

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

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Amendment of Section 73.622(b),
Table of Allotments,
Digital Television Broadcast Stations.
(Salem, Oregon)

) MM Docket No. 00-117
) RM-9810
)
)

To: Chief, Video Services Division
Mass Media Bureau

COMMENTS IN OPPOSITION

ACME Television Licenses of Oregon, LLC (hereafter "ACME"), licensee of KWBP(TV), Channel 32, Salem, Oregon, (Facility Id. No. 10192) and licensee of low power television station KWBP-LP, Channel 4, Reedville, Oregon, (Facility Id. No. 35151), by its attorneys, herewith opposes the proposal of Paxson Salem License, Inc. (hereafter "Paxson") to substitute digital TV channel 4 for assigned digital TV channel 20 at Salem, Oregon, (hereafter the "Paxson Proposal"). The Chief, Video Services Division, Mass Media Bureau (hereafter the "Bureau") invited comments on the Paxson Proposal in a "Notice of Proposed Rule Making" herein adopted June 26, 2000, DA 00-1417 (Released June 29, 2000) (hereafter "NPRM"). In support, ACME submits the attached engineering statement of Carl T. Jones Corporation (hereafter "Engineering Statement") and the following comments in opposition to the Paxson Proposal.

The Paxson Proposal Would Not Satisfy The Commission's Proposed DTV Principal Community Coverage Requirements

1. The Commission's "Notice of Proposed Rule Making" in MM Docket No. 00-39, *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 15 FCC Rcd. 5257 (2000) (hereafter "Conversion") has invited comment on a

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variety of questions surrounding the issue of “replication” – the matching of DTV service with the Grade B contour of the paired NTSC station. Among other things, the Commission invited comment on the use of a DTV principal community service requirement and when to impose such a replication requirement.

2. Recognizing that TV stations are in the process of transition from analog to digital, the Commission nonetheless noted that it has been presented “with proposals that do not involve replication” wherein “a DTV licensee might seek to locate its station so that its city of license is barely within its service contour, which may result in service that is less reliable or available to a smaller percentage of locations than usually expected for ‘city grade service.’” *Conversion* at 5267.

3. Accordingly, the Commission has proposed that “a DTV principal community be served by a stronger signal than that specified for the general DTV service contour,” thereby limiting “the extent to which DTV broadcasters can migrate from their current service contour” and improving “the availability and reliability of DTV service in the city of license.” *Id.* The Commission invited comment on the specific signal level that it should require to be placed over the DTV station’s principal community. For Channel 4 operations the Commission suggested a minimum 55 dBu F(50, 90) field strength contour over the entire community of license.

4. The Commission also proposed that all DTV stations that are paired with NTSC stations be required to meet the new principal community requirement by May 1, 2004. As an alternative, the Commission has proposed imposing the city-grade service requirement within a certain period of time (such as one year) after construction is scheduled to be completed. The Commission also stated that “[f]or petitioners seeking a DTV channel change, we propose to require a showing that the principal community

service requirement can be met with the proposed DTV allotment facilities or a commitment to elect their NTSC channel for their post-transition DTV operation.” *Id.* at 5268.

5. In numerous proceedings to amend the Table of Allotments for Digital Television Broadcast Stations the Bureau has recognized the importance of replicating the existing NTSC signal.¹ Furthermore, the Bureau has also stated that a petitioner for rulemaking to amend the Table of Allotments for Digital Television Broadcast Stations “will be required to demonstrate compliance with not only minimum field strength requirements but with any other of the technical standards that may be adopted by the Commission in ” MM Docket No. 00-39. *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations. (Kingston, New York) (NPRM, MM Docket No. 00-121, RM-9674), supra*, pp. 1-2 (Para. 3).

