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September 7, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: Petition for Rule Making

Dear Ms. Salas:

On behalf of Great Scott Broadcasting, licensee of WKHI(FM), Exmore, Virginia, I am transmitting herewith an original and four copies of a Petition for Rule Making seeking to amend the FM Table of Allotments by deleting Channel 298B at Exmore, Virginia, and assigning Channel 298B1 for use at Fruitland, Maryland.

Should there be any questions concerning this matter, please contact the undersigned.

Very truly yours,



Ross G. Greenberg

RGG:rg
Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
DIRECTOR OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 99 - _____
FM Broadcast Stations)	RM _____
(Exmore, Virginia and Fruitland, Maryland))	

To: Chief, Allocations Branch

PETITION FOR RULE MAKING

Great Scott Broadcasting, licensee of broadcast Station WKHI(FM), Exmore, Virginia ("Great Scott"), by its attorneys and pursuant to Section 1.401 of the Commission's Rules, hereby requests that the Commission institute a rule making proceeding to amend Section 73.202(b) of its Rules, the FM Table of Allotments, by deleting Channel 298B at Exmore, Virginia, and assigning Channel 298B1 for use at Fruitland, Maryland.

Submitted herewith on behalf of Great Scott as Attachment 1 is an Engineering Statement of Cohen, Dippell and Everist, P.C. (the "Engineering Statement") demonstrating that this petition is in full accord with Commission minimum distance separation and city grade coverage requirements.^{1/} Grant of the amendments proposed herein would result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures,

^{1/} It is requested that Channel 298B1 be allotted to Fruitland, Maryland, at a site located approximately 15 kilometers south-southwest of Fruitland. Engineering Statement at 3.

Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), reconsideration granted in part, denied in part, 5 FCC Rcd 7094 (1990), and would benefit a community in need of local transmission service. Under this precedent, these changes are to be made without opening the allotment to new applicants. See id.

The proposed change for WKHI(FM) would provide Fruitland with its first local service. Fruitland, incorporated in 1947 and listed in the 1990 census with a population of 3,511, has its own post office and zip code, its own police force, city hall, sanitation department, water and sewage plant, a bank, a primary and intermediate school, and a volunteer fire company. Telephone Interview by Ross G. Greenberg, Esq. of Peter Roskovich, President of Fruitland Chamber of Commerce (Aug. 31, 1999); Fruitland Home Page Web Site, <http://ci.fruitland.md.us> (as of Aug. 30, 1999) (printout annexed hereto as Attachment 2). Fruitland is currently developing a 91-acre industrial park located six miles from Salisbury-Ocean City Regional Airport and three miles from the Port of Salisbury. Id. A Wal-Mart that will employ approximately 600 people is expected to open in Fruitland in the spring of 2000. Fruitland Annual Newsletter, July 1999, at 5 (annexed hereto as Attachment 3). Accordingly, it is clear that Fruitland is an independent community deserving of its first local transmission service.

With respect to the technical aspect of the WKHI(FM) proposal, it is respectfully noted that the operation from the transmitter site identified in the Engineering Statement would result in a 1.0mV/m signal coverage of approximately 3,724 square kilometers containing 124,544 persons, compared to current coverage of approximately 1,789 square kilometers containing 47,217 people. The gain area from the proposed site encompasses 3,057 square

kilometers containing 108,277 people. The loss area from that site, by contrast, would encompass only 1,122 square kilometers and 31,400 persons. The entire gain/loss area is well served during the day, with at least 5 daytime reception services over the entire area.

Engineering Statement at 4. Operations from the proposed site would not create any nighttime white or gray area, but would eliminate a nighttime gray area of 104 square miles containing 647 people. Id.

The proposed change for WKHI(FM) will not cause Exmore (population 1,115) to lose its only local transmission service allotment. The Commission granted a construction permit for Channel 291B, allotted to Exmore (Permit File No. BPH-951109MC), to Be-More Broadcasting Company on April 24, 1998. Although a construction permit to build a new station is not a substitute for the loss of a operating station, the construction permit for Channel 291B should not be entirely disregarded and is “a factor to be considered in favor of the proposal”

In re Amendment of the Commission’s Rules Regarding Modification of FM and TV

Authorizations to Specify a New Community of License, 5 FCC Rcd 7094 (1990) at ¶ 19. Under the Commission’s current rules, the permittee or its successor must build the Channel 291B Exmore station no later than April 24, 2001. Although in the past permittees were sometimes granted multiple extensions of such deadlines, the Commission’s current rules leave little opportunity for such delays. See 47 C.F.R. §73.3598. Accordingly, the community of Exmore will not be deprived of local transmission service indefinitely and can reasonably expect a new service in less than two years.

