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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 8, 2002

By Hand Delivery
Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

RE: Amendment of Section 73.202(b), FM Table of Allotments
MM Docket No. 02-23, RM-10359, RM-10434
Hall Communications, Inc.

Dear Ms. Dortch:

Transmitted herewith is an original and four copies of an "Opposition" 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.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In re:	}	
	}	
Amendment of Section 73.202(b)	}	
Table of Allotments,	}	**MM Docket No. 02-23**
FM Broadcast Stations.	}	**RM-10359**
(Keeseville, New York; Hartford and	}	**RM-10434**
White River Junction, Vermont)	}	

To: Chief, Media Bureau

OPPOSITION TO MOTION TO STRIKE

Hall Communications, Inc. ("Hall"), by and through its attorneys, hereby submits the instant Opposition to the July 26, 2002 Motion To Strike filed by Great Northern Radio, LLC and Family Broadcasting, Inc. (together, the "Petitioners") in the above-referenced proceeding (the "Motion").[1]

As discussed in more detail below, the Motion must be denied. The Petitioners, using the guise of a Motion to Strike, are crying "fire" when there is not even any smoke. By incorrectly applying the rules of the FCC and the policies of a New York state agency, the Petitioners seek to prevent an allotment to Keeseville from being opened for public auction. With the Counterproposal out of the way, they would have the FCC reshuffle their existing facilities, and in the process, remove the sole full-time local service from White River Junction, Vermont so they could keep the new station at Keeseville for themselves. In contrast, Hall's Counterproposal would bring a new service to over 145,000 people without the loss of an

[1] The Commission initiated this proceeding through the release of a *Notice of Proposed Rulemaking* ("NPRM") DA 02-297, on February 8, 2002, in response to a Petition for Rule Making filed by the Petitioners proposing to (i) reallot Channel 282C3 from Hartford, Vermont to Keeseville, New York, (ii) reallot 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"). In response, Hall filed a Counterproposal on April 1, 2002, seeking to allot Channel 282A to Keeseville, with the allotments at Hartford and White River Junction remaining untouched (the "Counterproposal").

existing service, and the public would be able to participate in an auction for the new allotment. Clearly, the public interest would be better served by the grant of the Counterproposal. Moreover, the Petitioners have not advanced any cognizable arguments for its rejection.

BACKGROUND

In its Counterproposal, Hall demonstrated that the allotment of Channel 282A at Keeseville would comply with all domestic and international spacing requirements, and would provide the entire community with the required 70 dBu ("city grade") signal. The supporting engineering studies showed that the Counterproposal specified theoretical reference site coordinates that were in full compliance with the Commission's rules. The Counterproposal was further supported -- **but not changed** (as the Petitioners argue) -- by the showings submitted in Hall's subsequent pleadings.

In their Motion to Strike, the Petitioners go beyond the bounds of their ostensible procedural attack and renew their substantive arguments on the following central issues: (i) the effect of Hall's having specified reference coordinates in a park; (ii) the effect of terrain shielding on the required level of service to Keeseville, and (iii) the effect of these two factors on the overall viability of Hall's Counterproposal.

DISCUSSION

A. The Placement Of The Theoretical Reference Coordinates Fully Complies With All Federal And State Regulations.

Through selective citations and incorrect conclusions, the Petitioners would have the Commission believe that Hall's reference coordinates in the Adirondack State Park render the proposal defective. However, nothing can be further from the truth.

In the Motion, the Petitioners conclude that the Adirondack Park Agency ("APA"), the state government office with jurisdiction over the 6,000,000 acre park, "will deny [Hall's] request to construct a new tower." *Motion*, pg. 9. Referencing a recent decision of the APA denying a modification of an existing tower (but failing to provide any citation or other reference to such decision), Petitioners conclude that the facilities specified in the Counterproposal can not be constructed. *Id.*

However, a review of the APA's February 15, 2002 *Policy on Agency Review of Proposals for New Telecommunications Towers and other Tall Structures in the Adirondack Park* (the "Tower Policy Statement") reflects quite a different reality. A complete copy of the Tower Policy Statement is attached hereto as Appendix A. It is no wonder why the Petitioners did not provide a copy of the Tower Policy Statement in support of their self-serving conclusions. Rather than absolutely prohibiting towers over 40 feet in height, the Tower Policy Statement states:

> This policy is not intended to set forth a fixed general principle to be rigidly applied. Rather, its tenets are to be utilized solely as guidance and should be applied only after taking into account the specific facts and circumstances set out in the application and project review record for each proposed telecommunications tower.

Tower Policy Statement, pg. 5. Thus, by its own terms, the Tower Policy Statement does not preclude the placement of communications towers within the Adirondack State Park.

Moreover, the nature of the Adirondack State Park lends itself to communications uses and tower construction. Unlike the congressionally-protected Fire Island National Seashore at issue in *Bay Shore, New York*, 25 FCC 2d 877 (1970), or the land under the control of the Bureau of Land Management in *Twin Falls and Hailey, Idaho*, 13 FCC Rcd 20,172 (1998), the Adirondack State Park is a vast area consisting of 6,000,000 acres covering one-fifth of New York State (roughly the same area as the sovereign nations of Israel and Slovenia). Over 50% of

the park is privately owned, and includes more than 130,000 permanent residents in more than 100 communities.[2] Since 1977, the APA has authorized the placement of 49 towers within the state park.[3] Also, Figure 4 of the Engineering Statement prepared by Hall's consulting engineering firm, Munn-Reese, Inc., attached hereto as Appendix B (the "Engineering Statement"), supplies a list of 25 towers located within the state park that have been registered with the Commission. Further, as demonstrated in the Tower Policy Statement (pg. 2), facilities with an antenna height of only 30 thirty feet above ground, *e.g.*, high enough to provide Keeseville with a city grade signal (*see* Figure 2 of the Engineering Statement), can be approved by the APA without undergoing the special review process that is required for structures above 40 feet in height. Finally, the reference site is located in an area designated by the APA for Rural Use. Section 805(3)(f) of the Adirondack Park Agency Act specifically allows telecommunications towers in such areas.[4] In light of this information, and contrary to the Petitioners' speculations, it is clear that the site specified in the Counterproposal is suitable.

