

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

In the Matter of

Amendment of Section 73.202(b),	)	
Table of Allotments,	)	MB Docket No. _____
FM Broadcast Stations	)	RM - _____
(Converse, Flatonia, Georgetown, Ingram,	)	
Lakeway, Lago Vista, Llano, McQueeney,	)	
Nolanville, San Antonio, and Waco, Texas)	)	

To: Office of the Secretary  
Attn: Assistant Chief, Audio Division  
Media Bureau

**PETITION FOR RULE MAKING**

Capstar TX Limited Partnership (“Capstar”), licensee of Station KWTX, Waco, Texas; CCB Texas Licenses, L.P. (“CCB Texas”), licensee of Stations KAJA, San Antonio, Texas and KHFI-FM, Georgetown, Texas; Clear Channel Broadcasting Licenses, Inc., licensee of Station KLFX, Nolanville, Texas; and Rawhide Radio, L.L.C. (“Rawhide”), licensee of Station KNGT, McQueeney, Texas (together, “Joint Parties”), jointly by their respective counsel, pursuant to Section 1.401 of the Commission’s Rules, hereby submit this Petition for Rule Making for changes to the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules. The Joint Parties propose (1) the substitution of Channel 247C1 for 248C at Waco, the reallocation of Channel 247C1 from Waco to Lakeway, Texas, and the modification of the license for Station KWTX accordingly; (2) the substitution of Channel 243C2 for Channel 244C1 at Georgetown, the reallocation of Channel 243C2 from Georgetown to Lago Vista, Texas, and the modification of the license of KHFI-FM accordingly; (3) the substitution of Channel 249A for Channel 297A at Nolanville, and the modification of the license of Station KLFX accordingly; (4) the substitution of Channel 245C1 for Channel 247C at San Antonio, and the modification of the license for Station KAJA accordingly; and (5) the reallocation of Channel 249C1 from

McQueeney to Converse, Texas, and the modification of the license for Station KNGT accordingly. In order to accomplish these allotments, the following changes to the FM Table of Allotments are requested (listed alphabetically):

Community	Channels	
	Present	Proposed
Converse, Texas	-----	249C1
Flatonina, Texas	-----	232A
Georgetown, Texas	244C1	-----
Ingram, Texas	243A	256A
Lakeway, Texas	-----	247C1
Lago Vista, Texas	-----	243C2
Llano, Texas	242A	297A
McQueeney, Texas	249C1	-----
Nolanville, Texas	297A	249A
San Antonio, Texas	247C	245C1
Waco, Texas	248C	-----

**I. PRELIMINARY MATTERS**

1. The Joint Parties collectively own all of the stations that are required to make changes. As discussed below, the Joint Parties request the substitution of Channel 256A for the currently vacant Channel 243A allotment at Ingram, Texas. This channel substitution can be made at the current allotment reference coordinates. However, Channel 243A at Ingram is currently protected from changes under the Commission’s temporary freeze relating to the November auction of FM construction permits. *See Public Notice, Auction 37 Freezes Announced for FM Minor Change Applications and Certain Rulemaking Filings, DA 04-1642 (rel. June 7, 2004).* The Joint Parties hereby request that the Commission waive that policy to permit the requested channel substitution. The reason for the freeze is to give the auction participants adequate notice of any pending changes to the allotments they will be bidding for. *See id.* This purpose would not be frustrated by a waiver here, because the channel substitution

at Ingram was initially proposed by the Joint Parties on October 10, 2000, and should have been continuously protected since that time, and has been listed in the FCC's engineering data base for several years. Therefore, any prospective bidder for the Ingram allotment clearly was on notice of the proposed change at the time for filing short form applications on Form 175.

2. 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 each facility expeditiously.

## **II. COMPLIANCE WITH THE COMMISSION'S TECHNICAL RULES**

### **A. Station KWTX, Waco/Lakeway, Texas**

3. The Joint Parties wish to substitute Channel 247C1 for Channel 248C at Waco, Texas for Station KWTX and its community of license changed to Lakeway, Texas as its first local service. 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 1-2. The channel study reveals a short spacing to a proposed channel 247A allotment at Garwood, Texas. This allotment was requested in a petition filed by Charles Crawford on May 21, 2003. That petition, which has not yet been docketed, may be combined with this petition in the notice of proposed rule making.

