

ORIGINAL

DOCKET FILE COPY ORIGINAL

ANN BAVENDER*
HARRY F. COLE*
ANNE GOODWIN CRUMP
VINCENT J. CURTIS, JR.
PAUL J. FELDMAN
FRANK R. JAZZO
EUGENE M. LAWSON, JR.
MITCHELL LAZARUS
SUSAN A. MARSHALL
HARRY C. MARTIN
LEE G. PETRO*
RAYMOND J. QUIANZON
LEONARD R. RAISH
JAMES P. RILEY
ALISON J. SHAPIRO
KATHLEEN VICTORY
JENNIFER DINE WAGNER*
LILIANA E. WARD
HOWARD M. WEISS

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ARLINGTON, VIRGINIA 22209-3801

OFFICE: (703) 812-0400

FAX: (703) 812-0486

www.fhhlaw.com

RETIRED MEMBERS
RICHARD HILDRETH
GEORGE PETRUTSAS

CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)

OF COUNSEL
EDWARD A. CAINE*
DONALD J. EVANS
EDWARD S. O'NEILL*

WRITER'S DIRECT

(703) 812-0453
petro@fhhlaw.com

* NOT ADMITTED IN VIRGINIA

April 16, 2002

RECEIVED

APR 16 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Hand Delivery

William F. Caton, Acting Secretary
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

RE: REPLY COMMENTS

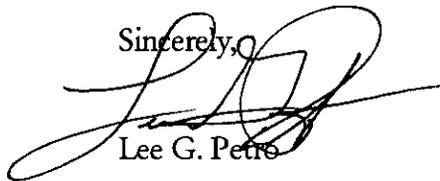
Amendment of Section 73.202(b), FM Table of Allotments
MM Docket No. 02-23, RM-10359
Hall Communications, Inc.

Dear Mr. Caton:

Transmitted herewith is an original and four copies of "Reply Comments" filed on behalf of Hall Communications, Inc. in the above-referenced proceeding.

Should there be any questions regarding this filing, please contact undersigned counsel.

Sincerely,



Lee G. Petro

Counsel to Hall Communications, Inc.

Enclosures

cc (w/enc): David G. O'Neill, Esquire
Counsel to Great Northern Radio, LLC
Counsel to Family Broadcasting, Inc.

Barry A. Friedman, Esquire
Counsel to Montpelier Broadcasting, Inc.

No. of Copies rec'd 0+4
List ABCDE

bcc: Susan Marshall, Esquire

FILE Hall Communications, Inc. - # 4 - (07871-01)

C:\Documents and Settings\petro\My Documents\Hall\Transmittal Letter - Reply Comments.wpd

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

RECEIVED

APR 16 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re:

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

MM Docket No. 02-23
RM-10359

To: Chief, Media Bureau

REPLY COMMENTS OF
HALL COMMUNICATIONS, INC.

Hall Communications, Inc. ("Hall"), by and through its attorneys, hereby submits the instant "Reply Comments" in the above-referenced proceeding. The Commission released a *Notice of Proposed Rulemaking* ("NPRM") DA 02-297, on February 8, 2002, in response to a Petition for Rulemaking filed by Great Northern Radio, L.L.C. and Family Broadcasting, Inc. (collectively, the "Petitioners"), proposing to (i) reallocate Channel 282C3 from Hartford, Vermont to Keeseville, New York, (ii) reallocate Channel 237A from White River Junction, Vermont to Hartford, and (iii) modify the Hartford and White River Junction stations operating on those channels accordingly (the "Petition"). On April 1, 2002, the Petitioners and Montpelier Broadcasting, Inc. filed comments in response to the NPRM, and Hall filed a Counterproposal.¹

In its Counterproposal, Hall noted three glaring deficiencies with respect to the Petition, and offered a simple solution to these problems. Specifically, Hall noted that the Petitioners' proposed reference coordinates did not comply with international contour protection regulations. This deficiency is based on the Petitioners' erroneous belief that an allotment in St. Jean, Quebec is a Class A, when, in fact, the allotment is for a Class B facility. Second, the proposal would remove the

¹ Montpelier Broadcasting, Inc.'s Comments support the Counterproposal filed by Hall.

sole FM allotment providing a fulltime aural transmission service from a larger population at White River Junction (2,569 persons), ostensibly to provide a new FM voice to the smaller population at Keeseville (1,850 persons). Finally, this reallocation would cause loss areas, resulting in areas and populations receiving less than five aural services.

Nothing in the Petitioners' Comments resolved these concerns. First, even after conducting a gain and loss area analysis as required by the Commission, Petitioners apparently still believe that the St. Jean Quebec allotment is a Class A facility. Moreover, while the Petitioners seek to portray the loss area caused by their proposal as *de minimis*, Hall's Counterproposal will not cause any loss area at all. In fact, the Counterproposal provides for a third allotment among the three communities, instead of removing one allotment from a larger community and adding it to a smaller community, which just happens to be in close proximity to the Burlington Urbanized Area. As such, the Petition for Rulemaking should be denied, and Hall's Counterproposal should be granted.

