



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information: 202-418-0500
Internet: <http://www.fcc.gov>
TTY: 888-835-5322

DA 18-35

Released: January 11, 2018

INCENTIVE AUCTION TASK FORCE AND MEDIA BUREAU GRANT WAIVER OF THE POST-AUCTION TRANSITION SCHEDULE AND MODIFY THE TRANSITION PHASE ASSIGNMENTS OF REPACKED STATIONS IN PUERTO RICO AND THE U.S. VIRGIN ISLANDS

MB Docket No. 16-306
GN Docket No. 12-268

1. The Incentive Auction Task Force and the Media Bureau (Bureau) hereby grant the requests filed by the repacked stations in Puerto Rico and the U.S. Virgin Islands listed in the attached Appendix (collectively, Stations) to modify the post-incentive auction transition phase assigned to the Stations in the *Closing and Channel Reassignment Public Notice* to permit the Stations to transition to their post-auction channels prior to the start of Phase 1.¹ We find that accelerating the Stations' post-auction transition is in the public interest in light of the widespread devastation caused by Hurricanes Irma and Maria, and that it will not adversely impact the overall post-auction transition schedule. For the reasons discussed below, the Stations are permitted to commence testing on their post-auction channels at 12:01 AM on July 1, 2018, and must discontinue operation on their pre-auction channels no later than 11:59 PM on August 1, 2018.

2. Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.² A waiver is appropriate where the particular facts would make strict compliance inconsistent with the public interest, and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.³ The Bureau has stated that it will evaluate such requests on a case-by-case basis to assess the impact on the transition schedule, including the impact on other broadcasters and viewers, in

¹ In total, 21 stations were reassigned new channels in Puerto Rico and the U.S. Virgin Islands as a result of the broadcast television incentive auction. WTJX-TV, a full power television station in Charlotte Amalie, U.S. Virgin Islands, is not a party to the instant *Request for Modification and Waiver of Phase Assignment*. As a result, WTJX-TV will continue to be assigned to transition Phase 3, which has a testing period start date of April 13, 2019, and a phase completion date of June 21, 2019. See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017).

² See *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306 and GN Docket No. 12-268, 32 FCC Rcd 890, 912-14, paras. 47-52 (MB 2017) (*Transition Scheduling Adoption Public Notice*).

³ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 CFR § 1.3 (waiver for good cause shown). See also *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 913-14, para. 51 and n.171.

order to facilitate a timely and orderly transition.⁴ The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and have little or no impact on the transition schedule.⁵ Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.⁶

3. In August and September of 2017, Hurricanes Irma and Maria devastated Puerto Rico and the U.S. Virgin Islands, resulting in widespread damage to infrastructure, including to the Stations' facilities. In a series of letters filed with the Commission (collectively, Waiver Requests),⁷ the Stations requested to have their assigned post-auction transition phases modified to permit them to transition to their post-auction channels prior to the start of Phase 1.⁸ The Stations assert that grant of their Waiver Requests will "avoid wasteful duplicative construction"⁹ and allow the Stations to coordinate their channel reassignments with their post-hurricane recovery efforts.¹⁰ All but two of the Stations were assigned to transition Phase 3 in the *Closing and Channel Reassignment Public Notice*, which has a phase completion date of June 21, 2019. The other two Stations were assigned to transition Phase 10, which has a phase completion date of July 3, 2020. Given the extent of the hurricane damage not only to the Stations but also to other infrastructure throughout Puerto Rico and the U.S. Virgin Islands, the Stations maintain that "there are simply not enough resources for broadcasters to contemplate building duplicate broadcast facilities over the course of the next 20-30 months."¹¹

