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AUG 20 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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SPECIAL COUNSEL  
JEROLD L. JACOBS

August 20, 1998

Magalie Roman Salas, Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: MM Docket Nos. 96-7 and 96-12  
(Banks, Redmond, Sunriver, Corvallis, and The Dalles OR)

Dear Ms. Salas:

Enclosed for filing on behalf of our client, CBS Radio License Inc. ("CBS"), licensee of Station KBBT-FM, Banks, Oregon, are an original and eight (8) copies of its "Supplement to Response to Petition for Reconsideration" ("Response") in the two above-referenced FM channel rulemaking proceedings. (Because two dockets are involved, four extra copies of the Response are being supplied for the convenience of the Commission.)

Because the July 22, 1998 Reply to CBS's "Response to Petition for Reconsideration" introduced a new engineering statement into this proceeding, which makes erroneous statements and conclusions that were not contained in the original Petition for Reconsideration, and upon which CBS has not previously had any opportunity to comment, "new matters" have clearly been raised. Hence, CBS urges that it be given a final opportunity to "set the record straight". To the extent that this pleading requires specific authorization, pursuant to §1.45(c) of the Commission's Rules, CBS requests such approval in the interest of administrative due process and a complete and accurate public record in this proceeding. See Footnote 1 of the enclosed Supplement.

Please direct any communications or inquiries concerning this matter to the undersigned.

Very truly yours,

  
Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (all w/enc.)

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**AUG 20 1998**

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),	)	MM Docket No. 96-7
Table of Allotments,	)	RM-8732
FM Broadcast Stations	)	RM-8845
(Banks, Redmond, Sunriver and Corvallis, Oregon)	)	
	)	
In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 96-12
Table of Allotments,	)	RM-8741
FM Broadcast Stations	)	
(The Dalles and Corvallis, Oregon)	)	
	)	
In re Application of	)	
	)	
Madgekal Broadcasting, Inc.	)	File No. BPH-960206IE
Station KFLY(FM), Corvallis, Oregon	)	
	)	
For Construction Permit to Modify	)	
Licensed Facilities (One-Step Upgrade)	)	
	)	
To: Chief, Allocations Branch		
Mass Media Bureau		

**SUPPLEMENT TO  
RESPONSE TO PETITION FOR RECONSIDERATION**

**CBS Radio License Inc.** ("CBS"), licensee of Station KBBT-FM, Banks, Oregon, by its attorneys, hereby supplements its June 30, 1998 "Response to Petition for Reconsideration" ("Response") in the above-captioned proceeding. In support of this Supplement, the following is shown:<sup>1</sup>

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<sup>1</sup> To the extent that CBS's supplementary pleading requires specific authorization, pursuant to §1.45(c) of the Commission's Rules, CBS hereby requests such approval in the interest of administrative due process and a complete and accurate public record in this proceeding.

1. The July 22, 1998 "Reply" by Madgekal Broadcasting, Inc. ("MBI"), licensee of Station KFLY(FM), Corvallis, Oregon, to CBS's Response relies heavily upon a further Engineering Report ("Report II") prepared by McClanathan and Associates, Inc. While §1.429(g) is silent on the matter, the Commission's rules generally specify that "Replies...shall be limited to matters raised in the opposition". See §1.106(h) of the Rules. By introducing a new engineering statement into this proceeding as part of its Reply, which makes erroneous statements and conclusions that were not contained in MBI's original Petition for Reconsideration, and upon which CBS has not previously had any opportunity to comment, MBI has essentially raised new matters. Hence, CBS urges that administrative due process warrants that CBS be given a final opportunity to "set the record straight". See Footnote 1 above.

2. To rebut the errors contained in Report II and the related Reply, CBS attaches hereto a further Engineering Statement prepared by Clarence M. Beverage of Communications Technologies, Inc. ("Beverage Statement II"). In it, Mr. Beverage fully responds to six new engineering arguments made by MBI in Report II. As the Reply (at 2) states, the purpose of Report II is to demonstrate that operation of a reserved band Class C3 station at The Dalles is "feasible" and that such a reserved allotment, or the allotment of unreserved Channel 256C3, should be preferred by the Commission to the allotment of Channel \*268C3 granted by Report and Order, 13 FCC Rcd 6596 (Mass Media Bur. 1998), in this proceeding. CBS will now show the fallacies in MBI's Reply.

