

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.606(b)) MM Docket No. 93-142
Table of Allotments) RM-8208
TV Broadcast Stations)
Willits, California)

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To the Commission
STOP CODE 1800D5

COMMENTS OF KTVU, INC.

KTVU, Inc., licensee of Television Station KTVU, Oakland, California, by its attorneys, submits herewith its Comments in response to the Commission's Notice of Proposed Rule Making in the above-captioned proceeding.^{1/}

Introduction

This proceeding was instituted on petition by Granite Broadcasting Corporation and its subsidiary, KNTV, Inc., licensee of Television Station KNTV(TV), San Jose, California ["Petitioners"]. Petitioners seek deletion of Channel 11 at Willits, California, as the first step in their attempt to move KNTV(TV)'s transmitting facilities northward toward the San Francisco Bay Area.

Petitioners' request that the Commission take the extraordinary step of deleting a channel for which there has never been an opportunity to apply is based solely their claims that the seismic instability of KNTV(TV)'s present

^{1/} Notice of Proposed Rule Making, MM Docket No. 93-142, DA 93-534 (May 27, 1993) ["Notice"].

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transmitter site mandates relocation and that the only suitable sites are located north of San Jose.

As demonstrated herein and supported by the three expert statements attached hereto,^{2/} Petitioners' claims in this regard are not only inadequately supported: they are inaccurate. Seismic instability will be more of a problem at sites to the north of KNTV(TV)'s present site, not less. Further, even if seismic concerns do warrant a site relocation, there is at least one fully acceptable site available which KNTV(TV) could utilize without requiring modification of the Table of Allotments. Moreover, the Willits Channel 11 allocation is located in an extremely underserved area, so that its deletion would potentially impede achievement of established allocations goals. Finally, Petitioners' claims concerning the impact of the deletion on ATV spectrum availability are premature and inaccurate.

In short, Petitioners have completely failed to justify the extraordinary relief they seek.

^{2/} Statement of Dane E. Ericksen, Consulting Engineer ["Engineering Statement"]; Statement of C.F. Crouse ["Crouse Statement"]; Statement of Madison J. Batt, Consulting Engineer ["Batt Statement"]. The latter two statements are appended to the Engineering Statement. It should be noted that such statements have also been prepared for filing herein with the comments of UTV of San Francisco, Inc. and KGO Television, Inc.

Petitioners Do Not Justify Deletion of
The Recent Willits Allocation

Under long-established policy, absent a compelling reason to do so, the Commission will not delete a channel from its Table of Allotments.^{3/} This reluctance is particularly strong in situations in which an interest has been expressed in utilizing the channel.

Channel 11 was assigned to Willits effective January 4, 1988.^{4/} At the time, the Commission's ATV Freeze^{5/} was in effect, and the Commission accordingly stated that "...interested parties are advised that no applications will be accepted for Channel 11 at Willits during the freeze." Willits Allocation, 2 FCC Rcd at 6963. Accordingly, parties have been unable as a practical matter to express an interest in the Channel 11 allocation. In such circumstances, the Commission must require a compelling showing as the basis for channel deletion.

Petitioners do not make such a showing.

3/ See, e.g., Channel Assignments, Snow Hill and Kinston, NC, 55 FCC 2d 769 (1975); Channel Assignments, Red Oak, IA, 46 FCC 2d 344 (1974); Channel Assignments, Fond du Lac and Sheboygan, WI, 55 RR 2d 592 (1984); Channel Assignments, LaSalle and Pontiac, Illinois, 53 RR 2d 392 (1983); Channel Assignments, Valley City and Fargo, ND, 8 RR 2d 1735 (1967); Channel Assignments in Puerto Rico, 14 RR 2d 1568 (1968); cf., Channel Assignments, Martin and Salyersville, Kentucky, 50 RR 2d 502 (1981).

4/ TV Table of Allotments (Fortuna and Willits, California), 2 FCC Rcd 6962 (1987) ["Willits Allocation"].

5/ Order, Advanced Television Systems and Their Impact on the Existing Television Service, 52 Fed. Reg. 28346 (July 29, 1987).

**Petitioners' Allegations Concerning Seismic Instability
Are Unsupported and Inaccurate**

Petitioners' channel deletion request is premised upon their assertion that KNTV(TV)'s existing tower site is peculiarly susceptible to an earthquake, thus requiring relocation to an unspecified but more seismically stable site somewhere to the north.^{6/} This claim, in turn, is premised upon the Declaration of Richard E. Hammond, who is a lawyer, not an engineer, and who expressly disclaims expert status with respect to the subject matter of his declaration.

Thus, Mr. Hammond admits that he has

...no formal academic training or field experience as a geologist, a seismologist, or a seismic engineer. Therefore, I am not, nor by executing this Declaration do I purport to be, an expert in the subjects of geology, seismology, or seismic engineering.

Moreover, his conclusions are based solely on a review of literature and maps and informal interviews with state officials;^{7/} Mr. Hammond apparently did not even personally visit the KNTV(TV) tower site.

Significantly, those conclusions hardly justify Petitioners' requested relief. All Mr. Hammond does is

^{6/} KNTV(TV)'s situation is not unique: many California radio and television stations, including KTVU, are located in areas where earthquakes are likely.

^{7/} One of these individuals, Mr. Earl W. Hart, did not visit the KNTV(TV) transmitter site following the 1989 earthquake.

restate the obvious -- for example, that the Sargent-Berrocal fault which is near the KNTV(TV) tower site is susceptible to major earthquakes and that earthquake damage is likely to be worse on mountain peaks.

In contrast to Mr. Hammond's declaration, the Crouse Statement is made by a consulting engineer whose entire professional career has been devoted to earthquake engineering. His evaluation of the seismic factors affecting the KNTV(TV) transmitter site thus reflects extensive experience and expertise as well as personal observation of the KNTV transmitter site.

Dr. Crouse concludes that the probability that the KNTV(TV) transmitter site will experience ground shaking equivalent to or greater than that experienced during the 1989 earthquake (which the tower survived) is "small," as is the probability that earthquake-induced ground failures will occur at the site. Crouse Statement at 4.

Most significantly, Dr. Crouse concludes that "[r]elocating the tower from Loma Prieta Peak to another peak to the northwest will most likely increase the ground shaking hazard that the tower might experience, not decrease it." Id. In other words, in the opinion of a fully qualified expert, the KNTV(TV) site move which Petitioners seek to facilitate by the requested channel deletion would exacerbate, not reduce, the risk of earthquake damage.

As stated in the Engineering Statement:

...the [KNTV(TV)] Loma Prieta site is now probably one of the safest areas in the greater San Francisco Bay Area...[I]f KNTV moved to a site on the San Francisco Peninsula, it would be increasing its chances of suffering earthquake damage, not decreasing those chances.

[emphasis in original]. In such circumstances, Petitioners clearly have not carried the burden of justifying deletion of Channel 11.

Other Measures to Minimize Earthquake Damage
Would Not Require Deletion of a Channel

Petitioners also claim that a northerly relocation of KNTV(TV)'s transmitter site^{8/} affords the only means of

transmitter site move is the only alternative cannot be credited.^{10/}

Further, as the Batt Statement demonstrates, relatively inexpensive structural improvements to KNTV(TV)'s existing tower would also minimize the extent of damage should another earthquake occur in the vicinity of its transmitter site.

**The Public Interest Would Not Be Served
By the Proposed Channel Deletion**

Petitioners make much of their claim that KNTV(TV) is the primary source of news and information to the San Jose area.^{11/} Yet there are four other television stations licensed to San Jose^{12/} and numerous other television stations from the San Francisco-Oakland-San Jose, Sacramento-Stockton and Salinas-Monterey television markets provide predicted Grade B service to that community.

^{10/} It is well established that a proposal for a short-spaced site must demonstrate that no suitable fully-spaced sites are available. See, e.g., Orange Park Florida TV, Inc. v. FCC, 811 F.2d 664 (D.C. Cir. 1987); cf., North Texas Media, Inc. v. FCC, 778 F.2d 28 (D.C. Cir. 1985).

^{11/} Petitioners claim that its requested northerly relocation would facilitate KNTV(TV)'s continued operations should an earthquake occur. As the San Francisco-Oakland stations know from their experience of off-air time during the 1989 quake, a location to the north does not necessarily guarantee uninterrupted operations.

