

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

In re Application of)	
)	
HUMBERTO LOPEZ)	File No. BPCT-19960920YG
Victoria, Texas)	Facility ID No. 83743
)	
For a Construction Permit for A New)	
Television Broadcast Station on Channel 31)	
)	
TO: Office of the Secretary)	
Federal Communications Commission)	
Attn: WTB/ASAD)	

AUCTION NO. 64 COMMENTS OF HUMBERTO LOPEZ

Humberto Lopez (“Lopez”), by his attorney, hereby respectfully comments on Auction No. 64, as follows:

1. By Public Notice (DA 05-2423), released September 23, 2005, the Wireless Telecommunications Bureau (“WTB”) and the Media Bureau (“MB”), collectively referred to as the “Bureaus,” announced an auction of eleven full power television construction permits, to commence on March 15, 2006. Attachment A to the Public Notice specified that Channel 31 would be auctioned at Victoria, Texas and that the minimum bid would be eighty thousand dollars (\$80,000.00).

2. Lopez is the licensee of Class A Low Power Television Station KVHM-LP, presently operating on Channel 31 at Victoria, Texas. Lopez has also applied for a Construction Permit for a full power television station to operate on the same channel at Victoria, Texas.

3. On July 12, 2001, the Chief, Television Branch issued a letter purporting to dismiss the Lopez application for a construction permit for a new full power television broadcast station at Victoria, Texas, because of interference to Station KVHM-LP. Under date of July 31, 2001, Lopez filed a Petition for Reconsideration, a partial copy of which is attached and marked Exhibit A. In his Petition, Lopez showed that, if his application for a construction permit for a full power television station was granted, he would surrender his license for the lower power television station in Victoria. Thus, Lopez fully resolved the issue of interference to the low power television station, which had been the basis for the July 12 letter from the Chief, Television Branch. Thereafter, the record will show that the Chief, Television Branch did, in fact, reinstate the Lopez application for a full power television station.

4. Now, the Commission has purported to open the door for other parties to file applications for a full power television station on Channel 31 at Victoria, Texas and to bid for the construction permit, at auction. However, any such application will necessarily involve prohibitive electrical interference to the low power television station already owned and operated by Mr. Lopez on Channel 31 at Victoria. Hence, any such application will be defective, when filed.

5. It makes absolutely no sense to invite applications which will, on their face, be defective when filed. Mr. Lopez has control of his low power television station on Channel 31 at Victoria. He and he alone can resolve the problem with interference to that station by surrendering the Station's license for cancellation. He does not propose to surrender the license for cancellation in order to accommodate any applications for full power television stations by anyone except himself. He, however, has a valid application on file for a construction permit for a full power television station to operate on Channel 31 at Victoria.

6. Under these circumstances, the Lopez application is, for all practical purposes, a “singleton.” No applications can be filed for Channel 31 at Victoria without creating intolerable electrical interference to the pre-existing Class A low power television station which Mr. Lopez already owns and operates in Victoria. Therefore, the Lopez application for a full power television station in Victoria is effectively unopposed and should be promptly granted. For these reasons also, Channel 31 at Victoria should be withdrawn from Auction No. 64.

Respectfully submitted,

HUMBERTO LOPEZ

October 10, 2005

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By: 

Lauren A. Colby
His Attorney

EXHIBIT A

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)	
TO: Chief, Mass Media Bureau)	

PETITION FOR RECONSIDERATION

Pursuant to Section 405 of the Communications Act, 47 U.S.C. Section 405, Humberto Lopez, by his attorney, hereby respectfully requests the Chief, Mass Media Bureau, to reconsider and set aside the decision of the Chief, Television Branch, taken by letter dated July 12, 2001, dismissing the above-captioned application for a construction permit for a new television broadcast station at Victoria, Texas. In support thereof, it is alleged:

1. Humberto Lopez is an applicant for a construction permit for a new television broadcast station to operate on Channel 31 at Victoria, Texas. On July 12, 2001, the Chief, Television Branch, released a letter, a copy of which is attached and marked Exhibit A, dismissing Mr. Lopez's application because, allegedly, the application, if granted, would create interference to low power television stations KHPG-LP, Giddings, Texas, and KVHM-LP, Victoria, Texas. In his letter, the Chief, Television Branch, refers to a Public Notice released November 22, 1999, in which the Commission created a window, closing July 17, 2000, for the amendment of full service NTSC

television stations to eliminate technical conflicts with Class A stations.