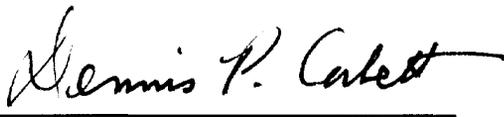
In sum, the reallocation proposed herein will result in a first local, Class B1 service for Fruitland, a community with a population three times that of Exmore; elimination of a

nighttime gray area of 104 square miles containing 647 persons; and a net extension of service to 77,327 persons. These public interest benefits are more than sufficient to outweigh the removal of local service from Exmore, which can expect a new local transmission service in less than two years. Accordingly, Great Scott respectfully submits that the allotment proposed herein would serve the public interest and should be implemented. Great Scott hereby expresses its intention to apply for Channel 298B1 at Fruitland, Maryland, if allotted and, if authorized, to build the station promptly.

WHEREFORE, for the reasons stated above, a rule making proceeding should be instituted to amend Section 73.202(b) to delete Channel 298B at Exmore, Virginia, and assign Channel 298B1 for use at Fruitland, Maryland.

Respectfully submitted,

GREAT SCOTT BROADCASTING

By: 
Dennis P. Corbett
Ross G. Greenberg

Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, N.W.
Suite 600
Washington, DC 20006-1809
202-429-8970

September 7, 1999

ATTACHMENT 1

ENGINEERING STATEMENT
RE PETITION FOR RULE MAKING TO AMEND
THE FM TABLE OF ALLOTMENTS (47 CFR 73.202)
TO CHANGE CLASSIFICATION OF FM CHANNEL AND
COMMUNITY OF LICENSE FOR STATION
WKHI, EXMORE, VIRGINIA

AUGUST 1999

COHEN, DIPPELL AND EVERIST, P.C.
CONSULTING ENGINEERS
RADIO AND TELEVISION
WASHINGTON, D.C.

This engineering statement has been prepared on behalf of Great Scott Broadcasting (Scott), licensee of FM station WKHI, Exmore, Virginia and is in support of a petition for rule making to amend the FM Table of Allotments in Section 73.202 of the Commission's rules. It is proposed to change the channel classification and principal community of the present Channel 298B allotment at Exmore, Virginia as indicated by the following table:

	<u>City/State</u>	<u>Channel</u>
Present	Exmore, VA	291B, 298B
	Fruitland, MD	---
Proposed	Exmore, VA	291B
	Fruitland, MD	298B1

Station WKHI(FM) currently operates on Channel 298B (107.5 MHz) with 50 kW effective radiated power (ERP) and 82 meters antenna height above average terrain (HAAT). Since the present operation of Channel 298B at Exmore, Virginia would be mutually exclusive with the proposed Channel 298B1 allotment at Fruitland, Maryland, it is requested that the Commission reserve Channel 298B1 for station WKHI(FM). Scott further states that it will file an application for a construction permit for making the necessary modifications in station WKHI(FM)'s operation immediately after the requested changes have been made by the Commission.

Fruitland city is located in the south central part of Wicomico County in Maryland. According to the 1990 U.S. Census, Fruitland has a population of 3,511 people. At present, there is no AM station authorized at Fruitland, Maryland. Furthermore, no FM channel is currently

allotted, and thus, available for a new FM station at Fruitland, Maryland. The proposed allotment of FM Channel 298B1 would provide the community with its first aural transmission service, thereby fulfilling the second priority for the distribution of broadcasting facilities under Commission policy.

The community of Exmore is located in the northern part of Northampton County in Virginia. According to the 1990 Census, the population of Exmore, Virginia is 1,115 people. In addition to WKHI(FM), a new FM station on Channel 291B1 with 25 kW ERP and 93 meters HAAT has been authorized (BPH-951109MC) at Exmore, Virginia. The Commission has upgraded the currently allotted Class B1 channel to a Class B allotment and an application has been filed (BMPH-980630IC) to operate on Channel 291B with 50 kW ERP and 92 meters HAAT.

An FM allocation study reveals there is a fully-spaced area available near Fruitland, Maryland where a Channel 298B1 antenna site can be located (see attached Exhibit E-2). A reference antenna site has been selected for illustrative purposes which meets the minimum distance separation requirements to all pertinent FM stations and/or allotments according to Section 73.207 of the Commission's rules. In addition, preliminary investigation reveals that the construction of a tower of up to 350 feet in height would not present a hazard to air navigation and cause no significant environmental impact as defined under Section 1.1307(a) of the FCC Rules (see attached Exhibits E-1 and E-1A).

The geographic coordinates (NAD-27) of the reference site are as follows:

North Latitude: 38° 11' 32"

West Longitude: 75° 41' 58"

The attached Table I shows the distances in km to the pertinent co-channel and adjacent channel stations and allotments which have been computed according to the method prescribed in Section 73.208 of the Commission's rules. Review of Table I indicates Channel 298B1 can be allotted to Fruitland, Maryland, in full compliance with the Commission's minimum distance separation requirements. The reference geographic coordinates are for a site approximately 15 km south-southwest from Fruitland. This restriction is necessary to meet the minimum distance requirements to first-adjacent channel station WSNJ-FM, Channel 299B, Bridgeton, New Jersey, WRQX(FM), Channel 297B, Washington, D.C., and third-adjacent channel station WRXS(FM), Channel 295A, Ocean City, Maryland.

Station WKHI(FM) operating with the maximum facilities specified in Section 73.211 of the Commission's rules for Class B1 station (25 kW/100 M HAAT), will provide city grade (3.16 mV/m) service over the entire city of Fruitland as defined by the 1990 U.S. Census. The proposed operation of WKHI(FM) on Channel 298B1 at Fruitland, Maryland, will result in an increase in 1.0 mV/m signal coverage from approximately 1,789 sq. km to 3,724 sq. km. The proposed Class B1 operation of WKHI(FM) at Fruitland, Maryland, would serve 124,544 people within its 1.0 mV/m contour when compared to the present operation of 47,217 people. This represents a 264% increase in population and 208% increase in area within the predicted 1 mV/m contour. This proposal would result in a substantial gain area containing 108,727 people and 3,057 sq. km and a loss area of only 31,400 people and 1,122 square km (Exhibits E-3 and E-4).

A study has been conducted to determine the number of other daytime and nighttime aural services within the present and proposed operations of WKHI(FM). The entire area receives 5 or more daytime aural services. The attached Exhibit E-5 shows that there are a

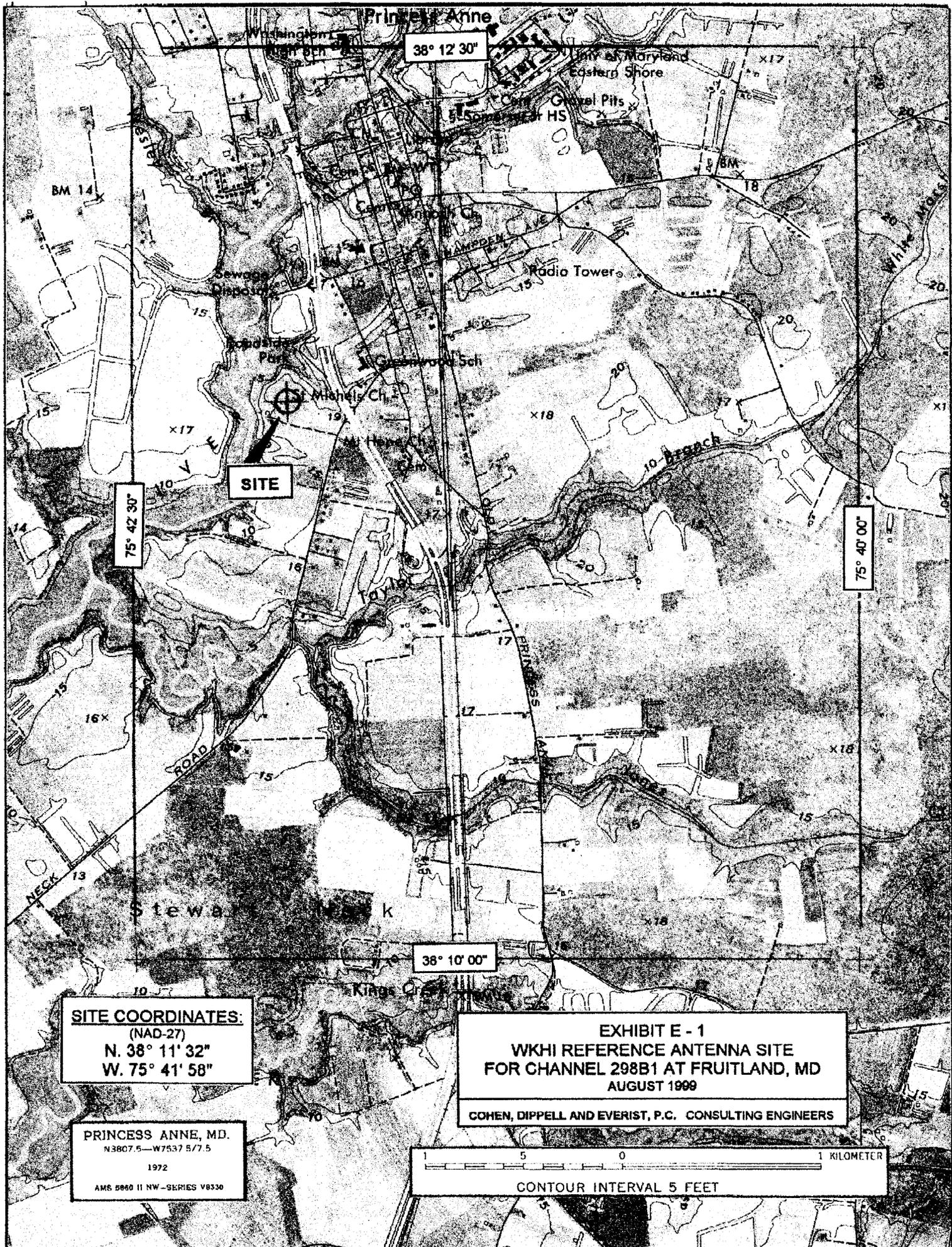
minimum of 2 and a maximum of 8 other nighttime aural services available within the present 1 mV/m contour of the WKHI Class B facility. The number of other aural nighttime services available within the 1 mV/m contour of the proposed Class B1 operation would be a minimum of 1 and maximum of 16. In addition to the previously mentioned gain in 1.0 mV/m signal coverage, the proposed Fruitland Class B1 operation would provide a second nighttime aural service to 647 persons and 104 sq. km (see Exhibit E-5).

