



Federal Communications Commission
Washington, D.C. 20554

December 29, 2015

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RE: Petition for Eligible Entity Status, Puerto Rico Public Broadcasting Corporation, Station WIPR-TV, San Juan, Puerto Rico (Fac. ID No. 53859), LMS File No. 0000004434.

Dear Counsel:

This is with respect to the Petition for Reconsideration and Change in Eligible Entity Status (“Petition”) filed on November 12, 2015, by Puerto Rico Public Broadcasting Corporation (“Licensee”), licensee of station WIPR-TV, San Juan, Puerto Rico (“Station” or “WIPR”).¹ In the Petition, the Licensee requests that the auction eligible facility for the Station be changed from File No. BLEDT-20090618ACM, the facility listed in the Commission’s June 9, 2015, Public Notice (“*Eligibility PN*”) and Appendix I to the *Applications Procedures Public Notice*,² to LMS File No. 0000004434, its distributed transmission system (“DTS”) facility. For the reasons discussed below, we deny the Petition.

Background. In the *Incentive Auction R&O*, the Commission adopted rules and procedures for conducting the broadcast television spectrum incentive auction, including rules for determining which full power and Class A television station facilities would be eligible for protection in the repacking process and participation in the reverse auction.³ The Commission exercised its discretion to extend protection to modified facilities of licensed full power and Class A stations that were authorized by construction permits granted on or before April 5, 2013.⁴ The Station’s DTS facility at issue here was authorized in a construction permit on August 16, 2012, in advance of April 5, 2013.⁵

In order to ensure a “stable database” to prepare for and carry out the incentive auction,⁶ the Commission delegated authority to the Media Bureau (“Bureau”) to take two actions. First, the Commission instructed the Bureau to issue a Public Notice specifying the Pre-Auction Licensing

¹ Petition for Reconsideration and Change in Eligible Entity Status for WIPR-TV, San Juan, PR filed by Puerto Rico Public Broadcasting Corporation (Nov. 12, 2015) (“Petition”).

² *Media Bureau Announces Incentive Auction Eligible Facilities and July 9, 2015 Deadline for Filing Pre-Auction Technical Certification Form*, Public Notice, 30 FCC Rcd 6153 (MB 2015) (“*Eligibility PN*”); *Applications Procedures for Broadcast Incentive Auction*, AU Docket NO. 14-252, GN Docket NO. 12-268, WT Docket No. 12-269, Public Notice, DA 15-1183, Appendix I (rel. Oct. 15, 2015) (“*Applications Procedures PN*”).

³ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6651-77, paras. 183-245 (mandatory and discretionary protection during repacking), 6715-19, paras. 350-357 (reverse auction participation eligibility) (2014) (“*Incentive Auction R&O*”).

⁴ *See id.* at 6660, para. 207.

⁵ File No. BPEDT-20120516AED.

⁶ *Incentive Auction R&O*, 29 FCC Rcd at 6651, para. 183 n.615 and 6656, para. 195.

Deadline by which modified facilities that were authorized by construction permits granted on or before April 5, 2013 must either be licensed or have an application for a license to cover the construction permit on file in order to be eligible for protection in the repacking process and participation in the reverse auction.⁷ The Bureau designated May 29, 2015 as the Pre-Auction Licensing Deadline.⁸ Second, the Commission instructed the Bureau to develop a form that all eligible full power and Class A television stations would use to verify and certify to the accuracy of the information contained in the Commission's databases with respect to their protected facilities.⁹

On June 9, 2015, the Bureau released the *Eligibility PN* which contained a list of all facilities eligible for protection in the repacking process and participation in the reverse auction.¹⁰ The Bureau also instructed all licensees with an eligible facility to file a Pre-Auction Technical Certification Form (Form 2100, Schedule 381) in order to verify and certify to the accuracy of the authorization and all underlying Database Technical Information for each eligible facility.¹¹ Licensees were provided the opportunity on the Pre-Auction Technical Certification Form to notify the Commission of any inaccuracies with regards to an eligible facility.¹² The Bureau also provided all licensees with an opportunity to file a Petition for Eligible Entity Status in order to have a facility added to the eligible entity list that was omitted, but that the licensee believed to be otherwise eligible.¹³ The filing deadline for both the Pre-Auction Technical Certification Form and any Petition for Eligible Entity Status was July 9, 2015.¹⁴

