

FCC MAIL SECTION

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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

**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: August 25, 2004**

**Released: August 27, 2004**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a *Notice of Proposed Rule Making*<sup>1</sup> issued at the request of Great Northern Radio, LLC, licensee of Station WSSH(FM), Channel 237A, White River Junction, Vermont, and Family Broadcasting, Inc., licensee of WWOD(FM), Channel 282C3, Hartford, Vermont (collectively, "Joint Petitioners"), proposing to reallocate Channel 282C3 from Hartford, Vermont to Keeseville, New York and Channel 237A from White River Junction to Hartford, and modify the licenses of Stations WWOD(FM) and WSSH(FM), respectively, to reflect the changes. Joint Petitioners state that they will file the necessary applications to effectuate the changes of community if granted. Hall Communications ("Hall") filed a counterproposal requesting the allotment of Channel 282A at Keeseville in lieu of Joint Petitioners' proposal.<sup>2</sup> Montpelier Broadcasting, Inc. ("MBI") filed comments in opposition to Joint Petitioners' petition and in support of Hall's proposal.

2. Joint Petitioners filed this proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.<sup>3</sup> In making this determination, we compare the existing arrangement of allotments to the proposed arrangement of allotments to determine which would result in a preferential arrangement of allotments.

3. **Pleadings.** Joint Petitioners state that their proposal would serve the public interest because it would provide Keeseville, New York, population 1,850 persons,<sup>4</sup> with its first local aural transmission service which would serve FM Allotment Priority (3)<sup>5</sup> and would not deprive either

<sup>1</sup> See *Keeseville, New York, Hartford and White River Junction, Vermont*, 17 FCC Rcd 2232 (2002).

<sup>2</sup> Public Notice of the Hall Counterproposal was given on May 6, 2002. See Report No. 2550.

<sup>3</sup> See *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).

<sup>4</sup> All population figures are from the 2000 U.S. Census.

<sup>5</sup> See *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 91 (1988). The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to given to priorities (2) and (3)].

Hartford or White River Junction of local aural transmission service.<sup>6</sup> In addition, they state that it would allow Station WSSH(FM) to upgrade from 3.0 to 6.0 kW Class A facilities at 100 meters. In response to the *Notice*, they state that Keeseville has sufficient indicia of community status to qualify as a community for allotment purposes.<sup>7</sup>

4. In its counterproposal, Hall proposes that Channel 282A be allotted at Keeseville, in lieu of Joint Petitioners' proposal. Hall states that its proposal also would provide Keeseville with its first local aural transmission service, would provide 93,000 persons with an additional service, and would avoid any loss area, while retaining existing stations in White River Junction and Hartford. Hall also argues that it would promote diversity by opening a channel for auction. It states that if the allotment is granted, it will file an application and participate at auction, and if it prevails, it will promptly construct the station.

5. Hall argues that its proposal would result in a preferential arrangement of allotments. It claims that under Priority (4) of the FM Allotment Priorities, its proposal to allot new Channel 282A at Keeseville and retain Channel 282C3 at Hartford and Channel 237A at White River Junction, would be preferred over the reallocation of Channel 282C3 from Hartford to Keeseville and the reallocation of Channel 237A from White River Junction to Hartford. Hall claims that the reallocation of Channel 282C3 from Hartford to Keeseville is unacceptable because it would cause Station WWOD to receive prohibited overlap from a Canadian station and would result in the loss of a fifth service for 400 persons. In addition, it argues that the entire gain area, which includes Burlington, Vermont, is well served. Finally, it claims that the reallocation should be considered a move-in to the Burlington Urbanized Area. MBI agrees with Hall.

6. Joint Petitioners argue that Hall's counterproposal should be dismissed because the allotment site Hall proposes for Channel 282A violates Section 73.315 and thus is fatally defective. Joint Petitioners claim that a major obstruction between Hall's proposed transmitter location and Keeseville prevents city-grade coverage to the entire community. Further, they contend that Hall's site is located in Adirondack State Park, and that due to its tower's height and location, Hall will not be able to get approval from the Adirondack Park Agency to build its proposed tower. Finally, Joint Petitioners argue that under allotment priority (4), its petition should be preferred because its calculations show that it would result in approximately 2000 persons receiving an additional reception service (95,670 vs. 93,700).

7. Hall responds that Joint Petitioners' analysis of the site is incorrect and that its proposal at the original site would provide city grade to the entire community. Regarding the Adirondack State Park site location, Hall concedes that it is within the park's boundaries, but notes that, contrary to Joint Petitioners' assertion, park agency regulations do not prohibit the construction of towers of the type

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<sup>6</sup> White River Junction is also served by WNHV(AM).

