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FEDERAL COMMUNICATIONS COMMISSION
DEPT. OF JUSTICE

January 22, 1997

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re:

In the Matter of Amendment of Section 73.202(b) Table of Allotments FM Broadcast Stations Victoria, Texas
File No.:

Dear Mr. Caton:

Transmitted herewith on behalf of Mazak Broadcasting Company are an original and 4 (4) copies of its "Petition for Reconsideration" as directed to the Chief, Allocations Branch.

Should any additional information be required, please contact this office.

Very truly yours,



Henry E. Crawford
Counsel for
Mazak Broadcasting Company

cc: Chief, Allocations Branch

No. of Copies rec'd 0+3
List ABCDE MMB

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NOV 22 1997

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20541

In the Matter of)	MM Docket No. _____
)	
Amendment of Section 73.202(b))	RM No. _____
Table of Allotments)	
FM Broadcast Stations)	
Victoria, Texas)	

To: The Allocations Branch
Policy and Rules Division
Mass Media Bureau

PETITION FOR RECONSIDERATION

MAZAK Broadcasting Company ("MAZAK"), by counsel, pursuant to 47 CFR §1.106, respectfully submits its *Petition for Reconsideration* in connection with the *Letter Ruling of the Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau, dated December 23, 1996* ("Letter Ruling")¹ released in the above-captioned matter on December 23, 1996. In support thereof, the following is stated:

1. On November 7, 1996, MAZAK filed its *Petition for Rulemaking* ("Petition") in the above-captioned matter, seeking the assignment of Channel 282A to the city of Victoria, Texas.² Prior to that filing, on October 16, 1996, Hooten Broadcasting, Inc. ("Hooten") filed an application to modify the existing construction permit of FM station KZAM (BMPH-961016IA) ("Hooten Application").³

¹ Exhibit 1.

² Exhibit 2.

³ MAZAK was unaware of the Hooten Application at the time it filed its Petition. The application did not appear in the Commission's Public Notices until November 13, 1996, 6 days after the filing of the instant petition. Broadcast Applications, REPORT NO. 23866, November 13, 1996.

2. On December 23, 1996, the Mass Media Bureau ("Bureau") issued the instant Letter Ruling returning MAZAK's Petition. The sole basis for returning the MAZAK Petition was stated as follows:

A staff engineering review of the proposal has determined that Channel 282A cannot be allotted to Victoria in compliance with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules. Using the city reference coordinates 28-48-18 ad 97-00-18, Channel 282A would be 29.4 kilometers short-spaced to the pending application (BMPH-961016IA) for Channel 282C2 at Ganado, Texas.

Letter Ruling, ¶2. The only impediment to the MAZAK Petition was the Hooten Application. Consequently, if the Hooten Application was filed in error, the MAZAK Petition was dismissed in error and must be reinstated.

3. The Hooten application was not filed in compliance with the Commission's Rules. According to 47 CFR §73.3535(a), applications seeking to modify an unbuilt construction permit must be filed within nine-months from the time that the underlying construction permit was granted. That time period expired on October 11, 1996, five days prior to the October 16, 1996 filing of the Hooten application.⁴

4. On December 12, 1996, prior to the issuance of the Bureau's Letter Ruling, MAZAK filed a timely Petition to Dismiss or Deny the Hooten modification application.⁵ Hooten sought an extension of time to respond and filed its Opposition to Petition to Dismiss or Deny on January 6, 1997.⁶ Finally, MAZAK filed its Reply to Opposition to Petition to Dismiss or Deny on January 16, 1997.⁷

⁴ See Exhibit 3, p. 2, ¶3.

⁵ Exhibit 3.

⁶ Exhibit 4.

⁷ Exhibit 5.

5. MAZAK has attached copies of all of the pleadings filed in the Hooten Broadcasting, Inc. proceeding. It is clear that Hooten has no viable defense for failing to file its modification application in a timely manner. As a result, the Hooten application must be dismissed by the Commission.

