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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

OCT 10 2000

In the Matter of

Federal Communications Commission
Office of Secretary

Amendment of Section 73.202(b))	
Table of Allotments)	MM Docket No. 00-148
FM Broadcast Stations)	RM - 9939
(Quanah, Texas))	

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

COUNTERPROPOSAL

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SUMMARY

This Counterproposal is filed on behalf of First Broadcasting Company, L.P., the proposed assignee of KLAJ(FM), Keller, Texas; Next Media Licensing, Inc., the current licensee of KLAJ; Rawhide Radio, L.L.C., licensee of KVCQ, McQueeney, Texas; Capstar TX Limited Partnership, licensee of KZCD, Lawton, Oklahoma and KWTX, Waco, Texas; and Clear Channel Broadcasting Licenses, Inc., licensee of KAJA, San Antonio, Texas and KHFI, Georgetown, Texas. This Counterproposal offers a first local service to five new communities, a net population gain of approximately 4,369,991 persons¹ in an area of 2,927 square kilometers, and the elimination of several pre-existing short spacings. Various other stations will be required to change channel and/or transmitter site. All but two of the affected stations have provided statements consenting to the changes. With respect to the remaining two stations, Orders to Show Cause may be issued in compliance with Commission rules and policies.

All changes comply with the Commission's spacing rules and its policies with regard to change in community of license. The new arrangement of allotments is preferable to the status quo, particularly when all of the benefits of the proposal are taken together.

The Counterproposal conflicts with the Commission's Notice of Proposed Rule Making proposing to allot Channel 233C3 to Quanah, Texas. However, the Counterproposal offers an alternative Channel 255C3, which can be allotted to Quanah in place of Channel 233C3. Therefore, both proposals can be granted. Nevertheless, on the basis of the Commission's allotment priorities, the Counterproposal would be preferred over the Quanah proposal.

Although the Counterproposal involves changes to a number of stations, the proponents are confident that it can be granted and implemented smoothly due to extensive preparatory work.

1. All population figures are based on 1990 U.S. Census data, unless otherwise stated.

Accordingly, for the reasons set forth herein, the proponents urge the Commission to accept this Counterproposal for public comment.

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COUNTERPROPOSAL

Next Media Licensing, Inc. (“NMLI”), licensee of Station KLAQ(FM), Durant, Oklahoma; First Broadcasting Company, L.P., (“FBC”),² Capstar TX Limited Partnership (“Capstar”), Clear Channel Broadcast Licenses, Inc. (“Clear Channel”), and Rawhide Radio, L.L.C. (“Rawhide”) (together, “Joint Parties”), jointly by their respective counsel, hereby submit this Counterproposal to the Notice of Proposed Rule Making (“NPRM”), DA 00-1905, released August 18, 2000, in the above-captioned proceeding. The Joint Parties propose the reallocation of existing channels to five new communities as first local services. In order to accomplish these allotments, the following changes to the FM Table of Allotments are requested (listed alphabetically):

2. FBC is the holder of an option to purchase KLAQ.

Community

Channels

	<u>Present</u>	<u>Proposed</u>
Ardmore, Oklahoma	239C1	-----
Durant, Oklahoma	248C2	-----
Elk City, Oklahoma	232C3	233C3
Healdton, Oklahoma	249C3	239C1
Lawton, Oklahoma	231C2	232C2
Purcell, Oklahoma	-----	249A
Archer City, Texas	248C1	230C1
Converse, Texas	-----	249C1
Flatonina, Texas	-----	232A
Georgetown, Texas	244C1	-----
Ingram, Texas	243A	256A
Keller, Texas	-----	248C
Knox City, Texas	297A	257A
Lakeway, Texas	-----	247C1
Lago Vista, Texas	-----	243C2
Llano, Texas	242A	297A
McQueeney, Texas	249C1	-----
Nolanville, Texas	297A	249A
San Antonio, Texas	247C	245C1
Seymour, Texas	230C2, 222C2	222C2, 298C2
Waco, Texas	248C	-----
Wellington, Texas	298C3	296C3

I. PRELIMINARY MATTERS

1. Agreements have been entered into with all of the stations that are required to make changes except KRZB, Archer City, Texas and KLFX, Nolanville, Texas. Each of the other licensees has provided a statement of consent to the proposed changes. Rawhide hereby states that it will reimburse the licensees of KBAE, Llano, Texas and KLFX, Nolanville, Texas for the changes required to be made to their facilities. FBC hereby states that as the beneficiary of the proposed

changes to KLAJ it will reimburse all other stations (including KRZB, Archer City, Texas) which are required to make changes to their facilities.³

2. The Joint Parties recognize that there is a relatively large number of changes (13 stations) that must take place to effectuate this Counterproposal. FBC wishes to assure the Commission that due to its prior experience in having achieved a similar number of station changes in a relatively quick manner, see, MM Docket 96-10 (Flower Mound, Texas, et. al.) 12 FCC Rcd 4099 (1997) and due to the extensive preparatory work in which it has been engaged, resulting in channel change agreements with all but one of the affected stations, FBC expects that the implementation process will proceed smoothly.⁴ In addition, FBC states that it is financially qualified to reimburse all affected stations. Pursuant to Section 1.420(j), the Joint Parties hereby state that they have not paid nor promised to pay, in any of their agreements, any licensee or permittee for withdrawing an expression of interest, dismissing an application or forbearing to file an expression of interest.