^{12/} Television Stations KICU-TV, KSTS, KTEH and KLXV-TV are all licensed to San Jose.

By contrast, the Engineering Statement demonstrates that Willits affords a classic case of an underserved community. In such circumstances, the deletion of Channel 11 from Willits would be inconsistent with established allocation priorities^{13/} and thus cannot be reconciled with the public interest.^{14/}

Petitioners' Claims Concerning ATV Spectrum Needs
Are Premature and Inaccurate

Petitioners also argue that deletion of Channel 11 at Willits will not adversely impact the public interest because it is likely that it will be deleted in order to accommodate ATV implementation. However, this argument is, at best, premature. There are many ATV-related issues still

^{13/} The proposed deletion would contravene Priorities 2 and 3 adopted by the Sixth Report and Order are "To provide each community with at least one television broadcast station" and "To provide a choice of at least two television services to all parts of the United States." Sixth Report and Order, 41 FCC 148, 167 (1952). In WITN-TV, Inc. v. FCC, 849 F.2d 1521, 1524-1525 (D.C. Cir. 1988), the court approved the Commission's goal of ensuring that "as many communities as possible should have the opportunity enjoying the advantages that derive from having local outlets that will be responsive to local needs," a goal which the proposed channel deletion would frustrate.

^{14/} Apparently recognizing that Willits is a classic example of an underserved community, Petitioners suggest a number of alternative UHF allocations for the community. However, at paragraph 6 of the Notice, the Commission properly rejects these proposals as premature in light of the still pending ATV proceeding and does not decide whether substitution of a UHF for a VHF station would be considered reasonable (it merely accepts the possibility thereof). Given the Commission's position in this regard, these Comments will not further address the merits of Petitioners' suggestions for alternative channel usage.

to be resolved,^{15/} and it is far from certain that Channel 11 at Willits will be needed to facilitate ATV implementation. Moreover, as demonstrated in the Engineering Statement, deletion of Channel 11 at Willits would not make that channel available for ATV use due to the precluding impact of KNTV(TV)'s own operations.

Conclusion

In the Notice, the Commission states that it is "hesitant" to delete Channel 11 from Willits; its proposal to do so is characterized as provisional. Analysis of Petitioners' request demonstrates that the Commission's hesitance is well-placed.

Petitioners seek to exploit the possibility of earthquake damage to justify the extraordinary action of deleting a channel in an underserved area which there has been no opportunity to activate. However, as demonstrated herein, the likelihood of earthquake damage is greater to the north, where Petitioners seek to relocate KNTV(TV)'s transmitter, than at KNTV(TV)'s present site. To the extent that KNTV(TV) continues to believe in the face of this evidence that preventative action should be taken, there are alternatives to deletion of Channel 11 at Willits, including

^{15/} See, e.g., Second Further Notice of Proposed Rule Making, MM Docket No. 87-268, 7 FCC Rcd 3340 (1992).

relocation to a site to the south and reinforcement of KNTV(TV)'s existing tower.

Not only is the fundamental premise of Petitioners' request in error, their ancillary justification concerning possible need for ATV spectrum is likewise premature and inaccurate.

In sum, Petitioners request that the Commission delete Channel 11 at Willits falls far short of the compelling showing required to warrant such action. The Commission should, accordingly, deny Petitioners' request.

Respectfully submitted,

KTVU, INC.

By Suzanne M. Perry
Kevin F. Reed
Suzanne M. Perry

DOW, LOHNES AND ALBERTSON
1255 - 23rd Street, N.W.
Washington, D.C. 20037
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July 19, 1993

ENGINEERING STATEMENT

Hammett & Edison, Inc.

KTVU, INC.
TV STATION KTVU
CHANNEL 2
OAKLAND, CALIFORNIA
ENGINEERING EXHIBIT IN SUPPORT OF
COMMENTS TO
MM DOCKET 93-142

July 16, 1993



HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

**MM DOCKET 93-142 COMMENTS
PROPOSED DELETION OF CHANNEL 11 ALLOCATION
WILLITS, CALIFORNIA**

STATEMENT OF DANE E. ERICKSEN, CONSULTING ENGINEER

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by KTVU, Inc., licensee of TV Station KTVU, Channel 2, Oakland, California, to review the engineering issues raised in MM Docket 93-142.

