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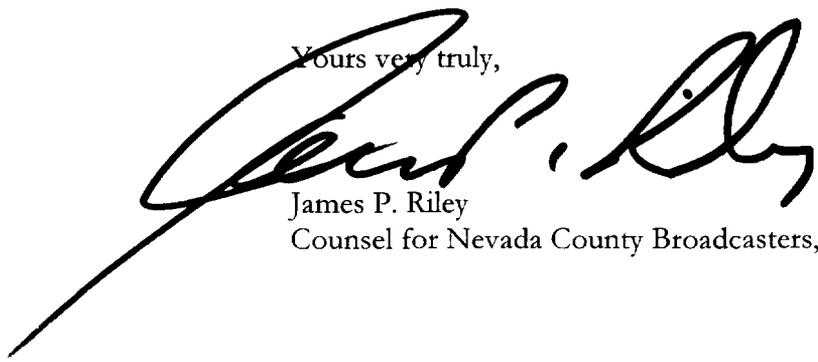
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket No. 90-189

Dear Ms. Salas:

Transmitted herewith is the original with four copies of the Application for Review by Nevada County Broadcasters, Inc., of the Memorandum Opinion and Order, DA 99-2453, released November 5, 1999, in the referenced docket.

Yours very truly,



James P. Riley
Counsel for Nevada County Broadcasters, Inc.

JPR:deb

Enclosures

cc: Robert Hayne, Esq., Mass Media Bureau (w/Enclosure)
Roger J. Metzler, Jr., Esq. (w/Enclosure)

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ORIGINAL

Before the
Federal Communications Commission
Washington DC 20554

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DEC - 6 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
Farmington, Grass Valley, Jackson)
Linden, Placerville and Fair Oaks)
California, and Carson City and)
Sun Valley, Nevada)

MM Docket No. 90-189
RM-6904
RM-7114
RM-7186
RM-7298

To: Commission

APPLICATION FOR REVIEW
OF NEVADA COUNTY BROADCASTERS, INC.

NEVADA COUNTY BROADCASTERS, INC.

By

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December 6, 1999

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SUMMARY

Nevada County Broadcasters, Inc., is seeking review and reversal of the Memorandum Opinion and Order adopted by the Allocations Branch of the Mass Media Bureau. The MO&O reversed the earlier Report and Order of the Allocations Branch, setting aside the allotment of Channel 232A to Farmington, California, as a first local service, the upgrade allotment of Channel 232B1 to replace 232A at Grass Valley, California, and the substitution of Channel 259A for Channel 232A at Jackson, California.

The MO&O reversed the Report and Order, not because of any change by the Allocations Branch of its initial analysis of the application of the traditional allotment priorities to the competing proposals in this case, but because of an allegation that the allotments in the Report and Order would cause "significant interference to the only broadcast station licensed to Jackson, California."

Nevada County shows herein that the Allocations Branch should not, under the Communications Act, the Commission's Rules, and well-settled precedent, have considered the argument which was at the heart of the MO&O. Never before the Report and Order was adopted and never within the statutory period for reconsideration did Gold Country Communications, Inc., make any argument concerning interference. It first did so thirty (30) days after the statutory deadline. Reconsideration should have been denied for this reason alone.

Even if Gold Country's claim of interference warranted evaluation, which it did not given the statutory prohibition against tardy petitions for reconsideration, the argument warranted evaluation only with rigorous use of sound and correct engineering precepts to determine whether "significant interference" would in fact be caused to KNGT. As shown herein, a rigorous evaluation shows that "significant interference" would not be caused to KNGT.

- At most, only 4,324 persons would be in an area where interference might be caused.
- The area of potential interference is at least 18 kilometers from Jackson, and is served by at least five other commercial stations.
- Interference may in fact not occur at all. The MO&O denies that a "high mountain range" will have any diminishing effect on the strength of the potential interfering signal, but the MO&O is wrong, as shown herein. Before reversing its Report and Order, the Allocations Branch should have, in this unusual case, used all sound scientific means to determine whether, considering terrain barriers, there would in fact be any significant interference or any material impairment to KNGT. It did not do so.

The MO&O should be reviewed and set aside and the Report and Order reinstated.

BEFORE THE
Federal Communications Commission
Washington, D.C. 20554

| | | |
|------------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | MM Docket No. 90-189 |
| Table of Allotments, |) | RM-6904 |
| FM Broadcast Stations |) | RM-7114 |
| Farmington, Grass Valley, Jackson, |) | RM-7186 |
| Linden, Placerville and Fair Oaks |) | RM-7415 |
| California, and Carson City and |) | RM-7298 |
| Sun Valley, Nevada |) | |

To: Commission

APPLICATION FOR REVIEW

1. Nevada County Broadcasters, Inc. ("Nevada County"), licensee of radio station KNCO-FM, Grass Valley, California, by counsel, hereby requests the Commission review the decision by the Chief of the Allocations Branch in Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, Memorandum Opinion & Order, DA 99-2453, MM Docket No. 90-189 (released November 5, 1999) ("Order"). In support of Nevada County's application for review, the following is shown:

2. **Background.** In the First Report and Order in this proceeding, released September 12, 1995, the Chief of the Allocations Branch allotted Channel 232A to Farmington, California and upgraded Nevada County's station, KNCO-FM, to specify operation on Channel 232B1. The First Report and Order in part resolved multiple petitions for rulemaking that were

either mutually exclusive or in some manner interrelated. The First Report and Order rejected a conflicting proposal in which Gold Country Communications, Inc. ("Gold Country"), licensee of KNGT(FM), Jackson, California would have been upgraded from Channel 232A to Channel 232B1. The First Report and Order deleted Channel 232A from Jackson and allotted Channel 259A to Jackson for use by KNGT. The Allocations Branch cited two primary reasons for granting the Nevada County proposed allotment rather than the Gold Country proposed allotment:

1.) The Nevada County proposal would provide a first local service to the community of Farmington, California. The Gold Country proposal, on the other hand, would only provide a second local service to the community of Placerville, California.

2.) The Nevada County proposal would provide additional service to 54,000 people (increasing coverage from 54,000 to 108,000 persons). The Gold Country proposal, in comparison, would provide additional service to approximately 46,000 people, 8,000 fewer people than the Nevada County proposal, increasing coverage from 25,000 to 71,000 people – 37,000 fewer people than in the Nevada County proposal. See First Report and Order.

3. Gold Country filed a Petition for Reconsideration against the First Report and Order. The Allocations Branch (herein sometimes "Staff") accepted the petition and released a Memorandum Opinion and Order on November 5, 1999 setting aside its decision in the First Report and Order.

4. Basis for Review. Commission consideration of the questions presented herein is warranted under three of the five factors cited in the Commission's rules as bases for review.

See 47 CFR 1.115(b)(2). First, the Staff committed prejudicial procedural error in accepting both the petition for reconsideration and the supplemental pleading upon which its decision is based. See 47 CFR 1.115 (b)(2)(v). Second, the grounds upon which the petition for reconsideration and the supplemental pleading were accepted are in conflict with regulation and statute. Third, the staff made an erroneous finding as to an important and material question of fact. See 47 CFR 1.115(b)(2)(iv). Each one of these factors, even standing alone, warrants Commission review of the Order.

5. Prejudicial Procedural Error and Conflict with Regulation and Statute. The Staff committed grievous, prejudicial procedural error in accepting first Gold Country's fatally flawed Petition for Reconsideration. The Petition for Reconsideration consists of a 2-page procedural history of the case, followed by a brief two-sentence, opaque claim of "disparate treatment, application of the amended rules for maximum transmitting power for FM stations to the losing petitioners and application of the earlier existing rules to those whose petitions were granted in violation of the Administrative Procedure Act, and results in a denial of due process to the losing petitioners." See Gold Country Petition for Reconsideration at 2. The Petition for Reconsideration offered no explanation of the "earlier existing rules" that it referred to, or of what violations of the Administrative Procedure Act had occurred. Gold Country failed to plead with particularity the respects in which it believed the First Report and Order should be changed, as is required by Commission rules, 47 CFR Section 1.106(d)(1), and therefore could not meet the requirement that it provide the Commission with "sufficient reason" for review, as is required by statute, 47 USC Section 405. Instead, Gold Country offered only an unsupported statement

that attempted to use an overbroad hook to fish for an unspecified reason to ask the Allocations Branch to reconsider a decision adopting allotments that would serve the greatest public good. *Most notably, the petition for reconsideration included no reference to interference or any issue related to interference.* Accordingly, under its own rules and under statute, the Allocations Branch should have dismissed the Petition for Reconsideration for failure to satisfy even the basic criteria for an acceptable Petition for Reconsideration.

6. Gold Country apparently filed the bogus Petition for Reconsideration only to provide itself with a foundation against which it could file an otherwise untimely pleading and call it a "supplemental petition." The so-called "supplemental pleading" was filed on November 13, 1995, more than a month after the October 12, 1995 expiration of the filing period. The Staff was wrong to accept Gold Country's Petition for Leave to File Supplemental Filing, along with the actual supplemental filing, after the statutorily mandated filing period had expired.

7. The supplement raised issues for the first time in this proceeding regarding interference, in direct conflict with the statutory prohibition against raising new issues at such a late stage in a proceeding. See 47 USC 405; See also 47 C.F.R. Section 1.106(c). Commission rules permit filing of a supplement to a Petition for Reconsideration after expiration of the 30 day period, but only upon grant of a separately filed pleading that "shall state the grounds therefor." See 47 CFR 1.106(f); See also 47 CFR 1.429(d). The Staff wrongly granted leave to file the supplement to the petition for reconsideration because the grounds upon which permission to file the supplement were requested have long been held invalid by the Commission.

8. Specifically, the Commission lacks authority to extend or waive the 30-day filing period for a petition for reconsideration set forth in 47 USC 405. See Reuters Limited v. FCC,

781 F.2d 946, 951-52 (D.C. Cir. 1986); Richardson Independent School District, 5 FCC Rcd 3135, 3136 (1990) ("Richardson"); Metromedia, Inc. 56 FCC 2d 909, 909-910 (1975), recon. denied 59 FCC 2d 1189 (1976). The only exception to the rule is if the petitioner shows that its failure to file for reconsideration in a timely manner resulted from "extraordinary circumstances." See Pueblo Radio Broadcasting Service, 6 FCC Rcd 1416, 1416 (1991); Gardner v. FCC, 530 F.2d1086, 1091-92 (D.C. Cir. 1976) (Commission failure to provide notice is extraordinary circumstance; Richardson, 5 FCC Rcd at 3136). Nothing in the present case would even remotely qualify as an "extraordinary circumstance." Instead, in its request for permission to submit a late filing, Gold Country contends that it could not file the pleading on time due to the incompetency of its counsel. However, it is the Commission's long-standing practice "to hold applicants themselves responsible for compliance with our rules and to reject all efforts to shift responsibility to others." See, e.g., WHW Enterprises, Inc. v. FCC, No. 83-2067 (D.C. Cir. 1985); 220 Television, Inc., 81 FCC 2d 575 (1980). The Commission has held that if it were to accept post-decisional arguments of incompetent counsel:

[It] would face one of two choices: (1) to waive these rules whenever a tardy applicant claimed reliance on professional advice as an excuse, or (2) to evaluate the competence of each individual practitioner to determine on a case-by-case basis whether the error was of a nature justifying waiver. Both approaches are clearly untenable, the former because it would create an exception so broad as to destroy the effectiveness of our ... procedures, the latter because it would involve us in questions of professional competence more properly left to courts and boards of review established for this purpose.

United Public Broadcasting Co., Inc., 57 RR 2d 1605 , 1606 (1985).

9. To accept such arguments would "create administrative and procedural havoc."

See Vela Broadcasting Co. et.al., 102 FCC 2d 997, 1000 (1985); See also Maricopa County Community College District, 4 FCC Rcd 7754, 7755 (1989); Carroll, Carroll & Rowland, 4 FCC

Rcd 7149, 7151 (1989) . The Commission has long recognized that ineffective counsel is not a valid reason to violate Commission rules or fail to bring facts that the applicant reasonably should have known to the Commission's attention, especially where blame is placed on allegedly ineffective counsel after the Staff has rendered a decision unfavorable to that party's position. Gold Country's allegation that it was unable to meet the statutorily mandated filing deadline or explore any issues related to interference between the stations, even though it had participated in the proceeding since its initiation, because of ineffective counsel is particularly unpersuasive because the issues raised in the "supplemental" petition are engineering issues, not legal issues. **Gold Country has maintained the same engineer throughout its participation in the proceeding.**

10. The Staff's failure to dismiss both the Petition for Reconsideration and the "supplemental" filing to the Petition for Reconsideration, amount to prejudicial procedural error (See 47 CFR Section 1.115(b)(2)(v)) because it is direct conflict with rules and statute. But for the Staff's disregard of these significant procedural issues, the initial order would stand and Nevada County would not have suffered the substantial harm caused to it by the Staff's reliance on pleadings with egregious procedural faults and new arguments inappropriately raised.

11. Erroneous Finding as to an Important and Material Question of Fact. Even without the fatal procedural errors, the Allocations Branch made an erroneous finding as to an important and material question of fact, which warrants review under 47 CFR 1.115. The Allocations Branch granted Gold Country's Petition for Reconsideration, saying that "**we believe that the public interest requires that we consider the allegation of significant**

interference to the only broadcast station licensed to Jackson, California." See Order at p. 4. There is no significant interference. The Allocation Branch found otherwise only because it based its decision on a study based on an utterly erroneous standard.

12. Specifically, the Allocations Branch fails to recognize the difference between the "interference area," which is smaller than the "overlap area" because the overlap area includes both the area in which quality of service falls below the minimally acceptable level -- i.e., the "interference area" -- and the larger area in which the quality of service is predicted to be better than minimally acceptable overall but nonetheless may be diminished for some listeners. The Commission itself has recognized the difference between overlap and interference: "The contour method identifies not only the area in which quality of service falls below the minimally acceptable level but also the larger area in which the quality of service is predicted to be better than minimally acceptable overall but nonetheless may be diminished for some listeners." See Board of Education of the City of Atlanta, 3 Comm. Reg. 798, 799 n1 (1996). The Commission has frequently authorized first or second local FM service to communities with *overlap* received to the new FM allotments. See, attached, Statement of William J. Getz in Support of an Application for Review in MM Docket No. 90-189 at 7-8 ("Getz Statement").¹

13. Despite the clear and important difference between overlap and interference, the Allocations Branch relied on Gold Country's inaccurate engineering study, included with its supplemental pleading, in determining that Gold Country's allegations were true and accurate

¹ In Board of Education of the City of Atlanta, the Commission relied upon a 1985 Memorandum Opinion and Order as having "changed" the "method of calculating interference." Id. at n. 1. Two of the instances of allotments made notwithstanding overlap, cited in the Getz Statement, were after the 1985 Memorandum Opinion and Order.

and required reversal of the allocation prescribed in the First Report and Order.²

14. Nevada County's engineering studies show that predicted interference is minor and would occur only in sparsely populated areas distant from KNGT's city of license, real interference may not occur at all because of terrain barriers to the potentially interfering signal.

15. As a result of Gold Country's incorrect characterization of the overlap and interference areas, the supplemental petition contains an extremely exaggerated representation of the predicted interference area. For example, the area of predicted interference caused by KFRC to KNGT is 322 km², as opposed to the 1,107 km² that Gold Country claims. The supplemental petition overestimates the predicted interference area by three times. The population within the area of predicted interference caused by KFRC to KNGT is 4,324 persons as opposed to 25,138 persons. The supplemental petition overestimates the population within the predicted interference area by six times over. Moreover, the area of predicted interference is, at its nearest point, 18 kilometers from the KNGT community of license, Jackson, California, and the entire area of predicted interference is served by at least five additional commercial FM stations. See Statement of William J. Getz in Support of an Opposition to a Supplemental Pleading to Petition for Reconsideration at pp. 2, 4.

16. Finally, while the Staff incorrectly found that atmospheric reflection, or troposcatter, will not allow a high mountain range to block interference, Nevada County's engineering study shows that the mountainous terrain will diminish or eliminate interference. The FM frequency band is not a very-high frequency band, and a clear line-of-sight does not

² However, despite Gold Country's contrary claim, the Staff held in the Memorandum Opinion and Order that the First Report and Order did not adopt a short-spaced allotment for KNGT. Instead, KNGT, on Channel 259A, is properly spaced as a three kilowatt Class A station. See Order, n6.

exist between the KFRC-FM transmitting antenna and the optical horizon. Consequently, a received field from KFRC-FM near the KGNT site, due primarily to troposcatter, is highly unlikely. "Under no circumstances would troposcatter be considered 'the dominant mode of propagation' for the KFRC-FM/KNGT radio path." See Getz Statement at 9. Instead, the mountains would have the effect of lessening or possibly eliminating the predicted interference area between KNGT from KFRC-FM. Because the Order dramatically miscalculates the effect of the terrain on interference, and interference is dramatically less, it logically follows that the population affected by the lesser interference is also dramatically less than what the Allocations Branch found in its Order. The Commission cannot let a decision founded on such inaccurate findings stand, especially when additional inaccurate information, such as population data, stems from it.

17. As the above demonstrates, the Staff has failed to adhere to the Commission's technical standards in evaluating the present case. Such failure threatens the integrity of the allocations process. The interference rules are not only intended to prevent interference, but are also a vehicle for ensuring a fair distribution of service throughout the country, as mandated by Section 307(b) of the Communications Act. Exaggerated and incorrect interference conclusion in the Memorandum Opinion and Order will, if not reversed, lead to a result antagonistic to Section 307(b), particularly including loss of a first local allocation to Farmington.

18. As a result of its failure to rely upon the technically sound methods used in the Nevada County engineering study, the Staff has erroneously set aside its correct modification of the FM Table of Allotments contained in the Report and Order. Therefore, the Staff made an erroneous finding as to an important and material question of fact, and the Commission is

obligated to review the decision and render a decision based upon accurate technical standards.

19. **Conclusion.** The Staff stated that its review of Gold Country's untimely supplement to its petition for reconsideration was justified by overwhelming public interest concerns. However, the Staff failed to consider the record in its entirety. Instead, the Staff examined information that was calculated under unacceptable engineering methods and was designed to severely exaggerate numbers in favor of Gold Country's self-interest in its proposal. The public interest depends on an accurate evaluation of the case under correct technical standards. For the foregoing reasons, Nevada County requests that the Commission review its Staff's decision, reverse the November 5, 1999 Memorandum Opinion & Order in this proceeding, and reinstate the correctly decided First Report and Order.

Respectfully Submitted,

NEVADA COUNTY BROADCASTERS, INC

By:


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December 6, 1999

CARL T. JONES
CORPORATION

STATEMENT OF WILLIAM J. GETZ
IN SUPPORT OF
AN APPLICATION FOR REVIEW
IN MM DOCKET NO. 90-189

Prepared for: Nevada County Broadcasters, Inc.

