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Re: WOLE-DT, Aguadilla, Puerto Rico
Facility ID No. 71725

Dear Counsel:

This letter is in reference to the above-captioned joint request to permit television station WOLE(DT), Aguadilla, Puerto Rico to operate as a satellite of WLII(DT), Caguas, Puerto Rico pursuant to the satellite exemption to the local television ownership rule ("Joint Request").¹ For the reasons set forth below, we grant the request.

Background. WOLE(DT) and WLII(DT) (collectively, "the parties") argue that grant of the requested relief will enable WOLE(DT) to rebroadcast the Spanish-language network programming carried on WLII(DT), thereby preserving the availability of that programming to viewers in western Puerto Rico, and enabling WOLE(DT) to continue to provide local news and information to those viewers. According to the Joint Request, WOLE(DT) has rebroadcast the Spanish-language programming of WKAQ(TV), the San Juan affiliate of the Telemundo television network, for 20 years, rebroadcasting approximately 95% of WKAQ(TV)'s weekly programming, in addition to providing locally originated news and information programming to western Puerto Rico.² The parties state that WOLE(DT)'s rebroadcast agreement with Telemundo terminates at the end of 2014 and will not be renewed. The Joint Request also states that, for twenty years, WLII(DT) has provided Spanish-language programming from the Univision Network, the Unimas Network and programming locally produced by

¹ 47 C.F.R. § 73.3555, Note 5.

² Joint Request at 1-2.

WLII(DT) to television station WORA(TV), in Mayaguez, on the west coast of Puerto Rico.³ According to the Joint Request, the rebroadcast agreement between WLII(DT) and WORA(TV) also expires at the end of 2014 and will not be renewed.

The parties seek a satellite exemption from the local television ownership rule in order to consummate an agreement under which WOLE(DT) would rebroadcast programming from the Univision and Unimas television networks currently carried on WLII(DT). According to the parties, an exemption to the local ownership duopoly rule is required because WLII/WSUR owns other stations in Puerto Rico, and the rebroadcast agreement constitutes an attributable local marketing agreement under Commission rules.⁴ Rather than seeking relief under the presumptive criteria set out in the *Television Satellite Stations Order*,⁵ the parties contend that good cause exists to grant an exemption under the *ad hoc* approach also established in that *Order*.

The parties describe the unique topographical and economic conditions in Puerto Rico as support for their request. They emphasize the fact that a mountain range bisecting the island effectively precludes stations located on one side of the island from providing coverage to communities on the opposite coast. As a result, the Joint Petition states that rebroadcasting and satellite arrangements are common in this market, and that the Commission has previously recognized the operational constraints of broadcasters in Puerto Rico. In addition, the parties argue that poor economic conditions make it difficult for full-service stations to operate outside of San Juan.⁶

With respect to the television stations at issue, the parties note that WOLE(DT) has not operated on a stand-alone basis for twenty years, and will lose the support of a full-service station in San Juan upon expiration of its current rebroadcast agreement at the end of 2014. According to the parties, Aguadilla lacks a sufficient economic base to support independent, full-service operations and, therefore, absent grant of a satellite exemption that will allow it to rebroadcast the Spanish-language programming of WLII(DT), WOLE(DT) is unlikely to survive. A rebroadcast agreement between WOLE(DT) and WLII(DT) will also ensure the continued availability of Univision and Unimas Spanish-language programming in western Puerto Rico. Finally, the parties recognize that there is no application pending and that the need to request an exemption arises from the attributable interest that WLII/WSUR will hold in station WOLE(DT) as a result of the rebroadcast agreement. They argue that grant of the exemption in this circumstance is consistent with precedent.⁷

Discussion. Stations typically seek a satellite exemption to the local ownership rule in the context of an application for assignment or transfer of control. Satellite exemptions are generally granted upon a

³ *Id.* at 2.

⁴ WLII/WSUR, an indirect subsidiary of Univision Communications, Inc., is also the licensee of full-power television stations WLII, WSUR(DT), Ponce, Puerto Rico, which operates as a satellite of WLII, and WSTE(DT), Ponce, Puerto Rico. See *Applications of Milton S. Maltz (Transferor) and Raycom Media, Inc. (Transferee)*, 13 FCC Rcd 15527 (MB 1998). 47 C.F.R. § 73.3555, Note j(2).

⁵ *Television Satellite Stations Review of Policies and Rules*, Report and Order, 6 FCC Rcd 4212 (1991), *subsequent citations omitted* (“*Television Satellite Stations*”).

⁶ The Joint Petition cites 2012 Census Bureau data comparing the median household income in the United States (\$51,371) with that of Puerto Rico (\$19,429), and noting that the median household incomes in Aguadilla (\$15,302) and Mayaguez (\$15,060) are even lower. *United States Census Bureau Household Income: 2012* (Sept. 2013) (attached to the Joint Request as Exhibit 1).

