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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations)
)
(Rocky Mount and Bassett, VA))

MM Docket No. 94-63
RM No. 8450

DOCKET FILE COPY ORIGINAL

To: The Chief, Policy and Rules Division

REPLY COMMENTS OF WNLB RADIO, INC.

WNLB Radio, Inc. ("WNLB" or "Petitioner"), by its attorney, pursuant to Section 1.415 of the Commission's rules and the Commission's Public Notice, Report No. 2031, released September 26, 1994, hereby respectfully submits its reply comments in the referenced matter. The purpose of the instant reply is to address concerns raised by the Acting Chief, Allocations Branch in the Notice of Proposed Rule Making herein, DA 94-640, released June 28, 1994 ("NPRM"), "Comments in Opposition to Rule Amendment" filed by Edward A. Baker d/b/a Radio 900 ("Baker") on August 19, 1994 ("Baker Comments") and in "Reply Comments of Edward A. Baker d/b/a Radio 900" filed by Baker on September 6, 1994 ("Baker Reply").

In response to the various matters raised in the NPRM, the Baker Comments and the Baker Reply, the following is respectfully shown:

1. Detailed Areas and Populations Showing. At paragraph 3 of the NPRM, the Acting Chief requested that the Petitioner provide information showing the areas and populations which would receive new service and would lose existing service if Channel 260C3 were

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reallotted to Bassett. Attached hereto is an exhibit from William Culpepper, WNLB's consulting engineer, to provide that information, which applies equally to the proposal for Bassett and the counterproposal for Stanleytown.^{1/} Using the specific site discussed at paragraphs 3 and 4, infra., Mr. Culpepper demonstrates that there would be a gain of 2,176 sq. km. and 80,903 people (1990 Census), a loss of 323 sq. km. and 6,119 people, yielding a net gain of 1,853 sq. km. and 74,784 people.^{2/} Mr. Culpepper further demonstrates that the entire loss area receives at least five full-time services (all from FM stations). The net gain represents 75.4% of the area and 88.5% of the population presently served by WNLB.

2. **Alleged Lack of an Available Site.** In ostensible support of this allegation, Baker submitted a map depicting a triangular

^{1/} Petitioner's counterproposal to allot Channel 260C3 to Stanleytown rather than Bassett incorporated by reference the engineering study submitted in WNLB's Request for Rule Making which led to issuance of the NPRM. See, Comments and Counterproposal of WNLB Radio, Inc. ("WNLB Comments"), filed August 19, 1994 at p. 3, note 1. Accordingly, the areas and populations which would receive or lose service would be identical under either the initial proposal for reallotment to Bassett or the counterproposal for reallotment to Stanleytown.

^{2/} In his comments at 3, Baker disputes the gain area asserted by WNLB based upon actual predicted contours rather than purely hypothetical coverage, on the basis of a vague allusion to "recognized FCC policies for evaluating gain and loss areas at the allotment stage." Although the reference is utterly unclear, it is possible that Baker has mistakenly confused the issue at hand by referring to the policies set forth at Woodstock and Broadway, Virginia, 3 FCC Rcd 6398, 6399 (1988). There, the Commission stated that uniform coverage predictions without reference to terrain variations should be used for allocation purposes, but addressed the question only in the context of the provision of city grade coverage. Baker has presented no reason why its abstract uniform contours should be preferred to the realistic data presented by WNLB.

area within which a fully spaced site must be located. Baker Comments at Figures 1.0 and 1.1. Baker then contends that the triangle lies wholly within army-, state- and county-administered areas^{3/} and that based upon informal telephone inquiries, the likelihood of obtaining a useable site is "virtually zero." Baker Comments at 4, 5 and note 2.

3. In light of Baker's speculation, WNLB has researched the matter and presents evidence herein of an available site. In order to avoid a collateral dispute over this matter, WNLB accepted Baker's map depicting the allowable area for a fully spaced site. As described in the attached declaration under penalty of perjury of William W. Geasey a/k/a Donny Brook, WNLB's President, a suitable privately-owned parcel of property has been located and its availability confirmed with Ray Prillaman, the owner's son. Attached to Mr. Geasey's declaration is a letter received from Mr. Prillaman in which he demonstrates that the property indeed lies within Baker's available-area triangle. Mr. Prillaman further states his willingness to lease the property to WNLB following FCC approval.

