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Federal Communications Commission
Office of Secretary
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MATTERS BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

ADMITTED IN
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NORTH CAROLINA

September 7, 1999

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Magalie Roman Salas, Esquire
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street
Washington, DC 20554

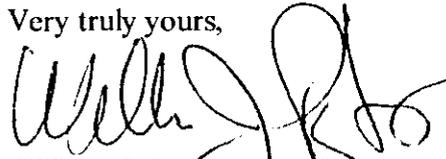
RE: Reply Comments
MM Docket No. 99-244
Cumberland Kentucky and Weber City, Virginia

Dear Ms. Salas:

Transmitted herewith on behalf of Cumberland City Broadcasting Company, are an original and four copies of its Reply Comments, filed in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with the undersigned.

Very truly yours,



William J. Pennington, III
Counsel Cumberland City Broadcasting
Company

Enclosure

cc(w/encl.): Certificate of Service (by first-class mail)

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Before the
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OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b))	MM Docket No. 99-244
Table of Allotments)	RM-9678
FM Broadcast Stations)	
(Cumberland, Kentucky and)	
Weber City, Virginia))	

Directed to : Chief, Mass Media Bureau

REPLY COMMENTS

Cumberland City Broadcasting Company ("CCBC" or "Petitioner"), licensee of FM Broadcast Station WSEH(FM) at Cumberland, Kentucky, by counsel, files these Reply Comments in the above-captioned rule making proceeding. The Petitioner seeks to amend the FM Table of Allotments by substituting Channel 274C3 for Channel 274A at Cumberland, Kentucky, reallocating Channel 274C3 to Weber City, Virginia and modifying its authorization accordingly so to provide that community with a much needed first local broadcast service. In support whereof the following is shown:

I.

Background

1. The Petitioner incorporates by reference all of the information submitted with its Comments and Petition for Rule Making in this proceeding.

2. The Petitioner filed with the Commission a Petition for Rule Making seeking the upgrade of Channel 274 to Class C3 and the reallocation of that frequency from Cumberland, Kentucky to Weber City, Virginia. The Commission released on July 2, 1999 its *Notice of Proposed Rule Making* in this proceeding wherein it sought comments on its proposed reallocation and upgrade of Channel 274.

3. Holston Valley Broadcasting Corporation (HVBC) submitted Comments and a Counterproposal in this proceeding wherein they request a myriad of allocation changes to allocate Channel 274 to Glade Spring, Virginia. If implemented, HVBC's scheme would effectively block the Petitioner's requested upgrade and reallocation of Channel 274 to Weber City. HVBC states that its request should be favored over the Petitioner's because the community of Glade Spring has greater population. In addition, HVBC seeks to show that the Petitioner's request should not be granted as it attempts to move an existing licensed facility closer to a larger market.

II.

Weber City Has a Larger Population Than Glade Springs

4. HVBC relies heavily on its assertion that according to the 1990 Census that Glade Springs has 58 more residents than Weber City. The Petitioner submits that the population attributed to Weber City by the 1990 Census is inaccurate and does not depict the actual population of the community in September of 1999. Attached hereto, as Exhibit 1, is a letter from Ms. Paula Sorrell, the Postmaster of the Gate City Post Office, which services Weber City, who states that Weber City has 940 boxes with an average of 3 persons per box for a total population of between 2,820 and 2,900 persons. This population figure is significantly more than attributed

FM channels from larger to smaller communities near large towns. In a recent decision, *FM Table of Assignments, Pauls Valley, Ratliff City, and Sulphur, Oklahoma, Abilene, Bowie, Highland Village, Mount Pleasant, and Overton, Texas*, MM Docket 97-84, RM-9021, 9095, released July 17, 1998, with aspects that mirror this proceeding, the Commission granted the reallocation of an FM Channel from Mount Pleasant, Texas (population 12,291 persons) to Overton, Texas (population 2,105 persons), even though Overton was a much smaller community and the reallocation would allow the station to provide 100% coverage of the Tyler and 75% of the Longview, Texas urbanized areas. In that case, after the reallocation of the FM channel to Overton, the community of Mount Pleasant, the seat of a rural county, was left with just one AM daytime facility to provide aural service. In this proceeding, the facts are no different. The Petitioner has made the requisite Tuck showing necessary which shows the proposed upgrade and reallocation of Channel 274 to Weber City meets the Commission's stringent criteria.

IV.