B. The Counterproposal Complies With Section 73.315.

The Petitioners next argue that the consideration of actual terrain precludes approval of the Counterproposal under Section 73.315(b) of the Commission's rules. *See Motion*, p. 4. However, as demonstrated in Figure 5 to the Counterproposal, Hall's Channel 282A allocation at the specified reference coordinates will provide a city grade signal over Keeseville in compliance with Sections 73.315(a) and (b) of the Commission's rules. 47 C.F.R. § 73.315 (2001). In fact,

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2 *See* Adirondack Council, www.adirondackcouncil.org/adkpark.html (last visited August 8, 2002).

3 *See* Press-Republican of Plattsburgh, www.pressrepublican.com/Archive/2001/06_2001/060320012.htm (last visited August 8, 2002).

4 *See* Adirondack Park Agency Act, Article 27, Section 805(3)(f) (1998). A copy of the Adirondack Park Land Use and Development Plan Map and State Land Map, with the tower site noted, is attached hereto as Appendix C. A full-size map is provided for the Commission's staff, while the other copies have the specific area of the tower site only.

Figure 5 demonstrates that the use of "standard prediction methodology" will result in a 70 dBu encompassment of the entire community, and seven kilometers beyond. *See Counterproposal*, Fig. 5.

In response to Petitioners' claim that the actual terrain characteristics between the reference coordinates and Keeseville render the Counterproposal defective, Figure 2 of the Engineering Statement contains a Longley–Rice engineering study (See Figure 2) demonstrating that a city grade signal will be provided to Keeseville. The Commission permits the submission of such supplemental engineering studies to rebut arguments at the allotment stage, such as those raised anew in the Motion, that the required signal will not be provided to a community.[5]

The Longley-Rice study takes into consideration the actual terrain characteristics between the reference coordinates and Keeseville, and assumes a minimal antenna height of 30 feet. This study, which uses methodology acceptable for this purpose shows again that the facilities specified in the Counterproposal will provide the required city grade signal to 100% of the community of Keeseville.

Petitioners also argue that the presence of a terrain obstruction along the path between the reference coordinates and Keeseville warrants rejection of the Counterproposal. However, the Commission has repeatedly held that the presence of a terrain obstruction does not automatically preclude an allocation where there is other technical evidence that service to the community will be provided.

Just recently the Commission allotted Channel 247C2 to Jackson, Kentucky even though line of sight could not be obtained due to the rugged terrain.[6] Despite the rugged terrain, the

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[5] *See Creswell, Oregon*, 4 FCC Rcd 7040, ¶ 8 (1999), *Eugene, Oregon*, 10 FCC Rcd 9793, ¶ 4 (1995).

[6] *Jackson and Salyersville, Kentucky*, 17 FCC Rcd 4662 (2002).

proponents of the reallotment demonstrated that a city grade signal could be provided under both Section 73.313's standard prediction method and a supplemental showing utilizing the Longley-Rice methodology. On the basis of those showings, the Commission granted the proposal, concluding that the required 70 dBu signal encompassed the community of license. *Id.*, ¶5. Additionally, the Commission granted proposals in *Madison, Indiana* and *Vacaville and Middletown, California* where it was demonstrated that, despite the lack of line of sight between the reference coordinates and the proposed community, the requisite 70 dBu signal still would be provided to the community.[7]

Thus, it is clear that the Commission will focus its attention at the allotment stage on whether the proposed facilities will provide the required signal to the proposed community. While Section 73.315(b) serves as a guide for petitioners in crafting their proposals, the Commission's decisions demonstrate that line of sight is not mandatory and its absence does not necessarily render the proposal ungrantable. There are situations, and Hall has shown that Keeseville is one of them, where a proposed facility will provide a city grade signal to the entire community of license, even where line of sight may be obstructed, and the Commission has granted those proposals.

C. The Counterproposal Was Complete As Filed.

The Commission has established the threshold for measuring whether a counterproposal is "technically correct and substantially complete" when filed. Specifically, the Commission requires that the proponent "provide the specific channel and class, specific transmitter site

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[7] *Madison, Indiana*, 14 FCC Rcd 9518 (1999); *Vacaville and Middletown, California*, 4 FCC Rcd 8315 (1989); *recon. denied*, 6 FCC Rcd 143 (1991); *See also Wellsville and Canaseraga, New York*, 14 FCC Rcd 15964, ¶6 (1999)(granting an allotment despite lack of line of sight in light of the provision of city grade signal).

coordinates, and engineering studies which indicated that the station would meet the minimum separation and city grade requirements." *See Provincetown, Massachusetts, et. al.*, 8 FCC Rcd 19, 20 (1992); s*ee also Stanford and Robbins, North Carolina*, 12 FCC Rcd 1 (1997).

Hall provided, in its initial filing specifications of the channel, class, coordinates and spacings for Keeseville, which together meet these requirements. On this basis, the Counterproposal was "technically correct and substantially complete" when submitted on April 1, 2002. Through subsequent submissions, Hall has corrected and clarified comparative and other nonessential information about its proposal, but the threshold information the Commission requires has not changed.

D. The Grant Of The Counterproposal Will Serve The Public Interest.

Perhaps intentionally absent from the Motion is any further argument that the Petitioners' proposal to reshuffle the existing allotments in White River Junction and Hartford, rather than provide a new service, would serve the public interest. As demonstrated in the Counterproposal, the original proposal is comparatively inferior on public interest grounds because the allotment of Channel 282C3 would suffer interference from a co-channel allotment in Canada, and would result in the removal of White River Junction's sole full-time local transmission service.

Conversely, the facilities specified in the Counterproposal would provide service to more people than under Petition (93,709 compared to 78,684), without any loss of service. Furthermore, Hall's supplement submitted on May 22, 2002 demonstrates that 145,534 people would receive service from a maximized Class A facility at the reference site. Finally, the Channel 282A allotment would be available to the public in a future auction, thus providing anyone the opportunity to obtain the construction permit. In this age of corporate power grabs

(e.g., Worldcom, Adelphia, and Enron) the Commission should embrace the opportunity to serve the ***public*** interest, rather than the Petitioners' self-serving ***corporate*** interests.

CONCLUSION

Clearly, the Counterproposal would represent a more efficient use of spectrum, as it would (i) maintain the status quo with respect to the allotments at White River Junction and Hartford, (ii) add a first local service at Keeseville, and (iii) permit the public at large to compete for that allotment. None of the arguments raised in the Petitioners' pleadings outweigh the consideration of public interest benefits the Counterproposal would afford.

Thus, Hall Communications, Inc. respectfully requests that the Commission deny both the Motion to Strike and allotment plan sponsored by Great Northern Radio, L.L.C. and Family Broadcasting, Inc., and grant Hall's Counterproposal.

