

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

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In the Matter of

APR 16 2002

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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MM Docket No. 02-23  
RM-10359

To: The Chief  
Media Bureau

REPLY COMMENTS

Montpelier Broadcasting, Inc. ("MBI"), by its attorneys and pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby submits its Reply Comments supporting the Counterproposal filed by Hall Communications, Inc. ("Hall") and opposing the Comments filed by Great Northern Radio, L.L.C. and Family Broadcasting, Inc. (collectively, the "Petitioners") in connection with the above-referenced Petition for Rule Making ("Petition"). In support hereof, MBI states as follows:

1. On July 23, 2001, Petitioners submitted the Petition proposing the following: (A) reallocation of Channel 282C3 from Hartford, Vermont to Keeseville, New York, (B) reallocation of Channel 237A from White River Junction, Vermont to Hartford, Vermont, and (C) modification of the licenses of Stations WSSH(FM) (currently authorized to White River Junction) and WWOD(FM) (currently authorized to Hartford) to reflect the proposed changes (the "Petition"). The Commission released a *Notice of Proposed Rulemaking* ("NPRM"), 17 FCC Rcd 2232 (M.M.B. 2002) seeking comments on the proposed allotment changes. On April

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1, 2002, MBI submitted Comments (“MBI’s Comments”), Petitioners submitted Comments (“Petitioners’ Comments”) and Hall submitted a Counterproposal urging the Commission to allot a new Channel 282A at Keeseville as an alternative to Petitioners’ proposal (“Hall’s Counterproposal”). MBI now submits that Hall’s Counterproposal better serves the public interest than the allotments proposed by Petitioners and MBI urges its adoption.

2. MBI submits that Hall’s Counterproposal as well as Petitioners’ Comments provide ample evidence that Keeseville qualifies as a “community” for allotment purposes under the Commission’s standards. However, Keeseville is entitled not only to a local transmission service, but also to service that makes optimal use of spectrum and fully promotes the public interest. Hall’s Counterproposal offers a preferential allotment scheme for Keeseville than the fatally flawed proposal put forth by Petitioners.

3. To begin with, the Engineering Statement supporting Petitioners’ proposal mistakenly identifies an allotment at St. Jean, Quebec as a Channel 282-A allotment. As pointed out by MBI and Hall, *see* MBI Comments at 3, Hall Counterproposal at 2, the St. Jean allotment is in actuality a Class B allotment. As demonstrated by Hall’s Engineering Report, Petitioners’ proposed Class C3 operation would impermissibly interfere with the St. Jean Class B allotment. *See* Hall’s Counterproposal, Engineering Report, Exhibit A, Appendix 1. Given this impermissible interference, the Commission cannot grant Petitioners’ proposal.

4. Further, any gains achieved under Petitioners’ proposal must be considered in light of the losses borne by populations in rural areas. Petitioners’ proposal removes the sole FM allotment and the only full-time transmission service from the rural community of White River

Junction,<sup>1</sup> and leaves three percent of the present coverage area of WWOD(FM) and 362 persons with less than five aural services. *See* Petitioners' Comments at 7. Hence, Petitioners' proposed operation provides additional service for already well-served populations in urbanized areas at the expense of underserved populations in rural areas.

5. In their Comments, Petitioners inappropriately characterize these losses as *de minimis* under FCC precedent. The fact that the FCC sometimes tolerates underserved areas where the public interest is otherwise served does not imply, as Petitioners suggest, that the Commission simply disregards underserved populations under a certain size. While the Commission may tolerate such losses, for example, when the proposed allotment advances one of the Commission's FM priorities,<sup>2</sup> such losses always remain cognizable. Commission precedent in no way supports treating any population, however small, as negligible. *See Detroit Lakes*, 16 FCC Rcd at 22584 (concluding that "these [population losses] do not preclude favorable action on this proposal" only after giving full consideration to those losses).

6. The Commission, therefore, must take underserved areas into consideration when deciding whether Petitioners' proposal or Hall's Counterproposal better serves the public

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<sup>1</sup> Under Petitioners' proposal, White River Junction would be served by a daytime-only station, WNHV(AM), which has its offices outside Vermont in the community of West Lebanon, New Hampshire.

<sup>2</sup> The Commission's FM priorities, as set forth in the *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 91-92 (1982) ("*FM Assignment Policies*"), include: (1) first aural service; (2) second aural service; (3) first local service; and (4) other public interest matters. The Commission gives co-equal weight to priorities (2) and (3). *Id.* The Commission accepted losses in the cases cited by Petitioners, Petitioners' Comments at 7, because such losses were offset by the promotion of the Commission's third FM priority, first local service. *See Detroit Lakes and Barnesville, Minnesota and Enderlin, North Dakota*, 16 FCC Rcd 22581, 22584 (M.M.B. 2001) ("*Detroit Lakes*"); *Earle, Pocohantas and Wilson, Arkansas and Como and New Albany, Mississippi*, 10 FCC Rcd 8270, 8271 (M.M.B. 1995); *Huntsville and Willis, Texas*, 10 FCC Rcd 3329 (M.M.B. 1995)).

interest. Like Petitioners' proposal, Hall's Counterproposal promotes the public interest by providing first local service to Keeseville. Unlike Petitioners' proposal, the Counterproposal does not create any underserved areas in the process. The loss areas and underserved populations created under Petitioners' proposal are clearly contrary to the public interest. In light of this loss differential, and given similar gains under the two proposed allotments,<sup>3</sup> Hall's Counterproposal is clearly more in keeping with Commission priorities and the public interest.

7. MBI further submits that the limitations in ERP and HAAT for the Keeseville allotment are another reason why Petitioners' allotment scheme fails to serve the public interest. In effect, Petitioners are requesting to make use of valuable spectrum in less than optimal fashion in order to allow Petitioners to enter the Burlington urbanized area and exit the White River Junction radio market. Clearly, the spectrum should not be used to promote a single party's own interests when alternative uses better serving the public interest are available. MBI supports Hall's Counterproposal as providing for the optimal use of the spectrum.

8. Hall's Counterproposal to allot a new Channel 282A at Keeseville neither violates Commission international contour protection requirements nor creates loss areas and underserved populations. *See* Hall's Counterproposal, Engineering Report, Exhibit A, Figure 1. Unlike Petitioners' flawed proposal, Hall's Counterproposal promises to bring optimal local transmission service to Keeseville without degrading existing levels of service. Hall's Counterproposal is clearly the preferential arrangement. Therefore, to best serve the public

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<sup>3</sup> In their Comments, Petitioners cite a net gain of 95,670 persons. *See* Petitioners' Comments at 6. Hall's Counterproposal cites a net gain of more than 93,000 persons. *See* Hall's Counterproposal at 5.

interest, the Commission should grant the Counterproposal and make a new Channel 282A allotment available through public auction.

WHEREFORE, MBI respectfully requests that the Commission deny the Petition for Rule Making submitted by Great Northern Radio, L.L.C. and Family Broadcasting, Inc., and grant Hall Communications, Inc.'s Counterproposal to allot a new Channel 282A at Keeseville, New York.

Respectfully submitted,

**MONTPELIER BROADCASTING, INC.**

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April 16, 2002

CERTIFICATE OF SERVICE

I, Barry A. Friedman, do hereby certify that I have, on this 16<sup>th</sup> day of April, 2002, served a copy of the foregoing "Reply Comments" on the following parties, by first-class mail, postage prepaid:

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