6. As demonstrated in the Engineering Statement, the Paxson Proposal fails to provide a 55 dBu city grade field strength contour over all of Salem, Oregon. Furthermore, more broadly, the Paxson Proposal fails to replicate the existing NTSC service area of KPXG(TV), Channel 22, Salem, Oregon. The Engineering Statement

¹ *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations. (Monroe, Louisiana) (Report and Order, MM Docket No. 99-265, RM-9660), DA 00-1708 (Released August 3, 2000); Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations. (Reno, Nevada) (NPRM, MM Docket No. 00-137, RM-9917), DA 00-1796 (Released August 18, 2000); Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations. (Portland, Maine) (NPRM, MM Docket No. 00-133, RM-9895), DA 00-1710 (Released August 4, 2000); Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations. (Kingston, New York) (NPRM, MM Docket No. 00-121, RM-9674), DA 00-1485 (Released July 3, 2000); and Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations. (Killeen, Texas) (NPRM, MM Docket No. 00-103, RM-9878), DA 00-1238 (Released June 8, 2000).*

shows that there is a significant area that receives KPXG NTSC service, but which would not receive digital TV service under the Paxson Proposal.

The Paxson Proposal Would Displace the Service of KWBP-LP, Channel 4, Reedville, Oregon

7. In the NPRM the Bureau states that, according to Paxson, the Paxson Proposal “would not result in the displacement of any LPTV stations.” This statement is incorrect.

8. In its “Petition for Rule Making to Amend the DTV Table of Allotments”, Paxson stated, at page 3 thereof, that the Paxson Proposal “would result in no net loss of LPTV stations.” In footnote 5, Paxson further said that “[t]he current allotment on channel 20 would displace at least one LPTV station, as would the proposed operation on channel 4.” The Technical Exhibit, supporting Paxson’s petition for rule making, states, at page 5 thereof, that “LPTV station KENY-LP [now KWBP-LP] on channel 4 at Reedville, Oregon will be displaced by the proposed KPXG DTV operation on channel 4. KENY-LP [now KWBP-LP] is only 12.4 kilometers from the proposed KPXG DTV site.”

9. Paxson attempts to suggest that there is no substantive difference between the LPTV displacement resulting from the Paxson Proposal and that resulting from operation on DTV Channel 20, which was originally assigned by the Commission. However, Paxson’s Technical Exhibit notes that the LPTV station in Albany, Oregon, (south of Salem) that might be displaced by Paxson’s DTV operation on Channel 20 is “59 kilometers from the KPXG channel 20 DTV allotment site”, and Paxson proposes to change sites and move *away* from that LPTV station. By contrast, Paxson has proposed to moved *toward* KWBP-LP, which is only 12.4 kilometers from the DTV site specified in the Paxson Proposal.

10. KWBP-LP, Reedville, provides a valuable public service – delivering WB Network, syndicated and local programming to persons residing in the City of Portland, Oregon, and the surrounding area, who are unable to satisfactorily receive that programming over the air from KWBP(TV), Salem. ACME acquired KWBP-LP based on the Commission’s original formulation of the Table of Allotments for Digital Television Broadcast Stations, which preserved the service provided by KWBP-LP. ACME invested considerable resources (in excess of \$250,000) in improving KWBP-LP’s service to the public.

11. Paxson has come forward with a proposal that not only fails to replicate the existing NTSC service area of KPXG(TV), Salem and fails to provide an adequate signal over the KPXG-DT community of license, but also displaces the extensive service provided by KWBP-LP. Paxson fails to explain how the public interest will be served by the loss of service currently provided by both KPXG(TV) and KWBP-LP.

12. For these reasons, ACME recommends that the Bureau deny the Paxson Proposal and terminate this proceeding.

13. If, however, the Bureau wants to give further consideration to the Paxson Proposal, then ACME must note that because of the timing of the *NPRM* it never had the opportunity to file a displacement application for modification of the KWBP-LP facilities to specify operation on another channel. Accordingly, any further consideration of the Paxson Proposal ought to be conditioned on location and assignment of a satisfactory equivalent replacement channel for KWBP-LP *and* reimbursement by Paxson to ACME of *all* associated costs resulting from the modification of KWBP-LP.

