

Before the
FEDERAL COMMUNICATIONS COMMISSION

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In the Matter of)
Preemption of State and Local Zoning and)
Land Use Restrictions on the Siting,)
Placement and Construction of Broadcast)
Station Transmission Facilities)

MM Docket No. 97-182

COMMENTS BY MARK F. HUTCHINS OF BRATTLEBORO, VERMONT

1. My name is Mark F. Hutchins, and I submit these comments as a communications consultant and broadcast engineer with over 30 years' experience; I have been certified by the Society of Broadcast Engineers as a Senior Broadcast Engineer since 1977. I am a former broadcast station owner, cognizant of what sometimes seems to be redundant regulatory burden when permittees and licensees of the Commission, having satisfied your requirements, face similar questions from local and/or state regulatory bodies. I also come before you for the second time this month¹, as a citizen who is impressed by how adversarial the situation has become as many com-

¹ Comments filed by the undersigned, October 8, 1997, in re: WT Docket No. 97-197.

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munities feel that communications facilities are being forced upon them without regard to local health and safety concerns. As a Vermonter, I view the removal of "obstacles" to digital television ("DTV") service sought by the broadcast industry as a Trojan Horse by which the reasonable and effective environmental review process in our state may be effectively ended, our sacred land trusts overruled, and our aesthetic concerns ignored.

2. Although I realize the "aggressive but reasonable" DTV construction schedule is not the subject of this proceeding, I must register opposition to deployment of any new service without proper regard to impact on the people and economy of Vermont of the magnitude I believe likely. I further respectfully disagree with the Commission's Initial Regulatory Flexibility Analysis² regarding Federal rules that overlap, duplicate or conflict with the proposed rules. Adoption of the proposed Rules raise the question of how the Commission will ascertain adequate compliance with the National Environmental Policy Act ("NEPA"), since most areas of Vermont's environmental review are required to be considered by NEPA. Comments filed by the Vermont Environmental Board³ outline the process and high degree of success enjoyed by applicants. This method of assuring NEPA compliance is arguably much more efficient than having the Commission assume the role of national zoning and environmental board.

² FCC 97-296, Appendix A.

³ Comments filed by the Vermont Environmental Board, October 8, 1997, in re: WT Docket No. 97-197.

3. The Commission has asked for a detailed record involving broadcast tower siting issues. I am enclosing⁴ my report prepared for a local citizens group involving one of your licensees, Burlington Broadcasters, Inc., to which I must underscore the caveat that the inspection performed over a year ago was not as comprehensive as usual, since I was not able to have the cooperation of the licensee. This case has been a source of frustration to the residents of Charlotte for over a decade and is, I believe, a preview of what it will be like with broad preemption of local permitting. The licensee has been found in violation of the promises made that there would be no harm caused by their operation; Burlington Broadcasters, Inc. has never demonstrated in any of the many proceedings in this case that this location is the only one where it is possible to cover Vergennes, the community of license. Instead, the licensee has stated to you, local authorities, and the media that the tower was in compliance - although the Compliance Bureau eventually determined otherwise. The repeated claims of compliance regarding the new radiofrequency radiation standards have been refuted by measurements of three experts, including their own. Rather than trying to solve the problems they have caused, the licensee has sought protection of the U. S. District Court. "Assuming that the permittees did obtain their permits by means of fraud and deception, if the remedy sought is elimination of RFI, state and local jurisdiction is preempted."⁵ If the Commission occupies this area of regulation exclusively but fails to enact protective (of the public) rules, the public has no recourse. The only possible remedy in this case is to relocate the site or reduce the

⁴ Attachment A - Inspection Report: Pease Mountain Telecommunications Site, Oct. 15, 1996.

power. Commission action to "simply codify the existing state of the law"⁶ by adopting the preemption sought regarding electromagnetic interference, will not serve the public interest and is an affront to the sensibility of a reasonable citizen.

This means an applicant can say anything to soothe the citizens and local authorities, with the full knowledge that it will be impossible to be held accountable.

4. The above-referenced submission by the Vermont Environmental Board included an exhibit⁷ concerning the case of your permittee⁸ for an FM radio station (WLPL) to serve Walpole, New Hampshire. In his application for a construction permit, he certified to you that he served the entire principal community when, in fact, he did not. He would presumably have been given an automatic waiver since his permit proposal showed coverage of at least 80% of the community. However, he failed to notify you when he subsequently lowered the antenna height in a manner which would make coverage of 80% of the community highly unlikely using a "real-world" propagation study as outlined and allowed for in the Rules. The studies I submitted in this case showed 4 other sites, all with much better coverage of the Walpole population and with a much less obtrusive tower, antenna, and power. Over the course of several hearings before different boards, Savoie referred to the "terms of my license" and otherwise conveyed the impression that the Commission was somehow mandating this particular site - that this was the only one that would work.

⁵ US District Court, District of Vermont, in re: Freeman, et al, v. Burlington Broadcasters, Inc. d/b/a WIZN, et al, 2:96-CV-295, p. 16.

⁶ FCC 97-296, ¶12.