3. The Commission has stated that it will not require more than two stations to change channels involuntarily. Columbus, Nebraska, 59 RR 2d 1185 (1986). Here, all stations which are to make changes have provided consent statements except Station KRZB, Archer City, Texas and Station KLFX, Nolanville, Texas. Thus, this proposal complies with the Commission's Columbus, Nebraska policy. See also, Castle Rock, Colorado, et al. 8 FCC Rcd 4475 (1993); Farmersville, Texas, 12 FCC Rcd 4099 (1997); recons. dismissed, 12 FCC Rcd 12056 (1997).

3. FBC and Rawhide are the ultimate beneficiaries of the channel changes proposed herein and are the parties responsible for all reimbursements.

4. In the case of KRZB, FBC has had extensive discussions with the licensee of Station KRZB concerning the proposed channel change and although KRZB did not want to submit a consent statement, FBC believes that KRZB will cooperate in changing channels.

4. As a final preliminary matter, the Joint Parties hereby state that should the Commission amend the table of allotments as requested herein, one of the Joint Parties, as the licensee, will file an application to implement each change and construct the facility expeditiously.

II. CONFLICT WITH THE NPRM

5. The NPRM proposed the allotment of Channel 233C3 to Quanah, Texas as its third local service. Quanah currently has Stations KVDL(AM) and KIXC(FM). The instant Counterproposal is in conflict with the Quanah proposal due to the proposed substitution of Channel 233C3 for Channel 232C3 at Elk City, Oklahoma. See Figure 18 of the Engineering Statement.

6. Under the Commission's allotment criteria as set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982), the instant counterproposal is preferred over the Quanah proposal. The instant Counterproposal will provide five first local services to Keller, Texas (1990 U.S. Census pop. 13,683); Purcell, Oklahoma (pop. 4,784); Lakeway, Texas (pop. 4,044); Lago Vista, Texas (pop. 2,199) and Converse, Texas (pop. 8,887). In addition, it will provide an overall net gain in area and population to 2,927 sq. km. and 4,369,991 persons within the respective 60 dBu contours. See Engineering Statement at Figure 62.

7. On the other hand, the Quanah petition will provide a third local service to a single community of 3,413 persons (1990 U.S. Census). Pursuant to the Commission's allotment priorities, the fact that five communities, four of which are substantially larger than Quanah, would receive a first local service clearly favors the Counterproposal. See e.g., Rose Hill, Trenton, Aurora and Ocracoke, North Carolina, 11 FCC Rcd 21223 (1996); Athens and Atlanta, Illinois 11 FCC Rcd 3445 (1996); and Blanchard, Louisiana and Stephens, Arkansas 8 FCC Rcd 7083 (1993).

8. Nevertheless, the Joint Parties have determined that Channel 255C3 can be allotted to Quanah, Texas instead, to satisfy the expression of interest submitted by the original petitioner

in this proceeding. In view of the fact that there is an alternate channel available to Quanah to eliminate the conflict here, and assuming no other counterproposals are filed, the Commission's usual strict compliance standard for counterproposals should not apply in this case.

III. COMPLIANCE WITH THE COMMISSION'S TECHNICAL RULES

A. Station KLAQ, Keller, Texas

1. Technical Studies

9. As indicated in the attached channel study Exhibit E, Figures 1 and 2, Channel 248C can be allotted to Keller, Texas at coordinates 33° 26' 13" North Latitude, 97° 29' 05" West Longitude in compliance with the Commission's spacing rules provided channel changes are made as follows:

- Channel 230C1 is substituted for Channel 248C1 at Archer City for Station KRZB;
- Channel 249A is allotted to Purcell, Oklahoma and Channel 249C3 is deleted at Healdton, Oklahoma for Station KGOK-FM;
- Channel 247C1 is allotted to Lakeway, Texas and Channel 248C is deleted at Waco, Texas for Station KWTX.

2. Change in Community of License

10. In Amendment of the Commission's Rules regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License") 4 FCC Rcd 4870 (1989), recons. granted in part, 5 FCC Rcd 7094 (1990), the Commission stated that in order to grant a change in community of license: (1) the proposed channel must be mutually exclusive with its current use; (2) the existing community of license must retain local service; and (3) the proposed arrangement of allotments should be preferred over the existing arrangement under the Commission's allotment priorities.

11. Here, the attached channel study, Figure 1, demonstrates that the proposed allotment of Channel 248C at Keller is mutually exclusive with the current use of Channel 248C2 at Durant, Oklahoma. Durant will retain existing service from stations KAYC(FM), KSEO(AM), KLBC(FM) and KSSU(FM). The new community, Keller (pop. 13,683) will obtain a first local service (priority 3) while Durant (pop. 12,823) will continue to have four local services (priority 4). See Revision of FM Assignment Policies and Procedures, supra.

12. In Community of License supra at 7096, the Commission also stated that it was concerned with the potential migration of stations from underserved rural areas to well-served urban areas. In making the determination whether to award an urbanized community a first local service preference, the Commission indicated it would be guided by the criteria set forth in Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). The Tuck case considers (1) the size and proximity of the central city to the proposed community of license; (2) the signal population coverage; and (3) the independence of the proposed community from the central city. Keller is located at the outer border of the Dallas-Ft. Worth Urbanized Area in Tarrant County approximately 35 miles from Dallas and 18 miles from Ft. Worth. The 70 dBu contour of the proposed facility will cover less than 5% of the Dallas-Ft. Worth Urbanized Area but will provide a 70 dBu signal to more than 50% of the much smaller Denton and Lewisville Urbanized Areas. Keller is located approximately 20 miles from Denton and 15 miles from Lewisville. In considering whether KLAK is migrating from a rural area, the Commission should consider the fact that KLAK currently provides a 70 dBu signal to the entire Sherman-Denison, Texas Urbanized Area.

13. Keller's population is 3.1% of that of Ft. Worth, 1.4% of Dallas, 20.6% of Denton, and 29.4% of Lewisville. See Ada, Newcastle and Watonga, Oklahoma 11 FCC Rcd 16896 (1996) (new city is 0.9% of the population of the central city); Scotland Neck and Pinetops, North Carolina,

10 FCC Rcd 11066 (1995) (3.1% of the central city). In any event, the Commission has repeatedly stated that these factors are less important than evidence of independence. See e.g., Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995).

14. Finally, as shown in Figure 5 of the Engineering Statement, the change in site location and upgrade in class for KLAK will result in a net gain in population to 2,774,468 persons and in coverage area to 17,938 sq. km. within the respective 60 dBu contours. The present coverage area will continue to receive at least five aural services. See Figures 6 and 7.

15. The Commission will consider eight factors in assessing the independence of a specified community: (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; (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. Faye and Richard Tuck, 3 FCC Rcd 5374, 5378 (1988). All eight factors need not favor the applicant; however, if a majority of the factors demonstrate that the specified community is distinct from the urbanized area, the Commission will treat it as an independent community. Id.; Parker and Port St. Joe, Florida, 11 FCC Rcd 1095, ¶¶ 9-11 (1996) (finding that the proposed community was independent, although it

lacked its own telephone directory and local newspaper, and was included in the urbanized area's market by Arbitron); accord Jupiter and Hobe Sound, Florida, 12 FCC Rcd 3570, ¶ 3 (1997) (citing Parker and Port St. Joe, Florida).

16. In this case the evidence presented, evaluated in light of Commission precedent in other change of community allocation proceedings, abundantly supports a finding that Keller is independent from Dallas-Ft. Worth, Denton and Lewisville:

(1) *Extent to Which the Residents of Keller Work in the City of Keller.* The population of Keller in 1990 was 13,683. According to the 1990 U.S. Census Database, 917 of the 7182 workers (13%) 16 years of age and older in Keller in 1990 worked in their place of residence. Of course, this information is no longer current, as the population of Keller has almost doubled since 1990 but there is no updated workforce estimates for Keller. According to the Keller Public Works Department, the official population of Keller as a January 1, 1998 was 22,475. The 1999 estimated population of Keller is 24,805. Some of the major employers within the City of Keller are the Keller Independent School District, DDMS (a software manufacturer), Entech (a manufacturer of solar instruments), and Envirotech (which makes freon recovery units). According to the City, its top 7 employers alone employ over 2,000 people. See Exhibit 2. See Coolidge & Gilbert, Arizona 11 FCC Rcd 3610 (1996) (13%).

(2) *Newspapers and Other Media.* Residents of Keller are served by a local weekly newspaper, the *Keller Citizen*, which has a total circulation of 16,800 (9,500 within Keller). See Exhibit 2. The *Keller Citizen* contains local news articles on topics such as local politics, local high school sports, and local construction projects. On the front page of each edition is a column titled "Community Notebook," which lists upcoming community activities. The *Keller Citizen* also contains numerous advertisements from Keller businesses. In addition, the City maintains its own

webpage at <www.cityofkeller.com>. By accessing this webpage, city residents can become aware of a wide variety of facts and events concerning Keller, including information regarding city officials, public services, city development, city job opportunities and community events. Sample pages from the website are attached as Exhibit 2.