WHEREFORE, for the foregoing reasons and for the reasons set forth in the attached Engineering Statement ACME requests that the Bureau deny the Paxson Proposal and terminate this proceeding.

Respectfully Submitted
DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
Attorneys for
ACME TELEVISION LICENSES OF OREGON, LLC

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August 21, 2000

CARL T. JONES
CORPORATION

STATEMENT OF JOHN E. HIDLE, P.E.
IN SUPPORT OF COMMENTS IN OPPOSITION TO
NOTICE OF PROPOSED RULE MAKING TO
AMEND THE DTV TABLE OF ALLOTMENTS
SALEM, OREGON

Prepared for: ACME Communications, Inc.

I am a Consulting 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. I am a registered Professional Engineer in the Commonwealth of Virginia, Registration No. 7418, and in the State of New York, Registration No. 63418.

GENERAL

ACME Communications, Inc. has authorized this office to prepare this statement and the associated exhibits in support of comments in opposition to a NOTICE OF PROPOSED RULE MAKING¹ within which the licensee of station KPXG(TV), NTSC Channel 22, Salem, Oregon requests the substitution of DTV Channel 4 for its assigned DTV channel 20. Although the Commission believes petitioner's proposal warrants consideration, ACME Communications, Inc. opposes the petitioner's request based on the inaccuracy of several of petitioner's questionable and misleading assertions.

¹ NOTICE OF PROPOSED RULE MAKING, MM Docket No. 00-117, RM-9810, DA 00-1417, Adopted June 26, 2000, Released June 29, 2000, Comment Date: August 21, 2000, Reply Comment Date: September 5, 2000

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COMMUNITY COVERAGE

Although the Commission stated in the NOTICE that the proposed substitution of Channel 4 for Channel 20 would comply with the principal community coverage requirements of § 73.625(a) at the proposed coordinates, ACME respectfully observes the Commission's own concerns² regarding the use of the noise limited signal coverage contour to demonstrate coverage of the principal community. Exhibit 1 shows the principal community coverage contour as proposed by the Commission for channel 2-6 DTV allotments (55 dB μ F(50,90)). It is clear that the proposed 55 dB μ coverage contour encompasses less than one-half of Salem, Oregon, the KPXT community of license.

ALLOTMENT CONSIDERATIONS

Petitioner provides a map showing the predicted 41 dB μ DTV contour for the KPXG channel 20 allotment (54.6 kW, 363 m), and the predicted 28 dB μ DTV contour for the proposed channel 4 allotment (17 kW, 455 m). Exhibit 2 shows the 28 dB μ noise limited contour and the 55 dB μ proposed principal community contour for the proposed channel 4 DTV facility, and the 64 dB μ (Grade B) noise limited contour and the 80 dB μ principal community contour for the licensed KPXG(TV) facility on channel 22. The proposal creates a loss area of 554 square kilometers, containing a population of 14,211, within the Grade B contour of the licensed NTSC facility.

Of more concern is the comparison of the existing and proposed principal

² Notice of Proposed Rule Making in MM Docket No. 00-39.

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community contours which shows a loss area of 1,287 square kilometers, containing a population of 182,444 including more than one-half of the principal community.

The petitioner has filed a maximization application for KPXG-DT (BPCDT-20000427ABW) at its allotted site (1000 kW, 363 m). It is obvious that the petitioner is in no way inhibited in implementing a maximized KPXG-DT on its allotted channel at its allotted site. Exhibit 3 compares the coverage contours of the maximized application on DTV channel 20 with the proposed DTV facility on channel 4. Within the respective noise limited contours there is a loss area of 4,434 square kilometers, containing a population of 50,065 people. A comparison of the proposed principal community contours shows a loss area encompassing 8,795 square kilometers, containing a population of 299,963. That loss population includes more than one-half of the population of the principal community, Salem, Oregon.