Petitioner's Population Gain Is Far Superior to Counterproposal

7. The persons and area served by the proposed upgrade and reallocation of Channel 274 to Weber City is far superior to that proposed in HVBC's counterproposal. The proposed upgrade and reallocation of Channel 274 to Weber City would serve 327,060 persons over a land area of 4,888.8 square kilometers. In contrast, the allocation of Channel 274A to Glade Spring would only provide service to 56,545 persons over an area of 2,516 square kilometers. The Petitioner's proposed operation will provide service to some 5.78 times more persons and 1.85 times the land area than HVBC's counterproposal. These figures can not be denied when considering how to most efficiently utilize the spectrum.

V.
Gain and Loss Area Study

8. The Petitioner's proposed upgrade and reallocation of Channel 274 to Weber City will not deny any portion of the existing WSEH(FM) 60 dBu service area with fewer than five aural services. In fact, most areas of the present WSEH(FM) 60dBu service area will receive many more than five aural signals. Attached hereto as Exhibit 2 is a study which shows both the AM and FM stations service contours which cover portions of the existing WSEH(FM) 60 dBu service contour. Figure 1 is a map showing the WSEH(FM) 60 dBu service contour. Figure 2 is a map showing all of the existing FM station 60 dBu service contours which cross the WSEH(FM) 60 dBu service contour. Figure 3 is a printout of those stations with relevant information regarding those station's operating parameters. Figure 4 is a map showing all of the existing AM 5.0 service contours which cross into the existing WSEH(FM) 60 dBu service contour. Figure 5 is a printout of those stations with relevant information regarding those station's operating parameters. Figure 6 is a map which shows that by using only a small number of the existing FM stations which cross into the WSEH(FM) 60 dBu service contour that the threshold of providing five aural services will be met. Figure 7 shows the areas that would lose WSEH(FM) 60 dBu service, those that will gain WSEH(FM) service and those that would experience no change in service.

9. The upgrade and reallocation of Channel 274 to Weber City will cause 54,987 persons to lose existing service from Station WSEH(FM). The persons who will gain additional service upon the reallocation and upgrade will total 314,162 persons. A total area of 2,131.2 square kilometers would lose service from Station WSEH(FM) upon the upgrade and reallocation while

an area of 4,166.9 square kilometers would gain a new service. These figures assume a consistent distribution of persons within both service contours.

10. It is abundantly clear that the gain and loss figures provided herein would favor the reallocation and upgrade of Channel 274 to Weber City.

11. It must also be noted again that Station WCPM(AM) would remain licensed to Cumberland Kentucky so to not deny the persons of that community with a local aural service.

VI. **Petitioner Questions the Motives of HVBC**

12. In spite of the assurances made by HBVC that it would submit an application seeking a new FM station at Glade Spring if an allotment were made, and if granted a construction permit build the new facility, the Petitioner questions the motives behind the counterproposal. HVBC owns and operates a number of broadcast facilities within the Bristol-Kingsport-Johnson City, Tennessee-Virginia market. This is not the first time that HVBC has sought to keep competition out of the market by filing counterproposals in rule making proceedings. In *FM Table of Assignments, Jefferson City, Cumberland Gap, Elizabethton, Tennessee and Jonesville, Virginia*, MM Docket no 94-116, RM-8507, 8567, released January 30, 1998, HVBC submitted a counter proposal where another station within the market was attempting to upgrade its facilities from Class C3 to Class C2. It appears that, as in this proceeding, HVBC went out and found a community where a channel could be allocated that provides a first local service and blocks the requested upgrade. In this case the blocking scheme was more complicated as HVBC had to go to other broadcasters and promise to reimburse for channel changes, one of which involves a change of antenna sites. All of this trouble was undertaken just to allocate a channel to Glade

Spring, a small rural community with ironically 58 more persons than Weber City. The Petitioner, in light of HVBC's past involvement in rule making proceedings in and around the Tri-Cities market, sees this "counterproposal" as much more than just sheer coincidence. The Commission has spoken numerous times about abuses in allotment proceedings that stymie competition but deny deserving communities of local service. The Petitioner submits that this "counterproposal" is but a very thinly veiled attempt to block a valid reallocation and upgrade by a broadcaster who is serious about providing a first local service to a deserving community.

