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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the

Federal Communications Commission

Washington, D.C. 20554

MM Docket No. 90-380

In re Applications of	)	
	)	
RIO GRANDE BROADCASTING CO.	)	File No. BPH-880815MV
	)	
ROBERTO PASSALACQUA	)	File No. BPH-880816NN
	)	
IRENE RODRIGUEZ DIAZ DE McCOMAS	)	File No. BPH-880816OR
	)	
UNITED BROADCASTERS COMPANY	)	File No. BPH-880816OW
	)	
For Construction Permit for a New FM Broadcast Station at Rio Grande, Puerto Rico	)	

To: The Commission

OPPOSITION TO JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

Roberto Passalacqua ("Passalacqua"), by his counsel, respectfully submits his opposition to the Joint Request for Approval of Settlement Agreement (hereinafter, "Joint Request"), dated November 9, 1998, filed by Rio Grande Broadcasting Co. ("Rio Grande") and United Broadcasters Company ("United").

Introductory

1. The Joint Request is for approval of a merger agreement between Rio Grande and United and grant of the merged application. It is conditional, however, upon Commission action

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dismissing the applications of Irene Rodriguez Diaz de McComas ("McComas ") and Passalacqua.

Merits

2. Insofar as the Joint Request requests dismissal of Passalacqua's application it is without merit and, accordingly, should be denied. In the First Report and Order in MM Docket No. 97-234, Implementation of Section 309(j) of the Communications Act, etc., FCC 98-194, adopted August 6, 1998, the Commission eliminated the use of comparative hearings and ruled that henceforth all mutually exclusive broadcast applications would be granted by the procedure of auctions. The Commission particularly considered the special situation of mutually exclusive applications which have proceeded through comparative hearings including, as in this case, applications which have proceeded through initial review proceedings. The Commission concluded and ruled that on balance auctions would best serve the public interest in these post-hearing cases.

3. Respecting particularly post-hearing cases, the Commission made two rulings of controlling significance here. First, respecting participation in the auctions, the Commission ruled as follows (Ibid, ¶89):

> At the outset we clarify that, where the Commission has denied or dismissed an application and such denial or dismissal has become final . . such an entity is not entitled to participate in the auction. Among those remaining in the proceeding, **we will permit all pending applicants to participate in the auction, without regard to any unresolved issues** . . as to the basic qualifications of a

particular applicant. (Emphasis added).

Second, respecting outstanding basic qualifying issues, the Commission continued as follows:

> **We will do so** (allow auction participation) **regardless of** the number of remaining applicants or **whether the adverse resolution of outstanding basic qualifying issues would eliminate all but one applicant** (footnote omitted). (Emphasis added).

The Commission continued, respecting basic qualifying issues, to explain that it was more efficient to resolve such issues only after the auction respecting only the auction winner (rather than prior to the auction which would entail resolution of all such issues pertaining to all applicants) (Ibid, ¶¶89-90).[1]

4. The foregoing is clear that Passalacqua is to be permitted to participate in the auction of the FM channel in issue. It is clear, further, pursuant to express ruling, that the Commission will not resolve outstanding hearing issues even if to do so would leave - as the Joint Request here proposes - a single applicant for grant. In short, the Joint Request requests exactly what the Commission specifically stated it would not do.[2]

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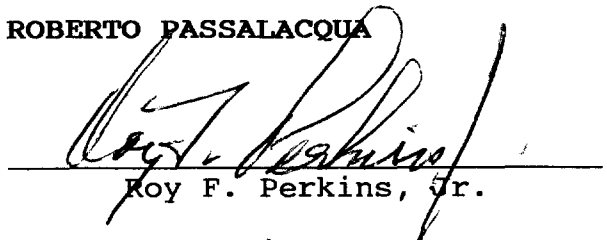
1 There is ample reason for the Commission's decision in this regard. A resolution of qualifying issues in order to grant a single applicant from among competing applicants does not ipso facto terminate litigation over them. Such litigation can well go on through reconsideration and appeal.

2 The fact that such action is requested here in the format of a joint request by two (of four) applicants does not alter the fact that it would be action which the Commission specifically ruled it would not undertake. The foregoing is not to say that the Commission would not undertake to resolve outstanding issues respecting a proposed winning applicant pre-

WHEREFORE, it is respectfully submitted that the Joint Request for Approval of Settlement Agreement should be denied.

Respectfully submitted,

ROBERTO PASSALACQUA



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December 7, 1998

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sented in the context of a global settlement where the resolution of such issues would be, by settlement agreement, final. That, however, is not the situation presented here.

CERTIFICATE OF SERVICE

I certify that I have, this 7th day of December 1998, deposited copies of the foregoing Opposition to Joint Request, etc., in the U. S. Mail, first class postage paid, addressed as follows:

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