I am a Graduate Engineer, an employee in the firm of Carl T. Jones Corporation with offices located in Springfield, Virginia. My education and experience are a matter of record with the Federal Communications Commission.

This office has been authorized by Nevada County Broadcasters, Inc. ("Nevada County"), licensee of KNCO(FM), Grass Valley, California, to prepare this statement and the associated exhibits as technical support to its Application for Review concerning the Federal Communications Commission Allocations Branch ("Allocations Branch") final decision in MM Docket No. 90-189. By *Memorandum Opinion and Order*, adopted October 27, 1999 and released November 5, 1999, the Allocations Branch reversed its original arrangement of allotments specified in the *First Report and Order* in MM Docket No. 90-189.¹

The Allocations Branch reversed its initial decision in response to a Petition for Reconsideration in MM Docket No. 90-189 ("Petition for Reconsideration") filed by Gold Country Communications, Inc. ("Gold Country"), licensee of KNGT(FM), Jackson, California. As stated in Nevada County's Objection to the Gold Country Petition for

¹ The *First Report and Order* was adopted September 1, 1995 and released September 12, 1995.

STATEMENT OF WILLIAM J. GETZ
PAGE 2

Reconsideration, the Gold Country Petition contained serious technical errors and false statements which exaggerated the net effect of the Amendments to the FM Table of Allotments adopted in the *First Report and Order*. The *First Report and Order* authorized the following changes in the FM Table of Allotments:

| <u>FM Station</u> | <u>Community</u> | <u>Old Channel/Class</u> | <u>New Channel/Class</u> |
|-------------------|------------------|--------------------------|--------------------------|
| (none) | Farmington, CA | (none) | 232A |
| KNCO | Grass Valley, CA | 232A | 232B1 |
| KNGT | Jackson, CA | 232A | 259A |

In the *Memorandum Opinion and Order*, the Allocations Branch reversed their initial decision and returned KNGT to channel 232A because the Allocations Branch contended that Jackson's only local service, operating on the new channel, would be subject to significant interference² received to a population of 25,138 persons within an area of 1,107 km². In reversing their initial decision, the Allocations Branch ultimately chose an upgrade at Jackson, California in lieu of a new first local service at Farmington, California.

Technical Issues

The *Memorandum Opinion and Order* was silent regarding Nevada County's explanation of the Federal Communications Commission's long-standing definition of, and distinction between, interference and overlap. Rather than address Nevada County's

² See *Memorandum Opinion and Order*, paragraph 9.

STATEMENT OF WILLIAM J. GETZ
PAGE 3

contention that Gold Country misrepresented overlap areas as interference areas, the *Memorandum Opinion and Order* simply accepted Gold Country's overlap areas and populations as interference areas and populations. With these exaggerated amounts of predicted "interference" area and populations, the Allocations Branch concluded in the *Memorandum Opinion and Order* that they "could not make a finding that impairing the only broadcast station licensed to Jackson is in the public interest".

Moreover, the Allocations Branch's contention in Paragraph 10 of the *Memorandum Opinion and Order* that a high mountain range between a transmitter and a receive site has no effect on predicted field at the receive site is ludicrous. In an effort to support this assertion, the Allocations Branch contends the interference fields will be "no less than predicted...because the dominant mode of FM signal propagation results from atmospheric reflection, referred to as troposcatter." Nevada County, in its Opposition to the Gold Country Petition for Reconsideration, simply stated the mountains would have the effect of lessening or possibly eliminating the predicted interference area. The Allocations Branch disagreed with Nevada County's statement and cited "troposcatter". As demonstrated herein, the term "troposcatter" is misplaced and does not apply to this radio path.

Predicted Overlap vs. Predicted Interference

The Nevada County Opposition to the Gold Country Petition for Reconsideration discussed the difference between overlap and interference. Those technical arguments, unaddressed in the *Memorandum Opinion and Order*, are not repeated herein but are reemphasized by reference.

In paragraph 10 of the *Memorandum Opinion and Order*, the Allocations Branch states:

"Cochannel interference results when the 40 dBu signal of Station KFRC-FM, using the F(50,10) curves, overlaps the 60 dBu contour of Station KNGT. See Section 73.509 of the Rules. In this instance, the Station KFRC-FM 40 dBu contour will extend 160 kilometers while the 60 dBu contour of KNGT extends 24.2 kilometers. This area of interference encompasses 1,107 square kilometers containing 25,138 persons."

The first sentence of the quoted excerpt is true but misleading. The last sentence is completely false.

No interference is predicted to occur if the contours specified above do not overlap. It is true that interference is predicted to occur when the contours specified above overlap. However, it is important to note further that, the overlap does not define the interference area.

"Contour overlap is an effective method to demonstrate compliance with rules aimed at preventing interference, since lack of contour overlap is sufficient to demonstrate compliance with rules aimed at preventing interference... We remain convinced that the practical effect on the listening public of interference between two stations is best evaluated in terms of interference (D/U ratio) rather than overlap. Therefore, we will require that

all interference showings for Proposal 1 [grandfathered short-spacing rules] be analyzed using the desired-to-undesired (D/U) signal strength ratio analysis." (See *Grandfathered Short-Spaced FM Stations*, 62 FR 50518 [1997]).

Although the FCC is discussing grandfathered short-spaced stations in the preceding quote, it is obvious that the Commission makes a clear distinction between interference and overlap. The Allocations Branch failed to make that distinction in the current proceeding.

Exhibit 1 shows the 60 dBu to 80 dBu protected contours F(50,50) in 1 dbu intervals for KNGT (assuming its licensed technical facility) on the new Channel 259A.³ Also shown are 40 dBu to 60 dBu interfering contours F(50,10) from fully-spaced, cochannel, superpower Class B station, KFRC, San Francisco, California, 259B. The interference area analyzed using the desired-to-undesired (D/U) signal strength ratio analysis is shaded. This 321 km² area contains a population of 4,324 persons.⁴

The Allocations Branch denied the channel change at Jackson because of "significant interference to the only broadcast station licensed to Jackson, California".⁵

³ The licensed KNGT facility (equivalent to A 3.0 kW ERP @ 100 meter Class A facility) is assumed for KNGT because the underlying Petition for Rulemaking which proposed use of Channel 259A at Jackson, California, was filed prior to October 2, 1989. Consequently, the provisions of Section 73.213(c)(1) of the Commission's Rules are applicable between the KNGT(FM) licensed site (the reference site used in the First Report and Order) and both KFRC-FM and KCIV(FM). This fact is clearly explained in the First Report and Order in footnote 6.