Respectfully submitted,

HALL COMMUNICATIONS, INC.

Susan A. Marshall
Lee G. Petro
Its Attorneys

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street, 11th Floor
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August 8, 2002

APPENDIX A

Adirondack Park Agency –
Policy on Agency Review of Proposals for
New Telecommunications Towers and Other Tall Structures in the Adirondack Park

Adirondack Park Agency Policy, Procedures & Guidance System	Agency- 4
Topic: Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park	
Richard H. Lefebvre, Chairman	Date: February 15, 2002

I. Purpose

The purpose of this policy is to provide guidance to the Agency, to telecommunications providers and others within the Adirondack Park regarding the Adirondack Park Agency's exercise of its powers and duties in light of the federal Telecommunications Act of 1996 and changing conditions within the Park. The policy specifically addresses telecommunications facilities covered by the federal law, that is, every type of wireless and radio emission device including cellular telephone, microwave, AM and FM radio and television. However, the guidance is also generally applicable to other tall structures subject to Agency regulatory review within the Adirondack Park.

This policy is intended to protect Adirondack Park aesthetic, open space, and other resources and, at the same time, provide guidance for a telecommunication system consistent with federal law. The natural scenic character and beauty of the Adirondack Park is the foundation of the quality of life and economy of the region, long recognized as a uniquely special and valuable State and National treasure. The policy must take into account the Park setting and serve the needs of Adirondack Park residents and visitors. The policy recognizes the potential compatibility of a system for personal communication signals (cellular telephone, PCS, wireless digital communications) in already developed areas and segments of streets and roadways where there is access to the existing electric and telephone infrastructure required for these facilities and where substantial invisibility can be achieved.

II. Background

A. General

The Adirondack Park Agency administers the Adirondack Park Agency Act, the New York State Freshwater Wetlands Act and, for private lands, the New York State Wild, Scenic and Recreational Rivers Act within the six-million acre Adirondack Park. The Adirondack Park Land Use and Development Plan recognizes the complementary needs of all the people of the State for the preservation of the Park's resources and open space character and of the Park's permanent, seasonal and transient populations for growth and service areas, employment, and a strong economic base.

The Agency also administers the Adirondack Park State Land Master Plan which sets forth

guidelines and criteria for the use of State-owned lands within the Adirondack Park. These lands include the Adirondack Forest Preserve, protected as "forever wild" by Article XIV of the New York State Constitution since 1895.

Among the Agency's duties and powers is the review of proposals for virtually all new telecommunication facilities as "major public utilities." This review responsibility also includes all structures over 40 feet in height. Under the Adirondack Park Agency Act, the Agency must determine that each proposed telecommunication or other facility requiring Agency regulatory approval is:

- "consistent with the [Adirondack Park] land use and development plan;"
- "compatible with the character description and purposes, policies and objectives of the land use area wherein it is proposed to be located;"
- "consistent with the overall intensity guideline for the land use area involved;"
- consistent with the shoreline restrictions, if applicable; and
- "The project will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the park or upon the ability of the public to provide supporting facilities and services made necessary by the project, taking into account the commercial, industrial, residential, recreational or other benefits that might be derived from the project. In making this determination, . . . the agency shall consider those factors contained in the development considerations of the plan which are pertinent to the project under review."

  See Adirondack Park Agency Act, NYS Executive Law, Article 27, Section 809(10)

In wetlands and rivers areas, additional findings will be required.

The 1996 amendments to the federal Telecommunications Act require, as a matter of federal law, that the Agency administer its regulatory responsibilities without discrimination among providers, in a manner that does not result in a prohibition of service, and in compliance with federally mandated radio emission effects standards. Federal law recognizes protected areas like public parkland, freshwater wetlands, formally designated wilderness, the Adirondack Forest Preserve and other special characteristics of the Adirondack Park, whose values are articulated and protected in the planning and regulatory process administered by the Agency.

B. Current Trends

In light of these responsibilities the Agency adopted a Policy on the location of new towers in 1978. That policy discouraged mountain top structures and encouraged co-location of facilities. Recognizing the changing technology utilized by the telecommunications industry, and the demands of government services and public safety factors, the Agency determined in August of 2000 that the 1978 policy should be updated because:

- current technology provides cellular telephone service through many small-scale

facilities interconnected to land telephone lines and electric power;

- governmental emergency communications are being converted to digital technology which will require new facilities to provide services to meet needs for public health, safety and welfare; and
- the policy should be re-evaluated in light of the 1996 federal Telecommunications Act, which acknowledges State and local authority to evaluate specific locations and designs.

The changing technology will result in requests for the construction of new towers for improved telecommunications systems. When considering the mountainous terrain of the Adirondack Park, there is a potential for requests for multiple facilities to improve coverage over time. Anticipated requests for more towers and the concerns over the effectiveness of the current policy to provide meaningful guidance in the development of the system authorized by federal law lead to this policy update.

III. Policy on Telecommunications Towers

A. General Policy

New telecommunications towers located within the Adirondack Park will be located to avoid undue adverse impacts in such a manner as to be substantially invisible and in the vicinity of existing settlements or those portions of highway corridors where existing telephone and electric power is accessible to the proposed facility. Facilities must also be designed and sited to avoid or minimize impact to nearby land uses. Co-location of facilities is preferred so long as substantial invisibility is achieved. Governmental emergency telecommunication towers will be handled in the same manner, with consideration given to the health and safety needs of the public.

Private, commercial telecommunication towers and facilities will not be located within the constitutionally protected Adirondack Forest Preserve. Governmental emergency telecommunications facilities located on State land must, in those very limited circumstances where they are allowed, be consistent with the Adirondack Park State Land Master Plan.

New tower proposals will be presented with supporting information regarding the proposed facility location, alternative support infrastructure, designs and locations and future facility plans, adequate to determine whether the cumulative impacts of the proposed towers will result in undue adverse impacts on the Adirondack Park. Applicants will be required to provide the best available data and visual representations in order to maximize Agency and public understanding of the proposed project.

B. Substantial Invisibility

A "substantially invisible" communication facility and its appurtenant support facilities and access road(s) 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.

Potential public viewing points include public roads, navigable waters and other public places. Substantial invisibility is intended to be applied on a site specific basis and may be achieved by consolidation of existing visual intrusions and/or by the development of facilities within lawfully existing buildings, and/or by providing substantial screening or concealment of the structure itself.

Substantial invisibility is considerably different in developed areas with the less restrictive Hamlet land use area classification when compared to areas classified Rural Use and Resource Management in light of the differing statutory purposes and policies for these areas set forth in the Land Use and Development Plan. To further the purposes of substantial invisibility, implementation of this policy recognizes the potential compatibility of the construction of communication facilities in areas with less restrictive land use classifications in an effort to preserve the open space character of the Park as called for in the Section 805 purposes, policies and objectives for all differing land use areas.

Preferred methods to reduce visibility include: avoiding locating facilities on mountain tops and ridge lines; concealing any structure by careful siting, using a topographic or vegetative foreground or backdrop; minimizing structure height and bulk; using color to blend with surroundings; using existing buildings to locate facilities whenever possible; using architecturally compatible buildings to house ground equipment; and otherwise using best available technology that avoids or minimizes visual impacts.

When none of the above preferred methods achieve substantial invisibility, camouflage in scale with the surroundings may be proposed in order to blend the facility with the visual setting.

C. Consolidation of Visual Intrusion

Consolidation of visual intrusions occurs when equipment is co-located on a single existing tower or on a new tower immediately adjacent to a lawful pre-existing facility. Consolidation of visual intrusions also occurs when telecommunication equipment is attached to other pre-existing tall structures, such as utility poles, water tanks, or buildings. In developed areas existing buildings, overhead utility poles and similar structures may host telecommunication equipment and achieve substantial invisibility even when the telecommunication device is in plain view juxtaposed to the existing structure. This policy is intended to maintain the visual quality and character of the site and to avoid undue adverse impacts to scenic vistas, locally important viewsheds, and historic resources. It should be noted that there is an indefinite threshold where the consolidation of visual intrusions becomes overbearing and considered clutter with resulting undue adverse impacts on the Adirondack Park. As part of the alternatives analysis required of the applicant, methods of avoiding or reducing clutter in a viewshed through consolidation at a site with more than one tower or multiple sets of equipment on a single tower will be necessary as part of the Agency review and permitting process.

D. Emergency Communication Facilities

The Agency recognizes that the demands of public health, safety and welfare will involve the upgrade of governmental emergency communications facilities. This policy recognizes that such factors should be taken into consideration along with the other policy guidelines contained herein.

E. Obsolescence and Abandonment

This policy is intended to require removal of obsolete or abandoned telecommunication facilities. A plan for timely removal of any related telecommunications structures which become obsolete or are abandoned will be required as an element of any proposal for a new facility. The Agency may require guarantees to assure removal and/or restoration of the site.

F. Local Government Regulations

Local Governments share authority over land uses, including telecommunications towers, with the Agency and consistent local regulations will be considered a supplement to this policy.

IV. Legal Effect

This policy is not intended to set forth a fixed general principle to be rigidly applied. Rather, its tenets are to be utilized solely as guidance and should be applied only after taking into account the specific facts and circumstances set out in the application and project review record for each proposed telecommunications tower.

V. Adoption

The Adirondack Park Agency has reviewed and adopted this policy effective February 15, 2002.

By _____ _____

Richard H. Lefebvre, Chairman Date

APPENDIX B

Engineering Statement of Munn-Reese, Inc.

OPPOSITION TO MOTION TO STRIKE

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

August 2002

MUNN-REESE, INC.
Broadcast Engineering Consultants
Coldwater, MI 49036

CERTIFICATION OF ENGINEERS

The firm of Munn-Reese, Inc., Broadcast Engineering Consultants, with offices at 100 Airport Drive, Coldwater, Michigan, has been retained for the purpose of preparing the technical data forming this report.

The data utilized in this report was taken from the FCC Secondary Database and data on file. While this information is believed accurate, errors or omissions in the database and file data are possible. This firm may not be held liable for damages as a result of such data errors or omissions.

The report has been prepared by properly trained electronics specialists under the direction of the undersigned whose qualifications are a matter of record before the Federal Communications Commission.

I declare under penalty of perjury that the contents of this report are true and accurate to the best of my knowledge and belief.

August 8, 2002

MUNN-REESE, INC.

By _____
Wayne S. Reese, President

By _____
Donald J. Baad, Project Engineer

100 Airport Drive, PO Box 220
Coldwater, Michigan 49036

Telephone: 517-278-7339

Engineering Statement

The firm of Munn-Reese, Inc. has been retained to prepare this report in support of the Opposition by Hall Communications, Inc. (Hall) to a Motion to Strike filed by the Joint Petitioners[1] in this ongoing proceeding.[2] In its counterproposal, Hall requested the allotment of Channel 282A to Keeseville, NY from a site that, unlike the Rulemaking proposed by the Joint Petitioners, would require no other changes in the FM Table of Allotments.

In multiple filings, the Joint Petitioners have repeatedly raised concerns about the availability of a line of sight path between the proposed transmitter site and the community of Keeseville, NY. For the reasons set forth below, Hall maintains that the issue is not determinative in the present proceeding.

Historically, the Commission has used two standards for determining whether a reference point in a rulemaking proceeding would provide the required 70 dBu coverage of a community of license. Normally, the Commission accepts a "uniform terrain" model in which a circle is drawn with a radius representing the distance to the 70 dBu contour using the maximum power and height for the reference class of station. In the case of a Class A channel, the circle would have a radius of 16.2 km. At other times, the Commission has also accepted the use of actual 70 dBu contours based on the FCC curves methodology and using the average terrain procedure set forth in §73.313. This is normally computed using the full power and antenna height for the reference class of station, which for a Class A facility would be 6.0 kW effective radiated power (ERP) at 100 meters height above average terrain (HAAT).

The elevation for the site specified in the Hall counterproposal[3] is much higher than the surrounding average terrain. Specifically, the site elevation shown on 7 ½ minute topographic mapping is 1230 feet above mean sea level (AMSL), which is 374.9 meters. The average terrain for this site is 271.5 meters AMSL, based on the USGS 03-arc second digitized terrain database. Thus, any installation at this site would require an antenna to be placed more than 100 meters HAAT. The Commission rules provide for such heights by requiring the power be reduced to provide the same distance to the 60 dBu service contour for the eight cardinal bearing HAAT as the maximum reference class parameters. This assures that the 60 dBu, as well as the 70 dBu, service contour remains virtually unchanged. If anything, increasing height and reducing power tends to reduce the distances to contours, but this effect is usually only noted in lower level interference contours where the distance to the contour would be much greater.

