

BEFORE THE

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# Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

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

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MM Docket No. 00-123  
RM-9903

To: The Commission

## OPPOSITION TO APPLICATION FOR REVIEW

International Broadcasting Corporation ("IBC"), by its attorney, hereby submits its opposition to the Application for Review filed by Jose J. Arzuaga, Jr., d/b/a Ocean Communications (Petitioner) in this proceeding.

1. Petitioner seeks review under Sections 1.115(b)(2)(iv) and (v) of the Commission's rules on the grounds that in its Memorandum Opinion and Order, DA 01-1065, released April 24, 2001, denying Petitioner's Petition for Reconsideration, the Mass Media Bureau made an erroneous finding as to an important or material question of fact and also subjected Petitioner to prejudicial procedural error. Review of the Bureau's decision on reconsideration is not warranted in either case.

2. In the first instance Petitioner contends that the Bureau erred in basing its decision, in part, on the submission by IBC of a letter from Mr. Val K. Urban of the Fish and Wildlife Service, U.S. Department of Interior, stating that use of the Desecheo National Wildlife Refuge as a transmitter site would not likely be approved. This National Wildlife Refuge encompasses the entirety of Desecheo Island which corresponds to the specified coordinates for

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Channel 300B at Rincon, Puerto Rico. Although Petitioner was served with a copy of Mr. Urban's letter at the time the letter was filed with the Commission by IBC, Petitioner states that it was precluded from filing an "authorized" pleading in response to IBC's submission because the time for filing reply comments in the rule making proceeding had expired. It then states that it would have had to file an unauthorized pleading, an act inconsistent with Commission case law. This conclusion is inaccurate. Petitioner could have requested leave to file a motion to respond to or to strike the submission by IBC, a procedure fully consistent with Commission rules and case law.

3. Further, the Bureau's consideration of the letter from the Department of Interior provided by IBC was fully consistent with case precedent where a matter of decisional significance had been presented to the Commission, though beyond the time for formal submission of comments. *See Cosmos Broadcasting of Louisiana, Inc.*, 56 FCC2d 320 (1975)

4. Faced with the issue whether Desecheo Island could be used as a transmitter site, Petitioner has submitted only unsupported allegations pertaining to the question. Instead, it stated in its Petition for Reconsideration for the first time that it could locate its transmitter on a ship and further in its Application for Review that it did not intend to locate on Desecheo Island proper so that the information provided to the Commission with respect to the character of the Island was irrelevant to its proposal. Petitioner now submits a copy of a map obtained from a Mr. Foote of the National Wildlife Refuge which allegedly shows that a transmitter could be located outside the Island Refuge on nearby minute points of land.<sup>1</sup> Although the map is insufficient in

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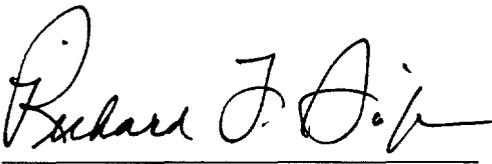
<sup>1</sup> Petitioner's assertions concerning the availability of such sites because of the shallowness of water and the location of small islands are wholly unsupported. It is not clear whether these points of land are even within the limited area in which a transmitter could be located to meet the required mileage separations. In short, Petitioner has not rebutted the evidence presented or provided any engineering showing pertaining to the availability of a site. *See Grand View, Idaho*, 15 FCC Rcd 2768 (2000) and cases cited therein.

itself to show the availability of any transmitter site, it is also information which the Bureau had not seen before and which raises a question of fact on which the Bureau had no previous opportunity to review. On this fact alone, the Application for Review must be denied because its reliance on these unsupported factual assertions is inconsistent with the dictates of Section 1.115(c) of the Rules.

5. In sum, Petitioner has not provided a legal or factual basis for grant of its Application for Review. Instead, it has reargued the appropriateness of the Bureau's proper consideration of decisionally significant information, reiterated its inaccurate position that it could not have responded to the submission of this information provided by IBC, and has presented a new factual argument, which, in addition to being vague, has not been advanced until now. Under these conditions, review of the Bureau's decision is not warranted.

Respectfully submitted,

International Broadcasting Corporation

By: 

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June 5, 2001

**Certificate of Service**

I, Richard F. Swift, hereby certify that on this 5<sup>th</sup> day of June 2001 true and complete copies of the foregoing **Opposition to Application for Review** have been sent via 1<sup>st</sup> Class U.S. Mail, postage prepaid to the following:

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A handwritten signature in black ink, appearing to read "Richard F. Swift", written over a horizontal line.

Richard F. Swift

\* Hand delivery.