

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

In Re:)
)
Amendment of Section 73.202(b)) MM Docket 98-_____
Table of FM Allotments)
(Healdton, OK and Pauls Valley, OK))

To: John Karousos
Chief, Allocations Branch

RECEIVED
APR 13 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION FOR RECONSIDERATION
AND "REQUEST FOR EXPEDITION"

Wright & Wright, licensee of KGOK (FM), Pauls Valley, OK, respectfully submits this Petition for Reconsideration of the letter decision, dated March 26, 1998,^{1/} which dismissed KGOK (FM)'s February 20, 1998 Petition for Rule Making.^{2/}

The dismissal of our client's Petition was based on the erroneous belief that Station KLAK (FM) had not commenced operations at its CP site and, in fact, had "the option of seeking cancellation of its construction permit and remaining at its licensed site." In fact, the tower at KLAK's "licensed" site was destroyed in a storm last year and, since late summer 1997, KLAK has been operating from its CP site.^{3/}

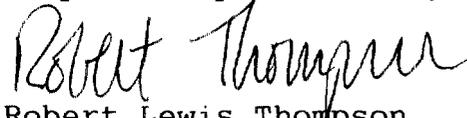
^{1/} See Attachment A.
^{2/} See Attachment B.
^{3/} See Attachment C.

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Accordingly, there is no "short-spacing" issue presented by our client's February 20, 1998 Petition, which now should be fully considered and expeditiously processed. ^{4/}

Respectfully submitted,



Robert Lewis Thompson
TAYLOR THIEMANN & AITKEN, L.C.
908 King Street, Suite 300
Alexandria, VA 22314
(703) 836-9400

April 13, 1998

cc: Wright & Wright, Inc. (KGOK-FM)
Lake Country Communications, Inc.

^{4/} The Petition is directly related to Healdton, OK and Krum, TX, MM Docket No. 98-659, NPRM released April 10, 1998, and therefore should be expedited.

Attachment A



Federal Communications Commission
Washington, D.C. 20554

MAIL ROOM 1998

Mr. Robert Lewis Thompson
Taylor Thiemann & Aitken, L.C.
908 King Street, Suite 300
Alexandria, VA 22314

Dear Mr. Thompson:

This is in response to the petition for rule making which you submitted on February 20, 1998, on behalf of Wright & Wright, Inc., licensee of Station KGOK(FM), Pauls Valley, Oklahoma. Wright and Wright request that Channel 249C3 be reallocated from Pauls Valley to Healdton, Oklahoma, and that its license for Station KGOK(FM) be modified to specify Healdton as its community of license.

An initial engineering review of the proposal shows that Channel 249C3 cannot be allotted to Healdton in compliance with the Commission's mileage separation requirements. Rather, the allotment would be short-spaced to the licensed transmitter site of Station KLAJ, Channel 248C2, Durant, Oklahoma. We recognize that the allotment of Channel 249C3 at Healdton would not be short-spaced to the transmitter site specified in Station KLAJ's outstanding construction permit (BPH-970129IC). However, we will not consider a petition for rule making which is short-spaced to a station's licensed transmitter site because the licensee has the option of seeking cancellation of its construction permit and remaining at its licensed site. See Cut and Shoot, Texas, 11 FCC Rcd 16383 (1996). Should Station KLAJ be licensed at the transmitter site specified in its construction permit, Wright and Wright may resubmit its request at that time.

Accordingly, the petition for rule making submitted on behalf of Wright and Wright to reallocate Channel 249C3 from Pauls Valley to Healdton, Oklahoma, is not acceptable for consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Karousos", written over a horizontal line.

