

BEFORE THE  
Federal Communications Commission

WASHINGTON, D.C.

In the Matter of )  
 )  
Amendment of Section 73.202(b), ) MM Docket No. 99-10  
Table of Allotments ) RM-9435  
FM Broadcast Stations. )  
(Walton, New York) )

RECEIVED  
MAR 15 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch

**PETITION FOR RULE MAKING AND COUNTERPROPOSAL**

AM Communications, by its undersigned attorneys, hereby petitions the Commission to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, to allot Channel 296A to Livingston Manor, New York. Because this allotment is mutually exclusive with the proposal set forth in the Notice of Proposed Rule Making, MM Docket No. 99-10, RM-9435, released January 22, 1999 (the "NPRM") to allot Channel 296A at Walton, New York, this filing is also a timely Counterproposal to the proposal advanced in the NPRM.

**I. PRELIMINARY STATEMENT**

The NPRM proposes, *inter alia*, to amend the Commission's FM Table of Allotments to allot Channel 296A to Walton, New York as the community's second local FM and third local aural service. By this Petition for Rule Making and Counterproposal, AM Communications proposes that Channel 296A instead be allotted to Livingston Manor, New York as Livingston Manor's first local aural transmission service. As demonstrated below, because the allotment of Channel 296A to Livingston Manor would result in a preferential new arrangement of allotments under the Commission's guidelines, the public interest will be better served by adopting the allotment proposed herein.

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## II. ARGUMENT

### A. AM Communications' Proposal is Consistent with the Commission's Separation Requirements

Pursuant to Section 73.207 of the Commission's rules, the reference points of the community proposed in a request to amend the FM Table of Allotments must meet all of the minimum distance separation requirements. As indicated in the attached Engineering Statement, the proposed allotment of Channel 296A to Livingston Manor complies with the Commission's minimum distance separation requirements and is therefore acceptable.

### B. AM Communications' Proposal will Result in a Preferential Arrangement of Allotments Under Established Commission Allotment Priorities

Allotment of Channel 296A to Livingston Manor is preferable to the allotment of the channel at Walton as proposed in the NPRM. The Commission's FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88 (1982).<sup>1</sup>

While neither the allotment to Walton nor to Livingston Manor would provide a first or second aural reception service, AM Communications' proposed allotment to Livingston Manor would constitute the community's first local aural transmission service. See Engineering Statement attached hereto. On the other hand, the allotment to Walton would constitute the community's third local aural service since both WDLA(AM) and WDLA-FM are licensed there. Accordingly, AM Communications' proposal satisfies the third allotment priority, while the Walton proposal meets only the fourth priority.

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<sup>1</sup>Co-equal weight is given to priorities (2) and (3).

1. Livingston Manor, New York Constitutes a “Community” for Allotment Purposes

Livingston Manor is an identifiable independent community, deserving of an FM allotment. Specifically, Livingston Manor is listed in the 1990 U.S. Census as a Census Designated Place with a population of 1,482 people.<sup>2</sup> The community has its own locally elected town supervisor and council as well as a town hall, post office and zip code. In addition, Livingston Manor has its own school, which serves approximately 800 children ranging from kindergarten through grade 12, as well as a library, a chamber of commerce, a fire house and several churches. The community also has a number of shops and stores, including a gift shop, a grocery store and several country markets. *See* Engineering Statement. Accordingly, Livingston Manor possesses the requisite social, economic and cultural components commonly associated with community status and constitutes a community worthy of its own first local transmission service.