Based on the above analysis, Scott believes its proposal is in the public interest since it would result in a first local transmission service at Fruitland, a larger community than Exmore, as well as a net gain of FM service to more than 77,000 people. The proposal thus makes efficient use of the FM spectrum. In addition, the proposed FM operation would provide a second nighttime aural service to more than 600 people. Therefore, Scott requests the Commission to delete the allotment of Channel 298B to Exmore, Virginia, and allot Channel 298B1 to Fruitland, Maryland, and reserve the new allotment for the use of station WKHI(FM).

COHEN, DIPPELL AND EVERIST, P. C.

TABLE I
FM ALLOCATION SITUATION
FOR THE PROPOSED ALLOTMENT OF
CHANNEL 298B1 FOR FRUITLAND, MARYLAND
JUNE 1999

<u>Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates NAD-27</u>	<u>Separation</u>	
				<u>Actual km</u>	<u>Required km</u>
298B1	Reference Site	Fruitland, MD	38°11'32" 75°41'58"	--	--
295A	WRXS	Ocean City, MD	38°20'57" 75°11'07"	48.3	48
296A	WTDK	Federalsburg, MD	38°46'02" 75°44'46"	64.0	48
297B	WRQX	Washington, DC	38°57'01" 77°04'47"	146.8	145
298B	WKHI(FM)	Exmore, VA	37°42'01" 75°41'36"	54.6	--
298B	WBYN	Boyertown, PA	40°19'03" 75°39'03"	236.0	211
299B	WSNJ-FM	Bridgeton, NJ	39°27'40" 75°12'21"	147.2	145
300B	WFSI	Annapolis, MD	38°59'46" 76°39'26"	122.2	71
245A	WBEY	Crisfield, MD	37°58'31" 75°49'46"	26.6	12



38° 12' 30"

75° 42' 30"

75° 40' 00"

38° 10' 00"

SITE

SITE COORDINATES:
 (NAD-27)
 N. 38° 11' 32"
 W. 75° 41' 58"

PRINCESS ANNE, MD.
 N 3807.5—W 7537.5/7.5
 1972
 AMS 5660 II NW—SERIES V0330

EXHIBIT E - 1
WKHI REFERENCE ANTENNA SITE
FOR CHANNEL 298B1 AT FRUITLAND, MD
AUGUST 1999
 COHEN, DIPPELL AND EVERIST, P.C. CONSULTING ENGINEERS

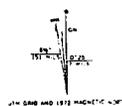
1 5 0 1 KILOMETER
 CONTOUR INTERVAL 5 FEET

EXHIBIT E - 1 A



FOR DETAIL OF SITE SEE LARGE SCALE MAP.

