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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

NOV - 1 1991

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Amendment of Section 73.202(b),) RM- _____
Table of Allotments,)
FM Broadcast Stations)
(Cadiz, Kentucky))

To: Chief, FM Allocations Branch
Policy and Rules Division
Mass Media Bureau

PETITION FOR RULE MAKING

1. Ham Broadcasting, Inc. ("Ham") hereby petitions the Commission to amend the FM Broadcast Table of Allotments to upgrade Station WKDZ-FM, Cadiz, Kentucky, from Class A to Class C3, as follows:

	<u>Present</u>	<u>Proposed</u>
Cadiz, Kentucky	292A	293C

2. Ham is the licensee of WKDZ-FM, which is currently licensed to operate on Channel 292A at Cadiz. Pursuant to Section 1.420(i) of the Commission's Rules, Ham seeks a modification of license for WKDZ-FM to specify operation on Channel 293C3.

3. Operation on Channel 293C3 at the existing WKDZ-FM transmitter site would not comply with the mileage separation requirements of Section 73.207(b) of the Rules. Accordingly, Ham proposes to move the transmitter of WKDZ-FM to a new site at 36°47'20" north latitude, 87°38'55" west longitude and to establish those coordinates as the reference point for the new Channel 293C3 allotment at Cadiz.

4. The attached Engineering Statement includes a separations study showing that Channel 293C3 may be used at this new reference point in full compliance with Section 73.207(b) except with respect to the outstanding construction permit for WSEQ(FM), Reidland, Kentucky. WSEQ is discussed further below. The study shows that from the proposed new reference point, WKDZ-FM will be able to provide 3.16 mV/m service to all of Cadiz, as required by Section 73.315(b) of the Rules.

5. The proposed new reference point is 20.4 km. from the present WKDZ-FM transmitter site. That is less than the 89 km. separation required between Channels 292A and 293C3 under Section 73.207(b). Thus the proposed allotment is mutually exclusive with the present allotment. Consequently, pursuant to Section 1.420(i), Ham's license for WKDZ-FM may be modified to specify operation on Channel 293C3 without accepting competing expressions of interest for the new allotment. Cleveland and Rosedale, Mississippi, MM Docket No. 89-415, DA 91-1189, (MM Bur. rel. Oct. 2, 1991). Ham requests that its license be so modified and states that if the proposed change in the Table of Allotments is modified, it will file an application for a construction permit for upgraded facilities and will, when that application is granted, construct and operate upgraded facilities on Channel 293C3.

6. The allotment of Channel 293C3 at the proposed reference point complies with application mileage separations requirements to existing stations except the outstanding construction permit for unbuilt station WSEQ(FM), Channel 294A, Reidland, Kentucky. It

does not comply with the required separation of 89 km. to either the presently authorized site for WSEQ in BPH-890117ML^{1/} (actual separation is 77.8 km.) or the transmitter site proposed by Ladon Broadcasting Company, Inc., permittee of WSEQ, under File No. BMPH-910913IC^{2/} (actual separation is 71.0 km.).

7. With respect to the proposed new WSEQ site in BMPH-910913IC, it is well established that a proposed transmitter site for an already authorized station is deemed a mere site preference that cannot prevail over a proposal for an upgraded allotment. Stuart and Boone, Iowa, MM Docket No. 89-334, DA 91-1288 (MM Bur. rel. Oct. 25, 1991); Homerville, Lakeland and Statenville, Georgia, MM Docket No. 90-214, DA 91-1241, (MM Bur. rel. Oct. 10, 1991); Dunn, Fuquay-Varina, Hope Mills, Topsail Beach, and Williamston, North Carolina, 4 FCC Rcd 2301 (MM Bur. 1989); Ephrata, Washington, 4 FCC Rcd 307 (MM Bur. 1989); Roland and Heavener, Oklahoma, 3 FCC Rcd 2684 (MM Bur. 1988); Freedom and Morgan Hill, California, 26 RR 2d 1057 (1987); Rockport, Texas, 4 FCC Rcd 8075 (1989). Therefore, the proposed new site for WSEQ must be disregarded when considering Ham's proposed upgrade for WKDZ-FM.

^{1/} The grant of BPH-890117ML was reported in Broadcast Actions, Report No. 21134, released June 13, 1991. The coordinates are 37°03'23" n. lat., 88°27'22" w. lon.