The Licensee did not file an application for a license to cover its DTS facility before the May 29, 2015, Pre-Auction Licensing Deadline. As a result, the protected facility listed for the Station in the *Eligibility PN* was its single-tower facility licensed as of the Pre-Auction Licensing Deadline, not its DTS facility.¹⁵ Furthermore, on July 9, 2015, the Licensee filed a Pre-Auction Technical Certification Form for the Station certifying that it reviewed the non-DTS facility license authorization (BLEDT-20090618ACM), as well as all underlying Database Technical Information for its eligible facility and such information was both accurate and complete.¹⁶ The Station did not file a Petition for Eligible Entity

⁷ *Id.* at 6656, para. 195 and n.646.

⁸ *Media Bureau Designates May 29, 2015 As Pre-Auction Licensing Deadline*, Public Notice, 30 FCC Rcd 393 (MB 2015).

⁹ *Incentive Auction R&O*, 29 FCC Rcd at 6651, para. 183, n.615.

¹⁰ *See Eligibility PN*, 30 FCC Rcd 6153.

¹¹ *Id.* at 6154-56. "Database Technical Information" means all underlying technical data that sets forth the operational parameters of the facility, including but not limited to, the technical information that may be found in the Commission's Consolidated Database System (as well as the successor Licensing Management System) and Antenna Registration System. In the *Eligibility PN*, the Bureau advised licensees to review "all technical information on file with the Commission related to that eligible facility" and stated that their review should not be limited "solely to the information provided for each eligible facility in the Appendix." *Id.* at 6154, n.2.

¹² *Id.* at 6155, *citing* Pre-Auction Technical Certification Form, FCC Form 2100, Schedule 381 available at: https://apps.fcc.gov/edocs_public/attachmatch/DOC-332131A1.pdf.

¹³ *Id.* at 6154.

¹⁴ *Id.* at 6153 (filing deadline for Pre-Auction Technical Certification Form) and 6154 (filing deadline for Petitions for Eligible Entity Status).

¹⁵ *Id.* at Appendix A. The Station's DTS facility was not listed because it was not licensed or subject to an application for a license to cover by the Pre-Auction Licensing Deadline.

¹⁶ LMS File No. 0000003940.

Status by the July 9, 2015 filing deadline. On August 17, 2015, after both the Pre-Auction Licensing Deadline and the Petition for Eligible Entity Status filing deadline had passed, the Licensee filed an application for a license to cover its DTS facility. The Licensee now contends that its DTS facility was constructed and commenced operation no later than September 30, 2013, and that it did not file an application for a license to cover until August 17, 2015 due to “miscommunication” involving its consulting engineer.¹⁷

On October 15, 2015, the Wireless Telecommunications Bureau released the *Application Procedures PN*, including an Appendix listing the station facilities eligible for protection in the repacking process and for relinquishment in the reverse auction.¹⁸ Consistent with the *Eligibility PN* and the Station’s Pre-Auction Technical Certification Form, the facility in the Final Baseline listed for the Station was its single-tower facility licensed as of the Pre-Auction Licensing Deadline.

On November 12, 2015, the Licensee filed the Petition, contending that the public interest would be served by changing its eligible facility to its DTS facility.¹⁹ It contends that the Station’s DTS facility provides valuable programming service that is not otherwise available in Puerto Rico.²⁰ It also claims that the request would not delay the broadcast television incentive auction, especially since the Station is located in Puerto Rico and any change in the Station’s contour would only impact Puerto Rico.²¹

Discussion. We deny the Petition.²² The Station had at least two previous opportunities to request that its DTS facility be included as an eligible facility for repacking protection and reverse auction participation. First, the Licensee could have filed an application for a license to cover its DTS facility any time before the Pre-Auction Licensing Deadline (May 29, 2015), which would have resulted in the

¹⁷ Petition at 2; LMS File No. 0000003621 (granted September 30, 2015). The Station’s DTS facility comprises the Licensee’s current eligible single-tower facility (File No. BLEDT-20090618ACM) and two additional facilities meant to increase the Station’s reception in the terrain shielded areas found in the southern and western portions of Puerto Rico. Petition at 2. According to the Petition, the Licensee was not notified when the consulting engineer for the Station initiated operations for the two additional facilities. *Id.*

¹⁸ See *Application Procedures PN*. On November 12, 2015, OET and MB issued corrected baseline data for several stations, *Incentive Auction Task Force Releases Revised Baseline Data and Prices for Reverse Auction, Announces Revised Filing Window Dates*, AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-269, Public Notice, DA 15-1296 (rel. Nov. 12, 2015), but did not change the list of eligible stations.

