

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

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**JUN 24 1992**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 92-70
SABLE COMMUNITY BROADCASTING CORPORATION	)	File No. BPED-851003MB
Channel 217A	)	
Hobson City, Alabama	)	
GADSDEN STATE COMMUNITY COLLEGE	)	File No. BPED-860307MK
Radio Station WSGN(FM)	)	
Channel 218C3	)	
Gadsden, Alabama	)	
TRINITY CHRISTIAN ACADEMY	)	File No. BPED-860512MB
Channel 217A	)	
Oxford, Alabama	)	
For a Construction Permit for New and Modified Noncommercial FM Facilities at Hobson City, Gadsden and Oxford, Alabama	)	

**ORIGINAL FILE**

TO: Honorable Arthur I. Steinberg  
Administrative Law Judge

**PETITION FOR LEAVE TO INTERVENE**

Bible Broadcasting Network, Inc. ("BBN"), licensee of Noncommercial Educational FM Station WYFD(FM), Decatur, Alabama, pursuant to Section 1.223(c) of the Rules, hereby respectfully seeks leave to intervene in the above-captioned proceeding.

Evidence just discovered by BBN indicates that there will be prohibited overlap between the application of Gadsden State Community College ("Gadsden State") and the proposed Class C-2 facilities of WYFD.

As required by Section 1.223(c) of the Rules, BBN has attached hereto an affidavit of counsel<sup>1</sup> setting forth the reasons why this

<sup>1</sup> Attachment 1.

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petition could not have been earlier filed. Also attached hereto is an affidavit of BBN's qualified radio engineer<sup>2</sup> describing the extent of interference which would be caused by Gadsden's station.

By way of background, on July 10, 1991, BBN filed an application (BPED-910710MD) seeking modification of the facilities of WYFD. This application was taken into consideration by Gadsden State in its amendment filed May 21, 1992.<sup>3</sup> On June 18, 1992, undersigned counsel was making a routine status check with the Mass Media Bureau processing staff last week when he learned that the WYFD application might be affected by the Gadsden State application. On June 19, 1992, counsel ordered a copy of the pertinent items in the docket, among which was a copy of Gadsden State's amendment filed May 21, 1992, and Gadsden State's Motion for Summary Decision filed June 8, 1992. On June 19, 1992, counsel sent the amendment by Federal Express to BBN's consulting radio engineer who made a study of it. Today, counsel received by overnight courier the engineer's overlap study (See Attachment 2). Thus, until BBN's counsel had in hand an affidavit of BBN's consulting radio engineer, BBN could not file this Petition for Leave to Intervene.

The engineering study by BBN's consulting radio engineer received in counsel's office today indicates that prohibited

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<sup>2</sup> Attachment 2.

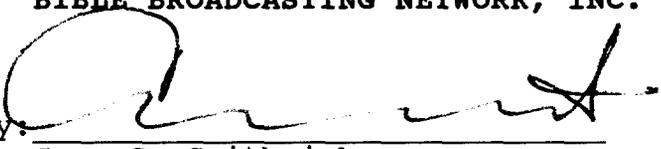
<sup>3</sup> In light of the facts set forth herein, the predicate of the Motion for Leave to Amend that it met the test in Erwin O'Connor Broadcasting Co., 22 FCC 140 (Rev. Bd. 1970) was erroneous because grant of the Motion necessitated the addition of new parties i.e., BBN.

overlap would exist between the 0.5 mV/m 50/10 contour of WYFD from BPED-910710MD and the 1.0 mV/m 50/50 contour proposed by Gadsden State. BBN's engineering statement indicates that the overlap would be eliminated if Gadsden State reduced its power in its major lobe to 5 kW. No other changes would be required.

WHEREFORE, based on the clear evidence that the Gadsden State application would interfere with the properly filed application filed by BBN for WYFD, BBN respectfully requests leave to intervene in this proceeding to protect its interest.

Respectfully submitted,

**BIBLE BROADCASTING NETWORK, INC.**

By: 

Gary S. Smithwick  
Its Counsel

**SMITHWICK & BELENDIUK, P.C.**  
1990 M Street, N.W.  
Suite 510  
Washington, DC 20036  
(202) 785-2800

June 24, 1992

**ATTACHMENT 1**

## DECLARATION OF GARY S. SMITHWICK

Gary S. Smithwick, under penalty of perjury, states as follows:

1. I am an attorney at law, licensed to practice in the District of Columbia. I am counsel for Bible Broadcasting Network, Inc. ("BBN"), which on July 10, 1991, filed an application (BPED-910710MD) seeking modification of the facilities of WYFD, Decatur, Alabama.

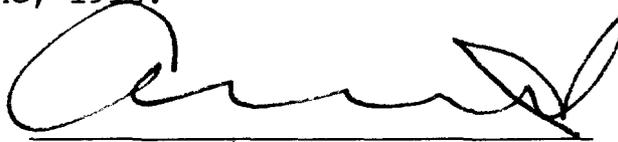
2. This application was taken into consideration by Gadsden State Community College in its an amendment filed May 21, 1992, to its application File No. BPED-860307MK seeking a modification of the facilities of WSGN, Gadsden, Alabama. On June 18, 1992, I was making a routine status check with the Mass Media Bureau FM Branch processing staff when I learned that the WYFD application might be affected by the Gadsden State application. On June 19, 1992, I directed my legal assistant to obtain a copy of the pertinent items in the docket, among which was a copy of Gadsden State's amendment filed May 21, 1992, and Gadsden State's Motion for Summary Decision filed June 8, 1992. I examined the materials, and noted that Gadsden State's "Technical Narrative" and the Allocation Study filed therewith took into consideration WYFD's proposal as described in BPED-910710MD. Figure 6, Sheet 3 of 4, of the Allocation Study makes specific reference to WYFD.

3. Because I was concerned that the FM Branch staff's study may have revealed prohibited overlap not apparent on the face of Gadsden State's application, on June 19, 1992, I sent the amendment by Federal Express to BBN's consulting radio engineer who made a

study of it. Today, my office received by overnight courier the engineer's overlap study. Thus, until I had in hand an affidavit of BBN's consulting radio engineer, BBN could not file its Petition for Leave to Intervene.

4. BBN had no prior notice that the Gadsden State application might adversely affect it. BBN is not a party to MM Docket No. 92-70. BBN had no reason to suspect that Gadsden State's May 21, 1992, amendment would cause prohibited overlap to its proposal for the improvement of WYFD's facilities. It was only through my routine check on the status of the WYFD application that this matter came to light. As soon as practicable after learning of the potential problem, I acted to file this petition for leave to intervene in this proceeding.

Executed this 24th day of June, 1992.

A handwritten signature in black ink, appearing to read "Gary S. Smithwick", written over a horizontal line.

Gary S. Smithwick

**ATTACHMENT 1**

05.9.58

ENGINEERING STUDY OF OVERLAP  
Between BPED-910710MD and  
BPED-860307MK as Amended  
June, 1992

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E. HAROLD MUNN, JR. & ASSOCIATES, INC.  
Broadcast Engineering Consultants  
Coldwater, MI 49036

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CERTIFICATION OF CONSULTANT

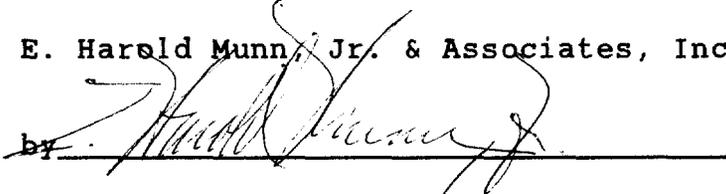
The firm of E. Harold Munn, Jr. & Associates, Inc., Broadcast Engineering Consultants, with offices at 100 Airport Drive, Coldwater, Michigan, has been retained for the purpose of preparing the technical data submitted in this report.

The report has been prepared by properly trained electronics specialists under the direction of the undersigned, whose qualifications are a matter of record before the Federal Communications Commission.

I declare under penalty of perjury that the contents of this report are true and accurate to the best of my knowledge and belief.

E. Harold Munn, Jr. & Associates, Inc.

June 23, 1992

by  \_\_\_\_\_

E. Harold Munn, Jr., President

100 Airport Drive, Box 220  
Coldwater, Michigan 49036-0220

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E. HAROLD MUNN, JR. & ASSOCIATES, INC.  
Broadcast Engineering Consultants  
Coldwater, MI 49036

## DISCUSSION

This firm was retained by Bible Broadcasting Network, licensee of Educational FM Broadcast Station WYFD, Decatur, Alabama, to examine a pending application BPED-860307MK, filed on behalf of WSGN, Gadsden, Alabama. The purpose of the examination was to determine if prohibited overlap would exist between the WSGN application, as amended May 21, 1992, and a pending application by WYFD, BPED-910710MD.

The WSGN application made use of WYFD data in the preparation of the WSGN engineering exhibit Figure 6, Sheet 3, the allocation study map. This map showed no overlap between WYFD as proposed, and the WSGN directional antenna pattern service contour.

An analysis using the program INTERCHK shows that, from the transmitter site proposed by WSGN, prohibited overlap would exist between the 0.5 mV/m 50/10 contour of WYFD, from BPED-910710MD, and the 1.0 mV/m 50/50 contour proposed by WSGN. This overlap is shown in the INTERCHK map exhibit Figure 1.

The overlap between the facilities would be eliminated if the WSGN power would be reduced to 5 kW in the major lobe, with no other changes required. The INTERCHK map Figure 2 shows the contour relationship. The larger scale map Figure 3 shows that there is no prohibited overlap under the condition suggested.

It appears that the WSGN exhibit Figure 6, Sheet 3, was prepared using the licensed Class A site of WSGN, rather than the proposed coordinate point, for the WSGN service and interference contour reference, thus giving the erroneous impression of contour clearance with WYFD.

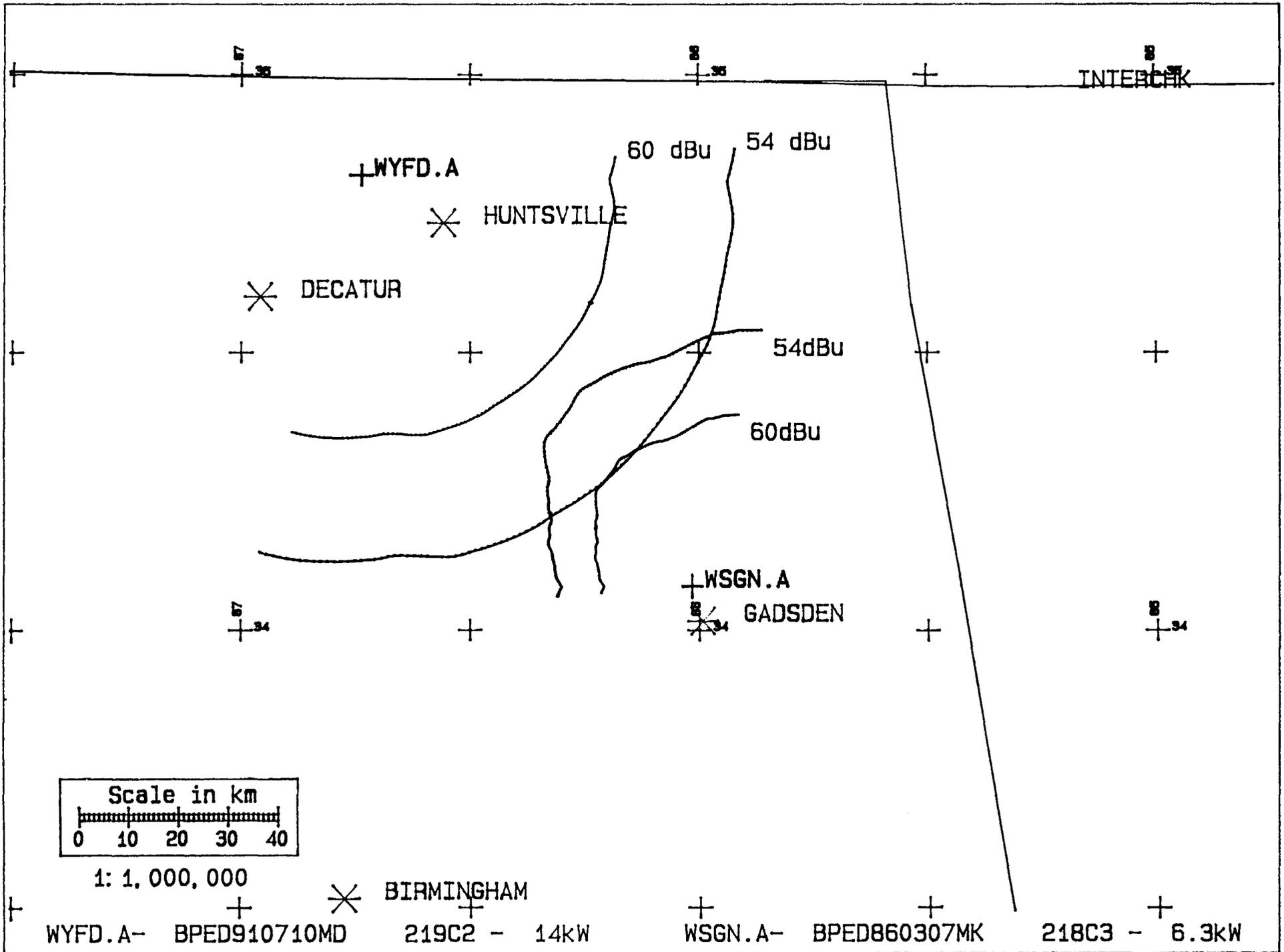


FIGURE 1

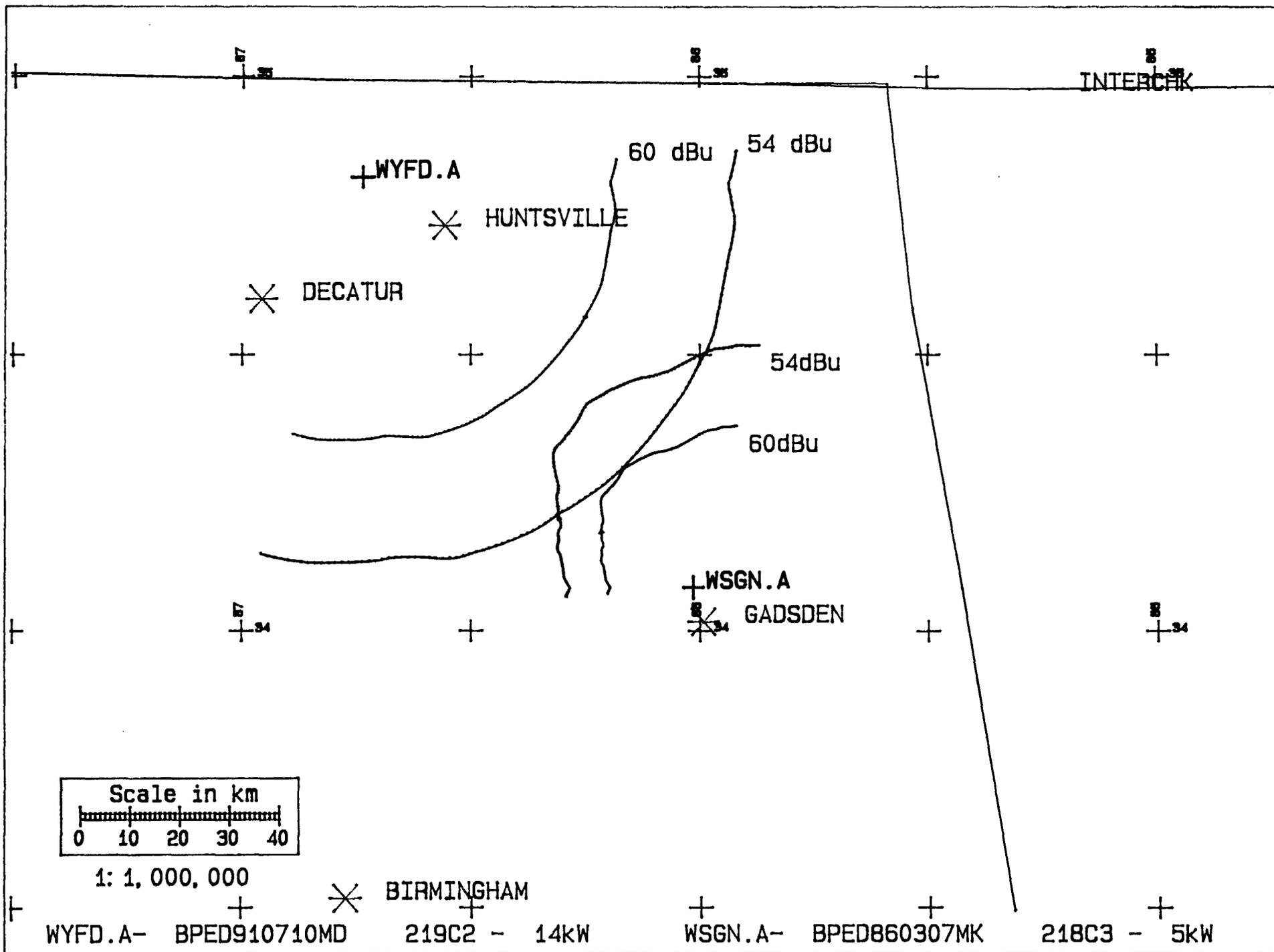


