

Request for Waiver of Consumer Education Requirement

Pursuant to Section 1.3 of the FCC’s Rules, Alpha Broadcasting Corporation (“Licensee”), licensee of full power television station WZVI(TV), Charlotte Amalie, VI (Fac. ID 83270) (“Station”), hereby requests a waiver of Section 73.3700(c) of the Commission’s rules to permit Station to provide consumer education regarding its post-auction operations through alternate means. Specifically, because Station is currently silent due to the devastating effects of Hurricane Irma, Licensee proposes to provide consumer education through notices on the Station’s website, on its Facebook page, and on its streaming cable channel in lieu of on-air announcements.

Like many other stations in Puerto Rico and the U.S. Virgin Islands, the Station suffered major damage to its transmission facilities in September 2017 as a result of Hurricane Irma, forcing the Station off the air. *See* LMS File No. 0000032527. On January 11, 2018, the Commission recognized that “Hurricanes Irma and Maria devastated Puerto Rico and the U.S. Virgin Islands, resulting in widespread damage to infrastructure, including to the Stations’ facilities” and reassigned WZVI from transition phase 3 to an early transition period beginning on July 1, 2018 and ending on August 1, 2018. *See 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*, Public Notice, MB Docket No. 16-306 (rel. January 11, 2018) (the “January 11 Public Notice”). As a result, Section 73.3700(c) requires Station to begin broadcasting on-air consumer education PSAs or crawls on its pre-auction channel on or before July 2, 2018. *See* 47 C.F.R. § 73.3700(c)(3). However, the January 11 Public Notice also provided that stations that remain silent as a result of the hurricanes may request a waiver of the consumer education requirement by providing: (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; and (3) an explanation of why grant of the waiver request complies with the Commission’s general waiver standard.

Here, allowing Licensee to provide consumer education through alternative means is in the public interest and satisfies the standard set forth in the January 11 Public Notice.

First, as explained above, Station remains silent as a result of Hurricane Irma and is focused on constructing its post-auction facilities on Channel 21 rather than rebuilding its existing Channel 43 facilities. As a result, Station is unable to broadcast the required PSAs or crawls on its pre-auction channel.

Second, Licensee has identified several alternative but comparable means to notify viewers of Station’s new channel. Specifically, Licensee proposes to, at least 30 days before it commences

operations on Channel 21: (i) include information about the post-auction transition on the website that Station shares with sister station WSVI, WSVI.tv; (ii) include information about the post-auction transition on the Facebook page that Station shares with WSVI; and (iii) include an on-air announcement on its streaming channel, which the USVI's sole cable provider, Viya, continues to transmit in place of Station's broadcast signal. These activities are consistent with the Commission's consumer education requirements and likely to reach most viewers interested in learning about Station's operating status. Indeed, Licensee has every incentive to ensure that viewers have ample notice of Station's return to air on its post-auction facilities and reasonably believes that these methods will reach its viewers.

Third, grant of the waiver request complies with the Commission's general waiver standard. The FCC may grant a waiver for good cause shown. 47 C.F.R. § 1.3. The agency typically grants a waiver where the particular facts make strict compliance inconsistent with the public interest. *See N.E. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In the January 11 Public Notice, the Commission recognized that the devastating effects of Hurricane Irma make strict compliance with the consumer education requirement impossible. Permitting Licensee to provide consumer education through the proposed alternative means will achieve the FCC's goals of minimizing consumer confusion and ensuring a smooth transition.

Accordingly, the Media Bureau should grant Licensee a waiver of Section 73.3700(c) and allow it to satisfy the consumer education requirement for Station by providing information about Station's post-transition operations as proposed herein.