

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

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In the Matter of)	FCC Mail Room
)	
Amendment of Section 73.202(b),)	MB Docket No. 05-162
Table of Allotments,)	RM-11227
FM Broadcast Stations.)	RM-11295
(Enfield, New Hampshire; Hartford and White River)	
Junction, Vermont; and Keeseville and Morrisonville,)	
New York)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 10, 2006

Released: May 12, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making* (“Notice”)¹ issued in response to a Petition for Rule Making filed on behalf of Nassau Broadcasting III, L.L.C. (“Petitioner”). Petitioner is the licensee of FM Station WWOD, Channel 282C3, Hartford, Vermont, and FM Station WXLN, Channel 237A, White River Junction, Vermont. Petitioner filed Comments and Reply Comments. Great Northern Radio, LLC (“Great Northern”) filed Comments. Radio Broadcasting Services, Inc. (“RBS”) filed Comments and Reply Comments. Hall Communications, Inc. (“Hall”) filed “Comments and Counterproposal” (“Counterproposal”),² and a separate Motion to Dismiss Petitioner’s Petition for Rule Making (“Motion to Dismiss”). Petitioner filed an Opposition to Hall’s Motion to Dismiss and Great Northern filed a Motion To Strike or Leave to File Comments directed at Hall’s Motion to Dismiss. RBS filed a Response and Hall filed a Consolidated Response to the two foregoing pleadings of Petitioner and Great Northern. For the reasons stated below, we grant Petitioner’s proposal and deny Hall’s Counterproposal.

2. Petitioner proposes to allot Channel 282A to Enfield, New Hampshire, as that community’s first local aural transmission service. In order to accommodate the operation of Channel 282A at Enfield, Petitioner proposes to reallocate Channel 282C3 from Hartford, Vermont, to Keeseville, New York, and modify the license of Station WWOD accordingly.³ Since the latter proposal would remove the sole local aural transmission service from Hartford, Petitioner proposes to reallocate Channel

¹ *Enfield, New Hampshire; Hartford and White River Junction, Vermont; and Keeseville and Morrisonville, New York*, Notice of Proposed Rule Making, 20 FCC Rcd 7587 (MB 2005).

² Hall also filed an Erratum to its Counterproposal.

³ Station WWOD has a license specifying operation on Channel 282C3 in lieu of Channel 282A at Hartford, Vermont. (See BLH-19960919KA.) Therefore, we correct 47 C.F.R. § 72.202(b), FM Table of Allotments under Hartford, Vermont, which lists Channel 282A instead of Channel 282C3. This action constitutes an editorial change in the FM Table of Allotments, for which a public notice and comment proceeding is unnecessary. See 5 U.S.C. § 553(b)(A) and (B).

237A from White River Junction, Vermont, to Hartford, and to modify Station WXLF's license accordingly. Petitioner also proposes to reallocate Channel 231A from Keeseville, New York, to Morrisonville, New York, thus providing Morrisonville with its first local aural transmission service. Petitioner made the reallocation requests for Stations WWOD and WXLF pursuant to Section 1.420(i) of the Commission's rules,⁴ which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.⁵ In considering such 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. This determination is based upon the FM allotment priorities.⁶

3. Hall filed a Counterproposal in which it proposed the retention of the existing allotments at Hartford and White River Junction, Vermont, and Keeseville, New York, but requested the allotment of Channel 282C3 to Morrisonville, New York, as a new "drop-in" allotment that would provide a first local service to Morrisonville. In its Counterproposal and its Motion to Dismiss Petitioner's Petition for Rule Making, Hall objects to Petitioner's proposals to reallocate Station WWOD's Channel 282C3 from Hartford, Vermont to Keeseville, New York, and to reallocate Channel 231A from Keeseville, New York to Morrisonville, New York because those proposals would make it impossible for anybody but Petitioner to file an application to provide the first local service for Keeseville. Hall also states that Petitioner is trying to "eviscerate" the *Report and Order* in MM Docket No. 02-23, involving, Keeseville, New York, and Hartford and White River Junction, Vermont.⁷ Hall argues that Petitioner is simply trying to file a late-filed petition for reconsideration of *Keeseville I*. Hall cites several cases for the principle that the Commission will not remove a TV or FM channel from a community if an applicant or potential applicant has expressed interest in that channel.⁸

4. We reject the Hall argument that the Petitioner's proposal is inconsistent with our earlier action allotting Channel 231A to Keeseville as a first local service. The Petitioner's proposal will maintain local service in Keeseville and does not seek reconsideration of that determination. *Keeseville I* was premised on a first local service to Keeseville and not the particular party that would ultimately provide this service. Further, the cases cited by Hall concerning the Commission's refusal

⁴ 47 C.F.R. § 1.420(i).