⁷ Vermont Environmental Board, October 8, 1997, in re: WT Docket No. 97-197, Exhibit J.

⁸ Gary P. Savoie, BMPH-930119IA.

5. These two cases are notorious in Vermont and I find the public, as evidenced by calls and other contact with my firm, distrustful of statements made by applicants. And yet the Vermont Environmental Board has pointed out to you that the process works, and works on a timely basis, far more often than not. That Vermont asks more of applicants is not an impediment to approval. It is my expert opinion that service to meet the Commission's requirements, relative to both of the above cases, could have been - and can be - achieved in ways conducive to permit approval. Preemption means the Walpole tower will be built and the Charlotte tower will stay - both perhaps higher and more obtrusive - and in both cases is it not necessary and the public will be ill-served.

6. Preemption regarding siting of all broadcast towers would, under the expansive language proposed, also cover most other towers. As the Broadcast Auxiliary Frequency coordinator for Vermont, I can identify numerous towers that have some sort of broadcast facility; DTV deployment does not hinge on construction of more such ancillary towers or modification thereof. Unless it involves the direct transmission of a DTV signal or is directly impacted by such a facility, it would be a mistake to even consider preemption of siting of other towers. Before any preemption is even considered, the burden should be placed on the applicant to show that, absent preemption, there is no other way the public can be served.

7. Many localities are dismayed at how much they must spend for technical advice and expertise to review applications, and I feel the applicants will always have the best technical resources. If they can be held accountable for their technical conclu-

sions and promises, I suggest they will be more forthcoming in the application process and will more readily provide technical data and information to local and state authorities - who, in turn, will feel better informed and able to more quickly act on a proposal. If the applicant utilizes effective internal tools to ascertain the technical and business viability of a particular proposal, the incremental cost to prepare this information to submit with an application should not be a significant burden. I urge the Commission to require its permittees and licensees to be held accountable, for whatever statements they make, in that particular jurisdiction.

Respectfully submitted,



October 29, 1997

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ATTACHMENT A

Mark F. Hutchins, October 29, 1997, re: MM Docket No. 97-182

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October 15, 1996

Report prepared for
Citizens for the Appropriate Placement of Telecommunications Facilities
P. O. Box 12
Charlotte, VT 05445-0012

INSPECTION REPORT: PEASE MOUNTAIN TELECOMMUNICATIONS SITE

Inspection, analysis and conclusions regarding the operation of the telecommunica-
tions site on Pease Mountain, Charlotte, Vermont with particular attention to radiofrequency
radiation, human health and public safety.

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I. INTRODUCTION

1. Radio Station WIZN (FM) began broadcasting from a new tower on Pease Mountain in Charlotte, Vermont, in 1987. From the first day of operation, widespread interference was experienced by a number of Charlotte residents. This is not surprising because a significant percentage of the Charlotte population resides within what the Federal Communications Commission (FCC) calls the "blanketing interference" zone¹; this is an area, discussed in detail later, in which there is an expectation of interference to various electronic devices and electrical appliances. The interference continues to plague many residents in a variety of ways and, during the past year, a number of residents have become concerned about the legality of this operation and about the health and safety threat it may pose.
2. In 1991, a cellular base station was added to the Pease Mountain tower. Since that time, interference has continued and, because not all instances have been accompanied by discernable audio from WIZN, the cellular base station's contribution to the interference has been suspect. Rather than taking effective steps at both attribution and mitigation, both licensees have produced reports, issued press releases and made public statements - some under oath - that they either couldn't be accountable and/or the other licensee must be the responsible party.
3. This firm, as part of its business, performs FCC compliance measurements and inspects broadcast facilities in order to prepare licensees for inspection by the FCC. Since broadcasters are also subject to regulations of the Federal Aviation Administration (FAA), the Environmental Protection Agency (EPA), the federal Occupational Safety and Health Administration (OSHA), and comparable state-level agencies, our inspections usually address compliance with these regulations as well. Because of the concerns about legality, health and safety, this firm was engaged to perform a comprehensive inspection and analysis of the Pease Mountain site. The caveat issued at the onset was that this would not be a normal inspection in that it would not be possible, due to what has become an adversarial situation, to have full access to the facility and the records of the licensees in a way to allow definitive statements. Instead, it has been necessary, in some cases, to make a presumption based either on other facts or by other conduct of the licensees.
4. There has been hesitation on the part of Vermont's Congressional delegation to become involved, despite numerous contacts from constituents in Charlotte, in what has appeared to be, at least initially, a local zoning dispute. The Charlotte Zoning Board of Authority (ZBA) has declined to enforce its own rules, even in the face of the ZBA determination that Burlington Broadcasters, Inc. (WIZN) has violated conditions of its permit, citing preemption by the FCC². This has made it more difficult for the local residents, since the Charlotte ZBA has effectively relieved itself of further responsibility on behalf of these citizens. Although the issue of preemption/jurisdiction is set to be decided in Federal Court in at least one action related to this site, the Findings of Fact issued by the ZBA, finding WIZN in violation, reflect on the character and candor of the licensee, which may be of great concern to the FCC. Additionally, the allegations of violation of the FCC blanketing interference rules, raised at the ZBA hearings, certainly seem to indicate the problems at Pease Mountain are, at least in part, a "federal case."

