

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 00-134
FM Broadcast Stations.)	RM-9922
(Brighton and Stowe, Vermont))	RM-10023
)	

REPORT AND ORDER
 (Proceeding Terminated)

Adopted: April 11, 2001

Released: April 20, 2001

Before the Chief, Allocations Branch:

1. The Allocations Branch has before it the Notice of Proposed Rule Making in this proceeding. 15 FCC Rcd 13978 (2000). Linda A. Davidson filed Comments. Radio Vermont Classics, L.L.C. (“Radio Vermont”) filed a Counterproposal. For the reasons discussed below, we are allotting Channel 295A to Brighton, Vermont.

Background

2. At the request of Linda Davidson, the Notice proposed the allotment of Channel 270A to Brighton, Vermont, as a first local service. In response to the Notice, Radio Vermont, licensee of Station WCVT, Channel 269A, Stowe, Vermont, filed a Counterproposal proposing the substitution of Channel 269C3 for Channel 269A at Stowe, and modification of its Station WCVT license to specify operation on Channel 269C3. In regard to a proposed allotment at Brighton, Radio Vermont suggests an alternate channel.

3. We believe that the public interest would be served by allotting alternate Channel 295A to Brighton as a first local service.¹ On the other hand, we deny the proposed Class C3 upgrade at Stowe in the context of this proceeding. In order to comply with the minimum separation requirements set forth in Section 73.207 of the Rules, this allotment would require a site restriction of 25.3 kilometers (15.7 miles) northeast of Stowe. Such a site restriction precludes compliance with the 70 dBu principal city coverage requirement set forth in Section 73.315(a) of the Rules. Based upon the presumption of uniform terrain and maximum permissible facilities (25 kilowatts at 100 meters HAAT), the 70 dBu contour of a Class C3 facility extends 23.2 kilometers and would not encompass Stowe. We do permit an exception to the presumption of uniform terrain. Woodstock and Broadway, Virginia, 3 FCC Rcd 6398 (1988). Under the Woodstock exception, a rulemaking proponent must, in addition to depicting actual terrain, demonstrate a reasonable assurance of the availability of the proposed tower site and FAA approval. In this instance, Radio Vermont merely includes a coverage map and a statement that FAA notification would not be

¹ The reference coordinates for the Channel 295A allotment at Brighton, Vermont, are 44-49-44 and 71-54-45.

required because the engineering exhibit contemplates a 6-meter pole at the allotment site. There is no assurance in the record of this proceeding that this site is available or the height above average terrain. It is necessary to know the height above average terrain of this site in order to ascertain the actual height of the tower above ground necessary to implement the proposed station at maximum facilities. The exact location of the tower is also crucial because of the need to know the actual distance from the tower to Stowe and the relevant radial. Once a rulemaking proponent has ascertained the relevant radial, it would then be able to depict the actual terrain on that radial and determine whether the actual terrain deviates sufficiently from uniform terrain to cause the 70 dBU contour to extend further than the predicted 23.2 kilometers. At this juncture, there is no basis under Woodstock in this proceeding to support a conclusion that this proposal complies with Section 73.315(a) of the Rules.

4. Canadian concurrence is required for the Channel 295A allotment at Brighton because Brighton is located within 320 kilometers (200 miles) of the U.S.-Canadian border. Therefore, Canadian concurrence for this allotment, a specially negotiated short-spaced allotment has been requested but not yet received. Rather than delay any further the opportunity to file an application for this allotment, we will allot the channel at this time. However, if a construction permit is granted prior to the receipt of formal concurrence by the Canadian government, the construction 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-USA FM Broadcast Agreement or if specifically objected to by Industry Canada."

5. Accordingly, pursuant to the authority contained in Sections 4(I), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective June 5, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Brighton, Vermont	295A

6. A filing window for Channel 295A at Brighton, Vermont, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau