

Community of License Change – Section 307(b)

Westport Radio Partners, LLC, permittee of WXMR(FM), channel 264A, Minerva, New York, Facility ID No. 166029, File No. BNPH-20060310AFQ (the “Permit”), submits this application for the minor modification of the Permit to specify operation at Plattsburgh West, New York (the “Application”). Expedited action on this request, which involves an unconstructed permit, is requested, so that new service to Plattsburgh West may be promptly instituted.

This exhibit, together with the Technical Exhibit to this Application, demonstrates that the proposed community of license change constitutes a preferential arrangement of allotments or assignments under Section 307(b) of the Communications Act of 1934, as amended (47 U.S.C. Section 307(b)). Furthermore, as set forth in the Technical Exhibit, the facilities specified in the Application are mutually exclusive, as defined in Section 73.207 of the Commission’s Rules, with the current assignment of the Permit. As confirmed in the Technical Exhibit to the Application, there is an assignment or allotment site for this facility at the proposed community of license that fully complies with Sections 73.207 and 73.315 of the Commission’s Rules without resort to Sections 73.213 or 73.215 of the Commission’s Rules. The applicant will comply with the local public notice provisions of Sections 73.3580(c)(3), 73.3580(d)(3), and 73.3580(f) of the Commission’s Rules, and understands that the exception contained in Section 73.3580(e) of the Commission’s Rules does not apply to an application proposing to change the community of license of an FM station. Consequently, this proposed community of license change qualifies for submission as a minor modification application pursuant to Section 73.3573(g) of the Commission’s Rules.

In determining whether a proposed community of license change constitutes a preferential arrangement of allotments under Section 307(b) of the Act, the Commission considers whether the proposal would serve one or more of the Commission's four priorities. ^{1/} Here, grant of the Application would satisfy the third priority by authorizing a first local aural transmission service at Plattsburgh West, New York. The Application constitutes a preferential arrangement of allotments under Section 307(b) as compared to the existing allotment/assignment. Plattsburgh West has a population (2000 Census) of 1,289 persons. ^{2/} In contrast, Minerva, the currently designated community, has a 2000 Census population of 796 persons ^{3/} nearly 40 percent less than Plattsburgh West. Section 307(b) goals would be promoted by allotment to the larger community of Plattsburgh West. ^{4/} Furthermore, grant of the Application would not result in a loss of existing local aural transmission service or aural

^{1/} See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982) (“*FM Assignment Policies*”). The four priorities are: (i) one full-time aural reception service to a community; (ii) a second full-time aural reception service to a community; (iii) one local transmission service to a community; or (iv) other public interest factors. The second and third criteria have equal priority. *Id.* at 91. See also *Report and Order, In the Matter of Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, FCC 06-163 at ¶ 10 (released Nov. 29, 2006) (Section 307(b) priorities and policies used by Commission since 1982 continue to apply under new application procedures).

^{2/} See Fact Sheet for Plattsburgh West CDP, New York , U.S. Census Bureau, Census 2000, at http://factfinder.census.gov/servlet/SAFFacts?_event=Search&geo_id=&_geoContext=&_street=&_county=plattsburgh+west&_cityTown=plattsburgh+west&_state=04000US36&_zip=&_lang=en&_sse=on&pctxt=fph&pgsl=010&show_2003_tab=&redirect=Y (copy at Attachment 1).

^{3/} See Fact Sheet for Minerva town, New York , U.S. Census Bureau, Census 2000, at http://factfinder.census.gov/servlet/SAFFacts?_event=Search&geo_id=&_geoContext=&_street=&_county=minerva&_cityTown=minerva&_state=04000US36&_zip=&_lang=en&_sse=on&pctxt=fph&pgsl=010&show_2003_tab=&redirect=Y (copy at Attachment 2).

^{4/} See, e.g. *Port Norris, New Jersey, Fruitland, and Willards, Maryland, Chester, Lakeside, and Warsaw, Virginia*, 21 FCC Rcd 11449, 11450 [¶ 4] (Ass't Chief, Audio Div., Media Bur.2006) (when proposals each involve an allotment to a community that would receive its first local aural transmission service, a Priority 3 factor, “our rules favor the community with the larger population”), *recon den.*, 23 FCC Rcd 9325 (Ass't Chief, Audio Div., Media Bur.2008).

reception services to Minerva since the Permit is not constructed. 5/ In any event, a construction permit (File No. BNPED-20071012AJB) has been issued for a radio station to serve Minerva, namely, WGOR(FM) (Facility ID No. 172429), and, as shown in the Technical Exhibit, Minerva will continue to be well served by other aural reception services.