4. A gain/loss study is provided in Figure 3, and a remaining services study is provided in Figures 4-5. 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.

5. 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 1 demonstrates. Waco will continue to receive adequate aural service from many stations. See Figures 4-5. Lakeway (pop. 8,002) will obtain a first local service (priority 3) while Waco (pop. 113,726) will continue to have at least 10 local services (priority 4). See *Revision of FM Assignment Policies and Procedures, supra*.

6. 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 concerning 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.

7. Lakeway's population is 1.2% 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). Lakeway is located 23.15 kilometers from Austin. 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).

8. As shown in Figure 3 of the Engineering Statement, the change in site location for KWTX will result in a net gain in population to 671,127 persons and a loss in coverage area to 5,480 sq. km. within the respective 60 dBu contours.

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

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

10. 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.

11. 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.***

12. 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.laketraavisview.com](http://www.laketraavisview.com)>), 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.***

13. 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.***

14. 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**

15. 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**

16. 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.

17. 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.**

18. Businesses 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.*

19. 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.

20. Lakeway students attend public schools in the Lake Travis Independent School District. Although the District primarily draws from nearby Bee Cave and various unincorporated areas around Lakeway, four of the district's six schools are located in the 78734 zip code, including two of its three elementary schools and its only high school. The district's most recent annual budget exceeded \$27 million. It is operated by a superintendent and a seven-member elected school board. In addition, the Lake Travis Education Foundation, a non-profit volunteer organization, raises money to support the students and teachers of the Lake Travis ISD.

**B. Station KAJA, San Antonio, Texas**

21. In order to reallocate KWTX to Lakeway on Channel 247C1, Station KAJA, San Antonio, Texas must change channel from 247C to 245C1 and relocate its transmitter site to a new location. The accompanying channel study (Figures 6-7) demonstrates that Channel 245C1 can be allotted to San Antonio at a new transmitter site in compliance with the Commission's spacing rules provided that an additional substitution is made at Georgetown, Texas as described

below. The channel study reveals short spacings to proposed allotments at Christine and Tilden, Texas. The Christine allotment was proposed in a petition for rule making filed by Katherine Pyeatt on July 18, 2003. That petition, which has not been docketed, may be combined with this one into one proceeding. The Tilden proposal was dismissed. *See Tilden, Texas*, DA 04-914 (rel. April 5, 2004), *app. for review pending*. Even though the Tilden dismissal is not final, this petition may be accepted and processed. *See Auburn, Alabama, et al.*, 18 FCC Rcd 10333, 10340-41 (2003). Alternatively, the Tilden proposal may also be considered in the context of this proceeding.

22. The channel study also shows a short spacing to a Channel 244C allotment at Piedras Negras, Mexico. However, the allotment of Channel 245C1 at KAJA complies with the U.S.-Mexico treaty because KAJA will not cause any interference to a hypothetical facility at Piedras Negras. *See Agreement Between the Government of the United States of America and the Government of the United Mexican States Relating to the FM Broadcasting Service in the Band 88-108 MHz*, Annex 1. A small reduction in power for KAJA in the direction of Piedras Negras is necessary to achieve treaty compliance. *See Figure 9*.

23. The relocation of Station KAJA will result in a net loss in population within the 60 dBu contour of 18,454 in an area of 46 square kilometers.

24. CCB Texas Licenses, L.P., the licensee of KAJA, is one of the Joint Parties. CCB Texas hereby states that it will file an application for Channel 245C1 in compliance with the Commission's spacing rules should the Commission approve the changes.

### **C. Station KHFI, Georgetown/Lago Vista, Texas**

25. In order to effectuate the changes at Waco/Lakeway and San Antonio, Station KHFI, Georgetown, Texas must change channel and downgrade from Channel 244C1 to 243C2, and change its community of license to Lago Vista, Texas. The accompanying Channel Study

(Figures 10-11) demonstrates that these changes can be made in compliance with the Commission's spacing rules provided that additional substitutions are made at Ingram and Llano, Texas as described below. The channel study reveals short spacings to proposed allotments at Evant, Kerrville, and Goldthwaite, Texas. The Evant allotment, although initially granted, was subsequently denied. 18 FCC Rcd 6213 (2003), *app. for review pending*. Even though this dismissal is not final, the instant petition may be accepted and processed. *See Auburn, Alabama, et al.*, 18 FCC Rcd 10333, 10340-41 (2003). Alternatively, the Evant proposal can be considered in the context of this proceeding. The Commission's CDBS shows that the Kerrville allotment was proposed in a petition for rule making filed by Charles Crawford which has not been assigned a docket number. The Goldthwaite allotment was proposed in a petition for rule making filed by Katherine Pyeatt on December 2, 2003. The Kerrville and Goldthwaite petitions may be combined with this petition in a single proceeding.

26. CCB Texas Licenses, L.P., the licensee of KHFI, is one of the Joint Parties. CCB Texas hereby states that it will file an application for Channel 243C2 at Lago Vista in compliance with the Commission's spacing rules should the Commission approve the changes.

27. The allotment of Channel 243C2 at Lago Vista complies with the Commission's rules for a change in community of license. Channel 243C2 at Lago Vista is mutually exclusive with Channel 244C1 at Georgetown, as Figure 10 demonstrates. Georgetown will continue to receive adequate aural service from 19 stations. *See Figures 13-14*. Lago Vista (pop. 4,507) will obtain a first local service (priority 3) while Georgetown (pop. 28,339) will retain local service from KAHK(FM) (priority 4). *See Revision of FM Assignment Policies and Procedures, supra*. The change in site and downgrade in class will result in a net loss of coverage to 175,094 persons in an area of 7,545 sq. km.. *See Figure 12*.

28. From Lago Vista, Channel 243C2 will place a 70 dBu contour over much of the Austin, Texas Urbanized Area. However, this relocation does not implicate the Commission's policy against the migration of stations from rural areas to urban areas. Indeed, if anything, the opposite is true. From its current location, KHFI places a 70 dBu contour over all of the Austin, Texas Urbanized Area. The Joint Parties propose to downgrade the station and relocate it away from the city center. Nevertheless, should the Commission require it, a Tuck showing can be made in this case, demonstrating that Lago Vista should be awarded a first local service preference.

29. Lago Vista's population is 0.7% 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). Lago Vista is located 29.08 kilometers from Austin. 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).

30. The eight factors discussed below demonstrate Lago Vista's independence from Austin. Sources for this information are provided in Exhibit B.

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

31. There are a sufficient number of businesses located in Lago Vista that residents of the city need not go to Austin for employment. These employers include the Boaz Financial Group, Christopher Travels, Compass Bank, Gila Construction, The Island on Lake Travis, Lago Vista Marine, Micro n'More, Inc., Showtime Performance Boats, and Vista Video. Lago Vista has an active Chamber of Commerce.

32. Moreover, according to the last available census data, of the roughly 942 working Lago Vista residents over the age of sixteen, 38.0% (358) worked in Lago Vista. The Commission has found that much smaller percentages of residents working in the specified community have satisfied this Tuck criterion. *See Coolidge and Gilbert, Arizona*, 11 FCC Rcd. 3610 (1996) (finding that 13% of persons working in their place of residence satisfied this Tuck criterion). Moreover, of the 584 residents who work outside of the town, only 353, or 37.5% of the town's workers, worked in the Austin MSA. The remaining 24.5% of Lago Vista's workers held jobs located either outside of the Austin MSA, or inside of the Austin MSA, but outside of Austin.

**(2) *Lago Vista is Served by a Local Newspaper.***

33. The North Lake Travis Log publishes every Thursday, and has been in existence for over 18 years. Although it is distributed in communities throughout the North Lake Travis area, a substantial amount of the paper's coverage is dedicated to the city of Lago Vista. For example, the paper recently printed an editorial written by the Mayor of Lago Vista, Dennis Jones, in which he discussed the city council's work on the FY 2001 city budget. The paper also covered the Council's ultimate passage of that budget. None of the other communities served by the Log received similar coverage. Both the print version of the Log, as well as the Log's Internet site (<[www.northlaketravislog.com](http://www.northlaketravislog.com)>), provide news and sports stories of interest to Lago Vista residents. The Log's Web site carries comprehensive listings of area meetings and events, and local classified advertisements.

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

34. Lago Vista has well-established identity that is separate from that of Austin. The city has its own government, allows residents the opportunity to participate in matters of local concern. Lago Vista has a unique history. The area that is now Lago Vista was previously the

Infamous Bar-K Ranch Resort, which flourished during the 1950's and '60s. The present-day city was developed as a planned community, and incorporated in the early 1980s. Moreover, the businesses and commercial opportunities available in Lago Vista, and the fact that Lago Vista provides many of its own municipal services, all suggest that the Lago Vista citizens view their city as a separate entity that could survive on its own if Austin did not exist.

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

35. The City of Lago Vista is governed by a Mayor and six City Council members and a city manager, who oversees the provision of police protection, water and sewage service, as well as the operations of the Lago Vista municipal court. The city levies a real estate and sales tax. It has four full-time employees and one part-time employee. Lago Vista citizens may also participate in municipal affairs through city's Planning and Development Commission.

**(5) *Lago Vista has its Own Zip Code***

36. The following zip code is associated with Lago Vista: 78645.

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

37. Lago Vista is the home of dozens of commercial establishments, including a number that identify with the community by using "Lago Vista" in their name: Lago Vista Chiropractic; Lago Vista Golf & Resort, Lago Vista Business Services, Inc., Lago Vista Rentals, and Lago Vista Real Estate, Inc. Lago Vista residents can obtain basic medical care from the two doctors and two dentists that practice in the city. Lago Vista has its own municipal airport, and its own library.

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

38. Business interested in reaching the residents of Lago Vista may do so through the North Lake Travis Log newspaper in either the print or online versions.

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

39. The city of Lago Vista, and not Austin, provides municipal services to Lago Vista's residents. Lago Vista has its own police department, water and sewer services, and its own Municipal Court.

40. There are seven churches within the Lago Vista town limits, including the Good Shepherd Lutheran Church and the Rolling Hills Community Church. Seven hundred eight students attend either the elementary school, junior high, or high school in the Lago Vista Independent School District. The district has been in existence since 1975, and its most recent annual budget exceeded \$23 million. It is operated by a superintendent and an six-member elected school board.

**D. Vacant Allotment at Ingram, Texas**

41. The changes at Georgetown/Lago Vista require that Channel 256A be substituted for the vacant Channel 243A allotment at Ingram, Texas. This substitution can be made consistent with the Commission's spacing rules, and requires no other changes to the Table of Allotments. *See* Figure 29. As discussed above, Channel 243A at Ingram is currently protected from changes under the Commission's temporary freeze relating to the November auction of FM construction permits. However, as discussed earlier, the Joint Parties request that the Commission waive the freeze to permit consideration of the requested channel substitution, which has been on file with the Commission since October, 2000.

42. The channel study reveals short spacings to allotments at Harper, Camp Wood, and Dilley, Texas. However, these short spacings do not preclude consideration of the Ingram allotment. A petition for Channel 256A at Harper, Texas was filed by Charles Crawford on May 7, 2001. The Harper petition, which has not been docketed, may be considered with the present

proposals in this proceeding. Channel 256A was deleted at Camp Wood in MM Docket 99-214. *See Camp Wood and Rock Springs, Texas*, 15 FCC Rcd 10349 (2000). That proceeding is now final.

43. On April 17, 2002, the Commission granted a construction permit for Station KLMO-FM, Dilley, Texas. The permit (BPH-20010102AAC) was issued in error because it conflicted with the Joint Parties' prior-filed proposal to substitute Channel 256A at Ingram, Texas. However, the construction permit in fact does protect Channel 256A at Ingram. The permit was issued pursuant to Section 73.215 with respect to Stations KAYG, Camp Wood, Texas; KBUC, Pleasanton, Texas; and KJFK, Lampasas, Texas, and in affording contour protection to those stations it also affords contour protection to the Ingram allotment. Should the Joint Parties' proposal be granted, the Dilley construction permit, with Section 73.215 protection towards Ingram, would not be affected. Therefore, Dilley permit does not preclude grant of the Joint Parties' proposal. *See Beverly Hills, Chiefland, Holiday, Micanopy and Sarasota, Florida*, 11 FCC Rcd 4641, 4641-42 (1996).

**E. Station KBAE, Llano, Texas**

44. In order to make the changes at Georgetown/Lakeway, Channel 297A must be substituted for 242A at Llano, Texas at a new transmitter site. The accompanying Channel Study demonstrates that Channel 297A can be allotted to Llano in compliance with the Commission's spacing rules provided a substitution is made at Nolanville, Texas as described below. *See Figures 15-16*. The channel study also reveals a short spacing to a proposed allotment at Goldthwaite, Texas and an application for KHLB, Channel 295A, Burnet, Texas. The petition for Goldthwaite was dismissed. *See Goldthwaite, Texas*, 19 FCC Rcd \_\_\_\_ (DA 04-734, rel. March 19, 2004), *app. for review pending*. Even though the Goldthwaite dismissal is not final, this petition may be accepted and processed. *See Auburn, Alabama, et al.*, 18 FCC Rcd

10333, 10340-41 (2003). Alternatively, the Goldthwaite proposal can be considered in the context of this proceeding.

