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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

MAR 10 2010

FCC Mail Room

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	
Table Of Allotments	)	MB Docket No. 07-163
FM Broadcast Stations	)	RM-11385
(Markham, Ganado, and Victoria,	)	RM-11416
Texas)	)	

To: Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission

Attn: Audio Division; Media Bureau

**OPPOSITION TO PETITION FOR RECONSIDERATION**

Roy E. Henderson <sup>1</sup>, (“Henderson” or “KHTZ”) licensee of radio station KHTZ(FM) in Ganado, Texas, in accordance with Section 1.106 of the Commission’s Rules, by Counsel herewith respectfully submits his Opposition to the Petition for Reconsideration as filed in this proceeding by Victoria Radio Works (“Victoria” or “KVIC”) on February 26, 2010. In support whereof, the following is submitted:

Henderson was the Petitioner in this Docket who requested that the existing allocation of channel 284C2 in Ganado, Texas, as currently occupied and licensed to Henderson for station KHTZ, be changed to channel 235C and Henderson’s license of KHTZ modified accordingly. In order to accommodate that change, Henderson also proposed modification of the existing allocation of channel 236C3 in Victoria, Texas,

<sup>1</sup> Formerly Fort Bend Media Broadcasting Company, 100% owned by Roy E. Henderson , and changed to “Roy E. Henderson” directly by pro-forma Form 316 assignment of license BALH-20080305ADM granted 3-13-2008, and effective 3-31-2008.

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currently occupied by KVIC, to new channel 284C3, with Henderson agreeing to reimburse Victoria for all of its reasonable and prudent out-of-pocket expenses incurred in making that channel change.

A Notice of Proposed Rulemaking was issued in this case (NPR Markum, Texas, 22 FCC Rcd 15125 (2007), followed by Henderson's counterproposal in Ganado, and then an Order to Show Cause, issued by the Commission on April 17, 2009, which ordered Victoria to "...show cause why its license [for KVIC in Victoria] should not be modified to specify operation on channel 284C3 in lieu of Channel 236C3". Victoria responded to that Show Cause Order by a pleading filed on June 1, 2009, and styled as "Conditional Consent To License Modification". It is noteworthy that in that pleading, Victoria supported the request of Henderson for allocation of channel 235C in Ganado, and also that the pleading was utterly devoid of any showing as to "why the license for Victoria's station should not be modified to specify operation on channel 284C3 in lieu of Channel 236C3", which was, of course the only question asked of Victoria in the Order to Show Cause. But while choosing to ignore that question as posed, Victoria then proceeded to submit its own new ideas and suggestions as to how the pending proposals could be modified to the satisfaction of Victoria. Essentially, this consisted of Victoria's request that the adoption of the rulemaking proposal as filed by Henderson be somehow "modified" to also provide that before Henderson could proceed to build on a construction permit for channel 235C, he would first be ordered to a modification to channel 235C2 "pending implementation of operations on Channel 235C", and requesting the FCC to "order Henderson to file an FCC Form 302-FM reflecting operations on Channel 235C2 within 90 days..."

It was Henderson's position then, and remains so now, that a response to an Order to Show Cause as to why a channel should not be changed is not the proper place for the respondent to choose to submit some "new ideas" including requirements for some new interim operation on a different channel that seemed like a good idea to the respondent. Henderson's position was totally consistent with the FCC's own subsequent conclusion in its Report and Order issued on January 29, 2010, (and the subject here of Victoria's Petition for Reconsideration) which recognized the settled law that controls this matter and that "... it is not permissible [for Victoria] to propose an involuntary lower class of channel than was proposed by Henderson, the licensee of Station KHTZ(FM), and Henderson has not consented to a lower class channel". Report and Order, DA 10-36, \_\_\_ FCC Rcd \_\_\_, (2010) at paragraph 9 and supporting case footnotes at f.n. 19).

Henderson did not understand why Victoria was so insistent upon an interim operation on a lower channel or why it seemed wedded to requesting the FCC to "order" such operation. In conversations between counsel subsequent to Victoria's filing of its response to the Order to Show Cause, some progress seemed to be made in that a "swap" of antennas by the two parties seemed to be in the best interests of each, representing a very convenient method of doing the channel change in a very expeditious way, and being a reasonable and prudent way to proceed all around. In furtherance of that proposal, both parties physically examined and approved the subject antennas as acceptable to each and it appeared, at least to Henderson, as a very reasonable way to proceed. Once again, however, the concept of simply doing this on a voluntary basis did not seem attractive to Victoria and draft pleadings, once again, bringing the Commission in to "order" did not seem necessary or suitable to Henderson, and nothing further was done in this regard

until the Report and Order was issued on January 29. But, in order to provide some further assurance to Victoria, Counsel for Henderson then sent an e-mail to Counsel for Victoria on February 22 noting that

“Now that the FCC has issued its Order in the rulemaking case, Mr. Henderson has asked me to assure you of his intended cooperation in making the change expeditiously and in cooperation with your own change at Victoria. In that regard he still would like to proceed with an agreement with [Victoria] to make the antenna swap as previously discussed, and to do so on a coordinated basis. Please let me know if you are prepared to go forward on that, and we will get things moving along.”