6. Since the Commission's Rules require dismissal of the Hooten Application, MAZAK's Petition should be reinstated *nunc pro tunc* pending the disposition of that proceeding. If Hooten's Application is dismissed, MAZAK's rights in connection with Channel 282A will be retained. This would allow the Commission to preserve the *status quo* in view of the fact that the Hooten Application was filed in error and MAZAK's Petition was wrongly returned.

7. In sum, the MAZAK Petition was returned in error because the Hooten Application was defective as filed. Therefore, MAZAK's Petition should be reinstated *nunc pro tunc* pending the dismissal of the Hooten Application.

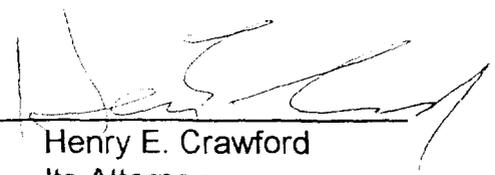
WHEREFORE, in accordance with the above, MAZAK Broadcasting Company respectfully requests that its Petition for Rulemaking be reinstated *nunc pro tunc* in the above-captioned case.

January 22, 1997

Law Offices of
Henry E. Crawford, Esq.
1150 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036
(202) 862-4395

Respectfully Submitted,

MAZAK Broadcasting Company

By: 

Henry E. Crawford
Its Attorney

Mazak Broadcasting Company
Petition for Reconsideration
January 22, 1997

EXHIBIT 1



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

REC 23 1996

Henry E. Crawford
Suite 900
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Crawford:

This is in response to the petition for rule making which you submitted on behalf of MAZK Broadcasting Company, seeking the allotment of Channel 282A to Victoria, Texas.

A staff engineering review of the proposal has determined that Channel 282A cannot be allotted Victoria in compliance with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules. Using the city reference coordinates 28-48-18 and 97-00-18, Channel 282A would be 29.4 kilometers short-spaced to the pending application (BMPH-961016IA) for Channel 282C2 at Ganado, Texas.

In view of the above, we are returning your petition for Victoria, Texas.

Sincerely,

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Enclosures

Mazak Broadcasting Company
Petition for Reconsideration
January 22, 1997

EXHIBIT 2

RECEIVED

NOV 7 1996

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

Federal Communications Commission
Office of Secretary

In the Matter of) MM Docket No. _____
)
Amendment of Section 73.202(b)) RM No. _____
Table of Allotments)
FM Broadcast Stations)
Victoria, Texas)

To: The Allocations Branch
Policy and Rules Division
Mass Media Bureau

PETITION FOR RULEMAKING

MAZK Broadcasting Company ("MAZK"), by counsel, hereby petitions the Federal Communications Commission for the initiation of a rulemaking proceeding to amend the FM Table of Allotments, Section 73.202 of the Commission's Rules, to assign FM Channel 282A to the community of Victoria, Texas, as follows:

City	Present	Proposed
Victoria, Texas	222A, 236C1, 254C1, 265A, 300C1	222A, 282A , 236C1, 254C1, 265A, 300C1

1. As indicated in the attached Engineering Statement (attached hereto as Exhibit 1), Channel 282A can be assigned to Victoria in complete compliance with the Commission's distance separation requirements as contained in 47 CFR §73.207. The reference coordinates: 28-47-40 N 97-00-52 W will show the 70dbu (city grade contour) entirely encompassing the city of Victoria, Texas. Moreover, there is a wide area available for placing an appropriate transmitter.

2. Victoria is a city located in Victoria County, Texas. According to the 1997 Rand McNally Atlas, Victoria has a population of 55,076 persons. Victoria is located along State Highway 59 at the junction with State Highway 87. The proposed service would be Victoria's 6th allocated FM service. Therefore, the public interest will be served by the assignment of Channel 282A to Victoria, Texas.