As a practical matter and as a "worst case scenario" test, coverage studies were made from the proposed Hall reference point using an antenna center of radiation only 30 feet (9.1 meters) above ground level (AGL). This height would place the center of radiation 384.0 meters AMSL and 112.5 meters HAAT. Full Class A equivalency would be achieved with an ERP of 4.7 kW.

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[1] Great Northern Radio, LLC, licensee of WSSH(FM) at White River Junction, VT and Family Broadcasting, Inc., licensee of WWOD(FM) at Hartford, VT.

[2] MM Docket No. 02-23, RM-10359, RM-10434

[3] The coordinates for this site are 44° 33' 44" NL and 73° 38' 05" WL (NAD27).

Figure 1 shows a map of both the "uniform terrain" circle (white line) and the FCC curves 70 dBu service contour (blue line) from the proposed Hall reference point using the above parameters. It is clear from this map that "city grade" service is provided to Keeseville using either of the methods traditionally accepted by the FCC.

The Joint Petitioners have repeatedly raised concerns that the intervening terrain between the proposed Hall reference site and Keeseville might preclude adequate coverage of the community of license. However, §73.313(e) makes provisions for the use of alternate propagation models in cases of widely varying terrain. One of the common tools for making these studies is the Longley-Rice propagation model. The Probe II™ software from V-Soft Communications was used to make such a study using a 1.0 km study grid and the parameters shown on ***Figure 2***. All of the areas predicted to receive a minimum of 70 dBu signal strength are shown in red on this map. For comparison purposes, the city limits for Keeseville, NY are shown in ***Figure 3***. These boundaries were obtained using the Tiger Mapping function at the US Census Bureau web site. All of the area within the Keeseville boundaries is predicted to receive city grade coverage.

This office has been involved with similar rulemakings[4] in the past where the Commission has accepted the Longley-Rice propagation model as a supplement to the regular FCC curves method. The use of terrain profiles based on the USGS 03-arc second digitized terrain database was also accepted. In fact, the profiles in the referenced case included far more obstructions than the single peak shown in the Joint Petitioner's Motion to Strike. While line of sight is desirable, the presence of terrain obstructions does not necessarily preclude adequate coverage of the community of license. When line of sight is available, no further study is required. The presence of obstructions simply means further supplemental showings may be required to assure sufficient coverage. In the present case, the Probe II™ study confirms that even a minimal antenna installation from this site is sufficient to provide city grade coverage to Keeseville. Thus, the line of sight issue is not determinative in the present case.

The Joint Petitioners have claimed that the Hall reference point was located in the Adirondack State Park. At the time the Hall counterproposal was formulated, this office did make a good faith determination that the site was outside the boundaries of the park. However, it appears the boundaries to the park were expanded subsequent to the date of the data on which we relied. Normally, a site within a state park is unacceptable because the land is owned by the state and not available for use by private, commercial entities. In this respect, the Adirondack State Park is unusual. The park includes all or portions of eleven counties and several towns, such as Keeseville and Saranac Lake. Obviously, not all of this land is owned by the State of New York.

Further research indicates that some of this land is owned by the state, and some of it has even been designated as "forever wild" by an article in the State Constitution since 1895. Other portions are available for private and commercial use. A copy of the *Adirondack Park Agency Act* (Act), as amended through the close of the 1998 Legislative Session, was found on the Park Agency web site.

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[4] See Report and Order for MM Docket No. 00-79, RM-9802. DA 02-614 released March 15, 2002.

Under the definitions found in §802 of the Act, land used for "any television, cable television, radio, telephone or other communication transmission tower" is designated as "major public utility use."[5] The area where the Hall reference site is located has been designated for "Rural Use." In detailing the various permitted uses for each designation, the Act permits "Major public utility areas" within the "Rural Use" category.[6] Indeed, the two nearby towers noted in Hall's earlier comments[7] are also located on land designated for "Rural Use."

Figure 4 is a map showing the location of twenty-five separate towers that were found in the FCC Antenna Structure Registration (ASR) database and are located within the park boundaries. The small cross symbols designate the location of each tower, and the numbers indicate the ASR designation for each tower. Where towers are located close together, multiple numbers are shown for what may appear to be a single location on the map. However, multiple towers do exist at these locations, but they are too close to one another to show up separately on the map. The boundaries of the Adirondack State Park are shown in red. Although the owners of any antenna structure may register it with the Commission, normally only those structures that exceed 200 feet (61.0 meters) AGL or present special air space problems are required to be registered. The registered heights above ground are listed on page 2 of ***Figure 4***. There is also evidence of additional towers located in the park that did not require registration with the FCC. A June 3, 2001, article in the Press Republican Online reported the following:

> *"APA information shows that 49 towers were approved between 1977 and 2000, while permits were not issued for 10 others during that time for various reasons ranging from failure to meet a deadline to inaction by an applicant."*[8]

The Joint Petitioners referred to a revised "*Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park*" released earlier this year. Although the document sets forth guidelines and procedures for locating new structures on private land within the park, it does not specifically exclude such structures. Section IV of the document sets forth its intended legal effects and specifically notes that each proposed tower will be considered individually.

Thus, even a reference point within the State Park does not automatically preclude the possibility of its use. As shown above, even a minimal antenna installation would provide service to Keeseville. In short, there is no reason to deny the Hall counterproposal in this proceeding. It provides a totally new radio service without removing any FM facility from its present community. The public interest would be served by the diversity of an additional first service rather than the rearranging of existing services.

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[5] *Adirondack Park Agency Act*, §802, Item 33, page 3.
[6] Ibid, §805, Item 3(f)(23), page 14.
[7] These towers have been assigned FCC Antenna Structure Registration Numbers 1003384 and 1007293.
[8] Online URL: http://www.pressrepublican.com/Archive/2001/06_2001/060320012.htm.

Munn-Reese, Inc.