4. The Stations state that grant of the Waiver Requests will not adversely impact the overall transition schedule or have any negative impact on other stations or viewers. In particular, they have agreed to coordinate their early transition with one another in order to prevent interference beyond the temporary two percent pairwise interference permitted during the transition period.¹² The Stations also assert that the "geographic isolation of Puerto Rico and the U.S. Virgin Islands allows for accomplishment of an early transition without impact to any other television station transitions."¹³ According to the Stations, their early transition will not divert resources from other transitioning stations because they will "leverage rebuilding efforts already underway on the islands"¹⁴ and take advantage of "excess capacity of vendors" available prior to Phase 1.¹⁵ For example, Electronics Research, Inc. (ERI),

⁴ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-14, paras. 49-52. See also *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Broadcast Transition*, 32 FCC Rcd 858, 881-82, para 73 (MB 2017) (*Broadcast Procedures Public Notice*).

⁵ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163.

⁶ *Id.*

⁷ Letter from Puerto Rico and U.S. Virgin Island Broadcasters, GN Docket No. 12-268 and MB Docket No. 16-306 (Nov. 14, 2017) (PR-USVI Waiver Request); Letter from Ana G. Mendez, Inc., GN Docket No. 12-268 and MB Docket No. 16-306 (Dec. 1, 2017) (joining the PR-USVI Waiver Request); Letter from CMCG Puerto Rico, LLC, GN Docket No. 12-268 and MB Docket No. 16-306 (Dec. 18, 2017) (joining the PR-USVI Waiver Request). While we would normally require that each station seeking to modify its phase assignment file its waiver request as a Legal STA in LMS, we will rely on these letters as the basis of our evaluation and not require each individual Station file a separate request given the extraordinary circumstances surrounding this request.

⁸ Stations assigned to Phase 1 are permitted to commence operation on their post-auction channel as early as 12:01 AM on September 14, 2018.

⁹ PR-USVI Waiver Request at 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16.

¹³ PR-USVI Waiver Request at 2.

¹⁴ *Id.*

¹⁵ *Id.*

which designs, fabricates and installs broadcast television antennas, has filed a letter of support confirming that it will be able to support the Stations' early transition without impacting its ability to support the transition efforts of other stations.¹⁶

5. The Stations also note that permitting them to undertake an early transition will have the added advantage of "swiftly clearing" the 600 MHz wireless band, and thereby enabling the deployment of new wireless broadband services, something that, according to the Stations, is "desperately needed in the islands."¹⁷ T-Mobile has filed a letter of support agreeing that grant of the Waiver Requests would help facilitate the "rapid deployment" of new wireless broadband services in the 600 MHz band in both Puerto Rico and the U.S. Virgin Islands.¹⁸ Furthermore, like many of the Stations, T-Mobile's facilities were also heavily damaged by the hurricanes, and the Stations' early transition will support T-Mobile's post-hurricane rebuilding efforts by facilitating its inclusion of new 600 MHz equipment in its plans.¹⁹

6. Upon review of the facts and circumstances presented, we find the Stations' requests to modify their phase assignment and transition prior to Phase 1 satisfy the requirements for a waiver. We agree that the proposed change to the Stations' transition phase should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. A staff analysis confirms that the phase change does not create any new linked station sets and will not result in new interference above the two percent permitted during the transition. As a result of this modification to the transition schedule, viewers in Puerto Rico will only be subject to one rescan period, instead of two.²⁰ Although in the U.S. Virgin Islands the total number of rescan periods will increase from one to two,²¹ this is within the two rescan periods per DMA limitation used in the tool adopted by the Bureau in the *Transition Scheduling Adoption Public Notice* to assign stations to transition phases.²²

7. Based on the record, including the letters of support filed by ERI and T-Mobile, we find that an early transition is unlikely to impact other transitioning stations' access to resources and will provide additional public interest benefits by expediting the deployment of new 600 MHz wireless broadband services. We believe that the Stations have significant economic and community incentive to complete construction of their post-auction channel facilities as quickly as possible, given that 12 out of the 20 stations seeking waiver are currently silent,²³ but in order to ensure that the transition is completed sufficiently in advance of the start of the Phase 1 testing period (September 14, 2018), we conclude that it is in the public interest to establish a deadline of August 1, 2018, for the Stations to cease operations on their pre-auction channels so as not to divert resources from stations transitioning in Phase 1.²⁴

¹⁶ See Letter from Electronics Research, Inc., GN Docket No. 12-268 and MB Docket No. 16-306 (Jan. 2, 2018).

