

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

In the matter of)	
Amendment of Section 73.202(b))	
FM Table of Allotments,)	MB Docket No. 02-212
FM Broadcast Stations.)	RM-10516
(Vinton, Louisiana, Crystal Beach,)	RM-10618
Lumberton, and Winnie, Texas) ¹)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: April 30, 2004

Released: May 4, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a *Notice of Proposed Rulemaking*² issued at the request of Charles Crawford (“Crawford”), requesting the allotment of Channel 287A at Vinton, Louisiana, as a first local service. Crawford filed comments and reply comments, restating his intent to file an application for Channel 287A at Vinton at the appropriate time. Tichenor License Corporation (“Tichenor”) filed a counterproposal, comments and reply comments.³ For the reasons discussed below, we are granting Tichenor’s counterproposal and dismissing Crawford’s petition.

2. Tichenor, licensee of Station KOBT, formerly Station KLAT, Winnie, Texas, and Station KLTO, Crystal Beach, Texas, filed a counterproposal in this proceeding. Tichenor requests the reallocation of Station KOBT, Channel 264C, from Winnie, Texas, to Lumberton, Texas, and modification of the license for Station KOBT to specify operation at Lumberton as that community’s first local service. Tichenor further requests the substitution of Channel 287C2 for Channel 287A at Crystal Beach, Texas, reallocation of Channel 287C2 to Winnie, Texas, and modification of the license for Station KLTO accordingly. The proposed reallocation of Station KLTO and Station KOBT was filed 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.⁴ In support of the proposal, Tichenor states that its counterproposal conflicts with the allotment of Channel 287A at Vinton, as proposed in the *Notice*, offers a first local service to the larger community of Lumberton, and allows Station KLTO to expand its service at a new community. According to Tichenor, Channel 287C2 can be allotted to Winnie in compliance with the Commission’s spacing requirements at its specified site. Tichenor provided a gain and loss study showing a net gain in 60 dBu service to a population of 269,619 people in an area of 4,390 square kilometers. The small loss area will remain well served by at least five aural services. Tichenor points out that Winnie is not located within an

¹ The communities of Crystal Beach, Lumberton and Winnie, Texas, have been added to the caption.

² See *Vinton, Louisiana*, 17 FCC Rcd 15191 (MB 2002).

³ The counterproposal was put on Public Notice on December 11, 2002, Report No. 2587 (RM-10618).

⁴ See *Modification of FM and TV Authorizations to Specify a new Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

Urbanized Area nor will the 70 dBu contour of Station KLTO cover more than 50 percent of any Urbanized Areas. Tichenor acknowledges that the reallocation of Station KOBT from Winnie to Lumberton removes the sole local service in that community. However, reallocation of Station KLTO from Crystal Beach to Winnie will maintain local service in Winnie. Tichenor states that there will be no gain or loss in service for Station KOBT as no site change is requested. Tichenor states that because no change in facilities is proposed, the proposed Lumberton station does not implicate the Commission's policy concerning the potential migration of stations from rural areas to urban areas. Nevertheless, Tichenor is providing evidence that Lumberton is independent from Beaumont under the factors set forth in *Faye and Richard Tuck*.⁵ Tichenor concludes that grant of its counterproposal is in the public interest as the larger community of Lumberton (8,731 people) will receive a first local service over Vinton (3,338 people) and expanded service will be provided to 269,619 people at Winnie with the upgrade and reallocation of Station KLTO.

3. Reply comments were filed by Crawford and Tichenor.⁶ Crawford argues that Tichenor's counterproposal is two independent proposals: moving Station KOBT from Winnie, Texas, to Lumberton, Texas and moving Station KLTO from Crystal Beach, Texas, to Winnie, Texas. Crawford further argues that the reallocation of Station KOBT, Channel 264C, from Winnie to Lumberton is not in conflict with the proposed allotment of Channel 287A at Vinton. Instead, Tichenor has created a conflict with the reallocation of Station KLTO, Channel 287C2, from Crystal Beach to Winnie. According to Crawford, the Commission should view the move of Station KOBT from Winnie to Lumberton on its own merits and not require the replacement of the existing Winnie allotment. Crawford contends that the only purpose for the reallocation of Station KOBT from Winnie to Lumberton is to overcome the first local service status that would be afforded to an allotment at Vinton, Louisiana. Crawford acknowledges that if the choice is between a first local service at Vinton or Lumberton, Lumberton is a more deserving community by virtue of its population. However, if the choice is to also have Station KLTO relocate from Crystal Beach to Winnie, the Commission must analyze the basis for the relocation of Station KLTO and award a first local preference to Vinton. Crawford believes the only consideration should be the mutual exclusivity between an allotment at Vinton and an allotment at Lumberton. Tichenor, in reply comments, points out that it submitted a timely-filed counterproposal which has been accepted in this proceeding. According to Tichenor, its proposal is superior to Crawford's proposal under the Commission's standard FM allotment criteria as it will provide a first local service to a larger community. Tichenor argues that its proposal is not two independent proposals as the reallocation of Channel 264C to Lumberton is dependent on the reallocation of Channel 287C2 at Winnie as a replacement service. In reply to Crawford's argument that the reallocation of Station KLAT, with no site change, is a misuse of Commission procedures to create a first local service, Tichenor cites to numerous Commission proceedings which granted a reallocation with no site change.⁷ Tichenor contends that Crawford's pleadings appear reminiscent of issues raised in comparative hearing processes previously used by the Commission to determine which one of mutually-competing applicants was entitled to the award of an FM construction permit for a new station.⁸ Tichenor argues that the sole object of this proceeding is to determine which proposal would provide better service to the public. Tichenor believes that its counterproposal is procedurally proper and superior to Crawford's proposal under the public interest standards uniformly used by the Commission in resolving FM rule making allotment proceedings.