3. If the Commission assigns Channel 282A to Victoria, Texas, MAZK will apply for a construction permit and will construct a new facility upon award of that permit.

WHEREFORE, in accordance with the above, MAZK Broadcasting Company respectfully requests that Channel 282A be assigned to Victoria, Texas.

November 7, 1996

Law Offices of
Henry E. Crawford, Esq.
1150 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036
(202) 862-4395

Respectfully Submitted,

MAZK Broadcasting Company

By: 
Henry E. Crawford

Its Attorney

MAZK Broadcasting Company
Petition for Rulemaking
November 7, 1996

EXHIBIT 1

Victoria TX

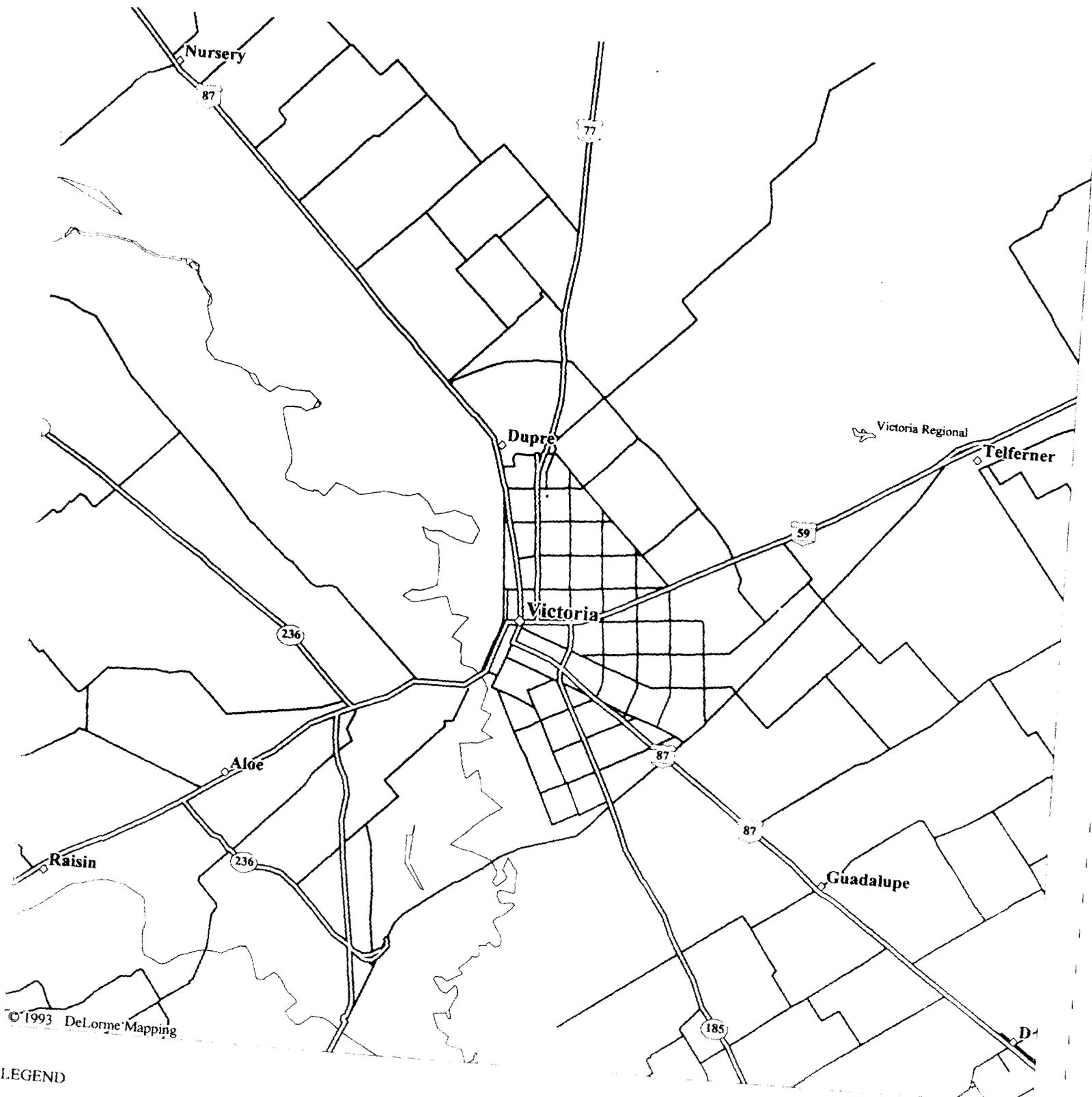
REFERENCE
 28 47 40 N
 97 00 52 W

CLASS = A
 Current Spacings

DISPLAY DATES
 DATA 11-01-96
 SEARCH 11-06-96

----- Channel 282 - 104.3 MHz -----

Call	Channel	Location	Dist	Azi	FCC	Margin
KZAM.C CP	284C2	Ganado TX	54.51	70.8	55.0	-0.49
KRBEM LI	281C	Houston TX	170.07	58.9	165.0	5.07
KOUL LI	279C1	Sinton TX	93.77	206.1	75.0	18.77
KZEPFM LI	283C1	San Antonio TX	159.01	296.3	133.0	26.01
ALOPEN AL	283A	Gregory TX	100.15	195.8	72.0	28.15
AP283 AP	283A	Gregory TX	100.96	195.3	72.0	28.96
AD281 AD	281C3	George West TX	118.08	246.1	89.0	29.08
AP283 AP	283A	Gregory TX	101.29	195.8	72.0	29.29
AD282 AD	282C2	Taylor TX	195.93	347.9	166.0	29.93
AP283 AP	283A	Gregory TX	105.27	188.4	72.0	33.27
AP283 AP	283A	Gregory TX	106.34	200.4	72.0	34.34
AP283 AP	283A	Gregory TX	111.97	199.0	72.0	39.97
DE281 DE	281A	George West TX	119.11	244.8	72.0	47.11
ALOPEN AL	281A	George West TX	119.11	244.8	72.0	47.11