⁴ It should be noted that the original interference study was performed in December 1995 by hand using a polar planimeter to determine interference area and the US Census Books assuming a uniform distribution of population to determine population. The different area and population numbers presented herein are due to improved computerized methods to determine area and population within a given area.

⁵ See *Memorandum Opinion and Order*, paragraph 9.

STATEMENT OF WILLIAM J. GETZ
PAGE 6

The Allocations Branch contends the interference area is 1,107 km². As shown herein, the predicted interference area is 321 km², only 29.0% of the Allocation Branch's contention.

The Allocations Branch contends the population within the interference area is 25,138 persons. As shown herein, using conventional FCC prediction methods, the appropriate F(50,50) and F(50,10) propagation curves and D/U ratios, the population within the predicted interference area (without any consideration of the elimination of interference due to terrain obstructions as discussed herein on Page 9) is 4,324 persons, only 17.2% of the Allocation Branch's contention.⁶

Allocations Branch Authorized Overlap to New First Local Service FM Allocations

Nevada County accepts that the overlap area in question is 321 km² and the population within the overlap area is 25,138 persons. The total KNGT(FM), Class A, 60 dBu service area encompasses 1,729 km² and contains 37,289 persons. Consequently, without being aware of any overlap issue, the Allocations Branch, in the *Report and Order*, adopted a channel change for KNGT(FM) in which overlap received covered 18.6% of the land area within the normally protected contour and 67.4% of the population.⁷ Now, in the *Memorandum Opinion and Order*, the Allocations Branch has reversed its original decision

⁶ The population was determined using the computerized block centroid retrieval methodology, recognized by the U.S. Census Bureau as a more accurate means of determining population within a given area than the uniform distribution method. See the October 9, 1992 *Letter from Chief, Audio Services Division to Larry W. Hill*, reference No. 1800B3-ESR.

⁷ It is important to note that the KNGT(FM) channel change authorized in the *Report and Order* satisfied allocation standards and the minimum distance spacing requirements of Section 73.207.

STATEMENT OF WILLIAM J. GETZ
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because of this "significant" amount of overlap (which was incorrectly categorized by the Allocations Branch as interference). Past Allocations decisions reveal that the Allocations Branch added assignments to some communities where much more significant amounts of prohibited overlap received were predicted to occur.

In a cursory search, this office identified three other cases in allocations proceedings where the Federal Communications Commission authorized a first or second local FM service to a community with reference coordinates which satisfied minimum distance spacing requirements but resulted in overlap received to the new FM station. Each of these cases is described briefly below.

Exhibit 2 depicts the protected contour for the first local FM service allotted to Sun City, California on Channel 225A [See 54 FR 47362 (1989)]. The protected service area is 2,619 km² and contains a population of 292,969 persons. As depicted in Exhibit 2, the entire authorized protected contour is subject to overlap received. In this instance, the Allocations Branch authorized a first local FM service where 100% of the protected service area would receive prohibited overlap and 100% of the population within the protected authorized service area would receive prohibited overlap.

Exhibit 3 depicts the protected contour for the first local FM service allotted to Big Bear City, California on Channel 227A [See 52 FR 44396 (1987)]. The protected service area is 3,620 km² and contains a population of 56,978 persons. As depicted in Exhibit 3, the authorized protected contour is subject to overlap received to an area of 2,427 km²

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which contains a population of 55,654 persons. In this instance, the Allocations Branch authorized a first local FM service where 67% of the protected service area would receive prohibited overlap and 97.7% of the population within the protected authorized service area would receive prohibited overlap.

Exhibit 4 depicts the protected contour for the second local FM service allotted to Shafter, California on Channel 282A [See *First Report and Order*, MM Docket No. 84-231, released January 14, 1985]. The protected service area is 2,514 km² and contains a population of 205,932 persons. As depicted in Exhibit 4, the authorized protected contour is subject to overlap received to an area of 1,898 km² which contains a population of 182,452 persons. In this instance, the Federal Communications Commission authorized a second local FM service where 75.5% of the protected service area would receive prohibited overlap and 88.6% of the population within the protected authorized service area would receive prohibited overlap.

Tropospheric Scatter ("troposcatter")

Exhibit 5, attached, is a copy of the computer generated terrain profile submitted as Exhibit 6 in the Nevada County Opposition. As shown in Exhibit 5, a high mountain range lies between the KFRC-FM transmitter and the KNGT transmitter. In the *Memorandum Opinion and Order*, the Allocations Branch agreed that the major terrain obstruction exists. Nevada County, in its Opposition to the Gold Country Petition for Reconsideration, simply

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stated the mountains would have the effect of lessening or possibly eliminating the predicted interference area to KNGT on Channel 259A from cochannel, superpower, Class B station KFRC-FM. In the *Memorandum Opinion and Order*, the Allocations Branch disagreed and contended the KFRC-FM interference fields will be "no less than predicted...because the dominant mode of FM signal propagation results from atmospheric reflection, referred to as troposcatter".

In the late 1940s, the effect of forward scattering due to turbulence and other tropospheric phenomena, summarized by the term "troposcatter" showed that it was possible to extend the range of one radio link beyond the optical horizon.⁸ Troposcatter is the dominant form of signal propagation only where line-of-sight conditions exist to the optical horizon and wave propagation continues beyond the optical horizon due to atmospheric reflection. The fields attributable to tropospheric propagation are typically weak but reliable fields which may be present several hundred miles beyond the horizon in very-high-, ultra-high-, and super-high frequency bands.⁹

The FM frequency band is not a very-high-, ultra-high-, or super-high frequency band. As shown in Exhibit 5, a clear line-of-sight path does not exist between the KFRC-FM transmitting antenna and the optical horizon. Consequently, even at the comparatively low FM frequencies, a received field from KFRC-FM near the KNGT site, due primarily to

⁸ Donald M. Hampshire, ed., Communications System Engineering Handbook, (McGraw Hill, 1967), pp. 16-5.

⁹ Reference Data for Radio Engineers, 5th ed. (Howard W. Sams and Co., 1968), pp. 26-23.

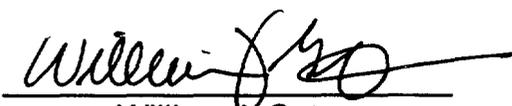
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troposcatter, is highly unlikely. Under no circumstances would troposcatter be considered "the dominant mode of propagation" for the KFRC-FM/KNGT radio path.