¹⁷ PR-USVI Waiver Request at 2.

¹⁸ See Letter from T-Mobile USA, Inc., GN Docket No. 12-268 and MB Docket No. 16-306 (Nov. 21, 2017).

¹⁹ *Id.* at 2.

²⁰ Under the transition schedule set forth in the *Closing and Channel Reassignment Public Notice*, repacked stations in Puerto Rico were assigned to Phases 3 and 10.

²¹ Because WTJX-TV will continue to be assigned to transition Phase 3, the total number of rescan periods for the U.S. Virgin Islands will now be two.

²² See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21.

²³ We remind stations that the license of any station that remains silent for any consecutive 12-month period expires automatically at the end of that period, by operation of law, except that the Commission can extend or reinstate such a license "to promote equity and fairness." See 47 U.S.C. § 312(g). In considering such a request, the Bureau will examine whether the station's silence was the result of compelling reasons beyond the licensee's control, including here, facts that relate to the post-auction transition process and damage resulting from Hurricanes Irma and Maria.

²⁴ To the extent an individual station requires additional time beyond August 1, 2018, to construct its post-auction facility, it must file a request for extension of its construction permit deadline as otherwise required by the Commission's rules. See 47 CFR § 73.3700(b)(5)(iv). Additional time to construct beyond 180-days may be sought pursuant to the Commission's existing "tolling" rule. See 47 CFR § 73.3700(b)(5)(i) and 47 CFR § 73.3598(b). See

Furthermore, in light of the fact that a number of stations throughout Puerto Rico are part of a linked station set, and in order to maintain an orderly transition across the islands, we establish a July 1, 2018, testing period start date. Therefore, the Stations may not begin testing on their post-auction channel until 12:01 AM local time on July 1, 2018, and are required to coordinate with any linked stations in order to prevent interference beyond the temporary two percent station-to-station pairwise interference permitted during the transition period.²⁵

8. In conducting their transition prior to Phase 1, the Stations must continue to comply with all Commission requirements that would otherwise apply to transitioning stations, including but not limited to, the filing of transition progress reports (FCC Form 387) at appropriate times,²⁶ compliance with the Commission's consumer education requirements for transitioning stations,²⁷ and, as applicable, providing required notice to MVPDs.²⁸ To the extent a station is silent and is not able to comply with its consumer education requirements, it must file a request for waiver of 47 CFR § 73.3700(c) as a Legal STA in LMS. All waiver requests will be evaluated on a case-by-case basis and must include the following information: (1) an explanation describing why the station is unable to comply with the existing consumer education requirements; (2) an alternative but comparable means the station will use to notify viewers of the station's new channel;²⁹ and (3) why grant of the waiver request complies with the Commission's general waiver standard.³⁰

9. This action is taken by the Chief, Media Bureau, pursuant to authority delegated by 47 CFR § 0.283.

10. For additional information or questions, please contact Kevin Harding (technical) Kevin.Harding@fcc.gov, (202) 418-7077, or Evan Morris (legal), Evan.Morris@fcc.gov, (202) 418-1656. Press should contact Charles Meisch, Charles.Meisch@fcc.gov, (202) 418-2943.

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also Broadcast Procedures Public Notice, 32 FCC Rcd at 871-72, paras. 40-45 (discussing extensions of time to construct post-auction facilities and tolling). Grant of an extension of time to construct will not extend the time during which the station may continue to operate on its pre-auction channel. The Stations must cease operation on their pre-auction channel no later than 11:59 PM on August 1, 2018, unless they have filed in LMS and been granted a request for special temporary authority to continue to operate on their pre-auction channel. A station that requests authority to continue operating on its pre-auction channel after August 1, 2018 will likely be required to do so at variance from its pre-auction authorized parameters (e.g., reduced power).

