

“significantly viewed” in counties within the West Palm Beach DMA,² WFOR-TV, in fact, no longer attains the viewing levels required for such status in the Communities in the West Palm Beach DMA. Consequently, WPEC Licensee respectfully requests that the Commission waive the “significantly viewed” exception with respect to WFOR-TV in the Communities.

WPEC(TV) is an affiliate of the CBS Network and pursuant to its network affiliation agreement with CBS, acquired network nonduplication rights from CBS for the entire West Palm Beach DMA, to the extent permitted by the FCC’s rules. WPEC(TV) has also acquired the exclusive rights to certain syndicated programming in the market. Nevertheless, WPEC(TV) cannot fully exercise its network nonduplication and syndicated exclusivity rights against WFOR-TV because the station is included on the Commission’s 1972 list as being significantly viewed. As a result of the significantly viewed exception, cable systems in the Communities are currently not required to delete the duplicating programming of WFOR-TV.

Pursuant to the Commission’s Rules and case precedent, in order to obtain a waiver of the significantly viewed exception, a petitioner must demonstrate “utilizing community-or system-specific data, to one standard error . . . that the station in question has not met [the Commission’s] standards for significant viewing for two consecutive years.”³ For a CBS-owned station such as WFOR-TV to be significantly viewed, it must achieve in non-cable homes both a share of viewing hours of at least 2% (total week hours) and a net weekly circulation of at least 5%, calculated to one standard error.⁴ WFOR-TV fails to meet these requirements in the Communities. A special community-specific survey conducted by Nielsen Media Research, attached hereto as Exhibit B, include a special tabulation of over-the-air viewing using diaries

² See 1972 Reconsideration Order, 36 FCC 2d 326, Appendix B (1972).

³ *KCST-TV, Inc.*, 103 FCC 2d 407, 413 (1986).

⁴ See 47 C.F.R. §76.5(i).

from noncable/non-ADS homes for the specified ZIP Codes of the Communities. WPEC Licensee previously gave notice of the special tabulation as required by 47 C.F.R. §76.54.⁵

As the studies show, WFOR-TV fails to meet the FCC's benchmarks for significantly viewed status in the Communities by a wide margin because the share of viewing in non-cable homes falls below 3%, within one standard error, and the net weekly circulation falls far below 25%, within one standard error, for each of the Communities.⁶ Indeed, nearly all of the studies show that for the majority of the Communities and in all survey periods, **WFOR-TV's share of total viewing hours and its net weekly circulation share are at zero.**⁷ For the remaining Communities, WFOR-TV's viewing shares also fall well below the required thresholds.

Based on the data presented in this Petition, WPEC Licensee requests that the Bureau find that station WFOR-TV no longer has viewing levels necessary to demonstrate significantly viewed status in the Communities.

⁵ The WPEC Licensee notice was sent on June 10, 2013.

⁶ Because WPEC LLC is submitting community specific data, rather than county or system-specific data, there is no requirement that the data provided be proportional. *See, e.g., WGFL License Corporation*, 22 FCC Rcd 1708 (2007); *WNTH Broadcasting, Inc.*, 16 FCC Rcd 16377 (2001); *KCST-TV, Inc.*, 103 FCC 2d 407 (1986).

⁷ As the United States Court of Appeals for the District of Columbia Circuit held long ago, "if a station's viewership falls to nearly zero ... it is obviously illogical for the Commission to deem the station significantly viewed." *KCST-TV, Inc. v. FCC*, 699 F.2d 1185, 1193 n.13 (D.C. Cir. 1983). As noted, here most of Nielsen's surveys established that WFOR-TV's viewing shares are not only *nearly* zero percent, they are, in fact, *at* zero percent.