Troposcatter may be considered the dominant mode of propagation in a very-high frequency radio system used for island hopping relay stations with a clear line-of-sight path over water to the optical horizon.¹⁰ The KFRC-FM/KNGT radio path is a dramatic departure from these ideal troposcatter, island-hopping path conditions. Nevada County reiterates its original contention that the mountains between the two sites would have the effect of lessening or possibly eliminating the predicted interference area to KNGT on Channel 259A from cochannel, superpower, Class B station KFRC-FM.

This statement and the supporting exhibits have been prepared by me or under my direct supervision and are believed to be true and correct.

DATED: December 1, 1999



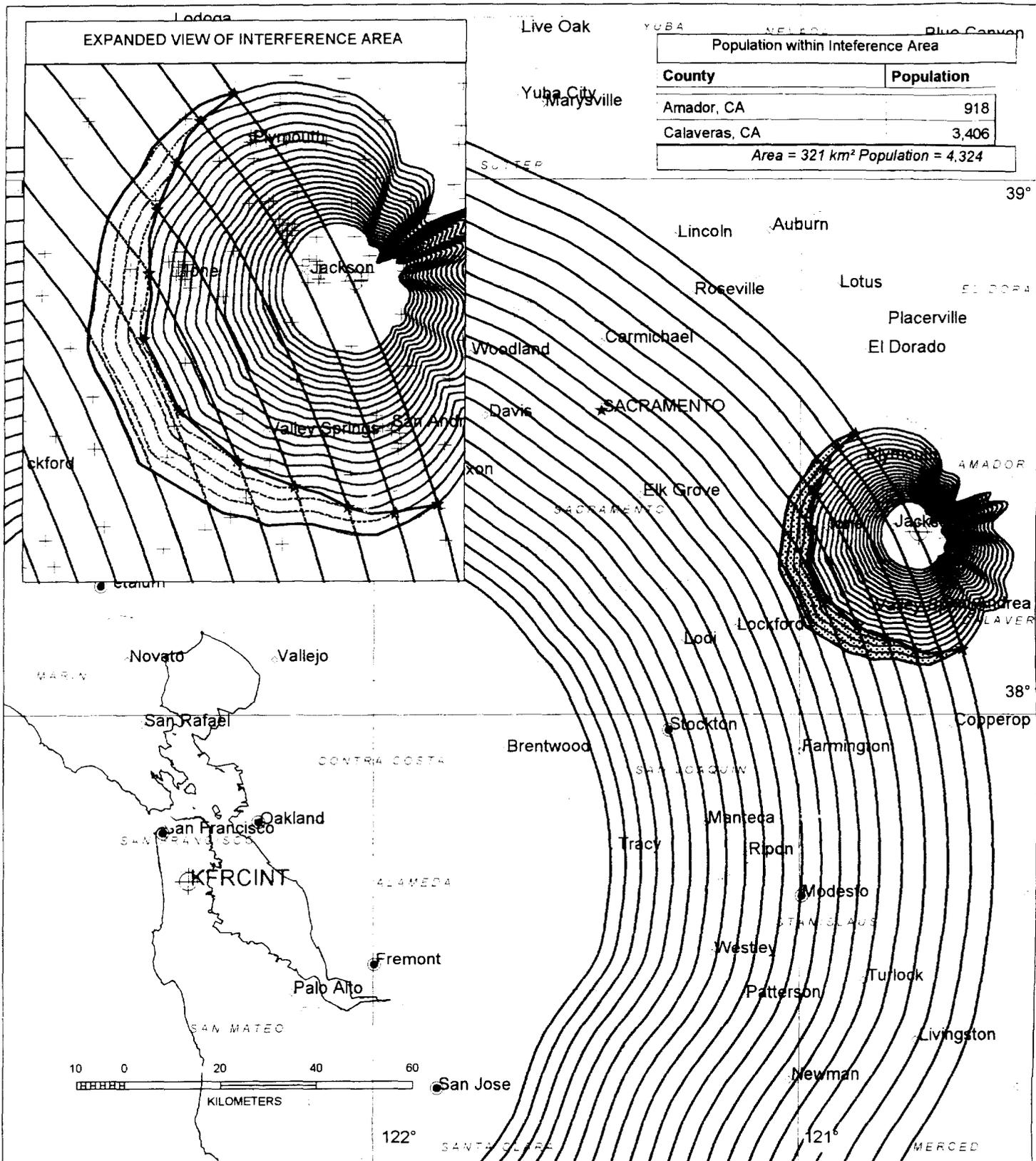
William J. Getz

¹⁰ Hampshire, pp. 16-5

KNGT(FM) Protected Contours: 60 dBu to 80 dBu F(50,50)
 KLRC-FM Interfering Contours: 40 dBu to 60 dBu F(50,10)

- + 1990 U.S. Census Bureau Population Centroid
- ★ Locus of Interference (D/U Ratios)

