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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
)  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations )  
(Haverhill and Andover, Massachusetts) )

MM Docket No. 04-\_\_\_\_  
RM-\_\_\_\_\_

ORIGINAL

To: The Secretary

PETITION FOR RULEMAKING

Beanpot Broadcasting Corp. ("Beanpot"), the licensee of Station WXRV(FM), Channel 223B, Haverhill, Massachusetts (the "Station" or "WXRV"), by its attorneys and pursuant to Section 1.420(i) of the Commission's Rules, hereby files this Petition for Rulemaking ("Petition"). Beanpot seeks to modify the Station's community of license from Haverhill, Massachusetts to Andover, Massachusetts, which will result in a preferential arrangement of allotments. In support thereof, Beanpot states as follows.

The allotment of Channel 223B at Haverhill is mutually exclusive with the proposed allotment of Channel 223B at Andover. *See Technical Exhibit at 1 (Attachment 1).* The proposal thus complies with the terms of Section 1.420(i) of the Commission's Rules.

Further, the proposal will not create any new short-spacings or exacerbate any existing short-spacings. *See Technical Exhibit at 3.* The existing short-spacings to which the Station is party are all permissible under the Commission's Rules. *See id.* The following pre-1964 short-spacings are "grandfathered" pursuant to Section 73.213(a) of the Commission's Rules: Station WPRO-FM, Channel 222B, Providence, Rhode Island; Station WWYZ(FM), Channel 223B,

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Waterbury, Connecticut; and Station WBOS(FM), Channel 225B, Brookline, Massachusetts. *See, e.g., Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (1992); *Oceanside and Encinitas, California*, 14 FCC Rcd 15302 (1999); and *Berlin and Conway, New Hampshire*, 14 FCC Rcd 15307 (1999). Station WUMB-FM, Channel 220A, Boston, Massachusetts is a pre-1989 “grandfathered” short-spacing pursuant to Section 73.213(c) of the Commission’s Rules. *See, e.g., Fremont and Holton, Michigan*, 14 FCC Rcd 17108 (1999). Station WFEX(FM), Channel 221A, Peterborough, New Hampshire, is a permissible short-spacing pursuant to Section 73.215 of the Commission’s Rules. *See, e.g., Killeen and Cedar Park, Texas*, 13 FCC Rcd 18790 (1998). WXRV’s site also complies with the separation requirements for international Class B allotments set forth in the U.S.-Canadian FM Agreement (Ottawa, February 1991). *See* Technical Statement at 3.

Significantly, the proposed move to Andover will result in a preferential arrangement of allotments pursuant to the Commission’s FM allotment priorities,<sup>1</sup> as required by the Commission. *See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) (“*Community Modification Reconsideration*”).

The community of Haverhill, Massachusetts (2000 Census population 58,969) currently receives local transmission service from both WXRV and Full-Power Commercial Station WCCM(AM). Thus, this proposal will not result in the removal of Haverhill’s sole local service. *See Community Modification Reconsideration*, 5 FCC Rcd at 7096 (prohibiting removal of a community’s sole local service on grounds that such a change presumptively disserves the public

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<sup>1</sup> The Commission’s FM priorities, as set forth in the *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 91-92 (1982), include: (1) first aural service; (2) second aural service; (3) first local service; and (4) other public interest matters. The Commission gives equal weight to priorities (2) and (3). *Id.*

interest). The community of Andover currently receives local service from Non-Commercial Educational Station WPAA(FM), Andover, Massachusetts.<sup>2</sup>

Despite the fact that the Commission generally does not distinguish between commercial and noncommercial stations for purposes of analyzing local service to a community,<sup>3</sup> the Commission has provided that in certain instances there are exceptions to this rule, and this is one such instance. The Commission will give weight to the commercial/noncommercial distinction where a noncommercial educational station fails to provide adequate coverage to its community of license. *See Alva, Oklahoma, et al.*, 16 FCC Rcd 1525 (MMB 2000), *recon. denied*, 16 FCC Rcd 7979, 7980 (MMB 2001) (concluding that non city-grade service provided by noncommercial station not adequate substitute for removal of sole local station providing city grade signal to community of license).