EXHIBIT A

Community	Zip Codes	Sweeps Periods
Delray Beach, FL	33444, 33445, 33446, 33483, 33484	Feb 11 and May 11 Feb 12 and May 12
Boynton Beach, FL	33426, 33435, 33436, 33437, 33472, 33473	Feb 11 and May 11 Feb 12 and May 12
West Palm Beach, Lake Park, FL	33401, 33403, 33404, 33405, 33406, 33407, 33408, 33409, 33410, 33411, 33412, 33413, 33414, 33415, 33417, 33418	Feb 11 and May 11 Feb 12 and May 12
Riviera Beach, FL	33403, 33404, 33407, 33410, 33418	Feb 11 and May 11 Feb 12 and May 12
Palm Beach Gardens, FL	33403, 33408, 33410, 33412, 33418	Feb 11 and May 11 Feb 12 and May 12
Royal Palm Beach, FL	33411, 33412, 33414	Feb 11 and May 11 Feb 12 and May 12
Wellington + Loxahatchee, FL	33411, 33414, 33449, 33467, 33470	Feb 11 and May 11 Feb 12 and May 12
Greenacres, FL	33413, 33415, 33463, 33467	Feb 11 and May 11 Feb 12 and May 12
Jupiter + Tequesta, FL	33458, 33469, 33477, 33478	Feb 11 and May 11 Feb 12 and May 12
Belle Glade, FL	33430	Feb 11 and May 11 Feb 12 and May 12
Lake Worth + Hypoluxo, FL	33449, 33460, 33461, 33462, 33463, 33467	Feb 11 and May 11 Feb 12 and May 12
Stuart, FL	34994, 34996, 34997	Feb 11 and May 11 Feb 12 and May 12
Port St. Lucie, FL	34952, 34953, 34983, 34984, 34986, 34987	Feb 11 and May 11 Feb 12 and May 12
Fort Pierce, FL	34945, 34946, 34947, 34949, 34950, 34951, 34952, 34953, 34981, 34982, 34983, 34984, 34986, 34987	Feb 11 and May 11 Feb 12 and May 12
Okeechobee, FL	34972, 34974	Feb 11 and May 11 Feb 12 and May 12
Vero Beach, FL	32960, 32962, 32963, 32966, 32967, 32968	Feb 11 and May 11 Feb 12 and May 12

EXHIBIT B



The attached report provides audience net weekly circulation (cume) and share information among non-cable/non-ADS households for WFOR during the Nielsen Station Index (NSI) survey conducted over four week periods during the February 2011, May 2011, February 2012 and May 2012 measurement periods. The report is based on series of Zip code groups. Households will maintain the reported Nielsen Viewers in Profile (VIP) weights used to project in-tab sample households to universe estimates for their respective measurement periods. This study measures non-cable/non-ADS household viewing between 7AM-1AM, Monday to Sunday.

The sample source for this survey consisted of non-cable/non-ADS TV households returning usable television viewing diaries. NSI procedures were used for distributing diaries and for compiling the estimated audience projections in this report. Average quarter hour projections were computed by summing weights for quarter hours in the daypart for the non-cable/non-ADS in-tab households and dividing by the number of quarter hours in the daypart. The weights which were used for projections are those used to project in-tab sample households to universe estimates in the regular Nielsen Viewers in Profile analysis. Share and cume estimates as well as their respective standard errors are computed for each of the geographies as follows:

Shares of total viewing are computed by dividing average quarter hour M-Su 7AM-1AM projections of a given station for the non-cable/non-ADS in-tab households by the average quarter hour M-Su 7AM-1AM projections in non-cable/non-ADS households across all stations. The associated standard error is calculated using the accepted formula for computing the standard error of a ratio estimate and is shown below:

The average weekly circulation (cume) is an average of the four weeks of the measurement period. The cume was computed by summing the weights for all non-cable/non-ADS households tuning at least one quarter hour to a given station within the cycle during the M-Su 7AM-1AM daypart and dividing by the sum of all non-cable/non-ADS weights within the given measurement period for each week. The cume for each week in the measurement period is then summed and divided by the number of weeks in the measurement period to compute the average weekly cume. The associated standard error for the average weekly cume is calculated using the accepted formula for computing the standard error of a ratio estimate. This standard error is the error of the average weekly cume; it is not an average of the weekly standard error. The formulas used are shown below:

Share

$$Share = \frac{\sum_1^n (w * Qhrs(s))}{\sum_1^n (w * Qhrs(t))}$$

Share Standard Error



$$\text{Std Error} = \sqrt{\frac{n}{n-1} * \sum_1^n \left[\frac{(w * Qhrs(s)) - (\text{Share} * w * Qhrs(t))}{\sum_1^n (w * Qhrs(t))} \right]^2}$$

where n = number of intab households

where w = household weight

where $Qhrs(s)$ = total quarter hours tuned to station of interest by household

where $Qhrs(t)$ = total quarter hours tuned by household

Average Weekly Cume

$$\text{Average Weekly Cume} = \frac{1}{z} * \sum_1^z \left[\frac{\sum_1^n (HH \text{ Weight} * x)}{\sum_1^n HH \text{ Weight}} \right]$$

