

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

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 00-228
Table of Allotments,) RM-9991
FM Broadcast Stations.)
(Linden, White Oak, Lufkin, Corrigan,)
Mount Enterprise, and Pineland,)
Texas, and Zwolle, Louisiana))

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: May 9, 2001

Released: May 18, 2001

By the Chief, Allocations Branch:

1. In response to a Petition for Rule Making filed by Reynolds Radio, Inc., previously named OARA, Inc. ("Reynolds"), the Commission has before it for consideration the Notice of Proposed Rule Making, 15 FCC Rcd 21619 (2000), requesting the reallocation of Channel 257C2 from Linden, Texas, to White Oak, Texas, and modification of its authorization for Station KIXK to specify White Oak as the community of license. Reynolds filed comments reaffirming its interest in an allotment at White Oak, Texas. No other comments were received in response to the Notice.¹
2. As stated in the Notice, Reynolds has filed a petition for rule making pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). As indicated in the Notice, Reynold's request would enable it to provide a first local aural transmission service to White Oak, Texas (population 5,136).² Reynolds provided a showing pursuant to the criteria set forth in Faye and Richard Tuck, 3 FCC Rcd 5374 (1988), that White Oak is independent of the Longview Urbanized Area. Since Reynolds intends to use a new transmitter site for Channel 257C2 at White Oak, it provided a study showing a

¹ Reynolds filed a counterproposal on January 2, 2001, involving the communities of Linden, White Oak, Lufkin, Corrigan, Mount Enterprise, Pineland, and Sulphur Bluff, Texas and Zwolle, Louisiana. On March 15, 2001, Reynolds withdrew its counterproposal, providing an affidavit stating the neither Reynolds nor its principals has received or will receive any consideration in exchange for withdrawal of its counterproposal. The counterproposal was not put out for public notice. As the counterproposal has been withdrawn, no consideration will be given to the comments filed by Ruston Broadcasting Company, Inc., licensee of Station KNBB, Ruston, Louisiana, objecting to the counterproposal.

² Population figures were obtained from the 1990 U. S. Census.

theoretical population gain of 336,733 people with a theoretical loss in population of approximately 100,500 people with the loss area continuing to receive five or more services. The figures for the loss and gain areas represent a potential, rather than an actual service since the station at Linden is presently unbuilt. See Glencoe and LaSueur, Minnesota, 7 FCC Rcd 7651 (1992). Further, as previously determined, the reallocation will not result in the creation of any white or gray area. Additionally, Reynold's proposal is mutually exclusive with its existing authorization at Linden, Texas (population 2,375).

3. Based on the above, as Reynold's reallocation request is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we will reallocate Channel 257C2 from Linden, Texas, to White Oak, Texas, and modify the authorization for Station KIXK, as requested. The reallocation will result in a preferential arrangement of allotments consistent with the Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982),³ as it will provide a first local aural transmission service to the larger community of White Oak.⁴ We acknowledge that this reallocation will leave Linden without any potential local aural service. While we carefully evaluate a proposal that would result in a loss of a community's only local aural service, we do not believe that the removal of an unbuilt station, such as Station KIXK, presents the parallel concerns with loss of service represented by the removal of an operational station since it does not represent a service that the public has become reliant upon. See Chatom and Grove Hill, Alabama, 12 FCC Rcd 7664 (1997), and cases cited therein. A staff analysis confirms that there will be a theoretical gain and loss of service with the reallocation of Station KIXK and that the loss area currently receives five or more aural services.

4. Channel 257C2 can be allotted to White Oak, Texas, in compliance with the minimum distance separation requirements set forth in Section 73.207(b)(1) of the Commission's Rules at Reynolds requested site provided changes are made at Lufkin, Corrigan, Mount Enterprise and Pineland, Texas, and Zwolle, Louisiana.⁵

5. To accommodate the allotment at White Oak, we shall substitute Channel 261C2 for Channel 257C2 at Lufkin, Texas, and modify the license for Station KUEZ accordingly. The licensee for Station KUEZ has consented to the channel change and Reynolds has entered into a written agreement to reimburse the licensee of Station KUEZ for the reasonable expenses in changing channels. A staff engineering analysis confirms that Channel 261C2 can be allotted to Lufkin in compliance with the

³ The allotment priorities are: (1) first full-time aural service; second full-time service; (3) first local service; and (4) other public interest matters. [Co-equal weight is afforded priorities (2) and (3).]

⁴ An application is pending for a new noncommercial FM station at White Oak, Texas (File No. BPED-19961217ME). Since the potential for a new noncommercial FM station at White Oak is purely speculative, the application is not considered a local transmission service pursuant to the Commission's FM allotment policies.