¹⁹ Petition at 2.

²⁰ *Id.* at 3.

²¹ *Id.*

²² While the Licensee characterizes its filing as a “Petition for Reconsideration and Change in Eligible Entity,” we will treat it as a late-filed Petition for Eligible Entity Status. See *Petition* at 1 (explaining that it seeks a change in the eligible facility listed in the *Eligibility PN*). While footnote 1 of the Petition suggests that it was filed as a Petition for Reconsideration of the *Application Procedures PN*, see *Petition* at 1, n.1, the caption of the Petition does not reference any of the rulemaking dockets associated with the *Application Procedures PN*. Moreover, the Petition “[f]ails to identify any material error, omission, or reason warranting reconsideration” of the *Application Procedures PN*. 47 C.F.R. § 1.429(l)(1). The facilities listed in the Appendix to the *Application Procedures PN* are those “that were licensed by May 29, 2015 (the ‘Pre Auction Licensing Deadline’), that received a waiver of that licensing deadline, that were explicitly excepted from that deadline (such as those stations impacted by the destruction of the World Trade Center), and those for which the Media Bureau granted a Petition for Eligible Entity Status.” *Application Procedures PN* at n.45. The Station’s DTS facility does not fall within any of these categories, thus the Station has identified no error or other reason warranting reconsideration of the *Application Procedures PN*.

facility being listed in the *Eligibility PN*. Instead, although the Licensee contends its facility was constructed prior to the Pre-Auction Licensing Deadline, and that it commenced operations no later than September 30, 2013,²³ it failed to file an application for license to cover until August 17, 2015, almost two years after it claims to have commenced operations.²⁴

Second, after release of the *Eligibility PN*, the Station had the opportunity to review the list of eligible facilities and file by July 9, 2015 a Petition for Eligible Entity Status seeking to add the DTS facility to the list of eligible facilities.²⁵ Instead, although the *Eligibility PN* listed the Station's single-tower facility as its eligible facility, and not its DTS facility, the Station filed a Pre-Auction Technical Certification Form certifying that "the authorization for the eligible facility and all underlying Database Technical Information is accurate and complete."²⁶ Indeed, even after the Station filed an application for a license to cover its DTS facility on August 17, 2015, it waited almost two additional months to file the Petition requesting that the DTS facility be added to the list of eligible facilities.²⁷ The Licensee's claim that there was a "miscommunication" involving its engineer does not excuse its failure to submit timely filings. It was the Licensee's ignorance of its own operations and failure to bring its own oversight to the attention of the Commission in a timely manner that resulted in the DTS facility not being listed as the Station's eligible facility for purposes of the incentive auction.²⁸

We reject the Licensee's claim that granting the requested relief would serve the public interest. Contrary to the Licensee's claim, a change in the Station's protected service area and population at this point in time would have more than just a "negligible impact" on implementation of the incentive auction.²⁹ Rather, we find that the harm that would be caused to the Commission's efforts to conduct a timely incentive auction outweighs any public interest benefit of modifying WIPR's eligible facility, especially in light of the Station's negligence in pursuing eligibility for its DTS facility. In order to ensure the stability of the auction system, the Commission has frozen the list of broadcast television facilities eligible to be protected in the repacking process and to participate in the reverse auction as of

²³ Petition at 2.