¹ 47 CFR Sec. 73.318

² Town of Charlotte, Zoning Board of Adjustment - In re: Appeal of Burlington Broadcasters d/b/a WIZN-FM, et al., July 11, 1996.

5. FCC Rules compliance depends more on self-certification and good-faith effort on the part of licensees since deregulation in the 1980s, with closing of some FCC Field offices, and budget cuts that have reduced field-enforcement effort. The experience of this firm is that most licensees are conscientious and determined to meet both the letter and spirit of the law; when there are deficiencies or problems, it is almost always due to lack of understanding and not deliberate infraction of the Rules. What has been observed regarding the Pease Mountain site, however, is repeated misrepresentation and/or negligence and, in the case of the licensee of WIZN, statements made to secure a permit followed by action demonstrably at odds with the original promise. What follows will outline apparent violations of guidelines and rules of the FAA and FCC; given the promise-versus-performance history, it is likely that OSHA violations exist as well. If these licensees are found to be in violation, that it has occurred in the area of human health and public safety makes this conduct particularly reprehensible.

II. BACKGROUND

6. On August 29, 1986, the licensee of WIZN, known at the time as Radio Vergennes, Inc., filed a construction permit application³ for a new transmission site in response to FCC Docket 84-231 which, among other things, changed the station's channel (frequency) and operation from Class A to the much more powerful Class C2. The President of Radio Vergennes, Inc., Arthur J. LaVigne, signed the accompanying Certification of Site Availability, although the use of Pease Mountain for this commercial enterprise would not normally have been allowed by Charlotte zoning, and was not subject to a ZBA hearing until November 12, 1986. There was considerable interest on the part of the ZBA to find a way to approve the application, which would have allowed the tower built by WIZN to be used by, and replace the inadequate tower of, Charlotte Fire & Rescue (CFR). By having WIZN donate the tower to CFR, the granting of conditional use to a non-commercial entity - CFR - was apparently considered more plausible.⁴

7. While tower-sharing by municipal services and commercial broadcasters is not unusual, particularly involving a short (200 feet or less) tower, it is unthinkable for this to occur with a high-power broadcast facility unless considerable engineering expertise is brought to bear on issues of both interference and radiation safety. Review of the FCC construction-permit application and the ZBA proceeding makes it clear this did not happen. As will be discussed later, the radiofrequency radiation analysis submitted to the FCC⁵ failed entirely to note either the co-location with other transmitters and receivers or the highly-irregular terrain and the tower location on the side of Pease Mountain, facing a sizable obstruction in the form of another large hill. Furthermore, WIZN assured the ZBA "that there will be no interference and if there is, WIZN will trap it out."⁶ WIZN could never have had a reasonable expectation that there

³ FCC File No. BPH-860829IC, granted October 31, 1986.

⁴ Charlotte, VT, Zoning Board of Adjustment, Meeting minutes: 11/20/86, 12/23/86; Findings of Fact, 1/7/87.

⁵ BPH-860829IC, Annex 6.6, Radiation Hazard Statement, was determined by the applicant to be in error. A supplemental exhibit, EE-1, was submitted September 30, 1986. Both relied on data and graphical information contained in FCC Office of Science & Technology Bulletin No. 65 which make it clear that such information applies "...to single FM antennas in which base of supporting tower is at approximately the same level or higher than the surrounding terrain," which is not the case at Pease Mountain.

⁶ Charlotte ZBA, Meeting minutes: 12/23/86.

would be no interference, but rather should have known that it would be severe and, in some cases, unsolvable.

8. Figures 1 - 5 show the placement of the Pease Mountain Communications site. On the shaded-relief map (Fig. 1), both Jones Hill and Pease Mountain are shown with arrows pointing to the general area of highest elevation.