⁵ The coordinates for Channel 257C2 at White Oak are 32-30-32 and 94-50-41 (2.6 kilometers southeast of the community).

spacing requirements.⁶ To accommodate the substitution at Lufkin, we shall also make changes at Corrigan, Texas and Mount Enterprise, Texas. At Corrigan, Texas, we shall substitute Channel 257A for vacant Channel 261A.⁷ A staff engineering analysis confirms that Channel 257A can be allotted to Corrigan without a site restriction at center city coordinates.⁸

To further accommodate the allotment at White Oak, we shall reallocate Channel 260A from Mount Enterprise, Texas, to Zwolle, Louisiana, and modify the construction permit for unbuilt Station KGRI to specify operation on Channel 260A at Zwolle. The reallocation of Channel 260A from Mount Enterprise to Zwolle can be made in compliance with the requirements of Section 1.420(i) of the Commission's Rules. The reallocation of Channel 260A at Zwolle (population 1,779 people) or retention of the channel at Mount Enterprise (population 501 people) both trigger priority 3) first local service, but reallocation of the channel to Zwolle will prove a first local service to the larger community. Here, as with Linden, we recognize that the reallocation will result in removal of the only potential local service at Mount Enterprise. However, since Station KGRI is an unbuilt facility, the residents of Mount Enterprise will experience no actual loss of existing service if the channel is reallocated to Zwolle. As the transmitter site is changing, a theoretical gain and loss study was provided showing that the loss area is well served. Since Reynolds is the permittee of Station KGRI at Mount Enterprise, reimbursement is not an issue and Reynolds has committed to filing an application for Channel 260A at Zwolle. A staff engineering analysis confirms that Channel 260A can be allotted to Zwolle, Louisiana, in compliance with the Commission's spacing requirements at Reynold's requested site.⁹

6. In response to Reynold's request for an FM allotment at Pineland, Texas, we shall allot Channel 256A to the community as a first local service. Reynolds filed comments stating its intention to file an application for Channel 256A at Pineland. The Notice provided information showing that Pineland is an established community deserving of a first local broadcast service. A staff engineering analysis confirms that Channel 256A can be allotted to Pineland, Texas, in compliance with the Commission's spacing requirements.¹⁰

⁶ The coordinates for Channel 261C2 at Lufkin are 31-24-28 and 94-45-53 (8.5 kilometers northwest of the community).

⁷ Channel 261A at Corrigan, Texas, has been included in Auction No. 37 scheduled for February 21, 2001. See Public Notice, DA 00-2171, released September 25, 2000, FM Broadcast auction scheduled for February 21, 2001. By public notice dated March 7, 2001, DA 01-619, the auction for Broadcast Construction Permits has been postponed until December 5, 2001.

⁸ The coordinates for Channel 257A at Corrigan are 30-59-47 and 94-49-36 (center city coordinates).

⁹ The coordinates for Channel 260A at Zwolle are 31-37-53 and 93-38-38 (center city coordinates).

¹⁰ The coordinates for Channel 256A at Pineland are 31-08-48 and 93-56-53 (11.5 kilometers south of the community).

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective July 3, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Community	Channel Number
Linden, Texas	-----
White Oak, Texas	257C2
Lufkin, Texas	230A, 261C2, 286C
Corrigan, Texas	257A
Mount Enterprise, Texas	-----
Zwolle, Louisiana	260A
Pineland, Texas	256A

8. IT IS ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this Notice of proposed Rule Making to the following:

Stephne W. Yates
Station KUEZ
121 Cotton Square
Lufkin, Texas 75901

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of Reynolds Radio, Inc. for Station KIXK, Channel 257C2, Linden, Texas, IS MODIFIED to specify operation on Channel 257C2 at White Oak, Texas, and the construction permit of Reynolds Radio, Inc. for Station KGRI, Channel 260A,

Mount Enterprise, Texas, IS MODIFIED to specify operation on Channel 260A at Zwolle, Louisiana, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and,

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the license of Station KUEZ, Lufkin, Texas, IS MODIFIED to specify operation on Channel 261C2 subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLH-19901015KF except for the channel as specified above. Any changes, except for those specified, require prior authorization pursuant to an application for construction permit. (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLH-19901015KF, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

11. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, IF THE REQUEST IS GRANTED, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Reynolds Radio, Inc., permittee of Stations KIXK and KGRI, is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license from Linden, Texas to White Oak, Texas and from Mount Enterprise, Texas to Zwolle, Louisiana.

12. A filing window for Channel 256A at Pineland, Texas, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

13. Accordingly, IT IS ORDERED, That the counterproposal filed by Reynolds Radio, Inc. IS DISMISSED.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

15. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. Questions relating to the application filing process should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau