

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

DOCKET FILE COPY ORIGINAL

RECEIVED

AUG 23 2004

In the Matter of

Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations)
(Keeseville, New York))

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Secretary

COMMENTS OF ADDISON BROADCASTING COMPANY, INC.

Addison Broadcasting Company, Inc. ("ABC"), the licensee of Station WXAL-FM, Addison, Vermont ("WXAL"), by its attorneys, hereby submits these Comments in connection with the above-referenced proceeding ("Keeseville Rulemaking").¹ In support thereof, ABC states as follows:

ABC filed an application requesting modification of WXAL's facilities on FM Channel 229, in File No. BPH-20030429AAE ("WXAL Application"). The WXAL Application was granted by the Commission on July 29, 2004. However, just one day later, the grant of the WXAL Application was rescinded. *Public Notice*, Report No. 25791, released August 4, 2004. ABC has been informed that rescission of the grant was the result of the Media Bureau's decision to withhold any consideration of the WXAL Application until certain matters relating to the Keeseville Rulemaking have been resolved. Specifically, two parties to the instant rulemaking, Great Northern Radio, L.L.C. ("Great Northern") and Family Broadcasting, Inc. ("Family Broadcasting"), have proposed the allotment of Channel 231 to Keeseville, New York.

¹ ABC has filed a Petition for Leave to Submit Late-Filed Comments simultaneously herewith.

No. of Copies rec'd 014
List ABCDE

The WXAL Application, as currently constituted, does not protect a Channel 231 allotment at the reference point proposed by Great Northern and Family Broadcasting.

ABC now wishes to present a mechanism to accommodate the allotment proposals contained in the Keeseville Rulemaking for Channel 231 while also allowing WXAL to proceed with its pending application. As shown in the attached Engineering Statement, a Channel 231 allotment at Keeseville can be made at the reference coordinates of N 44° 31' 45", W 73° 32' 00", or, alternatively, N 44° 31' 18", W 73° 31' 56". Using either such reference point will have no detrimental effect on the proposed Keeseville Channel 231 allotment as the reference point site will allow for the construction of a facility that provides the requisite service to Keeseville. Moreover, either of these reference points will permit the WXAL Application to be processed to grant immediately without need of any further amendment.

Grant of the WXAL Application will improve the service of the Station and WXAL wishes to provide such upgraded service at the earliest possible time. WXAL's ability to provide improved public service should be considered in expediting action on the WXAL Application. Given that the reference coordinates for Channel 231 at Keeseville set forth herein reconcile Great Northern's and Family Broadcasting's proposals with the WXAL Application, consideration of the Keeseville allotment proposal, as modified by the reference points described herein, should in no way impede the grant of the WXAL Application and vice versa.

Considering the circumstances of this proceeding, ABC submits that the public interest and equity will best be served if the Commission utilizes its reference points for Channel 231 at Keeseville as specified herein. By so doing, the Commission will allow reinstatement of the WXAL Application grant and permit ABC to proceed with its efforts to provide upgraded

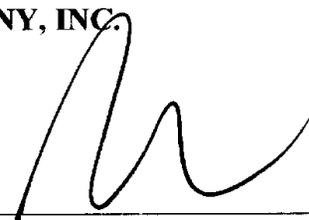
service to the public without jeopardizing the Channel 231 allotment as proposed in the Keeseville Rulemaking.

WHEREFORE, Addison Broadcasting Company, Inc. respectfully requests that the Commission utilize the reference points specified herein in connection with the Channel 231 allotment proposals contained in the Keeseville Rulemaking.

Respectfully submitted,

**ADDISON BROADCASTING
COMPANY, INC.**

By: _____



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

August 23, 2004

Engineering Statement for Addison Broadcasting Company, Inc.

This Engineering Statement has been prepared for Addison Broadcasting Company, Inc., licensee of FM Broadcast Station WXAL-FM, Addison, Vermont. The Statement provides information related to the pending application of WXAL-FM for minor modification of facilities, File Number BPH-20030429AAE. The WXAL-FM application requests authorization to operate on Channel 229C3 at a new transmitter site, employing a directional antenna system. Related engineering studies for the WXAL-FM application date back to early 2001; this work has included locating a suitable existing antenna supporting structure and modification of the antenna structure registration for this tower, along with an extended effort to achieve coordination of the proposed operation of WXAL-FM with Canada.

A little over two weeks ago the applicant became aware (by a grant of the pending WXAL-FM application on July 29, 2004, the rescinding of the grant the next day, and the subsequent reclassification of the WXAL-FM application as blocked) that the pending WXAL-FM application is in conflict with the proposed allotment of Channel 231A at Keeseville, New York, being considered by the Commission. The Keeseville allotment emerged in MB Docket No. 02-23 almost four months after the close of the final comment period in the rulemaking proceeding, in an extended filing of legal pleadings between the parties in the proceeding. The proposed allotment of Channel 231A to Keeseville appears to amount to either a further counterproposal in MB Docket No. 02-23, or a new rulemaking proposal that is not in conflict with the matters of MB Docket No. 02-23. No public comment was solicited with respect to the Keeseville allotment, and no public notice of the Keeseville allotment had been provided as of the time the WXAL-FM application was filed (it appears likely, for example, that there are several communities in addition to Keeseville to which the subject channel could be allotted).

