

**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)	)	

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: November 1, 2000**

**Released: November 9, 2000**

**Comment Date: January 2, 2001**

**Reply Date: January 17, 2001**

By the Chief, Allocations Branch

1. Before the Commission for consideration is a Petition for Rule Making filed by OARA, Inc. ("OARA"), proposing the reallocation of Channel 257C2 from Linden, Texas, to White Oak, Texas, and modification of its permit for Station KIXK(FM) to specify White Oak as the community of license. To accommodate its proposal for Station KIXK(FM), OARA also requests changes at Lufkin, Corrigan, Mount Enterprise and Pineland, Texas, and Zwolle, Louisiana. OARA stated its intention to apply for Channel 257C2 if it is reallocated to White Oak, as requested.

2. OARA filed its request pursuant to 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 ("Change of Community R&O") 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, OARA states that Channel 257C2 may be allotted to White Oak consistent with the Commission's separation requirements, placing a city-grade signal over the entire community of White Oak. Further, OARA states that the reallocation of Channel 257C2 to White Oak is mutually exclusive with the current use of Channel 257C2 at Linden (population 2,375), will provide a first local service at White Oak (population 5,136), and since the station has not yet been constructed, the reallocation will not cause the loss of an existing service at Linden, citing Jewett and Windham, New York, 14 FCC Rcd 21151 (1999), Genoa, Mt. Morris, and Oregon, Illinois, 14 FCC Rcd 10727 (1999), and Chatom and Grove Hill, Alabama, 12 FCC Rcd 7664 (1997). While OARA recognizes that retention of Station KIXK(FM) at Linden would trigger priority 3 as a first local service, it alleges that reallocation to White Oak should be preferred as it would result in a first local service under priority

3 to a community with a larger population. OARA states that it intends to use a new transmitter site for Channel 257C2 at White Oak and has provided a study showing a theoretical population gain of 236,159 persons with the loss area continuing to receive five or more services. OARA also states that White Oak is located in the Longview Urbanized Area and has provided a showing that White Oak is independent of the urbanized area.

3. OARA provided the following information to demonstrate that White Oak is independent of the Longview Urbanized Area pursuant to the criteria set forth in Faye and Richard Tuck (“Tuck”), 3 FCC Rcd 5374 (1988).<sup>1</sup> As to signal coverage, OARA states that the 70 dBu contour will cover all of the Longview Urbanized Area.

1) The extent to which community residents work in the larger metropolitan area rather than the specified community. OARA states that many residents of White Oak work in the community as twelve manufacturing plants are located in White Oak. The major employers located in White Oak each employ from 20 to 80 local residents. Some of the major employers in White Oak are Arco Oil & Gas Co., DCG Machine, Sisu North American, Cherokee Steel Fabricators, and O & D Manufacturing. The city of White Oak is also a major employer in providing municipal services to the community, and there are numerous retail and commercial establishments employing a larger number of residents. OARA contends that residents of White Oak have no need to travel to Longview to find employment.

2) Whether the smaller community has its own newspaper or other media that covers the community’s local needs and interests. OARA states that residents of White Oak are served by their own local newspaper published in White Oak, The White Oak Independent, which is published weekly with a circulation rate of 1,200 copies. White Oak is also served by the TCA Cable Television System. The city maintains its own webpage with a community calendar.

3) Whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area. According to OARA, White Oak was founded in 1884 when a dozen families settled at White Oak and constructed a school and church building. White Oak was incorporated in 1957 with a 1990 U. S. Census population of 5,136 people. OARA states that numerous businesses identify with the city of White Oak by including White Oak in their name: White Oak State Bank, White Oak Food, White Oak Video, White Oak Insurance and White Oak Flower & Gift Shop. OARA provided letters from Tim Vaughn, Mayor, and Carol Copeland, Director of Community and Economic Development for the City of White Oak, stating that city leaders and residents of White Oak perceive their city as an independent community separate from the City of Longview, Texas.

4) Whether the specified community has its own local government and elected officials. OARA states that White Oak is incorporated, adopted a Home Rule Charter in 1994, and has its own taxing authority. White Oak is

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<sup>1</sup> The independent factors set forth in Tuck are 1) the extent to which the community residents work in the larger metropolitan area rather than the specified community; 2) whether the smaller community has its own newspaper or other media that covers the community’s local needs and interests; 3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; 4) whether the specified community has its own local government and elected officials; and 5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; 6) whether the community has its own commercial establishments, health facilities, and transportation systems; 7) the extent to which the specified community and the central city are part of the same advertising market; and 8) the extent to which the specified community relies on the larger metropolitan area for various municipal services, such as police, fire protection, schools, and libraries.

governed by an elected Mayor and 5-member City Council. The Mayor and City Council hire a City Coordinator and department heads to implement the daily operations of the city. According to OARA, City Council meetings are held monthly in the White Oak City Hall.

