

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
FM Table of Allotments)
FM Broadcast Stations)
(Keeseville, New York and Hartford and)
White River Junction, Vermont))

MM Docket No. 02-23 /
RM - 10359

To: Media Bureau

**COMMENTS OF GREAT NORTHERN RADIO, LLC
AND FAMILY BROADCASTING, INC.**

1. Great Northern Radio, LLC ("Great Northern"), licensee of WSSH(FM), White River Junction, Vermont, and Family Broadcasting, Inc. ("Family Broadcasting"), licensee of WWOD(FM), Hartford, Vermont (collectively, the "Joint Petitioners"), by their counsel, hereby submit these Comments filed pursuant to Section 1.420 of the Commission's Rules in connection with the Notice of Proposed Rule Making in this proceeding.¹ The Joint Petitioners hereby reiterate their interest in implementing the proposed allotments outlined in their Petition for Rule Making ("Petition").² There, the Joint Petitioners proposed to substitute Channel 237A for Channel 282C3 at Hartford, Vermont, with the reallocation of Channel 282C3 from Hartford to Keeseville, New York and the modification of the license for WWOD(FM) accordingly. Concurrently, the Joint Petitioners proposed the reallocation of Channel 237A from White River Junction, Vermont to Hartford, Vermont, with a modification of the license for Station

¹ See *In the Matter of Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations (Keeseville, New York, and Hartford and White River Junction, Vermont), Notice of Proposed Rule Making*, MM Docket No. 02-23 (RM-10359) (rel. February 8, 2002) ("NPRM").

² See *Petition for Rule Making of Great Northern Radio, LLC and Family Broadcasting, Inc.* (filed July 23, 2001).

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WSSH(FM), accordingly. The Joint Petitioners submit these comments to provide additional detail in response to the *NPRM*'s request for additional information regarding the community status of Keeseville and the proposal's population gains and losses.

2. In the event that the Joint Petitioners' proposed changes to the FM Table of Allotments are implemented, the Joint Petitioners will timely file the necessary applications for construction permit for the new stations and will construct the new facilities in a timely manner. The Joint Petitioners reaffirm that this proposal will serve the public interest by resulting in a preferential allotment arrangement because the proposal would provide Keeseville with its first local aural transmission service but would not deprive Hartford or White River Junction of local aural transmission service. For these reasons, approval of this proposal is respectfully requested.

Community Status of Keeseville

3. The *NPRM* requests additional detail regarding the community status of Keeseville in connection with the Joint Petitioners' proposal to allot Channel 282C3 to that community as a first local transmission service. The *NPRM* determined that the Joint Petitioners' proposal does not require an analysis using the factors delineated in *Faye and Richard Tuck* because the proposed 70 dBu contour would cover less than 50 percent of the Burlington Urbanized Area.³ Accordingly, the following comments are submitted without a *Tuck* analysis. The Joint Petitioners respectfully submit that Keeseville represents a community that is independent from Burlington and that it therefore is entitled to consideration for a preference in the FM Table of Allotments as a first local service.

³ See *NPRM* at pp. 2-3; *Faye and Richard Tuck, Inc.*, 3 FCC Rcd 5374 (1988) (detailing eight factors relating to a proposed community's independence from a nearby Urbanized Area.).

4. Located in the Adirondack mountains, Keeseville lies near Lake Champlain, which separates Keeseville from Burlington, Vermont. Keeseville is a Census-designated place of 1,850 persons.⁴ The Ausable River runs through Keeseville, marking a boundary between Clinton and Essex counties, and Keeseville is located in both counties.⁵ Keeseville is located approximately 13 miles from Burlington.⁶

5. Several factors demonstrate Keeseville residents' perception that their community is separate from Burlington. First, Keeseville's historical identity differs from Burlington's. Keeseville was incorporated in 1878 to provide water and fire services to a developing industrial community along the Ausable River, and early industry centered on the iron ore and forestry that supported Keeseville commerce.⁷ Keeseville's Historic District, in the heart of this "Thoroughly Wide Awake Little Village,"⁸ appears in the National Register of Historic Places. Historic buildings, bridges and other landmarks in Keeseville appear on the National Register, including the Swing Bridge and the Stone Arch Bridge.⁹

6. Keeseville's independence also stems from its self-governance. According to the village clerk, Keeseville's elected officials include a mayor and a four-member Board of Trustees.¹⁰ The

⁴ See Exhibit 2. For purposes of the Comments, all population and U.S. Census Figures are provided as of the 2000 Census. There may be slight differences from populations proposed in the Petition for Rule Making, which were based on 1990 Census figures.