2. Livingston Manor is not Located Within an Urbanized Area

The proposed allotment of Channel 296A to Livingston does not implicate the Commission’s Urbanized Area “presumption.” When an applicant proposes an allotment to a community that lies within an Urbanized Area or the 70 dBu contour of the station will cover 50% or more of an Urbanized Area, a presumption of interdependence with the Urbanized Area is created. *See Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). If the presumption of interdependence is not rebutted, the community is credited with all the local transmission services

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<sup>2</sup>The Commission has allotted FM channels to other communities in the State of New York that have significantly smaller populations than that of Livingston Manor: Cape Vincent (1990 census population of 683); Cherry Valley (1990 census population of 617); Jeffersonville (1990 census population of 484); Morristown (1990 census population of 490); Remsen (1990 census population of 518).

licensed to communities within the Urbanized Area. *Id.*

The attached Engineering Statement establishes that Livingston Manor is not within any Urbanized Area nor will the 70 dBu contour of the station cover 50% or more of any Urbanized Area. Thus, Livingston Manor properly deserves a first local service preference, as it should not be credited with the aural broadcast transmission services licensed to any Urbanized Area.

**C. The Fourth Allotment Priority, the Public Interest Factor, is Better Served by the Allotment of Channel 296A to Livingston Manor**

As the Commission has recognized, it is in the public interest to award a community its first local aural transmission service. *See Newnan and Peachtree, Georgia*, 7 FCC Rcd 6307, 6308 (1992). Thus, by allotting FM Channel 296A to Livingston Manor the public interest will be served by providing the community with a locally based transmission service that otherwise would not exist. Because a new allocation is proposed, no existing listeners will lose any broadcast reception services.

In addition, AM Communications' proposal will result in new service to a larger population than the Walton proposal. As indicated in the attached Engineering Statement, the proposal set forth herein will result in a new service to 35,978 people. Allotting Channel 296A to Walton, as proposed by the Commission, would result in new service to 6,028 fewer people.

Because this proposed allotment results in a first local transmission service and provides a new aural service to a larger number of people without any resulting loss of service, the instant proposal is clearly in the public interest.

**D. AM Communications' Declaration of Intent**

If AM Communications' proposal set forth herein is adopted, AM Communications intends to file the appropriate application for Channel 296A at Livingston Manor, New York and, if its application is granted, to cause the facilities contemplated therein to be promptly constructed.

**E. AM Communications' Proposal Requires Canadian Concurrence**

Livingston Manor is located approximately 248 kilometers from the nearest point of the common border between the United States and Canada. *See* Engineering Statement at 2. Since Livingston Manor lies within 320 kilometers of the U.S.-Canadian border, Canadian concurrence in the allotment is required. *See 1991 Agreement Between the Government of Canada and the Government of the United States of America Relating to the FM Broadcasting Service*, as modified on July 9, 1997. AM Communications therefore respectfully petitions the Commission to request from Canada that a coordinated allotment be made for Livingston Manor, New York on Channel 296A. AM Communications' proposal meets all separation requirements toward identifiable Canadian stations and allotments as a Class A station. *See* Engineering Statement at 2.

Based on the foregoing, AM Communications respectfully requests that the Commission allot FM Channel 296A to Livingston Manor, New York rather than to Walton, New York as proposed in the NPRM, MM Docket No. 99-10, RM-9435. Because the allotment of the channel to Livingston Manor would result in a preferential new arrangement of allotments under the Commission's guidelines, the public interest will be better served by adoption of the allotment proposed herein.

Respectfully submitted,

AM COMMUNICATIONS

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Dated: March 15, 1999

# **ENGINEERING STATEMENT**

Engineering Statement  
**Petition for Rulemaking**  
**to Amend the FM table of Allotments (§73.202(b))**  
**Counter Proposal to RM-9435 - MM Docket 99-10**  
**Addition of Channel 296A at Livingston Manor, New York**  
prepared for  
**A M Communications**

## **Introduction**

*A M Communications* respectfully requests the Federal Communications Commission to amend Section 73.202(b) of its rules to add FM Channel 296A at Livingston Manor, New York instead of Walton, New York (RM-9435). *A M Communications* seeks to provide a first local aural service to the town of Livingston Manor in Sullivan County, New York.