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

Attachment B

FILE COPY

Attachment B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

RECEIVED
FEB 20 '98
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COMMISSION
OFFICE OF SECRETARY

In Re:)
)
Amendment of Section 73.202(b)) MM Docket 98-
Table of FM Allotments)
(Healdton, OK and Pauls Valley, OK)

To: John Karousos
Chief, Allocations Branch

PETITION FOR RULE MAKING

Pursuant to Sections 1.401, 1.420(g)(3) and 1.420(i)(1) of the Commission's rules, Wright & Wright, Inc. -- licensee of station KGOK (FM), Pauls Valley, OK -- respectfully submits this Petition for Rule Making to amend the FM Table of Allotments to reallocate channel 249C3 from Pauls Valley, OK to Healdton, OK and the modification of the license for KGOK (FM) accordingly, in order to provide a first local FM service for Healdton, OK.^{1/}

Upon a grant, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, would be amended as follows:

	<u>Present</u>	<u>Proposed</u>
Healdton, OK	229C2 ^{2/}	249C3
Pauls Valley, OK	249C3; 291A ^{3/} ; 283A ^{4/}	291A; 283A

^{1/} Concurrently with the filing of this Petition, the licensee of KICM (FM), Healdton, OK, is filing a Petition to reallocate its facility to Krum, TX, in order to provide that community with a first local service.

^{2/} See note 1, supra.

^{3/} See NPRM, Docket No. 97-84.

^{4/} See NPRM, Docket 97-84 (counterproposal).

The coordinates for this proposed allotment are 34-17-28 North and 98-29-23 West. The new site is approximately 50 kilometers from the currently authorized site. If this Petition is granted, a CP will be requested and the new facility at Healdton will be promptly built.

PRELIMINARY STATEMENT

The allocation reference point in this Petition complies with the minimum distance separation requirements set forth in Section 73.207 of the FCC's rules. See Technical Study, attached hereto as Appendix A (Table at page 3). The modification of license and change of community can be made in this proceeding since the modification will occur on a mutually exclusive co-channel. See 47 CFR 1.420(g)(3) and (i).

The requested change in allotments will not deprive Pauls Valley, OK, of its only local aural transmission service ^{5/} and, in any event, will result in a "net service benefit for the affected communities." See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870, 4874 (1989).

Discussion

I. HEALDTON, OK, IS A "COMMUNITY" FOR FCC ALLOTMENT PURPOSES

1. The Communications Act requires the FCC to allot all radio frequencies in a "fair" manner among the nation's various

^{5/} See notes 3 & 4, supra. Station KVLH (AM), 1470, is also licensed to Pauls Valley, OK.

"communities." See 47 USC 307(b). Accordingly, the FCC historically has endeavored to allot radio frequencies to any "community" -- regardless of size and whether or not incorporated ^{6/} -- that constitutes a "geographically identifiable population grouping." See FM Channel Policies/Procedures, 90 FCC 2d 88, 101 (1982).

2. Healdton is designated in the 1990 Census as a "city," with a 1990 population of approximately 2872 persons. It is located outside of any urbanized area. Because of its Census designation, that is sufficient for FCC purposes to demonstrate its status as a community. ^{7/}

II. THE PROPOSAL WILL RESULT IN A PREFERENTIAL ARRANGEMENT OF ALLOTMENTS

3. The proposal meets the FCC's allotment requirements. See Modification of Community of License, supra, 4 FCC Rcd at 4873. Under this proposal -- and assuming that the FCC grants a related proposal to reallocate station KICM (FM) from Healdton to Krum, TX ^{8/} -- the city of Healdton, OK, would receive a replacement "first local broadcast service," a factor of the highest priority in the FM allocation scheme. See Revision of FM Assignments, Policies and Procedures, 90 FCC 2d 88, 90-2 (1982). The

^{6/} See, e.g., Musical Heights, Inc., 29 FCC 1 (1960).

^{7/} Station KICM (FM) is currently licensed to the city of Healdton (although a Petition is being filed simultaneously herewith by the licensee of KICM (FM), seeking to reallocate its facility to Krum, TX, in order to provide a "first local service.")

^{8/} See note 1, supra.

The entire city of Healdton will receive city-grade service from the reference coordinates. See Appendix A at 4 (City-Grade Coverage Map).