⁵ See Exhibit 2.

⁶ *Id.*

⁷ See, e.g., "A Thoroughly Wide Awake Little Village: A Walking Guide to Keeseville's Historic District," published by Friends of the North Country, Inc. and others, which vividly details the community's landmarks and history. See also "A History of Keeseville, N.Y." at <http://bigelow.simplenet.com/keese/keese1.htm>.

⁸ *Id.*

⁹ See Exhibit 2.

¹⁰ *Id.* The village clerk has provided the Petitioners with some of the information in this paragraph regarding Keeseville's services.

local administration includes a planning board and a zoning board. Keeseville's municipal services also include public works, parks and recreation and water/sewer services. Keeseville's court hears matters arising within the village's jurisdiction. Keeseville has a full-time post office, and Keeseville's volunteer fire department also provides ambulance and emergency service. While Keeseville does not provide its own power/natural gas services or police force, those services are provided by New York State Electric and Gas and the New York State police, not by Burlington. Thus, Keeseville does not rely upon the Burlington Urbanized Area to provide these fundamental municipal services to Keeseville residents.

7. Keeseville has sought to promote the community's commerce and industry through devoting significant time and resources toward recent capital improvement projects. For example, the Keeseville wastewater treatment plant has obtained \$2 million in grants from New York State to improve water quality and to reduce runoff into Lake Champlain.¹¹ Other recent projects include a \$7.4 million project to improve the village's water filtration system and a community-wide tree-removal project to eliminate tree hazards from Keeseville's rights of way.¹² The village's ongoing Community Trail project involves the restoration of the Keystone Arch Bridge and the development of a riverwalk to link Keeseville with nearby Ausable Chasm.¹³

8. As noted in the Petition, dozens of local businesses call Keeseville home and demonstrate their connection to the village by including the village's name in their own. Keeseville is home to PepsiCo Bottling Company of Keeseville, Keeseville Bakery, Keeseville Auto Parts,

¹¹ See Press Release, *Governor Political Announces \$1 Million for Lake Champlain* (released July 12, 2001) at Exhibit 2.

¹² See Stephen Bartlett, *Progress in Keeseville*, *Press Republican* (November 25, 2000, p. A5) at Exhibit 2.

¹³ See Robin Loope, *Keeseville on the Move*, *Press Republican* (March 8, 2002) at Exhibit 2.

Keeseville Bowling Center and Keeseville Pharmacy, among others.¹⁴ These businesses provide many local employment opportunities for Keeseville residents who work in the village. In addition, a local doctor in private practice provides health-care services to Keeseville residents. Keeseville is home to several churches, including Immaculate Conception – St. John the Baptist, St. Paul’s Episcopal Church, Keeseville United Methodist Church, St. Catherine’s Shepherd Church and the Independent Baptist Church.¹⁵ Keeseville Elementary School and Ausable Valley Middle School are located in Keeseville.¹⁶ Keeseville’s Riverside Park and a bike trail are among the village’s cultural attractions, and the village is home to the Keeseville Field Day, parades and fairs, as well as fishing, camping, hiking, hunting and other sports.

9. Two local newspapers published in nearby communities serve Keeseville residents. The *Press Republican* (the self-described “Hometown Newspaper of Clinton, Essex and Franklin Counties”) is published in nearby Plattsburgh, New York and covers stories of interest to Keeseville residents. In addition, the *Valley News* (self-described as “Essex County’s Community Newspaper”) also covers local events in Keeseville. These media serve the local needs and interests of Keeseville residents and also demonstrate that advertisers need not rely upon Burlington-based newspapers to reach Keeseville residents.