<sup>7</sup> Family notes that Keeseville is 13 miles from Burlington, Vermont, and the communities are separated by Lake Champlain. Keeseville is identified in the 2000 U.S. Census as a village of 1,850 persons, and was incorporated in 1878. Keeseville is divided by the Ausable River and is located in two counties, Clinton and Essex. Keeseville has its own historic identity which was founded on providing water and fire services to the developing communities whose early industry centered on iron ore mining and forestry. Keeseville has its own elected government, with a mayor and Board of Trustees. It has planning and zoning boards. It provides public works, parks and recreation, and water/sewer services. It has a court, full-time post office, its own zip code, and volunteer fire department. Services not provided by the village, such as electric, gas and police service, are provided by the county or the State of New York, not Burlington. There are numerous businesses, which serve the needs of the residents and provide local opportunities for employment, a local doctor, churches, elementary and middle schools. There are county newspapers, published in nearby communities that serve the local needs and interests of Keeseville residents, and demonstrate that advertisers need not rely on Burlington-based newspapers to reach Keeseville residents.

specified in its counterproposal.<sup>8</sup> It also argues that under priority (4), its proposal should be preferred because it will serve more persons. It argues that the number of persons receiving an additional service should take into account the interference Station WSSH(FM) at Keeseville would receive from Canadian stations.<sup>9</sup> It states that if the interference area is taken into account then the actual number of persons receiving Station WSSH's signal would be 78,684 persons, not 95,670 persons, as Joint Petitioners argue.

8. In subsequent pleadings, Joint Petitioners suggest that the comparative proceeding be settled by substituting Channel 231A for Channel 282A in Hall's proposal and by granting both Joint Petitioners' proposal and Hall's proposal. Joint Petitioners point out that Channel 231A would not have the tower site issues that exist with Hall's original proposal for Channel 282A. Hall responds that if the Commission were to allot Channel 231A in lieu of Channel 282A, it would apply for it, agreeing that the tower site is preferable, but restates its objection to the reallocation of Channel 237A from White River Junction to Hartford, because of the resulting loss of service at White River Junction. It also points out that Joint Petitioners' proposal to allot Channel 231A moots its request to reallocate Channel 282C3 as a first local service to Keeseville and relegates the reallocation proposal to Keeseville to second local service status, a Priority (4) factor. Montpelier responds that the Commission should select either Channel 282A or Channel 231A at Keeseville, but deny the Joint Petitioners' proposal because it would remove the only full-time transmission service from White River Junction.

9. **Discussion.** We have determined that the public interest would be served by allotting at least one channel to Keeseville as the community's first local aural transmission service. Our engineering analysis confirms that Channel 231A is available for allotment to Keeseville. Generally, the availability of an alternate channel obviates the need for a comparison of the mutually exclusive proposals under our FM allotment priorities because the proposals are no longer short-spaced to each other.<sup>10</sup> Rather, the proposals are examined separately and both are granted if they serve the public interest and comply with our technical and legal policies and rules. However, this case presents an unusual situation because both Joint Petitioners and Hall propose to provide a first local service at the same community.<sup>11</sup> Thus, we must determine whether the public interest is served by providing Keeseville with one local aural transmission service or two, and if only one can be justified, whether it should be provided by the drop-in proposal or by the reallocation proposal. Because both parties propose a first local service to the same community, they are considered equal under Priority (3). Accordingly, our usual tie-breaker under Priority (3), comparison of the populations of the communities of license, cannot be used. Therefore, this determination will be based on considerations normally

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<sup>8</sup> Hall argues that Adirondack Park Agency Act, Article 27, Section 805(3)(f) (1998) specifically provides that telecommunications towers may be built in areas designated for rural use, such as the site it specified in its proposal.

<sup>9</sup> The allotment of Channel 282C3 at Keeseville has been accepted as Channel 282B1 by Canada. It is a specially negotiated short-spaced allotment limited to 21.3 kW ERP and 100m HAAT or the equivalent along the 16.9° azimuth towards Channel 282C1\* in Trios-Rivieres, Quebec, and limited to 4.2 kW ERP and 100 m HAAT or the equivalent along the 337° azimuth to protect Channel 281C\* in St. Jean, Quebec, and limited to 6.3 kW ERP and 100 m HAAT or the equivalent along the 329° azimuth to protect Channel 283B\* in Cornwall, Ontario.

<sup>10</sup> See, e.g., *Ozona and Iraan, Texas*, 18 FCC Rcd 444 (MB 2003); and *Reliance, Georgia*, 17 FCC Rcd 6630, 6631 n.1 (MB 2002).