4. Moreover, if KGOK (FM) is reallocated to Healdton, the city of Pauls Valley, OK, will continue to receive adequate local aural service. ^{2/} KGOK's Pauls Valley, OK, service area is already well served by five (5) or more aural reception services; for example, in the Pauls Valley "loss area," daytime service would still be provided by 5 or more aural reception services (even assuming there is no replacement service from either of the two proposed new FM stations) and nighttime service would be equivalent. See Appendix A at 5 & 6. ^{10/}

5. Finally, the loss of a C3 allotment for Pauls Valley, OK (and its corresponding replacement by one or two Class A allotments at Pauls Valley, OK) ^{11/} is outweighed by the overwhelming public benefits derived from providing a replacement "first" local service to Healdton, OK. See Modification of Community of License, supra, 4 FCC Rcd at 4874 ("a change in community of license that would result in a preferential arrangement of allotments should not [be] precluded because the licensee will no longer serve its original community of license").

^{2/} See note 5, supra.

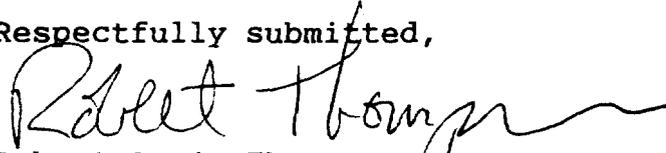
^{10/} Only a tiny area would receive less than five nighttime aural services. See Appendix A at 7 (Nighttime Area Loss Study). Moreover, that small area likely would be served by either or both of the proposed channel 291A/283A replacement services (from Pauls Valley, OK). See note 5, supra.

^{11/} See note 5, supra.

CONCLUSION

6. In view of the foregoing, the FCC should issue a Notice of Proposed Rulemaking, proposing the reallocation of channel 249C3 from Pauls Valley, OK, to Healdton, OK, and the modification of KGOK (FM)'s license to specify operation at Healdton, OK as a replacement "first local aural service."

Respectfully submitted,



Robert Lewis Thompson
TAYLOR THIEMANN & AITKEN, L.C.
908 King Street, Suite 300
Alexandria, VA 22314
(703) 836-9400

February 20, 1998

cc: Wright & Wright, Inc.
Lake Country Communications, Inc. (KICM-FM)

TECHNICAL NARRATIVE

This technical showing is prepared to support a request to change city of license of KGOK-FM from Pauls Valley, Oklahoma to Healdton, Oklahoma.

The proposed reference coordinates are:

34°17'28" North, 98°29'23" West.

This site is 50 kilometers from the current authorized site.

The Allocation Tabulations exhibit demonstrates that this site meets all spacings as required by §73.207 of the FCC Rules for existing Channel 249 Class C3. The City Coverage Map exhibit demonstrates that the entire city of Healdton, OK receives service from the reference coordinates at maximum facilities, as required by §73.315.

According to the 1990 US Census, Healdton is designated as a "city" and has a population of 2,872 persons in 1,420 households. The city is located outside any urbanized area. The proposed operation will provide service to 47,590 persons in 4,747 square kilometers.

In a separate proceeding, KICM-FM, licensed to Healdton is proposed to be moved to Krum, Texas. This proceeding seeks to replace the local service of KICM-FM for Healdton.

The replacement service for Pauls Valley has already been proposed in two rule-making proceedings. Tom Stamper proposes to add Channel 291A in Docket 97-84. Bowie-Nocona Broadcasting Co. Inc. proposes to add Channel 283A in a counter proposal. There is an existing AM station KVLH operating on 1470.

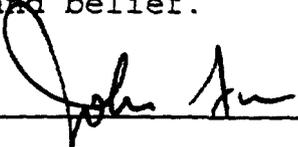
Because the replacement services proposed for Pauls Valley are Class A, a "white area" study of area lost is shown in the attached exhibits. Due to the complexity of the multiple lines, the presentation is made without base map information so the area affected can be clearly seen. Daytime there are more than 5 services covering the entire area lost. KVLH(AM) operates with 63 watts nighttime so therefore a separate nighttime service map is shown. All but a small area is served by 5 or more stations. A small area is shown with 4 stations serving. Since the proposed Class A is not yet granted, it would only be an assumption of its coverage. However, it is believed that the area with only 4 services would be served with the new replacement service in the nighttime period as the fifth service.

A site map is included in this petition to verify that the proposed reference coordinates meets the requirements for potential location for actual construction.

Because the area is well served, the replacement service is already in progress, and the proposed site meets FCC spacing and city coverage, this proposal is grantable.

