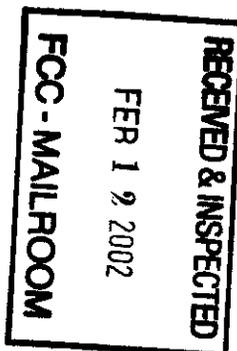


Before the
Federal Communications Commission
Washington, D.C. 20554



In the matter of)	
)	
Amendment of Section 73.202(b))	
Table of Allotments,)	
FM Broadcast Stations.)	
(Keeseville, New York, Hartford)	MM Docket No. 02-23
and White River Junction, Vermont))	RM-10359
)	
(Harrodsburg and Keene, Kentucky))	MM Docket No. 02-24 ✓
)	RM-10360
)	
(Beverly Hills and Spring Hill, Florida))	MM Docket No. 02-25
)	RM-10361
)	
(Bridgeton and Elmer, New Jersey))	MM Docket No. 02-26
)	RM-10362

NOTICE OF PROPOSED RULE MAKING

Adopted: January 30, 2002

Released: February 8, 2002

Comment Date: April 1, 2002

Reply Comment Date: April 16, 2002

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a multiple docket *Notice of Proposed Rule Making* setting forth four separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each proposal involves a change of community of license. Each petitioner states that it will file an application for construction permit to effectuate the change of community if granted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. Each of the petitioners filed its proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.¹

3. This is a multiple docket *Notice of Proposed Rule Making* issued in response to a Commission *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Notice of Proposed Rule Making*. Each proposal has its own docket and rulemaking number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions by avoiding duplicative actions. We request comments and/or

¹ See *Report and Order* in MM Docket No. 88-526 ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O").

counterproposals for the following proposals:

A. MM Docket No. 02-23; RM-10359

Petitioners: Great Northern Radio, LLC ("Great Northern")
Family Broadcasting, Inc. ("Family Broadcasting")
c/o David G. O'Neill
Jonathan E. Allen
Manatt, Phelps & Phillips
1501 M Street, N.W., Suite 700
Washington, DC, 20005-1702

Proposal: Great Northern, licensee of Station WSSH(FM), White River Junction, Vermont, and Family Broadcasting, licensee of WWOD(FM), Hartford, Vermont, propose to reallocate Channel 282C3 from Hartford, Vermont to Keeseville, New York and Channel 237A from White River Junction to Hartford, and modify the licenses of Stations WSSH(FM) and WWOD(FM) to reflect the changes. Great Northern and Family Broadcasting pledge to file the necessary applications to effectuate the changes, if granted.

<u>Community</u>	<u>Present</u>	<u>Channel</u>	<u>Proposed</u>
Hartford, Vermont	282C3		237A
White River Junction, Vermont	237A		----
Keeseville, New York	----		282C3

Coordinates: Coordinates for Channel 237A at Hartford are 43-43-45 NL and 72-22-22 WL. Coordinates for Channel 282C3 at Keeseville are 44-31-31 NL and 73-31-07 WL.

Additional Information: Great Northern and Family Broadcasting note that their proposal will serve the public interest because it would provide Keeseville, New York with its first local aural transmission service and will not deprive either Hartford or White River Junction of local aural transmission service.² In addition, it will allow Station WSSH(FM) to upgrade from 3.0 kW at 100 meters to a full 6.0 kW at 100 meters. They allege that Keeseville has sufficient indicia of community status to qualify as a community for allotment purposes and note that while it is outside of the Burlington, Vermont Urbanized Area, its 70 dBu signal would cover over 50% of that Urbanized Area.³ These petitioners provide an analysis using the factors delineated in *Faye and Richard Tuck ("Tuck")*,⁴ which they allege shows that Keeseville is an independent community for allotment purposes. This showing does not analyze enough of the factors to make a finding of independence. However, our initial analysis of the petition shows that the 70 dBu contour would cover approximately 25% of the Burlington Urbanized Area, and thus a *Tuck* analysis would not be necessary. We seek comment on the community status of Keeseville, adding more detail than was submitted with the petition. In addition, we seek

² White River Junction is also served by WNHV(AM).

³ In support of this, they state that Keeseville is recognized by the U.S. Census Bureau, and is 13 miles away from Burlington, Vermont, separated from the city by Lake Champlain. It has a 1990 U.S. Census population of 1,854 persons, an elected government, a town hall, town clerk, town justice (Factor 4) and a transportation department, sewage treatment plant and forest ranger, as well as schools and a fire station. (Factor 8). It has its own local post office and separate set of zip codes. (Factor 5). It has many businesses and health facilities. (Factor 6). In addition to stating that the Keeseville allotment will cover over 50% of the Burlington Urbanized Area petitioners also address the relative size and population of Keeseville vis à vis Burlington, which is 2.1%, and state that this should establish its independence of the Urbanized Area, as well.

⁴ 3 FCC Rcd 5375 (1988).

comment on the relative gains and losses from this proposal, addressing the number of reception services in the loss area and whether any areas will be underserved.

Channel 237A can be allotted at Hartford at a site 8.1kilometers (5.0 miles) north of the community. Channel 282C3 can be allotted at Keeseville at a site 3.8 kilometers (2.3 miles) northwest of the community. These proposals are within 320 kilometers of the Canadian border. Therefore, Canadian concurrence has been requested.

FCC Contact: Victoria McCauley (202) 418-2180.

B. MM Docket No. 02-24; RM-10360

Petitioner: Mortenson Broadcasting Company of Central Kentucky, LLC
 (“Mortenson”)
 c/o Jerrold Miller
 Miller & Miller, P.C.
 P.O. Box 33003
 Washington, DC 20033

Proposal: Mortenson, licensee of Station WJMM-FM, Harrodsburg, Kentucky, proposes to substitute Channel 257A for Channel 257C3 at Harrodsburg, and reallot Channel 257A from Harrodsburg, to Keene, Kentucky, as the community’s first local transmission service, and modify the license of Station WJMM-FM to reflect the changes. Mortenson pledges to file an application to effectuate the changes, if granted.

<u>Community</u>	<u>Present</u>	<u>Channel</u>	<u>Proposed</u>
Harrodsburg, Kentucky	257C3		---
Keene, Kentucky	---		257A

Coordinates: Coordinates for Channel 257A at Keene are 37-56-36 NL and 84-38-31 WL.

Additional Information: Mortenson states that its proposal will serve the public interest. The community of Harrodsburg will continue to be served by Station WHBN(AM), and Keene will receive its first local transmission service, which will fulfill FM Allotment Priority number 3. In addition, it states that Keene has sufficient indicia of a community to qualify as a community for allotment purposes, despite its small size, 200 persons. In support, it states that it was founded in 1794 under the name of Liberty, Kentucky, and the name was changes to Keene in 1848. It was a thriving community in the 19th century because of its sulfur springs, but its popularity waned after the Civil War. It has a post office and its own zip code, and numerous residents signed a petition attesting to their belief that they are residents of that town. It has a road designating its entrance, and there are businesses within its borders. We seek comment on the issue of the community status of Keene.

In addition, we seek comment on the public interest benefits of the downgrade and change of community in this proposal. Harrodsburg is a community of 7,335 persons, according to the 1990 U. S. Census. Keene is not a city, town or Census Designated Place (“CDP”). In the Census, Keene is listed as a Division of Jessamine County, Kentucky, with a population of 3,226 persons. Rand McNally lists Keene as a place in its *Commercial Atlas and Marketing Guide* with a population of 300 persons. Our engineering analysis shows that from the site proposed in the petition, Harrodsburg will no longer receive the signal of Station WJMM-FM. In addition, the proposal, while a reduction in power, will provide a city-grade signal to a larger proportion of the Lexington-Fayette, Kentucky Urbanized area, albeit less

than 50%. Finally, we note that while there are no white or gray areas in the change of community proposal, and all areas are well served, the number of people in the loss area, 89,601 persons, is 12 times as large as the number of persons in the gain area, 7,934 persons.

Channel 257A can be allotted at Keene, Kentucky without a site restriction.

FCC Contact: Victoria McCauley (202) 418-2180.

C. MM Docket No. 02-25; RM-10361

Petitioner: **WGUL-FM, Inc. ("WGUL-FM")**
c/o James A. Koerner
Koerner & Olender, P.C.
Suite 124
North Bethesda, MD 20852

Proposal: WGUL-FM, licensee of Station WGUL-FM, Beverly Hills, Florida, proposes to reallocate Channel 292C3 from Beverly Hills, Florida, to Spring Hill, Florida, as its first local transmission service, and modify Station WGUL-FM's license to reflect the changes.

<u>Community</u>	<u>Present</u>	<u>Channel</u>	<u>Proposed</u>
Beverly Hills, Florida	292C3		---
Spring Hill, Florida	---		292C3

Coordinates: Coordinates for Channel 292C3 at Spring Hill, Florida are 28-36-00 NL and 82-33-45 WL.

