

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Puerto Rico Public Broadcasting Corp.)
)
Application for a Permit to Construct a New) File No. BN PED-20071022DXS
Noncommercial Educational FM Station) Facility ID No. 123286
at Mayaguez, Puerto Rico) MX Group No. 221

MEMORANDUM OPINION AND ORDER

Adopted: April 23, 2014

Released: April 23, 2014

By the Commission:

1. The Commission has before it for consideration an Application for Review filed on May 19, 2011 by Puerto Rico Public Broadcasting Corporation (“PRPBC”), concerning dismissal of its October 22, 2007 application for a permit to construct a new noncommercial educational (“NCE”) FM station at Mayaguez, Puerto Rico. PRPBC seeks review of an April 19, 2011 decision letter by the Media Bureau, Audio Division (the “Bureau”)¹ which found that the proposed station would violate the Commission’s rules by causing interference to an existing NCE-FM broadcast station.² The *Letter* denied PRPBC’s request for a waiver of section 73.509 of the Commission’s Rules despite PRPBC’s prediction that the area’s rugged terrain would limit the number of people receiving interference to fewer than 4,000 and PRPBC’s showing that the affected broadcaster was willing to accept the interference. The Bureau reasoned that although grant of such waiver requests might seem appealing when viewed individually, they can cause substantial damage when combined with numerous similar waivers over time. The Bureau noted that, in particular, while a single waiver grant might provide new service to many while causing interference to a few, the cumulative impact of multiple such waivers would be a serious degradation of existing FM reception quality throughout the entire portion of the FM band reserved for NCE service.³ Accordingly, the Bureau dismissed the application. On review, PRPBC contends that the Bureau’s reasoning was flawed because PRPBC presents circumstances that are “so unique” that any waiver granted to PRPBC would not establish precedent for similar waivers to others.⁴ Specifically, PRPBC argues that it is an “instrumentality” of the government of Puerto Rico with a statutory mission to assess and attend to Puerto Rico’s population as a whole, and is located on an especially rugged island with difficult signal propagation characteristics.

2. With respect to PRPBC’s offering its mission and its relationship with the government as potential grounds for a waiver, PRPBC did not make this argument in its original waiver request and the

¹ See *Puerto Rico Public Broadcasting*, Letter, Ref. No. 1800B3 (MB Apr. 19, 2011) (“*Letter*”). The Bureau independently dismissed two mutually exclusive applications after denying their similar waiver requests. PRPBC, as the only applicant to seek reconsideration and review, is the sole remaining applicant in the group.

² See 47 C.F.R. § 73.509 (specifying contour protection standards for NCE-FM applications).

³ *Letter* at 2-3.

⁴ Application for Review at 3-6.

Bureau therefore had no opportunity to address it in that context.⁵ Similarly, PRPBC failed to raise before the Bureau any of the precedent that it now cites in its Application for Review.⁶ Accordingly, we will dismiss this portion of PRPBC’s Application for Review.⁷ Upon consideration of the remaining portion of the Application for Review and the entire record, we conclude that PRPBC has failed to demonstrate that the Bureau erred. The Bureau properly decided the matters raised, and we uphold its decision for the reasons stated in its *Letter*.

3. ACCORDINGLY, IT IS ORDERED that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and section 1.115(g) of the Commission’s rules, 47 C.F.R. § 1.115(g), the Application for Review IS DISMISSED IN PART and DENIED IN PART.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵ To the extent that PRPBC provided information in its application about its relationship with the government or its mission, it did so specifically to demonstrate its eligibility to hold an NCE authorization. *See* File No. BNPED-20071022DXS, Exhibit 3, (Eligibility/Organizational Documents). In contrast, in the application, PRPBC stated that the “details” of its waiver request were contained in its Comprehensive Technical Exhibit (Exhibit 17 to the application). That technical waiver showing found at pages 4-6 of that Exhibit, makes no reference to these additional grounds for waiver.

⁶ Application for Review at 4-5. This precedent includes an unreported 1996 Mass Media Bureau decision that was cited by each of the two mutually exclusive applicants in support of their requests for similar waivers that were denied by the Bureau. Family Educational Association, Inc. (File No. BNPED-20071019AJT) and Hispanic Broadcast System Puerto Rico, Inc. (File No. BNPED-20071022ALK).

⁷ *See* 47 C.F.R. § 1.115(c) (“No application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.”). *BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1184 (D.C. Cir. 2003).