Average Weekly Cume Standard Error

$$\text{Std Error} = \sqrt{\frac{1}{z^2} \sum_1^z \left[\frac{n}{n-1} * \sum_1^n \left[\frac{(x - \text{Week Cume}) * HH \text{ Weight}}{\sum_1^n HH \text{ Weight}} \right]^2 \right]}$$

where z = number of weeks in analysis (with non-zero intabs)

where n = number of intab households in week

where $x = 0$ if household did not tune station of interest

where $x = 1$ if household did tune station of interest

The attached report is representative of the viewing patterns of the non-cable/non-ADS households of the geographic area surveyed.



WFOR

Delray Beach			
Geography Grouping	Results	Feb11 & May11 Combined	Feb12 & May12 Combined
33444, 33445, 33446, 33483, 33484	Number of Intabs	3	5
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

Boynton Beach			
Geography Grouping	Results	Feb11 & May11 Combined	Feb12 & May12 Combined
33426, 33435, 33436, 33437, 33472, 33473	Number of Intabs	3	6
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

West Palm Beach, Lake Park, Mangonia Park, Palm Beach Shores, and North Palm Beach			
Geography Grouping	Results	Feb11 & May11 Combined	Feb12 & May12 Combined
33401, 33403, 33404, 33405, 33406, 33407, 33408, 33409, 33410, 33411, 33412, 33413, 33414, 33415, 33417, 33418	Number of Intabs	42	48
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

Riviera Beach			
Geography Grouping	Results	Feb11 & May11 Combined	Feb12 & May12 Combined
33403, 33404, 33407, 33410, 33418	Number of Intabs	13	11
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

Palm Beach Gardens			
Geography Grouping	Results	Feb11 & May11 Combined	Feb12 & May12 Combined
33403, 33408, 33410, 33412, 33418	Number of Intabs	9	3
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

Royal Palm Beach			
Geography Grouping	Results	Feb11 & May11 Combined	Feb12 & May12 Combined
33411, 33412, 33414	Number of Intabs	5	7
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00



WFOR

Wellington + Loxahatchee			
Geography Grouping	Results	Feb11 & May11 Combined	Feb12 & May12 Combined
33411, 33414, 33419, 33467, 33470	Number of Intabs	12	17
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

Greenacres			
Geography Grouping	Results	Feb11 & May11 Combined	Feb12 & May12 Combined
33413, 33415, 33463, 33487	Number of Intabs	6	10
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

Jupiter + Tequesta			
Geography Grouping	Results	Feb11 & May11 Combined	Feb12 & May12 Combined
33458, 33481, 33477, 33478	Number of Intabs	8	9
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

Belle Glade			
Geography Grouping	Results	Feb11 & May11 Combined	Feb12 & May12 Combined
33490	Number of Intabs	3	2
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

Lake Worth, Lantana, and Hypoluxo			
Geography Grouping	Results	Feb11 & May11 Combined	Feb12 & May12 Combined
33449, 33460, 33461, 33462, 33463, 33467	Number of Intabs	37	13
	Average Weekly Cume	4.54	0.00
	Cume Std. Error	4.65	0.00
	Share	0.33	0.00
	Share Std. Error	0.33	0.00

Stuart			
Geography Grouping	Results	Feb11 & May11 Combined	Feb12 & May12 Combined
34994, 34996, 34997	Number of Intabs	3	2
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00



WFOR

Port St. Lucie			
Geography Grouping	Results	Feb11 & May11 Combined	Feb12 & May12 Combined
34952, 34953, 34983, 34984, 34986, 34987	Number of Intabs	3	8
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

Fort Pierce			
Geography Grouping	Results	Feb11 & May11 Combined	Feb12 & May12 Combined
34945, 34946, 34947, 34949, 34950, 34951, 34952, 34953, 34981, 34982, 34983, 34984, 34986, 34987	Number of Intabs	3	12
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

Okeechobee			
Geography Grouping	Results	Feb11 & May11 Combined	Feb12 & May12 Combined
34972, 34974	Number of Intabs	1	4
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	-	0.00

Vero Beach			
Geography Grouping	Results	Feb11 & May11 Combined	Feb12 & May12 Combined
32960, 32982, 32983, 32986, 32987, 32988	Number of Intabs	5	1
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	-