⁷ Joint Petition at 6-7 citing *Applications of Paxson Communications of San Juan, Inc. (Transferor) and LIN Television Corporation (Transferee)*, 16 FCC Rcd 14139, 14143, ¶¶13-14 (2001) (“*Paxson*”).

showing that a station could not operate independently because the station's community is unable to support a fully independent station. In this case, however, WLII(DT) does not seek to own WOLE(DT), but rather to enter into an attributable rebroadcasting agreement with the station. We find that this request is similar to the facts in *Paxson*, in which the Commission granted authority for a television station in Puerto Rico to continue an attributable rebroadcasting agreement with a station that was not commonly owned.⁸ Therefore, this distinction does not preclude the relief sought if grant of a satellite exemption is otherwise warranted.⁹

In *Television Satellite Stations*, the Commission stated that applicants for satellite status are entitled to a "presumptive" exemption from Section 73.3555(b) of the Commission's rules if the parent/satellite combination 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; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station.¹⁰ Showings meeting these criteria, when unrebutted, will be viewed favorably by the Commission. If the showing cannot qualify for the presumption, the Commission will evaluate the proposal on an *ad hoc* basis, and grant the request if there are compelling circumstances that warrant approval.¹¹

With respect to the first criterion, we recognize that, following the digital transition, full-power television stations have a digital Principal Community Contour that serves a much larger area than their former analog City Grade contour. Thus, as we stated previously, the Principal Community Contour is not an equivalent standard to use in determining whether a proposed satellite qualifies for the presumptive satellite exemption to the duopoly rule.¹²

Although satellite operation of WOLE(DT) does not meet all the terms of the presumptive standard, we agree with the parties that "compelling circumstances" exist to grant an exemption under the Commission's *ad hoc* approach. The Commission has previously determined that certain unique characteristics of Puerto Rico warrant approval of the satellite exemption pursuant to Note 5 of Section 73.3555(b) of the Commission's rule. First, the mountainous terrain that divides the island limits signal propagation and effectively prevents stations serving San Juan from reaching other population centers on the western side of the island.¹³ Second, economic conditions, evidenced by a significantly lower median household income compared to the United States, makes it unlikely there is the economic base needed to support WOLE(DT) as a full-service station in Aguadilla. The Commission previously found that the Mayaguez-Aguadilla region, which includes the service area of WOLE(DT), "lacks the economic base to

⁸ See *Paxson* at 14143, ¶¶12-13.

⁹ *Id.*

¹⁰ *Television Satellite Stations*, 6 FCC Rcd at 4213-4214, ¶ 12.

¹¹ *Id.* at 4214, ¶ 14.

¹² See, e.g., *Local TV Holdings, LLC, Transferor and Tribune Broadcasting Company II, LLC, Transferee and Dreamcatcher Broadcasting LLC, Transferee*, Memorandum Opinion and Order, 28 FCC Rcd 16850, 16852 (MB 2013).

¹³ See, e.g., *In the Matter of Shareholders of Univision Communications, Inc. and Broadcasting Media Partners et al.*, 22 FCC Rcd 5842, 5857 ¶33 (2007) ("[a] mountainous 'spine' separates the eastern and western portions of Puerto Rico that limits signal propagation, and effectively prevents stations serving San Juan from reaching other population centers on the island."); *Paxson* at 14143, ¶14 ("The island's topography significantly obstructs local broadcast signals, and limits the ability of television stations in San Juan to provide service to portions of the island for which service would ordinarily be received.").

sustain full-service operations.”¹⁴ The parties submit the statement of Julio Toro, President of Media Net, Inc., a media buying service in Puerto Rico, who offers his professional opinion that “it is unlikely that a ready, willing, and able buyer would be available to purchase WOLE and operate it on a stand-alone basis.”¹⁵ Indeed, WOLE(DT)’s twenty years of operation pursuant to a rebroadcast agreement with another station serves as evidence of the station’s inability to operate as a stand-alone station. Thus, the geography and market conditions do not support a finding that WOLE(DT) could operate successfully as a full-service station. Finally, we find the requested relief is in the public interest because a rebroadcast agreement is essential to providing Spanish-language programming to viewers in western Puerto Rico. In this case, the rebroadcast agreement would also allow WOLE(DT) to continue providing local news and information.

ACCORDINGLY, IT IS ORDERED That the request for an exemption under Section 73.3555(b), Note 5 of the Commission’s rules to permit television station WOLE(DT), Aguadilla, Puerto Rico, to operate as a satellite of television station WLII(DT), Caguas, Puerto Rico, **IS GRANTED**.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁴ See *Televiscentro of Puerto Rico*, 22 FCC Rcd 2176, 2179 (2007).

¹⁵ Joint Request at Exhibit 2, Letter from Julio Toro, President, Media Net, Inc., to William T. Lake, Chief Media Bureau, Federal Communications Commission (dated October 3, 2014).