



PUBLIC NOTICE

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MEDIA BUREAU AND WIRELESS BUREAU WAIVE MINOR CHANGES RULE FOR AUCTION 100 APPLICANTS AFFECTED BY HURRICANES IRMA AND MARIA

On April 3, 2018, the Media Bureau and Wireless Bureau opened a settlement window running through June 14, 2018, during which Auction 100 mutually exclusive (MX) applicants can file technical amendments to resolve their mutual exclusivities.¹ The *Settlement PN* provided that technical amendments must be “minor” as defined by the FCC’s rules (Rules).²

The Puerto Rico Broadcasters Association (PRBA) filed a request that the Commission entertain waivers of the technical resolution rules set forth in the *Settlement PN* for MX applicants in Puerto Rico.³ Specifically the PRBA requests that the Commission permit such applicants to file amendments moving mutually exclusive translator proposals to any available channel and be treated as minor changes, provided such amendments do not cause interference to exiting or proposed FM stations and comply with coverage requirements for FM translators.⁴

The PRBA notes that the devastation caused by Hurricanes Irma and Maria has resulted in broadcasters “expending considerable financial, technical, and human resources in restoring broadcast services to the islands as soon as possible. Accordingly, these broadcasters currently lack the resources to resolve mutual exclusivities within the current confines of the Auction No. 100 MX Resolution Rules.”⁵

The Rules may be waived for good cause shown.⁶ When an applicant seeks waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action.⁷ The Commission must give waiver requests “a hard look,” but an applicant for waiver “faces a high hurdle even at the starting gate”⁸ and must support its waiver request with a compelling showing.⁹ Waiver is appropriate

¹ *Settlement Period Announced for Cross-Service FM Translator Mutually Exclusive Applications for Auction 100*, Public Notice, DA 18-332 (Apr. 4, 2018) (*Settlement PN*).

² *Id.* at para. 4 (citing 47 CFR § 74.1233(a)).

³ Letter from Francisco R. Montero, Esq., and Keenan P. Adamchak, Esq., Fletcher, Heald & Hildreth, to Marlene H. Dortch, Secretary, FCC (Apr. 5, 2018) (*PRBA Waiver Request*). The PRBA requested similar relief for Auction 100 applicants in the U.S. Virgin Islands (USVI). However, there are no MX Auction 100 applicants from the USVI.

⁴ *PRBA Waiver Request* at 1-2 (citing 47 CFR 74.1201(g)).

⁵ *PRBA Waiver Request* at 4.

⁶ 47 CFR § 1.3.

⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*).

⁸ *WAIT Radio*, 418 F.2d at 1157.

⁹ *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.¹⁰

We find that catastrophic damage to communications infrastructure on Puerto Rico caused by Hurricanes Irma and Maria and the extensive resource issues presented by the unusual extended recovery period is a special circumstance warranting waiver of Section 74.1233(a), and that such a waiver would serve the public interest by assisting the broadcasting industry to rebuild following the hurricanes and by ensuring that robust radio coverage is provided in areas prone to severe hurricanes. Although several states were affected by severe hurricanes in 2017, Puerto Rico in particular suffered a significant loss of broadcast facilities, and many of these facilities have not resumed operations as of March 2018.¹¹ Additionally, permitting MX applicants in Puerto Rico to resolve their mutual exclusivities by allowing them to move to any available non-reserved band channel—rather than waiting for a new auction filing window to take place—will expedite the construction of new broadcast facilities.

Accordingly, Auction 100 MX applicants in Puerto Rico¹² may request a waiver in their technical amendments specifying any available frequency in the non-reserved band.¹³ Applicants must still comply with all other requirements for technical amendments set forth in the *Settlement PN*, and must file by the close of the settlement window—June 14, 2018.¹⁴ **No amendments will be accepted that do not otherwise conform to the requirements set forth in the *Settlement PN* or are filed after the close of the settlement window.**

For further information, please contact Rob Gates or James Bradshaw of the Audio Division, Media Bureau, at (202) 418-2700.

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¹⁰ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)).

¹¹ *Communications Status Report for Area Impacted by Hurricane Maria* (Mar. 21, 2018).

¹² See *Settlement PN* at Attach. A.

¹³ The PRBA Waiver Request asks that parties be permitted to amend to “any” available channel. PRBA Waiver Request at 1, 4 (emphasis in original). Applicants will be permitted to amend their applications to identify any channel that is not reserved for noncommercial use. See *Revitalization of the AM Service*, Report and Order, 30 FCC Rcd 12145, 12150-51, para. 12 (cross-service translators limited to non-reserved band); 47 CFR § 73.7003 (point system selection procedures for reserved channels); 47 CFR § 74.1202(b) (commercial translators may operate only on non-reserved channels).

¹⁴ See *Settlement PN* at para 4.