²⁴ Under Section 73.1620(a)(1) of the Rules a licensee is required to file a license to cover within 10 days of commencing program tests. 47 C.F.R. § 1620(a)(1); see 47 C.F.R. §73.3536 (requiring an application for station license be filed pursuant to Section. § 73.1620 of the Rules). Furthermore, Section 301 of the Communications Act of 1934, as amended (Act), prohibits the unauthorized transmission of a broadcast signal. 47 U.S.C. § 301. The Licensee's actions have resulted in a violation of the Commission's Rules and the Act. To the extent sanction is deemed appropriate, we will address these violations of the Rules and Act in a spate proceeding.

²⁵ *Eligibility PN*, 30 FCC at 6154 ("if a licensee believes that the Appendix omits an eligible facility, it should file with the Commission a 'Petition for Eligible Entity Status' by July 9, 2015").

²⁶ *Id.* at 6154-56; see LMS File No. 0000003940.

²⁷ We distinguish our decision here from the one reached with regard to the Petition for Eligible Entity Status filed by Telecinco, Inc., licensee of Station WORA-TV, Mayaguez, Puerto Rico. Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Lee G. Petro, counsel for Telecinco, Inc. (Jul. 17, 2015). While the licensee of WORA-TV similarly did not file an application for a license to cover its DTS facility by the Pre-Auction Licensing Deadline, the licensee filed a timely Petition for Eligible Entity Status by the July 9, 2015 filing deadline. Petition for Eligible Entity Status for WORA-TV, Mayaguez, PR filed by Telecinco, Inc. (Jul. 9, 2015).

²⁸ See e.g., *Liability of J. B. Broadcasting of Baltimore, Ltd. for Forfeiture*, Memorandum Opinion and Order, 55 FCC 2d 594, 596-597 (1975) (finding that a licensee's ignorance of its own station's operations is not a mitigating factor and that licensees are responsible for the proper operation of their own station).

²⁹ Petition at 3.

October 15, 2015.³⁰ Any modifications at this stage would entail system modifications that would impact the overall schedule for the auction. Delay would be disruptive for prospective, eligible applicants who have developed business plans based on the current schedule. Accordingly, granting the requested relief would disserve the public interest.³¹

Although we will not protect the Station's DTS facility in the repacking process, the Commission has provided an opportunity for stations that are assigned to new channels in the repacking process to apply for "expanded facilities" on their new channel assignments following the release of the *Channel Reassignment Public Notice*.³² If WIPR is reassigned to a new channel, this will provide the Licensee an opportunity to request expanded facilities of the Station's new parameters, which may include re-implementing its DTS facility. While we cannot guarantee any specific outcome, we anticipate that a significant degree of replication of the Station's coverage provided by its DTS facility will be possible.³³

Accordingly, for the foregoing reasons, the Petition for Eligible Entity Status filed by Puerto Rico Public Broadcasting Corporation **IS DENIED**.

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

³⁰ See *Application Procedures PN* at para. 2. See also *supra*, note 17.

³¹ *Incentive Auction NPRM*, 27 FCC Rcd at 12358, para. 1. As the Commission explained in the *Incentive Auction NPRM*, "[o]ur country faces a major challenge to ensure that the speed, capacity, and accessibility of our wireless networks keeps pace with these demands in the years ahead, so the networks can support the critical economic, public safety, health care, and other activities that increasingly rely on them. Meeting this challenge is essential to continuing U.S. leadership in technological innovation, growing our economy, and maintaining our global competitiveness." Accordingly, the Commission has moved ahead with this first-of-its-kind auction with all deliberate speed. *Incentive Auction R&O*, 29 FCC Rcd at 6573, para. 13.

³² *Incentive Auction R&O*, 29 FCC Rcd at 6792-94, paras. 552-56. The Commission has delegated authority to the Bureau to announce filing windows to apply for expanded facilities. *Id.* at 6795, para. 556.

³³ The primary reference location used for the Station's current eligible facility (File No. BLEDT-20090618ACM) is identical to the one that would be used if it were replaced by the Station's DTS facility (LMS File No. 0000004434). The primary difference between the two facilities is that DTS provides expanded coverage in the southern and western portions of the island. These areas of Puerto Rico are not heavily populated and as a result spectrum is not as scarce as in other portions of the island (i.e., in and around San Juan). While repacking on Puerto Rico may impact to some degree the available spectrum in the western and southern portions of the island, we still anticipate greater flexibility in these areas to accommodate expanded facilities.