(3) *Community Leaders and Residents Perceive Themselves as Separate From Dallas-Ft. Worth.* The City of Keller has its own unique identity and history that is separate from that of Dallas-Ft. Worth. Located 35 miles northwest of Dallas and 18 miles north of Fort Worth in northeast Tarrant County, Keller encompasses 19 square miles. As noted above, the population of Keller has increased significantly over the past decade. It began in 1881 as a village along the railroad that ran between Fort Worth and Texarkana, and began to prosper as a trade center for the surrounding farm community. Its first post office was established in 1886. That same year, religious services were held by the Baptist Church, the Presbyterian Church, and the Methodist Church. By 1898 property was purchased for the local school, where the Keller Elementary School now stands. Keller was incorporated on February 20, 1958. *See Exhibit 2.*

(4) *Keller Has Its Own Local Government and Elected Officials.* Keller's City government functions independently of any other governmental units. It has a Council-Manager form of government run by an elected Mayor and a 5-member elected City Council, each of whom is elected for 2-year terms. There are approximately 180 City employees, including employees of the following departments: City Hall; Building Inspections and Permits; Community Development; Economic Development; Finance, Purchasing and Customer Services; Human Resources; Police Department; Fire Department; Municipal Court; Parks & Recreation; and Public Works. The City of Keller has a \$23.5 million total budget for fiscal year 1999.

(5) *The City of Keller Has its Own Zip Codes and Separate Government Listings in the Telephone Directory.* The zip codes designated exclusively for the City of Keller are 76244 and 76248. *See Exhibit 2.* The U.S. Postal Service operates a Post Office at 400 E. Vine Street in Keller to serve the City. Telephone listings for the City of Keller are found in the Grapevine/Southlake/Colleyville/Keller telephone book published by GTE, which contains a separate section for Keller city government telephone listings. *See Exhibit 2.*

(6) *Keller Has Numerous Commercial Establishments and Its Own Health Facilities.* There are numerous businesses located within Keller. *See Exhibit 2.* A substantial number of these businesses identify with the community by using “Keller” in their name, for example: Keller Auto Repair; Keller Auto Supply; Keller Donuts; Keller Family Medical Center; Keller Feed Store; Keller Fence Co. & Supplies; Keller Florist & Gift Shop; Keller Kar Kare; Keller Office Supply; Book Exchange of Keller; Keller Medical Clinic; Keller Pharmacy; Keller Practice Tee; Keller Printing & Graphics; Keller State Bank; Keller Trophy & Awards; Keller Welding Service; Keller Family Dentistry; and Keller Animal Clinic. *See Exhibit 2.* There is also a Greater Keller Chamber of Commerce, which publishes a Community Book & Buyer’s Guide containing advertisements and listings of businesses in Keller. Although the Chamber does have members who are located outside the city limits of Keller, its focus is clearly on the city of Keller as demonstrated by the fact that 24 of 28 of the Chamber’s officers and directors are from businesses located within Keller.

A number of health care providers are located in the City of Keller. *See Exhibit 2.* Medical services are available for community residents from many local doctors, some of whom practice with the following groups: Keller Family Medical Center, Keller Medical Clinic, and North Hills Family Practice. Dental care is provided by Keller Dental Clinic, Keller Family Dentistry and

Keller Dental Care, as well as by various other local dentists. Veterinary services may be obtained from Keller Town Center Animal Hospital, Alta Vista Animal Hospital and Keller Animal Clinic.

A full range of parks and recreation services are available to the residents of Keller, including Bear Creek Park (picnic facilities and pavilion, fishing, hockey, volleyball, basketball, soccer, playground and trails), Johnson Road Park (playground, amphitheater, Senior Center, basketball, volleyball, trail loop, two pavilions), Keller Sports Park (seven soccer fields, lighted baseball four-plex, one mile trail loop, volleyball, pavilion, playground, handicapped exercise area, fishing and ten picnic stations), Bursey Ranch Park (scheduled to be completed this summer with playground, swings, basketball, and picnic tables/grills) and Big Bear Creek Greenbelt (three mile hike and bike trail). Children in Keller can participate in the Keller Soccer Association and the Keller Youth Association (for football, baseball, softball, basketball and cheerleading). The Keller Parks & Recreation Department offers a variety of classes and activities to fit different lifestyles, including Tumbling for Tots, Horsemanship, Dog Obedience, Spanish for Beginners, Tae Kwon Do, CPR and First Aid, Parenting, and Home Decor classes. In addition, many sports programs are offered through the Parks & Recreation Department, such as tennis, hockey, flag football, volleyball, fishing and summer camp. *See Exhibit 2.*

Community activities in the City of Keller include Fishing Derbies, annual Easter Egg Scramble, Keller TREEmendous Bloomin' Trails Celebration, City Wide Clean-Ups, The Keller Games, the annual Harvest Stew, annual Keller Kountry Rally (benefitting the library), Wild Wild West Fest, Keller Holly Days in the Park, annual Spooky Kooky Keller Kastle at Halloween, annual Haunted Trails, and annual Jingle Bell Walk.

Keller is also home to a number of religious organizations, such as New Hope Lutheran Church, Keller Church of Christ, Calvary Pentecostal Church, Amazing Grace Fellowship,

First United Methodist Church, First Baptist Church of Keller, Bear Creek Bible Church, and many others. *See Exhibit 2.* There are many civic organizations in Keller, including the Keller Lions Club, Cub Scouts, Boy Scouts, Girl Scouts, Masonic Lodge, Indianette Service Organization, Keller Youth Association, Rotary Club, and Keller Garden Club.