VII. **Summary**

13. It is clear that the figures provided in the 1990 Census are dated and do not reflect the reality of the actual population in Weber City nine years after that count was made. The Petitioner has provided recent population estimates that reflect a more accurate determination of the community's population. These more accurate figures were obtained from a source relied upon by the Commission and used to substantiate greater population attributed to a community in another proceeding. Considering the more accurate information provided by the Petitioner, Weber City has a greater population than that of Glade Spring. But even if you do not consider this more recent and more accurate information, a population difference of just 58 persons is insignificant when looking at the other significant gains which the reallocation and upgrade of Channel 274 at Weber City would provide.

14. The Commission on numerous occasions in the recent past has allowed for reallocations where the channel in question was being moved from a larger to smaller town which is near a

large community if Tuck criteria has been met. In this case, the Petitioner has already made a successful Tuck showing.

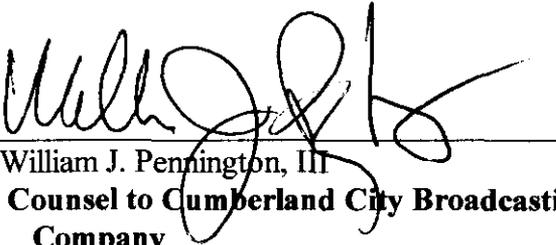
15. The upgraded use of Channel 274 at Weber City would allow Station WSEH(FM) to greatly increase its present population and area served. Furthermore, the Petitioner's proposed population and area served is significantly greater than the proposed population and area that HVBC counterproposes.

16. Finally, it appears to the Petitioner to be a bit more than suspicious that HVBC, an existing broadcaster in the Kingsport market, would go to such lengths involving numerous channel substitutions, antenna site relocations and promises to reimburse other stations just to allot a Class A FM channel in a town of just over 1,400 persons in a very remote area of southwest Virginia, when they know that their effort, if successful, will thwart the Petitioner's proposed reallocation and upgrade of Channel 274 to Weber City so to provide a first local service to that community.

WHEREFORE, in light of the foregoing, Cumberland City Broadcasting Company respectfully requests that the Commission GRANT the requested substitution of Channel 274C3 for Channel 274A at Cumberland, Kentucky and the reallocation of Channel 274C3 to Weber City, Virginia and MODIFY the license of Station WSEH(FM) to specify operation on Channel 274C3 at Weber City, Virginia.

Respectfully submitted,

**CUMBERLAND CITY BROADCASTING
COMPANY**

By: 
William J. Pennington, III
Counsel to Cumberland City Broadcasting
Company

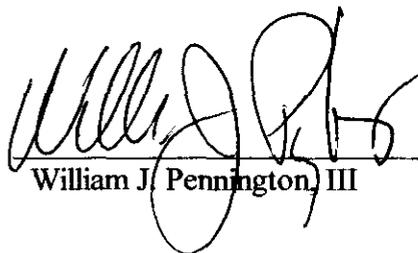
William J. Pennington, III
Attorney at Law (Admitted in NC & SC Only)
Post Office Box 403
Westfield, MA 01086
(413) 562-3341

September 7, 1999

CERTIFICATE OF SERVICE

I, William J. Pennington, III, hereby certify that on this 7th day of September, 1999 copies of the foregoing "Reply Comments" were mailed first-class, postage prepaid to the following:

Dennis J. Kelly, Esq.
Attorney at Law
Post Office Box 6648
Annapolis, MD 21401



William J. Pennington, III



August 31, 1999

J. George Bibb
President/General Mgr.
101 Keller St.
Cumberland, KY 40823

Dear Mr. Bibb:

The information you requested regarding the number of addresses/population we serve in the Weber City area:

- Serve approximately 940 boxes
- Average of 3 persons per box (2,820-2,900 population)

If further information is needed you may want to contact the Scott County Court House in Gate City.

Sincerely,

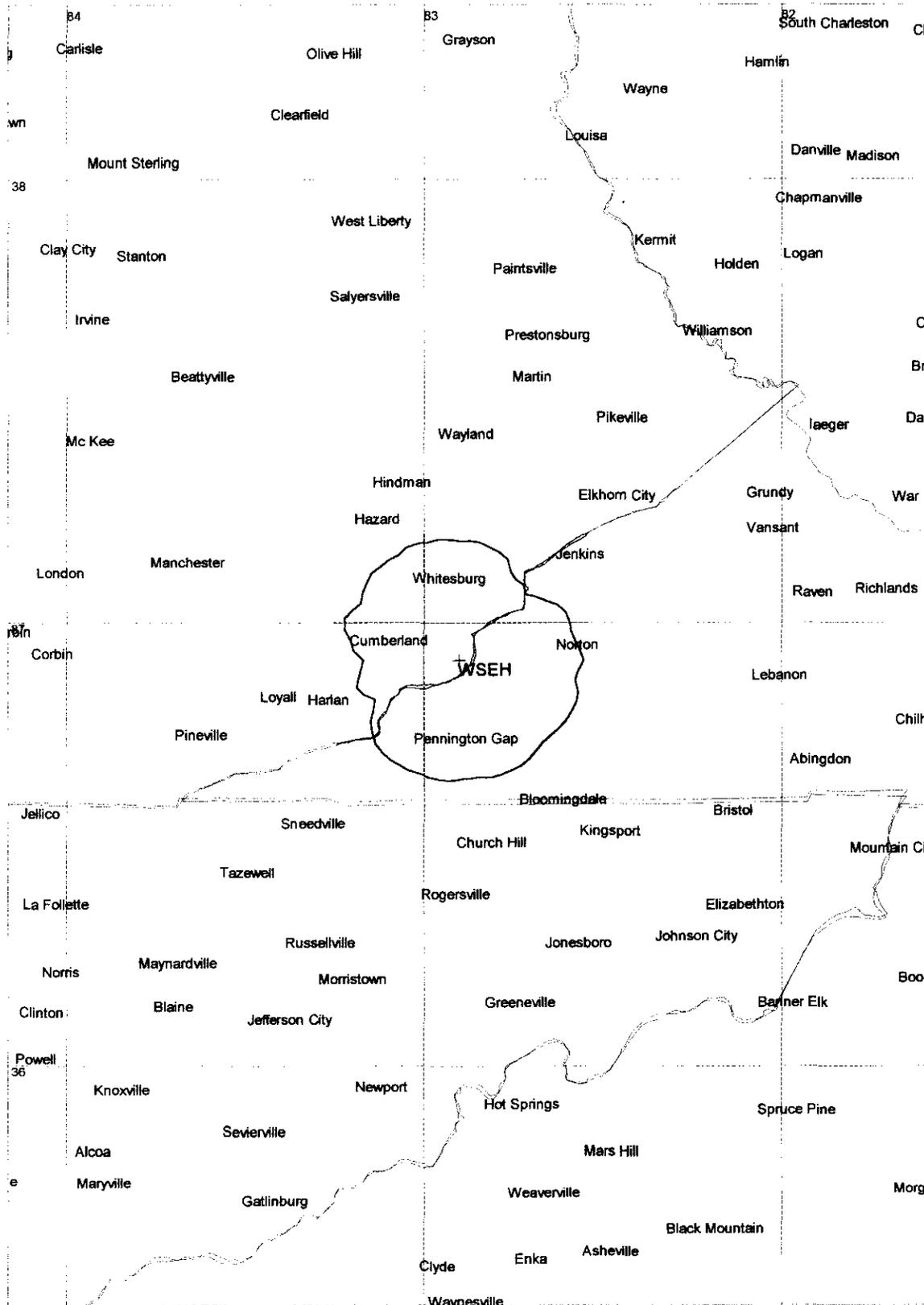
A handwritten signature in cursive script that reads "Paula Sorrell".

Paula Sorrell
Postmaster
Gate City VA 24251-9998

EXHIBIT 2

GAIN AND LOSS STUDY

WSEH(FM) 60 dBu CONTOUR



Scale 1:1500000

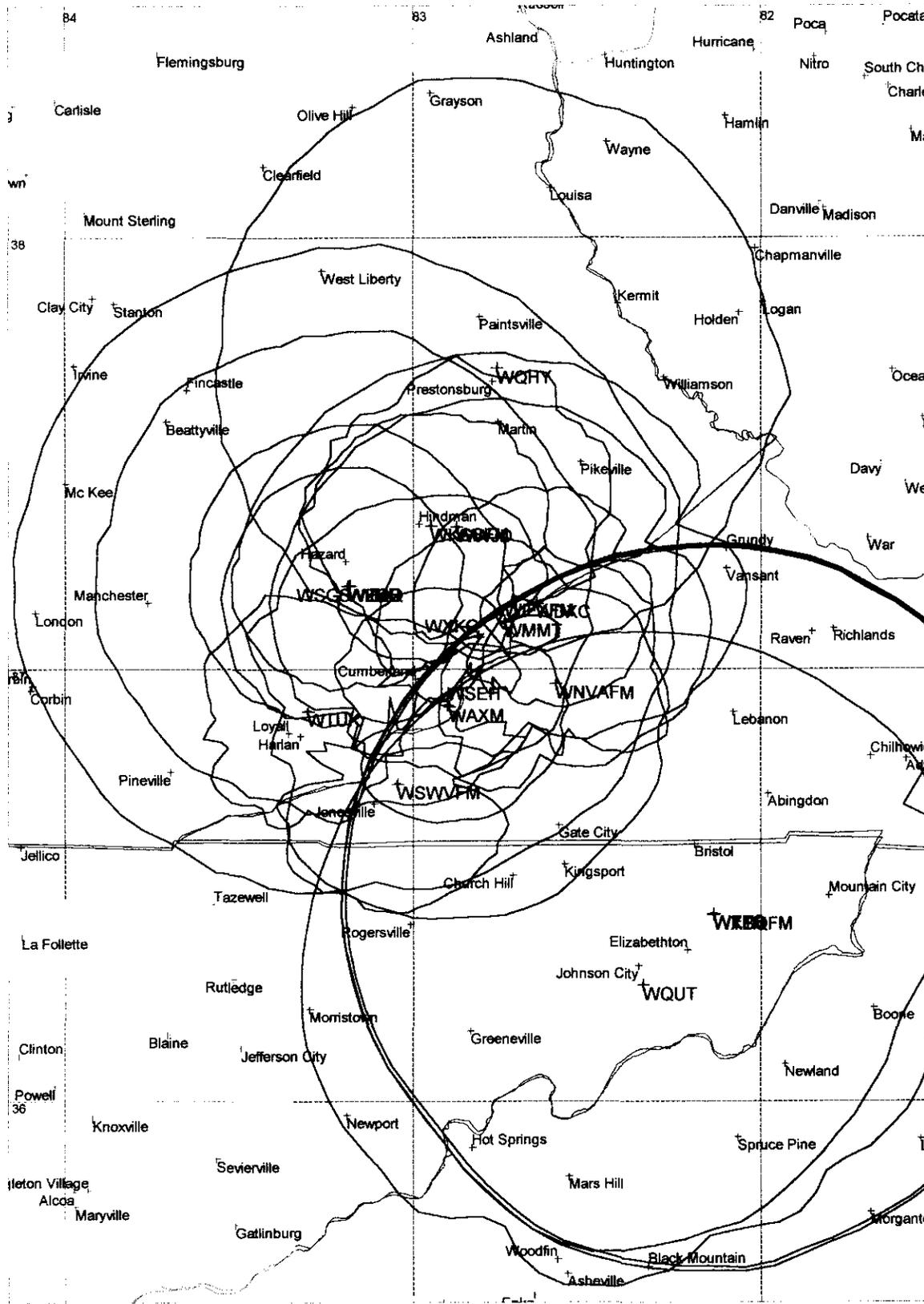
50 Km

— FM Service

- - - State Borders

Lat-Lon Grids

FM STATIONS CONTOURS CROSSING WSEH(FM) 60 dBu



Scale 1:1500000

50 Km

— FM Service

State Borders

Lat-Lon Grids

FM STATIONS CROSSING THE EXISTING WSEH(FM) 60 dBu SERVICE CONTOUR

CALL FORMAT	ST CITY	FREQ	CHN	CL	ERP	STAT	DST:km	dBu
LATITUDE	LONGITUDE	HAAT:m	AMSL:m	ARN	OWNER			
WAXM Oldies 36-54-50	VA Big Stone BLH911016KB 82-53-40	93.5	228	C2	2.5	Lic	1117.3	60
		574	1310					Valley Broadcasting, Inc
WDXC Country 37-09-07	VA Pound BMLH921221KA 82-38-41	102.3	272	A	0.3	Lic	1136.3	60
		401	956					WDXC Radio, Inc.
WEKH Talk 37-11-34	KY Hazard BLED850826KL 83-11-16	90.9	215	C1	33.0	Lic	1088.0	60
		306	718					Eastern Kentucky Univers
WETS Religious 36-26-02	TN Johnson Cit BLED820212AA 82-08-08	89.5	208	C	66.0	Lic	1192.1	60
		692	1318					East Tennessee State Uni
WIFXFM Off Air or New 37-06-38	KY Jenkins BLH920424KB 82-44-18	94.3	232	C2	4.2	Lic	1128.5	60
		477	1046					Kincraft Industries
WJMD Contemporary Hi 37-11-36	KY Hazard BMLH950417KB 83-11-04	104.7	284	A	0.5	Lic	1088.3	60
		346	747					Hazard Broadcasting Serv
WKCBFM Off Air or New 37-19-56	KY Hindman BMLH900302KB 82-56-52	107.1	296	A	1.5	Lic	1107.7	60
		198	617					Hindman Broadcasting Cor
WMMT Album Progressi 37-06-38	KY Whitesburg BLED951023KA 82-44-15	88.7	204	C1	15.0	LicD	1128.6	60
		448	1018					Appalshop, Inc.
WNVAFM Off Air or New 36-57-58	VA Norton BLH911211KD 82-35-17	106.3	292	A	1.6	Lic	1143.6	60
		187	899					Radio-Wise, Incorporated
WQHY Album Progressi 37-41-45	KY Prestonsbur BLH910521KB 82-45-24	95.5	238	C	100	Lic	1121.9	60
		305	575					WDOC, Inc.
WQUT Off Air or New 36-16-07	TN Johnson Cit BLH5459 82-20-21	101.5	268	C	100	Lic	1177.4	60
		457	1069					Tri-Cities Radio Corpora