DISCUSSION

A. The Allocation of Channel 282C3 at Keeseville Would Remove the Sole Fulltime Aural Service From White River Junction, Vermont.

As noted in Hall's Counterproposal, the removal of Channel 237A from White River Junction would leave this community with one local aural transmission service, Station WNHV(AM). However, Station WNHV(AM) is a Class D facility, authorized to operate at night with only 8.4 watts of power. Therefore, with the removal of Channel 237A from White River Junction, the Petitioners' proposal would effectively remove the only local fulltime aural transmission service from that community.

In the past, the Commission has discounted the value of such a minimal AM service as WNHV(AM), finding, for example, that even 10.8 watt operations "do not warrant" treatment as a "fulltime station, nor do they negate the loss of [the FM station] as the only full power nighttime

service.”² The Commission has thus considered the loss of such “only fulltime service” as a factor to consider when reviewing counterproposals. Therefore, under applicable Commission precedent, Petitioners’ proposal would conflict with the Commission’s goal of providing local fulltime aural service to as many communities as possible.

B. The Allocation of Channel 282A Will Introduce an Additional Service, Better Serving the Public Interest.

Moreover, rather than the mere reshuffling of two existing allotments as the Petitioners have proposed, Hall’s Counterproposal would provide for the allotment of Channel 282A to Keeseville, while maintaining Channel 237A at White River Junction and Channel 282C3 at Hartford. Specifically, Station WWOD(FM) would remain licensed to Hartford as a Class C3 facility, Station WSSH(FM) would remain licensed to White River Junction as a Class A facility, and Channel 282A at Keeseville, New York would be available for public auction.³

Clearly, by providing an additional service among the three communities, the Counterproposal offers a vastly superior arrangement of the FM allotments. Although the Petitioners and the Commission disagree as to how much of the Burlington, Vermont Urbanized Area would be served by Petitioners’ C3 proposal, it is clear that the allotment of a channel to Keeseville, and the proximate Burlington Urbanized Area, would provide service to a very well-served area. In fact, as demonstrated in Hall’s Counterproposal, there are more than five services available to the entire Channel 282 (as a Class A or C3) service area at Keeseville. *See Counterproposal, Exhibit One, Figure 6.*

Instead, the Counterproposal seeks to maintain the sole FM allotments at both White River Junction and Hartford. Any gain in service by the Petitioners’ proposal should be weighed against

² *Bay City, Texas et. al.*, 10 FCC Rcd 3337, ¶ 6 (1995).

³ Both Hall and Montpelier Broadcasting, Inc have expressed their interest in applying for the Keeseville Channel 282A allotment and, if successful, have promised to construct and operate the new Class A Keeseville station.

the level of service presently provided by the White River Junction and Hartford stations. The Commission has stated that “the public has a legitimate expectation that existing service will continue, and this expectation is a factor which we must consider independently against the service benefits that may result from reallocating a channel from one community to another.”⁴

CONCLUSION

Therefore, the public’s “legitimate expectation” should be taken into consideration in this case where there is a better alternative. Clearly, the Counterproposal would be more effective, as it would (i) maintain the status quo with respect to the allotments at White River Junction and Hartford, (ii) comply with all international contour protection requirements; and (iii) permit the public to compete for an allotment at Keeseville. Thus, Hall Communications, Inc. respectfully requests that the Commission deny the Petition for Rulemaking submitted by Great Northern Radio, L.L.C. and Family Broadcasting, Inc., and grant Hall’s Counterproposal.

Respectfully submitted,

HALL COMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Susan A. Marshall", is written over a horizontal line.

Susan A. Marshall
Lee G. Petro
Its Attorneys

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209
(703) 812-0400

April 16, 2002

⁴ *Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7097 (1990).

CERTIFICATE OF SERVICE

I, Carla M. Whitlock, a Secretary with the law firm of Fletcher, Heald & Hildreth, certify that I have this 16th day of April, 2002, caused to be sent by first-class U.S. mail, postage-prepaid, or Hand Delivery, as indicated, a copy of the foregoing Reply Comments to the following:

David G. O'Neill, Esquire
Jonathan E. Allen, Esquire
Manatt, Phelps & Phillips
1501 M Street, N.W., Suite 700
Washington, DC 20005-1702
Counsel to Great Northern Radio, LLC
Counsel to Family Broadcasting, Inc.

Barry A. Friedman, Esquire
Thompson Hine, LLP
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
Counsel to Montpelier Broadcasting, Inc.

Victoria McCauley*
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

By:



Carla M. Whitlock

* By Hand Delivery