Figure 1 • Charlotte, Vermont - Pease Mountain Tower Site

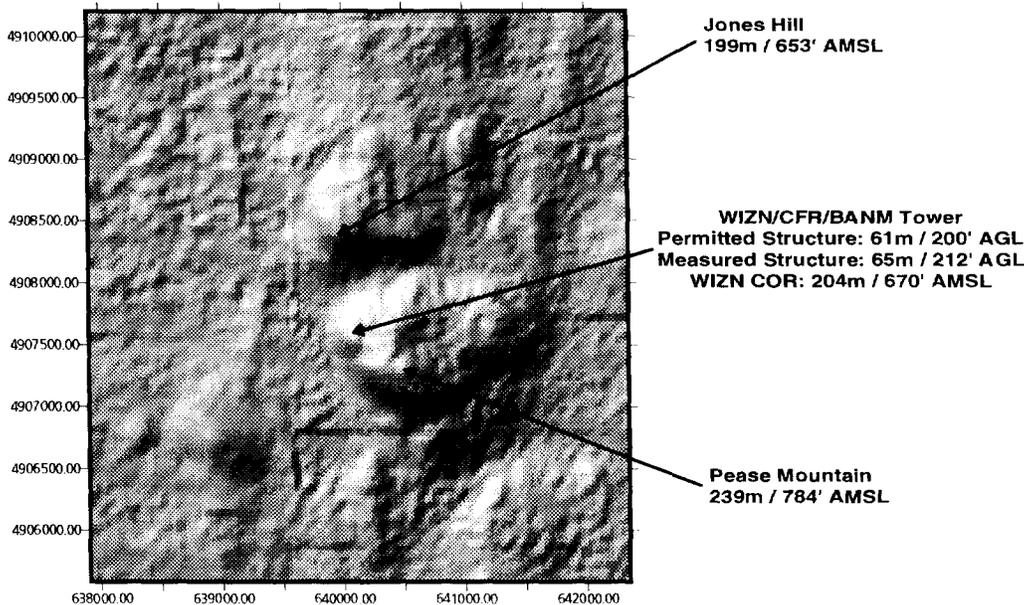
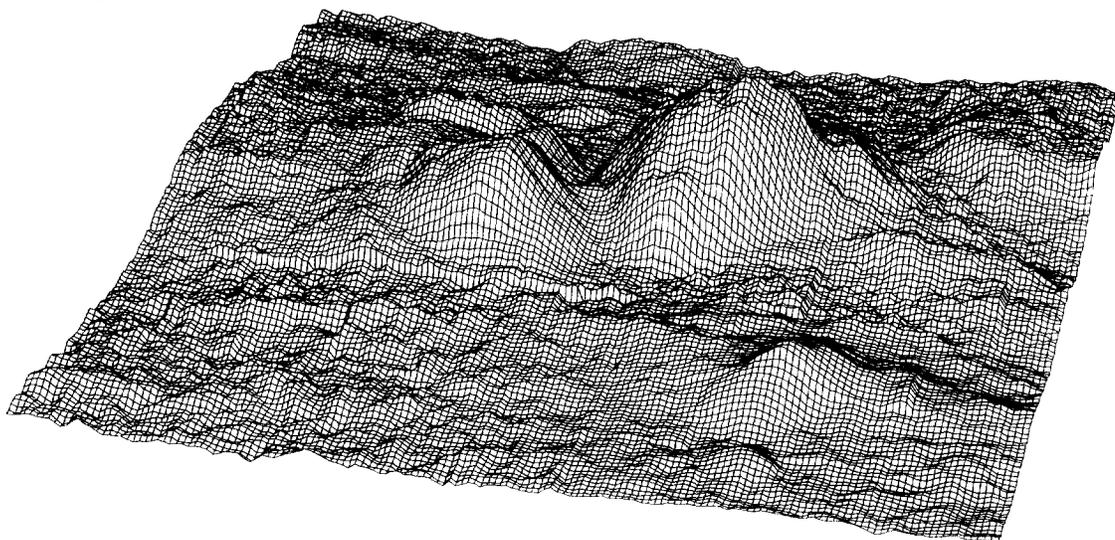


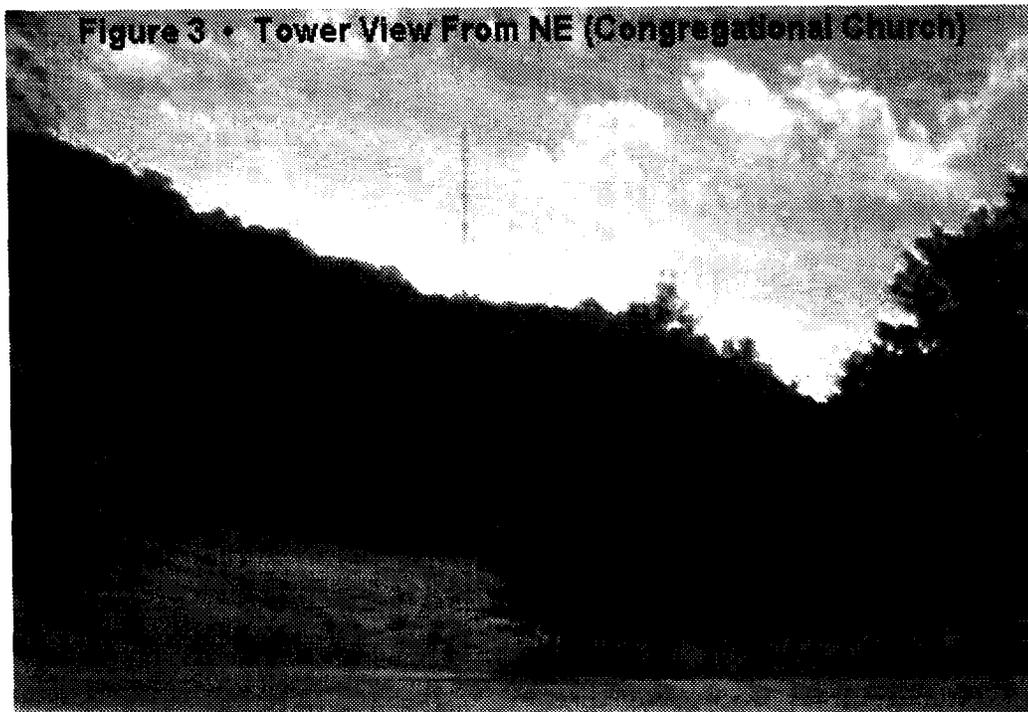
Figure 2 is the view from a west/south-west angle, with Pease Mountain to the right (south) of Jones Hill. All figures have been prepared using the 30-meter elevation database, which is extremely accurate. The FCC specifies the use of USGS topographic maps for the determination of the actual height above mean sea level (AMSL) for the tower base. In this case, the Mount Philo, VT, 7.5-minute quadrangle⁷ was compared. The path profiles indicate use of the USGS topographic map height, which is

Figure 2 • Jones Hill and Pease Mountain - View From W/SW

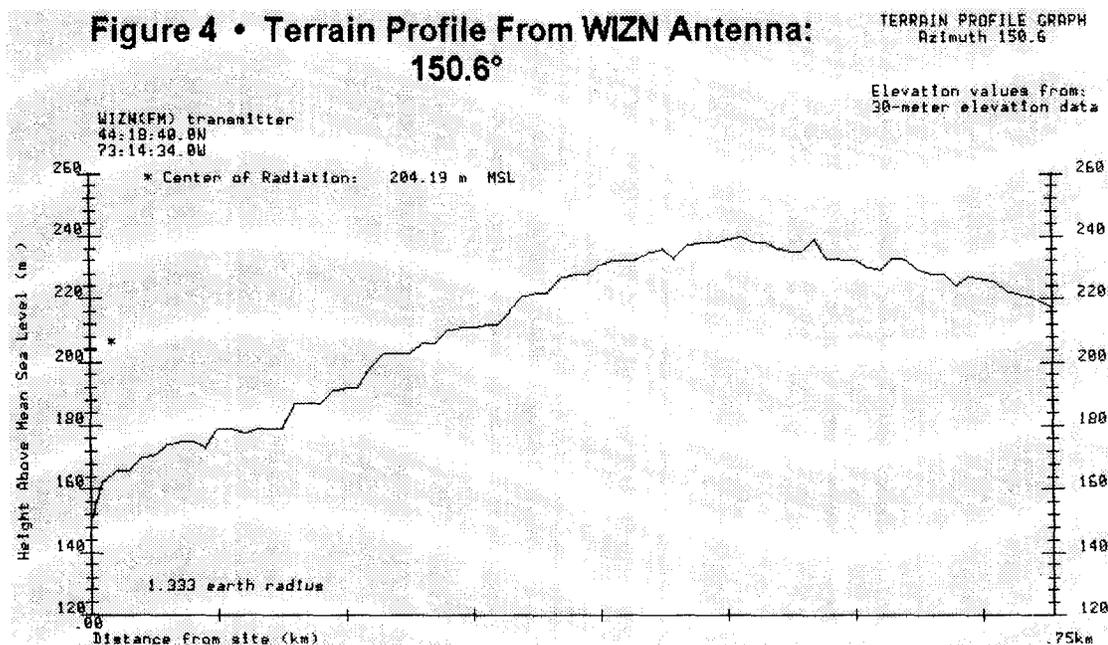


⁷ SW/4 - Burlington 15' quadrangle. Mount Philo, 1948; photorevised 1972.

13 meters lower than indicated by the weighted digital data.⁸ For microwave path clearances, it is better to utilize the less favorable height, but 13 meters makes almost no difference for the purposes of this study. Figure 3 shows the tower as viewed from the steps of the Charlotte Congregational Church; note the relatively low height of even the upper sections of the tower