Additional Information: In support of its proposal, WGUL-FM states that the proposal will result in a preferential arrangement of allotments because it will provide a first local transmission service to Spring Hill, a community with a 1990 Census population of 31,117 persons, (2000 Census population of 69,078 persons). In addition, it notes that the proposal will not deprive Beverly Hills, 1990 population 6,163 persons (2000 Census population, 8,317 persons) of its only local service because daytime Station WINV(AM) has been granted authorization to change its community to Beverly Hills pursuant to a construction permit, File No. BMJP-20010320AB, granted on July 2, 2001.⁵ WGUL-FM notes that it is the licensee of both stations and is committed to completing the construction of Station WINV-AM at Beverly Hills and will be filing its license application shortly. We seek comment on whether this would result in a preferential arrangement of allotments.

WGUL-FM states that Spring Hill is a community within the Commission's definition for allotment purposes. Although it is not incorporated, it is a census designated Urbanized Area in a growing area. Since its proposal covers no other Urbanized Area, it states that no *Tuck* analysis is required. As further support of its community status, WGUL-FM states that Spring Hill has numerous churches, businesses and restaurants, many of which contain the name "Spring Hill" in their names. We seek comment on additional indicia of community which shows that Spring Hill is a community for allotment purposes.

⁵ We note that amendments to Station WINV(AM)'s construction permit have been filed but not granted and that there is no license to cover that construction permit on file.

With respect to the public service benefits with respect to gain/loss of service, using 2000 census population figures, WGUL-FM states that there would be 54,278 persons in the loss area, all of whom would continue to be well served, with at least five reception services. There would be 83,037 persons in the gain area, which nets 28,759 persons who would gain service. Neither area includes any white or gray area. There would be a net loss of 962 square kilometers in land area. Our engineering analysis substantiates this for the most part. We seek comment on the public interest benefits of this reallocation.

Channel 292C3 can be allotted at Spring Hill at a site 12.0 kilometers (7.5 miles) northwest of the community.

FCC Contact: Victoria McCauley (202) 418-2180.

D. MM Docket No. 02-26; RM-10362

Petitioner: Cohanzick Broadcasting Corp. ("Cohanzick")
c/o Marnie Sarver
Wiley Rein & Fielding, LLP
1776 K Street, N.W.
Washington, DC 20006

Proposal: Cohanzick, licensee of Station WSNJ-FM, Bridgeton, New Jersey, proposes to reallocate Channel 299B from Bridgeton to Elmer, New Jersey, as that community's first local transmission service. Cohanzick pledges to file an application to effectuate the change of community, if granted.

<u>Community</u>	<u>Present</u>	<u>Channel</u>	<u>Proposed</u>
Bridgeton, New Jersey	299B		---
Elmer, New Jersey	---		299B

Coordinates: Coordinates for Channel 299B at Elmer are 39-27-32 NL and 75-12-12 WL.

Additional Information: In support of its petition, Cohanzick states that this proposal will serve the public interest as a preferential arrangement of allotments because it will provide a first local transmission service to Elmer, population with a 1990 population of 1,571 persons, and will leave behind an AM and a NCE FM station at Bridgeton, 1990 population 18,942 persons. Cohanzick points out there are preexisting short spacings between Station WSNJ-FM and four other stations. It argues that since these are grandfathered under Section 73.213 of the Commission's Rules, and it proposes no change of transmitter site, they should not be a bar to its change of community proposal. We seek comment on this issue.

Cohanzick argues that Elmer is a community for allotment purposes. It states that it has its own zip code and post office, and has a mayor and borough council. It has its own police and fire departments and has ambulance service. It has its own newspaper, library and schools. It has numerous retail establishments and churches. It has health facilities, including a hospital. It has cultural events at the Appel Farm Arts and Music Center, and has recreational facilities, including Yogi Bear's Jellystone Park.

Cohanzick states that the 70 dBu contour does not reach any Urbanized Area. However, our engineering analysis shows that it covers 3% of the Philadelphia Urbanized Area, 1.2% of the Wilmington, Delaware Urbanized Area, and 100% of the Vineland-Millville, New Jersey Urbanized

Area. Petitioner is requested to address this discrepancy in its comments, and the impact on its proposal, using the factors delineated in *Tuck*.

Channel 299B can be allotted at Elmer, New Jersey at Cohanzick's current transmitter site 15.4 kilometers (9.6 miles) south of the community.

FCC Contact: Victoria McCauley (202) 418-2180.

4. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket Notice of Proposed Rule Making should reference only the specific docket to which the filing pertains. 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 in paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before April 1, 2002, and reply comments on or before April 16, 2002, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Section 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).

7. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. 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 the 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 the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

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 protection. 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 proposals 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. The person filing the comments shall serve comments on the petitioner. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, 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 Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.