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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202 (b)	)	**MM Docket No. 00-123**
Table of Allotments,	)	**RM-9903**
FM Broadcast Stations	)	
Rincon, Puerto Rico	)	

To: The Chief, Allocations Branch

PETITION FOR RECONSIDERATION

Jose J. Arzuaga, Jr., d/b/a Ocean Communications ("petitioner"), by his counsel, herewith submits his petition for reconsideration in the above-captioned proceeding as follows:

1. On July 7, 2000, the Commission issued a Notice of Proposed Rule Making in the instant proceeding. 15 FCC Rcd 12611 (2000). In the Notice of Proposed Rule Making (at para. 5), the Commission established the date for filing Comments in the proceeding as August 28, 2000. Reply comments were required to be filed on or before September 12, 2000. All comments were to be served on petitioner.

2. Petitioner filed comments by the required date. No other comments or reply comments were filed in a timely manner.

3. On December 28, 2000, more than three months past the time for filing reply comments, International Broadcasting Corporation ("IBC") filed an unauthorized pleading opposing the proposed rulemaking. In its Report and Order, denying the proposed rulemaking (DA 01-255, released February 2, 2001), the Commission acknowledged that IBC's comments were untimely and, more significantly, not accompanied by a request for their acceptance. (R & O at FN 2).

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4. Despite the infirmity in IBC's filing, the Commission denied the rulemaking proposal based solely on the comments filed by IBC. The Commission stated that the "evidence" presented by IBC had "not been refuted." (R & O at para. 3).

5. The evidence in question is a letter from the Department of the Interior relating to the "Desecheo National Wildlife Refuge." The official stated: "To date, we have had no request for a permit to construct facilities on Desecheo, nor is it likely that we would approve any such request if received."

6. Petitioner respectfully requests reconsideration on both procedural and substantive grounds. The evidence in question was presented in an unauthorized pleading, as acknowledged by the Commission. Petitioner was precluded from filing a response to the pleading since the deadline for filing reply comments had expired. The only avenue available to petitioner for filing a response would have been through the filing of a second unauthorized pleading. Commission precedent is clear that the Commission does not look favorably on the filing of unauthorized pleadings.

7. Had IBC filed an accompanying request that the late-filed comments be considered, petitioner would have had a reasonable basis to file a response. As indicated no such request was filed. In short, petitioner has been injured by its diligence to adhere to the rules, while IBC has benefited by filing an unauthorized untimely pleading that was not the subject of an authorized response. The ruling denied petitioner "due process" in that the Commission stated that IBC's unauthorized proffer of "evidence" was not "refuted" when there was no proper procedure for

petitioner to refute the "evidence."[1] Thus, on procedural grounds alone, the Commission should reconsider its ruling in this proceeding.[2]

8. With respect to the "evidence" itself, there has been no engineering showing submitted that the transmitter in question must be located in the Desecheo National Wildlife Refuge. The fact is that petitioner intends to locate his transmitter on a ship.[3] Since he does not intend to locate on Desecheo island, the "evidence" submitted by IBC should have no bearing on whether the instant rulemaking is approved by the Commission. Under the circumstances, petitioner had no reason to refute an unauthorized pleading that was irrelevant to the proposal since he did not intend to locate on the island in question.

9. Furthermore, the "evidence" in this proceeding merely states that it is not "likely" that the Department of the Interior would approve construction of a tower in the Desecheo National Wildlife Refuge. This does not constitute proof that a tower could not be approved. In any event, as previously indicated, the tower is proposed to be located in an "off-shore" facility, and this issue is moot.

10. As a final note, there is nothing in the record whatsoever to indicate that IBC has any standing whatsoever in connection with this proposed rulemaking.[4] The fact is

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[1] It is noted that the Commission could have issued an interim ruling in this proceeding stating that it was going to consider the late-filed comments and providing an opportunity for interested parties, particularly petitioner, to respond.

[2] Reference is also made to late-filed comments filed by Katholic Neighbor Options, Inc. Since these comments were not considered by the Commission, they are not treated herein. It is requested that the Commission provide an opportunity for petitioner to respond to these comments (which petitioner has not yet seen) if at some point the Commission determines that they should be considered.

[3] It is petitioner's understanding that there is nothing in the Commission's rules that precludes an antenna from being located on a ship or other "off-shore" facility.

[4] It is understood that standing is not generally required in a proceeding calling for the filing of "Comments" by the public in accordance with a NPRM. However, a party seeking reconsideration is normally required to show standing and why it was unable to participate in a timely manner. The same principle applies to IBC in the instant situation. It has failed to state why it was unable to participate in a timely manner or otherwise how it has standing to file its untimely pleading and thus should be barred from further participation in this proceeding.

that IBC is involved in another dispute before the Commission in which petitioner's father has made allegations that IBC lacks the requisite character qualifications to be a Commission licensee. It is apparent that the instant comments were filed in retaliation to petitioner's father and not out of a grand desire to protect the public interest.[5]

WHEREFORE THE PREMISES CONSIDERED, it is respectfully requested that the Commission grant reconsideration and amend the FM Table of Allotments as proposed in Docket No. 00-123.

Respectfully submitted,

OCEAN COMMUNICATIONS

By James L. Oyster
Counsel

Law Offices
JAMES L. OYSTER
108 Oyster Lane
Castleton, Virginia 22716-9720

(540) 937-4800
February 26, 2001

CERTIFICATE OF SERVICE

James L. Oyster hereby certifies that he has sent a copy of the foregoing Petition for Reconsideration by first class U.S. mail, postage prepaid, or by hand delivery, on or before the 26th day of February, 2001, to the following:

Richard F. Swift, Esq.
2175 K Street, N.W., Suite 350
Washington, D.C. 20037
Counsel for International Broadcasting Corporation

James L. Oyster

[5] This, of course, explains the tardiness of the filing. IBC had no way of knowing that Mr. Arzuaga was involved until after Comments were filed. Only then did IBC determine to oppose the pleading.