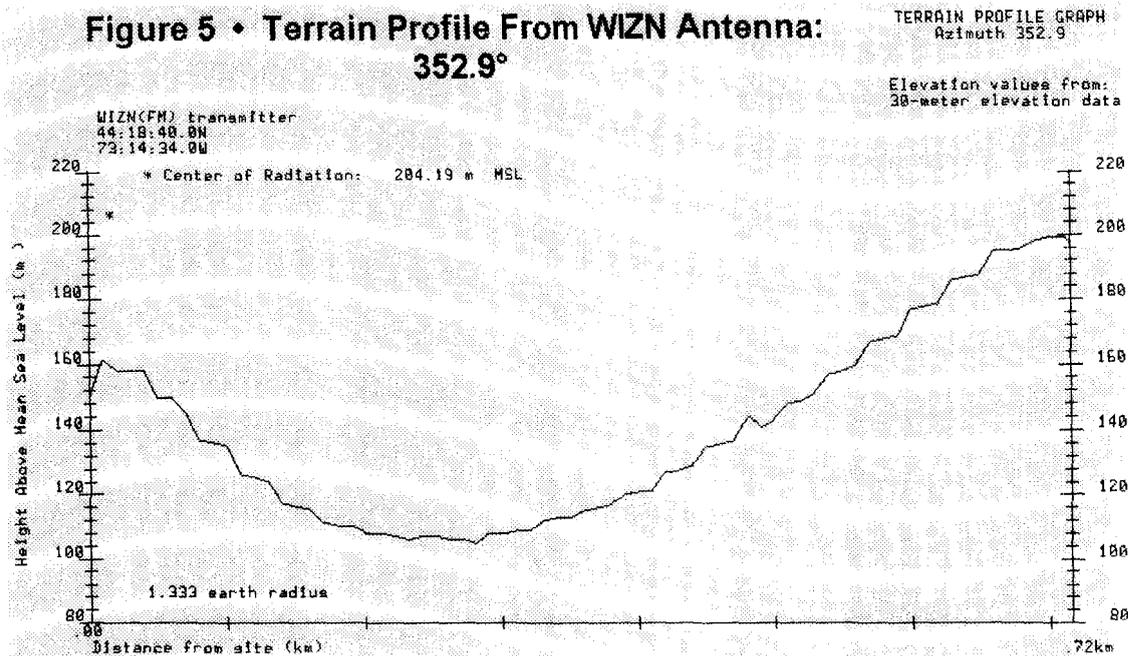
in comparison with the slope, to the left, toward the top of Pease Mountain. This is more accurately shown in the two path profiles prepared from the tower to a distance of approxi-



mately 750 meters, just under half a mile. Figure 4 is for the 150.6° azimuth, which includes some of the highest elevation points on Pease Mountain. Similarly, Figure 5 - the 352.9° azi-

⁸ Elevation points determined by a weighted method utilizing 12 data points for better accuracy.

muth - runs toward the highest points on Jones Hill. The southern slope of Jones Hill, in addition to being a residential area, provides an obstruction to the north almost as great as Pease Mountain to the south. The siting of the WIZN antenna with respect to these two major ob-



structions is completely at odds with good engineering practice and the provisions of the Rules regarding FM antenna location.⁹

9. Although part of Pease Mountain is conservation land, the tower abuts land which is Agricultural/Residential and there were already enough residences in close enough proximity to predict interference trouble at the time of the original planning. Indeed, nearby residential development which occurred after the tower construction had already been given subdivision approval under Act 250, Vermont's strict environmental control mechanism. The residents who purchased and/or built in this area had the expectation that, with Act 250 approval in addition to Charlotte's reputation for strict zoning, they would not be subject to invasive emissions from a commercial enterprise. WIZN, either deliberately or negligently, chose to ignore the fact that even more residences would be built nearby and, at the same time, failed to secure the Act 250 review of its own development - a review which probably would have been more rigorous than that of the cooperative Charlotte ZBA.¹⁰

10. What is also disturbing and unusual in respect to the nearby residences is the fact that the WIZN antenna, as outlined in Figures 1 - 5, has a center of radiation only 55 meters (180 feet) above ground, and is located far enough down the northern slope of Pease Mountain that the depression angle to many residences is relatively small. While a typical 4-bay FM antenna has a relatively narrow main lobe (compared with lower-gain antennas), the statement made in the WIZN construction-permit application, in which WIZN sought to minimize the amount of

⁹ 47 CFR 73.315(b): "The location of the antenna should be so chosen that line of sight can be obtained from the antenna over the principal city or cities to be served; in no event should there be a major obstruction in this path."

¹⁰ It has been determined that WIZN should have filed an Act 250 application, which has now been done; the hearing for this will be held October 29, 1996.

downward radiation,¹¹ is misleading since over half the horizon in the case of this antenna is hillside less than 750 meters away.

III. SPECIFIC ISSUES & PROBLEMS

A. Non-compliance with Blanketing Interference Rules¹²

11. WIZN received numerous complaints during its first year of operation from Pease Mountain, due to interference which began as soon as the station began operation at that site. Several of these involved receivers of the type specifically cited by the FCC as requiring satisfactory remedial action. At ZBA hearings held on May 22, 28 & 29, 1996, many people testified about problems with interference and problems with WIZN's response. "Prior to 1996, WIZN made sporadic attempts to assist individuals experiencing RFI [radiofrequency interference] problems. During this period, between 1986 and 1996, WIZN's efforts to reduce and/or eliminate RFI were largely ineffective. Only after receiving the 88 surveys and notice of potential zoning violation, did WIZN undertake a determined effort to resolve RFI complaints. While WIZN has successfully reduced and/or eliminated RFI in some cases, other Charlotte residents continue to experience annoying, costly, and burdensome interference problems."¹³

12. "Based on all of the evidence, the Board finds that WIZN has caused continuous and widespread RFI that has impaired the ability of Charlotte residents to communicate, transact business, and experience the peaceful enjoyment of their homes and property. In addition, the Board finds that these individuals have expended substantial amounts of money in their attempts to remedy interference problems."¹⁴

13. "Accordingly, WIZN is in violation of the terms of its December 23, 1986 conditional use approval and of Zoning Permit No. 86-136-JO, which expressly references that approval."¹⁵