4. As to jurisdictional matters, Mr. Geasey further recounts how he spoke to Melvin Clark, a member of the Franklin County Planning and Zoning Commission, which Baker had identified as a

^{3/} Baker's claim that the available site area lies wholly within government property (Baker Comments at 4) is a distortion of its own engineering statement (the only factual support Baker submits) which states only: "Nearly this entire area falls over water, state park land or state or federal recreational lands." Baker Comments, Engineering Statement at 2.

governmental authority controlling the allowable site area. As confirmed by an October 9, 1994 letter from Mr. Clark which is attached to Mr. Geasey's declaration, the Prillaman property is located within the jurisdiction of Mr. Clark's commission and district. Mr. Clark states that there are no zoning requirements or restrictions which would relate to the construction of a broadcast tower at the Prillaman site.

5. In light of the foregoing, WNLB has demonstrated the availability of a fully-spaced site, and Baker's speculative suggestion to the contrary must be rejected.

6. Removal of Service from Rocky Mount. At page 3 of its comments, Baker bemoans the loss of Rocky Mount's "only local FM service" as the result of the proposed reallocations. Baker concedes, however, that Rocky Mount would remain served by two AM stations -- WNLB and WYTI. In that light, the loss of a local FM station is without particular significance, as the Commission, for over a decade, has considered AM and FM stations to be joint components of a single aural medium and has not distinguished between the two services for allotment purposes. See, Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982).

7. Stanleytown as a Licensable Community. In addition to repeating the foregoing claims, the Baker Reply characterizes Stanleytown as a "hamlet" which lacks the indicia of a licensable community. In an attached declaration, Baker contends that Stanleytown is not incorporated and lacks its own government,

utility and services.^{4/} In his declaration, Mr. Geasey notes numerous community indicia which characterize Stanleytown.

8. Of equal importance, Mr. Geasey notes that the lack of incorporation, a discrete government and separate services has no bearing upon whether Stanleytown is licensable, as these characteristics apply equally to Bassett and Fieldale, both of which are already cities of license of broadcast stations (one of which, ironically, is owned by Baker). Mr. Geasey explains that many communities of this relative size intentionally do not incorporate in order to benefit from the government and services which are furnished by Henry County.

9. In any event, Stanleytown is a Census Designated Place listed in the U.S. Census, a fact which, in and of itself, obviates the need for the types of arguments concerning licensable status which Baker has attempted to raise. See, Revision of FM Assignment Policies and Procedures, supra., at 101. Even so, Mr. Geasey demonstrates that Stanleytown is characterized by businesses (including a major employer of about 2,000), churches, schools, health

^{4/} The source of Baker's information contained in his sworn declaration is unclear. In any event, much of it is false. Thus, for example, Baker asserts that Stanleytown has no civic clubs, whereas in fact there is a Ruritan club and a country club. Baker further contends that garbage services are provided by Henry County, whereas the Ruritan club provides this service. Yet again, Baker claims that there are no physicians, whereas in fact three physicians practice there. Beyond these falsities, the declaration is misleading in several other respects. Thus, it states that there are no "high or middle schools," while ignoring the fact that there is an elementary school and a private academy for grades 1 through 12. Similarly, Baker cites the lack of a local hospital, but overlooks the fact that Stanleytown has a health care center and a nursing home.

facilities, civic and social clubs and a U.S. post office. Accordingly, Stanleytown is clearly a licensable community.

10. **Local Information Service.** In the NPRM, the Acting Chief requested Petitioner to submit additional information as to the overall public interest benefits that would be advanced from the grant of its proposal. In its comments and counterproposal, WNLB indicated that, in addition to the service gains which would result, it intended to provide a first local full-time programming service to Patrick County as well as a second night-time service to much of Henry County. In its reply comments, Baker characterizes this programming pledge as "curious," without foundation and "self-serving puffery." Baker Reply at 2-3. In his attached declaration, Mr. Geasey explains the need for such service and pledges to provide it. Baker has failed to suggest any reason to discredit Mr. Geasey's proposal, which will provide the type of informational programming which lies at the very heart of the Commission's concern with local broadcast service.