RADD-282A

Latitude: 44-33-44 N
Longitude: 073-38-05 W
ERP: 4.70 kW
Channel: 282
Frequency: 104.3 MHz
AMSL Height: 384.0 m
Elevation: 374.9 m
HAAT: 112.5 m
Horiz. Pattern: Directional
Vert. Pattern: No

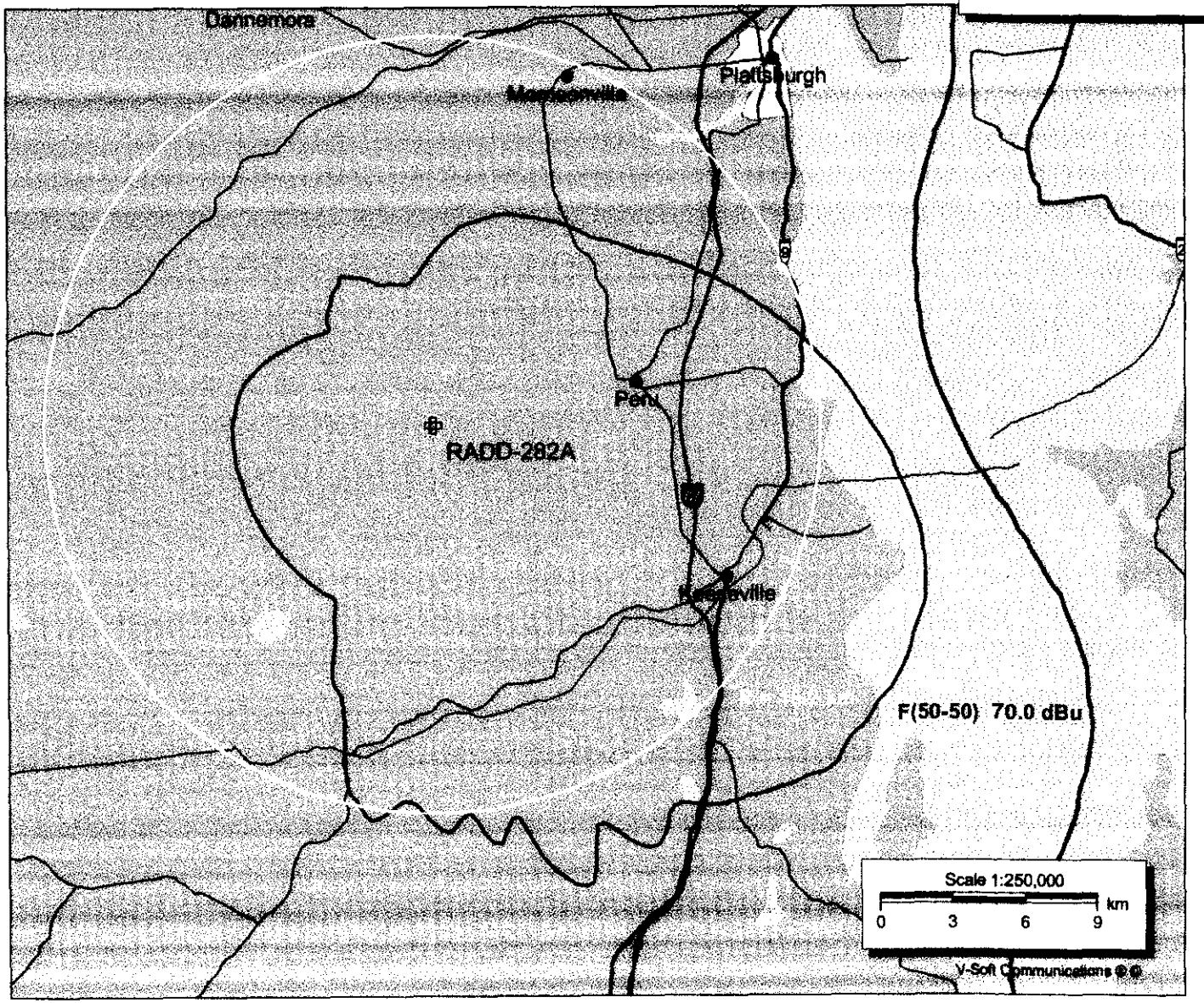


FIGURE 1

Munn-Reese, Inc.

RADD-282A

Latitude: 44-33-44 N
Longitude: 073-38-06 W
ERP: 4.70 kW
Channel: 282
Frequency: 104.3 MHz
AMSL Height: 384.0 m
Elevation: 374.9 m
HAAT: 112.5 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: Longley/Rice
Climate: Cont temperate
Conductivity: 0.0040
Dielec Const: 15.0
Refractivity: 310.0
Receiver Ht AG: 10.0 m
Receiver Gain: 0 dB
Time Variability: 50.0%
Sit. Variability: 50.0%
ITM Mode: Broadcast