14. Virtually all of the WIZN defense in this action has been to point out that only the FCC has jurisdiction, rather than making a credible effort to address the underlying problems. In a letter to the ZBA, WIZN's attorney addressed the Notice of Zoning Violation by noting: "1. The FCC has exclusive jurisdiction over the regulation of radio frequency interference phenomena.", "2. WIZN is not in violation of the terms of its zoning approvals.", and, finally, "3. Stay of enforcement. To the extent it is necessary, WIZN requests a stay of enforcement..."¹⁶ Raising jurisdictional issues and other legal maneuvering typify the way this licensee has responded to the problems it has caused the Town of Charlotte. The WIZN attorney never mentioned in his letter whether or not WIZN was, indeed, complying with the Rules of the FCC. However, just five days before this legal response, WIZN's consulting broadcast engineer performed measurements and determined that the station was out of compliance with FCC Rules due to inade-

¹¹ BPH-860829IC, Exhibit EE-1: "The typical four-bay antenna proposed by WIZN does not direct its main lobe of radiation downward, but has a narrow lobe oriented towards the horizon."

¹² 47 CFR Sec. 73.318

¹³ Town of Charlotte, Zoning Board of Adjustment - In re: Appeal of Burlington Broadcasters; General Findings of Fact, ¶ 8.

¹⁴ Town of Charlotte, ZBA - In re: Appeal...; General Findings of Fact, ¶ 7.

¹⁵ Town of Charlotte, ZBA - In re: Appeal...; Conclusion, ¶ 10.

¹⁶ Letter to Charlotte ZBA from John P. Cain, Esq., McCormick, Fitzpatrick, Kasper & Burchard, P.C., Burlington, VT, April 18, 1996.

quate third harmonic suppression.¹⁷ The third harmonic of WIZN, 320.1MHz, has been raised by several residents as a concern due to its proximity to the 319.5MHz used by remote units in home security systems. While the WIZN consultant's analysis of the security systems made some valid arguments about why the third harmonic was not the likely culprit, at least two households discontinued use of their systems due to persisting problems apparently caused by RFI.

B. Failure To Properly Address Non-ionizing Radiation Safety¹⁸

15. The Pease Mountain site is accessible by means of a steep, unpaved road suitable only for all-terrain vehicles. Beyond the difficulty of terrain, there is no gate or other means to deter travel on the road. Most of Pease Mountain is either conservation land, traversed by a variety of individuals and groups, or residential, including the subdivision common land which abuts the property on which the tower is located. There is neither fencing nor any posting of the tower-site property. It is only reasonable to conclude that the general public may enter an area where the Maximum Permissible Exposure (MPE) levels might be exceeded, particularly under the new standard.¹⁹

16. There have been questions raised about which standard is in effect for sites like Pease Mountain, but the FCC has made it clear that "With respect to previously-licensed stations, we note that we expect our licensees to comply with our RF radiation environmental rules as applicable to them... Once a license is granted, we expect our licensees to continue to operate their facilities in compliance with these limits."²⁰ The more stringent "General population/uncontrolled exposures apply in situations in which the general public may be exposed, or in which persons that are exposed as a consequence of their employment may not be fully aware of the potential for exposure or can not exercise control over their exposure."²¹

17. Because of the accessible nature of this site, the RF radiation must be considered in terms of the MPE levels for the general public. Moreover, because the site is a relatively clear and flat area, it is reasonable to assume that hikers might well be in this area beyond the Averaging Time allowance of 30 minutes.

18. The maximum power density allowed prior to the adoption of the present standard was 1.0 mW/cm², time-averaged over a 6-minute period. WIZN, as previously noted, incorrectly tabulated the worst-case applicable distances from the antenna to any point on the ground, and subsequently filed a supplemental exhibit in which it was concluded that the WIZN antenna would be at a safe distance relative to any point on the ground. This was done by utilizing both the EPA recommendation for realistic (compared with a truly worst-case) approximation for ground reflection²² *combined with* a mitigating field factor. Absent a detailed site survey

¹⁷ Engineering report submitted by David W. Groth, Red Hook, NY, May 10, 1996, including the results of measurements performed March 18 and April 13, 1996.

¹⁸ 47 CFR 1.1307.

¹⁹ Recommended exposure guidelines published by the National Council on Radiation Protection and Measurement (NCRP) in "Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields," NCRP Report No. 86, Sections 17.4.1, 17.4.1.1, 17.4.2 and 17.4.3. ©1986, NCRP, Bethesda, MD 20814. These guidelines are the basis for the new standard adopted by the FCC and contained in 47 CFR 1.1310, Table 1.

