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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

JUL 26 2002

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))

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 02-23
RM - 10359
RM - 10434

To: Media Bureau

MOTION TO STRIKE

Great Northern Radio, LLC, licensee of WSSH(FM), White River Junction, Vermont, and Family Broadcasting, Inc., licensee of WWOD(FM), Hartford, Vermont (collectively, the "Joint Petitioners"), by their counsel, hereby submit their motion to strike the unauthorized pleadings filed by Hall Communications, Inc. ("Hall") in this proceeding.¹ The Commission must dismiss Hall's unauthorized pleadings as untimely and an attempt to modify Hall's defective counterproposal, contrary to the Commission's rules and policies.² If the Commission does not dismiss Hall's unauthorized pleadings, the Joint Petitioners hereby request leave to file this response to Hall's modified counterproposal.

I. Hall's Unauthorized Pleadings Must Be Dismissed As an Untimely Filed Modification to Their Counterproposal

1. The Commission must dismiss Hall's unauthorized pleadings as untimely filed. In issuing the Notice of Proposed Rulemaking for this proceeding, the Commission established April 1, 2002 and April 16, 2002, respectively, as the deadlines for the public to file Comments

¹ Hall filed two unauthorized pleadings in this proceeding: (1) Motion for Leave to File Supplement to Comments of Hall Communications, Inc. dated May 22, 2002 ("Supplement Comments"); and (2) Motion to Strike dated June 3, 2002 ("Strike Motion").

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Commission's Rule. That Hall may disagree with the substance of the Reply Comments does not justify Hall filing the Strike Motion.

4. The Commission should further dismiss the Strike Motion as a thinly disguised attempt to correct Hall's defective counterproposal. Although the Strike Motion purportedly claims to seek dismissal of the Reply Comments, in reality the Strike Motion abandons the Hall Counterproposal and seeks to substitute a new proposal, significantly increasing the proposed antenna height by more than 114 or 190 meters. The Strike Motion proposes the new antenna heights in direct response to the Reply Comments noting that the Hall Counterproposal specified an insufficient antenna height that would not comply with Section 73.315. Hall's justification for proposing these new antenna heights, that Hall did not intend to construct an antenna below ground, does not justify the untimely submission of a proposal to substantially change the proposed antenna height. The Commission expects rulemaking proposals to be substantially complete and accurate at the time of filing. The proposed increases in antenna height prove that the Hall Counterproposal was not substantially complete and accurate and must be dismissed.

5. If the Commission does not dismiss Hall's unauthorized pleadings, the Joint Petitioners hereby request leave to respond to Hall's unauthorized pleadings. The Reply Comments pointed out the defects in the Hall Counterproposal that required its dismissal. Instead of addressing the merits of the Reply Comments, the Strike Motion modifies the Hall Counterproposal by significantly increasing the overall antenna height in a futile attempt to overcome its defects. These untimely changes deprived Joint Petitioners of their right to comment fully on the Hall Counterproposal. Moreover, as demonstrated in this pleading, the proposed increase in antenna height does not resolve the basic technical defects with the Hall Counterproposal. The Commission should grant Joint Petitioners leave to file this response.

II. The Hall Counterproposal, as Modified, Does Not Comply With Section 73.315 of the Commission's Rules

6. Hall puts forth two arguments for striking the Reply Comments: (1) they claim that the Reply Comments mistakenly used terrain factors in calculating the 70 dBu coverage that Hall's proposed tower site would provide over Keeseville; and (2) the Reply Comments erroneously assumed an antenna height of 371.5 meters AMSL when analyzing the line-of-sight issue from Hall's proposed tower site to Keeseville. Hall's arguments are based upon an incorrect interpretation of the Reply Comments and the engineering methodology employed therein. The technical studies associated with the Reply Comments and this pleading clearly demonstrate that the tower site specified in the Hall Counterproposal and as modified by the Strike Motion, does not comply with Section 73.315.⁷

7. The Hall Counterproposal is defective because it erroneously relies upon *average* terrain calculations to determine compliance with Section 73.315(a) and an *interpolated* terrain database to determine compliance with 73.315(b). The Reply Comments, on the other hand, used *actual* terrain calculations in their review of the Hall Counterproposal. The use of actual terrain calculations is required for showing compliance with Section 73.315(b) and permissible for Section 73.315(a). When the actual terrain is taken into consideration, it is clear that the Hall Counterproposal does not comply with either Section 73.315(a) or 73.315(b).

A. The Hall Counterproposal Will Not Provide The Required 70 dBu Signal Over Keeseville

8. Hall is mistaken in its assumption that reliance upon standard propagation methodology to demonstrate compliance with Section 73.315(a) for an allotment proceeding is irrefutable evidence of compliance with this provision. Sections 73.313(e) and 73.315(d) permit

the use of alternate means of signal propagation in cases of questionable antenna location or where the terrain in one or more directions departs widely from the average elevation. The Reply Comments showed that the average terrain along the radial between the proposed Hall site and Keeseville varied by more than 103 meters.⁸ This is more than double the normal terrain variation of 50 meters assumed by F(50,50) curves.⁹

9. The Commission has in the past considered the actual terrain in determining compliance in an allotment proceeding. In *Liberty, New York*, 8 FCC Rcd 4085 (1993), the Commission rejected a proposal to allocate a new channel to Liberty, New York after an opponent filed a technical showing demonstrating that the proposed allocation did not comply with either Sections 73.315(a) or 73.315(b). The Commission agreed, and denied the rulemaking petition even though a theoretical site complying with the Commission's minimum distance separation requirements could be found. The Commission determined that:

“ . . . a terrain profile analysis performed by the staff, using both the site coordinates proposed by the petition and by the Commission, shows that unobstructed line-of-sight service is not possible. Rather, severe shadowing would occur. Further, because of terrain obstructions between the theoretical transmitter site under consideration and Liberty, it does not appear possible for a Channel 271A station to provide the community with the required 70 dBu field strength signal. Finally, we believe that these conditions would prevail regardless of whether an antenna of up to 200 meters height above average terrain was used.”

