

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 05-279
FM Table of Allotments,	)	RM-11276
FM Broadcast Stations.	)	
(Old Forge and Black River, New York)	)	

**REPORT AND ORDER  
(Proceeding Terminated)**

**Adopted: March 15, 2006**

**Released: March 17, 2006**

By the Assistant Chief, Audio Division, Media Bureau:

1. Before the Audio Division for consideration is a *Notice of Proposed Rule Making*<sup>1</sup> issued at the request of Radioactive, LLC ("Petitioner"), permittee of an unbuilt station for Channel 223A, Old Forge, New York. Petitioner proposes to reallocate Channel 223A from Old Forge to Black River, New York, and modify the construction permit authorization<sup>2</sup> to specify the new community. Petitioner filed comments reiterating its intention to file an application for a construction permit to effectuate the change of community if Channel 223A is reallocated. Clancy-Mance Communications, Inc. ("CMC") filed comments opposing the proposed change of community. Petitioner filed reply comments. No counterproposals or other comments were received.

2. Petitioner filed its 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 considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments.<sup>4</sup> The Commission has clearly stated that the loss of a potential service does not raise the same level of concern as that of an existing service.<sup>5</sup>

<sup>1</sup> *Old Forge and Black River, New York*, 20 FCC Rcd 17185 (MB 2005) ("*Notice of Proposed Rule Making*").

<sup>2</sup> See FCC File No. BNPB-20050103AFU, Facility ID No. 164250.

<sup>3</sup> See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989) ("*New Community of License*"), recon. granted in part, 5 FCC Rcd 7094 (1990).

<sup>4</sup> The FM allotment priorities are: (1) First full-time aural reception service; (2) Second full-time aural reception service; (3) First local aural transmission service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1988).

<sup>5</sup> *Pelham and Meigs, Georgia*, 18 FCC Rcd 12187 (MB 2003); *Chatom and Grove Hill Alabama*, 12 FCC Rcd 7664 (MMB 1997).

3. In opposition to the proposed reallocation, CMC argues that the reallocation of the unconstructed station should be denied because: (1) it will result in the loss of a first FM reception service to a population of 2,248 persons and the loss of a first transmission service to Old Forge; and (2) the move to the urban Watertown market is analogous to a move from a rural to an urbanized area. CMC also provides a statement from the Supervisor for the Town of Webb which includes the hamlet of Old Forge, opposing the reallocation because the opportunity to use the commercial FM to promote tourism would be lost.

4. Our review indicates that CMC's engineering analysis of the potential gain and loss areas is flawed because it appears to be based on actual terrain. In allotment proceedings, the appropriate comparison is the omni-directional 60 dBu contours of the existing and proposed channels at maximum facilities for the station classes involved using uniform terrain.<sup>6</sup> Our engineering analysis shows that the change of community will not result in the creation of any white or gray areas (*i.e.*, no full-time aural reception service or only one full-time aural reception service, respectively). Old Forge will not be deprived of its only potential local aural transmission service because there remains a vacant allotment for Channel 231A. Additionally, the station's move to the Watertown market is not analogous to the migration of a station from a rural to an urbanized area. The Commission's concern for the loss of a station in a rural area to an urban area is triggered when the proposed 70 dBu signal will cover 50 percent or more of an urbanized area or the proposed community is located within an urbanized area.<sup>7</sup> In this instance, a *Tuck* analysis is not necessary because the signal does not encompass at least 50 percent of an Urbanized Area nor is Black River located within an Urbanized Area.<sup>8</sup> Lastly, the statement from the Supervisor for the Town of Webb is irrelevant to our determination of whether the reallocation of Channel 223A from the community of Old Forge to the community of Black of River will result in a preferential arrangement of allotments.<sup>9</sup>

5. We find that the proposal would provide a first local service at Black River under Priority Three which would result in a preferential arrangement of allotments over the retention of a second local service at Old Forge under Priority Four.<sup>10</sup> Our engineering analysis shows that Channel 223A can be reallocated from Old Forge to Black River, New York in conformity with the technical requirements of the Commission's rules at coordinates located 44-04-01 North Latitude and 75-38-53 West Longitude with a site restriction of 13.3 kilometers (8.3 miles) northeast of the community. Because the proposed reference coordinates are located within 320 kilometers (199 miles) of the Canadian border, concurrence of the Canadian government has been obtained. For all the foregoing reasons, we conclude that

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<sup>6</sup> See *Greenup, Kentucky and Athens, Ohio*, 6 FCC Rcd 1493 (1991).

<sup>7</sup> See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988); *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352, 10354 (MMB 1995).

<sup>8</sup> *Id.*

<sup>9</sup> A town or city is presumed to be a community for allotment purposes when it is incorporated or listed in the U.S. Census Bureau. As indicated in the *Notice of Proposed Rule Making*, Black River is an incorporated village with a 2000 U.S. Census population of 1,285 persons.

<sup>10</sup> See *New Community of License*, 4 FCC Rcd at 4873 ("If adoption of the proposed allotment plan would result . . . (in a preferential arrangement of allotments), we will adopt the proposal. We conclude that the best way to ensure a preferential arrangement of allotments is to apply the relevant FM or television allotment priorities and policies.").

the public interest would be served by reallocating Channel 223A to Black River, New York. Therefore, in accordance with the provisions of 47 C.F.R. Section 1.420(i), we will modify the construction permit authorization for Channel 223A, Old Forge, New York to specify operation on Channel 223A at Black River, New York.

6. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. Section 801(a)(1)(A).

7. Accordingly, pursuant to authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective May 1, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED for the communities listed below, to read as follows:

<u>Community</u>	<u>Channel</u>
Old Forge, New York	231A
Black River, New York	223A

8. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the permit construction authorization of Radioactive, LLC, for Channel 223A, Old Forge, New York, IS MODIFIED to specify operation on Channel 223A, Black River, New York, subject to the following conditions:

- a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and
- c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

9. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (3)(l), Radioactive, LLC, is required to submit a rulemaking fee in addition to the fee required for the application to effectuate the change in community of license for Channel 223A to Black River, New York at the time its Form 301 application is submitted.

10. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this Report and Order to Petitioner's counsel, as follows:

Radioactive, LLC  
C/o Marissa G. Repp, Esquire  
Hogan and Hartson L.L.P.  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004-1109

11. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

12. For additional information concerning this proceeding, contact Helen McLean, Media Bureau (202) 418-2738.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief  
Audio Division  
Media Bureau