⁵ See *Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

⁶ See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

⁷ *Keeseville, New York, Hartford and White River Junction, Vermont*, Report and Order, 19 FCC Rcd 16106, (MB 2004) ("*Keeseville I*"). In *Keeseville I*, the staff allotted Channel 231A to Keeseville, New York, as a first local service, and denied requests to reallocate Channel 282C3 from Hartford, Vermont to Keeseville, New York and to reallocate Channel 237A from White River Junction to Hartford, Vermont. Petitioner has included both of the latter requests in its proposal in order to accommodate the new proposal for first local service at Enfield.

⁸ See, e.g., *Montrose and Scranton, Pennsylvania*, Memorandum Opinion and Order, 5 FCC Rcd 6306 (1990); *Driscoll, Texas, et al.*, Report and Order, 10 FCC Rcd 6528 (MMB 1995); and *Martin, Tennessee, et al.*, Memorandum Opinion and Order, 15 FCC Rcd 12747 (MMB 2000).

to remove a TV or FM channel allotted to a community, if an expression of interest in that channel had been expressed,⁹ involve situations in which a community would have been denied any first local service if the channel had been deleted or reallocated. That is not the situation we face here, where we would replace one first local service with another first local service at Keeseville and provide a new first local service to Morrisonville. Further, we do not see any public interest benefit in retaining Channel 231A in Keeseville at the expense of providing a first local service to Morrisonville on Channel 231A.

5. We find that Enfield, New Hampshire,¹⁰ and Morrisonville, New York, are communities to which an FM allotment may be made. Comparing Petitioner's proposal to Hall's Counterproposal, we conclude that allotting Channel 282A to Enfield, New Hampshire, and Channel 231A to Morrisonville, New York would result in a preferential arrangement of allotments under the FM allotment priorities and would be preferred over the allotment of Channel 282C3 to Morrisonville, New York, because Petitioner's proposal would provide the first local service to both Enfield and Morrisonville (priority (3) of the FM allotment priorities). We note that allotting Channel 282C3 to Morrisonville, New York, would provide first local service to Morrisonville, New York, but that the population of Enfield (2000 U.S. Census of 4,618) is greater than the population of Morrisonville, New York (2000 U.S. Census population of 1,702). In addition, Morrisonville would still receive a first local service under Petitioner's proposal. Therefore, consistent with Commission precedent, we allot Channel 282A to Enfield, New Hampshire and Channel 231A to Morrisonville.¹¹ To accommodate the Enfield allotment, we also find that the public interest would be served by reallocating Channel 282C3 from Hartford, Vermont to Keeseville, New York., thereby preserving a first local service to Keeseville. Further, reallocating Channel 237A from White River Junction to Hartford, Vermont would serve the public interest by retaining local service for Hartford, Vermont. After Channel 237A is reallocated to Hartford, White River Junction would retain local aural transmission service from AM Station WNHV. Although Hall has expressed its continuing interest in filing an application for Channel 231A in Keeseville, we conclude that the public interest is better served by granting Petitioner's proposal rather than Hall's Counterproposal. Thus, we are reallocating Channel 282C3 from Hartford, Vermont, to Keeseville and reallocating Channel 231A from Keeseville to Morrisonville, New York, thereby preserving first local service to Keeseville and providing new first local services to Enfield, New Hampshire and Morrisonville, New York, pursuant to priority (3) of the FM allotment priorities. In accordance with the provisions of Section 1.420(i) of the Commission's Rules,¹² we modify the licenses of Stations WWOD and WXLV as requested. In

⁹ *See id.*

¹⁰ The Township of Enfield has a 2000 U.S. Census population of 4,618 persons, whereas the Census Designated Place (CDP) of Enfield, which is a smaller, more densely populated part of the Township of Enfield, has a 2000 U.S. Census population of 1,698 persons. Although some CDP's within New England Townships have been licensed in the past to insure that licensees comply with our technical requirements to cover the community of license with a major signal (70 dBu signal for FM stations) (*see, e.g., Andy Valley Broadcasting System, Inc.*, Memorandum Opinion and Order, 12 FCC 2d 3 (1968)), we are making the Enfield allotment for the Township of Enfield since the proposed transmitter site will provide a 70 dBu signal that covers the entire Township.