MM DOCKET 93-142

In response to a Petition for Rule Making ("Petition") filed by Granite Broadcasting Corporation ("Granite"), licensee of TV Station KNTV, Channel 11, San Jose, California, to amend the TV Table of Allotments by deleting the vacant allocation for Channel 11 at Willits, California, the Commission issued the instant Notice of Proposed Rule Making. Granite argued that deletion of the Channel 11 allocation for Willits was necessary to allow it to relocate KNTV from its present site at Loma Prieta, a 1,156-meter peak 25 kilometers south of San Jose, California. Granite argued that the Loma Prieta site is so seismological unsafe that it must vacate that site, and relocate to some seismologically safer site on the San Francisco Peninsula. Granite claimed that no relocation to the south of its present site would be possible because of terrain obstruction

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PROPOSED DELETION OF CHANNEL 11 ALLOCATION
WILLITS, CALIFORNIA

that, apart from Channel 11, only Channel 22 could provide an additional service to the southern portion of the region. Even at maximum facilities, Channel 22 would not place even a Grade B signal over the city of Willits. The following TV stations or allocations were used in preparing Figure 1:

<u>Station</u>	<u>Channel</u>	<u>City of License</u>
KAEF	23	Arcata
KIEM-TV	3	Eureka
KVIQ-TV	6	Eureka
KEET	13	Eureka
KBVIJ	29	Eureka

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The attached Figure 4 shows the extent of the City Grade 77 dBu contour of an omnidirectional Channel 11 station at the KSBW site, making reasonable assumptions as to the transmitting facilities: effective radiated power of 172 kW and effective height of 1,201 meters AMSL, 440 meters AGL, and 871 meters above average terrain, using the standard FCC F(50,50) curves. These hypothetical facilities would represent the allowable effective radiated power for a side-mounted Channel 11 antenna just below the bottom of the KSBW antenna.

Figure 4 shows that all of San Jose is within the predicted City Grade contour. Further studies shown by the attached terrain profiles from the KSBW antenna, Figure 5, there is no significant terrain obstruction to San Jose. As further evidence, the attached Figure 6, a terrain-sensitive coverage map based on the TIREM propagation model.² demonstrates that 77 dBu coverage of San

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PROPOSED DELETION OF CHANNEL 11 ALLOCATION
WILLITS, CALIFORNIA**

that any relocation of the KNTV tower would have to be to the north in order to overcome “geographic and topographic factors.”³

FEASIBILITY OF AN EARTHQUAKE RESISTANT TOWER AT KNTV’S EXISTING SITE

We have additionally retained the services of Mr. Madison Batt, P.E., of TRA, a consulting firm that specializes in tower engineering and inspection. Mr. Batt’s engineering exhibit, Attachment B, indicates that it would be feasible to modify the existing KNTV tower to withstand the Upper Level Earthquake (ULE) shaking identified by Dr. Crouse as likely to occur at Loma Prieta over the next 30 years. Mr. Batt concludes that the reason the KNTV tower and antenna suffered structural damage from the 1989 Loma Prieta earthquake was because the tower base was (and continues to be) bolted directly to its concrete foundation, rather than having a pinned base. Mr. Batt concludes that the tower could be modified to a pinned base easily and economically in order improve its resistance to earthquakes.

Although it may not be clear from the Petition, Loma Prieta is a *principal* communications site for the San Jose area, with the transmitting facilities for two television stations (KNTV and Station KLXV-TV, Channel 65, San Jose), a TV Booster station (KTEH-1), an LPTV station (K25AC), an ITFS station (WHR453, operating on the A Group ITFS channels), four FM stations (KKUP, Channel 218B1, Cupertino; KUFX, Channel 233B, Gilroy; KSRI, Channel 256B, Santa Cruz; and KBAY, Channel 262B, San Jose), and a large number of point-to-point microwave stations and land mobile stations. Photographs of the Loma Prieta communications site are shown in the attached Figure 7. To our knowledge none of these stations has applied to relocate from Loma Prieta due to earthquake hazard.