*Id.*¹⁰

⁷ See *Engineering Statement of Robert M. Smith*, attached hereto as Exhibit 1 (“*Smith Engineering Statement*”).

⁸ See *Smith Engineering Statement* at n.4.

⁹ See *Id.*

¹⁰ The Commission reached similar decisions involving Sections 73.315(a) and 73.315(b) in other cases. See, e.g., *Twin Falls and Hailey, Idaho*, 13 FCC Rcd 20172 (1998) (use of terrain profile analysis confirms that unobstructed line-of-sight 70 dBu service to proposed allocation community not possible because of intervening terrain); *Jefferson City, Virginia*, 10 FCC Rcd 12207 (1995) (terrain profile study reveals major obstruction in line-of-sight path between the proposed antenna sight and proposed allocation community, thereby mandating denial of proposal); *Ider, Alabama*, 10 FCC Rcd 10799 (1995) (use of terrain profile analysis requires dismissal of counterproposal for failing to provide unobstructed line-of-sight coverage); *Eugene, Oregon*, 10 FCC Rcd 9793 (1995) (use of terrain profile analysis confirms that unobstructed line-of-sight 70 dBu service to proposed allocation community not possible).

10. The Hall Counterproposal suffers from the same defects that required dismissal of the proposed allocation in the *Liberty, New York* proceeding. In their Reply Comments, the Joint Petitioners provided a detailed technical showing that terrain obstructions would prevent a radio station from providing a 70 dBu signal over Keeseville. The Reply Comments studied a random sampling of tower sites to determine the suitability for a proposed tower for the Hall Counterproposal, but none of the sites complied with Section 73.315(a).¹¹ In light of the preponderance of this evidence, reliance upon actual terrain measurements is appropriate to show that the Hall Counterproposal does not comply with Section 73.315(a).

B. THE HALL COUNTERPROPOSAL DOES NOT PROVIDE LINE-OF-SIGHT COVERAGE TO KEESEVILLE

11. The Reply Comments demonstrate that the Hall Counterproposal does not comply with Section 73.315(b) because an obstruction between the proposed tower site and Keeseville prevents line-of-sight coverage over that community. The Strike Motion argues that the Reply Comments are defective because the study is based on the unreasonable assumption that Hall's proposed antenna would be buried in a mountain, 3.4 meters below ground. The Strike Motion illustrates that Hall still does not understand why its counterproposal is defective.

12. The height of the actual terrain at the proposed tower site is irrelevant for determining whether the Hall Counterproposal complies with Section 73.315(b). Rather, it is the calculation of the intervening terrain between the proposed tower site to the town of Keeseville that is important. The Reply Comments showed that at a proposed antenna height of 371.5

¹¹ The severity of the surrounding terrain and the importance of using an actual terrain study in determining compliance with Section 73.315(a) is buttressed by the fact that Joint Petitioners selected an additional 26 theoretical reference sites distributed throughout the area to locate a tower site that complied with the Commission's minimum distance separation requirements, and none of these sites would provide the required 70 dBu signal or line of sight over all of Keeseville. This representative sampling makes it abundantly clear that the actual terrain makes it

meters AMSL, the Hall Counterproposal would not provide the required line-of-sight coverage to Keeseville because of an intervening obstruction. Hall does not disagree that the actual antenna height specified in the Hall Counterproposal would fail to provide line-of-site-coverage to Keeseville.

13. The Reply Comments did not make any assumptions about the proposed tower height in conducting the line-of-sight calculations, but relied upon the 371.5 meters AMSL tower specified in the Hall Counterproposal.¹² Hall mistakenly selected an antenna height based upon average terrain instead of actual terrain consideration. If the Hall Counterproposal specified an antenna height located below the actual terrain, that is the fault of Hall and not Joint Petitioners. Hall concedes that the proposed antenna at 371.5 meters AMSL would not provide the required line-of-sight path to Keeseville.¹³

14. Instead of explaining how the original antenna height specified in the Hall Counterproposal complies with Section 73.315(b), Hall inexplicably specifies two new antenna heights for the proposed tower, one at 114 meters AGL, the other at 190 meters AGL. Hall acknowledges that an antenna at 114 meters AGL would provide at best coverage to the reference coordinates for Keeseville and not the entire community.¹⁴ Hall claims that with an antenna at 190 meters AGL, it would provide the required line-of-site-coverage to several points within Keeseville, but not the entire community.

impossible for the proposed Channel 282A allocation to Keeseville to provide the required city-grade signal over that community.

¹² Hall derived the antenna height based upon the assumption of a maximum facility for a Class A radio station. (6 kW at 100 meters HAAT). See Strike Motion at 2. Hall assumes that the average terrain is 271.5 meters AMSL. When the additional 100 meters for a Class A facility is added to this number, one reaches the total of 371.5 meters AMSL, the number contained in the Hall Counterproposal.

¹³ See *Engineering Statement of Munn-Reese* at 1 (attached to Strike Motion).

¹⁴ See *Id.* It is unclear why Hall submitted with its Strike Motion this defective proposal to increase the antenna height to 114 meters HAAT, when Hall acknowledges that the proposed antenna does not comply with the provisions of Section 73.315(b). Since Hall acknowledges that this proposal is defective, no further comment by Joint Petitioners on this proposed antenna height is necessary.