Mapped, edited, and published by the Geological Survey
Control by USGS and USCAGS
Orthophotomap prepared from aerial photograph taken
April 9, 1972. Topography by photogrammetric methods from
aerial photographs taken 1972. Field checked 1972.
Supersedes Army Map Service map dated 1942.
Selected hydrographic data from USCAGS Chart 555 (1973).
This information is not intended for navigational purposes.
Projection and 10,000-foot grid shown. Maryland coordinate
system (Lambert conformal conic).
1000-meter Universal Transverse Mercator grid shown.
Scale 1:50,000 as shown. 1927 North American datum.
Only landmark buildings in urban areas.



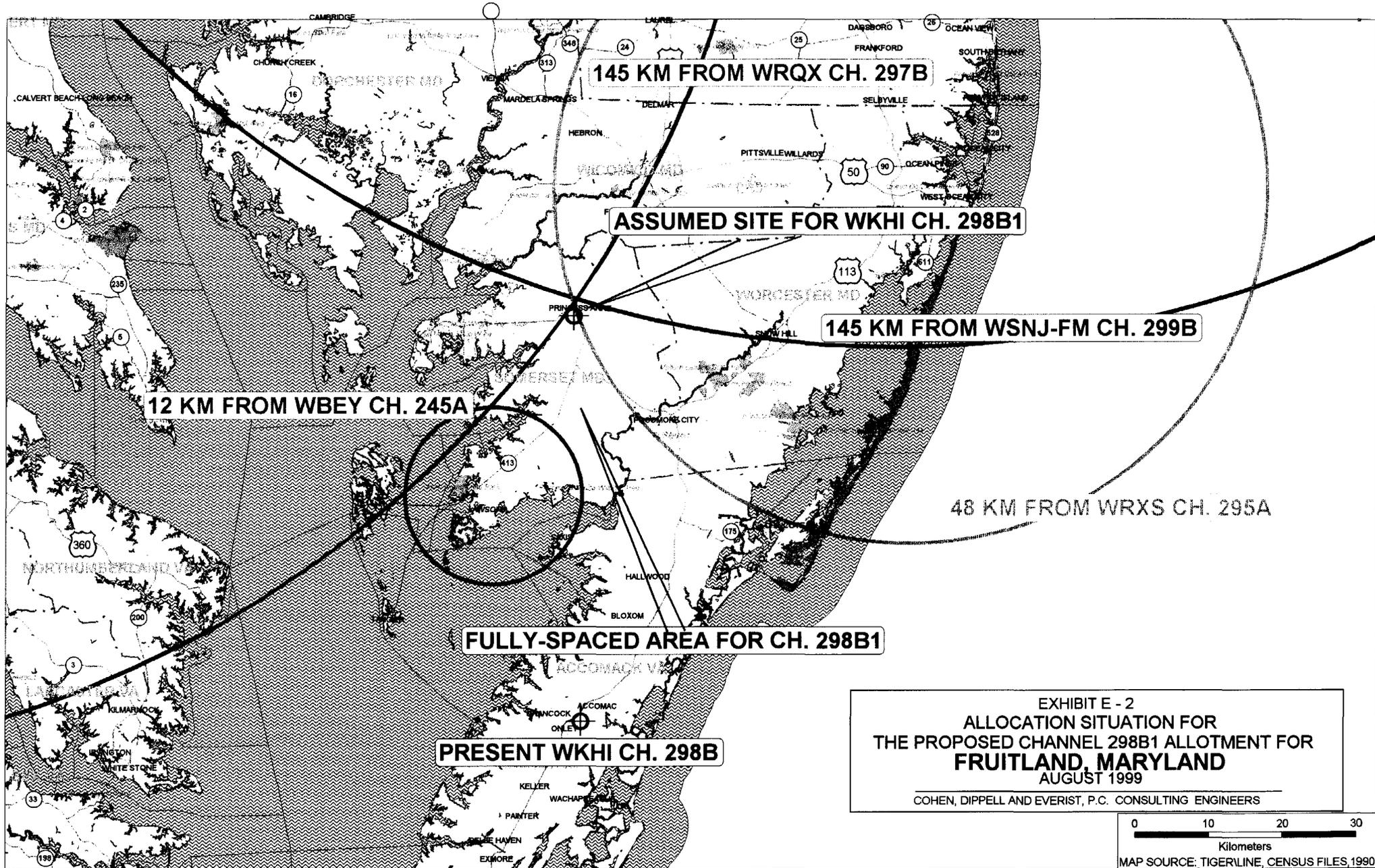
CONTOUR INTERVAL 5 FEET
DATUM IS MEAN SEA LEVEL
SOUNDINGS IN FEET—DATUM IS MEAN LOW WATER
THE MEAN HIGHS OF TIDE IS APPROXIMATELY 4 FEET