The petitioner also claims the necessity of a change in channel from 20 to 4 because it cannot apply for channel 20 at the proposed KOIN site. We have performed an interference study which shows that KPXG-DT can operate at the KOIN site on DTV channel 20 using 1000 kW ERP, at 455 m with a non-directional antenna while causing no interference exceeding the 2% and 10% *de minimis* limits to any other facility. Petitioner claimed significant interference to its own NTSC facility on channel 22 if it moved channel 20 to the KOIN site. Our study shows for KPXG(TV) an interference population increase of 85 people (0.006%).

It appears to ACME Communications, Inc. that KPXG-DT can better serve its

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community of license with the implementation of the facilities described in its pending application (BPCDT-20000427ABW).

LOW POWER TELEVISION IMPACT

Petitioner claims minimal displacement of LPTV facilities. ACME submits that substitution of channel 4 for channel 20 will result in the displacement of KWBP-LP, Reedville, Oregon. Exhibit 4 shows the existing protected service area of LWBP-LP. The 74 dBμ contour encompasses an area of 1,281 square kilometers containing a population of 1,051,131 people. In comparison, the petitioner claims that operation KPXG-DT on channel 20 will displace K20DD, Albany, Oregon. We agree, but note that K20DD has a pending displacement application to move to channel 38 (BPTTL-19990316JG).

SUMMARY

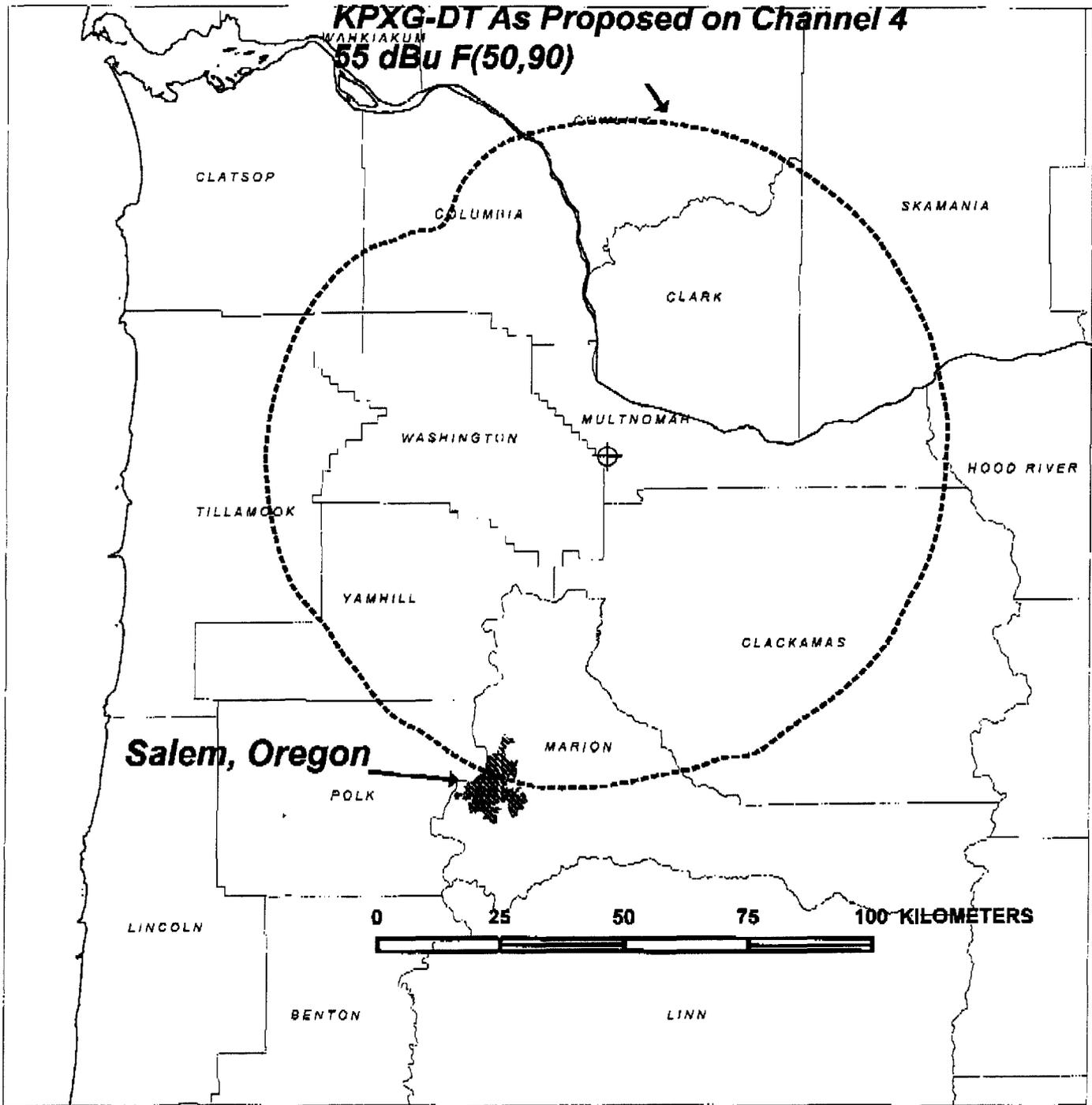
We have thoroughly evaluated the petitioner's proposal and find that KPXG-DT can operate with maximized facilities at its allotted site on its allotted channel. We find that a substitution of channel 4 for channel 20 is unnecessary and is indeed detrimental to the continued existence of KWBP-LP. This statement and associated exhibits were prepared by me, or under my direct supervision and are true and correct to the best of my knowledge and belief.