45. The Burnet application, File No. BPH-20030902ADU, does not protect the Joint Parties' proposal, and thus is contingent upon action in this proceeding. The Commission has not yet granted the application, and is holding the application in its pending queue. The application could be combined and considered as a counterproposal in this proceeding.

46. Rawhide Radio, LLC, the licensee of KBAE, is one of the Joint Parties. Rawhide hereby states that it will apply for Channel 297A at Llano and construct the facilities if the application is granted.

47. At the new transmitter site, there will be a net loss in population of 4,832, with a small gain in an area of 88 sq. km. *See* Figure 17.

#### **F. Station KLFX, Nolanville, Texas**

48. In order to change channels at Llano, Channel 249A must be substituted for Channel 297A for Station KLFX at Nolanville, Texas. The channel substitution may be made at the current transmitter site of KLFX, as Figure 18 demonstrates, provided that a change is made at McQueeney, Texas as described below. Clear Channel Broadcasting Licenses, Inc., the licensee of KLFX, is one of the Joint Parties. Clear Channel states that it will apply for the new channel and construct the frequency change as authorized.

#### **G. Station KNGT, McQueeney/Converse, Texas**

49. In order to allot Channel 249A at Nolanville, Channel 249C1 must be deleted at McQueeney, Texas. The accompanying Channel Study demonstrates that Channel 249C1 can be allotted to Converse for use by Station KNGT in compliance with the Commission's spacing rules, provided that changes are made at Waco and San Antonio as discussed *supra*. *See* Figures 19-20. The channel study reveals short spacings to proposed allotments at Mason, Tilden, and

Batesville, Texas. However, the Batesville rule making proposal should not have been accepted, and the Mason and Tilden rule making proposals have been dismissed.<sup>1</sup> Even though these dismissals are not final, the instant petition may be accepted and processed. *See Auburn, Alabama, et al.*, 18 FCC Rcd 10333, 10340-41 (2003). Alternatively, the proposals may be considered in the context of this proceeding.

50. Rawhide, one of the Joint Parties, is the licensee of KNGT. Rawhide hereby states that it will file an application for Channel 249C1 at Converse should the Commission grant the changes. A gain/loss study is provided in Figure 21.

51. The allotment of Channel 249C1 at Converse complies with the Commission's rules for a change in community of license. The use of Channel 249C1 at Converse is mutually exclusive with its use at McQueeney, as Figure 19 demonstrates. McQueeney will continue to receive adequate aural service from 24 stations. *See* Figures 22-23. Neither McQueeney nor Converse currently has local service. (KNGT, although allotted to McQueeney, currently operates from its previously allotted Channel 249C3 at Cuero, Texas. If the Commission grants this proposal, Rawhide does not intend to commence broadcast operations at McQueeney.) Therefore, each community receives priority 3 as a first local service but since Converse (pop. 11,508) is larger than McQueeney (pop. 2,527), Converse is preferred under the Commission's allotment priorities. *See Chatom and Grove Hill, Alabama*, 12 FCC Rcd 7664 (1997); *Revision of FM Assignment Policies and Procedures*, 90 F.C.C.2d 88 (1982).

52. Converse is a community deserving of its own local radio station. Converse is within the San Antonio, Texas Urbanized Area, which implicates the Commission's policy concerning the migration of stations from underserved rural areas to well-served urban areas.

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<sup>1</sup> *See Mason, Texas*, 17 FCC Rcd 11038 (2002), *recon. denied*, 18 FCC Rcd 103 (2003), *app. for review denied*, 19 FCC Rcd 470 (2004), *pet. for review pending*; *Tilden, Texas*, 19 FCC Rcd \_\_\_\_\_ (DA 04-914, rel. April 5, 2004), *app. for review pending*. Batesville is not dismissed yet.

However, in this case there is ample evidence of the independence of Converse from San Antonio, and the Tuck criteria are clearly met.