WSGS KY Hazard 101.1 266 C 100 Lic 1088.6 60
 Off Air or New BLH871217KD Mountain Broadcasting Se
 37-11-38 83-10-52 446 861

WSWVFM VA Pennington 105.5 288 A 3.5 Lic 1106.9 60
 Dance-CHR BMLH900126KB Lee Broadcasting Corpora
 36-44-02 83-02-34 84 659

WTFM TN Kingsport 98.5 253 C 74.0 LicD 1191.9 60
 Off Air or New BLH950213KA Holston Valley Broadcast
 36-25-54 82-08-15 683 1305

WTUK KY Harlan 105.1 286 A 0.4 Lic 1081.6 60
 Classic Rock BLH940323KC Eastern Broadcasting Com
 36-54-09 83-18-01 316 883

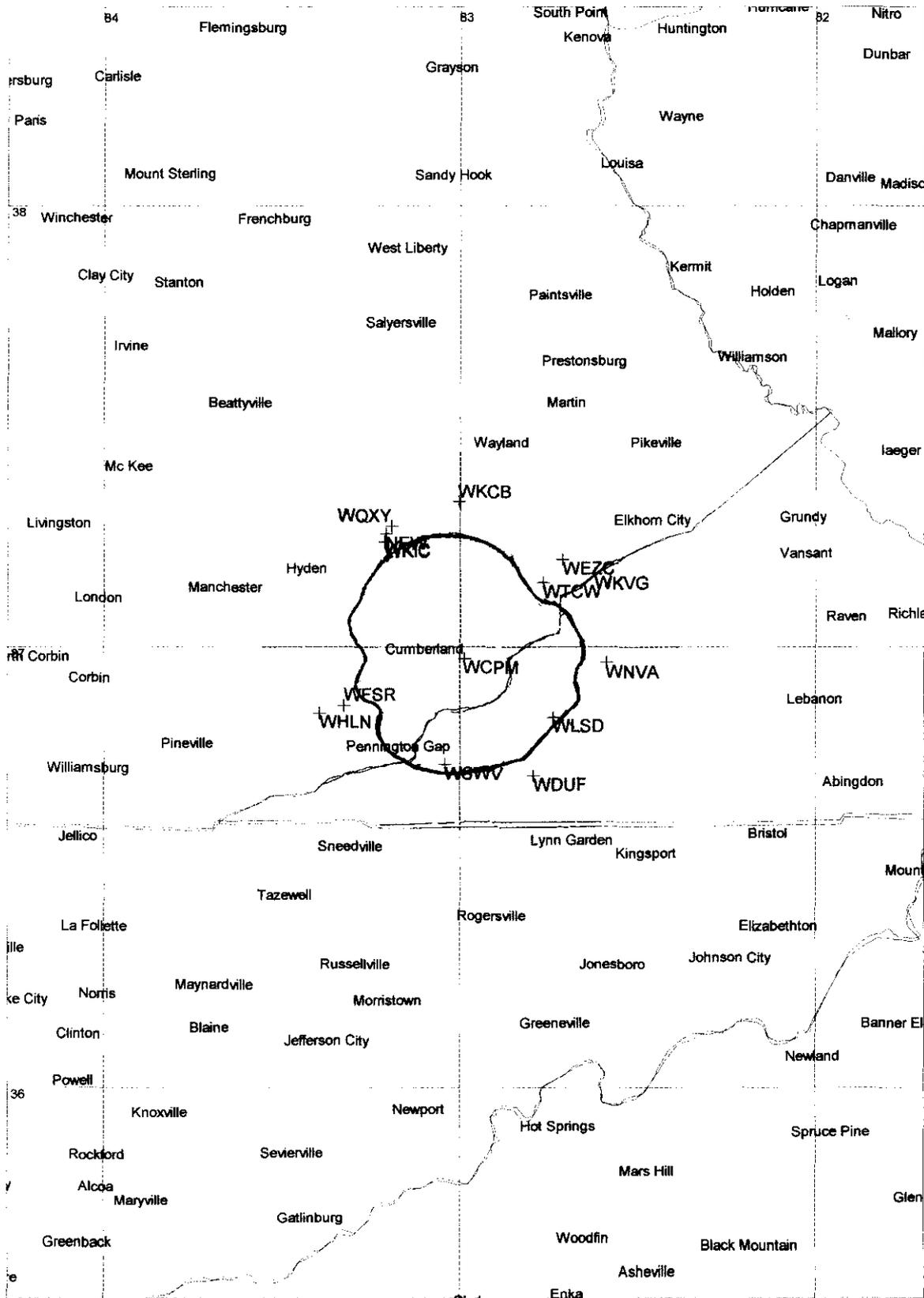
WWJD KY Pippa Passe 91.7 219 C3 7.3 Lic 1114.2 60
 Off Air or New BLED971028KA Alice Lloyd College
 37-19-45 82-52-30 166 588