Date: August 21, 2000



John E. Hidle
John E. Hidle, P.E.

EXHIBIT 1



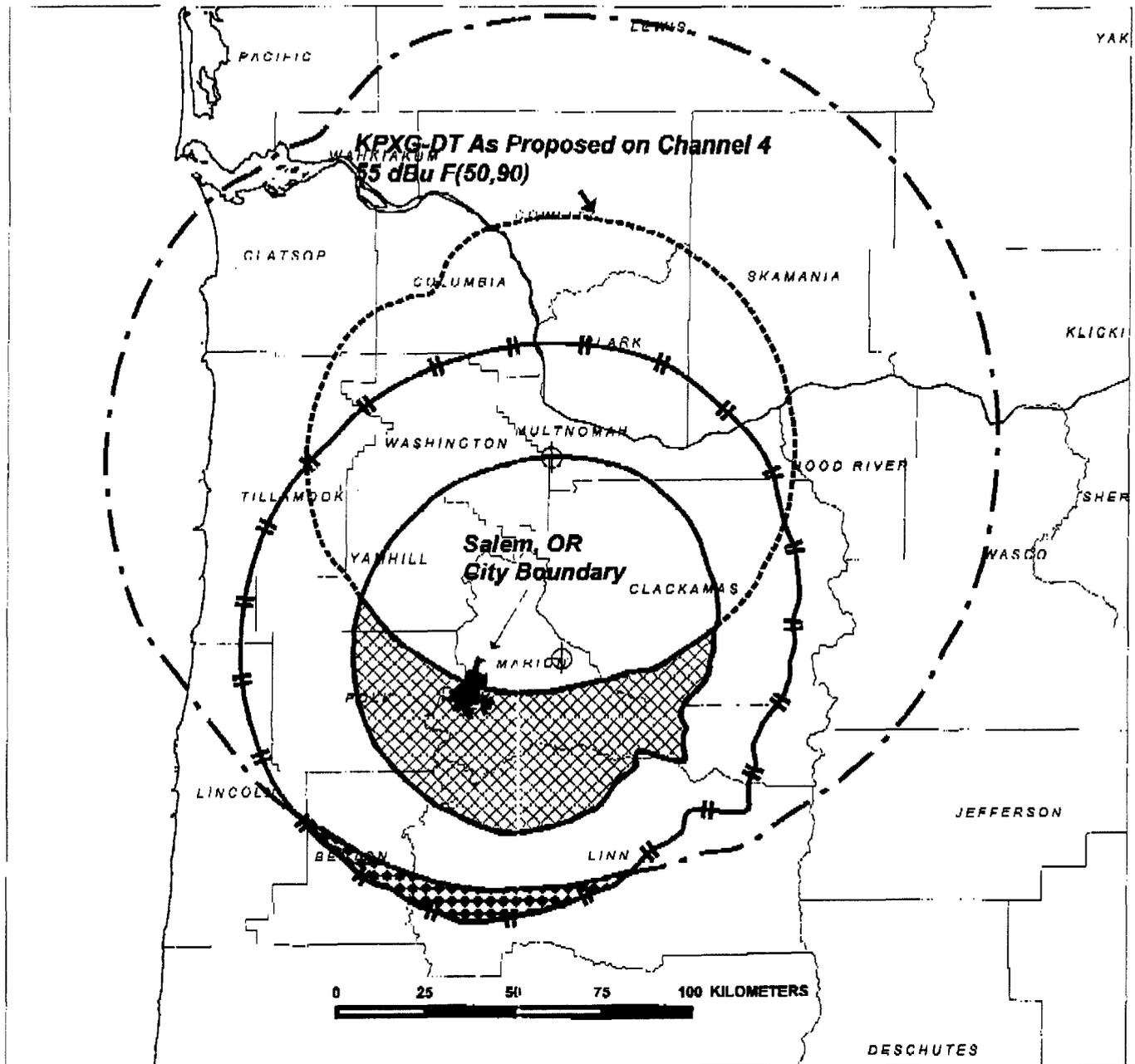
----- KPXG-DT as Proposed on Channel 4
 17 kW ERP; 455 m HAAT
 Nondirectional Antenna Pattern
 55 dBu F(50,90) Coverage Contour