AP281 AP	281A	George West TX	120.71	249.4	72.0	48.71



©1993 DeLonne Mapping

LEGEND

- State Route
- Town, Small City
- Large City
- US Highway
- River
- Open Water
- Airfield
- County Boundary
- Population Center
- Major Street/Road

Scale 1:125,000 (at center)
 2 Miles
 2 KM

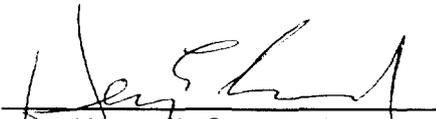
Victoria, TX (pop. 55,076)
 Mag 12.00
 Wed Nov 06 01:53:53 1996

CERTIFICATE OF SERVICE

I, Henry E. Crawford, do hereby certify that copies of the foregoing Petition for Rulemaking have been served by United States mail, postage prepaid this 7th day of November, 1996 upon the following:

*Pamela Blumenthal
Allocations Branch, Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., 5th Floor
Washington, D.C. 20554

*Hand Delivered


Henry E. Crawford

Mazak Broadcasting Company
Petition for Reconsideration
January 22, 1997

EXHIBIT 3

LAW OFFICES
HENRY E. CRAWFORD
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RECEIVED
DEC 12 1996

TELECOPIER NUMBER
202-828-4130

INTERNET: crawlw@wizard.net
Microsoft Network: crawlw@msn.com

Federal Communications Commission
Office of the Secretary

December 12, 1996

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re:

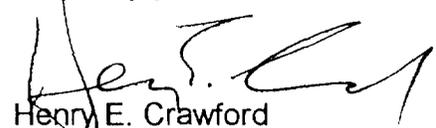
In Re Application of Hooten Broadcasting, Inc. For Consent to Modify Existing Construction Permit of FM Station KZAM, Channel 284C2 Ganado, Texas
File No.: BMPH-961016IA

Dear Mr. Caton:

Transmitted herewith on behalf of MAZAK Broadcasting Company are an original and four (4) copies of a "Petition to Dismiss or Deny" as directed to the Mass Media Bureau.