15. A proposed antenna at 190 meters AGL still does not comply with Section 73.315(b). The Strike Motion relies upon a terrain database to determine the intervening terrain between the proposed tower site and Keeseville. The terrain database determined the elevation of the obstruction to be 876 feet AMSL based upon interpolated terrain calculations. The Joint Petitioners, however, used the actual terrain elevation (taken directly from USGS 7.5 Minute Topographic Series maps) in determining the line-of-sight. The actual terrain elevation for the obstruction is 980 feet AMSL, or 104 feet higher than the height specified by Hall relying upon a terrain database.¹⁵ This 104 feet miscalculation by Hall means that even at an antenna height of 190 meters AGL, the Hall Counterproposal would fail to provide the required line-of-sight coverage to Keeseville.¹⁶ Hall acknowledges that determination of compliance with Section 73.315(b) requires using actual terrain obstructions.¹⁷ The use of the 7.5 Minute Topographic Series Maps is more precise and reliable than reliance upon a database. It is clear that when actual terrain calculations are used, none of the three antenna heights that Hall proposes would provide the required line-of-sight coverage to Keeseville.¹⁸

16. Hall mistakenly claims that the proposed tower is located outside of the Adirondack Park. Hall relies upon a 1964 map in making this determination. The Joint Petitioners provide a more current map from 2001, which shows that the proposed tower is well within the Adirondack State Park.¹⁹ Hall does not have reasonable assurance from the Adirondack Park Agency (the “Park Agency”) for the construction of a tower. Agency policy requires that any

¹⁵ See *Smith Engineering Statement* at 3.

¹⁶ See *Id.*

¹⁷ See Strike Motion at 3.

¹⁸ See *Smith Engineering Statement* at 3. The Joint Petitioner’s engineer has determined that construction of a tower with a minimum height of 1,120 feet AGL is required in order to provide unobstructed line-of-sight coverage to Keeseville. See *Smith Engineering Statement* at 3-4.

¹⁹ See *Id.* at Figure 3.

new tower be “substantially invisible.”²⁰ The Agency defines “substantially invisible” with respect to telecommunications towers as a:

“ . . . communications facility that will not be readily apparent as to size, composition, or color and the structure(s) will, to the maximum extent practicable, blend with the background vegetation, other structures or other landscape features as seen from all significant potential public viewing points and as documented by simulation and other visual analysis methods.”²¹

A tower of more than 200 feet AGL would require obstruction lighting, painting and marking, and therefore by its very nature can not be substantially invisible in compliance with the Agency’s policy. The Agency recently denied a request to increase the tower height of an existing tower in the Park by 40 feet. If the Agency denied this modest request to increase the height of an existing tower, they certainly will deny a request to construct a new tower.²²

Conclusion

The Hall Counterproposal was defective when originally filed because it specified an antenna height that did not comply with Section 73.315. When the Reply Comments pointed out this defect, Hall filed an untimely pleading to increase the overall antenna height. However, the modified proposal still does not comply with Section 73.315. The Commission expects counterproposals to be substantially complete and accurate at the time they are filed. The Hall

²⁰ See *Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park* (Feb. 15, 2002 (“*Agency Telecommunications Tower Policy*”). The Agency is charged with approving all proposed structures over 40 feet in height. See *Adirondack Park Agency Act*, NYS Executive Law, Article 27, Section 809(10).

²¹ See *Agency Telecommunications Tower Policy*.

²² Hall mistakenly suggests that the existence of two nearby towers lend support to the possible construction of a new tower. The two towers were constructed in 1962 and 1978. The construction of two towers more than 24 and 40 years ago do not support a conclusion that a new tower of 1,120 feet AGL may be constructed within the park.

Counterproposal, and its untimely filed amendment, does not satisfy this standard. The Commission must dismiss the Hall Counterproposal and the unauthorized pleadings.

This leaves only the Joint Petitioners' rule making petition for the Commission's consideration. The Joint Petitioners' proposal complies with the Commission's Rules and the U.S./Canada Working Agreement, which Hall now acknowledges. The Joint Petitioners have shown in prior pleadings why Montpelier Broadcasting's comments have no merit. The Joint Petitioners' proposal represents a preferential arrangement of allotments because it would provide a first local service to Keeseville, without depriving Hartford or White River Junction of first local service. The Commission must grant the Joint Petitioners' proposal.

WHEREFORE, FOR THE FOREGOING REASONS, Great Northern and Family Broadcasting respectfully request that the Commission: (1) strike the unauthorized pleadings filed by Hall; (2) dismiss the Counterproposal of Hall Communications in this proceeding; and (3) issue an Order 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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Jonathan E. Allen
MANATT, PHELPS AND PHILLIPS, LLP
1501 M Street, N.W., Suite 700
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Their Counsel

July 26, 2002

EXHIBIT 1

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ENGINEERING STATEMENT

IN SUPPORT OF
COMMENTS BY
GREAT NORTHERN RADIO, LLC
AND
FAMILY BROADCASTING, INC

ON A MOTION TO STRIKE
BY
HALL COMMUNICATIONS, INC.

July 2002

PURPOSE AND SCOPE

The Comments, of which this Statement is a part, request a denial of the Motion to Strike ("Motion") filed by Hall Communications, Inc. ("Hall") on June 3, 2002 in the matter of a Notice of Proposed Rule Making in MM Docket No. 02-23, RM-10359.

This Statement addresses inaccuracies in Hall's Motion. This information is provided for the purpose of assuring that the record in this matter is complete and accurate and requests that the Motion be denied.