SUMMARY OF FINDINGS

1. The areas surrounding Willits, California, is presently served by only one TV station.
2. Deletion of Channel 11 at Willits would not free up use of that channel for ATV transmissions at San Francisco because of the precluding effect of the continued NTSC operation of KNTV on Channel 11 in San Jose.
3. Relocating from Loma Prieta would probably increase the earthquake risk to KNTV, certainly not decrease it.

³ Granite Petition, Exhibit E, Page 1, third paragraph.



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PROPOSED DELETION OF CHANNEL 11 ALLOCATION
WILLITS, CALIFORNIA**

4. It is feasible to modify the existing tower at Loma Prieta to make it less likely to suffer damage in the unlikely event of another earthquake.
5. There is at least one suitable site to which KNTV could move and meet all existing FCC requirements.

CONCLUSION

Based on the studies reported above, it is my considered professional opinion that there is no demonstrated technical basis to delete the Channel 11 allotment at Willits, California.

LIST OF FIGURES

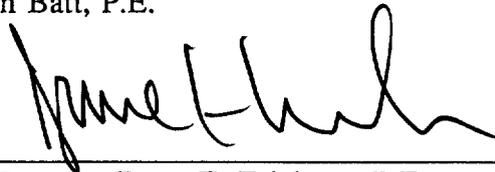
In carrying out these engineering studies, the following attached figures were prepared under my direct supervision:

1. Map showing predicted Grade B signals in the vicinity of Willits, California
2. Map showing locations of earthquake-damaged Bay Area broadcast towers
3. Map showing KNTV allocation conditions
4. Map showing predicted City Grade coverage over all of San Jose from KSBW site
5. Terrain profiles from KSBW site to San Jose
6. Terrain-sensitive coverage map showing actual City Grade coverage from KSBW site
7. Photographs of Loma Prieta communications site.

The following exhibits were commissioned by Hammett & Edison, Inc. and are incorporated into these Docket 93-142 comments:

EXHIBIT 1: Engineering Statement of Dr. C.B. Crouse, P.E.

EXHIBIT 2: Engineering Statement of Madison Batt, P.E.



Dane E. Ericksen, P.E.

July 16, 1993

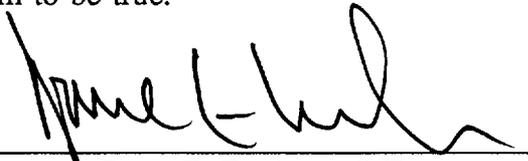


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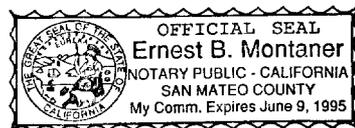
State of California |
County of San Mateo | ss:

Dane E. Ericksen, being first duly sworn upon oath, deposes and says:

1. That he is a qualified Registered Professional Engineer, holds California Registration No. E-11654 which expires on September 30, 1996, and is employed by the firm of Hammett & Edison, Inc., Consulting Engineers, with offices located near the city of San Francisco, California,
2. That he graduated from California State University, Chico, in 1970, with a Bachelor of Science Degree in Electrical Engineering, was an employee of the Field Operations Bureau of the Federal Communications Commission from 1970 to 1982, with specialization in the areas of FM and television broadcast stations and cable television systems, and has been associated with the firm of Hammett & Edison, Inc., since October 1982,
3. That the firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by KTVU, Inc., licensee of TV Station KTVU, Channel 2, Oakland, California, to review the engineering issues raised in MM Docket 93-142,
4. That such engineering work has been carried out by him or under his direction and that the results thereof are attached hereto and form a part of this affidavit, and
5. That the foregoing statement and the report regarding the aforementioned engineering work are true and correct of his own knowledge except such statements made therein on information and belief and, as to such statements, he believes them to be true.


Dane E. Ericksen, P.E.

