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July 20, 1992

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JUL 20 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

ATTN: Allocations Branch, Mass Media Bureau

RE: Amendment of Section 73.202(b), Table of Allotments, FM
Broadcast Stations (Hartford, Vermont), RM-7968, MM
Docket No. 92-120

Dear Ms. Searcy:

Transmitted herewith, on behalf of Family Broadcasting, Inc., is an original and four (4) copies of its "Comments" filed in connection with the above-referenced docketed proceeding.

Should any questions arise concerning this matter, kindly contact the undersigned directly.

Respectfully submitted,

FAMILY BROADCASTING, INC.

By: Joseph E. Dunne III
Joseph E. Dunne III
Attorney for Family
Broadcasting, Inc.

JED:gmcB91
xc: Alex McEwing

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	MM Docket No. 92-120
)	
)	
Amendment of Section 73.202(b))	RM-7968
Table of Allotments,)	
FM Broadcast Stations)	
(Hartford, Vermont))	

COMMENTS

Family Broadcasting, Inc. (Family), by its undersigned attorney and pursuant to section 1.420 of the Commission's rules and regulations, 47 C.F.R. § 1.420 (1992), hereby submits its Comments in response to the Notice of Proposed Rule Making in the above-captioned matter.

1. Family is the licensee of WGLV(FM), Hartford, Vermont, and is the proponent of the above-captioned proposal which seeks an upgrade in the class of channel (from class A to class C3) on its existing frequency allocated to Hartford. Family will apply to construct and operate its station on the upgraded frequency should this proposal be adopted by the Commission.

2. In its Notice of Proposed Rule Making (see ¶ 2), the Commission requested additional information concerning Family's ability to provide a prima facie showing concerning its ability to comply with section 73.315 of the Commission's Rules. Family notes that its original Petition noted that from the site assumed in the Petition that its proposal met both the minimum mileage separation standards as well as the requirements of section 73.315 of the

Commission's Rules (see, Petition Technical Exhibit, page 2). This statement was based on the Commission's oft cited general policy that "the Commission does not evaluate specific terrain data in allotment proceedings." FM Channel Assignments (Woodstock and Broadway, Va.), 3 FCC Rcd. 6398, 65 R.R.2d 713, 714 (Mass Med. Bur. 1991). The reason for the policy is quite simple, as well as reasonable, "... [w]e cannot determine what specific transmitter sites will ultimately be applied for..." Id. at 715.

3. Despite this general policy to assume uniform terrain data in allotment proceedings, see, e.g., FM Channel Assignments (Sonora, California), 6 FCC Rcd. 6042, 70 R.R.2d 165 (M. Med. Bur. 1991) the Commission requested, and Family provided, additional information concerning the terrain between the assumed site and the community of license. Family provided this information despite the fact that it is not specifying its existing site, or any site, but was quite clear that the site specified in its rule making petition was an assumed site. (See Petition, Technical Exhibit, page 2). Accordingly, this Petition does not fit the Woodstock exception under which the general policy of assuming uniform terrain is discarded if the upgrade applicant specifies a specific site for which it has both reasonable assurance and FAA approval.

4. To the extent that a showing concerning the provision of city grade coverage over the community is necessary, Family notes that it is, at this time, impossible, because Family does not have a specific site secured in the allocation area. Moreover, it would be both unnecessarily expensive and might even be counterproductive

to attempt to secure a site within the allocation area, because that would unnecessarily limit Family's freedom to obtain the best available site at the time the application is filed. Land unavailable now may be available at that time, and Family may have a greater area in which it may locate a site because the allocation area is not fixed, and may be effected by subsequent Commission actions expanding (or decreasing) the allocation area.

5. Once a specific site is determined, Family will perform any required terrain studies from that site to determine a necessary tower height to comply with section 73.215 of the Commission's Rules. Family would then, based upon the provision of a specific site, apply to the FAA and local zoning authorities, if necessary, for approval of the necessary tower. Should it be necessary, Family, at that time, would perform the signal propagation studies required to show the requisite 70 dBu contour over Hartford. These studies, including those using knife-edge diffraction calculations, are expensive to perform and cannot reasonably be required of an proponent of a rule making at the allocation stage when the site specified is wholly theoretical.

6. Finally, if it should become necessary, Family will conduct the signal measurement studies permitted by section 73.215 (d) of the Commission's Rules.

7. Family's proposal is, therefore, in full compliance with the Commission's existing allocation policies and should be granted. As the Commission is well aware, there are a large number of potential transmitter sites for a broadcast station within any

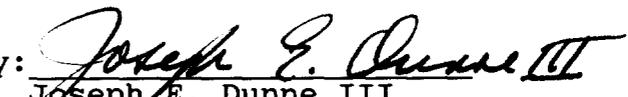
proposed allocation area. Any site specified in the rule making proposal is not necessarily the site that will be available to Family when it actually is able to implement its upgrade proposal. It is unfair to Family to force it to incur the substantial costs of signal propagation and other studies to support the viability of a wholly imaginary site. As noted above, Family is quite willing to expend the resources to find a site, secure the necessary FAA and local approvals, and, if necessary, perform propagation studies or other studies and tests permitted by the rules, when it submits its application and must, of necessity, locate a specific site. Family does not believe it is consistent with Commission allocation policies or with simple fairness to require Family to obtain a site, perform the expensive studies concerning terrain which may be required to prove compliance with the Commission's Rules, prior to the necessity for obtaining such a site. The Commission's existing policy is, after all, the wisest, since "... [w]e cannot determine what specific transmitter sites will ultimately be applied for." FM Channel Assignments, Woodstock and Broadway, Va., supra, 65 R.R.2d at 715.

WHEREFORE, the foregoing considered, Family Broadcasting, Inc. respectfully requests the Commission to approve the proposed

substitution of channel 282C3 for 282A, Hartford, Vermont, and to modify its license for WGLV(FM) accordingly.

Respectfully Submitted,

FAMILY BROADCASTING, INC.

By: 
Joseph E. Dunne III
Its Attorney

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TECHNICAL EXHIBIT