Plattsburgh West clearly constitutes a community suitable for allotment purposes. 6/ Commission precedent holds that a community that is a Census-Designated Place presumptively qualifies as a community for allotment purposes and thereby merits its own local transmission service. 7/ Plattsburgh West meets this qualification as it is recognized as a Census-Designated Place in the 2000 Census. 8/

Plattsburgh West is a recognized community comprising multiple residences and businesses, as well as health, religious and social service institutions and service providers. 9/

5/ See, e.g. *Chatom and Grove Hill, Alabama R&O*, 12 FCC Rcd 7664, 7665 [¶ 4] (Chief, Allocations Br. 1997) (the relocation of an unconstructed station does not present the concerns with loss of service represented by the removal of an operating station as it does not constitute a service that the public has become reliant upon). See also *Bagdad and Chino Valley, Arizona R&O*, 11 FCC Rcd 523, 523 [¶ 4] (Chief, Allocations Br. 1995) (permitting a change of community of license for an unconstructed permit, without taking into consideration loss of service in Bagdad).

6/ As the proposed facility's 70 dBu contour does not encompass any Urbanized Area, no "Tuck" showing is needed. The Bureau has expressly held that a Tuck showing is not required where the principal community contour of the station would involve an Urbanized *Cluster*, and not an Urbanized *Area*, as defined by the U.S. Census. See *Vernon Center and Eagle Lake, Minnesota*, 21 FCC Rcd 14714, 14715 [¶ 4] (Ass't Chief, Audio Div. 2006).

7/ See e.g., *Cleveland and Ebenezer, Mississippi R&O*, 10 FCC Rcd 8807, 8808 [¶ 6] (Allocations Br. 1995) ("The Commission's long standing policy is to allot channels to communities composed of geographically identifiable population groupings. This requirement is generally satisfied if the community is either incorporated or listed in the U.S. Census."). See also *Reydon, Oklahoma R&O*, 18 FCC Rcd 3222, 3222 [¶ 2] (Ass't Chief, Audio Div., released Mar. 4, 2003).

8/ See *supra* note 3. See also Plattsburgh West CDP Boundary Map, U.S. Census Bureau, Census 2000, at http://factfinder.census.gov/servlet/MapItDrawServlet?geo_id=16000US3658601&_bucket_id=50&tree_id=420&context=saff&_lang=en&_sse=on (copy at Attachment 3).

9/ Location of the facilities listed in this paragraph as within Plattsburgh West was confirmed by reference to the Census Plattsburgh West CDP Boundary Map and Google Maps.

For example, there are over 150 owner-occupied homes in Plattsburgh West. ^{10/} Business facilities located within the boundaries of Plattsburgh West include: Lowe's Home Improvement, Champlain National Bank, Henry's Pools & Spas, Applebee's Neighborhood Grill, Cabinet Gallery (kitchen and bath remodeling), Security Supply Corporation, Salerno Plastics Corporation, Haun Welding Supply, Lee Appliance Services Center, Saleem's Petroleum, Buffalo Jeans, Jiffy Lube, V Fraas Scarf Outlet, Price Chopper Supermarket, Lake Placid Craft Brewing and a Days Inn. Medical and dental professionals situated within Plattsburgh West include: Dr. Glenn Schroyer, Family Practice; Dr. Alison Guile, Internal Medicine; Dr. Lorna J. Clark-Rubin, Psychiatry; Dr. Maria Szmigiel, Gentle Touch Family Dentistry; and CVPH Dental Center. The St. Joseph Church is located in the community, as is a social services provider, the Joint Council for Economic Opportunity of Clinton and Franklin Counties. Clearly, the vibrant community of Plattsburgh West, New York is deserving of an allotment.

^{10/} See *supra* note 3 (Housing Characteristics). See also Landsat, Plattsburgh West, NY New York Aerial Photography Map 2008, at <http://www.landsat.com/plattsburgh-west-new-york-aerial-a3658601.html> (copy at Attachment 4) and Google Maps, Plattsburgh West, New York (copy at Attachment 5).