

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

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

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 *Reply Comments* filed in connection with the *Notice of Proposed Rule Making* in this proceeding.¹ In their *Comments*,² the Joint Petitioners reiterated their interest in implementing the proposed allotments outlined in their *Petition for Rule Making*.³ The public interest and FCC precedent clearly demonstrate that the proposed allotment of Channel 282C3 at

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"). The NPRM authorizes the filing of Reply Comments by April 16, 2002. Thus, these *Reply Comments* are timely filed.

² See *Comments of Great Northern Radio, LLC and Family Broadcasting, Inc.* in MM Docket No. 02-23 (filed April 1, 2002) ("*Comments*").

³ See *Petition for Rule Making of Great Northern Radio, LLC and Family Broadcasting, Inc.* (filed July 23, 2001) (the "*Petition*"). 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 WSSH(FM), accordingly.

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Keeseville represents a preferential allotment, and that the FCC may grant the *Petition* without delay.

Hall Communications, Inc. (“Hall”) and Montpelier Broadcasting, Inc. (“Montpelier”) raised several objections to the *Petition* in their filings in this proceeding.⁴ As these *Reply Comments* will show, these objections are without merit and ignore the force of applicable FCC law and precedent; thus, Hall and Montpelier provide no basis for denying the *Petition*.

I. The *Petition* Fully Protects the Allotment for FM Channel 281B at St. Jean, Quebec, and Does Not Result in “Impermissible Received Interference.”

1. Both Montpelier and Hall incorrectly suggest that the *Petition* fails to comply with U.S. and Canadian contour protection rules with respect to an allotment for a Canadian FM Station at St. Jean, Quebec. Montpelier states that the proposal is “fatally flawed” because the rulemaking “is premised on protecting an allotment of Channel 282-A at St. Jean, Quebec,” while Hall acknowledges that the proposal protects the Canadian allotment but offers only an unsupported claim that the proposal will result in “impermissible received interference” due to a “severe contour overlap,” and thus would not comply with U.S. and Canadian contour protection requirements. These claims must fail.

2. As the attached Engineering Statement indicates,⁵ and Hall Communications’ own engineering exhibit confirms, the Joint Petitioners’ proposal fully protects the allotment of

⁴ See *Counterproposal to Petition for Rulemaking* filed by Hall Communications, Inc. in MM Docket No. 02-23 (filed April 1, 2002); *Comments of Montpelier Broadcasting Inc.* in MM Docket No. 02-23 (filed April 1, 2002). If the FCC determines that the Hall pleading constitutes a valid counterproposal, the FCC will issue a public notice describing Hall’s Counterproposal and provide an opportunity for public comment. The Joint Petitioners will submit comments addressing Hall’s Counterproposal within the time period established upon issuance of a public notice and hereby reserve their rights to file such comments. These *Reply Comments* accordingly are limited to Hall’s and Montpelier’s challenges to the proposed changes in community of license for WWOD(FM) and WSSH(FM).

⁵ See Engineering Statement of Robert M. Smith (attached hereto as Exhibit 1) (the “Engineering Statement”).

Channel 281B at St. Jean, Quebec.⁶ The Joint Petitioners' proposed 48 dBu contour (F(50,50)) is located entirely within the United States; any resulting interference caused by contour overlap would lie wholly within the United States.⁷ Hall's own Engineering Statement, at Appendix I – Figure A, shows that Channel 282C3's proposed 48.0 dBu contour does not cross the U.S./Canada border.⁸

3. The proposed reallocation of WWOD(FM) to Keeseville and any received interference domestically is permissible under the Working Agreement. The FCC has previously held that the Working Agreement between the United States and Canada⁹ does not prohibit proposed domestic allotments for facilities that are short-spaced to vacant allotments in Canada where no objectionable interference is caused within the protected service contour of the existing allotment.¹⁰ In addition, the Commission has granted numerous authorizations for domestic radio stations whose protected contour receives predicted interference from Canadian stations.¹¹ This approach is consistent with the terms and conditions of the Working Agreement, and neither Hall nor Montpelier identifies any provision in the Working Agreement that would prohibit a

⁶At the time the *Petition* was filed, Channel 281A was allotted to St. Jean, Quebec, which the *Petition's* Engineering Statement inadvertently designated as Channel 282A. As the attached Engineering Statement confirms, the *Petition's* engineering also protected Canada's proposal to upgrade the allocation to Channel 281B.

⁷ See Engineering Statement at 1.

⁸ An unlabeled horizontal line, bisecting Figure A, appears to represent the U.S./Canadian border, because Keeseville and St. Jean are depicted on opposite sides of the line.

⁹ See *Working Arrangement for the Allotment and Assignment of FM Broadcasting Channels 201-300 Under the Agreement Between the Government of the United States of America and Government of Canada Relating to the FM Broadcasting Service in the 88-108 MHz Frequency Band* ("US/Canada Working Agreement").