10. Keeseville’s independence from Burlington stems from many economic, geographic and historic factors that strongly support Keeseville’s qualifications for an FM allotment that would constitute a first local aural transmission service for the community. Accordingly, the Joint

¹⁴ See Exhibit 2.

¹⁵ *Id.*

¹⁶ *Id.*

Petitioners reiterate their position in the Petition and respectfully submit that Keeseville is entitled to a preference as a first local service.

Technical Compliance

11. The *NPRM* seeks additional information regarding the population gains and losses associated with the Joint Petitioners' proposal. This section and the attached Engineering Statement¹⁷ address the gains and losses and the number of reception services associated with the proposal and whether any areas will be underserved.

12. The proposal includes a proposed net gain in population of 95,670 persons, based on 2000 U.S. Census figures.¹⁸ The population in the proposed coverage area of WWOD(FM) is 198,776 persons, compared to the 103,106 persons within the station's present coverage area. The Engineering Statement demonstrates that removal of the existing WWOD(FM) primary coverage contour would comport with FCC rules and policy. At least 31 aural services serve some portion of the existing WWOD(FM) 60 dBu contour, and the removal of this coverage area will not create "white areas" within the existing coverage area because the primary coverage contour of WVPR(FM) subsumes this entire coverage area.¹⁹ In addition, the removal of WWOD(FM)'s current 60 dBu coverage area will not create "gray areas" because three existing stations' contours completely encompass the existing WWOD(FM) 60 dBu coverage area.²⁰

13. Among the 103,106 persons currently served by WWOD(FM), almost 99.7 percent will continue to receive five or more aural services after the removal of WWOD(FM)'s primary

¹⁷ See *Engineering Statement* of Robert M. Smith, R.M. Smith and Associates at Exhibit 1.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

coverage contour.²¹ This population is considered “well served” according to FCC policy.²² The geographic areas receiving four aural services represent only three percent of the present coverage area of WWOD(FM).²³ Although the population (362 out of 103,106 persons) in these areas will receive four aural services, this percentage is *de minimus* under FCC precedent and does not preclude the FCC’s favorable consideration of the Joint Petitioners’ proposal.²⁴

²¹ *Id.*

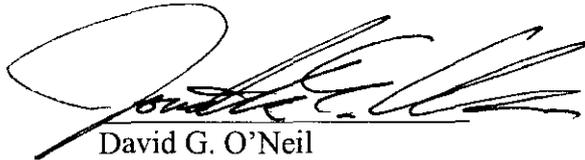
²² *See Family Broadcasting Group*, 53 RR.2d 662, 669 (Rev. Bd. 1983), rev. denied, FCC 83-559 (1983).

²³ *See Engineering Statement.*

²⁴ *See Detroit Lakes and Barnesville, Minnesota and Enderlin, North Dakota*, 2001 FCC LEXIS 6869 (2001) (awarding first local service preference to community where almost nine percent of loss-area population would receive four or fewer full-time services); *Earle, Pocohantas and Wilson, Arkansas and Como and New Albany, Mississippi*; 10 FCC Rcd 8270 (1995); *Huntsville and Willis, Texas*, 10 FCC Rcd 3329 (1995).

Conclusion

WHEREFORE, FOR THE FOREGOING REASONS, Great Northern and Family Broadcasting respectfully request that the Commission issue an Order in the instant proceeding granting the proposal outlined in the Joint Petitioners' July 23, 2001 Petition for Rule Making and modify Section 73.202(b) accordingly.

A handwritten signature in black ink, appearing to read 'Jonathan E. Allen', is written over a horizontal line.

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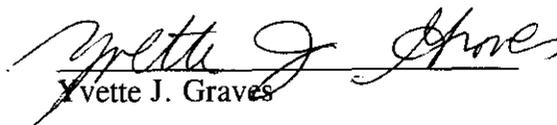
April 1, 2002

Certificate of Service

I, Yvette Graves, a secretary in the law firm of Manatt, Phelps and Phillips, LLP, do hereby certify that on this 1st day of April, 2002, I caused copies of the foregoing "Comments of Great Northern Radio, LLC and Family Broadcasting, Inc." to be hand delivered, addressed to the following persons:

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