Here, WPAA is licensed to the Trustees of Phillips Academy, a private college preparatory boarding school, and is operated as a broadcast service for the Academy. WPAA's 70dBu contour covers only 31% of the Andover limits, and its 60 dBu contour covers only 70% of the Andover limits. *See* Technical Exhibit at 4, Figure 3.

Given that WPAA is a station operated for the benefit of a private school and does not provide city-grade coverage to Andover, the Commission should heed the commercial/noncommercial distinction in this instance and recognize that WXRV's move to Andover will not simply provide the community with its second local aural transmission service,

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<sup>2</sup> By virtue of the WPAA allotment to Andover, there is no question that Andover is a community for allotment purposes.

<sup>3</sup> *See Crisfield, Maryland et al.*, 18 FCC Rcd 19561, 19568 (MB 2003) (noting relevance for noncommercial stations for purposes of analyzing local service to a community); *Valley Broadcasters, Inc.*, 5 FCC Rcd 2785, 2788 (1990) (holding that there is no legitimate public interest purpose served in exempting noncommercial educational stations from transmission service analyses and overturning earlier, inconsistent caselaw).

but rather with its first commercial aural transmission service and its first and only local service. *See Alva, Oklahoma, supra.* WXRV will serve all of the community of Andover, in name, practice and interest, rather than simply the community associated with a private school. Thus, the respective sizes of Haverhill's and Andover's local populations notwithstanding, the Station's proposed move to Andover will result in a preferential arrangement of allotments.

Further, because Beanpot does not propose any changes in the transmitter site or facilities, the proposal will not result in: (i) any gain or loss of service or (ii) any change in the Station's city-grade service to Haverhill. *See* Technical Exhibit at 4-5; *Payson and Camp Verde, Arizona*, DA 03-3040, released October 10, 2003.

Finally because no transmitter site or facility changes have been proposed, and because Haverhill and Andover are both located within the Boston, Massachusetts Urbanized Area, no *Tuck* analysis need be performed. *See* Technical Exhibit at 4; *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951); *RKO General, Inc.*, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). The Station is already in an urbanized area, and thus does not implicate the concerns set forth in *Tuck* involving the migration of stations from rural areas to urban areas. *See id.* *See also Athens and Doraville, Georgia*, 18 FCC Rcd 17627, 17628 (MB 2003) (noting that *Tuck* analysis not necessary because station not migrating into an urbanized area but is already there) (citing *Headland, Alabama and Chatahooche, Florida*, 10 FCC Rcd 10352 (MMB 1995)).

WHEREFORE, for the foregoing reasons, Beanpot Broadcasting Corp. respectfully requests that the Commission grant the Petition for Rulemaking and issue a notice of proposed rulemaking proposing modification of Section 73.202(b) of the Commission's Rules to change the community of license for Station WVRX(FM) from Haverhill, Massachusetts to Andover, Massachusetts.

Respectfully submitted,

**BEANPOT BROADCASTING CORP.**

By: 

Barry A. Friedman, Esq.  
Thompson Hine LLP  
1920 N Street, N.W.  
Suite 800  
Washington, D.C. 20036  
(202) 331-8800

July 2, 2004

**ATTACHMENT 1**

TECHNICAL EXHIBIT  
IN SUPPORT OF  
A PETITION FOR RULE MAKING  
TO AMEND THE FM TABLE OF ALLOTMENTS  
HAVERHILL AND ANDOVER, MASSACHUSETTS

Technical Narrative

This technical narrative and associated exhibits have been prepared on behalf of station WXRV in support of a Petition for Rule Making to amend Section 73.202(b) by the reallocation of channel 223B (92.5 MHz) from Haverhill to Andover, Massachusetts and the modification of the license (BLH-19870604KC) of WXRV accordingly. As the requested change is mutually exclusive with the allotment of channel 223B at Haverhill, Petitioner invokes the provisions of Section 1.420(i).