²⁵ A station that commences testing on its post-auction channel and causes interference beyond that permitted during the transition period will be operating in violation of Commission rules. A list of linked stations is available on the Commission's website at: https://data.fcc.gov/download/incentive-auctions/Current_Transition_Files/.

²⁶ See 47 CFR § 73.3700(e)(5); *The Incentive Auction Task Force and Media Bureau Release Transition Progress Report Form and Filing Requirements for Stations Eligible for Reimbursement from the TV Broadcast Relocation Fund and Seek Comment on the Filing of the Report by Non-Reimbursable Stations*, Public Notice, 32 FCC Rcd 256 (MB 2017); *The Incentive Auction Task Force and Media Bureau Adopt Filing Requirements For the Transition Progress Report Form By Stations that are Not Eligible for Reimbursement from the TV Broadcast Relocation Fund*, Public Notice, 32 FCC Rcd 4029 (MB 2017).

²⁷ See 47 CFR § 73.3700(c).

²⁸ See 47 CFR § 73.3700(d).

²⁹ For example, a station may propose to provide its viewer notifications through some combination of the following: other television or radio stations with significant contour overlap, local newspapers, social media, and the station's website.

³⁰ See 47 CFR § 1.3 (waiver for good cause shown).

Appendix

Facility ID	Call Sign	Community of License	Assigned Transition Phase	Licensee
58342	WJWN-TV	SAN SEBASTIAN, PR	3	AMERICA-CV STATION GROUP, INC.
3001	WCCV-TV	ARECIBO, PR	3	ASOCIACION EVANGELISTICA CRISTO VIENE, INC.
8156	WUJA	CAGUAS, PR	3	CAGUAS EDUCATIONAL TV, INC.
60357	WOST	MAYAGUEZ, PR	10	CMCG PUERTO RICO LLC
32142	WQQZ-CD	PONCE, PR	3	CMCG PUERTO RICO LLC
15320	WRUA	FAJARDO, PR	3	EASTERN TELEVISION CORPORATION
18410	WIDP	GUAYAMA, PR	3	EBENEZER BROADCASTING GROUP, INC.
67190	WVSN	HUMACAO, PR	3	LA CADENA DEL MILAGRO, INC.
53859	WIPR-TV	SAN JUAN, PR	3	PUERTO RICO PUBLIC BROADCASTING CORPORATION
53863	WIPM-TV	MAYAGUEZ, PR	3	PUERTO RICO PUBLIC BROADCASTING CORPORATION
54443	WRFB	CAROLINA, PR	3	R&F BROADCASTING, INC.
2174	WMTJ	FAJARDO, PR	3	SISTEMA UNIVERSITARIO ANA G. MENDEZ, INC.
2175	WQTO	PONCE, PR	3	SISTEMA UNIVERSITARIO ANA G. MENDEZ, INC.
29000	WVOZ-TV	PONCE, PR	3	SPANISH BROADCASTING SYSTEM HOLDING COMPANY, INC.
73336	WNJX-TV	MAYAGUEZ, PR	3	TELEVICENTRO OF PUERTO RICO, LLC
26681	WTIN-TV	PONCE, PR	3	TELEVICENTRO OF PUERTO RICO, LLC
48237	WQSJ-CD	QUEBRADILLAS, PR	3	WANDA ROLON
48239	WSJN-CD	SAN JUAN, PR	10	WANDA ROLON
3255	WQHA	AGUADA, PR	3	WESTERN NEW LIFE, INC.
83270	WZVI	CHARLOTTE AMALIE, USVI	3	ALPHA BROADCASTING CORPORATION