The Keeseville Channel 231A allotment as presently proposed is spaced 62 kilometers from the WXAL-FM reference point at the station's existing licensed transmitter site; the distance separation requirement under Section 73.207 of the Commission's Rules is 42 kilometers. However, the Keeseville allotment is spaced 34 kilometers from the WXAL-FM proposed site. This spacing is 8 kilometers less than the distance separation required under Section 73.207 of the Rules, and two kilometers less than the minimum short-spacing of 36 kilometers specified in Section 73.215(e) of the Rules at which the proposed operation of WXAL-FM would be permitted to provide contour protection to the Keeseville allotment. Additionally, the Keeseville allotment would result in a small amount of overlap of the 100 dBu F(50,10) contour for the allotment with the 60 dBu F(50,50) contour for the proposed operation of WXAL-FM.

An allocation study shows that the conflict between the proposed allotment of Channel 231A to Keeseville and the pending WXAL-FM application could be resolved if the Commission established a reference point for the Keeseville allotment that is fully spaced to the proposed operation of WXAL-FM, or by either of two preferable other possible approaches that are outlined below.

The first possibility would be for the Commission to establish a different reference point for the Keeseville allotment that is fully spaced to the WXAL-FM licensed site and to which the proposed operation of WXAL-FM would conform with the minimum short spacing permitted under Section 73.215(e) of the Commission's Rules. This would make it possible for WXAL-FM to amend the pending application to specify contour protection toward the new Keeseville allotment. This new reference point could be at the following geographical coordinates:

N 44° 31' 45"
W 73° 32' 00".

The new Keeseville reference point is located 2.1 kilometers at a bearing of 10.8 degrees True from the reference point given in MB Docket No. 02-23, and is located 5.0 kilometers from Keeseville. The distance from the new Keeseville reference point to the WXAL-FM licensed site is 63 kilometers, and the distance from the WXAL-FM proposed site to the new reference point is 36 kilometers. Contour protection could be provided to the new Keeseville allotment with no changes in the proposed operation of WXAL-FM. The new Keeseville reference point would conform with the distance separation requirements of Section 73.207 of the Rules toward all other U.S. stations.

An alternate possibility would be for the Commission to establish a different reference point for the Keeseville allotment that is fully spaced to the reference point at the WXAL-FM licensed site and to which the proposed operation of WXAL-FM would provide contour protection. This approach would require the *minimum change in the location of the Keeseville reference point*, but would involve Commission consideration of a waiver request from WXAL-FM for a small short-spacing of the minimum permitted distance separations specified in Section 73.215(e) of the Rules. The alternate new reference point could be at the following geographical coordinates:

N 44° 31' 18"
W 73° 31' 56".

The alternate new Keeseville reference point is located 1.3 kilometers at a bearing of 21.4 degrees True from the reference point given in MB Docket No. 02-23, and is located 4.5 kilometers from Keeseville. The distance from the alternate new Keeseville reference

point to the WXAL-FM licensed site is 62 kilometers, and the distance from the WXAL-FM proposed site to the alternate new reference point is 35 kilometers, or one kilometer less than the distance separation of 36 kilometers permitted under Section 73.215(e) of the Rules between a Class A station and a Class C3 station separated in frequency by 400 kHz. The site conforms with the distance separation requirements of Section 73.207 of the Rules toward all other U.S. stations.

Both the new reference point and the alternate new reference point for Keeseville would be subject to the same or similar environmental concerns as the Keeseville reference point presently being considered by the Commission.

A consideration in favor of the suggested changes in the proposed Keeseville allotment and the rule waiver is that the proposed operation of WXAL-FM would eliminate a short-spacing of 16 kilometers to first-adjacent-channel station WMXR(FM), Woodstock, Vermont on Channel 230A; WMXR(FM) presently receives contour protection from the licensed operation of WXAL-FM.

An additional consideration is that there are no known existing towers in the vicinity of the WXAL-FM proposed site that would be suitable for the proposed operation of the station. Use of the antenna supporting structure proposed in the WXAL-FM application is a desirable objective from an environmental standpoint because the proposed site then would be considered to be an "antenna farm" utilized by both the proposed operation of WXAL-FM and the licensed operation of WCLX(FM), Westport, New York (File Number BLH-20040412AAO).

Fred W. Volken
Engineering Consultant

August 2004

Sierra Madre, California

Statement of Engineer

FRED W. VOLKEN, whose place of business is located at 348 W. Sierra Madre Blvd., Sierra Madre, California, hereby states that he is a graduate physicist holding the degree Bachelor of Arts from Occidental College, Los Angeles, California; that his qualifications as an engineering consultant are a matter of record with the Federal Communications Commission; that he has prepared the attached document as engineering consultant for Addison Broadcasting Company, Inc., licensee of FM Broadcast Station WXAL-FM, Addison, Vermont; and that all of the information contained in this document is accurate and correct to the best of his knowledge and ability.

August 14, 2004


Fred W. Volken

CERTIFICATE OF SERVICE

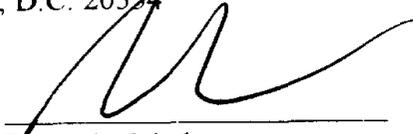
I, Barry A. Friedman, do hereby certify that I have, on this 23rd day of August, 2004 served a copy of the foregoing "Comments of Addison Broadcasting Company, Inc." on the following parties, by first-class mail, postage prepaid:

David G. O'Neill, Esq.
Rini Coran, P.C.
5th Floor
1501 M Street, N.W.
Washington, D.C. 2005-1702

Susan A. Marshall
Lee G. Petro
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209

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

Mr. Andrew Rhodes*
Audio Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554



Barry A. Friedman

* By Hand

160857