2. Attached and marked Exhibit B is a Declaration of Humberto Lopez. As Mr. Lopez indicates, he never had any notice of the November 22, 1999, Public Notice. He was represented in Washington by an excellent communications law firm, but that firm never called his attention to any such Public Notice. His son called the FCC regularly to check on the status of the application, but nobody at the FCC told his son that there was any need to amend the application.

3. One of the key elements of due process of law is adequate notice. In this case, the Commission could have given actual notice to the pending television applicants by writing them and indicating that their applications needed to be amended. Instead, the Commission chose to give only constructive notice. Where, however, an agency chooses to rely upon constructive notice, simple considerations of justice and fair play require that the notice be clear and unambiguous. In this instance, the Public Notice of November 22, 1999, was anything but clear and unambiguous. It was entitled "Mass Media Bureau Announces Window Filing Opportunity for Applications and Allotment Petitions for New Analog TV Stations". The words "amend" or "amendment" nowhere appear in the title of the Public Notice. They were buried in the body of the Notice, itself.

4. There were about 160 applications for full service NTSC television stations on file when the Notice was released. Following the release of the Notice, it would have been reasonable to expect that many of the applications would have been amended to provide protection to Class A television stations and to DTV stations. However, Commission records show that nothing happened; that very few, if any, of the applications were ever amended. The reason for this is obvious: The title of the Notice was complete misleading; it suggested "an opportunity". It said nothing to indicate that some action had to be taken to avoid dismissal of an application.

5. In most cases, the failure to amend a singleton application would have been harmless. That is because the FCC has taken the position that it can and will invite competing applications in such cases and hold an auction to select a winner. Thus, in most cases involving singletons, an auction is going to be held and a few very large broadcasting companies will easily outbid individual applicants, such as Lopez.

6. The Lopez situation is, however, unique. His application was dismissed, primarily, because a grant of the Channel 31 facilities would create electrical interference to an LPTV station which also operates on Channel 31 at Victoria, Texas. As it happens, Mr. Lopez is, himself, the licensee of that LPTV station.

7. Attached and marked Exhibit C is an amendment to the above-referenced application. In that amendment, Mr. Lopez supplies a commitment that if his application for a new full service station is granted he will surrender the license for his LPTV station for cancellation prior to going on the air with the new full service Channel 31 facilities. Thus, the issue of interference to those facilities is completely resolved. The Chief, Television Branch, also made reference to possible electrical interference to an LPTV station operating on Channel 31 at Giddings, Texas. Giddings is 90 miles from Victoria and all interference to the Giddings station is easily eliminated by a slight reduction in power. An engineering statement accomplishing this reduction is attached to the amendment.

8. To summarize, the Lopez application was dismissed primarily because a grant of the application would create electrical interference to an LPTV station which Lopez, himself, owns. Mr. Lopez proposes to eliminate that interference by simply surrendering the license for his LPTV station before going on the air with the full service Channel 31 facilities. He is also amending his

application to reduce power, so as to eliminate any interference, whatsoever, to a Channel 31 station at Giddings, Texas. Because Lopez had no adequate notice that any amendment to his application was required, Lopez should be permitted to amend his application at this time.

9. To the extent that the November, 1999, Public Notice sought to impose a July 17, 2000, deadline for amendments, waiver of the deadline is requested. This is a unique situation, because the existing Class A station which Lopez owns at Victoria precludes an application by anybody else for a full service television station at Victoria. Thus, grant of the waiver and acceptance of the amendment will in no way open the doors to an avalanche of similar waiver requests, nor will it undermine the integrity of the FCC's rules. No similar situation exists, anywhere in the country.

Respectfully submitted,

HUMBERTO LOPEZ

July 31, 2001

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