

FCC MAIL ROOM

Federal Communications Commission

DA 01-255

2001 FEB -5 P 3: Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
 Table of Allotments,
 FM Broadcast Stations.
 (Rincon, Puerto Rico)

RECEIVED

MM Docket No. 00-123
 RM-9903

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 24, 2001

Released: February 2, 2001

By the Chief, Allocations Branch:

1. At the request of Ocean Communications ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 15 FCC Rcd 12611 (2000), proposing the allotment of Channel 300B to Rincon, Puerto Rico, as the community's first local aural service. Comments were filed by the petitioner reiterating its intention to apply for the channel, if allotted.¹ International Broadcasting Corporation ("IBC") filed comments in opposition to the petition.² No reply comments were received.

2. IBC, licensee of Station WVOZ, Channel 299B, Carolina, Puerto Rico, states that the proposed transmitter site is coordinates are those of Desecheo Island and the Desecheo National Wildlife Refuge and therefore is not available for a radio transmitting tower. In support, it submits a letter dated December 1, 2000, from Mr. Val K. Urtan, Project Leader, Caribbean Islands NWR Complex, Fish and Wildlife Service, United States Department of the Interior, stating that no request for a permit to construct an antenna had been submitted and that it is unlikely that such approval would be given if requested. Therefore, IBC requests that the proposed allotment be denied.

3. Based on this information, we cannot find that it would serve the public interest to allot a channel to Rincon. Rather, evidence, which has not been refuted, has been presented to demonstrate that it is unlikely that the Department of the Interior would favorably consider a request to erect a transmitting tower within the refuge and we believe that this is sufficient to find that petitioner does not

¹ The Notice requested clarification as to whether the verification statement included in the petition, as required by Section 1.52 of the Commission's Rules, was signed by the petitioner or its technical consultant. In response, petitioner states that since he is now represented by counsel, counsel verifies the pleadings submitted in the proceeding.

² IBC's comments, which were served on the petitioner, were not timely filed or accompanied by a request for their acceptance. However, because the comments contain information of decisional significance, we have accepted them for consideration herein. Late-filed opposing comments, which were not served on the petitioner or accompanied by a request for their acceptance, were also filed by Catholic Neighbor Options, Inc. ("Catholic Neighbor"). These comments are moot in light of our action herein.

have a reasonable assurance of the site's availability. See, Grand View, Idaho, 15 FCC Rcd 2768 (2000), Cusseta, Georgia, 6 FCC Rcd 7437 (1991) and cases cited therein.

4. In view of the above, IT IS ORDERED, That the petition of Ocean Communications (RM-9903) IS DENIED.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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