CERTIFICATE OF SERVICE

I, Julia Colish, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that copies of the foregoing **“PETITION FOR SPECIAL RELIEF”** were served via U.S. Mail on this 23rd day of August 2013 to the following:

Comcast Cable

Attn: Vickie DiMaio
1401 Northpoint Parkway
West Palm Beach, FL 33407

Atlantic Broadband

Attn: Jim Waldo
1681 Kennedy Causeway
North Bay Village, FL 33141

WPTV TV

Attn: Steve Wasserman
1100 Banyan Blvd
West Palm Beach, FL 33401

WPBF

Caroline Taplett
3970 RCA Blvd
Suite, 7007
Palm Beach Gardens, FL 33410

WFLX

John Heislman
1100 Banyan Blvd
West Palm Beach, FL 33401

WTVX/WTCN

Bob Butterfield
1700 Palm Beach Lakes Blvd.
Suite 150
West Palm Beach, FL 33401

WFOR

Attn: Adam Levi
8900 NW 18th Terrace
Miami, FL 33172-2623

WPLG

Attn: Dave Boylan
3401 W Hallandale Beach
Pembroke Park, FL 33023

WTVJ

Attn: Manuel Martinez
15000 SW 27th St
Miramar, FL 33027-4147

WSVN

Attn: Bob Leider
1401 79th St Causeway
Miami, FL 33141-4104

WSFL

Attn: Howard Greenberg
500 E Broward Blvd Ste 900
Ft Lauderdale, FL 33394

WBFS

Attn: Adam Levi
8900 NW 18th Terrace
Miami, FL 33172-2623

WLTV

Attn: Mike Rodriguez
9405 NW 41st St
Miami, FL 33178-2301

WSCV

Attn: George Carballo
15000 SW 27th St
Miramar, FL 33027-4147

WAMI

Attn: Mike Rodriguez
9405 NW 41st St
Miami, FL 33178-2301

WJAN

Attn: Marcelo Soldano
13001 NW 107th Ave
Hialeah Gardens, FL 33018-1104

Comcast

Attn: Vicki DiMaio
1100 Northpoint Parkway, Suite
100
West Palm Beach, Fl 33407

WSBS

Attn: Albert Rodriguez
7007 NW 77th Ave
Miami, FL 33166-2836

AT&T U-Verse

Richard Levine, General Manager
1880 Century Park East Street
Los Angeles, CA 90067
310-552-0244

Hometown Cable Plus

Jim Davis, General Manager
10486 SW Village Center Drive
Port St. Lucie, FL 34987
772-345-6000

Hotwire Communications

Matt Holcom, Director of
Operations
300 East Lancaster Ave, Suite 208
Wynnewood, PA 19096

WPXM

Attn: James Januszka
13801 NW 14th Street
Sunrise, FL 33323-2844

WHDT

Attn: Station Manager
5244 SW Orchid Bay Dr
Palm City, FL 34990-8519

WGEN

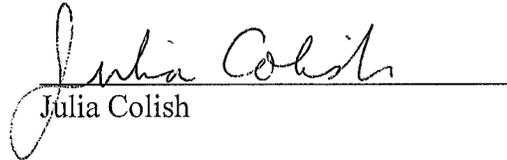
Attn: Station Manager
1800 NW 94th Ave
Miami, FL 33172-2329

WHFT

Attn: Station Manager
3324 Pembroke Rd
Pembroke Park, FL 33021-8320

WFGC

Attn: Station Manager
1900 S Congress Ave
Suite A
West Palm Beach, FL 33406-6610



Julia Colish

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(11) PAYER (FRN) REDACTED		(12) FCC USE ONLY
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(13) APPLICANT NAME WPEC Licensee, LLC		
(14) STREET ADDRESS LINE NO. 1 2300 N Street, NW		
(15) STREET ADDRESS LINE NO. 2		
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(26A) Fee Due for (PTC) \$1,355.00	(27A) Total Fee \$1355.00	FCC Use Only
(28A) FCC CODE 1 FL,WestPalmB	(29A) FCC CODE 2 X	
(23B) FCC Call Sign/Other ID	(24B) Payment Type Code(PTC)	(25B) Quantity
(26B) Fee Due for (PTC)	(27B) Total Fee	FCC Use Only
(28B) FCC CODE 1	(29B) FCC CODE 2	