Subscribed and sworn to before me this 16th day of July, 1993



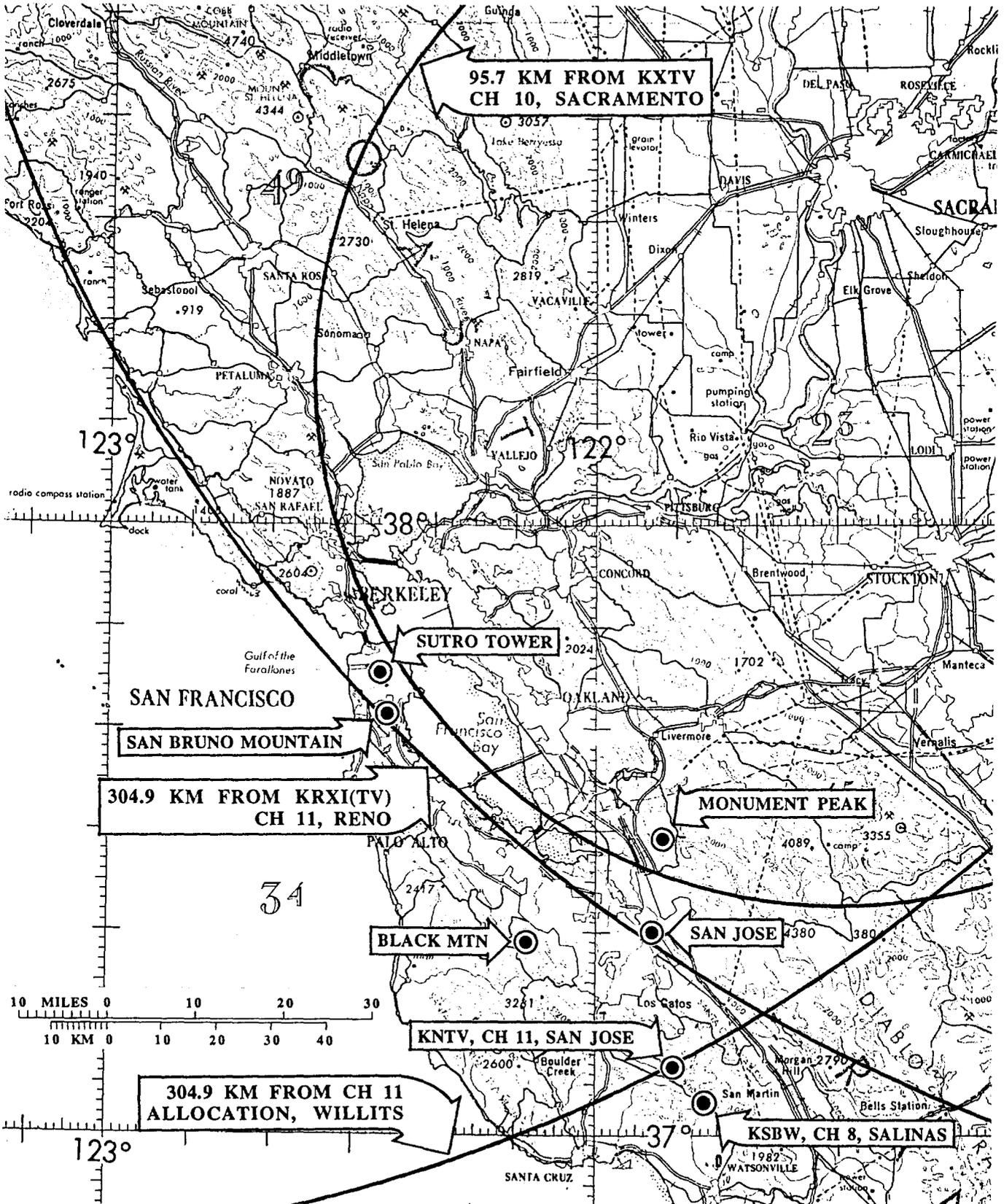


MM DOCKET 93-142 COMMENTS
PROPOSED DELETION OF CHANNEL 11 ALLOCATION
WILLITS, CALIFORNIA