11. **Conclusion.** WNLB has responded to the Commission's concerns outlined in the NPRM and has rebutted each of the allegations raised in Baker's comments and reply comments. WNLB restates its interest in seeking an authorization for Channel 260C3 at either Bassett or Stanleytown and, if authorized, to build such a station promptly. Accordingly, WNLB supports both the initial proposal to reallocate Channel 260A at Rocky Mount to Channel 260C3 at Bassett, and the counterproposal to reallocate Channel 260A at Rocky Mount to Channel 260C3 at Stanleytown, Virginia.

Respectfully submitted,

WNLB RADIO, INC.

By: _____


Peter Gutmann
Its Attorney

PEPPER & CORAZZINI, L.L.P.
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-0600

October 11, 1994

DECLARATION UNDER PENALTY OF PERJURY

William W. Geasey hereby declares under penalty of perjury that the following is true and correct of his personal knowledge and belief:

1. I am president of WNLS Radio, Inc., licensee of station WZBB-FM, Channel 260A, Rocky Mount, Virginia. We have proposed the substitution of Channel 260C3 for Channel 260A and the reallocation of Channel 260C3 from Rocky Mount to Bassett, Virginia or, alternatively, to Stanleytown, Virginia. Edward A. Baker d/b/a Radio 900 has opposed both our original proposal for Bassett and our counter-proposal for Stanleytown on a number of grounds which I would like to address in this declaration.

2. Baker has provided a map (Figure 1.0) of his August 19, 1994 "Comments and Opposition to Rule Amendment" which depicts the area within which a fully spaced site must be located. Baker claims that no sites are available within this area, and that the area is administered by government agencies who are unwilling to permit the construction of broadcast towers.

3. I have studied the area and have located two separate pieces of property that are privately owned. I have specifically discussed the lease of suitable property with Ray Prilliman (on behalf of his father who is the actual property owner), and have obtained the attached letter in which Mr. Prilliman agrees to lease the necessary property to me following FCC approval. Mr. Prilliman also examined Baker's map and confirmed that his property falls within the allowable area triangle.

4. I also spoke to Melvin Clark, a member of the Franklin County Planning and Zoning Commission, which Baker identified as having jurisdiction over the allowable area. Mr. Clark confirmed to me that there are no zoning laws in the part of Franklin County where the Prilliman property is located and that there would be no restrictions on building a tower on that site. I attach a letter which Mr. Clark has sent to me confirming that advice.

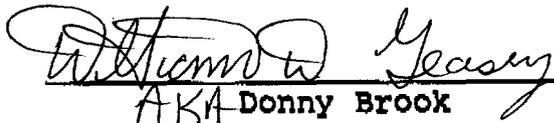
5. Baker also suggests that Stanleytown is not a licensable community and seems to contrast Stanleytown unfavorably with Bassett. Stanleytown's major business is Stanley Furniture, with employment of about 2,000. Stanleytown also contains five churches, an elementary school, a private academy for grades 1-12, a health care center, a Ruritan club (which also provides refuse collection services to the town), a country club, a U.S. post office, a major car dealership, approximately 25 other businesses, three physicians (Dr. Sinclair J. Marcus, Jr., Dr. Edward M. Eller, Jr. and Dr. Edward Holubowitch) and a nursing home.

6. It is true that Stanleytown is not incorporated, but neither is Bassett or Fieldale, to which stations have already been licensed by the FCC. This is because many communities of this size intentionally do not incorporate so as to benefit from county services, such as school systems, law enforcement, water and sewage, all of which are furnished for these communities by Henry County. Thus, when Mr. Baker states that Stanleytown has no separate government, school system, utilities or law enforcement, he is

making a statement which applies equally to other cities of license in this area.

7. Baker also disputes our intention to bring a first local full-time service to Patrick County. We are proud of our record of public service which we have established on our existing facility. Our proposal would provide significant new service to much of Patrick County, which simply does not receive useable coverage from WHEO in Stewart, which is a 5 kilowatt daytime AM station, and which is the only daytime station licensed to a community in Patrick County. Most other radio coverage to the area is provided by Martinsville stations, which do not devote significant attention to Patrick County. Portions of Patrick County also receives limited service from WODY, Fieldale (authorized at 250 watts night, directional) and WCBX, Bassett (500 watts directional, but which is not even broadcasting at present). We take our public interest responsibilities quite seriously, and intend to provide valuable information and emergency service to Patrick County.