EXHIBIT 1

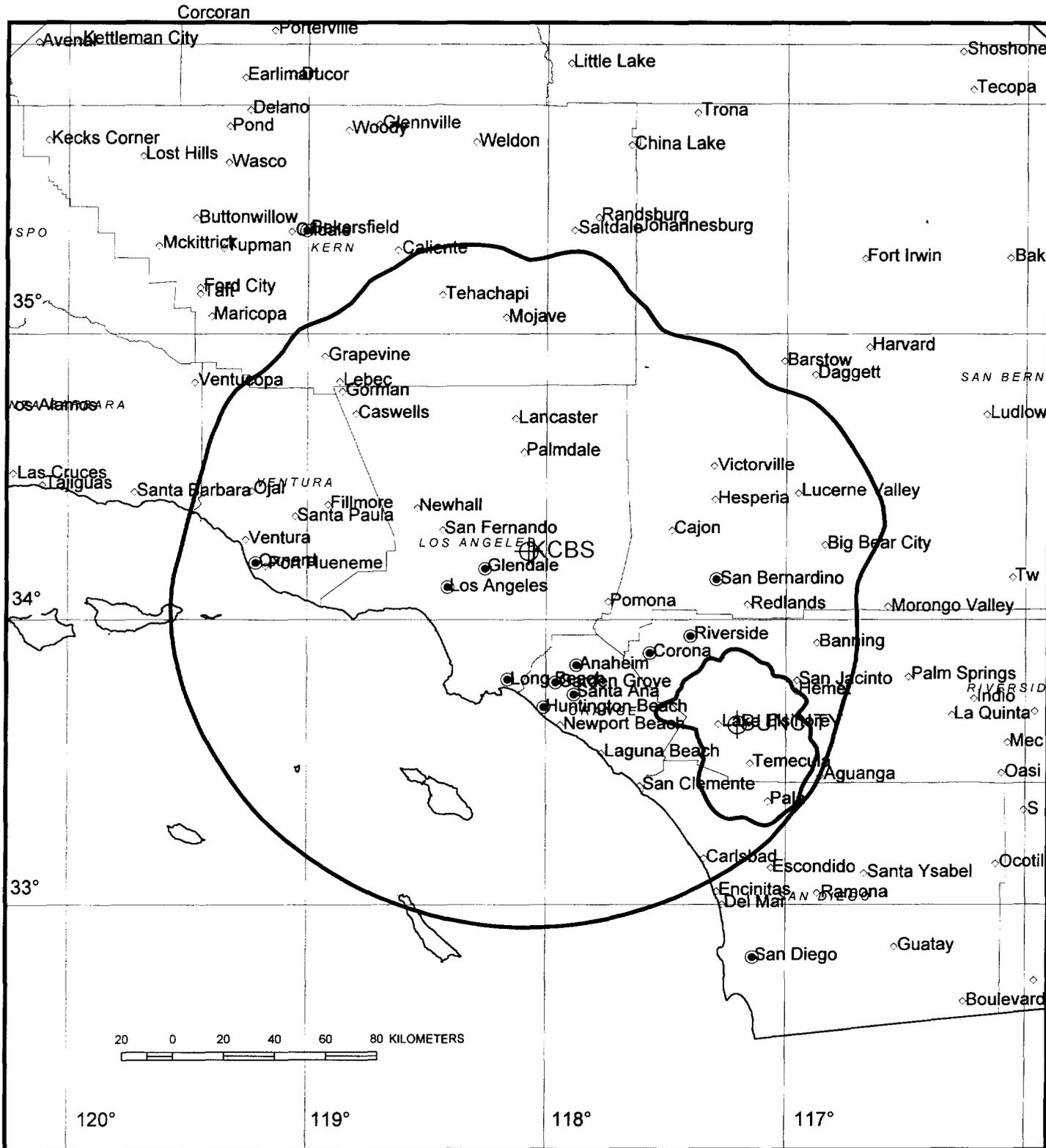


KNGT(FM): Ch. 259A, 0.23 kW, 332 m HAAT
 KFRG-FM: Ch. 259B, 40.0 kW, 396 m HAAT

PREDICTED INTERFERENCE CAUSED TO KNGT(FM), JACKSON, CA (CH. 259A) FROM KFRG-FM, SAN FRANCISCO, CA DECEMBER, 1999

CARL T. JONES CORPORATION

Sun City New First Local Service Protected Contour: 60 dBu F(50,50)
KCBS Interfering Contour: 54 F(50,10)



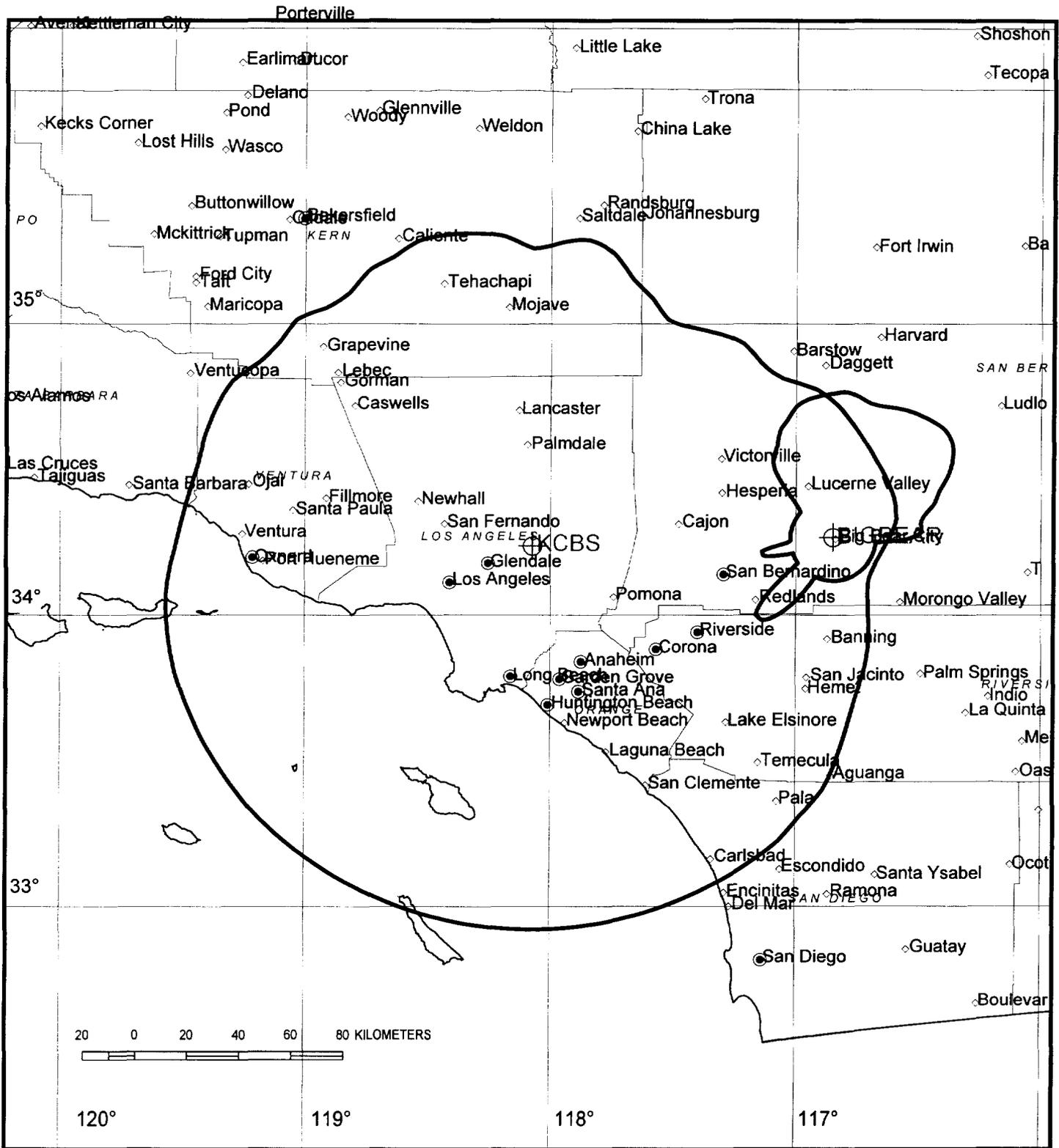
Sun City, CA reference site:
Ch. 225A: 33-37-29 N.L. 117-12-03