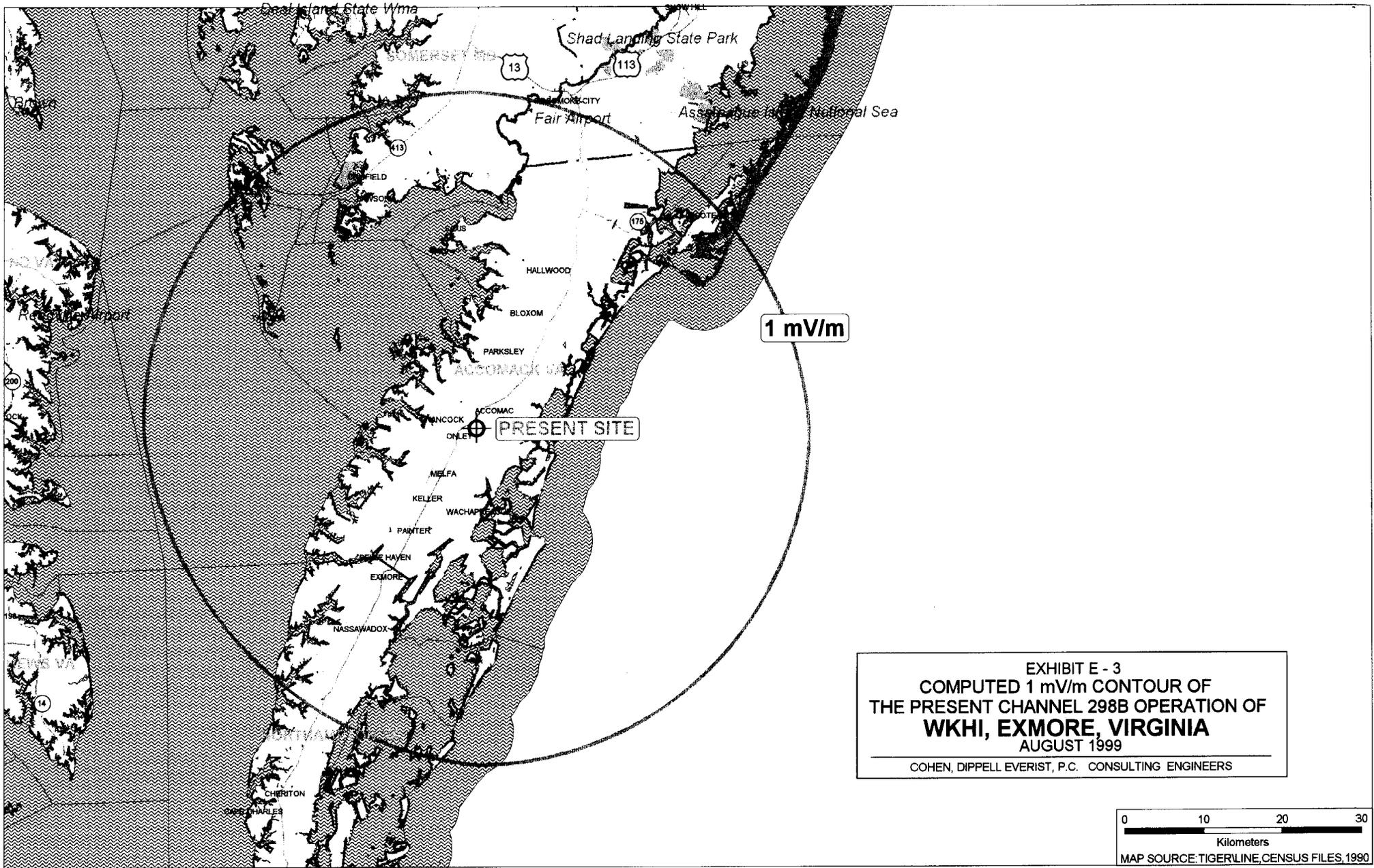


ROAD CLASSIFICATION
Primary highway: Light-duty road, hard or improved surface
Secondary highway: Unimproved road
Trails
Interstate Route: U.S. Route, State Route

THIS MAP COMPLEYS WITH NATIONAL MAP ACCURACY STANDARDS
FOR SALE BY U.S. GEOLOGICAL SURVEY, RESTON, VIRGINIA 22092
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