8. I again confirm our interest in seeking an authorization for Channel 260C3 at Bassett or Stanleytown and, if authorized, to build such a station promptly.


AKA Donny Brook

10/10/94
Date

pg/vp
c:\wp\1438A\declper]

MR. DONNY BROOK
WNLB RADIO INC.
P.O. BOX 602
ROCKY MOUNT, VA. 24151

OCT. 6, 1994

DEAR DONNY,

MY FATHER, AMOS PRILLAMAN, OWNS APPROXIMATELY NINE AND A HALF ACRES OF PROPERTY LOCATED ALONG RT. 903 IN FRANKLIN COUNTY. I HAVE EXAMINED FIGURE 1.0 PREPARED BY CARL E. SMITH CONSULTING ENGINEERS. THIS PROPERTY FALLS WITHIN THE TRIANGLE DRAWN ON THAT MAP.

I HAVE MARKED THE LOCATION OF THIS PROPERTY ON THE ENCLOSED COPY OF THAT MAP.

MY FATHER HAS AUTHORIZED ME TO DISCUSS THE LEASE OF THIS PROPERTY FOR THE PURPOSE OF CONSTRUCTING A TOWER AND RELATED FACILITIES FOR YOUR FM BROADCAST STATION.

UPON FCC APPROVAL, WE WOULD BE WILLING TO LEASE THE AMOUNT OF PROPERTY NEEDED AT A RENTAL RATE TO BE DECIDED WHEN THE SPECIFIC SITE IS SELECTED.

SINCERELY

A handwritten signature in cursive script that reads "A. Ray Prillaman".

RAY PRILLAMAN



Timothy J. Krawczel
Director of Planning & Zoning

County of Franklin

Planning Commission

Office of Planning & Zoning
124 East Court Street
Suite 301
Rocky Mount, Va. 24151
Phone (703) 483-3027

Edward Goode
Blackwater District
Melvin Clark
Blue Ridge District
H.A. Ruff, Sr.
Boone District
Charles Hutto
Gills Creek District
Edmund Law
Rocky Mount District
George Metz
Snow Creek District
Marshall Blair
Union Hall District

October 9, 1994

Mr. Donny Brook
WNLB Radio Inc.
P O Box 1117
Rocky Mount, VA 24151

Dear Donny:

This will confirm that the Amos Prillaman Property on State Route 903 in Franklin County, Virginia, is located in the Blue Ridge Magisterial District.

There are no zoning requirements in the Blue Ridge District, so there are no zoning restrictions as it relates to the construction of a broadcast tower at this site.

If I can be of further help, please advise.

Sincerely,


Melvin L. Clark, Jr.
Franklin County Planning Commission
Blue Ridge District

cc: Mr. Timothy J. Krawczel

WNLB RADIO, INCORPORATED

RADIO STATION WZBB

ENGINEERING EXHIBIT

October 1994

William Culpepper & Associates, Inc.
900 Jefferson Drive
Charlotte, North Carolina 28270

WNLB RADIO, INCORPORATED

ROCKY MOUNT, VIRGINIA

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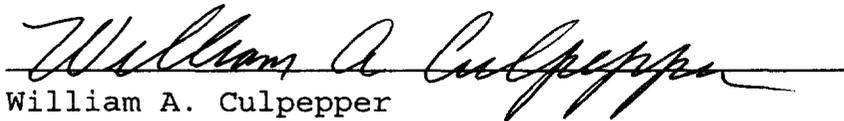
WNLB RADIO, INCORPORATED

ROCKY MOUNT, VIRGINIA

DECLARATION

I declare, under penalty of perjury, that I have prepared the attached Engineering Exhibit for WNLB Radio, Incorporated, and that all of the facts therein, except for facts of which the Federal Communications Commission may take official notice, are true to the best of my knowledge and belief; and that I am a Registered Professional Engineer in the State of North Carolina.

Executed on October 10, 1994.


