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

In the Matter of)
)
Amendment to Section 73.202(b),)
Table of Allotments)
FM Broadcast Stations)
(Markham, Ganado and Victoria,)
Texas))

MB Docket No. 07-163
RM-11385
RM-11416

FILED ACCEPTED

FEB 26 2010

To: The Secretary
For transmission to: Chief, Audio Division

Federal Communications Commission
Office of the Secretary

PETITION FOR RECONSIDERATION

Victoria RadioWorks, LLC ("KVIC"), licensee of KVIC(FM), Victoria, Texas, hereby files this petition for reconsideration of the *Report and Order*, DA 10-36, released in this proceeding on January 29, 2010. This petition is timely filed under Section 1.106 of the Commission's rules within 30 days after release of the *Report and Order*.

The relief sought by KVIC is limited. Consistent with KVIC's "Conditional Consent to License Modification" ("Conditional Consent"), filed June 1, 2009, the channel change and Class C upgrade sought by Fort Bend Broadcasting Company ("Fort Bend") for its Station KHTZ, Ganado, Texas, and the allotment of a new channel to Markham, Texas, need not be disturbed. KVIC's only request is that the Commission order Fort Bend to immediately change frequencies to Channel 235, the channel awarded to it in the *Report and Order*, and require interim operations as a Class C2 facility on that frequency pending its transition to the authorized full-Class C operation.

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As KVIC demonstrated in its Conditional Consent, this arrangement has the following advantages: (1) KHTZ, which currently operates on Channel 284C2, can operate on Channel 235C2 at its present transmitter site, height and power, and do so without having to file a Form 301; (2) KVIC would seek no reimbursement from Fort Bend for the new antenna, other equipment and administrative expenses it would otherwise be entitled to receive; (3) KVIC could immediately commence operations as a maximum-power, non-directional station on Channel 284C3 and abandon Channel 236C3 on which KVIC currently operates with only 6.5 kW ERP due to required Section 73.215 protections;¹ (4) Channel 283A at Markham, could be made available for auction immediately and create that community's first competitive service; and (5) Fort Bend did not object to KVIC's proposal for interim operations on Channel 235C3.

The only reason the FCC declined to implement this plan is what it characterized as a proposal by KVIC to force Fort Bend's KHTZ onto a lower class of channel than it proposed. But KVIC is *not* seeking to impose a lower class of channel on KHTZ. KVIC supports the reallocation scheme advanced by Fort Bend, and has no objection to a modification of KHTZ's license to specify operations on Channel 235C, or to modification of KVIC's license to specify Channel 284C3. KVIC's request pertains only to an interim period of operations, not to KHTZ's permanent frequency assignment.² There is no regulatory impediment to imposition of such an interim license modification. Under the plan urged by KVIC, KHTZ would be authorized to operate on a temporary

¹ KVIC has a construction permit, BPH-20011109AAE, for a directional facility with maximum ERP of 13 kW, but must suppress radiation to 6.5 kW at 300 degrees. On Channel 283C3, KVIC will operate with 13kW ERP on a fully-spaced non-directional basis.

² *Fishers, Lawrence, Indianapolis, and Clinton, Indiana*, 22 FCC Rcd 11660 (MB 2007), *recon denied*, 24 FCC Rcd 2612 (MB 2009) and *Parker, Arizona*, 17 FCC Rcd 9578 (MB 2002), do not apply here. Both cases involved efforts to impermissible changes to existing authorizations. Here, KVIC accepts the allocation changes imposed in the *Report and Order*, and seeks relief only under an interim plan that neither compromises that allocation scheme nor prejudices other parties.

basis on Channel 235C2, through the submission of a Form 302-FM. This would not involuntarily impose a lower class of channel on KHTZ. KHTZ's license would be permanently modified to reflect Class 235C.³ At any time it chooses, Fort Bend could license its full Class C facility by filing a Form 302-FM to cover its Class C construction permit—a permit it must in any event apply for pursuant to paragraph 13(a) of the *Report and Order*. This plan, which is fully within the FCC's power to implement, imposes no burdens on Fort Bend. On the contrary, as shown above, it relieves Fort Bend of its reimbursement obligation to KVIC. *Fort Bend has not objected to this plan.* From a public interest standpoint an interim modification of KHTZ's license, as part of the more permanent license modification to Channel 235C, speeds implementation of improved and new services at Victoria and Markham. This opportunity for improved service has no disadvantages to any party and should be adopted.

WHEREFORE, It is respectfully requested that the Commission (1) affirm the allocation of Channel 235C to Ganado, Texas, as a substitute for the present Channel 284C2; (2) modify the license of Station KHTZ at Ganado to specify operations on Channel 235C but order an interim Channel 235C2 facility pending implementation of operations on Channel 235C; (3) order Fort Bend to file an FCC Form 302-FM reflecting operations on Channel 235C2 within 90 days after the effective date of a modified Report and Order in this proceeding; (4) affirm its allocation of Channel 284C3 as a substitute for Channel 236C3 at Victoria, Texas, and modify the license of Station KVIC, Victoria,

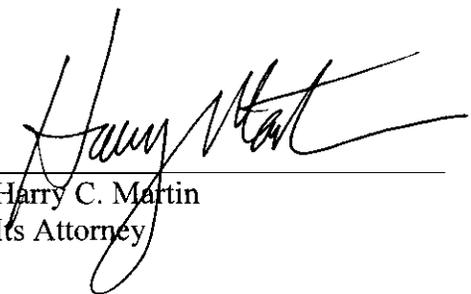
³ Should Fort Bend decide to operate KHTZ as a Class C2 station permanently, it could, at its current site, apply as a minor change for modification of its authorization to specify Class C2. See Section 73.3573(a)(1)(ii) of the Rules.

accordingly; and (5) affirm its allocation of Channel 283A to Markham, Texas.

Respectfully submitted,

VICTORIA RADIOWORKS, LTD.

By



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February 26, 2010

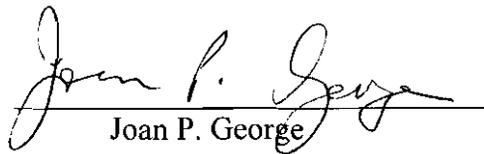
CERTIFICATE OF SERVICE

I, Joan George, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a true copy of the foregoing *Petition for Reconsideration* was sent this 26th day of February, 2010, by first-class mail (or electronic mail where indicated) upon the following parties:

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