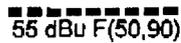
 Area Inside City Boundary
 of Salem, Oregon

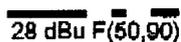
KPXG-DT, Salem, Oregon
Incomplete City Grade Coverage Within
55 dBu F(50,90) Coverage Contour
August, 2000

--- CARL T. JONES ---
 CORPORATION

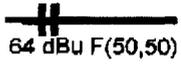
EXHIBIT 2



 55 dBu F(50,90) KPXG-DT as Proposed on Channel 4
 17 kW ERP; 455 m HAAT
 Nondirectional Antenna Pattern

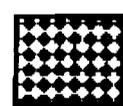
 28 dBu F(50,90)

 80 dBu F(50,50) KPXG(TV) Licensed Contours

 64 dBu F(50,50)

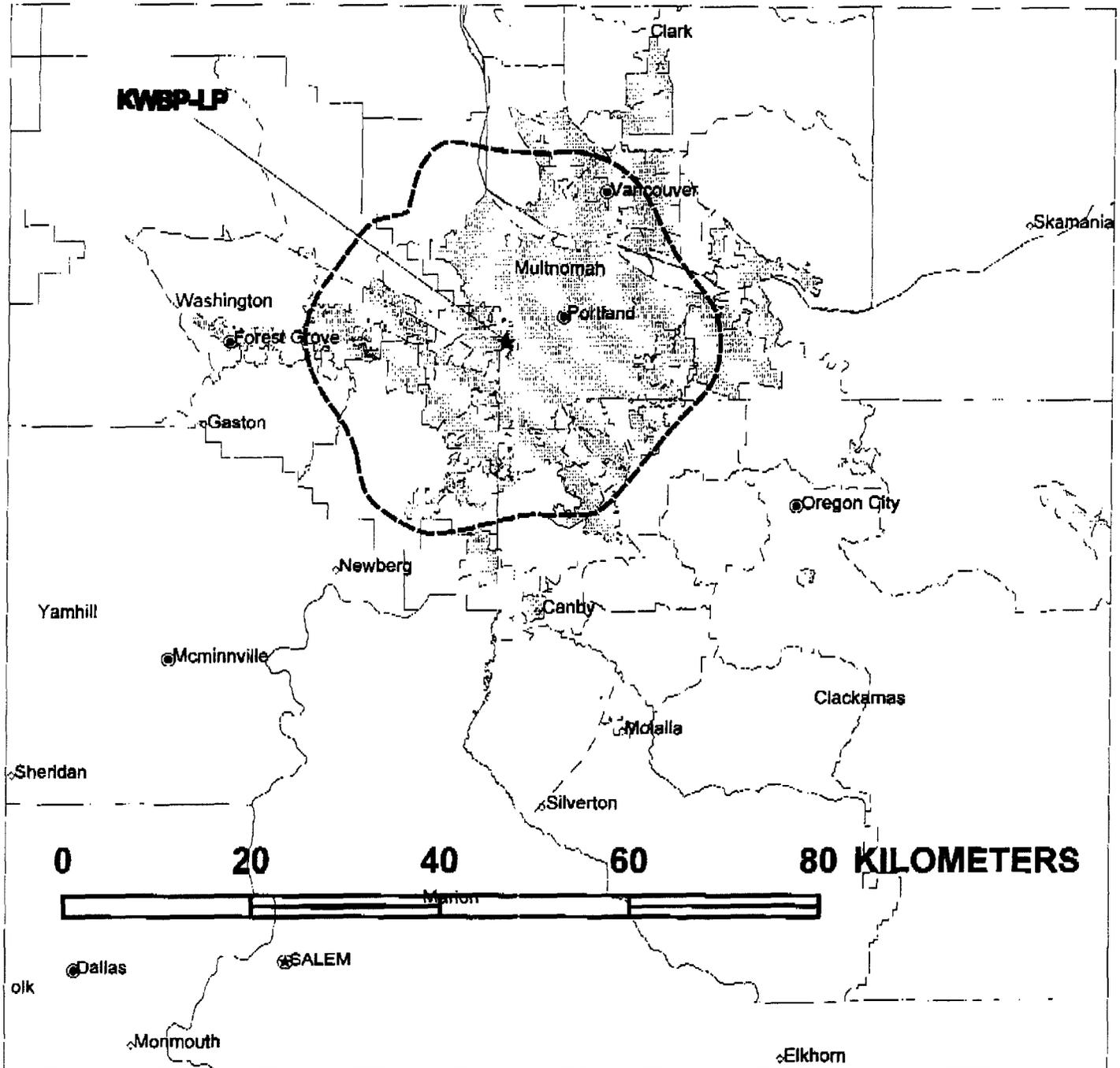
**KPXG-DT, Salem, Oregon
Loss Areas Within NTSC Contours
August, 2000**

 Area of Loss Inside Existing City Grade Contour
 Of KPXG(TV) Licensed Facility
 Loss Area = 1,287 Square Kilometers
 Population Loss = 182,444

 Area of Loss Inside Existing Grade B Contour