William A. Culpepper

William Culpepper & Associates, Inc.
900 Jefferson Drive
Charlotte, NC 28270
704-365-9995

WNLB RADIO, INCORPORATED

ROCKY MOUNT, VIRGINIA

NARRATIVE

This exhibit supports the attached Reply Comments of WNLB Radio, Incorporated, licensee of WZBB, channel 260A, Rocky Mount, Virginia. WNLB Radio, Incorporated has filed a Petition for Rule Making to modify the FM Table of Allotments to reassign channel 260 from Rocky Mount to Bassett, Virginia, to change the class to C3 and to modify the license of WZBB accordingly. It has also filed a Counterproposal to reassign channel 260 to Stanleytown, Virginia, to change the class to C3 and to modify the license of WZBB accordingly.

The petitioner has an agreement with a land owner to provide a transmitter site at a location that meets the spacing requirements of §73.207 at approximately 36° 49' 50" north and 80° 03' 35" west. These coordinates have been used in the channel study on page 4 and in calculations of areas and populations in this exhibit. This site will meet the requirements of §73.215 regarding signal strength over Bassett and Stanleytown.

Figure 1 shows the 60 dBu contours for the present and proposed facilities and the 60 dBu contours of WPVR, Roanoke, WSLQ, Roanoke, WVTF, Roanoke, WXLK, Roanoke, and WROV, Martinsville. The loss area that would be created by implementation of this proposal is shown with cross hatch, and it is clear that this loss area receives at least five full-time services from FM broadcast stations.

The present and proposed 60 dBu contours are shown on the census map of Figure 2. The areas and populations of the licensed facility and of the proposed C3 facility at the available site are as follows:

	<u>AREA</u>	<u>POPULATION</u> <u>(1990 DATA)</u>
PRESENT	2458 km ²	84,502
PROPOSED	4311 km ²	159,286
LOSS	323 km ²	6,119
GAIN	2176 km ²	80,903
NET GAIN	1853 km ² (75.4%)	74,784 (88.5%)

NARRATIVE...(continued)

[Present and proposed areas were calculated from distances to the 60 dBu contours as predicted by the FCC F(50,50) method, using 72 radials with terrain data from the NGDC 30 second data base. Population was determined using the signal strength contours and Census data file PL 94-171 from the 1990 U. S. census. Summary levels used include State-County-Voting District/Remainder-County Subdivision-Place/Remainder-Census Tract/Block Numbering Area-Block Group (Summary Level code 740.) Gain and loss areas were measured with a planimeter.]