KCBS, Los Angeles, CA
Ch. 226B, 28.5 kW ERP, 1066 m HAAT, BLH-861222KC

**PREDICTED OVERLAP RECEIVED
SUN CITY, CALIFORNIA
CH. 225A, 6.0 kW, 100 m HAAT
DECEMBER, 1999**

CARL T. JONES
CORPORATION

Big Bear City New First Local Service Protected Contour: 60 dBu F(50,50)
 KCBS Interfering Contour: 54 F(50,10)



Big Bear City, CA reference site:
 Ch. 227A: 34-15-42 N.L. 116-50-40

KCBS, Los Angeles, CA
 Ch. 226B, 28.5 kW ERP, 1066 m HAAT, BLH-861222KC

**PREDICTED OVERLAP RECEIVED
 BIG BEAR CITY, CALIFORNIA
 CH. 227A, 6.0 kW, 100 m HAAT
 DECEMBER, 1999**

Shafter New Second Local Service Protected Contour: 60 dBu F(50,50)
KBIG-FM Interfering Contour: 40 dBu F(50,10)

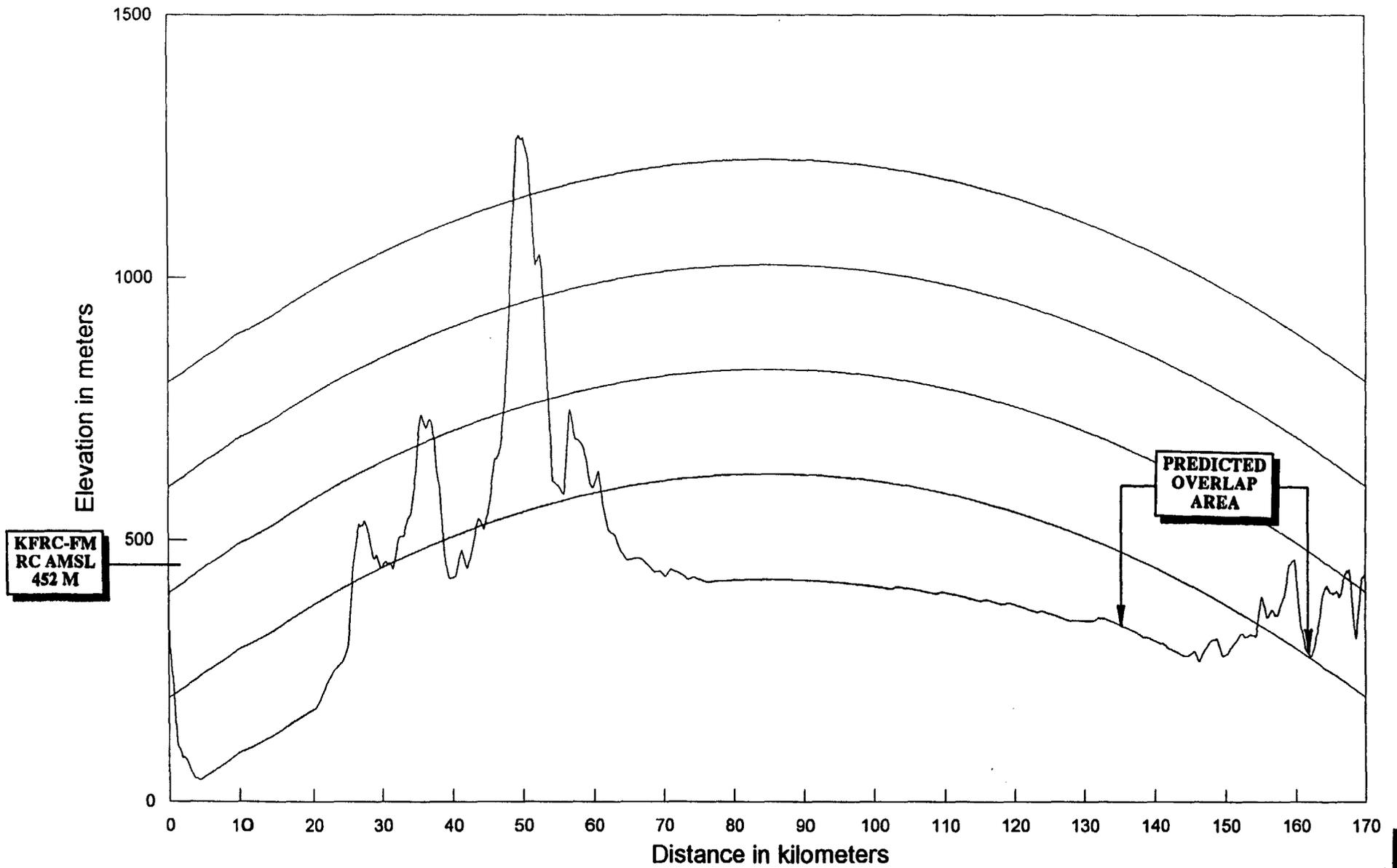


Shafter, CA reference site:
Ch. 282A: 35-28-58 N.L. 119-16-34

KBIG-FM, Los Angeles, CA
Ch. 282B, 105 kW (max), 882 m HAAT, BLH-960917KC

**PREDICTED OVERLAP RECEIVED
SHAFTER, CALIFORNIA
CH. 282A, 6.0 kW, 100 m HAAT
DECEMBER, 1999**

Terrain profile from KFRC-FM toward KNGT
Azimuth = 65 deg. --- 4/3 Earth Curvature

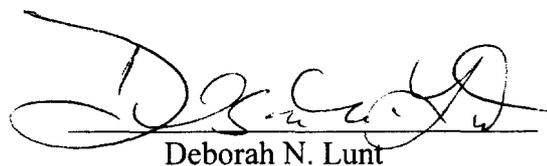


CERTIFICATE OF SERVICE

I, Deborah N. Lunt, a secretary with the law firm of Fletcher, Heald & Hildreth, PLC, do hereby certify that true copies of the foregoing "**Application for Review**" was sent this 6th day of December, 1999, by first-class mail, postage prepaid, to the following:

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Deborah N. Lunt

*By Hand Delivery