¹⁰ See *Moscow, Post Falls and Troy, Idaho*; 14 FCC Rcd 17012 (Chief, Alloc. Branch 1999); *Wellsville and Canaseraga, New York*, 14 FCC Rcd 15964 (1999).

¹¹ See, e.g., application for construction permit for WNCQ-FM (File No. BPH-20001024ABS); application for construction permit for WFBE(FM) (File No. BMPH-901017IF); application for construction permit for WXKC(FM) (File No. BPH-861114IA); application for construction permit for WNUC(FM) (File No. BMPH-850809IF).

domestic proposal from receiving predicted interference from an existing Canadian allotment. The Commission must reject Hall's and Montpelier's objections to the reallocation of WWOD(FM) to Keeseville as devoid of merit.

II. The *Petition* Reflects Preferred Allotments Pursuant to FCC Precedent, and Hall and Montpelier Fail to Demonstrate Otherwise.

4. As stated in their *Petition* and *Comments*, the Joint Petitioners' proposal represents a preferential arrangement of allotments pursuant to FCC rules and policies. The *Petition* introduces a first local service into Keeseville, which represents a higher priority and an FCC-recognized stronger public interest benefit than the retention of a second local service at White River Junction. Hall and Montpelier attempt to conjure public interest and policy arguments to suggest otherwise, but neither commenter addresses, much less contradicts, FCC precedent affirming that the proposal represents a preferred arrangement of allotments. As described below, the objections raised by Hall and Montpelier are insufficient to justify overturning the *Petition*.

5. In assessing whether a proposal will result in a preferential arrangement of allotments, the Commission compares the existing and proposed arrangements in accordance with the FM allotment priorities set out in *Revision of FM Assignment Policies and Procedures*.¹² The FCC has consistently approved reallocation of channels that would introduce a first local transmission service to a community (Priority 3), over retention of the station in the original community, which would represent at best a second local service (Priority 4). The FCC has even granted change of community proposals where a new community of license would receive a first local

¹² *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (Comm. 1982). The 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, with co-equal weight given to priorities (2) and (3).

service and a daytime-only AM station would remain at the original community.¹³ Hall and Montpelier complain that the proposal contemplates removing the only *FM* allotment from White River Junction, but neither party can argue that the proposal deprives White River Junction of its sole local transmission outlet. As Hall acknowledges, the FCC will not prohibit a reallocation where such a transmission outlet remains in the community.¹⁴

6. Both commenters argue that the allocation of a Class C3 facility at Keeseville would not provide new service to an underserved population.¹⁵ Hall also asserts that there is “little justification” for the *Petition* because the population of White River Junction is greater than the population of Keeseville, but provides no basis for why the population difference is relevant to the FCC’s analysis of the proposal in accordance with the FM priorities. Clearly, both Hall and Montpelier ignore that the proposed first local transmission service in Keeseville represents a higher priority under the FM allotment criteria than a proposal to serve a larger community through preserving the existing allocation. These concerns about underservice and population disparities are immaterial to the analysis in light of the *Petition*’s higher allotment priority. Neither Hall nor Montpelier cite any controlling authority to disturb the well-settled precedent that supports the Joint Petitioners’ proposal, and their arguments on this score must fail.

7. Hall also claims that the proposal will create underserved areas but ignores the *de minimis* nature of these loss areas. As the Joint Petitioners describe fully in their *Comments*, the proposed allotment of Channel 282C3 at Keeseville at the proposed coordinates would leave *de minimis* loss areas at the present WWOD(FM) 60 dBu coverage area. As stated in the *Comments*,

¹³ See, e.g., *Ravenswood and Elizabeth, West Virginia*, 10 FCC Rcd 3181 (1995); *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352, 10355 (1995).

¹⁴ See *Hall Comments* at note 7.

¹⁵ See *Hall Comments* at 4; *Montpelier Comments* at 2.

almost 99.7 percent of the persons currently served by WWOD(FM) would continue to receive five or more aural services after the removal of WWOD(FM)'s primary coverage contour.¹⁶ FCC precedent considers this population to be "well served."¹⁷ Although 362 out of 103,106 persons will receive fewer than five aural services, this percentage is *de minimis* under FCC precedent and does not preclude the FCC's favorable consideration of the Joint Petitioners' proposal.¹⁸ Even if Hall is correct that the "removal of Station WWOD would eliminate one of the scarce aural voices for nearly 450 persons,"¹⁹ more than 99 percent of the persons in the current primary coverage contour would continue to receive five or more aural services; thus even Hall's projected loss areas are *de minimus* and not fatal to the proposal. Furthermore, the Joint Petitioners demonstrated in their *Comments* that no loss area will receive fewer than four aural services and disagree with the claim by Hall Communications on this matter.

8. Contrary to Montpelier's suggestion, the operation of WWOD(FM) on Channel 282C3 in Keeseville does not represent a prohibited move into an U.S. Census-Defined Urbanized Area.²⁰ The Commission determined in the *NPRM* that the proposed operations of WWOD(FM) on Channel 282C3 in Keeseville do not require a *Tuck* showing²¹ because the station will not place a 70 dBu signal over 50 percent or more of the Urbanized Area of Burlington, Vermont. Thus, operation of WWOD(FM) in Keeseville does not constitute operation in an urbanized market.

