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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)	)	**MM Docket No. 00-123**
Table of Allotments,	)	**RM-9903**
FM Broadcast Stations	)	
Rincon, Puerto Rico	)	

To: The Commission

REPLY TO OPPOSITION TO APPLICATION FOR REVIEW

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

1. The opposition filed by International Broadcasting Corporation ("IBC") proves the point that the Commission has handled this proceeding improperly. IBC boldly states that the "National Wildlife Refuge encompasses the entirety of Desecheo Island ...." IBC fails to cite the record for this proposition. There is nothing in the record that demonstrates this to be a fact (even when the unsupported informal objection of IBC is taken into account). The map attached to the application for review, which was supplied by the federal government official responsible, indicates that the Wildlife Refuge does not include all of the small islands located off the shore of Desecheo island. A transmitter site could be located on one of these small islands and meet the separation requirements specified by the Commission.

2. With respect to para. 3 of the opposition, petitioner does not dispute the fact that the Commission may consider matters submitted outside the time for filing formal submissions in appropriate circumstances. In such circumstances, the Commission must afford other parties an opportunity to respond to the facts that are viewed to be of "decisional significance." To argue that

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petitioner could have filed a response (outside the rules) is not sufficient. A party must be given a proper and formal avenue in which to present arguments. Otherwise, there would be no point in establishing any pleading deadlines in the first place. Before the Commission considers new facts that could be of decisional significance, it is required to provide parties that may be impacted with an opportunity to respond. This is basic due process.

3. In para. 4 of the opposition, IBC accuses petitioner of submitting "only unsupported allegations." None of IBC's allegations were ever supported by legally sufficient documentation. Indeed, its claim that the Wildlife Refuge covers the whole island is not even supported by the informal letter that was submitted. Once again, IBC's pleading proves the point. Due process requires equal treatment. Petitioner should not be held to one standard while IBC is held to another. Thus, we have the anomaly presented here that the only party that filed comments in accordance with the procedures prescribed the Commission is being accused of being the party that has not followed correct procedure. Indeed, this is a classic case of Alice-in-Wonderland Justice -- first the ruling then the trial.

4. IBC's statement that the map submitted with the application for review is "information which the Bureau had not seen before" is indicative of the Alice-in-Wonderland mentality that has been applied to this case. There is "nothing" in the record in this proceeding to indicate that the Wildlife Refuge covers all of Desecheo Island. Nevertheless, the Commission based its ruling on that "fact." While the map that was presented with the application for review has never been a part of the record, neither has the "fact" that the Refuge covers the entire island. Once again IBC makes petitioner's point. The instant ruling is based on non-record facts that may not be considered. None of the non-record evidence should have ever been considered. If the Commission believed that the informal comments filed by IBC were entitled to consideration, it

was required to afford an opportunity for all concerned to place their comments on the record in a formal manner. The failure to do so has resulted in a clear violation of due process in this instance. The Commission's ruling is based on an erroneous statement of the facts that cannot be found in the record. The ruling must be reversed.

Respectfully submitted,

OCEAN COMMUNICATIONS

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June 14, 2001

CERTIFICATE OF SERVICE

James L. Oyster hereby certifies that he has sent a copy of the foregoing Application for Review by first class U.S. mail, postage prepaid, or by hand delivery, on or before the 14th day of June, 2001, to the following:

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James L. Oyster