DISCUSSION

The Petitioners' Reply Comments to Hall's Counter Proposal demonstrated that the Hall Counter Proposal is defective in that it failed to specify an allotment site that provided unobstructed line of sight to Keeseville, NY. Further, due to this obstruction, the proposed Hall site would not provide 70 dBu coverage to Keeseville. On June 3, 2002, Hall, by its attorney, filed a Motion to Strike, claiming that the Petitioners' engineering analysis was flawed and should be rejected by the Commission by being stricken from the record. This Statement examines each of Hall's claims and demonstrates that it is in fact not the Petitioners', but Hall's engineering, that is inaccurate.

HALL'S CLAIMS

Hall puts forth two reasons the Petitioners' Reply Comments to the Counter Proposal should be stricken: (1) they claim that the Petitioner erroneously used terrain factors in calculating 70 dBu coverage over Keeseville, and (2) the Petitioner erroneously assumed an antenna height of 371.5 meters AMSL when analyzing the lack of line of sight from the Hall site to Keeseville. Both of these claims are false.

(1) The use of Terrain Factors Is supported by the Commission.

While "standard propagation methodology" is useful in predicting coverage over "normal" terrain without intervening obstruction, the Commission recognizes alternative methods when the terrain departs widely from average or an intervening major obstruction exists. In *Liberty, NY*, 8 FCC Rcd 4085 (1993) the Commission denied a Petition to locate Channel 271A at Liberty, NY because the terrain between the proposed allotment site and Liberty prevented the site from providing 70 dBu coverage over Liberty:

"...a terrain profile analysis performed by the staff, using both the site coordinates proposed by the petitioner and by the Commission, showed that unobstructed line-of-sight service is not possible. Rather severe shadowing would occur. Further, because of terrain obstructions between the theoretical transmitter site under consideration herein and Liberty, it does not appear possible for a Channel 271A station to provide the community with the required 70d dBu field strength. Finally, we believe that these conditions would prevail regardless of whether an antenna of up to 200 meters height above average terrain was used."

(2) The Antenna Height Analyzed Was Provided In the Hall Counter Proposal

Hall states in its Motion that the Petitioners' engineer erroneously assumed the coverage and line of sight from the proposed Hall site should be analyzed at a height of 100 meters HAAT (371.5 meters AMSL) even though the Hall site is 374.9 meters AMSL. The undersigned agrees that an antenna 3.4 meters below ground is "unreasonable and ridiculous", but the analysis by this firm was performed on the parameters supplied by Hall in its counter proposal. The antenna height analyzed was the height proposed by Hall (center of radiation 371 meters AMSL) in its counter proposal in Figure 2. The petitioners made no assumptions when analyzing the Hall counter proposal. The fact that the counter proposal site is on a mountain was not ignored by the Petitioners, but it is irrelevant. The failure of the counter proposal to provide line of sight coverage is caused by intervening terrain at a distance of 10 kilometers from the Hall site, not by terrain at the site. It is not the assumption that is faulty, as Hall claims, but the Counter Proposal itself which was defective. Hall apparently now agrees that an antenna center of radiation at 371 meters AMSL (100 meters HAAT), as they proposed, does not provide line of sight coverage of Keeseville.

Hall now states, in its Motion, that an antenna height of 114 meters AGL (217.4 meters HAAT) is necessary to provide line of sight coverage to the reference coordinates of Keeseville. As shown herein, this is inaccurate. Were it true, it also is inadequate to comply with 47 C.F.R. Section 73.315(b). Line of sight coverage is required over all of the principal community, not just the reference coordinates. Hall seems to recognize and accept this requirement in that they state in the Motion that an antenna height of 190 meters AGL (293.4 meters HAAT or 565.9 meters AMSL) is required to provide line of sight to all of Keeseville. Again, it is Hall's engineering, not the Petitioners' that is faulty. Hall's engineer used a 3 second terrain database to determine the terrain profile between the counter proposal and Keeseville. It is recognized by the Commission that 3 second terrain data provides an accurate average terrain, it is also well know that such data is useless

in determining accurate, individual, spot elevations.^{1/} This firm used actual terrain elevations (taken directly from USGS 7.5 Minute Topographic Series maps) in determining the line of sight from the Hall proposed allotment site to the community of Keeseville. Hall's Motion Exhibit 1 Figures 2 through 6 attempt show that an antenna at 190 meters AGL would provide line of sight to all of Keeseville. The inadequacy of the 3 second terrain database for profile use is evident in this analysis. In Hall's Exhibit 1, Figure 4, the 3 second terrain database shows the elevation of the obstruction to be 876 feet AMSL while the actual elevation (from the USGS quadrangle) of that obstruction is 980 feet AMSL.^{2/} This 104 foot error in Hall's analysis means that even an antenna height of 190 meters AGL fails to provide line of sight coverage to Keeseville. Figure 1 of this Statement is a plot of the actual terrain along the exact profile shown in Hall's Exhibit 1 Figure 2. From an antenna height of 190 meters AGL the line of sight is still blocked to Hall's "Point #2". Also plotted on Figure 1 of this Statement is a line from Hall's Point #2 to the minimum antenna height that provides unobstructed line of sight to the antenna. This antenna altitude is not 190 meters AGL (564.9 meters AMSL), as claimed by Hall, but is 320 meters AGL (695 meters AMSL or 423.5.5 meters HAAT). The required 423.5 meter HAAT antenna is over twice the 200 meters HAAT considered and rejected in *Liberty* cited above. Hall's terrain analysis also fails to take into account the river valley in which the downtown portion of Keeseville is located. Hall's engineer selected three points in Keeseville to examine. While those points are the closest to the obstruction and would normally be the most difficult to provide line of sight, this assumption presumes that Keeseville is flat and at the altitude of the three chosen points. This presumption is not accurate. Keeseville is located in the valley of the Ausable River and portions of the town are 30 meters below the line of sight end point shown by Hall at Point #2. Providing line of sight to the bottom of the valley running right through the middle of Keeseville requires raising the antenna yet another 22 meters to 342 meters AGL. The tower required to clear the obstruction to this valley is over 1120 feet in height.^{3/}

^{1/} The Commission recognizes the limitations of terrain databases in 47 C.F.R. Section 73.212(d). "In lieu of maps, the average terrain elevation may be computer generated except in cases of dispute...The height above mean sea level of the antenna site must be obtained manually using appropriate topographic maps." (Underline added)

^{2/} Included in this Statement as Figure 2 is a portion of a 7.5 Minute USGS Topographic Series Map with the disputed altitude marked.