^{2/} The coordinates specified in the pending WSEQ application are 37°01'26" n. lat., 88°23'24" w. lon. An application is pending to assign the construction permit for WSEQ to WMOK, Inc., File No. BAPH-910913GO. A request is also pending to change the call letters of WSEQ to WXEZ, contingent on consummation of the assignment. See Call Sign Public Notice, Report No. 168, released October 4, 1991.

8. With regard to the presently authorized site for WSEQ, specified in BPH-890117ML, while it is true that there is a general policy against forced transmitter site relocation,^{3/} that policy does not apply here, because WSEQ is an unbuilt station, so there is no investment in the currently authorized transmitter site,^{4/} and the permittee of WSEQ has stated on the record, in BMPH-910913IC, that it does not propose to construct at that site. This latter factor -- the filing of an application to move the transmitter site -- distinguishes this case from Mt. Morris and Savanna, et al., supra. In Mt. Morris, as in the instant case, the station being asked to move was unbuilt and was being sold. The proponent in the rule making claimed that Counsel for the permittee of the affected station had indicated that an application to change site would be filed after consummation of the assignment of the permit. However, no written consent from the permittee or assignee was proffered; and because no site change application had actually been filed, the Commission refused to require the station to move. The instant case is fundamentally different in that the permittee here has already filed a site change application, which constitutes

^{3/} See Boalsburg, Clearfield, Jersey Shore, Renovo, St. Marys and Tioga, Pennsylvania, 3 FCC Rcd 6116 (MM Bur. 1988); Mt. Morris and Savannah, Illinois, Bell Plaine, Maquoketa, Webster City and Winterset, Iowa, 5 FCC Rcd 2683 (MM Bur. 1990).

^{4/} The pending assignment application for WSEQ, File No. BAPH-910913GO, includes a copy of the contract between the assignor and assignee. One of the exhibits to the contract is a list of the assignor's expenses to date. No expense is listed for the transmitter site. Of course, Ham will compensate the permittee of WSEQ for the reasonable and prudent incremental costs -- if there are any -- that the permittee must bear as a result of the outcome of this rule making.

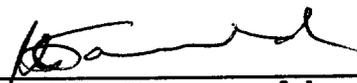
the written statement of intent to move that was missing in Mt. Morris. This basic difference is a controlling distinction that makes Mt. Morris not applicable to the instant case and returns this case to the general rule that a mere site preference must yield to increased service from a new or upgraded allotment. It makes no sense, and there is no statutory or regulatory requirement, to protect a site for WSEQ in which the permittee has no stake and which the permittee has announced it has abandoned by filing a modification application. See Greenville, Texas, MM Docket No. 90-85, DA 91-1295 (MM Bur. rel. Oct. 25, 1991), at par. 4 (where party has already proposed to move transmitter site, move to alternate location may be ordered to accommodate another proposal).

9. Ham's proposal would not prevent WSEQ from being constructed by leaving the permittee with no place to build, so it is not impractical. As shown in Ham's attached Engineering Statement, there are ample alternative sites for WSEQ that not only meet required mileage separation requirements to both the WKDZ-FM proposed upgrade site and all existing stations but are also realistic, because they include sites proposed by some of the original applicants for the WESQ channel at Reidland.^{5/} These sites would also allow WESQ to cover all of Reidland with a 3.16 mV/m signal.

^{5/} These sites include 37°04'55" n. lat., 88°35'38" w. lon., which was proposed by Rising Sun Enterprises, Inc. in BPH-890117MD (90.3 km. from the proposed Cadiz reference point) and 37°03'36" n. lat., 88°36'12" w. lon., which was proposed by Whiting Enterprises, Inc. in BPH-890118MC (90.2 km. from the proposed Cadiz reference point.)

10. In light of the foregoing, it is respectfully requested that the Table of Allotments be amended as proposed in Paragraph 1 hereof and that the license for WKDZ-FM be modified to specify operation on Channel 293C3 at Cadiz, Kentucky, at the new reference point proposed in Paragraph 3.

Respectfully submitted,



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November 1, 1991

Counsel for Ham Broadcasting
Co., Inc.