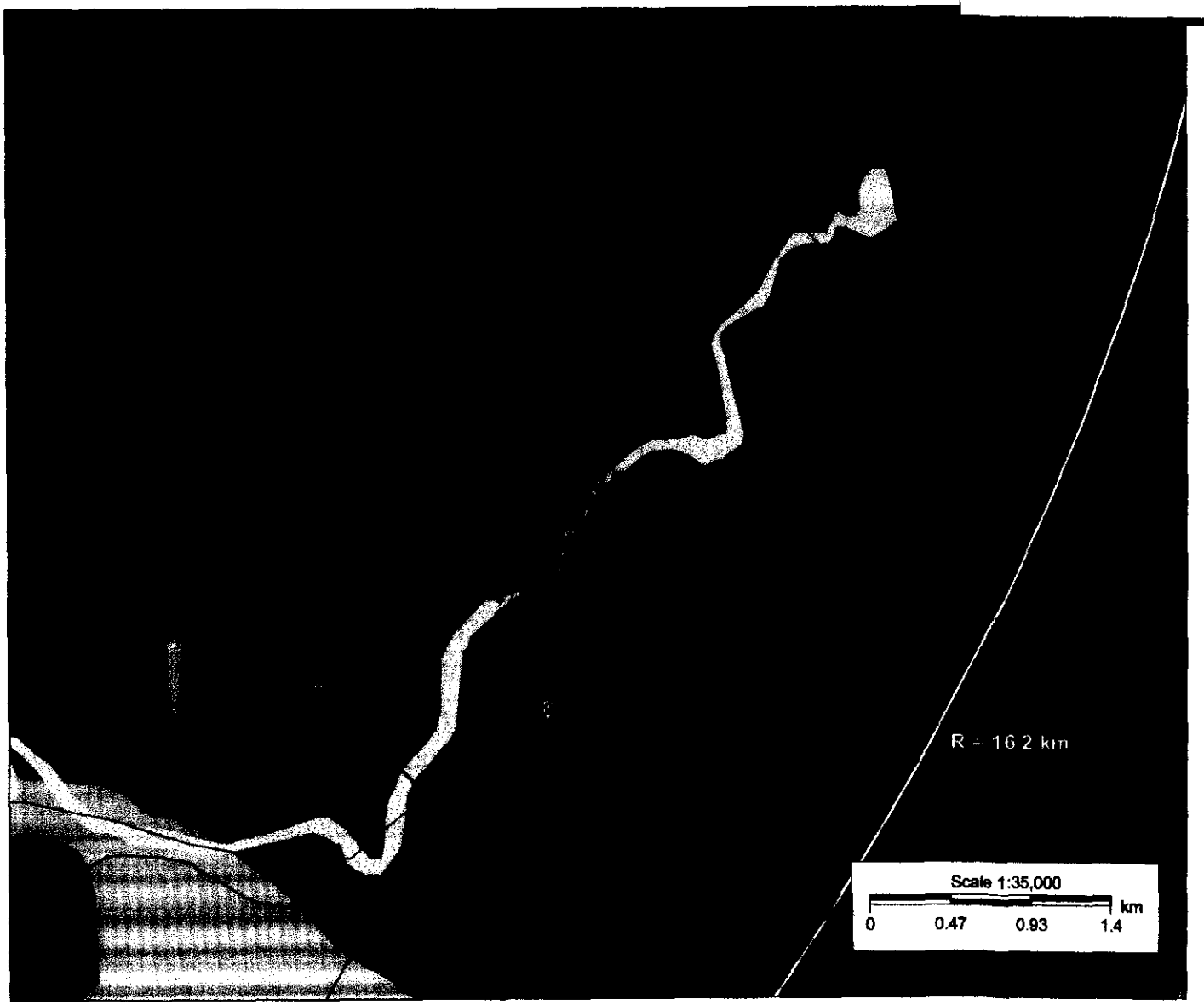


FIGURE 2

Figure 3

Keeseville, NY Boundaries

As indicated by US Census Bureau Tiger Map

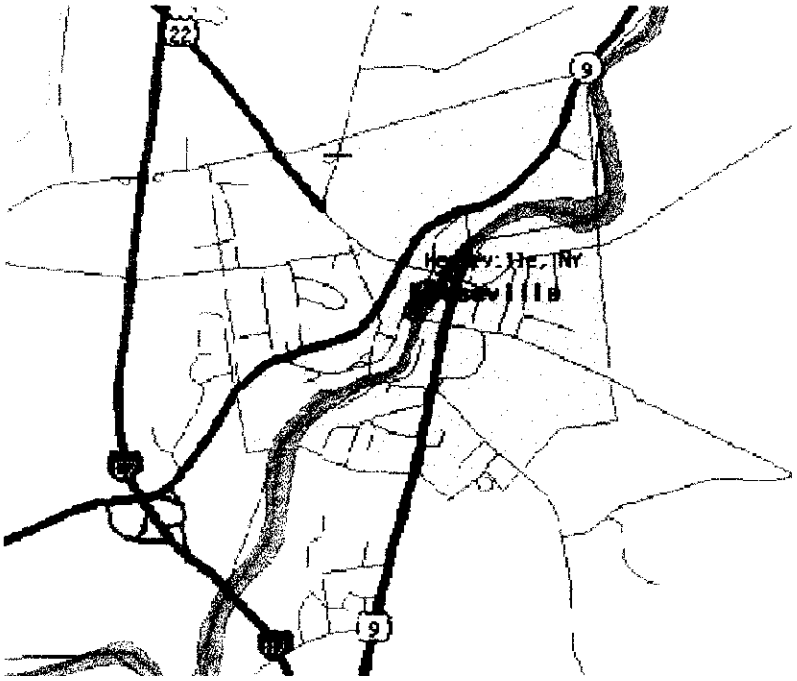


Figure 4
ASR Towers Located Within State Park Area

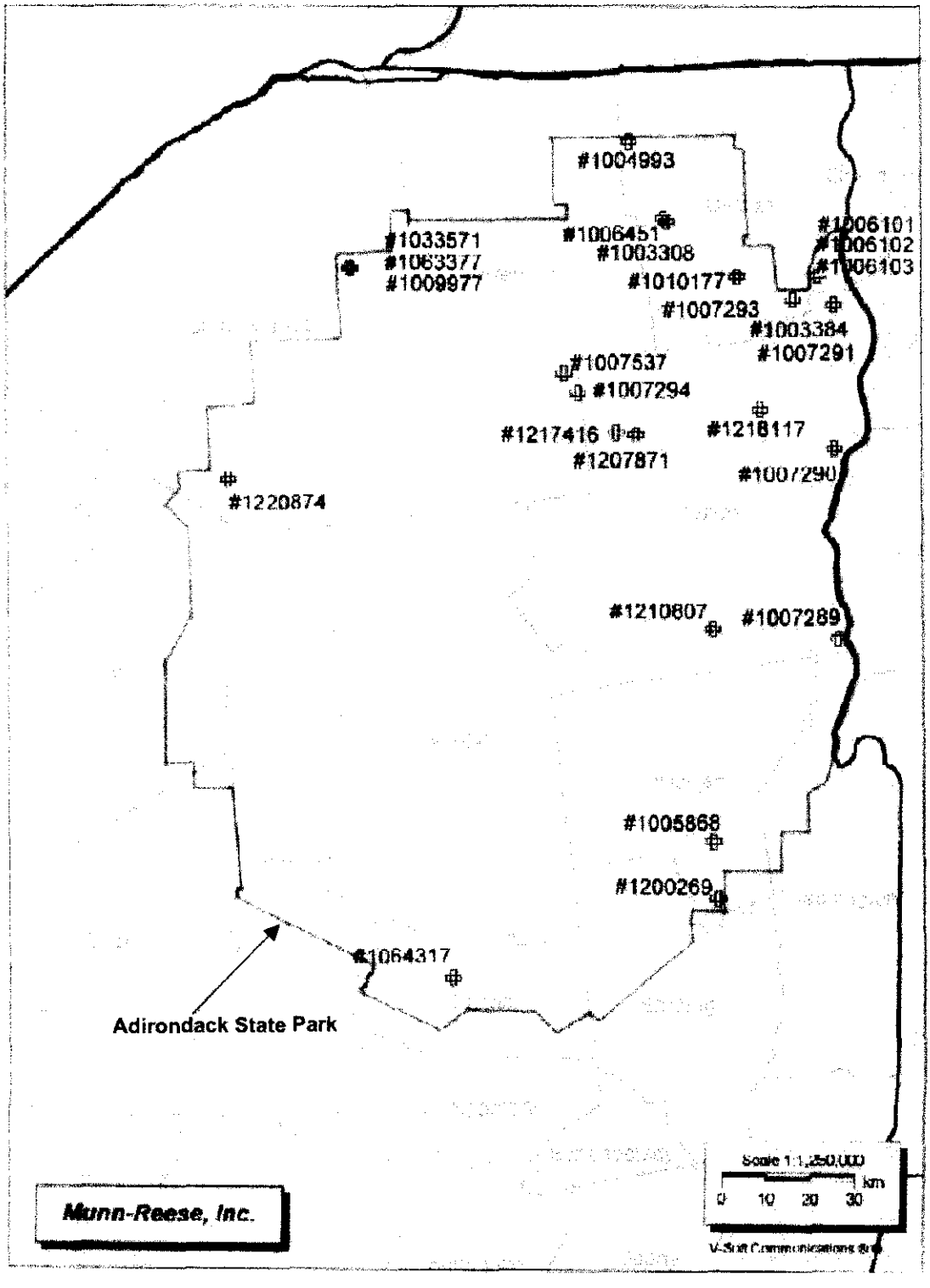


Figure 4
ASR Towers Located Within State Park Area

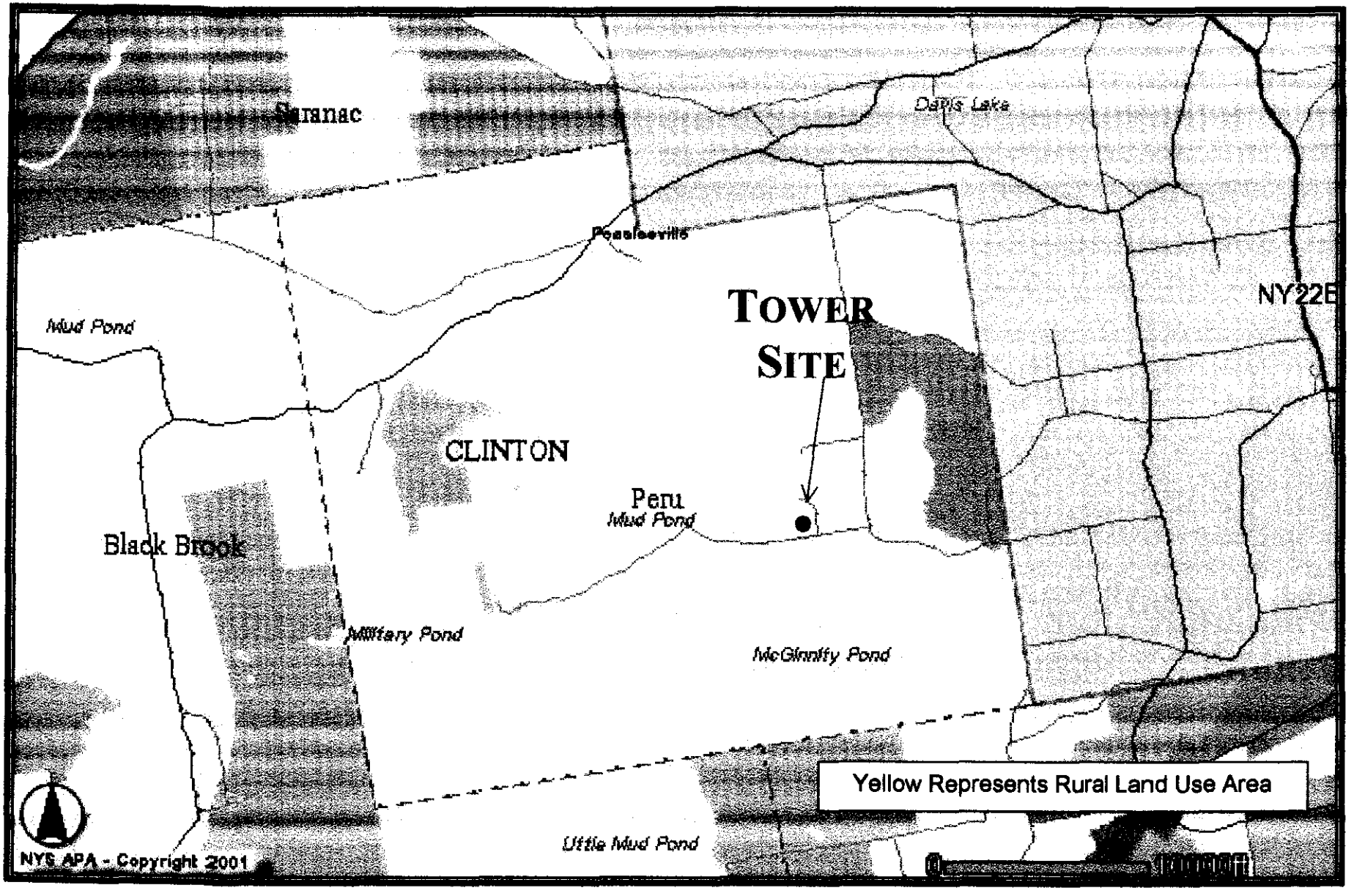
Tower ASR Number	Tower Height Above Ground Level (AGL)
1218117	60.6 meters
1007290	30.4 meters
1007289	7.6 meters
1009977	60.0 meters
1033571	66.4 meters
1063377	61.0 meters
1004993	66.4 meters
1003308	135.9 meters
1006451	50.3 meters
1003384	297.8 meters
1007293	48.7 meters
1010177	76.2 meters
1006101	79.0 meters
1006102	78.0 meters
1006103	77.0 meters
1007291	24.3 meters
1005868	42.7 meters
1200269	68.0 meters
1007294	24.3 meters
1007537	42.6 meters
1207871	84.7 meters
1210807	35.1 meters
1217416	62.5 meters
1220874	41.1 meters
1064317*	67.7 meters*

*Tower 1064317 is believed to be dismantled at this time, however ASR still remains in existence.

APPENDIX C

Adirondack Park Land Use and Development Plan Map and State Land Map

Appendix C
Portion of Adirondack State Park Land Use Map



MUNN–REESE, INC.
Broadcast Engineering Consultants
Coldwater, MI 49036

CERTIFICATE OF SERVICE

I, Carla M. Whitlock, a Secretary with the law firm of Fletcher, Heald & Hildreth, certify that I have this 8th day of August, 2002, caused to be sent by first-class U.S. mail, postage-prepaid, or Hand Delivery, as indicated, a copy of the foregoing "Opposition" the following:

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* By Hand Delivery