The following is a summary of the reallocation proposal:

- The community of Andover (2000 Census population 31,247) will be provided with its second local aural transmission service, first commercial aural transmission service and first local city grade service.
- The community of Haverhill (2000 Census population 58,969) will continue to have local fulltime aural service from AM station WCCM.
- No new short-spacings will be created and no existing short-spacings will be exacerbated.
- There will be no gain or loss of service as there will be no change in transmitter site or facilities.
- As no change in transmitter site is proposed, Haverhill will continue to receive a city grade (70 dBu) signal.
- As both Haverhill and Andover are located within the Boston, Massachusetts Urbanized Area, a Tuck analysis is not believed necessary.

Proposed Change in Table of Allotments

Station WXRV is currently licensed (BLH-19870604KC) to operate on channel 223B at Haverhill, Massachusetts with an effective radiated power (ERP) of 25 kW and an antenna height above average terrain (HAAT) of 217 meters.

Haverhill, is located in Essex County, Massachusetts and has a 2000 U.S. Census population of 58,969 persons. Fulltime AM station WCCM is currently licensed to serve Haverhill on 1490 kHz (1 kW-U). Therefore, adoption of the proposal will not deprive Haverhill of its sole "existing" local fulltime aural service.

Andover is located in Essex County, Massachusetts and has a 2000 U.S. Census population of 31,247 persons. Noncommercial educational FM (NCE-FM) station WPAA is licensed (BLED-19830222AQ) to serve Andover. Therefore, Petitioner's proposal would bring Andover its second local aural transmission service, first commercial aural transmission service and, as detailed below, its first local city grade service. Accordingly, Petitioner requests modification of the FM allocation table as follows:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Haverhill, Massachusetts	223B	--
Andover, Massachusetts	--	223B

Compliance With FCC Rules

The attached Figure 1 is a tabulation of required separations pertinent to use of channel 223B at Andover.<sup>1</sup> The reference site complies with the Commission's minimum distance separation requirements contained in Section 73.207 of the FCC's rules to all existing, authorized and proposed stations and allotments with the following exceptions: WUMB on channel 220A at Boston, Massachusetts (BLED-19880722KA); WFEX on

channel 221A at Peterborough, New Hampshire (BLH-20010828AAS); WPRO on channel 222B at Providence, Rhode Island (BMLH-19920605KA); WWYZ on channel 223B at Waterbury, Connecticut (BLH-19940916KD); and WBOS on channel 225B at Brookline, Massachusetts (BLH-20000403ABK). Each short-spacing is addressed below.

It is noted that WXRV is a pre-1964 "grandfathered" station. Based on research of the FCC's files it has been determined that the short-spacings with WPRO, WWYZ and WBOS are pre-1964 "grandfathered" short-spacings pursuant to Section 73.213(a). In addition, the short-spacing with WUMB is a pre-1989 "grandfathered" short-spacing pursuant to Section 73.213(c). Also, the short-spacing with WFEX resulted from WFEX requesting processing under Section 73.215. The Commission permits a station to change its community of license despite the presence of pre-1964 and pre-1989 "grandfathered" short-spacings and those permitted under Section 73.215 of the Rules.<sup>2</sup> Furthermore, as station WXRV does not propose to change its transmitter site, no new short-spacings would be created, and no existing short-spacing would be exacerbated. Additionally, operation from the reference site will provide the requisite city grade signal to all of Andover.

The reference site also complies with the separation requirements contained in the U.S.-Canadian FM Agreement (Ottawa, February 1991) applicable to international Class B allotments.

Figure 2 is a map which depicts the city coverage (70 dBu) contours based on WXRV's actual facilities (ERP 25 kW/HAAT 217 m) as well as maximum Class B allotment facilities (ERP 50 kW/HAAT 150 m). As shown, all (100%) of Andover is

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<sup>1</sup> The geographic coordinates for Channel 223B at Andover are the existing transmitter site of WXRV located at North Latitude 42°46'23" and West Longitude 71°06'01".