CERTIFICATE OF SERVICE

I, Lucy S. Colebaugh, do hereby certify that I have, this 1st day of November, 1991, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Petition for Rule Making" to the following:

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Lucy S. Colebaugh

ENGINEERING STATEMENT

CADIZ, KENTUCKY

FM CHANNEL 29303

for

Ham Broadcasting

Licensee of WKDZ(FM)

The attached engineering study of channel 29303 for Cadiz, Kentucky was performed using the Commission's separation criteria contained in 47 CFR 73.207, Minimum Distance Separation Between Stations. This study indicates that channel 29303 can be assigned to Cadiz, Kentucky 1/ with the allocation reference point situated 18.6 kilometers east-southeast of the community (116 degrees true). 2/

DISCUSSION

A search on channel 29303 at the present WKDZ(FM) tower site 3/ reveals that this location would be short-spaced by 5.8 kilometers to WRTB, channel 293B in Washington, Indiana; by 4.1 kilometers to channel 29302 assigned to New Madrid, Missouri and to the assignment point and the permittee for channel 294A in Reidland, Kentucky by 25.7 and 31.3 kilometers respectively. See Exhibit I.

1/ Coordinates for Cadiz, KY are N 36-51-48; W 87-50-06

2/ Coordinates for channel 29303 are N 36-47-20; W 87-38-55

3/ Coordinates for WKDZ(FM) are N 36-52-57; W 87-50-44

The proposed Cadiz allocation point for channel 293C3 is 211.0 kilometers from WRTB and 187.4 kilometers from the New Madrid channel 293C2 allocation point. The proposed allocation point is also 11.2 kilometers short-spaced to the construction permit for WSEQ, Reidland, Kentucky and by 18 kilometers to the WSEQ application (BMPH-910913IC). It is also mutually exclusive with WKDZ(FM) channel 292A in Cadiz, Kentucky by 68.6 kilometers. See Exhibit II.

Channel 294A allocated to Reidland, Kentucky attracted five applicants. Two of these, Whiting Enterprises, Inc. 4/ and Rising Sun Enterprises, Inc. 5/, proposed tower sites that would have maintained sufficient clearance to the proposed Cadiz assignment: Whiting by 1.2 kilometers; Rising Sun by 1.3 kilometers. Since both of these applications provided city-grade coverage to Reidland, Kentucky it follows that it is quite possible to accommodate this proposal and channel 294A in Reidland, Kentucky.

A channel search and clearance map for channel 294A indicate the large area where a tower site could be located to serve Reidland, Kentucky and provide protection to the proposed Cadiz, Kentucky allocation. See Exhibit III and IV.

4/ Whiting Enterprises BPH-890118MC: N 37-03-36; W 88-36-12

5/ Rising Sun Enterprises BPH-890117MD: N 37-04-55; 88-35-38

At maximum facilities (25 kw ERP; 100m HAAT) a class C3 city-grade contour will cover approximately 24 kilometers from the antenna site. Therefore it is quite possible to provide Cadiz, Kentucky with the required city-grade signal from a transmitter site within the clearance area shown on Exhibit U.

Having demonstrated that this proposal meets the separation requirements of 47 CFR 73.207 and that it also meets the city-grade coverage requirements of section 73.315, the public interest will be served by the allotment of channel 293C3 to Cadiz, Kentucky.


Dwight R. Magnuson, P.E.

Dated: Oct 31, 1991

EXHIBIT I

***** FM CHANNEL SPACING STUDY *****

Job title: Cadiz, Kentucky

Latitude: 36 52 57

Channel: 29303

Longitude: 87 50 44

Database file name: D:\FCCDATA\FM910828.EDX

Pre-1989 Class A spacings?: N

CH	Call	Record	City	ST	Status	Bear.	Dist.	Dist.	Result
2930	WSKZ	8573	Chattanooga	TN	LIC	129.3	297.2	237.0	60.2
294A	WHHT	8680	Cave City	KY	APP	80.7	168.2	89.0	79.2
294A	WHHT	8695	Cave City	KY	LIC	80.7	168.2	89.0	79.2
294A	NEW	9305	Mount Juliet	TN	APP	119.6	130.6	89.0	41.6
294A	NEW	9309	Mount Juliet	TN	APP	126.5	131.4	89.0	42.4
294A	NEW	9323	Mount Juliet	TN	APP	126.5	131.4	89.0	42.4
2900	WLACFM	9326	Nashville	TN	LIC	136.3	129.7	96.0	33.7
294A	NEW	9336	Mount Juliet	TN	APP	126.5	131.4	89.0	42.4
294A	NEW	9343	Mount Juliet	TN	APP	126.5	131.4	89.0	42.4
294A	NEW	9347	Mount Juliet	TN	APP	122.5	136.8	89.0	47.8
294A	NEW	9352	Mount Juliet	TN	APP	126.5	131.4	89.0	42.4
294A	NEW	9360	Mount Juliet	TN	APP	124.7	132.1	89.0	43.1
294A		9378	Mount Juliet	TN	VACANT	120.7	130.8	89.0	41.8
292A	WLLSFM	9413	Hartford	KY	LIC	53.1	104.6	89.0	15.6
292A	WKDZFM	9929	Cadiz	KY	LIC	.0	.0	89.0	-89.0
295A	WTTL	9956	Madisonville	KY	CP	31.0	64.7	42.0	22.7
294A		9960	Mount Vernon	IN	VACANT	356.8	115.0	89.0	26.0
294A	NEW	9961	Mount Vernon	IN	APPGID	356.2	116.5	89.0	27.5
294A	NEW	9962	Mount Vernon	IN	APPDID	355.4	116.2	89.0	27.2
293B	WRTB	9979	Washington	IN	LIC	16.7	205.2	211.0	-5.8
293B	WRTB	9991	Washington	IN	CP	16.7	205.3	211.0	-5.7
29501	WWYN	10478	Mckenzie	TN	LIC	217.8	137.5	76.0	61.5
294A	WSEQ	10578	Reidland	KY	CP	289.8	57.7	89.0	-31.3
294A	WSEQ	***	Reidland	KY	APP	287.9	51.0	89.0	-38.0
239A	NEW	10579	Calvert City	KY	APP	309.1	50.0	12.0	38.0
239A		10586	Calvert City	KY	VACANT	304.9	48.5	12.0	36.5
292B1	WQRL	10591	Benton	IL	CP	327.9	137.9	114.0	23.9
294A		10600	Reidland	KY	USED	286.9	63.3	89.0	-25.7
239A	NEW	10603	Calvert City	KY	APP	296.2	41.6	12.0	29.6
292A	WQRL	10606	Benton	IL	LIC	323.4	153.8	89.0	64.8
239A	NEW	10612	Calvert City	KY	APP	300.1	42.9	12.0	30.9
29302		11197	New Madrid	MO	VACANT	253.4	172.9	177.0	-4.1
29301	WKBQ	11859	Granite City	IL	CP	311.5	288.1	211.0	77.1
29301		11886	Granite City	IL	USED	311.6	287.9	211.0	76.9

***** End of channel 293 study *****

***Note: Application of WSEQ -- BMPH-91091310

EXHIBIT II

***** FM CHANNEL SPACING STUDY *****

Job title: Cadiz, Kentucky Latitude: 36 47 20
 Channel: 293C3 Longitude: 87 38 55
 Database file name: D:\FCCDATA\FM910828.EDX Pre-1989 Class A spacings?: N
 Reqd.