GRADE R CONTOURS OF OTHER ALLOCATED CHANNELS AROUND WILLITS

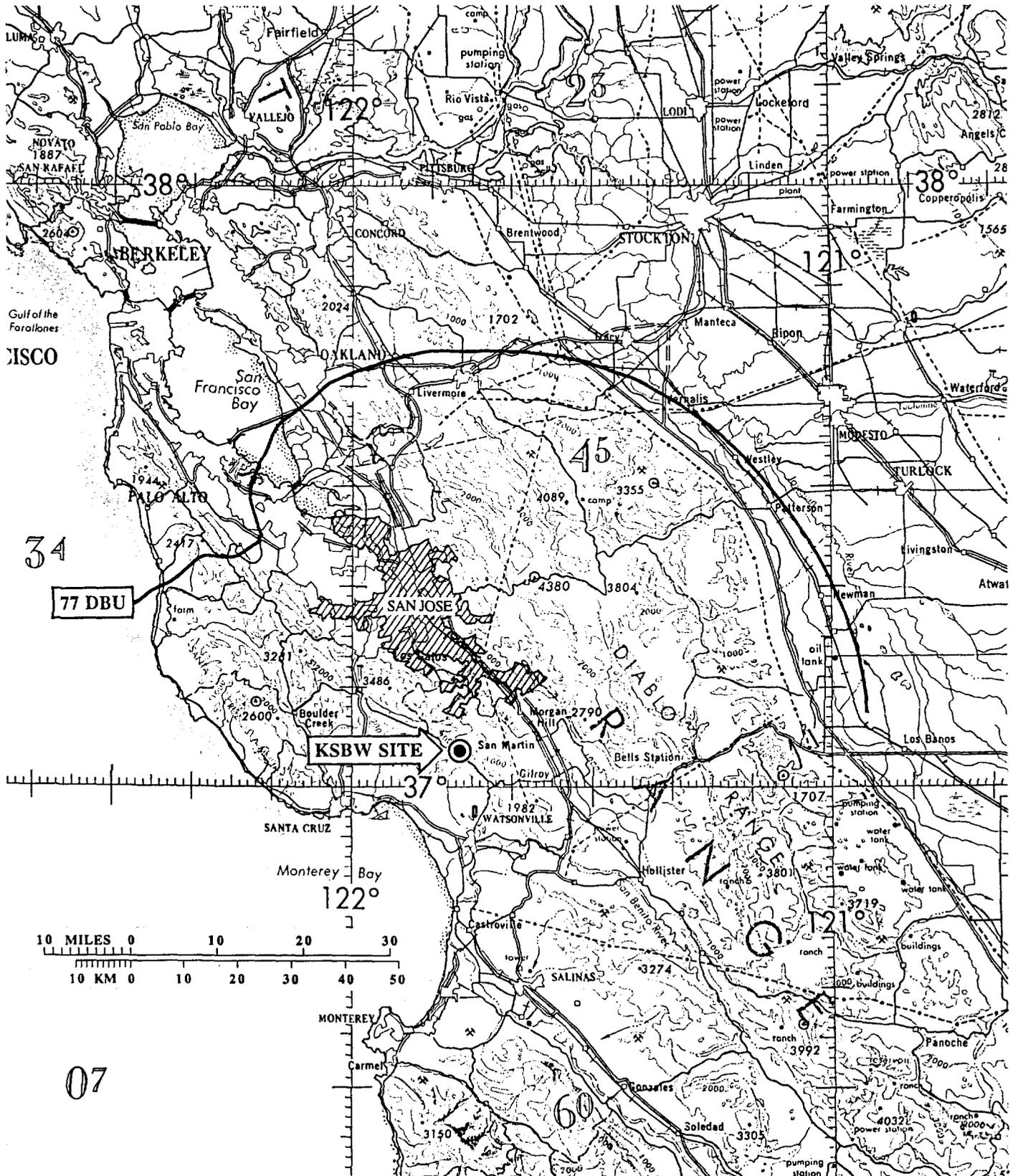
**MM DOCKET 93-142 COMMENTS
PROPOSED DELETION OF CHANNEL 11 ALLOCATION
WILLITS, CALIFORNIA**