53. Converse's population is 1.0% of that of San Antonio. *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). Converse is located 20.61 kilometers from San Antonio. However, as discussed above, these factors are less important than evidence of independence. *See e.g., Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).

54. The relocation of KNGT from McQueeney to Converse will result in an increase in population served of 1,282,622 persons within the station's 60 dBu contour. *See* Figure 21. This relocation will create a small gray area within the loss area. *See* Figure 21. The creation of a small gray area should not pose a problem, since it falls under a co-equal priority as first local service. *See* Littlefield, Wolfforth, and Tahoka, Texas, 12 FCC Rcd 3215 (1997), partial recon. granted, 15 FCC Rcd 5532 (2000). Nevertheless, should the Commission require it, the Joint Parties propose the allotment of Channel 232A to Flatonia, Texas, as that community's first local service. *See* discussion, *infra*. Rawhide will file an application to build a new station at Flatonia if the allotment is approved. The new allotment to Flatonia will provide a second aural service to the entire grey area.

55. The eight factors discussed below demonstrate Converse's independence from San Antonio. Sources for this information are provided in Exhibit C.

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

56. Converse is home to dozens of businesses, and residents of the city need not go to San Antonio for employment. These businesses include AAA Bathtub Refinishing, Inc., Bug

Free Pest Control Service, Chism Trail Antiques, Diamond Shamrock Corp., F & M Medical Supply, Northeast Janitorial Service, RR Truck Sales & Service, Star Custom Cabinets, and Walgreens Drug Store.

57. Moreover, according to the last available census data, of the roughly 4552 working Converse residents over the age of sixteen, 11.6% (529) worked in Converse. Of the 4023 residents who worked outside of Converse, 2864, or 62.9 % of the town's workers, worked in San Antonio. The remaining 25.5% of Converse's workers held jobs located either outside of the San Antonio MSA, or inside of the San Antonio MSA, but outside of San Antonio. Converse businesses may join the Randolph Metrocom Chamber of Commerce, which promotes the industrial and commercial interests of communities, including Converse, that surround Randolph Air Force Base.

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

58. The Metrocom Herald publishes weekly and serves Converse and several surrounding communities. Both the print version of the Herald, as well as the Herald's Internet site (<[www.primetimenewspapers.com/herald/hercvr.htm](http://www.primetimenewspapers.com/herald/hercvr.htm)>), offer news and sports stories of interest to Converse residents. The paper provides a substantial amount of coverage to the city of Converse. For example, the Herald regularly covers the Converse City Council, as indicated by a recent story on a proposal before the Council to house stray animals found in Converse at the facilities of the nearby town of Live Oak. The Herald also recently ran a feature on the extension of an existing bus route to include south Converse. The Herald's Web site also carries comprehensive weekly listings of meetings and events and a crime blotter for Converse and its other communities.

**(3) *Converse Residents Consider Their Community to be Separate from San Antonio.***

59. Converse has a well-established identity and a distinct history that distinguishes it from San Antonio. As explained below, Converse has its own government, which allows residents the opportunity to participate in matters of local concern. There are also a wide range of businesses and commercial opportunities available in Converse. These factors, in combination, suggest that residents of the city view their community as a separate entity from San Antonio, one that could survive on its own if San Antonio did not exist.

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

60. The City of Converse is governed by a Mayor and six City Council members, who oversee the provision of police and fire protection, water and sewer services, as well as the operations of the Converse Municipal Court. The city's operations are overseen on a day-to-day basis by a City Manager. Converse citizens may also participate in municipal affairs through the Converse Parks and Recreation Commission, the Building and Standards Commission, the Street Commission, the Planning Commission, and the Zoning Commission. The Converse City Council has independent taxing authority.

**(5) *Converse has its Own Zip Code***

61. The U.S. Postal Service associates the following zip code with Converse: 78109.

**(6) *Converse has Numerous Commercial Establishments, and is Not Dependent on San Antonio for Medical Care***

62. As mentioned above, Converse is the home of dozens of commercial establishments. A number of these businesses identify with their community by using "Converse" in their name, including: Converse AC & Heating, Converse Mini Storage, Converse Beauty Shop, Converse Chiropractic Center, and Converse Painting.

63. Although Converse has no hospital of its own, it does have several general practitioners and dentists, a vision care provider, and two chiropractors, to provide basic medical care to Converse residents.

64. Converse has its own library, which was created through the combined efforts of the Converse Lions' Club, the Converse Grange, and other volunteers.