¹¹ *Blanchard, Louisiana, and Stephens, Arkansas*, Memorandum Opinion and Order, 10 CC Rcd 9828 (MMB 1995).

¹² 47 C.F.R. § 1.420(i).

addition, we shall condition the commencement of service on Channel 282C3 by Station WWOD at Keeseville, New York, on the commencement of service on Channel 237A by Station WXLV at Hartford, Vermont, to avoid any disruption of local service to Hartford, Vermont.

6. Consistent with the technical requirements of the Commission's Rules, Channel 282A can be allotted to Enfield, New Hampshire, utilizing coordinates of 43-38-30 NL and 72-08-42 WL; Channel 282C3 can be allotted to Keeseville, New York, utilizing coordinates of 44-31-31 NL and 73-31-07 WL, with a site restriction of 3.8 kilometers (2.3 miles) northwest of Keeseville; Channel 237A can be allotted to Hartford, Vermont, utilizing coordinates of 43-43-45 NL and 72-22-22 WL, with a site restriction of 8.1 kilometers (5.0 miles) north of Hartford; and Channel 231A can be allotted to Morrisonville, New York, utilizing coordinates of 44-40-19 NL and 73-32-17 WL, with a site restriction of 3.0 kilometers (1.9 miles) southeast of Morrisonville. All four of the foregoing allotments are located within 320 kilometers (199 miles) of the U.S. Canadian border. Canadian concurrence has been received for Channel 282A at Enfield, New Hampshire and Channel 237A at Hartford, Vermont. Channel 231A at Morrisonville, New York, has been accepted as a specially negotiated short-spaced allotment limited to 855 watts effective radiated power (ERP) and 100 meters in antenna height above average terrain (HAAT) or the equivalent along the 357.4 degree azimuth toward Channel 232C1 in order to protect Channel 232C1 in Montreal, Quebec. Channel 282C3 at Keeseville, New York, has been accepted as a specially negotiated short-spaced allotment, with the following restrictions: the allotment is limited to 21.3 kilowatt (kW) ERP and 100 meters of antenna HAAT or the equivalent along the 16.9 degree azimuth towards Channel 282C1 in Trois-Rivieres, Quebec, and limited to 4.2 kW ERP and 100 meters of antenna HAAT or the equivalent along the 337 degree azimuth to protect Channel 281B, St. Jean, Quebec, and limited to 6.3 kW ERP and 100 meters of antenna HAAT or the equivalent along the 329 degree azimuth in order to protect channel 283B in Cornwall, Ontario.

7. 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. 801(a)(1)(A).

8. Accordingly, pursuant to the 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 June 26, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Enfield, New Hampshire	282A
Hartford, Vermont	237A
Keeseville, New York	282C3
Morrisonville, New York	231A
White River Junction, Vermont	-----

9. IT IS FURTHER ORDERED, That the Petition for Rule Making filed by Nassau Broadcasting III, L.L.C., IS GRANTED.

10. IT IS FURTHER ORDERED, That the Counterproposal submitted by Hall Communications, Inc. IS DENIED.

11. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Nassau Broadcasting III, L.L.C., for Station WWOD(FM), Hartford, Vermont, IS MODIFIED to specify operation on Channel 282C3 at Keeseville, New York, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee 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 not be conducted in accordance with 47 C.F.R. Section 73.1620 until Station WXLFFM is operating on Channel 237A at Hartford, Vermont, 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.

12. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Nassau Broadcasting III, L.L.C., for Station WXLFFM, White River Junction, Vermont, IS MODIFIED to specify operation on Channel 237A at Hartford, Vermont, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee 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.

13. Pursuant to 47 C.F.R. Section 1.1104(3)(1), Nassau Broadcasting III, L.L.C., licensee of FM Stations WWOD and WXLFFM, is required to submit a rule making fee in addition to the fee required for the applications to effectuate the changes in community of license for FM Stations WWOD and WXLFFM, respectively, at the time their Form 301 applications are submitted.

14. Filing windows for Channel 282A at Enfield, New Hampshire, and Channel 231A at Morrisonville, New York, will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

15. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

16. For further information concerning the above, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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