An antenna height of 1120 feet above ground is not practical at the Hall specified location. Contrary to what Hall asserted to the Commission in Footnote 3, their proposed site is within the boundary of the New York Adirondack State Park. Attached as Figures 3 and 4 are maps of the park boundary in the area of the Hall proposed site. These map shows the current Adirondack Park boundaries. The Hall site has been plotted on these maps. The boundaries shown in the Hall Motion Exhibit 1 Figure 1 are taken from a USGS Quadrangle dated 1964. Clearly, as shown on the current maps, the Hall site is within the Adirondack Park and footnote 3 to Hall's Motion is simply a misstatement of fact.

Current Adirondack Park Agency tower policy requires that any new tower be "substantially invisible". Making a tower of over 1100' in height even approximate substantial invisibility would be difficult if not impossible.

Hall attempts to show, in Exhibit 1 of their Motion, that their proposed site is suitable as a Keeseville allotment site because other broadcasters have found towers in the area suitable.^{4/} The existence of Class C2 facilities in Dannemora and Schuyler Falls, NY is irrelevant for this analysis. Neither of the referenced facilities were required to have a clear line of sight to Keeseville, nor provide Keeseville with 70 dBu coverage. In addition, both cited facilities are Class C2, not Class A as Hall counter proposed. Further, the existence of two towers within five kilometers of Hall's proposed site in no way addresses the possibility of constructing a new tower of over 1100' in height at the Hall location.^{5/} One of the towers (ASR Number 1007293) was constructed in 1978 and the other (ASR Number 1003384) was constructed in 1962. The tower utilized by WPTZ(TV) and WXLU(FM) (ASR Number 1003384) is on Terry Mountain, over 17.1 kilometers from the reference coordinates of Keeseville. Using "standard propagation methodology" this site fails to provide 70 dBu coverage of Keeseville. This tower was examined as an alternative site in the

^{3/} It should be noted that even at an unreasonable Class A antenna height of 1120' AGL, the western slope of the valley is shadowed by the plain adjacent to the valley. A tower of well over 500 meters would be required at the Hall location to eliminate this shadowing.

^{4/} See Hall's *Motion to Strike*, Engineering Statement, ¶ 3 and footnotes 1 through 5.

^{5/} Hall presents no evidence in its Motion, or in any previous pleading, that the F.A.A. or the Adirondack Park Agency would approve even the inadequate 195 meter AGL tower now proposed in its Motion.

Petitioners' Reply Comments to the Counter Proposal, and was also found to not meet the line of sight requirement to Keeseville. The other referenced tower is also on Terry Mountain and is over 17.2 kilometers from the reference coordinates of Keeseville (more than 18 kilometers from the furthest point of Keeseville). This structure is also not suitable since it does not line of sight all of Keeseville and fails to provide 70 dBu coverage to Keeseville.

SUMMARY

Hall's Motion to Strike the Petitioners' Reply Comments is baseless. The Petitioners' Reply Comments were timely filed and were entirely true and correct. The Reply Comments were based upon sound engineering and correct interpretation of Commission Rules and policies.

In contrast, the additional information supplied by Hall, in its Motion, relied upon less exacting engineering analysis and misstates its site location with respect to the Adirondack State Park

CONCLUSIONS

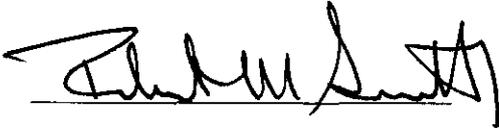
Hall's Motion to Strike of June 3, 2002, should be denied because it is baseless.

The Hall Counter Proposal should be denied because, even as modified in the Motion to Strike, it is defective. Hall still fails to show an allotment site complying with the requirement to provide line of sight coverage over Keeseville. Further, the Counter Proposal failed to show an allotment site that provides 70 dBu service over the entire community when terrain obstructions are considered. In addition, as demonstrated in the Petitioners' Reply Comments, an allotment site complying with Commission distance separation requirements and the requirements of 47 C.F.R. § 73.315(a) and (b) likely does not exist.

The Petitioners' Proposal complies with all Commission Rules and policies and should therefore be granted.

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.