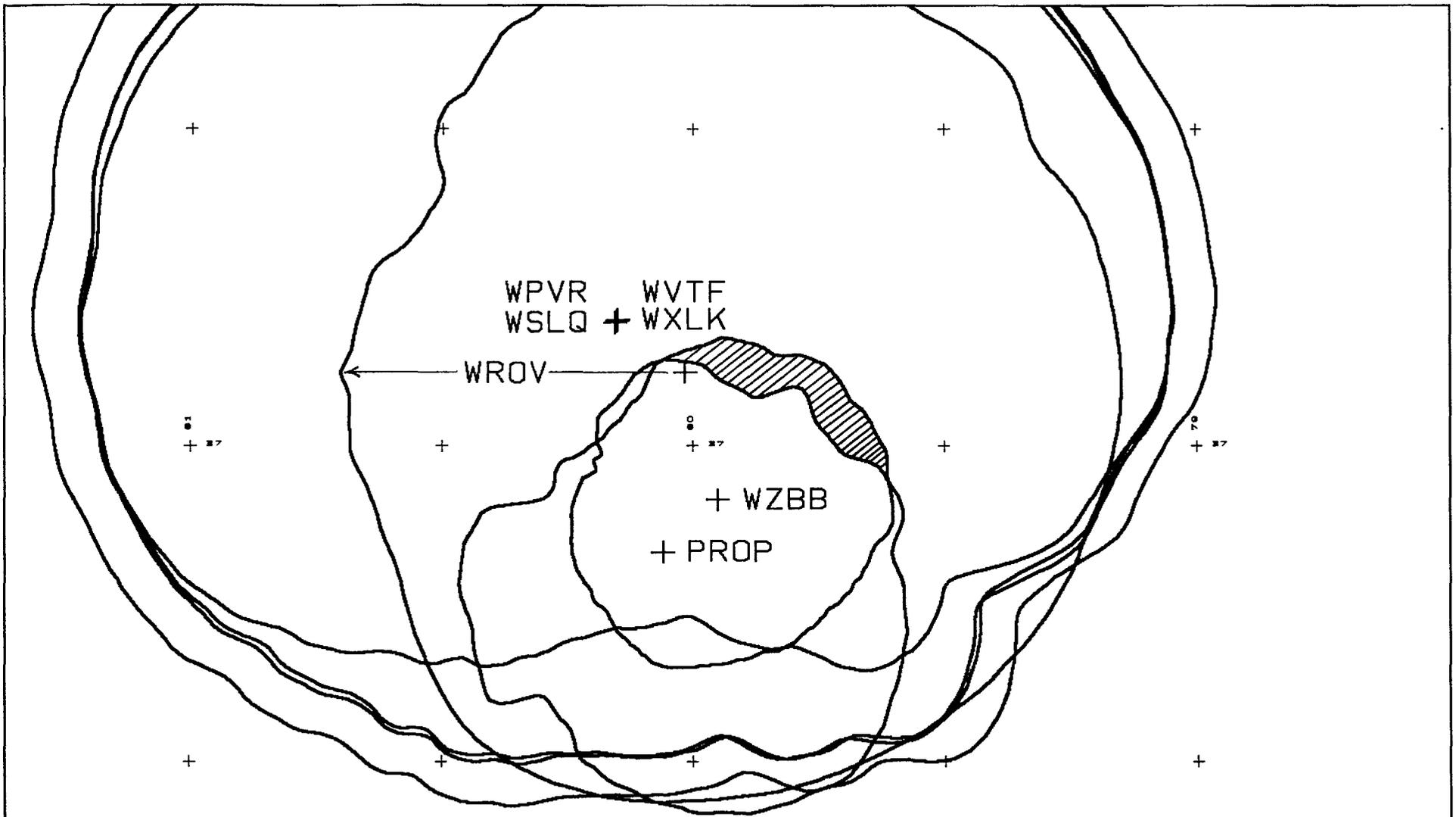
The spacing requirements for channel 260C3 cannot be met while also meeting the city-grade coverage requirements for Rocky Mount. Grant of this petition will permit the increased coverage of area and population as shown above, it will provide Bassett or Stanleytown with a full-time local service, it will not deprive Rocky Mount of full-time local service, and it will not create any new underserved area.

WILLIAM CULPEPPER & ASSOCIATES
 900 JEFFERSON DR - CHARLOTTE NC 28270

WNLB RADIO, INCORPORATED
 WZBB (FM)

REFERENCE		DISPLAY DATES
36 49 50 N	CLASS C3	DATA 08-30-94
80 03 35 W	Current rules spacings	SEARCH 10-07-94
----- CHANNEL 260 - 99.9 MHz -----		

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN	
AD260	260C3	Bassett	VA	220.1	2.54	152.5	-149.96	*
WZBB	260A	Rocky Mount	VA	46.1	13.34	141.5	-128.16	*
DE260	260A	Rocky Mount	VA	46.1	13.34	141.5	-128.16	*
WFXQ	260C3	Chase City	VA	91.1	152.60	152.5	0.10	<
WVAF	260B	Charleston	WV	321.6	210.72	210.5	0.22	<
WWWB	262C	High Point	NC	167.6	97.88	95.5	2.38	<
WVTF	206C	Roanoke	VA	348.8	41.67	30.5	11.17	
WLYK	261C3	Lynchburg	VA	51.9	111.29	98.5	12.79	
WMAG	258C	High Point	NC	169.5	108.36	95.5	12.86	
WVAO	259B	Staunton	VA	39.0	176.30	144.5	31.80	
WRFXFM	259C1	Kannapolis	NC	198.5	180.58	143.5	37.08	



THE PRESENT AND PROPOSED 60 dBu CONTOURS OF WZBB, WROV MARTINSVILLE, WSLQ ROANOKE, WPVR ROANOKE, AND WVTF ROANOKE. LOSS AREA IN CROSS HATCH.