(7) *Extent to which the community and the central city are part of the same advertising market.* Businesses in Keller may advertise in the *Keller Citizen*, which enable them to reach the residents of Keller and do not involve Dallas-Ft. Worth media sources. According to staff at the *Keller Citizen*, it is primarily businesses within Keller that advertise in the newspaper. Residents may also access the City's webpage to learn about community news and events. Thus, the residents of Keller do not need to travel to Dallas-Ft. Worth, Denton or Lewisville or seek out other media sources in order to find out what is happening in their community.

(8) *Keller Has Its Own Library, and its Police and Fire Protection are Provided Independent of any other jurisdiction.* Reading materials are made available to the community by the Keller Library, which has approximately 48,000 volumes. The Library offers children's programs, such as Preschool Storytimes, Toddler Time, and summer reading programs. It maintains its own webpage at <www.kellerlib.org>. Library cards can be obtained with a picture ID and proof of residence.

The City's own school district, the Keller Independent School District, consists of fifteen schools with a total enrollment of 14,791 students and employs 275 teachers. The total number of employees of the Keller I.S.D. is approximately 1500. There are also 2 private/parochial schools in Keller.

The City provides many municipal services to its residents. The Keller Police Department has 29 full time officers. The Keller Fire Department was founded in the 1940s; it

currently has a staff of 30 professional line firefighters providing both fire and EMS services. It also employs three administrative personnel and has a fleet of seven fire department vehicles. Water and sewer services are provided to residents by the City of Keller. The City contracts for bi-weekly solid waste disposal for residential customers and for weekly disposal for commercial customers. The City also has a recycling program, and bins are available at the Keller Water Administration Department. *See Exhibit 2.*

B. Station KRZB, Archer City, Texas

17. In order to allot Channel 248C to Keller, Channel 248C1 must be deleted from Archer City, Texas. The Joint Parties propose to substitute Channel 230C1 which meets the spacing requirements at the reference point specified in MM Docket 99-23, DA 99-2698, released December 3, 1999, 14 FCC Rcd 21169 (1999) *See Figure 8.* In order to substitute Channel 230C1 at Archer City at the Class C1 reference point it will be necessary to substitute channels and/or change transmitter sites at Seymour, Texas, Lawton, Oklahoma and Healdton, Oklahoma. *See Exhibit E, Figure 8.*^{5 6} These changes will be discussed herein.

-
5. The Channel Study, Figure 8, lists the application of Station KICM(FM), Krum, Texas for a one-step upgrade to Class C1, which is short spaced. This application was filed contingent on another station relocating its site. The Joint Parties expect that the Class C1 application will be dismissed shortly. The Joint Parties hereby state that there is no agreement between the parties to withdraw the application and no consideration is to be paid for the withdrawal.
 6. The Channel Study, Figure 8, also indicates that a pending proposal for Channel 230C3 at Windthorst, Texas is in conflict with the proposed Channel 230C1 substitution at Archer City. The Windthorst proposal was dismissed by Commission letter of May 24, 2000, due to a short spacing to Channel 230C3 (which should be C2) at Seymour, Texas for Station KSEY and a pending application for Channel 230C2 (BPH-20000406ABD). Although the Joint Parties propose to substitute Channel 222C2 at Seymour, this alternate channel does not enable the Windthorst proposal to become acceptable because that petitioner has not obtained the consent of or offered to reimburse for the channel and site changes necessary for KSEY. If the Windthorst petition is reinstated and accepted as a counterproposal in this
(continued...)

18. Should the Commission decide to substitute Channel 230C1 for 248C1 at Archer City, Texas, the Joint Parties again state that it will reimburse the KRZB permittee for the reasonable costs involved in changing its channel in accordance with Circleville, Ohio. In addition, the Joint Parties urge the Commission to issue an Order to Show Cause to Station KRZB in order to enable this proposed channel substitution to be effectuated.

C. Station KSEY, Seymour, Texas

19. In order to substitute Channel 230C1 for Channel 248C1 at Archer City, Texas, Channel 222C2 must be substituted for Channel 230C2 at Seymour, Texas at a new site. Station KSEY currently operates on Channel 232A and obtained an upgrade in class to Channel 230C2 in MM Docket 86-478. The licensee has an application pending for Channel 230C2 at Seymour (BPH-20000406ABD). The attached Channel Study demonstrates that Channel 222C2 can be allotted to Seymour, Texas in compliance with the Commission's spacing rules, provided an additional substitution is made at Seymour and substitutions are made at Knox City and Wellington as described below. See Figures 9 and 10.

20. The licensee of KSEY, Mark Aulabaugh, has provided a statement of consent to the channel change and the change in site coordinates for Channel 222C2. See Exhibit 1. FBC has entered into a reimbursement agreement with the KSEY licensee and hereby states that it will reimburse KSEY for its reasonable expenses in changing channel and its transmitter site.

21. The substitution of Channel 222C2 at Seymour at a new reference site will result in a net loss in population of 2,160 persons and 21 sq. km. within the 60 dBu contour. See Figure 11.

6. (...continued)
proceeding, the Joint Parties will file reply comments to such Public Notice and discuss the relative merits of the respective proposals at that time.