FIGURE 1 - PATH PROFILE

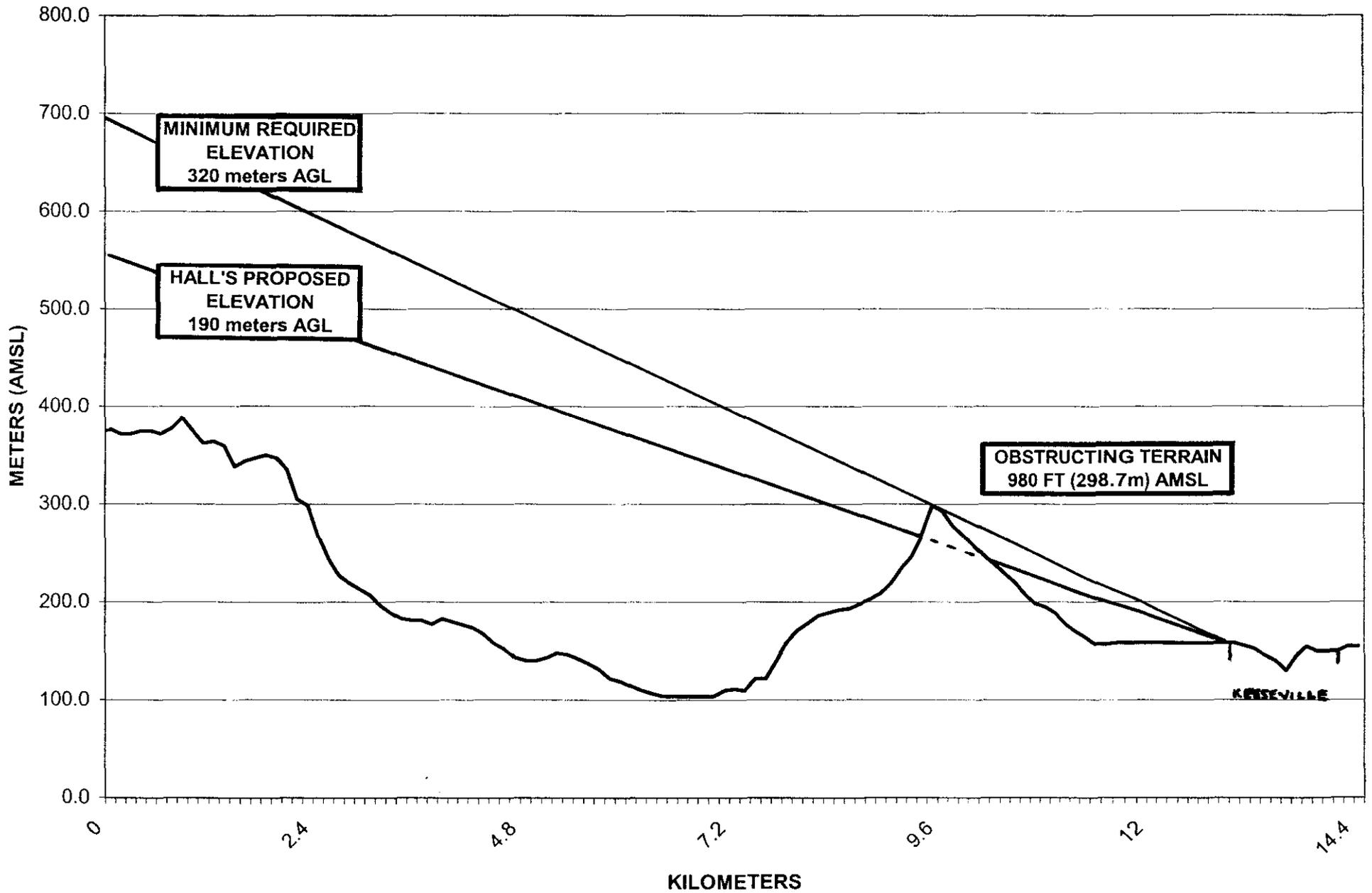
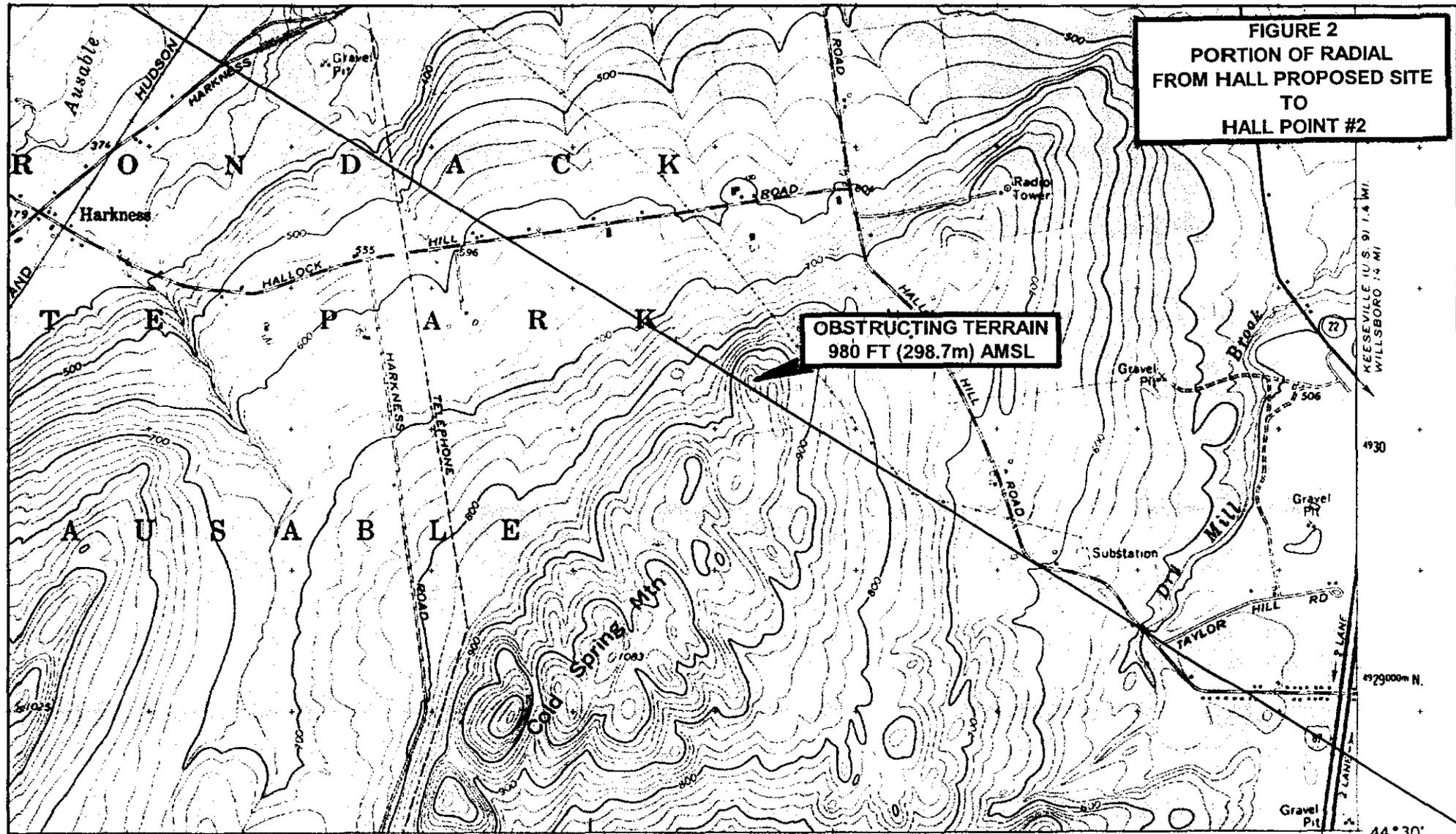
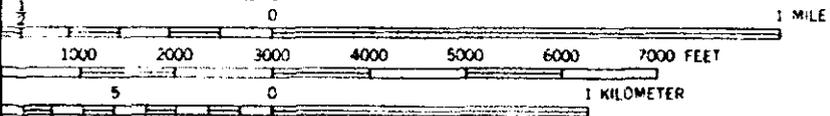