CH	Call	Record	City	ST	Status	Bear.	Dist.	Dist.	Result
293C	WSKZ	8573	Chattanooga	TN	LIC	130.1	277.1	237.0	40.1
294A	WHHT	8680	Cave City	KY	APP	75.9	153.0	89.0	64.0
294A	WHHT	8695	Cave City	KY	LIC	75.9	153.0	89.0	64.0
294A	NEW	9305	Mount Juliet	TN	APP	119.5	110.2	89.0	21.2
294A	NEW	9309	Mount Juliet	TN	APP	127.6	111.1	89.0	22.1
294A	NEW	9323	Mount Juliet	TN	APP	127.6	111.1	89.0	22.1
290C	WLACFM	9326	Nashville	TN	LIC	139.3	110.1	96.0	14.1
294A	NEW	9336	Mount Juliet	TN	APP	127.6	111.1	89.0	22.1
296C2	WBLG	9339	Smiths Grove	KY	APP	86.8	124.2	56.0	68.2
294A	NEW	9343	Mount Juliet	TN	APP	127.6	111.1	89.0	22.1
294A	NEW	9347	Mount Juliet	TN	APP	122.9	116.4	89.0	27.4
294A	NEW	9352	Mount Juliet	TN	APP	127.6	111.1	89.0	22.1
294A	NEW	9360	Mount Juliet	TN	APP	125.5	111.8	89.0	22.8
294A		9378	Mount Juliet	TN	VACANT	120.8	110.4	89.0	21.4
296C2		9381	Smiths Grove	KY	VACANT	87.1	122.4	56.0	66.4
292A	WLLSFM	9413	Hartford	KY	LIC	42.2	98.5	89.0	9.5
292A	WKDZFM	9929	Cadiz	KY	LIC	300.8	20.4	89.0	-68.6
295A	WTTL	9956	Madisonville	KY	CP	13.6	67.6	42.0	25.6
294A		9960	Mount Vernon	IN	VACANT	349.3	127.5	89.0	38.5
294A	NEW	9961	Mount Vernon	IN	APPGID	348.8	129.1	89.0	40.1
294A	NEW	9962	Mount Vernon	IN	APPDID	348.1	129.1	89.0	40.1
293B	WRTB	9979	Washington	IN	LIC	11.5	211.0	211.0	.0
293B	WRTB	9991	Washington	IN	CP	11.5	211.1	211.0	.1
295C1	WWYN	10478	Mckenzie	TN	LIC	226.2	141.6	76.0	65.6
294A	WSEQ	10578	Reidland	KY	CP	292.8	77.8	89.0	-11.2
239A	NEW	10579	Calvert City	KY	APP	306.8	70.2	12.0	58.2
239A		10586	Calvert City	KY	VACANT	303.8	68.9	12.0	56.9
292B1	WQRL	10591	Benton	IL	CP	324.6	156.3	114.0	42.3
294A		10600	Reidland	KY	USED	290.4	83.3	89.0	-5.7
294A		***	Reidland	KY	APP	291.5	71.0	89.0	-18.0
239A	NEW	10603	Calvert City	KY	APP	297.8	61.9	12.0	49.9
239A	NEW	10612	Calvert City	KY	APP	300.4	63.3	12.0	51.3
293C2		11197	New Madrid	MO	VACANT	258.1	187.4	177.0	10.4

***** End of channel 293 study *****

***Note: Application of WSEQ -- BMPH-910913IC

EXHIBIT III

***** FM CHANNEL SPACING STUDY *****

Job title: Reidland, Kentucky

Latitude: 37 3 15

Channel: 294A

Longitude: 88 35 30

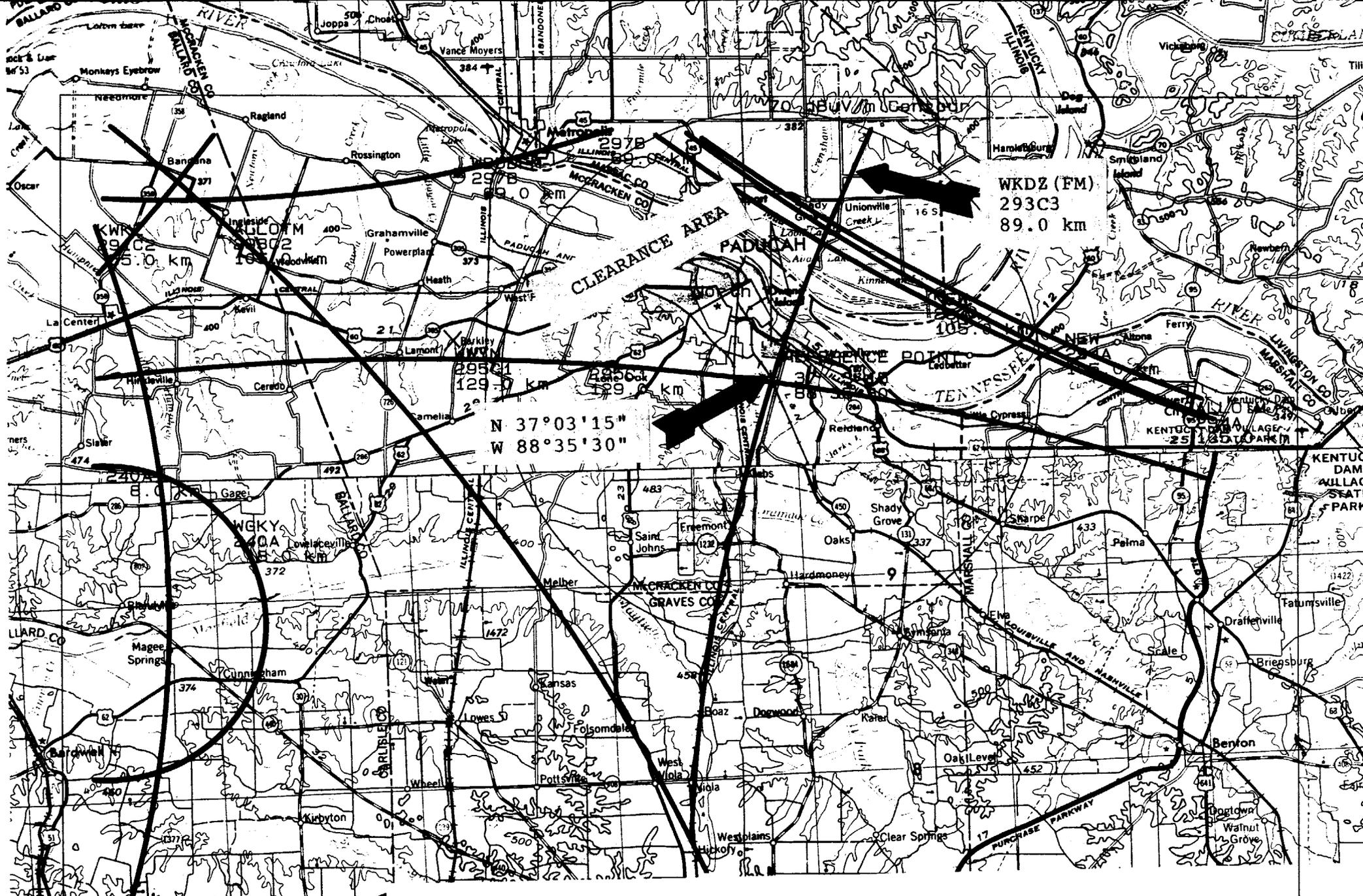
Database file name: D:\FCCDATA\FM910828.EDX

