

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

MM Docket No. 89-440

In the Matter of

Amendment of Section 73.202(b), RM-6763
Table of Allotments,
FM Broadcast Stations.
(Texarkana, Arkansas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 9, 1992; Released: January 21, 1992

By the Assistant Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 7137 (1989), issued in response to a petition for rule making filed by State Line County Broadcasting Company, permittee for Station KUKB, Channel 292A, Texarkana, Arkansas, proposing the substitution of Channel 292C2 for Channel 292A, and modification of its permit to specify operation on the higher class channel.

2. Petitioner filed comments reaffirming its interest in applying for the channel, if allotted. CarePhil Communications ("CarePhil"), licensee of Station KKBI(FM), Channel 291C2, Broken Bow, Oklahoma, filed comments opposing the proposed substitution on the grounds that the Texarkana proposal would be short spaced to both the licensed KKBI(FM) facility and to CarePhil's application to downgrade its station to a Class C3 facility.¹ Petitioner filed a Motion to Dismiss and CarePhil filed an Opposition. CarePhil subsequently withdrew its opposition, stating that both parties have been able to reach a compromise so that improvements in both facilities are possible.² Accordingly, petitioner's proposal is uncontested.

3. We believe the public interest would be served by the substitution of Channel 292C2 for Channel 292A at Texarkana, since it could enable Station KUKB to increase its service area. Channel 292C2 can be allotted to Texarkana in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 16.5 kilometers (10.3 miles) southeast at petitioner's requested site.³ Pursuant to the provisions of

Section 1.420(g) of the Commission's Rules, we are herein modifying the permit of State Line Broadcasting for Station KUKB to specify operation on Channel 292C2 in lieu of Channel 292A at Texarkana, Arkansas.

4. Accordingly, pursuant to the authority found 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 March 2, 1992, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Texarkana, Arkansas	292C2

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the permit of State Line County Broadcasting for Station KUKB, Texarkana, Arkansas, IS MODIFIED to specify operation on Channel 292C2 in lieu of Channel 292A, subject to the following conditions:

- Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

CarePhil Communications
617 South Park Drive
Broken Bow, Oklahoma 74728
(BPH-890717IK)

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

8. For further information concerning this proceeding, contact Arthur Scrutchins, Mass Media Bureau, (202) 632-6302.

¹ Contrary to CarePhil's arguments, the proposed substitution at Texarkana is not short spaced to KKBI's presently authorized facilities. KKBI was originally licensed to operate on Channel 292A, and subsequently upgraded to Channel 291C2. An application is pending to downgrade KKBI from a Class C2 to a Class C3 station (BPH-890717IK). Petitioner's proposal is short spaced to this application and cannot be further site restricted to avoid this conflict. However, the site specified in KKBI's application is generally considered a mere site preference unless KKBI can

make a showing to the contrary. See *Andalusia, Alabama*, MM Docket No. 83-999, 49 FR 32201 (August 13, 1984). CarePhil will be served with a copy of this *Order* and will be permitted to amend its application to specify a non-conflicting site.

² State Line and CarePhil also filed a settlement agreement to resolve the conflict. However, we make no judgment as to the merits of the settlement agreement.

³ The coordinates for Channel 292C2 at Texarkana are North Latitude 33-18-05 and West Longitude 93-57-10.

FEDERAL COMMUNICATIONS COMMISSION

Beverly McKittrick
Assistant Chief
Policy and Rules Division
Mass Media Bureau