 Of KPXG(TV) Licensed Facility
 Area Loss = 554 Square Kilometers
 Population Loss = 14,211

CARL T. JONES CORPORATION

EXHIBIT 4



----- KWBP-LP Channel 4
 3 kW ERP; 415 m HAAT
 Directional Antenna Pattern
 74 dBu F(50,50) Protected Service Contour
 Population : 1,051,131
 Area : 1,281 square km.

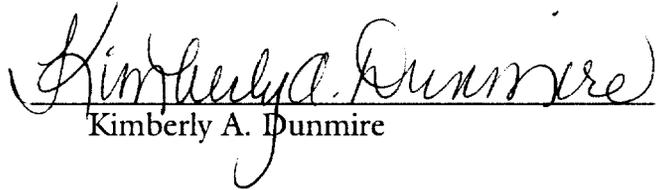
KWBP-LP, Reedville, Oregon
Protected Service Contour
74 dBu F(50,50) Coverage Contour
August, 2000

==== CARL T. JONES ====
 CORPORATION

CERTIFICATE OF SERVICE

I, Kimberly A. Dunmire, do hereby certify that I have caused to be served, by First Class Mail, postage prepaid, this 21st day of August, 2000, a copy of the foregoing "Comments in Opposition", upon the following person:

Scott S. Patrick, Esquire
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Kimberly A. Dunmire