## **Ch. 296A at Livingston Manor, New York**

The town of Livingston Manor is a census designated place with a population of 1,482 people as of the 1990 U.S. Census. The town of Livingston Manor has an elected town supervisor and four councilmen as well as a number of other features which conform to the definition of a community. There is a town school with approximately 800 children ranging from kindergarten through 12<sup>th</sup> grade, a town hall, a chamber of commerce, a library, a fire house, various shops and stores, including a gift shop, an IGA (grocery store), and several country markets. In Livingston Manor there are several community churches and a post office. Livingston Manor is assigned zip code 12758.

*A M Communications'* proposed reference point for Livingston Manor (North Latitude 41° 56' 52" West Longitude 74° 48' 13") incorporates a 6.3 km site restriction to the north because of a 115 km separation requirement with WWYY(FM) (Ch. 296A, Belvidere, NJ). *A M Communications'* proposed reference point for Ch. 296A meets all pertinent minimum distance separation requirements for Ch. 296A with respect to domestic, United States stations.

From the proposed reference point, a 6.0 kW/100m facility will be able to encompass the town of Livingston Manor with a 3.16 mV/m or better principal community signal strength contour. From the proposed reference point, within the Class A class contour distance of 28 kilometers, there

are 2,463 square kilometers and 35,978 people as of the 1990 U.S. Census.<sup>1</sup> Livingston Manor is not situated in an “urbanized area.” A 3.16 mV/m contour at maximum Class A facilities from the proposed reference point will not contact any portion of an “urbanized area.”

The proposed reference point is approximately 248 kilometers from the nearest point of the U.S. Canadian Border. The instantly proposed use of ch. 296A at Livingston Manor is therefore within the 320 km “coordination zone” considered the “border area” in the 1991 Agreement between the United States and the Government of Canada regarding the FM Broadcasting Service as amended in 1997. *A M Communications* therefore petitions the Commission to request from Canada that a coordinated allotment be made for Livingston Manor, New York on Channel 296A. *A M Communications*’ proposed reference point for Ch, 296A with 6.0 kW/100m AAT facilities at Livingston Manor meets all pertinent separation requirements toward identifiable Canadian stations and allotments as a Class A station.

#### **Ch. 296A at Livingston Manor, NY is Mutually Exclusive with Ch. 296A at Walton, NY**

The use of Ch. 296A at *A M Communications*’ proposed reference point to provide a first local service to Livingston Manor, New York is mutually exclusive with the pending proposal to add Ch. 296A as a third local service to Walton, New York. WDLA-FM and WDLA(AM) are allotted to Walton, New York.

#### **Conclusion**

*A M Communications* respectfully requests that the Commission amend Section 73.202(b) to allot Ch. 296A to Livingston Manor, New York with the reference point North Latitude 41° 56' 52" West Longitude 74° 48' 13" with a 6.3 km site restriction to the north. Allotment of Ch. 296A to Livingston Manor will provide a first local aural service to the town.

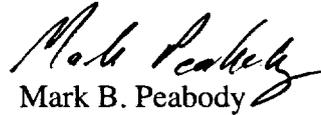
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<sup>1</sup> From the proposed reference point for Ch. 296A at Walton, New York, the Class A class contour distance of 28 kilometers encompasses 29,950 people as of the 1990 U.S. Census.

Engineering Statement  
(continued - Page 3 of 3)

**Certification**

I, Mark B. Peabody, hereby certify that the foregoing statement for Ch. 296A at Livingston Manor, New York for *A M Communications* was prepared by me or under my direction, that it is true and correct to the best of my knowledge and belief, and that my qualifications are a matter of record with the Federal Communications Commission.

  
Mark B. Peabody

March 12, 1999

**CERTIFICATE OF SERVICE**

I, Renee Williams, hereby certify that I have on this 15th day of March, 1999 caused a copy of the foregoing "**PETITION FOR RULE MAKING AND COUNTERPROPOSAL**" to be served by first class U.S. mail, postage prepaid, upon the following:

\*Leslie K. Shapiro  
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Dana Puopolo  
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Renee Williams

\*via hand delivery