My qualifications are a matter of record with the FCC. The above information and attached exhibits are true and correct according to my knowledge and belief.

January 9, 1998



John R. Furr

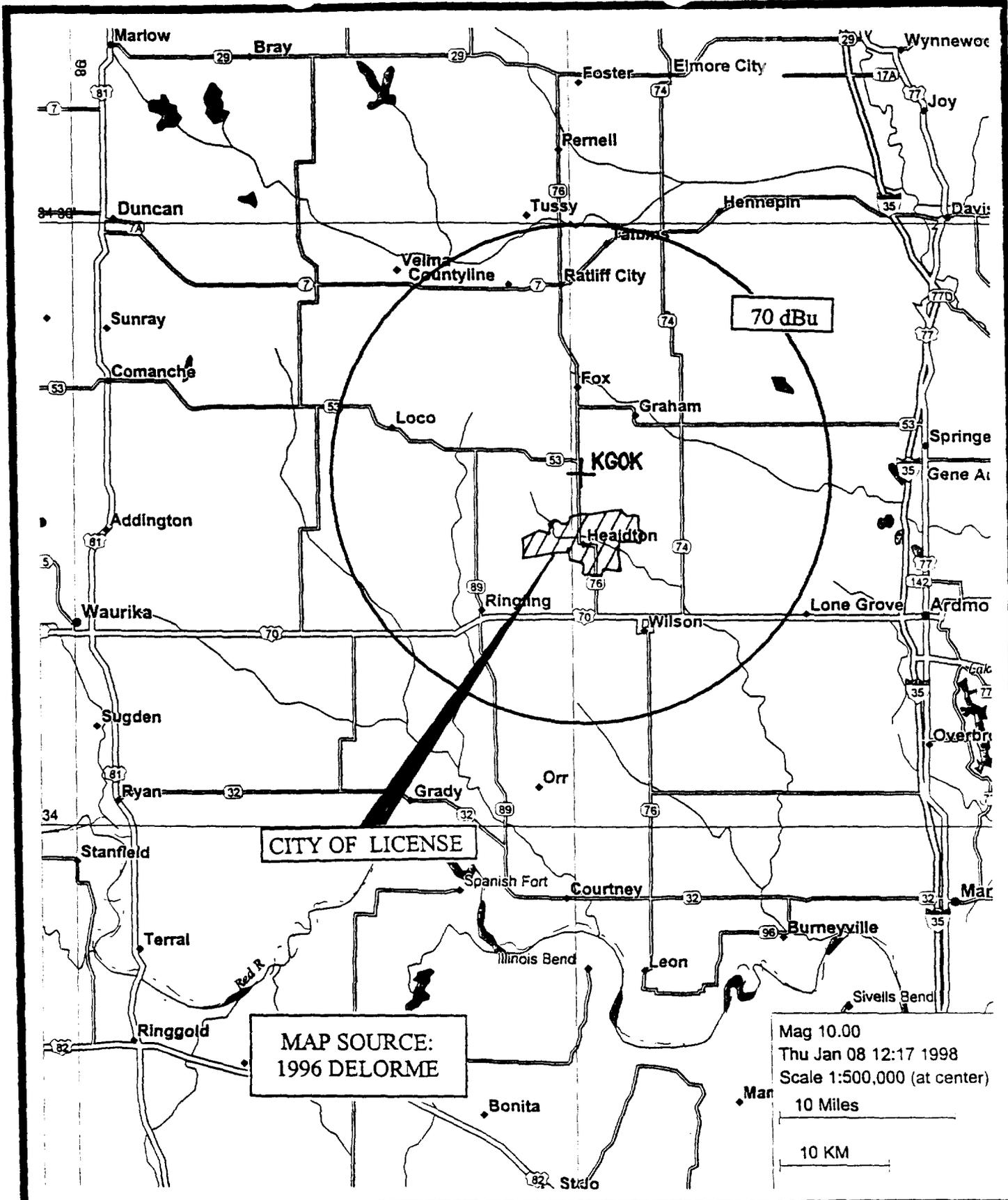
01-08-1998

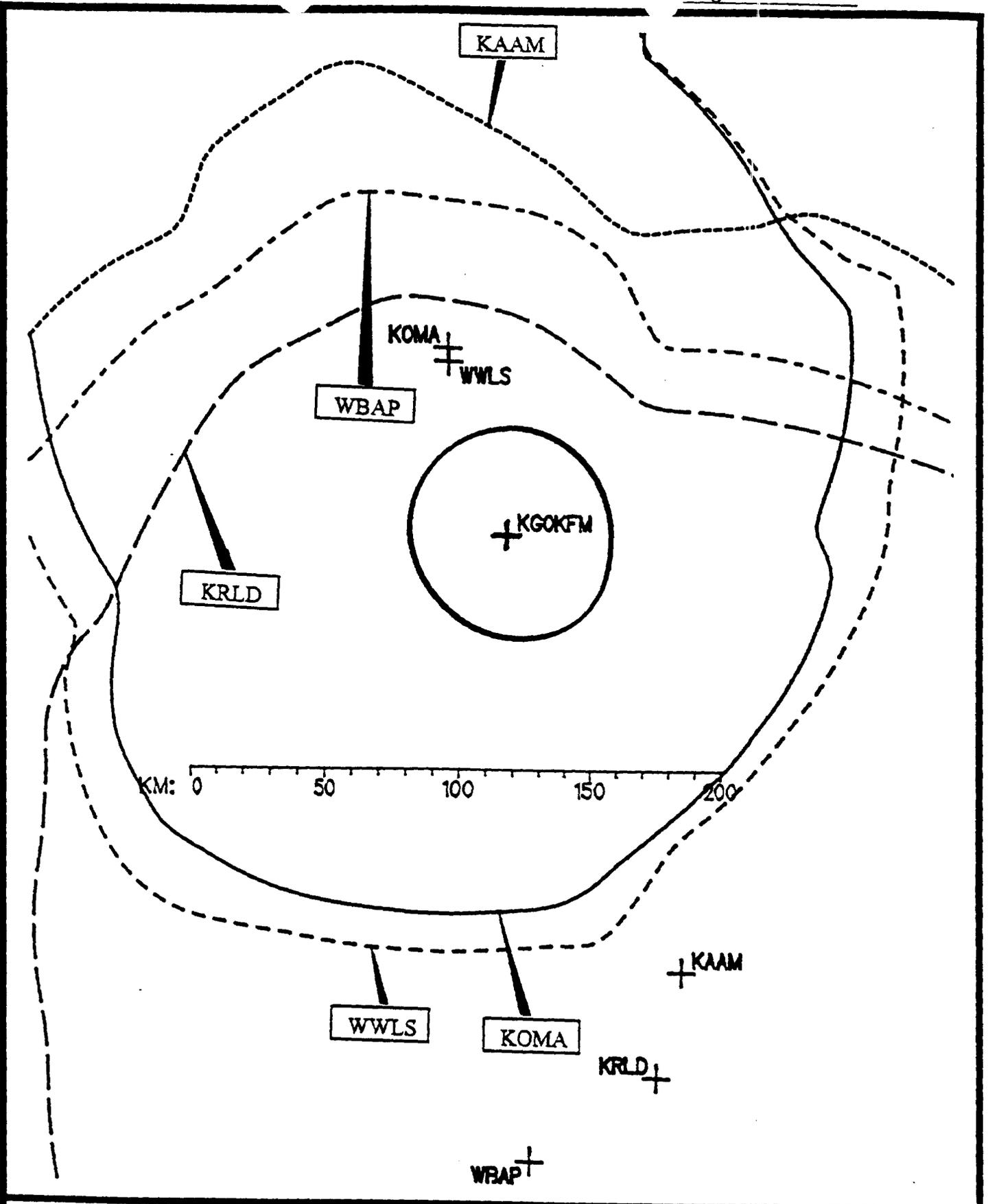
John Furr & Associates Inc.