5. Discussion. This case involves a comparison between two competing first local services under our

⁵ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁶ Late-filed comments were filed by Crawford and Tichenor.

⁷ See *Kankakee and Park Forest, Illinois*, 16 FCC Rcd 6768 (MM 2001), *El Dorado and Camden, Arkansas*, 14 FCC Rcd 9564 (MM 1999), *Ankeny and West Des Moines, Iowa* 15 FCC 4413 (MM 2000).

⁸ See, *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 5 RR 2d 1901 (1965).

FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁹ The reallocation of Channel 287C2 from Crystal Beach to Winnie as the replacement for the loss of a sole local service at Winnie is a necessary and integral part of the counterproposal and enables us to make a comparison between first local services at Vinton and Lumberton. A review of the proposals indicates that both Vinton and Lumberton are deserving of an FM allotment. The allotment of Channel 287A at Vinton or Channel 264C at Lumberton would provide a first local service to each community, fulfilling priority (3). Therefore, our decision must be based on the community with the larger population. As Lumberton (population 8,731) is larger than Vinton (population 3,338), we believe the public interest would be served by allotting Channel 264C at Lumberton as it would provide a first local aural transmission service to the larger community.

6. A staff engineering analysis verifies that the requested reallocations can be made in compliance with the Commission's spacing requirements.¹⁰ Our analysis confirms that the reallocation of Channel 287C2 from Crystal Beach to Winnie at Tichenor's selected site will result in a net gain in service to a population of approximately 270,000 people in an area of approximately 4,400 square kilometers with a small loss area that is served by at least five aural services. There will be no gain or loss with respect to the relocation of Channel 264C from Winnie to Lumberton, as no site change is contemplated. While Winnie and Lumberton are located within the Beaumont Urbanized Area, since Station KLTO will not be changing sites, the station is not relocating from a rural to an urban area as the station is already located in an urban area. In any event, Tichenor has provided a showing that Lumberton is independent of Beaumont under the factors set forth in *Faye and Richard Tuck*.¹¹ The Commission has specifically stated that the public has a legitimate expectation that existing service will continue, and that this expectation is a factor to be weighed independently against the service benefits that may result from reallocating a channel. Therefore, although we are granting Tichenor's proposal to provide first local service to Lumberton, to ensure that local service will continue to be provided to Winnie, we shall condition the grant of an authorization to operate Station KOBT, Channel 264C, at Lumberton on the activation of service for Station KLTO, Channel 287C2, at Winnie.¹²

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 0.61, 0.204(b) and 0.283 of the Commission's rules, IT IS ORDERED That effective June 18, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's rules, IS AMENDED, with respect to the communities listed below, as follows:

Community	Channel
Crystal Beach, Texas	268C3
Lumberton, Texas	264C
Winnie, Texas	287C2

8 IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Tichenor License Corporation for Station KOBT, Winnie, Texas, IS MODIFIED

⁹ See 90 FCC 2d 88 (1982). The FR allotment priorities are: (1) First fulltime aural service; (2) second fulltime aural service; (3) First local service; and (f) other public interest matters. Equal weight is given to priorities (2) and (3).

¹⁰ The coordinates for Channel 287C2 at Winnie are 29-41-45 and 94-19-34. The coordinates for Channel 264C at Lumberton are 30-03-05 and 94-31-37.

¹¹ See 3 FCC Rcd 5374 (1988).

¹² See *Llano and Marble Falls, TX*, 12 FCC Rcd 809 (MM 1997) and *Pacific Broadcasting of Missouri LLC*, 18 FCC Rcd 2291 (2003), *recon. pending*.

to specify operation on Channel 264C at Lumberton, Texas, in lieu of Channel 264C at Winnie, Texas, and the license for Station KLTO, Crystal Beach, Texas, IS MODIFIED to specify operation on Channel 287C2 at Winnie, Texas, in lieu of Channel 287A at Crystal Beach, 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 not be conducted by Station KOBT at Lumberton until Station KLTO has commenced operation at Winnie in accordance with Section 73.1620 of the Rules.

(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 unless the proposed facilities are categorically excluded from environmental processing.

9. IT IS FURTHER ORDERED, That the petition filed by Charles Crawford IS DISMISSED.

10. Pursuant to Commission Rule Section 1.1104(1)(k) and (3)(l), 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 of community. As a result of this proceeding, Tichenor License Corporation, licensee of Station KOBT, Winnie, Texas, and Station KLTO, Crystal Beach, Texas, is required to submit a rule making fee in addition to the fees required for the applications to effect the change of community for Station KOBT and for the change of community and class of channel for Station KLTO.

11. For further information regarding the proceeding listed above, contact Robert Hayne, (202)418-2180.

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

FEDERAL COMMUNICATIONS COMMISSION

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