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

In the Matter of	)	
	)	
Amendment of Section 73.622(b)	)	MM Docket No 01-244
Table of Allotments,	)	RM-10234
Digital Television Broadcast Stations	)	
(Tyler, Texas)	)	

In the Matter of	)	
	)	
Amendment of Section 73.622(b)	)	MM Docket No. 01-245
Table of Allotments,	)	RM-10235
Digital Television Broadcast Stations	)	
(Lufkin, Texas)	)	

To the Honorable Commission

APPLICATION FOR REVIEW

International Broadcasting Network ("IBN") hereby applies for review of the Memorandum Opinion and Order ("the Order") adopted on September 4, 2003, and released on September 12, 2003, by the Chief of the Video Division ("the Chief") in the above-captioned consolidated proceedings. In support hereof, IBN respectfully shows the following

1 IBN is a party and is adversely affected by the Order

2 This Application for Review ("the Application") is submitted pursuant to Section 1 115 of the Commission's Rules

3 The Application is timely under Sections 1 115(d) and 1 4(b) of the Commission's Rules

4 The questions presented for review include the following:

(a) Is the Order consistent with the evidence presented in these proceedings?

(b) Is the Order consistent with the applicable law?

(c) Does the Order give reasoned consideration to the comments that were filed?

(d) Has the Chief acted in an impartial, unbiased manner?

(e) Is the Order arbitrary, capricious, an abuse of discretion and contrary to law?

5. The factors which warrant Commission consideration of the questions presented include the following:

(a) The action taken by the Chief pursuant to delegated authority is in conflict with statute, regulation, case precedent or established Commission policy.

(b) Erroneous findings as to important or material questions of fact have been made.

(c) There has been prejudicial procedural error.

6. The basic issue that has been in dispute in these proceedings is whether CivCo, Inc. ("CivCo")[1] has met its burden of proof with regard to the proposed substitution of channels IBN submits that CivCo has not done so. Although CivCo has made boilerplate assertions that are unproven and untrue, it has presented no evidence whatsoever to support those assertions. Not a scintilla evidence has been presented in these proceedings that would support a finding that the substitution of channels sought by CivCo is in the public

[1] As used herein, the term "CivCo" applies to CivCo, Inc , and any or all of its predecessors, affiliated companies and alter egos

interest. The record clearly shows that the substitution of channels is not in the public interest.

7. The Order deceptively provides an incomplete and inaccurate list of those who filed comments and fails to note that no commenter other than CivCo supported the substitution of channels. Among the commenters supporting IBN and opposing the substitution of channels were the City of Lufkin, Lufkin Independent School District, Lufkin Educational Broadcasting Foundation, Media Services Group of East Texas and various individuals. Certified Public Accountant Bert McKinney filed affidavits showing that 6,241 persons residing within the coverage areas of CivCo's stations had signed petitions opposing the substitution of channels.[2]

8. The Order's failure to properly consider the evidence and the comments was arbitrary, capricious, an egregious abuse of discretion and contrary to law. It makes a mockery of the Commission's well-established policy and legally-required practice of inviting public comments and giving reasoned consideration to those comments in rule making proceedings. Moreover, it elevates the interests of CivCo, a for-profit business whose management is located in distant states and which is unresponsive to the public it is licensed to serve, above the interests of those who reside within its stations' coverage areas There can be no better indicator of the public interest than the local institutions, public officials, community leaders and residents who eagerly signed petitions and filed comments and affidavits in these proceedings. The

[2] After Mr McKinney's affidavits were made, the number of signers soared far beyond his first official count as stated therein

undeniable fact that the Order is contrary to the sworn evidence and public comments reflects disdain for the rule of law, lack of objectivity and disregard of the public interest.

9. IBN operates three stations, KIBN-LP, KLGV-LP and KTWC-LP, that will be forced to cease operation on their currently-licensed channels by reason of the Order. IBN continues to believe that constitutional issues, including the Takings Clause of the Fifth Amendment and the Equal Protection Clause, are relevant and that the Order is in violation of those provisions. However, the Commission may reverse the Order without addressing those issues. The reversal may be based upon, and should be based upon, a finding that the Order failed to properly consider the public comments that were filed, that CivCo did not meet its burden of proof, that CivCo failed to give required notices and that the substitution was not in the public interest.

10. There is no provision of law, whether statutory or regulatory, that gives full power stations a right to substitute channels without meeting the required burden of proof that such substitution is in the public interest. CivCo has not met that burden of proof. The evidence and the public comments conclusively show that the substitution of channels is contrary to the public interest.

11 CivCo's position is essentially that this is a contest between a full power licensee and a low power licensee and that the full power licensee must win regardless of the evidence, regardless of the public comments and regardless of the public interest. By analogy, CivCo's position is that, in a contest between David and Goliath, Goliath inevitably must be declared the winner

because of his size The evidence and the public comments are of no consequence to CivCo Unfortunately, the Chief has ardently and uncritically adopted CivCo's untenable position and the Order reflects her bias. Accordingly, the Order is arbitrary, capricious, contrary to law and unsupported by the evidence and public comments.

12. It is irrelevant that IBN's stations are low power. Even if IBN had no station at all, it would have a right to be heard and to have its comments properly considered. The public and private institutions that filed comments, the community leaders and others who filed comments or affidavits and the thousands of local residents who signed petitions all are entitled to have their voice heard. In our great nation, as in any representative democracy, the will of the people must not be ignored by governmental officials whose power derives from the consent of the governed The public interest must never be sacrificed to benefit a favored class.

13. CivCo has repeatedly claimed that IBN's stations were not eligible for Class A status. The truth is that they were eligible for Class A status, and the Commission officially recognized the stations' eligibility. Notwithstanding that eligibility and the protected status that provided, CivCo filed applications for IBN's channels and, thereby, effectively blocked the issuance of Class A licenses. Thereafter, IBN could not have truthfully made the required certifications of non-interference and, for that reason, could not submit applications for relicensing the stations as Class A stations. It is inequitable

that CivCo be allowed to take unfair advantage of a situation that was the result of its own actions

14 The Order fails to give reasoned consideration to CivCo's repeated violation of the applicable notice requirements, including those set forth in Section 1 401(d) of the Commission's Rules As has been previously noted, CivCo's failure to give timely notice was intentional and highly prejudicial to IBN Accordingly, the channel substitutions CivCo sought should have been denied.

15 The Order, while failing to properly consider the reasons IBN and other commenters gave for denying the proposed channel substitutions, made a number of assertions that are misleading or untrue Among these are the following

(a) The Order, at footnote 2, states that IBN "argues that it is entitled to a stay as a matter of right under Section 1 102(a)(2) " That is not what IBN argued IBN based its request for a stay on Section 1 102(b) and argued that a stay was necessary to preserve the integrity of a decision yet to be rendered The Order does not give any reasoned response to IBN's irrefutable argument that the wrong standard was applied in denying the requested stay

(b) The Order, at paragraph 8, states that "the Commission found that approval of the substitution proposals would permit stations KIBN-LP and KLGV-LP to avoid potential loading problems " That statement is untrue and has no basis in the record

(c) The Order, at paragraph 9, states that CivCo "offered to assist IBN" and that CivCo's "cooperative spirit was apparently rejected by IBN " To the contrary, the record shows that CivCo engaged in a pattern of deceit and made no legitimate offer of assistance

(d) The Order, at paragraph 10, states that the "Commission will not reconsider arguments that have already been considered." That flies in the face of logic To be reconsidered, a matter must first have been considered.

16 For all of the foregoing reasons, and for all of the reasons set forth in IBN's previous filings, IBN respectfully requests that this Application for Review be granted, that the Memorandum Opinion and Order issued by the Chief of the Video Division be reversed and vacated and that such further relief to which IBN may be entitled be granted

Respectfully submitted,

INTERNATIONAL BROADCASTING NETWORK

By its President

Paul J Broyles
5206 FM 1960 West, Suite 105
Post Office Box 691111
Houston, Texas 77269-1111

Telephone 281-587-8900

E-Mail IBN@ev1 net

October 13, 2003

CERTIFICATE OF SERVICE

I, Paul J Broyles, hereby certify that on this 13th day of October 2003 a copy of the foregoing APPLICATION FOR REVIEW has been served by facsimile and by first-class mail, postage prepaid, upon the following:

John S. Logan
Scott S Patrick
Courtney P Manzel
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036-6802
(Counsel for Civic License Holding Company, Inc , and CivCo, Inc)

Barbara A Kriesman
Chief, Video Services Division
Federal Communications Commission
445 Twelfth Street, SW
Washington, D C 20554

Paul J. Broyles

Paul J. Broyles

International Broadcasting Network
5206 FM 1960 West, Suite 105
Post Office Box 691111
Houston, Texas 77269-1111

Telephone 281-587-8900

E-Mail IBN@ev1 net