<sup>2</sup> See *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (1992); *Oceanside and Encinitas, California*, 14 FCC Rcd 15302 (1999); and *Berlin and Conway, New Hampshire*, 14 FCC Rcd 15307 (1999) (pre-1964 "grandfathered" short-spacing); *Fremont and Holton, Michigan*, 14 FCC Rcd 17108 (1999) (pre-1989 "grandfathered" short-spacing); and *Killeen and Cedar Park, Texas*, 13 FCC Rcd 18790 (1998) (Section 73.215 short-spacing).

located within the 70 dBu contours. In addition, Haverhill will continue to receive a 70 dBu signal. The Andover and Haverhill city limits shown on Figure 2 were obtained from the 2000 Census.

#### Andover Local Service

Currently NCE-FM station WPAA is licensed to serve Andover on channel 219A (91.7 MHz) with an ERP of 0.025 kW and an HAAT of 64 meters (BLED-19830222AQ). Figure 3 is a map which depicts the 70 dBu and 60 dBu contours for WPAA based on its licensed facilities. The Andover 2000 limits are also shown on Figure 3. As indicated on Figure 3, WPAA's 70 dBu contour only covers 31% of the Andover limits. Furthermore, the WPAA 60 dBu contour only encompasses 70% of the Andover limits. On the other hand, the WXRV 70 dBu will encompass 100% of the Andover limits. Therefore, Petitioner's proposal would bring Andover its first local city grade service.

#### Urbanized Area Considerations

Both Andover and Haverhill are located within the Boston, Massachusetts Urbanized Area (UA). Furthermore, the 70 dBu signal will continue to cover 31% of the Boston, Massachusetts UA, 60% of the Nashua, New Hampshire-Massachusetts UA, 22% of the Portsmouth, New Hampshire UA and 5% of the Manchester, New Hampshire UA. Therefore, it is not believed that a *Tuck* analysis is necessary.<sup>3</sup>

#### 60 dBu Gain and Loss Areas

There will be no change in the WXRV transmitter site or facilities. Therefore, there will be no 60 dBu gain or loss areas.

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<sup>3</sup> See *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951); *RKO General, Inc.*, 5 FCC Rcd 3222 (1990); and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

70 dBu Coverage Contours

The predicted 70 dBu coverage contours for WXRV and WPAA were based on each stations actual facilities and were calculated in accordance with the provisions of Section 73.313. The 70 dBu contour for WXRV's Class B allotment facilities (ERP 50 kW/HAAT 150 m) was also calculated in accordance with Section 73.313 except that uniform terrain was presumed in all directions.

Conclusion

Channel 223B can be reallocated from Haverhill, Massachusetts to Andover, Massachusetts in compliance with all applicable Commission Rules and International Agreements. The community of Andover (2000 census population 31,247 persons) will be provided with its second local aural transmission service, first commercial aural transmission service and first local city grade service. The community of Haverhill (2000 census population 58,969 persons) will continue to have local fulltime aural service. In addition, Haverhill will continue to receive 70 dBu service from the proposed WXRV facilities. As no change in the WXRV transmitter site is proposed, there will be no gain or loss area. Furthermore, no new short-spacings would be created, and no existing short-spacing would be exacerbated. Therefore, Petitioner requests the reallocation of channel 223B from Haverhill to Andover, Massachusetts and the modification of the WXRV license (BLH-19870604KC).

  
W. Jeffrey Reynolds

du Treil, Lundin & Rackley, Inc.  
201 Fletcher Avenue  
Sarasota, Florida 34237-6019  
(941) 329-6000  
JEFF@DLR.COM