22. In order to substitute Channel 222C2 at Seymour, three additional substitutions must be made to vacant channel allotments. Channel 222C2 is already allotted to Seymour, but is currently vacant. Channel 298C2 can be substituted at the Channel 222C2 reference coordinates, provided that Channel 257A is substituted for the vacant Channel 297A allotment at Knox City, Texas, and Channel 296C3 is substituted for the vacant Channel 298C3 allotment at Wellington, Texas. See Figures 12, 13, and 14.

D. Station KZCD, Lawton, Oklahoma

23. In order to substitute Channel 230C1 at Archer City, the substitution of Channel 232C2 for Channel 231C2 at Lawton, Oklahoma for Station KZCD must be made. The Engineering Statement at Figure 15 shows that using a new reference point, Channel 232C2 may be substituted at Lawton for KZCD consistent with the Commission's distance separation rules provided channel substitutions are made at Seymour, Texas, as discussed earlier and at Elk City, Oklahoma, as will be discussed. Capstar, one of the Joint Parties, is the licensee of KZCD. Capstar hereby states that it will file an application for the new channel at a new transmitter site, if necessary, in compliance with the Commission's spacing rules, if the changes are approved.

24. At the new reference point, there will be a net gain in population of 21,814 persons and sq. km. of 2,404. See Figure 17.

E. Station KXOO, Elk City, Oklahoma

25. In order to substitute Channel 232C2 at Lawton, Channel 233C3 must be substituted for Channel 232C3 at Elk City, Oklahoma for Station KXOO(FM). The attached channel study, Figure 18, demonstrates that Channel 233C3 can be used at Elk City at the KXOO license site without any other changes to its existing stations or allotments. The channel study also indicates that Channel 233C3 at Elk City conflicts with the petition to allot Channel 233C3 to Quanah, Texas.

Station KXOO has provided a statement of consent. See Exhibit 1. FBC has entered into a reimbursement agreement with the licensee and hereby states that it will reimburse KXOO for the reasonable costs of its channel change.

F. Station KGOK(FM), Healdton/Purcell, Oklahoma

26. In order to allot Channel 248C to Keller, Channel 249A must be substituted for Channel 249C3 and the community of license of Station KGOK changed from Healdton to Purcell, Oklahoma. Channel 249A can be allotted to Purcell consistent with the Commission's spacing requirements. See Figures 20 and 21. The channel study demonstrates that Channel 249A is mutually exclusive with the current allotment of Channel 249C3 at Healdton. Under the Commission's FM allotment priorities a first local service to Purcell (population 4,784) should be preferred over retaining the channel at Healdton in view of the fact that the Joint Parties are offering a replacement service for Healdton as will be discussed herein. In view of the replacement station, Healdton will not lose its current service. The Joint Parties note that Station KGOK has not yet effectuated the change in the community of license to Healdton.

27. By way of background, in MM Dockets 98-50 and 98-75, 14 FCC Rcd 3932 (1999) the Commission reallocated Channel 249C3 (Station KGOK) from Pauls Valley, Oklahoma to Healdton, Oklahoma as a replacement service for the removal of KICM from Healdton to Krum, Texas. KICM obtained a permit for Class C2 status at Krum but has not yet constructed. KICM subsequently filed an application for a one step upgrade to Class C1 in which it admitted the application was contingent on another station's relocation.

28. The Joint Parties are also proposing to replace KGOK when it moves from Healdton with Station KKAJ(FM), Ardmore, Oklahoma. The Ardmore station currently provides the requisite 70 dBu signal to all Healdton and therefore can begin providing service immediately after the rule

making is approved. The Ardmore/Healdton proposal will be discussed further herein. AM & PM Broadcasting, LLC (“AM & PM”), the licensee of KICM and KGOK, has provided a consent statement for the relocation of Station KGOK from Healdton to Purcell. See Exhibit 1. FBC has entered into a reimbursement agreement with AM & PM for the expenses incurred in relocating Station KGOK. FBC hereby states that it will reimburse AM & PM for its reasonable expenses.

29. Purcell is a community deserving of its own local radio station. Purcell is not located in an Urbanized Area nor will the proposed 70 dBu contour of the Class A station cover any part of an Urbanized Area. Thus a Tuck showing is not necessary.

30. Purcell, Oklahoma fully satisfies the FCC definition of “community” for allotment purposes. The town had 4784 residents as of the 1990 Census. It is governed by its own elected mayor, vice-mayor, four city council members, and a city manager. Purcell provides its own fire and police protection, and there are a number of other branches that provide various services, including the city’s Child Welfare, Conservation, Human Services, and Transportation Departments. Residents can obtain local news from the weekly *Purcell Register*, as well as from the Internet on Web sites sponsored by the City, the Purcell Chamber of Commerce, and Main Street Purcell, Inc. a local, non-profit organization whose mission is “to revitalize downtown Purcell and help restore community pride.” See Exhibit 3. The city’s students attend Purcell Public Schools, which operates an elementary school for grades K-5, two middle schools for grades 6-7 and 8-9, and a high school for grades 10-12. The City has its own library, and zip code (73080). Residents can obtain medical care from any of several doctors who practice in the area, as well as either of the two hospitals that are located in the city. Purcell has its own municipal airport.