Pre-1989 Class A spacings?: Y

CH	Call	Record	City	ST	Status	Bear.	Dist.	Dist.	Result
292A	WKDZFM	9929	Cadiz	KY	LIC	105.8	69.1	27.0	42.1
293C3	WKDZFM	****	Cadiz	KY	ADD	109.3	89.0	89.0	.0
295A	WTTL	9956	Madisonville	KY	CP	69.6	106.1	64.0	42.1
294A		9960	Mount Vernon	IN	VACANT	31.6	112.8	105.0	7.8
294A	NEW	9961	Mount Vernon	IN	APPGID	30.6	113.3	105.0	8.3
294A	NEW	9962	Mount Vernon	IN	APPOID	30.0	112.1	105.0	7.1
295C1	WWYN	10478	Mckenzie	TN	LIC	187.6	129.0	129.0	.0
240A		10563	Wickliffe	KY	DEL	249.2	35.7	8.0	27.7
240A	WGKY	10566	Wickliffe	KY	LIC	249.2	35.7	8.0	27.7
294A	WSEQ	10578	Reidland	KY	CP	88.8	12.1	105.0	-92.9
292B1	WQRL	10591	Benton	IL	CP	355.4	97.6	48.0	49.6
294A		10600	Reidland	KY	USED	99.1	5.8	105.0	-99.2
292A	WQRL	10606	Benton	IL	LIC	345.7	107.0	27.0	80.0
297B	WDDDFM	10609	Marion	IL	LIC	338.8	83.4	69.0	14.4
291C2	KWKZ	11194	Charleston	MO	ADD	261.9	86.2	55.0	31.2
293C2		11197	New Madrid	MO	VACANT	234.9	120.7	105.0	15.7
291A	KWKZ	11207	Charleston	MO	CP	261.7	72.2	27.0	45.2
240C3	WGKY	11209	Clinton	KY	ADD	237.5	61.8	11.0	50.8
292A	KMISFM	11216	Portageville	MO	LIC	234.9	120.7	27.0	93.7
291A	KWKZ	11221	Charleston	MO	DEL	261.7	72.2	27.0	45.2
295A		11245	Perryville	MO	ADD	299.8	137.7	64.0	73.7
294A		11246	Perryville	MO	VACANT	303.8	135.0	105.0	30.0
294A		11255	Perryville	MO	DEL	303.9	135.0	105.0	30.0