June 28, 2004

## CDBS FM SEPARATION STUDY

Job Title: Proposed WXRV, Andover, MA  
Channel: 223 B

Separation Buffer: 32 km  
Coordinates: 424623 710601

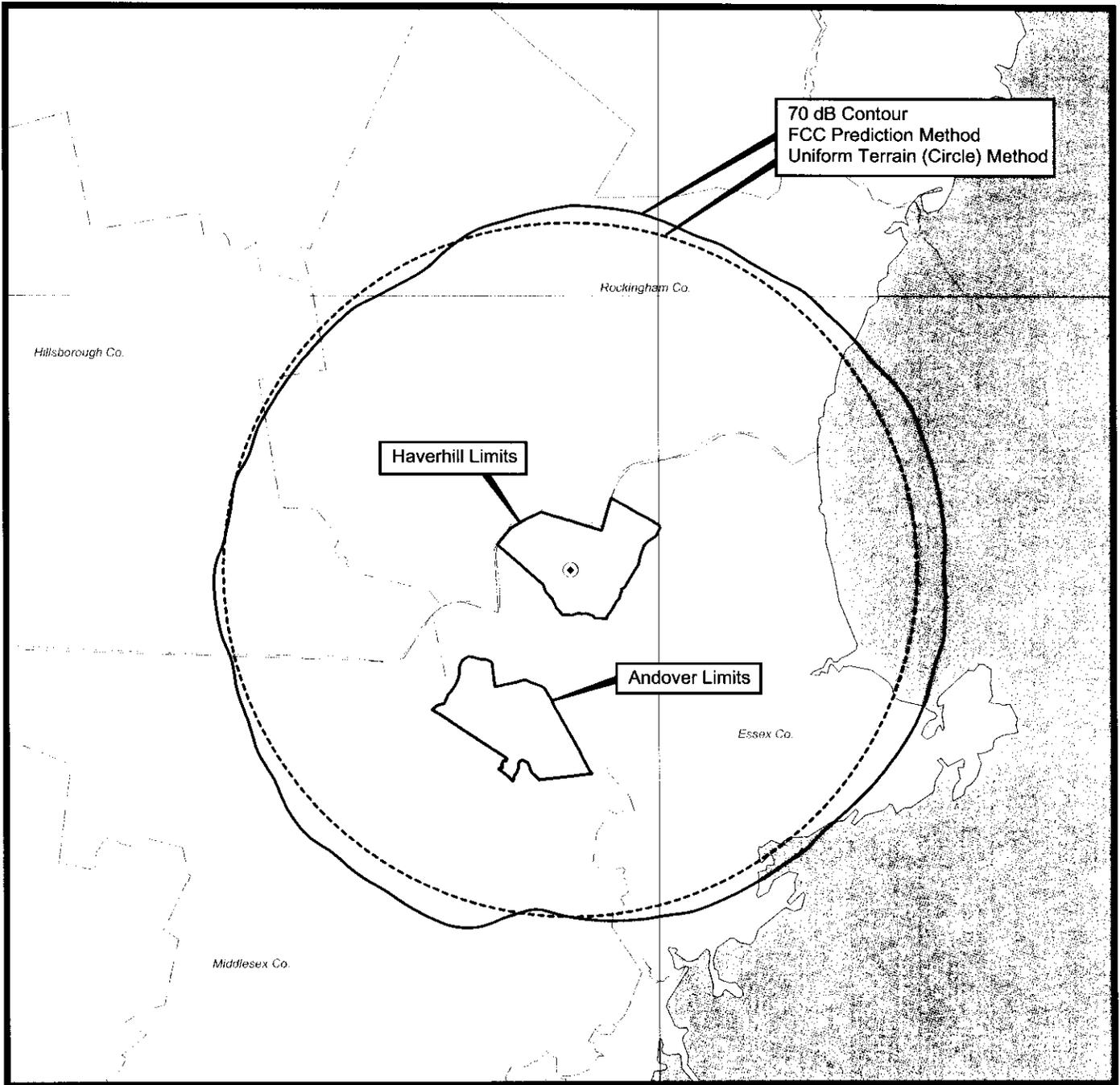
Call Id	City St	File Status	Channel Num	ERP Freq	HAAT	DA Id	Latitude Longitude	73 215	Bear	Dist. (km)	Req. (km) 215	207
WUMB-F 66578	BOSTON MA LIC	C BLED 19880722KA	220 A	0.660 91.9	63	N	42-15-27 071-01-44	N	174.2	57.57 -11.43	63.0 <b>Short</b> <sup>1</sup>	69.0
WBPR 69163	WORCESTER MA LIC	C BLED 20000901AIH	220 A	0.760 91.9	93	Y 31067	42-15-15 071-57-36	N	231.0	91.18 22.18	63.0 Clear	69.0
WFEX 52399	PETERBOROUGH NH LIC	C BLH 20010828AAS	221 A	0.170 92.1	423	N	42-51-41 071-52-45	Y	279.1	64.45 -4.55	63.0 <b>Short</b> <sup>2</sup>	69.0
WPHX-F 74067	SANFORD ME CP	C BPH 20030805AFH	221 A	1.340 92.1	190	N	43-25-08 070-48-03	Y	18.6	75.78 6.78	63.0 Close	69.0
WPHX-F 74067	SANFORD ME APP	C BPH 19991223ACE	221 A	2.550 92.1	156	N 31017	43-25-11 070-48-09	Y	18.5	75.82 6.82	63.0 Close	69.0