31. There are number of small businesses and organizations located in Purcell, including several that identify with the city by including “Purcell” in their names, including: Purcell

Automotive, Purcell Cleaners, Purcell Bakery, Purcell Farm & Ranch Supply, Purcell Livestock Auction, and the Purcell Radio Shack. See Exhibit 3.

32. Main Street Purcell, Inc. helps promote the city's downtown area by sponsoring events like the annual October Food Fest. The organization also promotes the annual "Mane Event," a celebration of the city that includes a pageant, carnival, vendors, and entertainment, which was first held in June 1999.

33. The proposed new service area will result in a net loss in population and area of 4,088 persons and 2,225 sq. km. See Figure 22. At least five aural services will remain in the loss area. See Figures 23 and 24.

G. Station KKAJ, Ardmore/Healdton, Oklahoma

34. In order to replace Station KGOK at Healdton, Chuckie Broadcasting Company, licensee of Station KKAJ, Ardmore, Oklahoma has agreed to have its station reallocated to Healdton to provide the first local service. See Exhibit 1. This proposal meets the Commission's standards in Section 1.420 of the Commission's Rules and policies set forth in Community of License. First, the use of Channel 239C1 at Ardmore will conflict with its use at Healdton. See Figure 25. Second, the proposal to place this station in Healdton will maintain a first local service. The comparison that results from this proposal is the provision of a first local service at Purcell, Oklahoma (Priority 3) over a fourth local service at Ardmore. Stations KACO(FM), KLCU(FM), KVSQ(AM) and KKAJ-FM currently serve Ardmore. The Joint Parties have already demonstrated that Purcell deserves a first local service and Healdton will maintain its service. In fact, Healdton will receive a Class C1 station instead of the current Class C3 station. In doing so, there will be an increase in coverage area and population over the current Class C3 facility at Healdton. See Figure 27. In addition, at least five aural services will remain in the loss area. See Figures 28 and 29.

35. The consent statement provided by Chuckie Broadcasting Co., in Exhibit 1 indicates that it will file an application for Healdton should this proposal be granted. FBC has entered into a reimbursement agreement for the changes and hereby states that it will reimburse Chuckie Broadcasting Co. for its reasonable expenses.

H. Station KWTX, Waco/Lakeway, Texas

36. In order to allot Channel 248C to Keller, Texas, Channel 247C1 must be substituted for Channel 248C at Waco, Texas for Station KWTX and its community of license changed to Lakeway, Texas. As indicated in the attached Engineering Statement, Channel 247C1 can be allotted to Lakeway at a new transmitter site in compliance with the Commission's distance separation rules provided additional channel substitutions are made at San Antonio, Georgetown, and Nolanville, Texas, as discussed below. See Figures 37 and 38. A gain/loss study is provided in Figure 39. Capstar TX Limited Partnership, one of the Joint Parties, is the licensee of KWTX. Capstar hereby states that it will file an application for Channel 247C1 consistent with the Commission's spacing rules if the Commission grants its allotment to Lakeway as proposed herein.

37. The allotment of Channel 247C1 at Lakeway complies with the Commission's rules for a change in community of license. Channel 247C1 at Lakeway is mutually exclusive with Channel 248C at Waco, as Figure 37 demonstrates. Waco will continue to receive adequate aural service from many stations. See Figures 40 and 41. Lakeway (pop. 4,044) will obtain a first local service (priority 1) while Waco (pop. 103,590) will continue to have at least 10 local services (priority 4). See Revision of FM Assignment Policies and Procedures, *supra*.

38. Lakeway is a community deserving of its own local radio station. Although Lakeway is within the Austin, Texas urbanized area, the relocation of KWTX from Waco to Lakeway does not implicate the Commission's policy against the migration of stations from rural to urban areas

since KWTX currently places a 70 dBu contour over the Waco, Texas urbanized area. Therefore, a Tuck showing is not necessary. Nevertheless, should it be necessary, the Tuck criteria are met in this case.

39. Lakeway's population is 0.9% of that of Austin. See Ada, Newcastle and Watonga, Oklahoma 11 FCC Rcd 16896 (1996) (new city is 0.9% of the population of the central city); Scotland Neck and Pinetops, North Carolina, 10 FCC Rcd 11066 (1995) (3.1% of the central city). In any event, the Commission has repeatedly stated that these factors are less important than evidence of independence. See e.g., Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995).

40. As shown in Figure 39 of the Engineering Statement, the change in site location for KWTX will result in a net gain in population to 518,467 persons and a loss in coverage area to 6,610 sq. km. within the respective 60 dBu contours.

41. In addition, the eight factors discussed below demonstrate Lakeway's independence from Austin. Sources for this information can be found in Exhibit 4.

- (1) *There are Sufficient Employment Opportunities in the Lakeway for its Residents, and a Substantial Percentage of Lakeway Residents Work in Lakeway.*

There are a substantial number of businesses located in Lakeway, and residents of the city need not go to Austin for employment. These employers include Lakeside Air (HVAC company), American Automobile Rental and Sales, B-J's Auto Repair, the First Commercial Bank, the Village Bank and Trust, Harborside Boats, PRODOC (computer services), Spiller Carpet & Flooring, Lakeway Pharmacy, and Buster's Bar-B-Q.