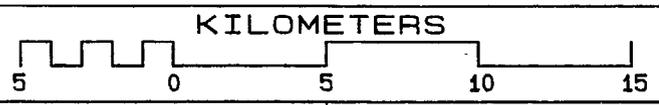
***** End of channel 294 study *****

****Note: Proposed channel 293C3 for Cadiz, Kentucky



WKDZ (FM)
293C3
89.0 km

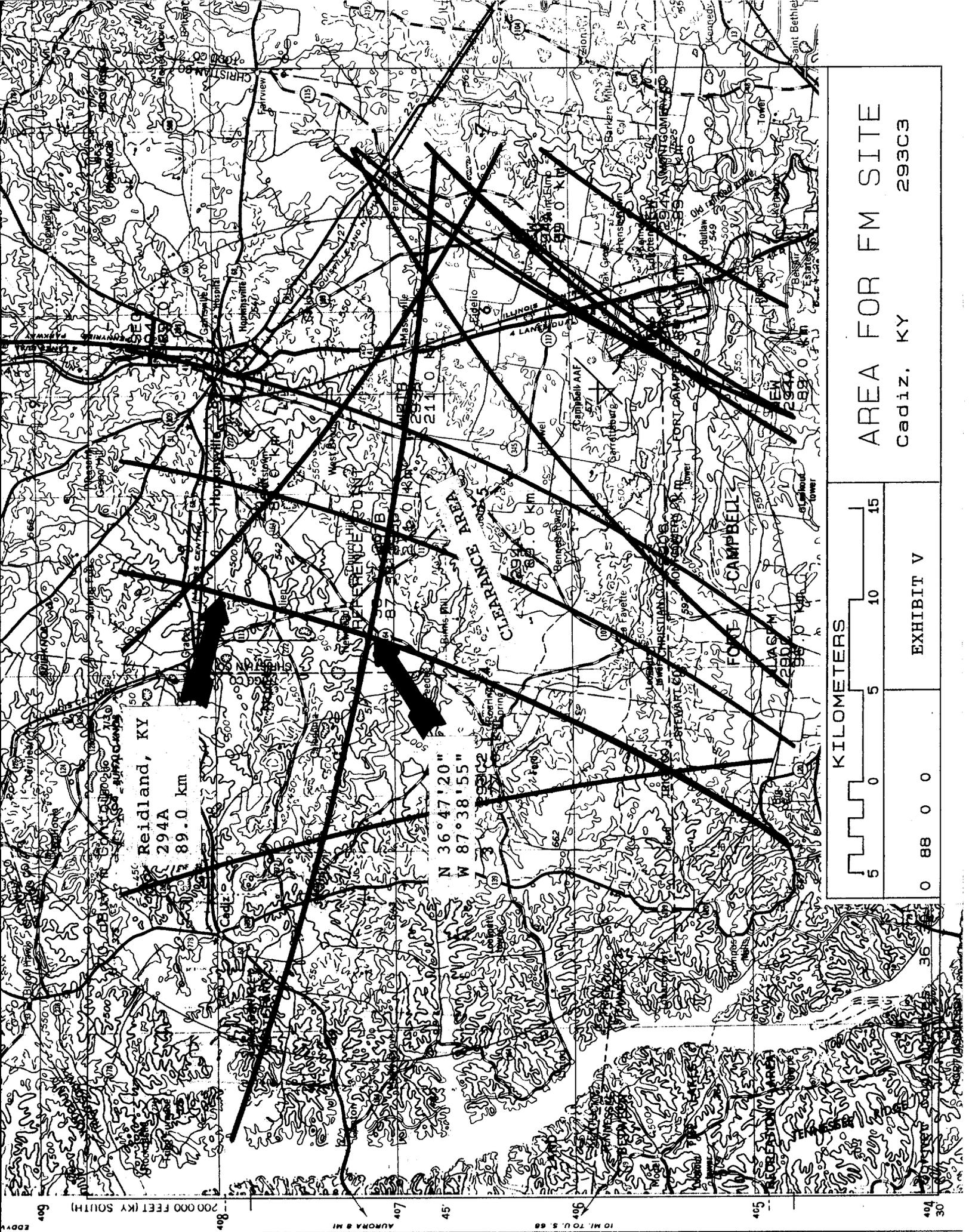
N 37°03'15"
W 88°35'30"



AREA FOR FM SITE
Reidland, KY 294A

EXHIBIT IV

Corner coordinates: 36 45 0 89 0 0



Reidland, KY
294A
89.0 km

N 36°47'20"
W 87°38'55"

293032



EXHIBIT V

AREA FOR FM SITE

Cadiz, KY 29303