FM Study for: KGOK	FCC Database Date: 1/98	34-17-28
Location: HEALDTON, OK	Channel Class: C3	97-29-23
Call City, State	Chan Class Freq kW Latitude Dist.	Required
Status Proponent	File Number HAAT Longitude Azm.	Clear (km)

>>>>>>> Study For Channel 249 97.7 MHz <<<<<<<<

KGOKFM PAULS VALLEY, OK	249 C3	97.7	16.0	34-42-14	50.3	155	
LIC WRIGHT AND WRIGHT, IN	BLH-960502KC	125		97-15-46	24.4	-102.7	SHORT
	Use of 73.215			for short spacing requires:	142	-91.7	SHORT
From Channel 249A per D93-247							
KLAK DURANT, OK	248 C2	97.5	45.	33-47-14	103.2	117	
LIC LAKE BROADCASTING, IN	BLH-870623KA	157		96-33-00	122.5	-13.8	SHORT
	Use of 73.215			for short spacing requires:	106	-2.8	SHORT
KDDQ COMANCHE, OK	246 A	97.1	3.0+	34-26-12	42.16	42	73.215
CP HAROLD E. COCHRAN	BPH-970709IB	92		97-54-47	292.6	+0.16	CLOSE
From Channel 244A per D96-10-Petition for Recon D96-10 filed 2-18-97							
Dismissed MO&O D96-10, 970815-AMENDED 971114							
KLAK DURANT, OK	248 C2	97.5	27.	33-41-31	117.32	117	
CP LAKE BROADCASTING, IN	BPH-970129IC	205		96-26-36	124.2	+0.32	CLOSE
KJMZ LAWTON, OK	251 C1	98.1	100.	34-35-27	86.0	76	
LIC SOVEREIGN BROADCASTIN	BLH-4928	61		98-21-10	293.0	+10.0	CLOSE
Horizontally polarized only							
KRZB ARCHER CITY, TX	248 C2	97.5		33-35-36	130.4	117	
ADD TEXAS GRACE COMMUNICA	Docket-97-225	0		98-37-31	233.9	+13.4	CLOSE
KBFB DALLAS, TX	250 C	97.9	99.	32-35-15	195.1	176	
LIC WHFS, INC.	BLH-910515KB	491		96-57-59	165.4	+19.1	CLEAR
KRZB OLNEY, TX	248 C2	97.5	50.0	33-22-08	154.2	117	
CP TEXAS GRACE COMMUNICA	BPH-960201MB	88		98-44-11	228.8	+37.2	CLEAR
KRZB OLNEY, TX	248 C2	97.5		33-22-06	155.7	117	
DEL TEXAS GRACE COMMUNICA	Docket-97-225	0		98-45-24	229.2	+38.7	CLEAR





Attachment C

SWORN STATEMENT

1. My name is Robert Thompson and I am counsel for the Petitioner in this matter.

2. Following my receipt and study of the Branch's March 26, 1998 letter with respect to our client's February 20, 1998 Petition for Rule Making, I spoke with the owner of Station KLAJ (FM). Mr. Bill Harrison told me that KLAJ (FM) was no longer operating from its previously licensed site because his tower at that site had been destroyed in an ice storm. He stated that KLAJ had been operating from the site specified in its CP (BPH-970129IC) since last summer. He was uncertain whether the FCC had ever been notified that he was operating from the new site.

3. When the lawyer for KLAJ, Mr. Scott Johnson, was informed of these facts about two weeks ago, he quickly determined that no Form 302-FM license application (to cover the CP) had been filed last year but that one would be expeditiously placed on file at the FCC. I agreed to delay the filing of our client's Petition for Reconsideration until the station's engineers could draft and file a Form 302-FM application for KLAJ's new site. When KLAJ had taken no action by April 3, 1998, I notified Mr. Johnson that our client would wait only one more week.

4. I was informed this date by Mr. Johnson that the station's engineers were uncertain as to when they would file the Form 302-FM for KLAJ. Nevertheless, understanding that KLAJ's inaction should not reasonably delay our client's rights to have its Petition for Rule Making fully considered by the FCC, Mr. Johnson graciously authorized me to represent to the FCC that his client's station, KLAJ (FM), has been operating at its CP site for many months, that it has no intention of returning to its previously licensed site and that a Form 302-FM application will be filed at the FCC in due course.

Executed under penalty of perjury this 10th day of April, 1998.



Robert Lewis Thompson