¹⁶ See Engineering Statement in *Comments*.

¹⁷ See *Family Broadcasting Group*, 53 RR.2d 662, 669 (Rev. Bd. 1983), *rev. denied*, FCC 83-559 (1983).

¹⁸ See, e.g., *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).

¹⁹ See *Hall Comments* at p. 3.

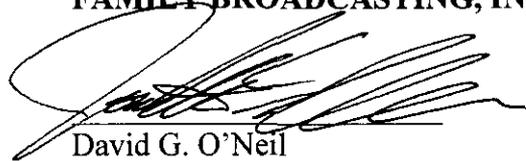
²⁰ See *Montpelier Comments* at p. 2.

Conclusion

The FCC should grant the *Petition* as a preferential arrangement of allotments because it will permit a first local service to Keeseville. The *Petition* complies with FCC policies and the U.S./Canada Working Arrangement. Hall and Montpelier provide no basis for denying the Joint Petitioners' proposal to change the community of license for stations WWOD(FM) and WSSH(FM). Hall and Montpelier rely almost solely upon policy arguments, without reference to controlling law, in a desperate effort to delay granting the Joint Petitioner's proposal. The FCC must implement its rules and international law and deny their objections.

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.

**GREAT NORTHERN RADIO, LLC
FAMILY BROADCASTING, INC.**



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April 16, 2002

²¹ See *NPRM*; see also *Faye and Richard Tuck*, 3 FCC Rcd 5375 (1988).

Certificate of Service

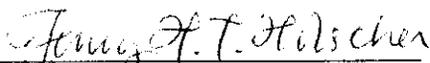
I, Jenny H. T. Hilscher, a secretary in the law firm of Manatt, Phelps and Phillips, LLP, do hereby certify that on this 16th day of April, 2002, I caused copies of the foregoing "Reply Comments of Great Northern Radio, LLC and Family Broadcasting, Inc." be delivered by first class mail, unless otherwise specified, to the following persons:

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EXHIBIT 1

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ENGINEERING STATEMENT

IN SUPPORT OF
REPLY COMMENTS ON A
PETITION FOR RULE MAKING

BY:

GREAT NORTHERN RADIO LLC
AND
FAMILY BROADCASTING, INC.

April 2002

PURPOSE AND SCOPE

The Reply Comments, of which this Statement is a part, support a Petition for Rule Making by Great Northern Radio LLC ("Great Northern") and Family Broadcasting, Inc. ("Family Broadcasting"). This Statement is in response to Comments by Montpelier Broadcasting, Inc. ("MBI"), and Hall Communications, Inc. ("Hall") to a Notice of Proposed Rule Making in MM Docket No. 02-23, RM-10359.

This Statement addresses MBI's objection to the proposal based upon MBI's assertion that the original Petition engineering is flawed with respect to protection of a Canadian allocation in St. Jean, Quebec. It also addresses Hall's objection based upon the proposal receiving interference from the allocation in St. Jean.

PROTECTION OF ALLOCATION 281B - ST. JEAN, QUEBEC

At the time of the preparation of the engineering for the Petition, the allocation for St. Jean, Quebec was listed in the Commission's CDBS database as a Class A allocation, with a request from Canada to upgrade the allocation to Class B. The engineering in the Petition listed the allocation as Class A, which it was, but the protection provided to the allocation recognized the requirement to protect the facility as a Class B, as proposed.

MBI, in its Comments stated, but did not attempt to support, "...the proposed limitations on ERP and HAAT sought by the Petitioners may well not serve to avoid the short-spacing problem".

The Petition fully protects, as required by the U.S./Canada Working Agreement, the allocation of channel 281B in St. Jean, Quebec. The 48 dBu F(50,10) contour from the proposed limited allotment at Keeseville, NY does not cross the U.S./Canadian border and thus provides full protection, within Canada, to the 54 dBu F(50,50) contour of the allocation in St. Jean.

Hall's Comments agree that St. Jean is protected by the proposed Keeseville facility (see Engineering Report of Munn-Reese, Inc., Appendix 1, Point One and Figure A). Hall's Engineering Report then states that the proposed Keeseville facility will receive interference within the United States. Hall's Counsel states that such interference is impermissible. Such interference is not prohibited by the Working Agreement. The working Agreement requires that an existing facility not receive prohibited interference from a proposed facility, but does not require that a proposed facility not receive interference from an existing facility.

CERTIFICATION

I, Robert M. Smith Jr., of Port St. Lucie, FL, do hereby certify that all of the data, calculations and statements in this application are true and correct to the best of my knowledge and belief. I further certify that I am an experienced and qualified broadcast engineer and that my qualifications are a matter of record with the Commission.

A handwritten signature in black ink, appearing to read "Robert M. Smith Jr.", written over a horizontal line.

Robert M. Smith Jr.