WXBQFM TN Bristol 96.9 245 C 75.0 LicD 1192.0 60
 Off Air or New BLH950914KB Bristol Broadcasting Co.
 36-25-59 82-08-11 683 1308

WXKQ KY Whitesburg 103.9 280 A 0.2 Lic 1122.5 60
 Adult Contempor BLH820722AJ T.C.W. Broadcasting Comp
 37-04-27 82-48-44 287 868

WZQQ KY Hyden 97.9 250 C3 1.8 Lic 1088.3 60
 Off Air or New BLH960311KB Leslie County Broadcasti
 37-11-36 83-11-04 368 770

AM SERVICE TO PRESENT WSEH(FM) 60 dBu CONTOUR



Scale 1:1500000

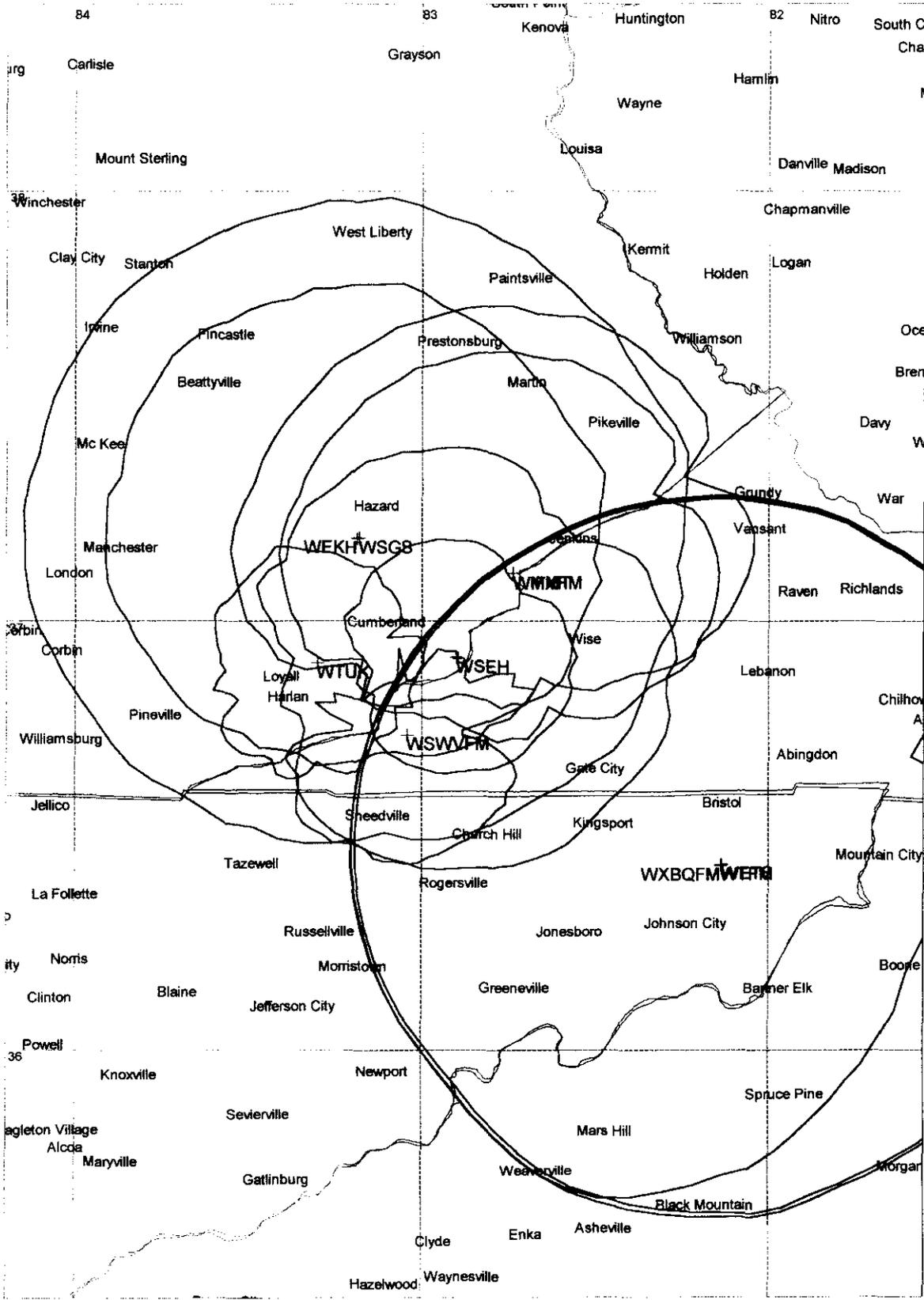
50 Km

AM City Day State Borders Lat-Lon Grids

AM STATIONS THAT CROSS THE EXISTING WSEH(FM) 60 dBu SERVICE CONTOUR

CALL FORMAT LATITUDE	ST CITY 	CITY 	ARN 	FREQ 	ANT 	CL 	PWR 	STAT 	DST:km	mV/M
			TWR		RMS		OWNER			
WDUF Gospel/Bl 36-42-30	VA	DUFFIELD		1120	NDD	0D	1.0	LicD	34.2	5.0
			BL880120AD				W.B. Moore, Jr.			
			82-47-30	1	306.0					
WEZC Christian 37-11-54	KY	NEON		1480	NDD	0D	5.0	LicD	35.0	5.0
			BL820802AC				Jesus Communications, In			
			82-42-42	1	712.6					
WFSR Country 36-52-02	KY	HARLAN		970	ND1	0D	5.0	LicD	32.4	5.0
			BL900802AE				Eastern Broadcasting Co.			