FIGURE 2
PORTION OF RADIAL
FROM HALL PROPOSED SITE
TO
HALL POINT #2



OBSTRUCTING TERRAIN
980 FT (298.7m) AMSL

(AU SABLE FORKS)
 1:25,000
SCALE 1:24,000



CONTOUR INTERVAL 20 FEET
 NATIONAL GEODETIC VERTICAL DATUM OF 1929



INTERIOR—GEOLOGICAL SURVEY, RESTON, VIRGINIA—1988
 0.3 MI. TO INTERCHANGE 34
 44° 30'
 73° 30'

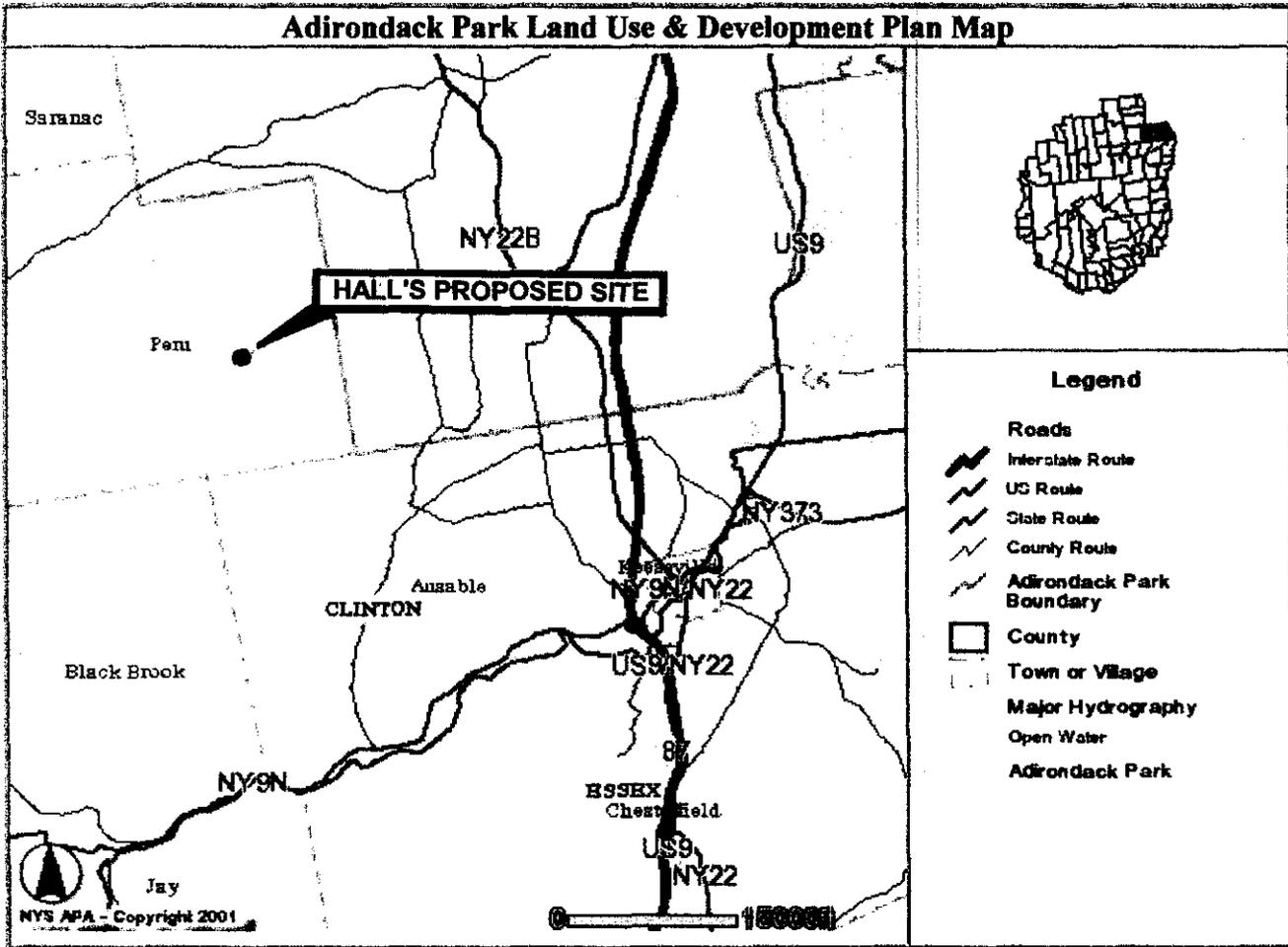
ROAD CLASSIFICATION

- Heavy-duty —————
- Medium-duty ————
- Light-duty —————
- Unimproved dirt - - - - -
- Interstate Route
- State Route

MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
 FOR SALE BY U. S. GEOLOGICAL SURVEY

PERU, N. Y.
 SE/4 DANNEMORA 15' QUADRANGLE
 44073-E5-TF-024

1966



**FIGURE 3
MAP OF PORTION
OF ADIRONDACK PARK
WITH
HALL'S PROPOSED SITE**