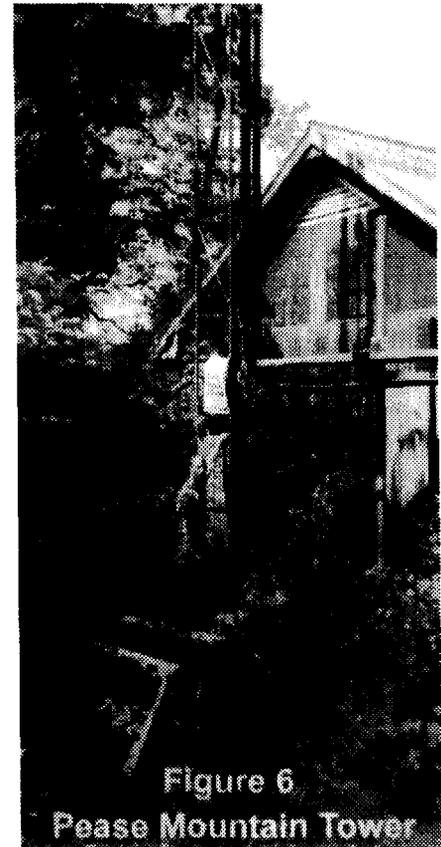
²⁰ FCC Report & Order, 96-326, August 1, 1996; ¶119.

²¹ 47 CFR 1.1310, Table 1, Note 2.

proving otherwise, this firm feels that is wrong to do so, since many of the mitigating factors which might be allowed in normal circumstances are not present at the Pease Mountain site. This position is buttressed by the FCC Environmental/RF Compliance Worksheets which WIZN should have used initially and/or at the time of its most recent license renewal. Among the exclusions, for which standard assumptions should not be made and the worksheet is not allowed, are the situations in which: "2. There are sources of RF radiation on your tower other than AM, FM, or TV that are not categorically excluded from environmental processing by 47 C.F.R. Section 1.1307;" and "4. The tower is located at a site where the terrain or a building (or other inhabited structure) within a 315 meter radius is higher than the terrain at the base of the tower."²³ Both exclusions apply at the Pease Mountain site. More favorable formulae should only be used for single antennas in which the base of the supporting tower is at approximately the same level or higher than the surrounding terrain. By applying a vertical field factor of 0.3 *in addition to* the EPA-recommended factor, WIZN determined that it would comply at the tower base, with a power density of 0.119 milliwatts/cm². Using the normal formula more appropriate given the surrounding terrain, the prediction for the base of the tower would be 1.34 milliwatts/cm², which exceeds the allowable standard in effect at the time.

19. WIZN also failed in its Radiation Hazard Statement to acknowledge that it would be sharing the tower with other emitters. Although there would be an expectation that these other transmitters, being both low power and usually intermittent duty, would be within their individual exposure limits, it is always necessary to note and calculate for cumulative effect which could be the worst case.

20. Perhaps most shocking is the fact that, although WIZN promised that "Where accessible areas of support structures are within the hazard zone, they will be posted with warning signs and protected from unauthorized access."²⁴ As shown in Figure 6, the site was not at all in acceptable condition on the date of the inspection, July 22, 1996. There was one damaged RF Radiation Hazard sign attached to the tower. The tower itself has wooden climbing guards which had become loose in a manner which made them able to assist climbing. Furthermore, there were sawhorses close to the tower, presenting an attractive nuisance. There is no fencing to restrict unauthorized access with respect to the tower.



C. Compliance With OSHA Radiofrequency Safety Rules²⁵

21. Given the indication WIZN has not taken seriously its obligation as a licensee in other areas, it is probable that the station has an inadequate RF safety program to protect its employees and subcontractors who may be at the

²² FCC - Office of Science & Technology Bulletin No. 65, 10/85; p. 8.
²³ FCC Broadcast License Renewal Application, Form 303-S; worksheet Section II.
²⁴ BPH-860829IC, Annex 6.6, Radiation Hazard Statement.
²⁵ 29 CFR 1910.147

tower. The OSHA Lockout/Tagout Rules are probably not being followed. Because there is an auxiliary antenna which may be capable of coupling significant amounts of energy back into the transmitter room, both the FCC and OSHA guidelines regarding this possibility may not be properly followed.

D. Violation of Tower Height Rules²⁶

22. From the time of the original FCC construction permit application through filings made with the District Environmental Commission by the licensees as recently as September, 1996, the tower has been described as 199 feet high, unpainted and unlit. On August 5, 1994, Burlington Broadcasters, Inc., submitted an application in support of license modification in which it was stated: "There has been no change in effective radiated power, antenna height above average terrain, geographic coordinates, antenna or supporting structure."²⁷ This appears to be the most recent submission to the FCC regarding tower height.

23. A professional survey has shown the tower structural height to be 212.2 (±0.7) feet. This is consistent with what is highlighted in Figure 7. It appears to be a pole-mounted antenna which could explain the extra 13 feet on the tower.

24. The FAA database reveals that the tower is noted (at 199 feet) as a hazard / obstruction relative to Deeds Airport, a private facility 2.1 nautical miles southwest of the tower. The tower is not painted or lighted as it would normally be at this height. This information has already been brought to the attention of the FCC by Holly Fournier of Charlotte.



²⁶ 47 CFR Part 17, Construction, Marking and Lighting of Antenna Structures
²⁷ FCC File No. BMLH-940805KE, Engineering Data, Exhibit No. 1; granted January 30, 1995.