Should any additional information be required, please contact this office.

Very truly yours,



Henry E. Crawford
Counsel for
MAZAK Broadcasting Company

cc: Mass Media Bureau

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In re Application of

HOOTEN BROADCASTING, INC.

File No. BMPH 961016IA

For Consent to Modify Existing
Construction Permit of FM Station
KZAM, Channel 284C2
Ganado, Texas

To: Mass Media Bureau

PETITION TO DISMISS OR DENY

MAZAK Broadcasting Company ("MAZK"), by counsel, pursuant to 47 CFR §73.3584 respectfully submits its *Petition to Dismiss or Deny* the *Application to Modify Existing Construction Permit* ("Modification Application") filed on October 16, 1996, by Hooten Broadcasting, Inc. ("Hooten"). In support thereof, the following is stated:

I. INTRODUCTION

1. Hooten filed its original construction permit application on June 30, 1994 (BPH-940630MB). That permit was granted on January 11, 1996. On October 16, 1996, Hooten filed its Modification Application proposing to modify that permit to specify a new antenna location and a new tower height. The public notice of that application was released on November 13, 1996.¹

2. On November 7, 1996, prior to the public notice of the acceptance of the Hooten Modification Application, MAZK filed a Petition for Rulemaking to amend the FM Table of Allotments to assign FM Channel 282A to the community

¹ Broadcast Applications, REPORT NO. 23866, November 13, 1996.

of Victoria, Texas. The changed facilities proposed in Hooten's Modification Application would cause electrical interference to MAZK's proposed Victoria FM station.²

3. The Hooten Modification Application was filed on October 16, 1996. Since Hooten's original construction permit was granted on January 11, 1996, the Modification Application was not filed within the first nine months of the issuance of the original construction permit, as is required by 47 CFR §73.3535(a). The time for filing a modification application expired on October 11, 1996.

4. Where, as here, the nine month period has lapsed, an application to modify an underlying construction permit cannot be accepted by the Commission absent a "one-in-three" showing demonstrating that either (1) construction is complete with testing underway; (2) there has been substantial progress toward construction; or (3) no progress has been made for reasons clearly beyond the permittee's control, but the permittee has taken all possible steps to resolve the problem and to proceed with construction.³ Hooten failed to make the required showing in the Modification Application. Consequently, the Hooten Modification Application must be dismissed in its entirety.

II. ARGUMENT

5. Section 73.3535(a) of the Commission's Rules states:

(a) If a permittee finds it necessary to file either an application to modify its authorized, but unbuilt

² Based on these facts, MAZK has met the requirements for standing in this case. See, FCC v. Sanders Bros. Radio Station, 309 U.S. 470, 60 S. Ct. 693, 84 L. Ed. 689 (1940).

³ Deleted Station WPHR(FM), FCC 96-294, Released July 10, 1996, ___ FCC Rcd ___ (Comm. 1996), ¶12.

facilities, or an assignment/transfer application, such application shall be filed within the first 9 months of the issuance of the original construction permit for radio and other broadcast ... stations....

47 CFR §73.3535(a). As demonstrated above, Hooten did not file its Modification Application within the applicable time period.

6. Failing to meet the nine month deadline, Hooten's Modification Application cannot be granted. The only exception to §73.3535(a) is stated as follows:

b) Modification and assignment applications filed after the time periods stated in paragraph (a) will not be granted absent a showing that one of the following three criteria applies: (1) construction is complete and testing is underway looking toward prompt filing of a license application; (2) substantial progress has been made i.e., demonstration that equipment is on order or on hand, site acquired, site cleared and construction proceeding toward completion; or (3) no progress has been made for reasons clearly beyond the control of the permittee (such as delays caused by governmental budgetary processes and zoning problems) but the permittee has taken all possible steps to expeditiously resolve the problem and proceed with construction. A certification by the permittee or the assignee that it immediately will begin building after the modification is granted or the assignment is consummated is also necessary.