5) Whether the smaller community has its own telephone book provided by the local telephone company or zip code. The City of White Oak is serviced by its own U.S. Post Office. The city also has its own zip code: 75693.

6) Whether the community has its own commercial establishments, health facilities and transportation systems. OARO provides the following information in response to this factor. White Oak has over eighty commercial establishments, some of which use White Oak in their name. The businesses are represented by the White Oak Chamber of Commerce, which has a full-time manager. The White Oak Economic Development Corporation promotes economic development for the community while Keep White Oak Beautiful is a local affiliate of Keep Texas Beautiful, promoting beautification projects for the community. White Oak has various medical facilities which include a chiropractic clinic, two mental health centers, and several dentists offices. The City Parks include baseball and softball fields, tennis courts and a city pool. Annual events in White Oak include the Roughneck Days Festival, Christmas parade and a community Christmas tree lighting ceremony. Civic organizations include Boy Scouts of America, Campfire Girls, Cub Scouts, White Oak Lions Club, White Oak Senior Citizens Club, and a Parent-Teachers Organization. There are twelve churches located in the community.

7) The extent to which the community and central city are part of the same advertising market. According to OARA, businesses in White Oak may advertise in the White Oak Independent Newspaper. This would enable them to directly reach the residents of White Oak.

8) The extent to which the specified community relies on the larger metropolitan area for various municipal services, such as police, fire protection, schools, and libraries. In response, OARA states that White Oak has its own fire department, the White Oak Fire Department, which was organized in 1962 and has two fire stations. The White Oak Police Department has 14 police officers. The city of White Oak has its own school district which serves 1,378 students in four schools. The city also has a City Secretary who handles the city's finances and payroll, city council meetings, city records, elections and assists with operation of the Municipal court. White Oak also has its own City Attorney, Municipal Court, Streets and Parks Department, Water Department, Maintenance Department and a Planing & Zoning Commission.

4. We believe that OARA's proposal warrants consideration since the allotment of Channel 257C2 at White Oak could provide the larger community with its first local aural service. While the reallocation would result in removal of the only potential local service at Linden, Texas, Station KIXK(FM) is an unbuilt facility, and the residents of that community will experience no loss of existing service if the proposal is adopted.<sup>2</sup> See Glencoe and LeSueur, Minnesota, 7 FCC Rcd 7651 (1992). We believe that OARA has provided sufficient information to show that White Oak is an independent community from the Longview Urbanized Area. As OARA is proposing to change the authorized

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<sup>2</sup> An application is pending for a new noncommercial FM station at white Oak, Texas (file no. BPED-961217ME), but the application is mutually exclusive with two other applications for new noncommercial FM stations at Jefferson, Texas (File No. BPED-960920ME) and Longview, Texas (File No. BPED-960724MG). 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.

transmitter site for Station KIXK(FM), it provided a gain and loss study. A staff engineering analysis confirms that there would be a gain and loss of service and that the loss area is served by at least five existing full-time services and that Channel 257C2 at White Oak will provide a 70 dBu signal to 100 percent of the Longview, Texas Urbanized Area.<sup>3</sup> However, OARA is requested to supplement its engineering exhibit indicating the number of people within the theoretical gain and loss areas. Channel 257C2 can be allotted to White Oak at OARA's proposed site in compliance with the Commission's spacing requirements provided additional channel substitutions are made.<sup>4</sup>

5. To accommodate the allotment at White Oak, OARA proposes the substitution of Channel 261C2 for Channel 257C2 at Lufkin, Texas, and modification of the license for Station KUEZ accordingly. The licensee for Station KUEZ has consented to the channel change and OARA 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 spacing requirements.<sup>5</sup> To accommodate the substitution at Lufkin, changes are also required at Corrigan, Texas and Mount Enterprise, Texas. OARA requests the substitution of Channel 257A for vacant Channel 261A at Corrigan, Texas.<sup>6</sup> A staff engineering analysis confirms that Channel 257A can be allotted to Corrigan at center city coordinates without a site restriction.<sup>7</sup> OARA further requests the reallocation of Channel 260A from Mount Enterprise, Texas to Zwolle, Louisiana, and modification of the construction permit for unbuilt Station KGRI to specify operation on Channel 260A at Zwolle, to accommodate the change at Lufkin, under Section 1.420(i) of the Commission's Rules. OARA contends that reallocation of Channel 260A to Zwolle (population 1,779 people) or retention of the channel in Mount Enterprise (population 501 people) both trigger priority 3), first local service, but reallocation of the channel to Zwolle would best serve the public interest as a first local transmission service would be provided to the larger community. While we recognize that the reallocation would result in removal of the only potential local service at Mount Enterprise, Station KGRI is an unbuilt facility, and the residents of that community will experience no loss of existing service if the proposal is adopted. However, since the transmitter site is changing, OARA is requested to provide information as to the number of people in the theoretical gain and loss area. Since OARA is the permittee for Station KGRI, Mount Enterprise, reimbursement is not an

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<sup>3</sup> OARO provided a showing demonstrating independence from the Longview Urbanized Area. See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995).