Moreover, according to the last available census data, of the roughly 1,835 working Lakeway residents over the age of sixteen, 12.1% (222) worked in Lakeway. Of the 1613 residents

who worked outside of Lakeway, 1022, or 55.7 % of the town's workers, worked in the Austin MSA. The remaining 32.2% of Lakeway's workers held jobs located either outside of the Austin MSA, or inside of the Austin MSA, but outside of Austin.

(2) *Lakeway is Served by a Local Newspaper.*

The *Lake Travis View* publishes weekly, and has been in existence for 15 years. Although it is distributed in a number of communities located to the south of Lake Travis, the paper provides a substantial amount of coverage to the city of Lakeway. For example, the *View* provides substantial coverage of the Lakeway City Council. This coverage included giving candidates for Lakeway City Council a forum to discuss their views on various issues of importance to the community. None of the other communities served by the *View* received a similar level of coverage. Both the print version of the *View*, as well as the *View's* Internet site (<www.zwire.com/site/news.cfm?brd=1552>), provide news and sports stories of interest to Lakeway residents. The *View's* Web site also carries comprehensive listings of area meetings and events, and local classified advertisements.

(3) *Lakeway Residents Consider Their Community to be Separate from Austin.*

Lakeway has a well-established identity and a distinct history that distinguishes it from Austin. As explained below, Lakeway has its own government, which allows residents the opportunity to participate in matters of local concern. Moreover, Lakeway has its own unique history. The town was founded on the site of a 2,700 acre ranch owned by Houston oilman Jack Josey. In 1962, representatives of the Gulfmont Hotel Company purchased a portion of the ranch with plans to build an inn and a residential community. They began selling lots in May 1963, and a year later bought an additional 2,800 acres. By 1974, the development had grown to over 300 homes and 1200 acres. Residents accordingly requested and received the consent of the city of

Austin to incorporate. This history, when combined with the wide range of businesses and commercial opportunities available in Lakeway, and the fact that Lakeway provides many of its own municipal services, all suggest that residents of the city view their community as a separate entity from Austin, one that could survive on its own if Austin did not exist.

(4) *Lakeway Has its Own Local Government and Elected Officials.*

The City of Lakeway is governed by a Mayor and five City Council members, which oversee the provision of police protection, water and sewage services, as well as the operations of the Lakeway municipal court. Lakeway citizens may also participate in municipal affairs by receiving mayoral appointments to the one of the city's many committees, including the Activity Center Advisory Committee, the Board of Adjustment, the Deer Relocation Committee, the Health Services Committee, the Parks and Recreation Commission, or the Zoning and Planning Commission. Lakeway also has its own Municipal Utility District (MUD), which is comprised of elected members who oversee the operation of two water treatment plants and three wastewater treatment plants. Lakeway receives its fire protection from nearby Hudson's Bend, and is not dependent on Austin for these services.

(5) *Lakeway has its Own Zip Code*

The U.S. Postal Service associates the following zip code with Lakeway: 78734.

(6) *Lakeway has Numerous Commercial Establishments, and is Not Dependent on Austin for Medical Care*

As mentioned above, Lakeway is the home of dozens of commercial establishments, including a number that identify with the community by using "Lakeway" in their name, including: the Lakeway Inn, Lakeway Exxon Service Center, Lakeway Mortgage, Lakeway Pharmacy, Lakeway Pool Maintenance, Lakeway Printing and Visual, Towers of Lakeway Retirement

Community, and PakMail of Lakeway. Lakeway has its own municipal airport, the Lakeway Airpark, and its own library.

Although Lakeway has no hospital of its own, it does have several general practitioners and dentists, two acupuncture centers, two assisted living communities, two chiropractors, an optometrist, two orthodontists, and three mental health or family counseling providers.

- (7) *Businesses Can Advertise to Lakeway Residents Directly and Need Not Use Media from the Austin Market.*

Business interested in reaching the residents of Lakeway may do so through the *Lake Travis View* newspaper in either the print or online versions. Also, the Lakeway Civic Corporation produces the *Lakeway Resident's Directory*, which is given to all Lakeway residents free of charge, and which accepts advertising from local businesses.

- (8) *Lakeway Provides its Own Municipal Services; It Does Not Receive them from Austin.*

The city of Lakeway, and not Austin, provides municipal services to Lakeway's residents. Lakeway levies its own property taxes, enforces its own parking regulations, has its own police department, oversees its own garbage collection, has its own Utility District that manages the provision of water and sewer services, and its own municipal Court. The city also owns and operates an Activity Center, a multi-use facility that provides meeting rooms for Lakeway activities, organizations and businesses. Lakeway residents may take any of more than a dozen classes at the center, including Bridge I and II, Cooking - Tuscan Cuisine, Digital Photography, Personal Safety and Integral Yoga.

There are five churches in Lakeway of various denominations.