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

MAR 23 2001

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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

REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION

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

1. On March 13, 2001, International Broadcasting Corporation ("IBC") filed an opposition to the petition for reconsideration filed in the instant pleading. Petitioner respectfully submits the instant reply to that pleading.

2. The rulemaking proposed in this proceeding was denied based on a letter from a local official of the Department of Interior indicating that it was not "likely" that construction of a tower would be permitted in the wildlife refuge that is located at the site of the reference coordinates specified in the proposed rulemaking. The letter does not purport to reflect the official position of the Department of Interior on this matter. Further, the letter was submitted by IBC in an unauthorized pleading. The Commission accepted the grossly untimely pleading without any notice to petitioner and denied the rulemaking.

3. The coordinates specified in the petition for rulemaking and in the notice of proposed rulemaking were never represented to be the exact location of a transmitter site to be utilized in an application for construction permit. The coordinates were given to demonstrate the location

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where a tower could be located and meet minimum separation requirements. As the Commission stated in the NPRM, "Channel 300B can be allotted to Rincon in compliance with the Commission's minimum distance separation requirements with a site restriction of 26.6 kilometers (16.5 miles west)...." Clearly the Commission did not specify an exact tower site where the station must be located. The restriction was noted and any suitable location 16.5 miles west of Rincon would be acceptable.

4. IBC's argument that "Ocean is making an entirely new proposal" is simply not correct. The site restriction of 16.5 miles west is the correct restriction. This does not mean that an applicant cannot select an actual transmitter site further to the west and petitioner has indicated that it is able to do so by locating on an offshore facility. In any event, it is incredulous that IBC should be heard to complain as to a procedural question when it failed to follow correct procedure in filing its untimely pleading in the first place.

5. With respect to the suitability of a transmitter site for the instant proposal, the Commission has previously ruled that issues of this sort are best decided at the application stage and that precedent should be followed here. *See Bay Shore, NY*, 18 RR 2d 1510, 20 FCC 2d 988, 1970 Lexis 1594 (January 12, 1970), wherein the Commission stated, at para. 16:

16. The same considerations apply to the broader argument urged by WTFM and the informal objectors -- that the assignment should not be made because it is inconsistent with national policy as expressed in Public Law 88-587, and that the station would impinge on the unspoiled, natural values of Fire Island. The questions of land use planning and the alleged inconsistency of the proposed tower with the cultural or esthetic environment of the town of Islip or Fire Island can best be determined by the (as the case may be), legislators of the town of Islip or the Department of Interior in formal proceedings and actions. We wish to note again, that our decision is only in respect to allocations. The Secretary or the National Park Service, or the informal objectors may choose to raise this matter again in formal pleadings in connection with any application for the channel which may be filed, in that any proper final determination of the matters of jurisdiction and land use planning would affect, of course, any future application herein. As far

as the allocations considerations involved here are concerned, we do not find the situation to approach that degree of certainty of law which, alone, could warrant the restrictive action of denial at this stage.

6. IBC further argues that petitioner's argument that it was denied due process because it was given no opportunity to respond to IBC's unauthorized pleading is "baseless" (Opposition at para. 2). While IBC states (Opposition at para. 2) that "[t]here is nothing in the Commission's rules prohibiting Ocean from filing a pleading" in response to IBC's unauthorized pleading, this statement begs the question. The fact is that there is nothing in the rules that permits the filing of a response to an unauthorized pleading, and the Commission has consistently stricken unauthorized pleadings and responses thereto. It is understood, of course, that petitioner could have filed a motion to strike directed against the unauthorized pleading (which is not a "response" *per se*). In fact, petitioner was in the process of preparing just such a pleading when it received notice that the Commission had issued an order in this proceeding and that the Table of Allotments had been amended.¹ At that point, petitioner's right to file even a motion to strike expired without any notice being provided to petitioner that it needed to respond to the unauthorized pleading. Further, the Commission's notice made it appear that the issue was moot since the announcement indicated that the Table of Allotments had been amended.

7. Of course, petitioner did have one last opportunity to respond to the unauthorized pleading submitted by IBC and that was in a petition for reconsideration. Petitioner has availed itself of that opportunity in accordance with the rules, and the Commission should grant reconsideration as requested.

¹ FCC Daily Digest, Vol. 20 No. 25, February 2, 2001, stating: "RINCON, PUERTO RICO. Amended FM Broadcast Table of Allotments. (Dkt No. 00-123). Action by: Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau. Adopted: 01/24/2001 by R&O. (DA No. 01-255). MMB

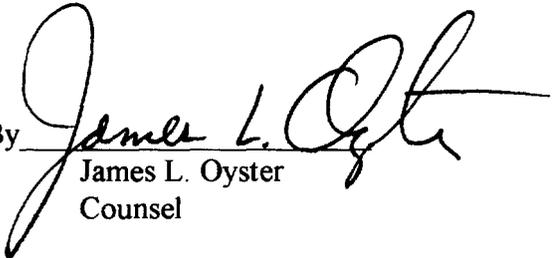
WHEREFORE THE PREMISES CONSIDERED, it is respectfully requested that the Commission grant reconsideration and amend the FM Table of Allotments as proposed in Docket No. 00-123.

Respectfully submitted,

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March 23, 2001

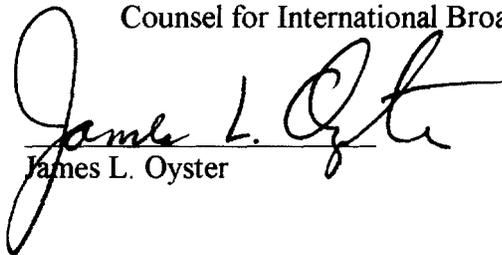
OCEAN COMMUNICATIONS

By 
James L. Oyster
Counsel

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 23rd day of March, 2001, to the following:

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