3. First, Beverage Statement II (at 2-3 and Figures 1 and 2) fully rebuts MBI's assertions (Reply at 4-5 and Report II at 1) that "Channel 211 may be used in The Dalles at

lower class A antenna powers,” “a Channel 213C3 station may be located at a site on Stacker Butte near The Dalles,” and “a Class C3 station could be operated on Channel 215 at a hilltop site identified as ‘1048’”. In reality, Channels 211A and 213C3 are not available, because they are precluded by a pending application for a new FM station on Channel 212A at Hood River, Oregon – File No. BPED-980522MB. As to Channel 215, Report II itself (at 1) asserts only that a Class A facility (Channel 215A) could be allotted to The Dalles -- not a Class C3 station. Hence, the Reply has clearly misspoken on that point. Moreover, and most importantly, Mr. Beverage concludes (Beverage Statement II at 3, 4) that, while a Channel 215A facility is technically feasible, it would have an ERP of only 100 watts, a service area of 917 square kilometers, and a population of merely 19,341 persons. In short, it would be a “low powered Class A station” and a “minimal facility” which “compares very unfavorably to the proposed reserved use of Channel 268 as a full C3 facility with 48,075 persons” that was allotted by the Report and Order herein. Id.

4. Second, the Reply (at 5-6) reiterates MBI’s view that severe terrain shielding precludes allotting Channel \*268C3 to The Dalles, and MBI attacks CBS’s use of the allegedly “non-standard Longley-Rice Propagation Method” to support CBS’s assertion that The Dalles would receive a 70 dBu signal with Channel \*268C3. At the outset, CBS emphasizes that the Response and Beverage Statement I stated and fully demonstrated that the two different transmitter sites specified for Channel \*268C3 in this proceeding “both...show 100%, 70 dBu service to The Dalles, using either the F(50,50) curves or the Longley-Rice propagation method” (emphasis added) (Response ¶9 and Beverage Statement I, p. 3 and Figures 1-2). Thus, MBI’s attack on CBS’s Longley-Rice showing, even if meritorious, leaves wholly un rebutted CBS’s

conclusion that terrain shielding does not preclude allotting Channel \*268C3 to The Dalles, using the Commission's "standard" propagation method.

5. Moreover, in any event, Beverage Statement II (at 3-4) shows that CBS's use of the Longley-Rice method cannot be classified as "non-standard" since the Commission recently proposed to adopt an analogous "Point-To-Point Contour Prediction Model" in MM Docket No. 98-93 that is based upon the "well accepted [Longley-Rice] model". See Notice of Proposed Rulemaking in MM Docket No. 98-93 (Streamlining of Radio Technical Rules), 63 Fed. Reg. 33892, 33895 (June 22, 1998), and Public Notice, "Technical Information Relating to MM Docket No. 98-93," DA 98-1406, released July 23, 1998. Under these circumstances, MBI's argument (Reply at 5) that Channel 256C3 should be preferred to Channel \*268C3 because Channel 256C3 alone would provide line-of-sight coverage to The Dalles falls flat. In point of fact, Channel \*268C3 and Channel 256C3 both would provide line-of-sight coverage.

6. Finally, MBI's contention (Reply at 6-7) that allotting Channel 256C3 to The Dalles would be superior to Channel \*268C3 is factually and legally erroneous. First, allotting Channel \*268C3 to The Dalles permits one community (The Dalles) to have a new service and two communities (Corvallis and Banks) to have upgrades, while allotting Channel 256C3 permits The Dalles to have a new service and only one community (Corvallis) to have an upgrade. MBI cannot be permitted to overlook the fact that its recently-filed one-step upgrade application (File No. BPH-980515IC), which allows it to upgrade its present Corvallis facilities to Class C1, is an indirect result of the Report and Order's allotment of Channel \*268C3 to The Dalles. On the other hand, if Channel 256C3 is allotted to The Dalles, CBS will not be able to upgrade its Banks facility at all.

7. In addition, MBI mistakenly argues (Reply at 7) that the greater areas and populations represented by a Channel \*268C3 allotment to The Dalles should be ignored “[g]iven the great uncertainty as to where the actual permittee of the proposed new noncommercial station at The Dalles will operate”. However, the Commission routinely makes allotment decisions based upon comparative area and population data. The data in this proceeding are no more “uncertain” than in other allotment cases, since applicants are almost always free to specify transmitter sites that differ from the allotment reference site coordinates. In sum, allotting Channel \*268C3 to The Dalles and Channel 298C1 to Banks and granting MBI’s Channel 268C1 Corvallis upgrade application maximize the efficient use of the electromagnetic spectrum and are, therefore, in the paramount public interest.

WHEREFORE, in light of the foregoing, CBS respectfully requests that the Bureau should take this Supplement into account when ruling on MBI’s Petition for Reconsideration and should either grant the parties’ settlement agreement in full or should affirm the allotments made in the Report and Order and grant MBI’s pending upgrade application (File No. BPH-980515IC).

Respectfully submitted,

**CBS RADIO LICENSE INC.**

By   
Howard J. Braun  
Jerrold L. Jacobs

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1300 - 19th Street, N.W. Suite 200  
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(202) 463-4640

Its Attorneys

Dated: August 20, 1998

**ENGINEERING STATEMENT**

**IN RESPONSE TO**

**REPLY BY MADGEKAL BROADCASTING, INC.**

**CONCERNING**

**RESPONSE TO PETITION FOR RECONSIDERATION**

**FILED BY**

**CBS RADIO LICENSE INC.**

**KBBT-FM BANKS, OREGON**

**MM DOCKET NOS. 96-7 AND 96-12**

**BANKS, REDMOND, SUNRIVER, CORVALLES**

**AND THE DALLES, OREGON**

**AUGUST 1998**

**ENGINEERING STATEMENT  
IN RESPONSE TO  
REPLY BY MADGEKAL BROADCASTING, INC.  
CONCERNING  
RESPONSE TO PETITION FOR RECONSIDERATION  
FILED BY  
CBS RADIO LICENSE INC.  
KBBT-FM BANKS, OREGON  
MM DOCKET NOS. 96-7 AND 96-12  
BANKS, REDMOND, SUNRIVER, CORVALLES  
AND THE DALLES, OREGON**

**AUGUST 1998**

**SUMMARY**

The following engineering statement has been prepared on behalf of **CBS Radio License Inc.** ("**CBS**"), licensee of station KBBT-FM, Banks, Oregon. On June 30, 1998, **CBS** filed its "Response to Petition for Reconsideration" ("Response") in the two above noted proceedings. On July 24, 1998, Madgekal Broadcasting, Inc. ("Madgekal") filed a Reply to the **CBS** Response. This statement addresses six new engineering arguments found in a July 15, 1998 engineering statement prepared by McClanathan and Associates, Inc. which was attached to Madgekal's July 24, 1998 Reply.

The engineering statement accompanying Madgekal's Reply asserts the following six points:

1. Channel 211 may be used in The Dalles area at a lower Class A antenna power.
2. A minimum power, Channel 213C3, facility may be located on Stacker Butte in compliance with *Section 73.525(e)*.
3. Channel 215A can be used at a hilltop site identified as "1048" in compliance with *Section 73.525(e)*.
4. Channel 268C3 is not an appropriate allotment for The Dalles, Oregon due to severe terrain shielding to the populated areas of the corporate city of The Dalles.

5. Allotment of Channel 268C3 to The Dalles will eliminate Channel 215A as an available NCE channel due to the 53 Channel I.F. spacing requirement.
6. Channel 256C3 is a superior allotment for The Dalles as it will preserve the use of Channel 215A for The Dalles.

Responses to Madgekal's engineering statement are fully developed in the following pages.

### **NCE CHANNEL AVAILABILITY (POINTS 1-3)**

In the May 11, 1998 engineering statement prepared by McClanathan on behalf of Madgekal, it was stated that an NCE FM channel study demonstrated that Channels 201, 211, 213 and 215 have possibility for use to serve The Dalles as C3 facilities. Madgekal's most recent engineering statement appears to concede that Channel 201 is not available, classifies Channel 211 as a Class A channel, Channel 213 as a minimum C3 facility, and Channel 215 as a Class A channel.

A review of the current FCC database reveals a pending application for a new NCE FM station on Channel 212A at Hood River, Oregon. The application has been filed by KBPS Public Radio Foundation, FCC File No. BPED-980522MB. *Figure 1*, attached, is a *Section 73.509* allocation study for Channel 213C3 at the suggested Stacker Butte site location. The proposed KBPS Channel 212 site is located inside the Channel 213C3 60 dBu and the KBPS 54 dBu F(50,10) interfering contour encompasses all of The Dalles. Based on this showing, it is believed reasonable to state that Channel 213C3 will be precluded from use at The Dalles upon grant of the KBPS application.

It is noted that Channel 211, like Channel 213, is a first adjacent channel to KBPS's proposed Channel 212A facility and would also be similarly precluded for use in The Dalles.

Channel 215A was studied next. Based on the site "1048" ERP, RC and coordinates found on Madgekal's map labeled "NCE Channel 215A - The Dalles, OR", a Class A facility will meet *Section*

73.509 allocation standards as seen on Figure 2, attached. However, it must be noted that the facility has an ERP of 1 kW and a HAAT of -15.5 meters which is equal to an ERP 0.1 kW at a HAAT of 100 meters. The 60 dBu contour for this minimal facility encompasses an area of 917 square km and a population of 19,341 persons.