**(7) *Businesses Can Advertise to Converse Residents Directly and Need Not Use Media from the San Antonio Market.***

65. Business interested in reaching the residents of Converse may do so through the Metrocom Herald newspaper.

**(8) *Converse Provides its Own Municipal Services; It Does Not Receive them from San Antonio***

66. The city of Converse, and not San Antonio, provides municipal services to Converse's residents. As noted above, Converse levies its own property taxes, has its own police and fire departments, oversees its own garbage collection, water and sewer services, and municipal Court. The Converse Police Department employs twenty-three officers, two civilians and one K-9 unit. The Converse Fire & EMS Department has nine paid personnel and between fifteen and twenty-five volunteers. The Department is fully equipped, with three major class-A pumpers, three ambulances, one rescue vehicle and one brush truck. All of the full-time personnel are cross-trained in both fire and emergency medical services, as are most of the volunteers.

67. There are ten churches in Converse of various denominations. Converse students attend public schools in the Judson Independent School District. Although the school district also draws students from other communities around Converse, a number of its schools, including its only high school, senior high school, and adult and community education center, are located

in Converse itself. The school district's most recent annual budget exceeded \$103 million. It is operated by a superintendent and a seven-member elected Board of Trustees.

#### **H. Flatonia, Texas**

68. As discussed above, the Joint Petitioners do not believe a supplementary allotment is necessary in order to remove gray area. Nevertheless, should the Commission desire, Channel 232A can be allotted to Flatonia, Texas, as demonstrated in the channel study, Appendix A to Exhibit E. The station will place a 70 dBu signal over the entire community of license as shown in the map, Appendix B to Exhibit E.

69. Flatonia, Texas fully satisfies the FCC definition of "community" for allotment purposes. The town had 1,295 residents as of the 1990 Census. It is not part of any urbanized area. According to the staff at the Flatonia City Hall, the town is governed by its own elected mayor, five city council members, and a city manager. It provides its own fire and police protection, and its own water and wastewater service. The city also retails electricity, and contracts out for garbage collection. Residents can obtain local news from the weekly Flatonia Argus, as well as an Internet-based "newspaper," the Flatonia News. The city's Chamber of Commerce also operates a web site, <[www.flatonia-tx.com](http://www.flatonia-tx.com)>, that contains a substantial amount of information about local events and attractions. The city's approximately 600 public school students attend Flatonia Public Schools, which operates an elementary school, a middle school, and a high school. The city has its own library, and zip code (78941). Medical services are available to Flatonia residents at the city's medical clinic, eye doctor, and veterinary clinic. There are three churches in the town. *See Exhibit D.*

70. There are dozens of small businesses and organizations located in Flatonia, including several that identify with the city by including "Flatonia" in their names, including the Flatonia Veterinary Clinic, the Flatonia Food Mart, the Flatonia Baptist Church, the Flatonia

Livestock Commission, and the Flatonia Community Clinic. The city's major employers include Cal-Maine Foods, the Flatonia Independent School District, Prototype (a machining company), the Oak Manor Nursing Center, and Central Texas Bank. *See* Exhibit D.

71. The calendar of events maintained by the Flatonia Chamber of Commerce shows that there are a number of events that give the town an identity of its own, highlighted by Czilispiel XXVII, the 28th annual chili cook-off originated by the town's Czech immigrants. Other events include Flatonia Market Days in April and September, the 4-H and FFA Livestock Show, the Sacred Heart Catholic Church Picnic and Fall Festival, and the Christmas in Flatonia Candlelight Homes Tour. *See* Exhibit D.

### **III. CONCLUSION**

This petition for rule making is virtually identical to the alternative proposal set forth in the Joint Parties' counterproposal in MM Docket 00-148 (Quanah, Texas). *See Quanah, Texas, et al.*, 18 FCC Rcd 9495 (2003), *app. for review pending*. The Commission may combine this proceeding with a number of pending proceeding in a single notice of proposed rule making, thereby realizing gains in administrative efficiency. As the Joint Parties have demonstrated, grant of the petition would provide first local services to three communities (four, if the Commission desires to make an allotment to Flatonia as set forth herein). It would provide a significant gain in population able to receive radio service.

WHEREFORE, the Commission should issue a notice of proposed rule making as set forth herein.

Respectfully submitted,

RAWHIDE RADIO, LLC

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