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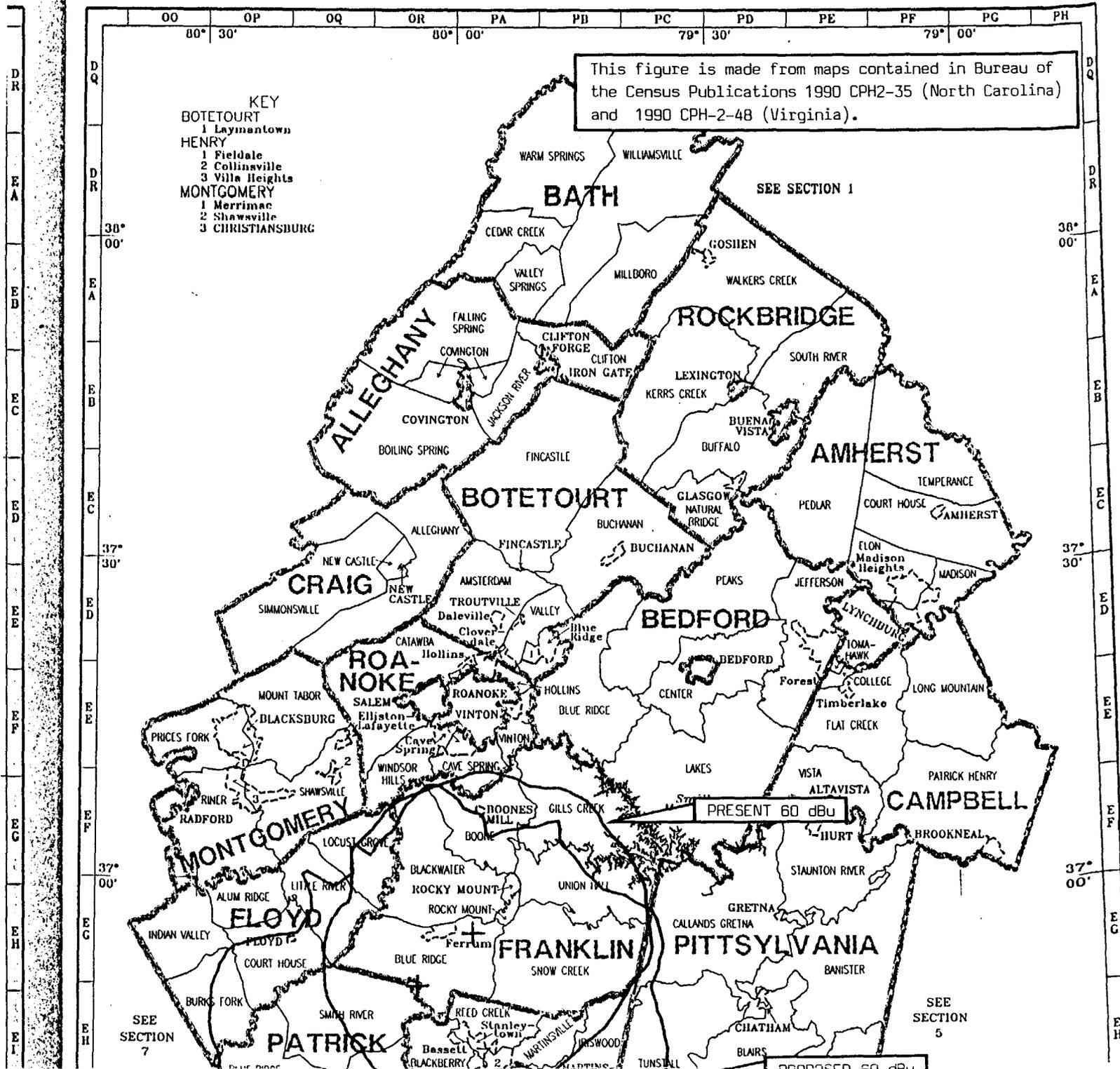
Scale in km