<sup>11</sup> It is highly unusual for a change of community and reallocation proposal for a first local service to be in conflict with a lower class, drop-in allotment proposal on a co-channel or adjacent channel in the same community. In this proceeding, under Section 1.420(i) of the Commission's Rules, Family's current Channel 282C3 at Hartford, Vermont, must be mutually exclusive with the proposed reallocation of Channel 282C3 at Keeseville under our minimum distance separation rules. Then, to be considered as a counterproposal Hall's proposed allotment must be mutually exclusive with the proposed reallocation of Channel 282C3 at Keeseville, but also protect, under Section 73.208(a), the existing authorization for Station WWOD(FM), Channel 282C3, at Hartford.

addressed under priority (4) of the Allotment Priorities, "other public interest matters."

10. In accordance with the procedures set forth in *Modification of FM and TV Authorizations to Specify a New Community of License*,<sup>12</sup> we have taken into account the "totality of the service improvements" resulting from the proposed new and modified allotments.<sup>13</sup> We conclude that adopting the new drop-in channel to Keeseville and at the same time maintaining the balance of the existing services would best serve the public interest. In addition to a first local service to Keeseville (population 1,850 persons), adoption of the counterproposal would maintain a first local service on a higher class channel at Hartford (population 10,367 persons), and maintain the first competitive and first nighttime service at White River Junction. The public interest is better served by maintaining a second local and first nighttime service at the larger community of White River Junction (population 2,569 persons) than allotting a second channel to the smaller community of Keeseville. Further, this is consistent with our analysis of similar cases decided under Priority (4) in which we have held that retention of the original community's first competitive and first nighttime service outweighs the new community's need for a first competitive or second local service.<sup>14</sup> Hall has indicated that it would apply for this channel if we allotted it. Further, use of this channel would avoid the issues of tower siting raised with respect to Hall's proposal for Channel 282A.<sup>15</sup>

11. Channel 231A can be allotted to Keeseville at a site 5.0 kilometers (3.1 miles) northwest of the community.<sup>16</sup> Adirondack State Park contains 6 million acres and covers one-fifth of New York State. Over 50% of the park is privately owned and there are already 49 towers located there, thirty of which are registered with the Commission. Therefore, it is conceivable that the site could be used, and if not, another site could be located which would provide service to the community. We do not require absolute assurance of a particular site's availability at this stage.<sup>17</sup>

12. Keeseville is located within 320 kilometers (200 miles) of the U.S.-Canadian border and Canadian concurrence in the allotment has been requested but has not yet been received. However, we will allot Channel 231A to Keeseville at this time. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Canadian government, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement or if specifically objected to by Industry Canada."

<sup>12</sup> See 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

<sup>13</sup> *Id.* at 4874.

<sup>14</sup> *Royston and Commerce, Georgia*, 15 FCC Rcd 5676 (MMB 2000); *Bay Springs, Ellisville, and Sandersville, Mississippi*, 14 FCC Rcd 21339 (MMB 1999).

<sup>15</sup> Although this issue is now moot, Hall's proposed use of Channel 282A was permissible. We have determined that Hall's site met the requirements of 73.315 and 73.207 of our rules, contrary to Family's suggestion that Hall's proposal would require a tower of 500 meters height above average terrain ("HAAT"). Our analysis showed that the Hall proposed tower site would have been 383.7 meters above mean sea level ("AMSL"), and that at that site, a tower with a HAAT of 178.5 meters and adjusted power of 1.93 kilowatts would comply with our rules and would cover 100% of Keeseville with a 70dBu signal. Hall indicated its willingness to construct a tower of this height and we accepted its submission.

<sup>16</sup> The coordinates for Channel 231A at Keeseville are 44-31-45 NL and 73-32-00 WL. This site was suggested in an amendment filed by Addison Broadcasting Company, Inc., licensee of Station WXAL-FM, Channel 229C3, Addison, Vermont, on August 23, 2004, to accommodate their modification application, File No. BPH-20030429AAE. We have determined that this site is acceptable and that accommodating Station WXAL's modification is in the public interest.

<sup>17</sup> *Mount Wilson FM Broadcasters, Inc. v. FCC*, 884 F.2d 1462 (1990).

13. IT IS ORDERED That effective October 12, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

<u>Community</u>	<u>Channel</u>
Keeseville, New York	231A

14. Additionally, IT IS ORDERED That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this *Order* to the following:

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15. IT IS FURTHER ORDERED That the Petition for Rulemaking filed by Great Northern Radio, LLC, and Family Broadcasting, Inc., IS DENIED.

16. IT IS FURTHER ORDERED That this proceeding IS TERMINATED

17. For further information concerning this proceeding, contact Victoria McCauley, Media Bureau (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau