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September 9, 2005

Our File No. 21554-00100-63

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: 325-STA-20050701  
Broadcast Company of the Americas  
Request for Special Temporary Authority Under Section 325(c) of the  
Communications Act

Dear Ms. Dortch:

More than two months ago, Broadcast Company of the Americas, LLC (“BCA”) asked that the Commission grant special temporary authority to BCA to permit it to supply a single program, “El Cucuy de la Mañana,” to the Class C1 facilities of XHBCE-FM. BCA requested that authority because, even though XHBCE-FM had completed construction of its Class C1 facilities, BCA had been precluded from providing programming over those Class C1 facilities from BCA’s U.S.-based studios as the result of a Petition to Deny filed against BCA’s Section 325 application by Lazer Broadcasting Company and Emmis Broadcasting Company. In that Petition to Deny, Lazer and Emmis attempted to demonstrate that the XHBCE-FM Class C1 facilities do not comport with the terms of the coordination between the United States and Mexican Governments. At bottom, Lazer and Emmis sought to convince the Commission that the Class C1 facilities would cause interference to Lazer’s station allocated to Hemet, California.

The Class C1 facilities have now been in operation (other than during that time when “El Cucuy de la Mañana” is being aired) on virtually a full-time basis since July. Despite BCA’s repeated entreaties to Lazer and Emmis to take any measurements that they might deem to be useful in determining whether the station is achieving the requisite directional pattern, Lazer and Emmis have failed to provide the Commission with a single measurement.

Instead, Lazer and Emmis have adopted a strategy of persistent delay. Thus, whereas BCA was able to file its Opposition to the Petition to Deny only fifteen days after the filing of that Petition, petitioners waited nearly a full month to file their Reply to BCA’s Opposition. When the petitioners



used that Reply as a vehicle to claim that their consultant had not seen any parasitic elements on the XHBCE-FM antenna that would permit the antenna to achieve the requisite directional pattern, BCA within days provided the Commission and the petitioners with a statement from Dr. Ali Mahnad, who is the engineer who designed the antenna, as to why such parasitic elements would not be apparent to the petitioner's consultant. Although that statement was provided to the Commission on August 5, 2005, petitioners waited over a month, i.e., until September 7, 2005, to respond to it.

The facts at this point are quite clear:

- The Class C1 facilities were coordinated between the U.S. and Mexican Governments.
- The facilities, as coordinated, are to provide a certain level of protection in the direction of Hemet, California, and Ludlow, California.
- Dr. Ali Mahnad, who holds a Ph.D. in electrical engineering, who holds five U.S. patents for various types of antennas and a feed mechanism, who is the author of several publications including the chapter on "Broadcast Antennas" from the Antenna Engineering Handbook, and who has been a consultant to SWR for more than ten years, designed an antenna to provide such protection.
- Dr. Mahnad's design was provided to SWR, an established U.S. antenna manufacturer.
- SWR built and tuned the antenna, ranged tested it and certified the results of the range testing.
- Those results, which were provided to the Commission as part of BCA's Opposition, clearly demonstrate that the antenna meets pattern.
- The antenna was installed in accordance with the SWR specifications and has now been in use by XHBCE-FM on nearly a full-time basis since July.

Rather than providing any readings to demonstrate that the antenna as installed is not achieving the requisite pattern, the petitioners, in their letter of September 7, 2005 from counsel, seek to call into question the antenna's pattern by submitting letters from ERI criticizing Dr. Mahnad's August 5, 2005 statement. In so doing, petitioners choose to ignore that Dr. Mahnad's statement was never intended to provide a detailed explanation or demonstration of the method by which the antenna's directional pattern is achieved. Rather, the statement was simply designed to explain why the petitioner's consultant, who is not a registered engineer, would not have seen any obvious parasitic elements on the XHBCE-FM antenna.

In fact, contrary to the implication fostered by the ERI letters, there would have been no need for Dr. Mahnad to have provided any "detailed information" in support of his antenna design. As petitioners and ERI well know, the Commission is not in the business of second-guessing FM antenna design. Rather, the Commission relies upon range testing to ensure that the antennas being used by their licensees are meeting pattern. Even a cursory review of the FCC Forms 301 and 302 quickly reveals that the information now being sought by ERI, which is one of SWR's largest competitors, is far more extensive than the information required to be provided by U.S. stations seeking to construct directional facilities.

Petitioners and ERI, however, would impose an obligation on XHBCE-FM that goes far beyond any obligation imposed upon a U.S. station. The Commission has been provided with a surveyor's letter



showing that the antenna has been properly placed and a certification from SWR showing that the antenna is achieving the correct pattern. The Mexican Government has provided the requisite assignment to the U.S. showing that XHBCE-FM has been constructed in accordance with the terms of its authorization. Petitioners and ERI, however, would have the Commission take the unprecedented step of subjecting a Mexican station's antenna to inspection by a competing antenna manufacturer solely because ERI's Test Range Director, who does not even claim that he holds an engineering degree, cannot figure out how to reverse engineer Dr. Mahnad's design based on his review of distant pictures of the antenna. In the meantime, the Mexican Government has ordered XHBCE-FM to cease operating its Class B facilities and the licensee of XHBCE-FM has been stymied in its desire to fulfill the Mexican Government's wishes because the petitioners continue to object to the grant by the FCC of authority to place a single program on XHBCE-FM's Class C1 facilities, even though the petitioners still have failed to provide a single reading demonstrating that XHBCE-FM, which has now been on the air for many weeks, is not operating in accordance with the terms of its authorization.

The Class C1 facilities were coordinated. They were constructed as authorized and the Commission has been provided with the requisite materials to demonstrate that the station is complying with the terms of the coordination. BCA respectfully submits that it is now time for the wishes of the Mexican Government to be observed. The long-pending STA request should be granted so that the XHBCE-FM Class B facilities can cease operations.

Sincerely,



John M. Pelkey

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