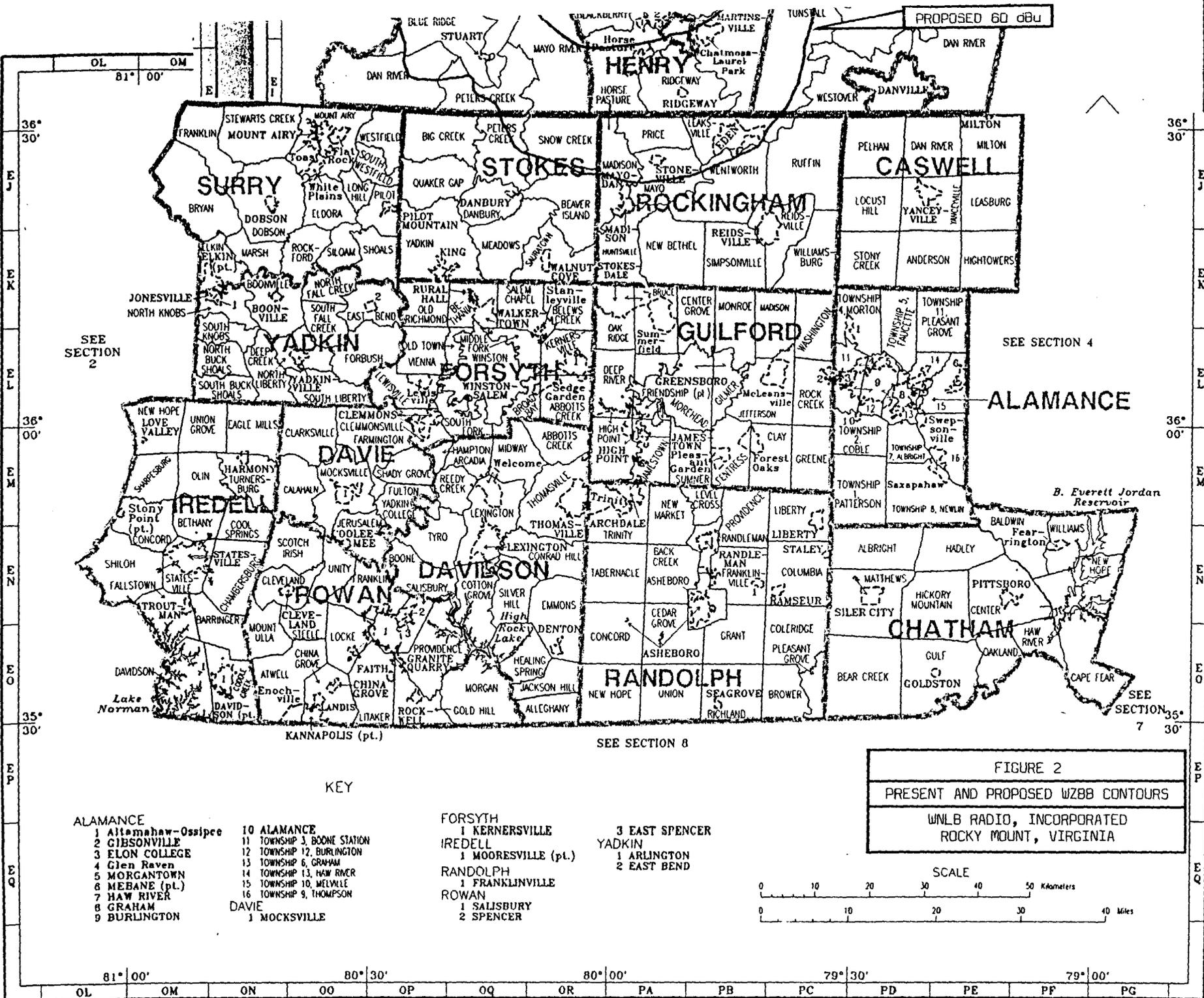


WNLB RADIO, INCORPORATED
ROCKY MOUNT, VIRGINIA

FIGURE 1

American Indian Areas, Counties, Independent Cities, County Subdivisions, and Other Places - Section 6





CERTIFICATE OF SERVICE

I, Veronica A. Pierce, a secretary with the law firm of Pepper & Corazzini, do hereby certify that a true and correct copy of the foregoing "Reply Comments of WNLB Radio, Inc." was served by U.S. mail, first-class, postage prepaid on the 11th day of October, 1994, on the following individuals:

Pyramid Communications - Charlotte FM License
Corporation
245 Park Avenue, 40th Floor
New York, NY 10167
(Licensee of WRFX-FM)

Julian P. Freret, Esquire
Booth, Freret & Imlay
1233 20th Street, N.W.
Suite 204
Washington, D.C. 20036
(Counsel for Edward A. Baker d/b/a Radio 900)



Veronica A. Pierce