FIGURE 2

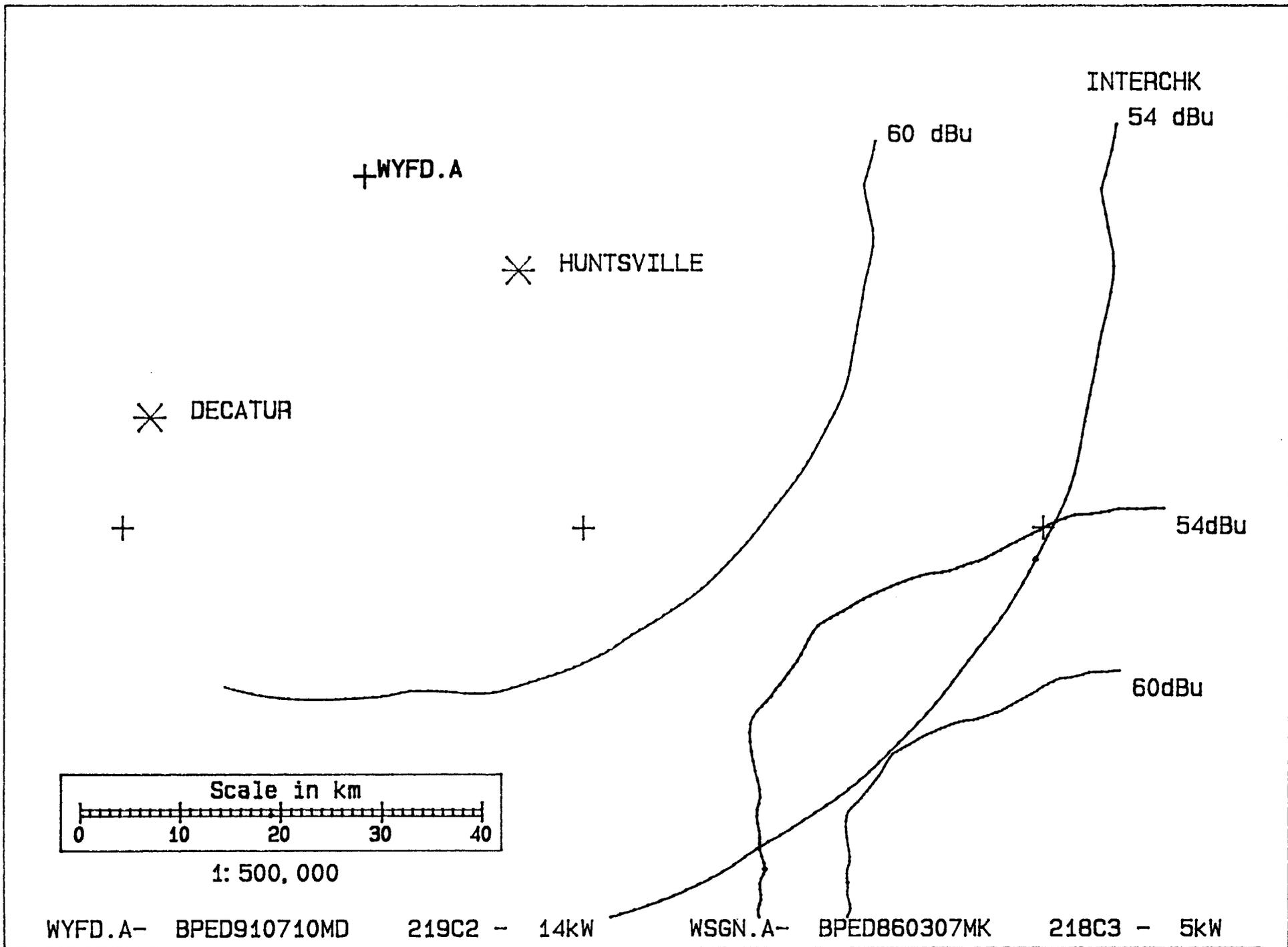


FIGURE 3

**CERTIFICATE OF SERVICE**

I, Lisa M. Volpe, a legal assistant in the law firm of Smithwick, & Belendiuk, P.C., certify that on this 24th day of June 1992, copies of the foregoing were mailed, first class, postage paid to the following:

The Honorable Arthur I. Steinberg\*  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., Room 228  
Washington, DC 20554

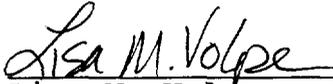
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Counsel for Garden State Community College

\*By Hand

  
\_\_\_\_\_  
Lisa M. Volpe