We did not get a response to that e-mail until March 3, when we were informed by counsel for Victoria that they were not inclined to go forward on that and that they would not further entertain the swap absent an FCC-ordered interim move of KHTZ to Channel 235C2. We were unaware at that time that Victoria had also already filed its Petition for Reconsideration, which we then received shortly thereafter.

Although Henderson went to great pains to provide assurance to Victoria that he intended to proceed expeditiously on construction of the new station on channel 235C, and would cooperate and coordinate with Victoria in all of the changes, that does not seem sufficient to Victoria which seems to be somehow obsessed with having the FCC **order** some interim operation by KHTZ in Ganado on channel 235C2. The fact is that Henderson intends to build on 235C expeditiously and does not want, nor does he see any need for, any “interim operation” on channel 235C2, and if arguendo, he ever felt such a need during construction, he would simply request Special Temporary Authority to do so, but again, he does not anticipate needing such temporary authority to operate on a lower channel designation, and does not plan to do so.

So reference to the “Petition for Reconsideration” as now filed by Victoria indicates again that it does **not** oppose what Henderson had requested in his Petition for

Rulemaking, what had been proposed by the Commission in its Order to Show Cause, or what the Commission adopted in its Report and Order, but what they **DO** object to is that the Commission did not also adopt the additional temporary allocation and “order” to the lower channel as first raised by Victoria in its response to the “Order to Show Cause”. This is simply beyond reasonable in a Petition for Reconsideration. They had no right in the first place to seek to “add” their own desired channel modifications as part of a response to an Order to Show Cause, and where the Report and Order clearly and carefully reminded Victoria at paragraph 19 that such “suggestions” were not properly made or received at that stage of the proceeding, there is simply nothing properly before the Commission to now “reconsider”. And its attempts to distinguish the line of cases that control and apply to such matters are simply vapid, consisting essentially of its own unsupported conclusions that to adopt its “interim plan” “neither compromises that allocation scheme nor prejudices other parties”. Really? When Henderson filed his Rulemaking Petition he requested and committed to Channel 235C, and he did not include any request for an “interim operation” on 235C2, as Victoria now wishes to impose on him. He seeks to go forward and build on Channel 235C on an expeditious basis and does not contemplate any interim operations on anything else, or on some extraneous timetable devised by Victoria for whatever purpose it may have, and that “suggestion” by Victoria would indeed act to compromise and prejudice Henderson.

Henderson has prosecuted his Petition in good faith and has also tried to convey that same good faith to Victoria. He has committed to them that he intended to proceed expeditiously in constructing his station on Channel 235C, and has agreed to fully cooperate and coordinate with Victoria in its own change at Victoria. What more do they

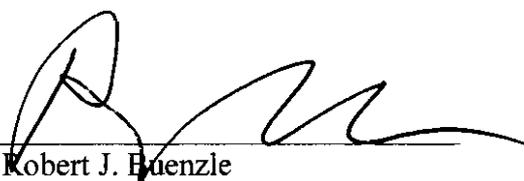
want? It seems that proceeding this way on a voluntary basis is somehow not enough for Victoria and it will settle for nothing less than turning FCC precedent upside down to seek to force the FCC to issue an Order that would be good and sufficient to satisfy whatever needs that Victoria has in forcing and requiring Henderson to operate on Channel 235C2.

The argument submitted by Victoria has no substance or meaning other than they want what they want , despite the fact that they have no right to that and there is also no reason to support it.

Wherefore, it is respectfully submitted that the Petition for Reconsideration, as filed by Victoria, is utterly devoid of merit and should be dismissed or denied as such.

Respectfully submitted,

ROY E. HENDERSON

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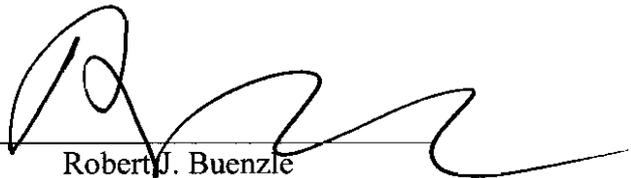
**CERTIFICATE OF SERVICE**

I, Robert J. Buenzle, do hereby certify that copies of the foregoing "Opposition to Petition for Reconsideration" have been served by United States mail, postage prepaid, this 10th day of March , 2010, upon the following:

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