KNTV ALLOCATION CONDITIONS



**MM DOCKET 93-142 COMMENTS
 PROPOSED DELETION OF CHANNEL 11 ALLOCATION
 WILLITS, CALIFORNIA**

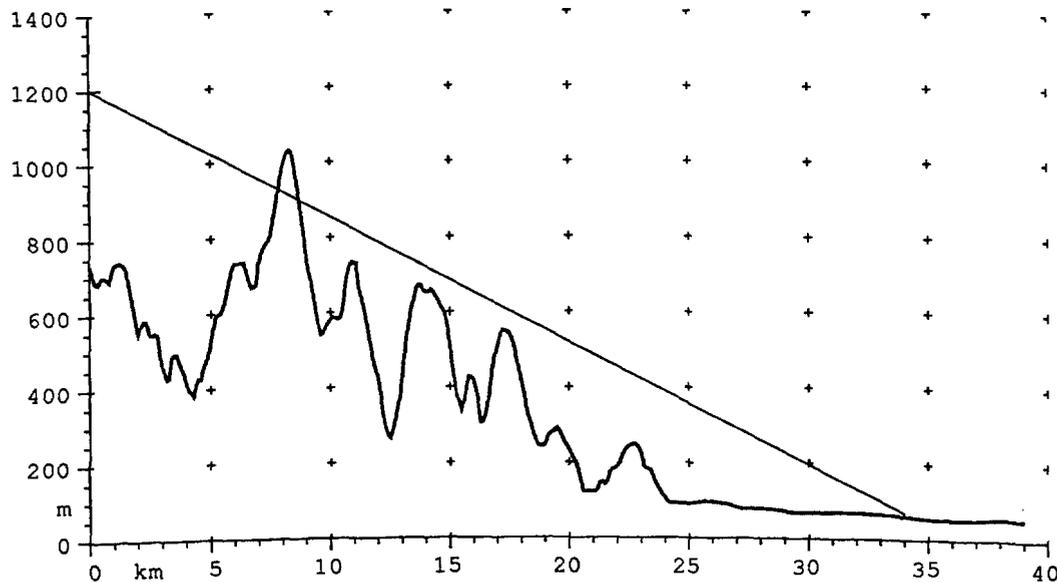
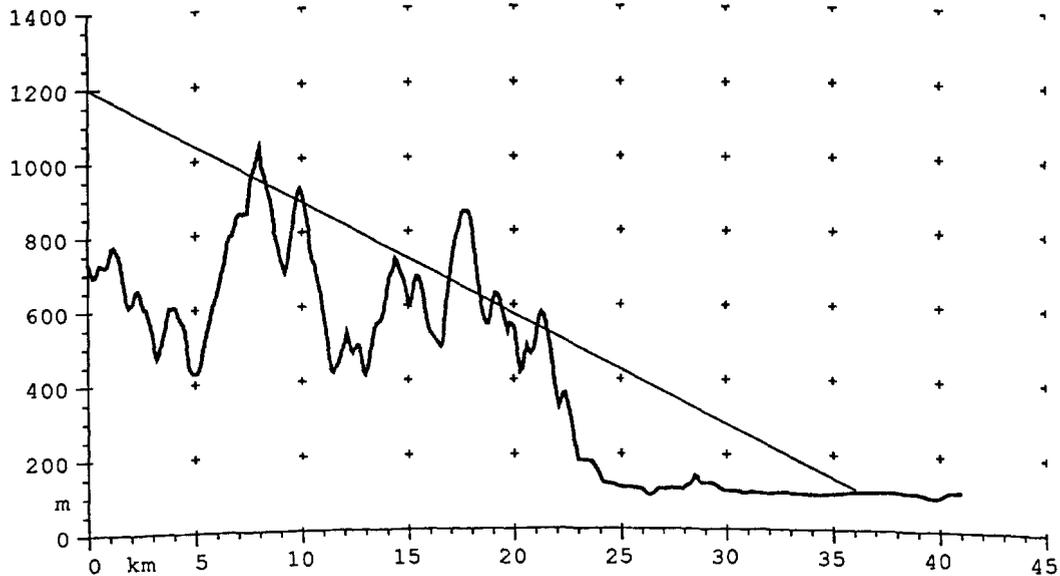
CITY GRADE COVERAGE OF SAN JOSE FROM KSBW TOWER



07

MM DOCKET 93-142 COMMENTS
PROPOSED DELETION OF CHANNEL 11 ALLOCATION
WILLITS, CALIFORNIA

320°T AND 325°T RADIALS FROM KSBW SITE TO SAN JOSE, CALIFORNIA



Terrain profiles from KSBW site, with same elevation as employed by TV Station KSBW, to most-distant extent of City of San Jose population centroids based on the 1990 U.S. Census. Profile extends an additional 5 kilometers beyond this distance.