			83-19-36	1	640.6					
WHLN Oldies 36-50-59	KY	HARLAN		1410	ND1	0D	5.0	LicD	38.8	5.0
			Unlisted				James T. Morgan			
			83-23-41	1	838.5					
WKIC Soft AC 37-14-19	KY	HAZARD		1390	NDD	0D	5.0	LicD	35.5	5.0
			Unlisted				Mountain Bcstg Service,			
			83-12-41	1	784.4					
WLSD C. Christ 36-50-26	VA	BIG STONE G		1220	ND1	0D	1.0	LicD	26.7	5.0
			Unlisted				Valley Broadcasting, Inc			
			82-44-14	1	386.2					
WNVA Southern 36-57-58	VA	NORTON		1350	ND1	0D	5.0	LicD	35.6	5.0
			BL911211AC				Radio-Wise, Inc.			
			82-35-17	1	845.6					
WQXY Oldies 37-16-27	KY	HAZARD		1560	NDD	0D	1.0	LicD	38.0	5.0
			BL880310AB				+Hindman Broadcasting Co			
			83-11-29	1	306.0					
WSWV S. Gospel 36-44-02	VA	PENNINGTON		1570	ND1	0B	2.3	LicD	27.1	5.0
			BL870625AD				IBS Communications, LLC			
			83-02-34	1	564.1					
WTCW Country 37-08-46	KY	WHITESBURG		920	ND1	0D	4.2	LicD	27.4	5.0
			BL930517AA				+Key Broadcasting, Inc.			
			82-46-01	1	685.9					

FM SERVICE TO PRESENT WSEH(FM) 60 dBu CONTOUR



Scale 1:1500000

50 Km

— FM Service State Borders Lat-Lon Grids