#### **CHANNEL 268C3 ALLOTMENT (POINTS 4-6)**

Madgekal continues its objection to the use of Channel 268C3 at The Dalles based on a lack of line of sight to portions of the community. Madgekal goes on to state that "National Bureau of Standards Technical Note 101 or Longley-Rice field calculations are not sufficiently accurate to determine the actual received VHF field strength in severely shadowed areas." Madgekal's objection to these methodologies is not surprising given the fact that CBS has demonstrated 70 dBu service to 100% of The Dalles using the Longley-Rice methodology. However, this objection rings hollow against the Commission's proposed use of a new Point-to-Point terrain sensitive propagation model in MM Docket No. 98-93.

In a Public Notice released July 23, 1998 titled "Technical Information Relating To MM Docket No. 98-93", the Commission directed consulting engineers to the FCC Worldwide web site at <http://www.fcc.gov/oet/fm/ptp>. At that address, under the title "The Point-To-Point FM Model Compared to Measurement Data" is the following paragraph:

" In the NPRM, the Commission proposed a point-to-point "PTP" radio propagation prediction model to take into account the effects of terrain while streamlining the technical rules. The standard method for predicting coverage and interference is use of the FCC curves, Section 73.333 of FCC Rules. Because of the limited length (3 to 16 kilometers) of the radials used to determine antenna height above average terrain, the Commission's standard propagation methodology does not accurately account for all terrain effects. The FCC curves represent average situations, so they often fail to account for radio propagation losses due to terrain obstructions. Also, the curves tend to overestimate losses in especially flat areas. The PTP model, on the other hand, examines specific terrain elevation data for each propagation path. It combines a well-accepted model of radio diffraction with a procedure for characterizing terrain obstructions". Emphasis added.

A review of other portions of the FCC Web site indicates that the "well accepted model" used in the proposed Point-to-Point method is in fact taken from NBS Tech Note 101/Longley-Rice. On this basis

**CBS** is confident in its representation that Channel 268C3 is the superior allotment for The Dalles and that 70 dBu service will be provided to the community.

In light of the preceding analysis, it is believed that Madgekal's Points 5 and 6 are not valid. Point 5 suggests that allotting Channel 268C3 to The Dalles would preclude Channel 215A at The Dalles. Channel 268C3 will reach 48,075 persons while the Channel 215A proposal set forth by Madgekal would reach only 19,341 persons, making Channel 268C3 the clear preference from a public interest standpoint. As to Point 6, and given the superior NCE service area associated with Channel 268C3, there is no need to protect Channel 215A as the NCE service it would offer to The Dalles is clearly inferior.

### **CONCLUSION**

Based upon the analysis herein, Madgekal's arguments favoring NCE operation at The Dalles on Channels 211A, 213C3, and 215A are incorrect. The pending application for Channel 212A at Hood River, Oregon precludes both Channel 211A and 213C3 from a site that would adequately serve The Dalles. Channel 215A, as depicted by Madgekal, would operate with the equivalent of 0.1 kW @ 100 M HAAT and serve only as a low powered class A station reaching 19,341 persons within its 60 dBu contour. This compares very unfavorably to the proposed reserved use of Channel 268 as a full C3 facility with 48,075 persons within the 60 dBu contour.

Finally, **CBS** reaffirms the propriety of the Longley-Rice model to demonstrate 70 dBu service to The Dalles from a Channel 268C3 allotment. The Commission's proposal for a superior point-to-point propagation model in MM Docket 98-93 supports use of the Longley-Rice model as a more accurate method of predicting signal levels. In sum, **CBS'** engineering analysis clearly demonstrates that Channel 268C3 is the best NCE allotment for The Dalles, Oregon.

The foregoing was prepared on behalf of **CBS Radio License Inc.** by Clarence M. Beverage of *Communications Technologies, Inc.*, Marlton, New Jersey, whose qualifications are a matter of record with the Federal Communications Commission. The statements herein are true and correct of his own knowledge, except such statements made on information and belief, and as to these statements he believes them to be true and correct.

