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Before the
Federal Communications Commission
Washington, D.C. 20554

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

MM Docket No. 00-123
RM-9903

FILED

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: April 18, 2001

Released: April 24, 2001

By the Chief, Allocations Branch:

1. The Allocation Branch has before it a Petition for Reconsideration filed by Jose J. Arzuaga, Jr., d/b/a Ocean Communications directed to the Report and Order in this proceeding. DA 01-255, released February 2, 2001. International Broadcasting Corporation ("International Broadcasting") filed an Opposition to Petition for Reconsideration and Ocean Communications filed a Reply. For the reasons discussed below, we deny the Petition for Reconsideration.

Background

2. At the request of Ocean Communications, the Notice of Proposed Rule Making in this proceeding proposed the allotment of Channel 300B to Rincon, Puerto Rico, as a first local service. Ocean Communications filed timely Comments in response to the Notice. International Broadcasting, licensee of Station WVOZ, Channel 299B, Carolina, Puerto Rico, filed Comments after the comment date in this proceeding. In its Comments, International Broadcasting states that the proposed coordinates for the Channel 300B allotment are located within the Desecheo National Wildlife Refuge and would not be available for a transmitter site. In support of this contention, International Broadcasting included a letter from Val K. Urtan, Project Leader, Caribbean Islands NWR Complex, Fish and wildlife Service, Department of the Interior, stating that no request for a permit to construct a tower had been submitted and that approval of such a tower would be unlikely. We accepted this submission because it contained information of decisional significance and had been served upon Ocean Communications. In light of this information, we determined that there was no reasonable assurance of an available transmitter site and denied the proposed allotment.

3. In support of its Petition for Reconsideration, Ocean Communications advances both a procedural and substantive argument. Ocean Communications first notes that the International Broadcasting pleading is both unauthorized and untimely and that it was "precluded" from filing a response. In regard to the substantive argument of transmitter site unavailability, Ocean Communications argues that there had been no showing that the transmitter site must be located within the Desecheo National Wildlife Refuge. In this regard, Ocean Communications states that it intends to locate its transmitter "on a ship" in the Atlantic Ocean.

4. We deny the Petition for Reconsideration. Consideration of the late-filed Comments by International Broadcasting enabled us to resolve this proceeding on the basis of a complete and accurate record. International Broadcasting served its Comments on Ocean Communications. In view of the decisional significance of the Comments, Ocean Communications could have filed a response to the letter from Val K. Urtan either at that time or in the context of its Petition for Reconsideration. In either context, Ocean Communications is afforded an opportunity to refute the substance of International Broadcasting argument. In regard to the substance of the argument, we undertook our own engineering review of this matter. Rincon is located at the western edge of Puerto Rico. In order to comply with the minimum spacing requirements set forth in Section 73.207(b) of the Rules, the proposed reference site must be located 26.6 kilometers (16.5 miles) west of Rincon. The only island upon which the transmitter could be located is Desecheo Island. The Desecheo National Wildlife Refuge covers all of Descheo Island. On the basis of our own engineering review, there is no site on land that could accommodate a transmitter site for this allotment. The Ocean Communications contention that it could locate its transmitter on a ship does not appear to be feasible or practical. It would be necessary for a ship to maintain a stationary location at the allotment's authorized site approximately 16 miles into the Atlantic Ocean. We continue to believe that Ocean Communications does not have a reasonable assurance of a transmitter site availability. See Grand View, Idaho, 15 FCC Rcd 2768 (2000); Cusseta, Georgia, 6 FCC Rcd 7437 (1991).

5. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by Jose J. Arzuga, Jr. d/b/a Ocean Communications IS DENIED.

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

7. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

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