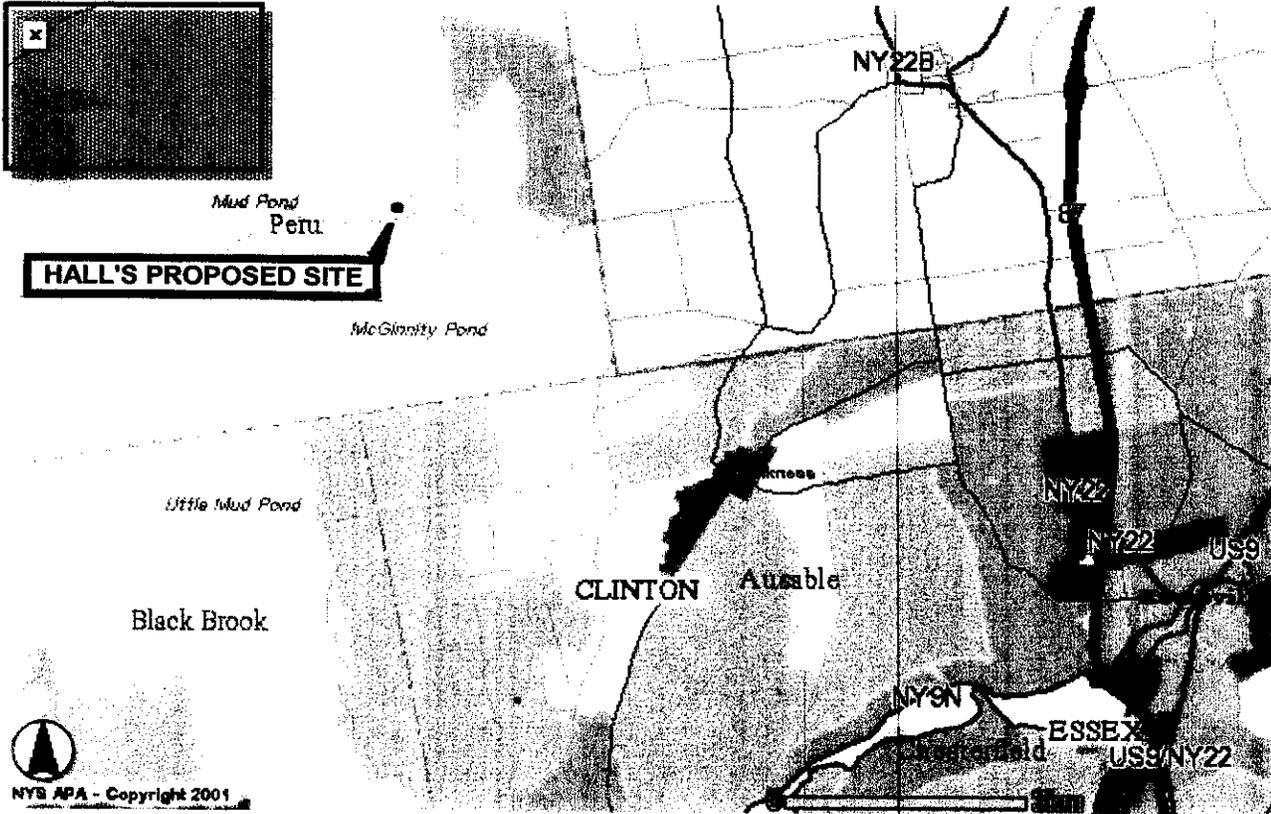


FIGURE 4
MAP OF PORTION
OF ADIRONDACK PARK
WITH
HALL'S PROPOSED SITE

Certificate of Service

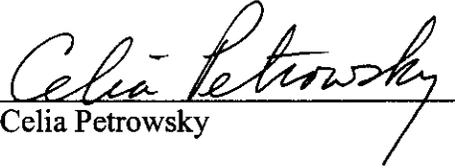
I, Celia Petrowsky, a secretary in the law firm of Manatt, Phelps and Phillips, LLP, do hereby certify that on this 26th day of July, 2002, I caused copies of the foregoing "Motion to Strike" to be delivered by first-class mail, unless otherwise specified, to the following persons:

John A. Karousos, Assistant Chief*
Audio Division
Office of Broadcast License Policy
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Victoria M. McCauley*
Federal Communications Commission
Media Bureau
445 12th Street, SW
Washington, DC 20554

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