47 CFR §73.3535(b).

7. Hooten did not make the required showing. An examination of the exhibit tendered by Hooten to show "Compliance with 47 C.F.R. Section 73.3535" shows only the certification that it will begin building the facility as soon as the modification is granted.⁴ However, it is clear from Section 73.3535 that

⁴ See Modification Application, Exhibit E-II.

this certification must be made in addition to the formal three part showing of good cause for late filing.

8. The need to show cause is particularly important in the present case. By certifying that it will only begin construction upon a grant of the Modification Application, Hooten implies that it falls into the third category, *i.e.*, no progress has been made. However, Hooten offers no reason for this lack of progress. Additionally, Hooten never demonstrates that the move to a new tower site was necessitated by events beyond its control. Finally, there is no showing that Hooten has taken all possible steps to expeditiously resolve the problem and proceed with construction. If anything, it appears that no steps were taken at all.

9. In *Deleted Station WPHR(FM)*, *supra*, the Commission upheld a staff denial of a modification application for failing to meet the one-in-three criteria where the completed application was filed approximately two weeks after the nine month period had lapsed.⁵ In doing so, the Commission noted that it must apply a stricter standard after the nine month period. The Commission also rejected the applicant's notion that it could present evidence of the one-in-three showing in pleadings filed after the late filed modification application. *Deleted Station WPHR(FM)*, *supra*, at ¶16.

10. MAZK and the community of Victoria, Texas will be irreparably harmed unless the Commission applies Section 73.3535 in a manner consistent with the rules and case law. Clearly, Hooten has failed to follow the Commission's Rules with its dilatory filing. Given these circumstances, the public interest benefits gained by the establishment of a new FM Facility in

⁵ *Deleted Station WPHR(FM)*, *supra*, at ¶4.

Victoria outweigh the any interest in rewarding or protecting Hooten for its lack of diligence.

III. CONCLUSION!

11. The Commission's Rules and case law clearly state that modification applications must be filed within the first nine months following the grant of the initial construction permit. Hooten failed to do so and offered no showing to account for its failure. Therefore, the Commission must dismiss Hooten's Modification Application.

WHEREFORE, MAZAK Broadcasting Company respectfully requests that the Application to Modify Existing Construction Permit filed by Hooten Broadcasting, Inc. be denied in its entirety.

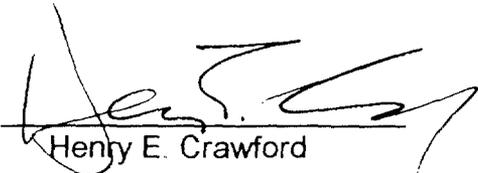
December 12, 1996

Law Offices of
Henry E. Crawford, Esq.
1150 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036
(202) 862-4395

Respectfully Submitted,

MAZAK Broadcasting Company

By:



Henry E. Crawford

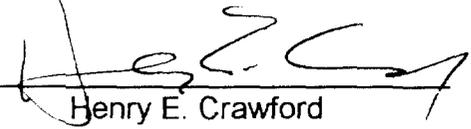
Its Attorney

CERTIFICATE OF SERVICE

I, Henry E. Crawford, do hereby certify that copies of the foregoing
Petition to Dismiss or Deny have been served by United States mail, postage
prepaid this 12th day of December, 1996 upon the following:

