station’s inability to operate as a full-service, stand alone station. America-CV attests that, as 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 WJPX(TV), America-CV argues that WIRS(TV) would lack the financial wherewithal to continue operations.

WKPV(TV) and WJWN-TV. As to the first criterion, historically there was no overlap of WJPX(TV)’s analog City Grade contour with the analog City Grade contours of either WKPV(TV) or WJWN(TV). Although the predicted analog City Grade contours of the two satellites overlap, America-CV explains that the Commission has concluded in the past that no actual overlap exists between the two stations when terrain is considered. Regarding the second criterion, 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,” America-CV contends 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. Moreover, neither station generates any revenues through the sale of local advertising. America-CV contends that continued satellite operation is crucial to the stations’ financial viability.

In addition, America-CV asserts 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 noted above, none of the satellite stations generate any revenues through the sale of local advertising time. America-CV explains 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 America-CV maintains that advertisers expect to be able to reach the entire island with their messages. However, the terrain of the island makes achievement of that goal with a single station a virtual impossibility. America-CV notes that poor cable

³ *Id.* at 4213-14.

⁴ *Id.* at 4212.

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

and DBS penetration on the island precludes any significant additional audience reach from these sources.

Moreover, America-CV explains that the Commission has repeatedly recognized that the island is a geographically small and highly concentrated broadcast market. Specifically, America-CV states 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, which present uniquely difficult challenges to television broadcasters. 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. Puerto Rico's topography is dominated by a central mountain range which runs east to west along the island. As the Commission traditionally recognized, the extension of analog Grade B service by television stations located in Puerto Rico was constrained by the island's mountainous terrain. As a result, America-CV states 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, argues America-CV, 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 population center lack the economic basis to sustain full-power operations.⁶

Furthermore, America-CV explains the 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 outside of San Juan. Specifically, America-CV explains that 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. The gross national income per capita, a measurement of the income actually accruing to residents of the island, is only about 30% of the United States' average. Furthermore, the average wage earned by island residents is a mere 54% of the average earned by mainland residents. Moreover, America-CV points out that the Commonwealth of Puerto Rico, "stands out for the extraordinarily low proportion of its population that is employed." In the year 2000, the percentage of the island's jobless population was 10.1%. As of August 2009, the island's unemployment rate had reached 15% and was projected to reach more than 16% in September. Added to these factors particular to Puerto Rico, states America-CV, is the economic downturn affecting the United States as whole. America-CV concludes that rising wholesale and transportation costs can only serve to limit the amount of television advertising that local businesses will be able to afford and purchase.

Based on our review of the materials submitted, we find that America-CV has set forth information sufficient to warrant continued satellite operations for WKPV(TV), WJWN-TV and WIRS(TV) under our *ad hoc* analysis. America-CV notes that the Commission reaffirmed in 2007 and 2008,⁷ in connection with long-form applications for transfers of control, that all of these satellite relationships serve the public interest. America-CV asserts that the circumstances upon which this precedent is based have not changed, and the recent worsening of the Puerto Rico economy provides even greater support for satellite operations. We agree that the factors upon which we based our most recent

⁶ See *T. Michael Whitney*, 16 FCC Rcd 2297 (2001); *JEM Communications, Inc.*, 9 FCC Rcd 4874 (1994).

⁷ See *S&E Network, Inc.*, 23 FCC Rcd 13295 (2008) (approving continuing satellite status for WKPV(TV), WJWN-TV and WIRS(TV)); *CaribeVision Station Group, LLC*, 22 FCC Rcd 16896 (2007).

grant of satellite authorization for these stations last year have not changed to such an extent as to alter the determination here, and have actually worsened. Although America-CV's 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 of America-CV Station Group, Inc. 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) assign the licenses for WJPX(TV), San Juan, WKPV-TV, Ponce, and WJWN-TV, San Sebastian, all in Puerto Rico, from S&E Network, Inc. to America-CV Station Group, Inc. (File No. BALCDT-20091123AKM); and (2) assign the license for WIRS-TV, Yauco, Puerto Rico, from CaribeVision Station Group, LLC to America-CV Station Group, Inc. (File No. BALCDT-20091123AKQ) **ARE GRANTED**.

FEDERAL COMMUNICATIONS COMMISSION

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