WPHX-F 74067	SANFORD ME LIC	C BLH 19991213ABM	221 A	1.800 92.1	156	N 30474	43-25-11 070-48-09	Y	18.5	75.82 6.82	63.0 Close	69.0
WPRO-F 64841	PROVIDENCE RI LIC	C BMLH 19920605KA	222 B	39.000 92.3	168	N	41-48-18 071-28-24	N	196.0	111.84 -57.16	145.0 <b>Short</b> <sup>3</sup>	169.0
WGXL 56621	HANOVER NH LIC	C BMLH 19930604KD	222 A	6.000 92.3	99	N	43-39-17 072-17-41	N	315.8	137.89 24.89	96.0 Clear	113.0
WXRV 49385	HAVERHILL MA LIC	C BLH 19870604KC	223 B	25.000 92.5	217	N	42-46-23 071-06-01	N	98.8	0.00		
0	POULTNEY VT ADD	RM DD-123	223 A	0.000 92.5			43-26-35 073-08-41		294.9	182.31 4.31	143.0 Close	178.0
WWYZ 74205	WATERBURY CT LIC	C BLH 19940916KD	223 B	17.000 92.5	268	N	41-33-47 072-50-42	N	227.5	197.10 -43.90	211.0 <b>Short</b> <sup>3</sup>	241.0
WKVT-F 57780	BRATTLEBORO VT LIC	C BMLH 19900627KB	224 A	1.800 92.7	186	N	42-53-45 072-39-49	N	276.6	128.55 15.55	96.0 Close	113.0
WBOS 23439	BROOKLINE MA LIC	C BLH 20000403ABK	225 B	18.500 92.9	224	N	42-20-50 071-04-59	N	178.3	47.32 -26.68	68.0 <b>Short</b> <sup>3</sup>	74.0