By 

**Clarence M. Beverage**  
for *Communications Technologies, Inc.*  
Marlton, New Jersey

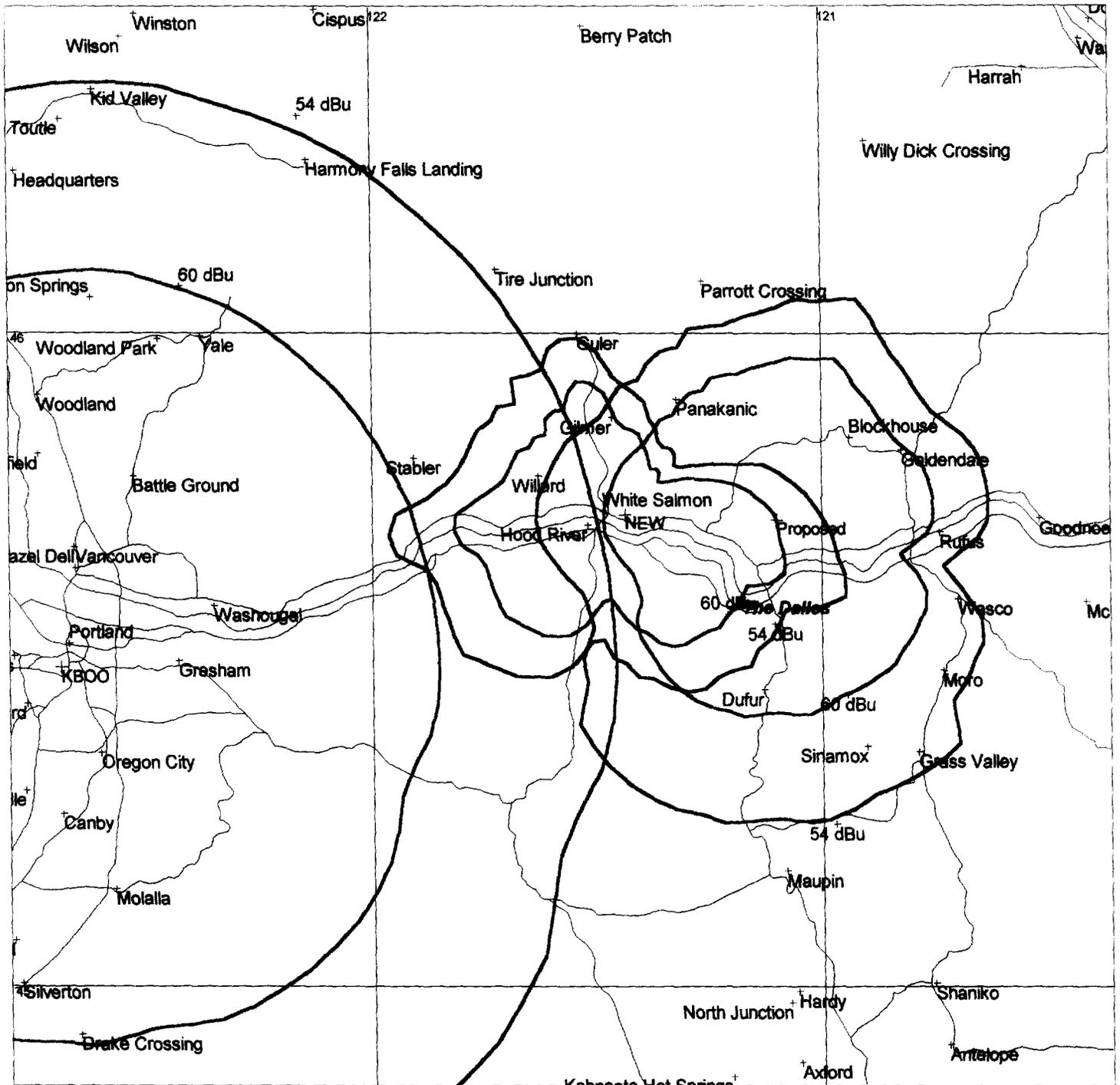
**SUBSCRIBED AND SWORN TO** before me,

this 19<sup>th</sup> day of August, 1998,

Esther G. Sperbeck, NOTARY PUBLIC

**ESTHER G. SPERBECK**  
**NOTARY PUBLIC OF NEW JERSEY**  
**MY COMMISSION EXPIRES OCT. 15, 2002**

**FIGURE 1 NCE Channel 213C3 - The Dalles, OR**



Communications Technologies, Inc. Marlton, NJ 08053

Scale 1:1000000

50 Km

— FM Service

— FM Interfering

— Highways

— State Borders

— Lat-Lon Grids



**CERTIFICATE OF SERVICE**

I, Dolly M. LaFuente, do hereby certify that on this 20th day of August, 1998, I have caused to be mailed, or hand-delivered, a copy of the foregoing "**Supplement to Response to Petition for Reconsideration**" to the following:

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**\*BY HAND**