<sup>4</sup> The coordinates for Channel 257C2 at White Oak are 32-30-32 and 94-50-41.

<sup>5</sup> The coordinates for Channel 261C2 at Lufkin are 31-24-28 and 94-45-53.

<sup>6</sup> 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.

<sup>7</sup> The coordinates for Channel 257A at Corrigan are 30-59-47 and 94-49-36.

issue. OARO has made a commitment to file an application for Channel 260A at Zwolle. OARO has provided information showing that Zwolle is a community for allotment purposes and states that the community is not located in an urbanized area.<sup>8</sup> A staff engineering analysis confirms that Channel 260A can be allotted to Zwolle, Louisiana, in compliance with the Commission's spacing requirements at OARO's specified site.<sup>9</sup>

6. OARA requests the allotment of Channel 256A at Pineland, Texas, as that community's first local service. In support of an allotment at Pineland, OARA states that Pineland is located in Sabine County, founded in 1903, incorporated in 1941, and currently has a population of 882 people according to the 1990 U.S. Census. Pineland has its own government consisting of an elected mayor and three city council members. OARA points out that Pineland has police and fire departments, a City Park Manager, municipal airport, and its own post office and zip code (75968). Pineland has its own school system serving 700 students. OARO states that there are 11 churches in the community and approximately fifty businesses serving the local residents, as well as the Pineland Pharmacy, Pineland Health and Rehabilitation Center, laser surgery clinic and doctors' offices. OARA believes that Pineland is an established community deserving of a first local broadcast service. OARA stated its intention to file an application for Channel 256A if the channel is allotted to Pineland. A staff engineering analysis confirms that Channel 256A can be allotted to Pineland, Texas, as a first local service with a site restriction 11.5 kilometers (7.1 miles) south of the community.<sup>10</sup>

7. In view of the above, the Commission believes that it would serve the public interest to solicit comments on the proposal to reallocate Channel 257C2 to White Oak, Texas, and modify the license of Station KIXK(FM) accordingly, substitute Channel 261C2 for Channel 257C2 at Lufkin, Texas, substitute Channel 257A for Channel 261A at Corrigan, Texas, reallocate Channel 260A to Zwolle, Louisiana, and modify the license of Station KGRI, accordingly, and allot Channel 256A at Pineland, Texas. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to White Oak, Lufkin, Corrigan and Pineland, Texas and Zwolle, Louisiana, as follows:

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<sup>8</sup> OARA provides the following information supporting community status for Zwolle, Louisiana. OARA states that Zwolle was founded in 1896 and chartered in 1898. The community has an elected government, police department, city water and sanitation department and provides its residents with various municipal services. Zwolle has its own post office and zip code. The community has three schools, a local library, 13 churches and civic organizations including the Veterans of Foreign Wars, Boy Scouts, Cub Scouts and a 4-H Club. Zwolle is located adjacent to the North Toledo Bend State Park, which provides numerous recreational facilities for the residents. The largest employer in Zwolle is the Zwolle Rail Car Company which employs 147 people. Fifty-five businesses are located in Zwolle along with several medical facilities, a pharmacy, beauty salon, garden center, shoe repair shop, gas station, and three general merchandise stores.

<sup>9</sup> The coordinates for Channel 260A at Zwolle 31-37-53 and 93-38-39.

<sup>10</sup> The coordinates for Channel 256A at Pineland are 31-08-48 and 93-56-53.

Community	Channel No.	
	Present	Proposed
Linden, Texas	257C2	-----
White Oak, Texas	-----	257C2
Lufkin, Texas	230A,257C2, 286C	230A,261C2, 286C
Corrigan, Texas	261A	257A
Mount Enterprise, Texas	260A	-----
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:

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

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before January 2, 2000, and reply comments on or before January 17, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Ann Bavender  
 Fletcher, Heald & Hildreth, P.L.C.  
 1300 N. 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
 Arlington, Virginia 22209

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

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

## APPENDIX

1. Pursuant to 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 PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

Comments should be filed with the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by



interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 445 Twelfth Street, S.W., Washington, D. C.