<sup>1</sup> Pre-1989 "grandfathered short-spacing pursuant to Section 73.213(c). See Technical Narrative.

<sup>2</sup> Section 73.215 short-spacing. See Technical Narrative.

<sup>3</sup> Pre-1964 "grandfathered" short-spacing pursuant to Section 73.213(a). See Technical Narrative.

Figure 2

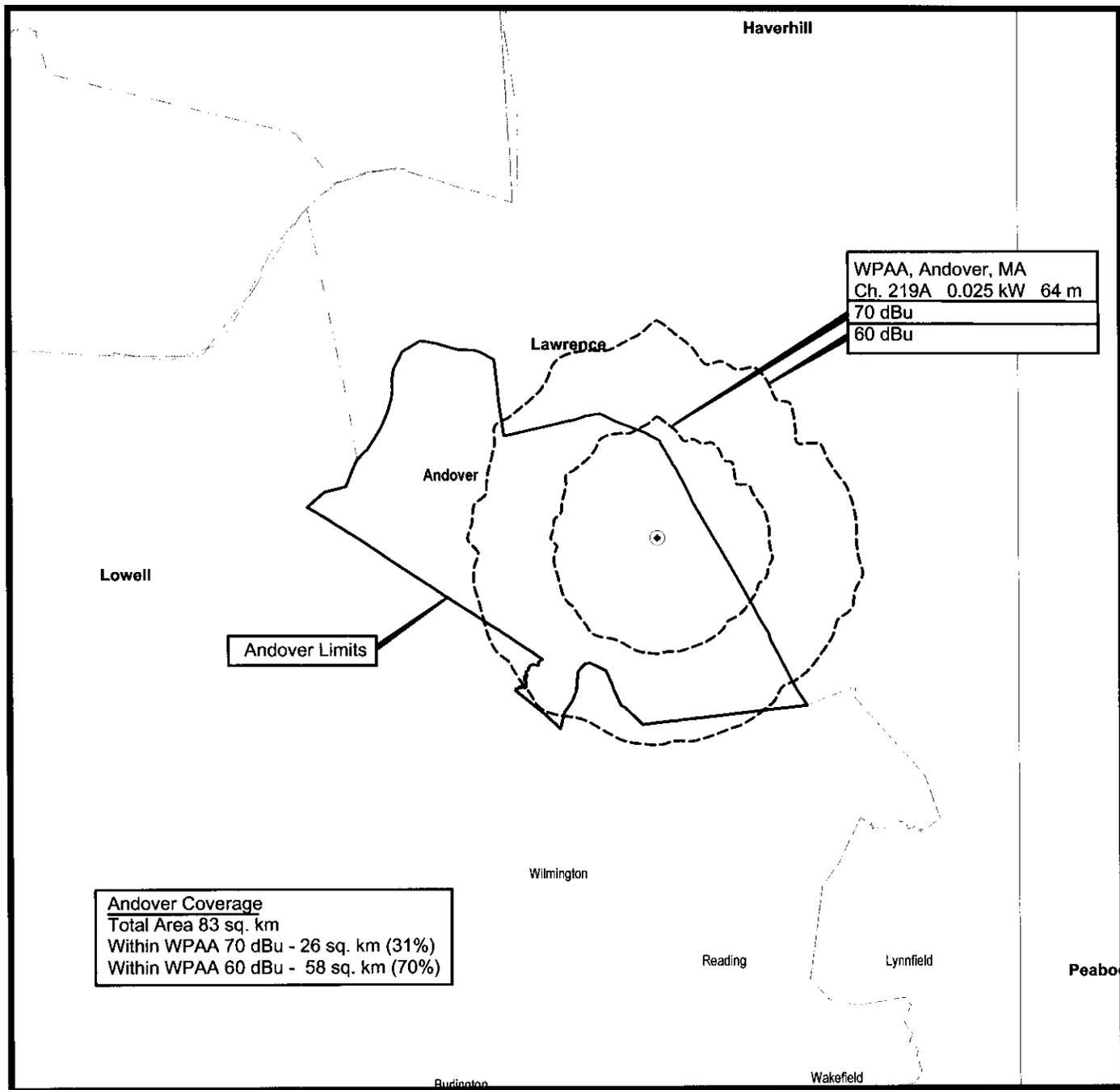


## CITY GRADE COVERAGE COMPLIANCE

FM STATION WXRV  
ANDOVER, MASSACHUSETTS  
CH 223B 25 kW 217 m

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Figure 3



WPAA, Andover, MA
Ch. 219A 0.025 kW 64 m
