

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

2001 SEP 10 P 3: 21

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 01-223
Table of Allotments,	)	RM-10157
FM Broadcast Stations.	)	
(Crystal Beach, Texas	)	
and Stowell, Texas)	)	

RECEIVED

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: August 29, 2001**

**Released: September 7, 2001**

**Comment Date: October 29, 2001**

**Reply Date: November 13, 2001**

By the Chief, Allocations Branch

1. Before the Commission for consideration is a Petition for Rule Making filed by Tichenor License Corporation ("Tichenor"), proposing the substitution of Channel 287C3 for Channel 287A at Crystal Beach, Texas, reallocation of Channel 287C3 from Crystal Beach to Stowell, Texas, and the modification of the authorization for Station KLTO(FM) accordingly.<sup>1</sup> Tichenor stated its intention to file an application for Channel 287C3 at Stowell.

2. Tichenor 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). Tichenor points out that Stowell, with a population of 1,419 people, is located in Chambers County, Texas, and has its own post office, Chamber of Commerce, several churches, community parks, local businesses and within the area is White's Ranch, one of the largest operating cattle ranches in Texas. Tichenor states that Crystal Beach will not be deprived of local service as Station KSTB(FM), Channel 268C3, is licensed to Crystal Beach. According to Tichenor, the population of Stowell (1,419) is larger than the population of unincorporated Crystal Beach (approximately 700), yet Stowell has no local aural service while Crystal Beach currently has two authorized local services,

<sup>1</sup> Action in MM Docket No. 99-26 substituted Channel 287A for Channel 285A at Galveston, Texas, modified the license for Station KLTO(FM) and reallocated Station KLTO(FM) from Galveston, Texas, to Crystal Beach, Texas. See 15 FCC Rcd 17311 (2000). Tichenor has a construction permit for Station KLTO(FM) at Crystal Beach (BPH-20010214ACH).

Channel 287A and Channel 268C3. Hence, the reallocation of Channel 287C3 to Stowell would enable both Crystal Beach and Stowell to have their own local broadcast stations.

3. We believe Tichenor's proposal warrants consideration since the allotment of Channel 287C3 at Stowell could provide the larger community with its first local service under our allotment priorities.<sup>2</sup> Therefore, we will propose to reallocate Channel 287C3 from Crystal Beach, Texas, to Stowell, Texas, and modify Tichenor's authorization (File No. BPH-20010214ACH) to specify operation on Channel 287C3 at Stowell as requested. Our engineering analysis indicates that Channel 287C3 can be allotted to Stowell at Tichenor's specified site in compliance with the Commission's spacing requirements.<sup>3</sup>

4. Accordingly, 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 Crystal Beach and Stowell, Texas, as follows:

Community	Channel No.	
	Present	Proposed
Crystal Beach, Texas	268C3, 287A	268C3
Stowell, Texas	-----	287C3

5. IT IS FURTHER 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:

B&C Broadcasting, Inc.  
 Station KZWA  
 730 Enterprise Boulevard  
 P. O. Box 699  
 Lake Charles, Louisiana 70602

<sup>2</sup> The FM allotment priorities are: (1) First full-time aural services; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters [Co-equal weight given to priorities (2) and (3)]. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

<sup>3</sup> The coordinates for Channel 287C3 at Stowell are 29-47-12 and 94-22-50. We do note that Channel 287C3 at Stowell is short spaced to Channel 287C2, Station KZWA, Lake Charles, Louisiana. However, in MM Docket No. 99-26, Channel 285C3 was substituted for Channel 287C2 at Lake Charles and its license for Station KZWA modified accordingly to specify operation on Channel 285C3 at Moss Bluff, Louisiana. See 15 FCC Rcd 17311 (2000).

6. 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.

7. Interested parties may file comments on or before October 29, 2001, and reply comments on or before November 13, 2001, 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:

Roy R. Russo  
Lawrence N. Cohn  
Cohn and Marks  
1920 N Street, N.W. Suite 300  
Washington, D. C. 20036-1622

8. 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.

9. 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.