PRINCESS ANNE, MD.
H3807.5—W7537.5/7.5
1972
AMS 8608 II HW—SERIES Y356





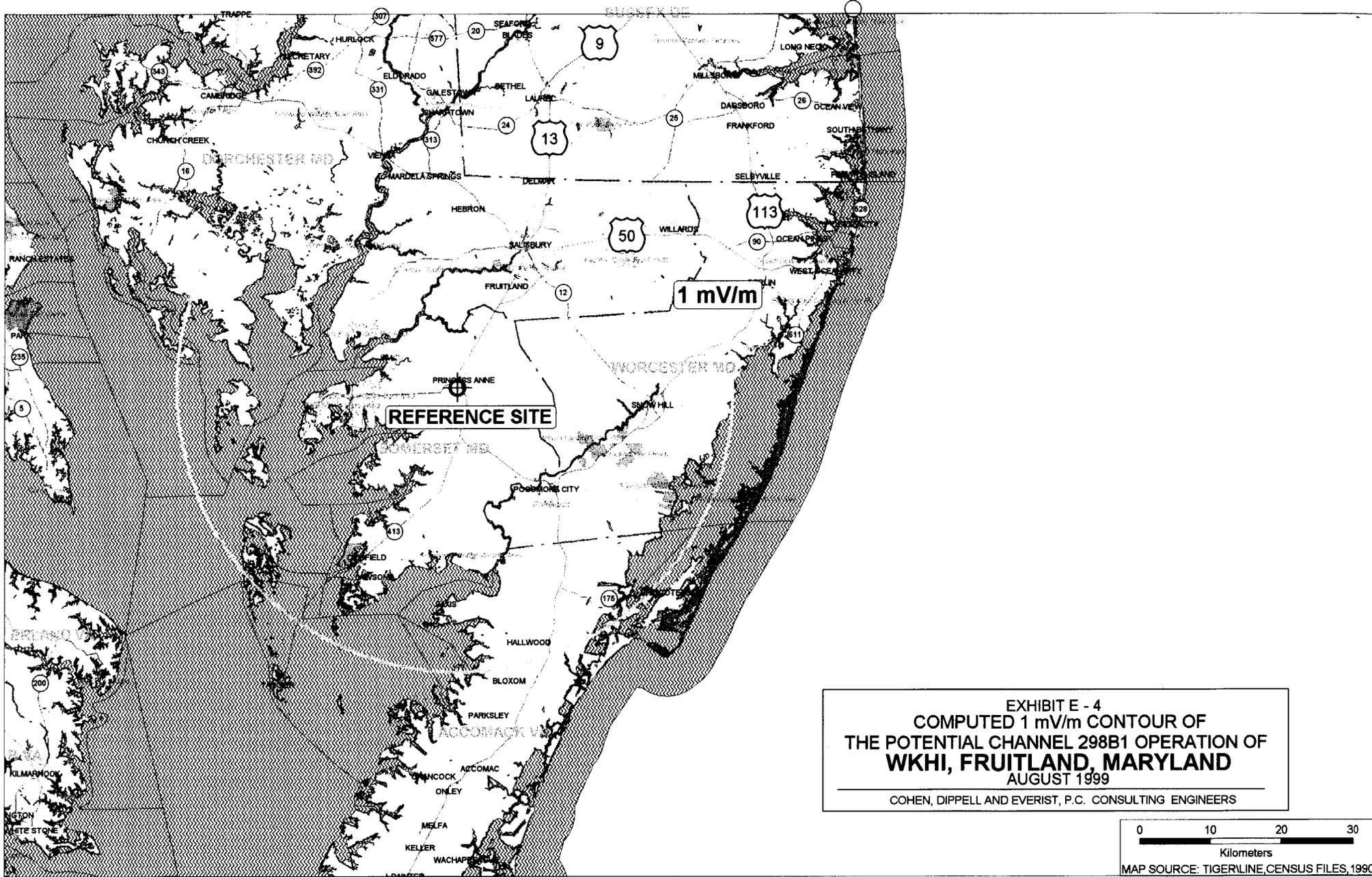
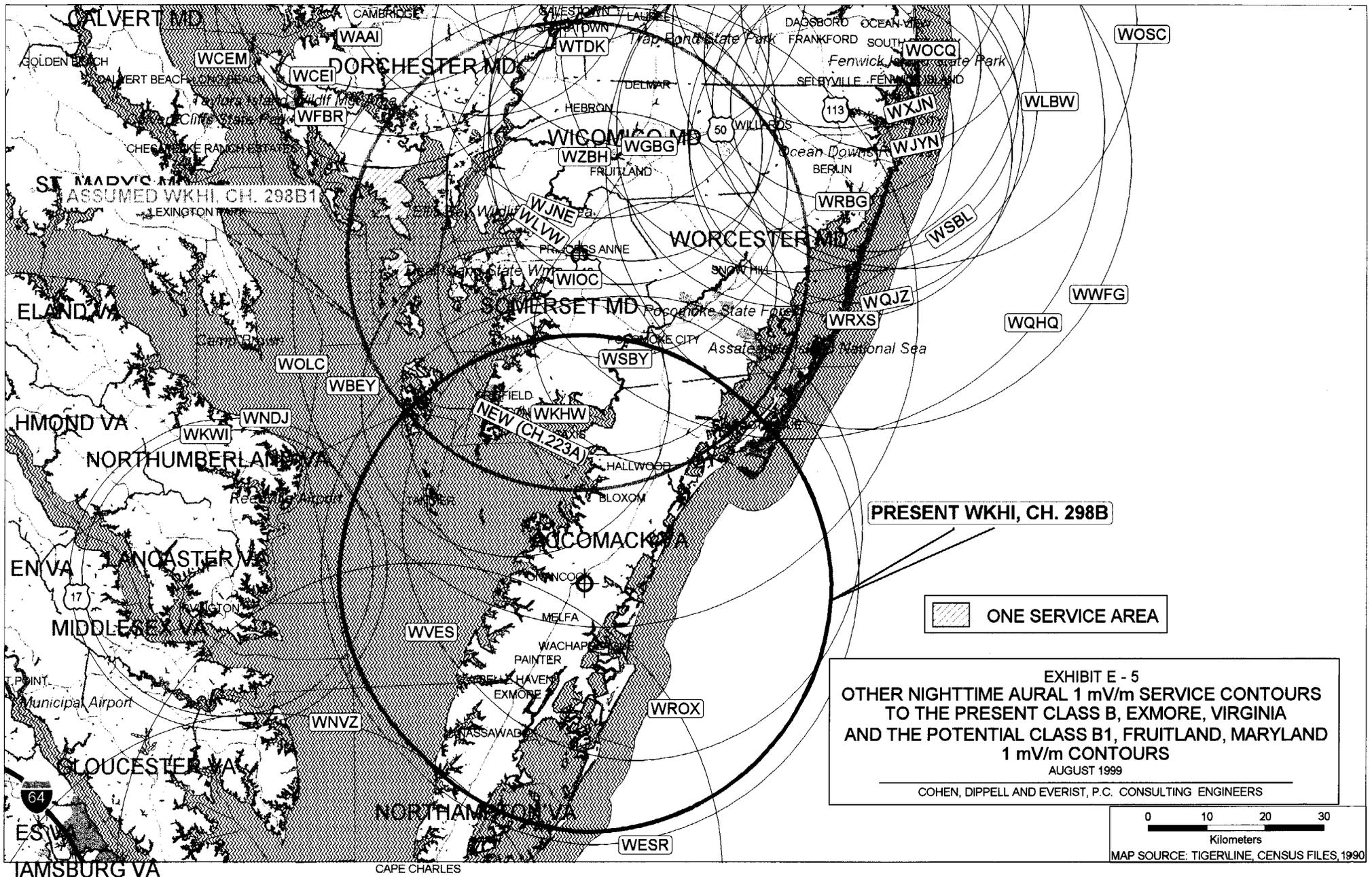


EXHIBIT E - 4
 COMPUTED 1 mV/m CONTOUR OF
 THE POTENTIAL CHANNEL 298B1 OPERATION OF
WKHI, FRUITLAND, MARYLAND
 AUGUST 1999
 COHEN, DIPPELL AND EVERIST, P.C. CONSULTING ENGINEERS

0 10 20 30
 Kilometers

MAP SOURCE: TIGERLINE, CENSUS FILES, 1990



PRESENT WKHI, CH. 298B

ONE SERVICE AREA

EXHIBIT E - 5
 OTHER NIGHTTIME AURAL 1 mV/m SERVICE CONTOURS
 TO THE PRESENT CLASS B, EXMORE, VIRGINIA
 AND THE POTENTIAL CLASS B1, FRUITLAND, MARYLAND
 1 mV/m CONTOURS
 AUGUST 1999
 COHEN, DIPPELL AND EVERIST, P.C. CONSULTING ENGINEERS

0 10 20 30
 Kilometers
 MAP SOURCE: TIGERLINE, CENSUS FILES, 1990

ATTACHMENT 2