70 dBu
60 dBu

Andover Limits
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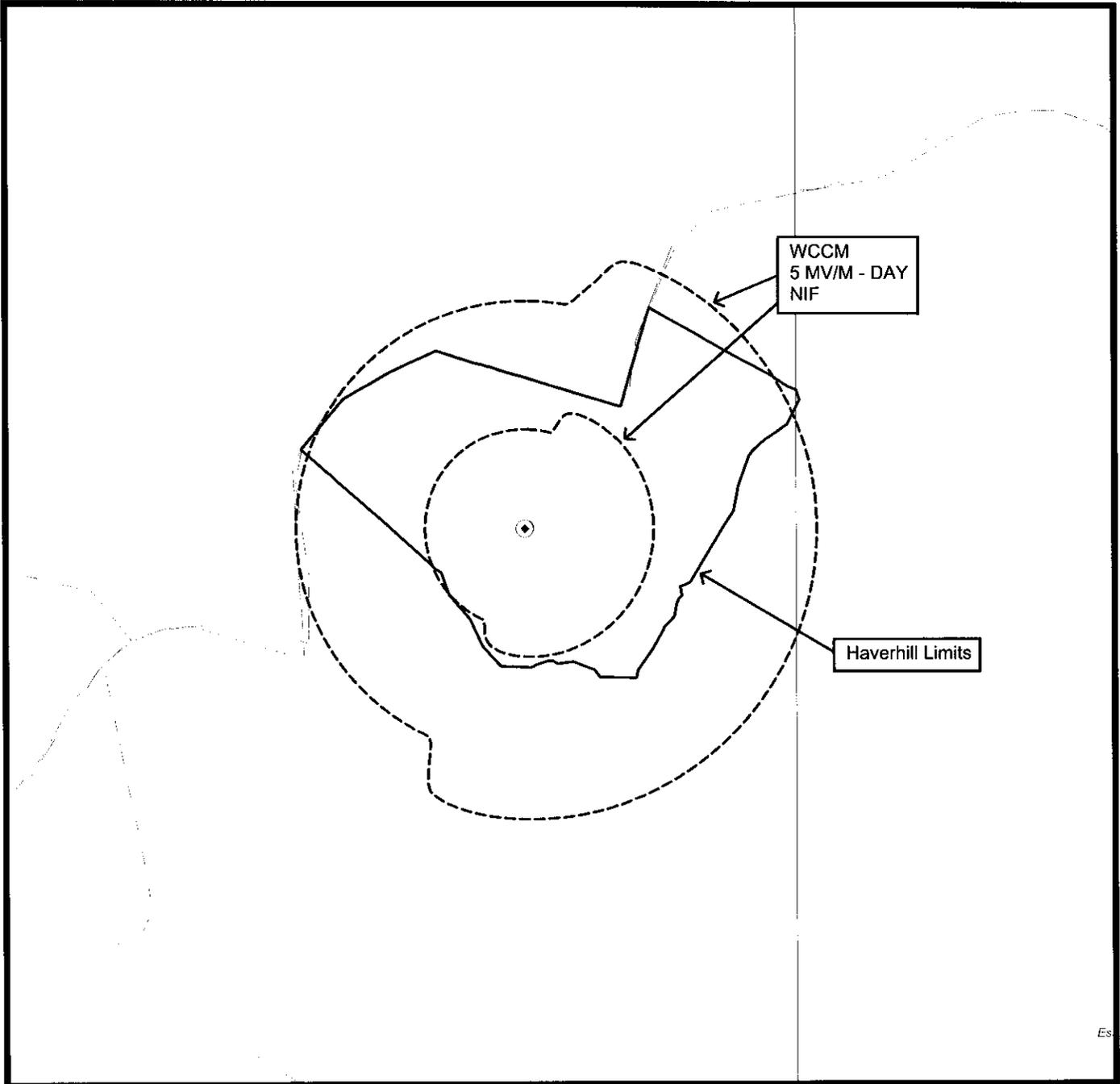
<b>Andover Coverage</b>
Total Area 83 sq. km
Within WPAA 70 dBu - 26 sq. km (31%)
Within WPAA 60 dBu - 58 sq. km (70%)



### FCC PREDICTED COVERAGE

FM STATION WPAA  
ANDOVER, MASSACHUSETTS  
CH 219A 0.025 kW 64 m

du Treil, Lundin & Rackley, Inc. Sarasota, Florida



**CITY GRADE COVERAGE CONTOURS**

AM STATION WCCM  
HAVERHILL, MASSACHUSETTS  
1490 KHZ 1 KW-U ND

du Treil, Lundin & Rackley, Inc. Sarasota, Florida