Hooten Broadcasting, Inc.
P.O. Box 11196
College Station, Texas 77842

*Hand Delivered


Henry E. Crawford

Mazak Broadcasting Company
Petition for Reconsideration
January 22, 1997

EXHIBIT 4

ANN BAVENDER*
ANNE GOODWIN CRUMP*
VINCENT J. CURTIS, JR.
RICHARD J. ESTEVEZ
PAUL J. FELDMAN*
ERIC FISHMAN*
RICHARD HILDRETH
FRANK R. JAZZO
ANDREW S. KERSTING*
KATHRYN A. KLEIMAN
EUGENE M. LAWSON, JR.
HARRY C. MARTIN
GEORGE PETRUTSAS
LEONARD R. RAISH
JAMES P. RILEY
KATHLEEN VICTORY*
HOWARD M. WEISS

*NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET
ROSSLYN, VIRGINIA 22209-3801

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(1936-1962)
FRANK ROBERSON
(1936-1961)
RUSSELL ROWELL
(1948-1977)

RETIRED
EDWARD F. KENEHAN
CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)
OF COUNSEL
EDWARD A. CAINE*
WRITER'S NUMBER
(703) 812-

0438

January 6, 1997

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: KZAM(FM)
Ganado, TX
Application for modification
File No. BMPH-961016IA
Opposition To Petition To Dismiss Or Deny

Dear Mr. Caton:

Transmitted herewith, on behalf of Hooten Broadcasting, Inc., are an original and four copies of an Opposition To Petition To Dismiss Or Deny filed in connection with the above-referenced application.

If questions arise, please contact the undersigned attorney.

Sincerely,



Ann Bavender
Counsel for
Hooten Broadcasting, Inc.

Enclosure

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Application of)
)
HOOTEN BROADCASTING, INC.) File No. BMPH-961016IA
)
For Modification of)
construction permit for)
KZAM(FM), Ganado, Texas)

To: Chief, Audio Services Division

OPPOSITION TO PETITION TO DISMISS OR DENY

Hooten Broadcasting, Inc. ("Hooten"), by its attorneys and pursuant to Section 73.3584 of the Commission's rules, hereby opposes the Petition To Dismiss Or Deny ("Petition") filed on December 12, 1996¹ by MAZAK Broadcasting Company ("Mazak") in connection with the above-referenced application of Hooten for modification of its construction permit for new FM Station KZAM, Ganado, Texas. In support thereof, the following is respectfully submitted:

Introduction

Mazak's Petition is an attempt to block Hooten's efforts to place KZAM on the air as expeditiously as possible. Hooten diligently submitted its modification application during KZAM's initial nine month construction period. In addition, Hooten made substantial progress towards placing the station in operation during that time, with the

¹On December 23, 1996, Hooten filed a Motion For Extension requesting an extension until January 6, 1997 in which to oppose the Petition. Counsel for Mazak consented to the extension.

anticipation that the station would be on the air a few months prior to the construction deadline. Due to a minor clerical error, the modification application was returned to Hooten a few days after the initial nine month construction period and promptly resubmitted. The Commission accepted the application for filing and, in response to Hooten's request for expedited action, began processing the application on an expedited basis. Hooten continues to work diligently towards placing KZAM on the air, with the intent that the station will commence broadcasting before the end of the construction period.

**The Commission's Rules Do Not Provide For
The Filing Of A Petition To Deny Against
An Application For Minor Modification**

Mazak's Petition must be dismissed as the Commission's rules do not permit the filing of a petition to deny or a petition to dismiss in connection with an application for minor modification of a broadcast authorization. Section 73.3584 of the Commission's rules, pursuant to which Mazak claims to file its Petition, permits the filing of a petition to deny only in connection with those applications for which local notice is required pursuant to Section 73.3580. Section 73.3580(a)(1) specifically exempts an application for minor modification from the local notice requirement. Mazak's petition, accordingly, is unauthorized and should be promptly dismissed.

**Mazak's Petition Fails To Raise An Issue
Warranting Denial Or Dismissal Of Hooten's Application**

Even if the Commission were to consider Mazak's Petition as an informal objection, the Petition must be denied as it fails to raise an issue warranting denial or