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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
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

REPLY COMMENTS OF PAXSON SALEM LICENSE, INC.

Paxson Salem License, Inc. ("Paxson"), licensee of KPXG(TV), Salem, Oregon, by its attorneys and pursuant to the Commission's *Notice of Proposed Rulemaking* ("Notice") in the above-captioned proceeding, hereby respectfully submits these reply comments regarding Paxson's proposal to amend Section 73.622(b), the DTV Table of Allotments, by substituting Channel 4 as the station's paired DTV allocation for the transition period in lieu of Channel 20, as originally allotted. Paxson's comments are in response to the opposition ("Opposition") to the DTV channel change filed by ACME Television Licenses of Oregon, LLC ("Acme"), licensee of the other full power television station serving Salem, Oregon (KWBP(TV)). Acme's comments are so fraught with inaccuracies and imaginary standards, it is difficult for Paxson to distill a reasonable basis for its opposition.

I. BACKGROUND

Paxson explained in its Petition for Rule Making ("*Petition*") that the proposed substitution would permit KPXG-DT to improve over-the-air DTV service by relocating closer

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to other broadcast stations serving the DMA, thereby eliminating receiving antenna orientation problems. Specifically, Paxson proposed to co-locate facilities with KOIN-TV, a move precluded by KPXG-DT's initially allotted channel. Accordingly, Paxson submitted the *Petition*, proposing a channel substitution that would allow the desired relocation. The other digital station allotted to Salem, Oregon, Acme's KWBP-DT, is not so precluded and similarly has applied to relocate to the KOIN-TV tower.¹

The *Petition* noted that grant of the DTV channel change would result in no net loss of low power stations. KPXG-DT's proposed allotment would displace Acme's recently acquired low power station, KWBP-LP (Reedville, Oregon), but KPXG-DT's initial allotment on Channel 20 would displace K20DD (Albany, Oregon).

Paxson's proposed amendment to the DTV Table of Allotments is in full compliance with the Commission's rules. Acme cannot disagree with this and does not attempt to. Instead, in an understandable but misguided attempt to keep its low power station operating on Channel 4, Acme manufactures a series of fanciful standards that KPXG-DT then "fails" because of ironically alleged "questionable and misleading assertions."² As explained below, stripped of its imaginary rules, Acme's opposition only can be viewed as a quite legitimate concern about increased digital broadcast competition between two emerging networks.

¹ See FCC File No. BPCDT-19981007KE.

² Opposition, Engineering Statement at 1.

II. ACME'S OPPOSITION.

Acme first asserts that the proposed channel change would not satisfy various coverage "requirements" as proposed in the Commission's *DTV Biennial Review NPRM*.³ Of course, the Commission's proposals are not requirements at all. Congress directs that the Commission can enforce adopted rules only after their publication.⁴ Proposed Commission rules have no effect until at least 30 days after they are adopted and published.⁵ It is fundamental that rules, by definition, must have prospective application.⁶ Accordingly, when the Commission proposes to change a rule, it applies the current one until the proposed rule is final.⁷ Moreover, it is far from certain that the Commission would even adopt the proposed coverage rules upon which Acme relies. Comments filed by interested parties generally were opposed to the proposals.

In any event, Acme's argument is moot. Paxson's proposed operation satisfies the proposed principal community coverage requirement. As demonstrated in the attached Technical Statement,⁸ the Longley-Rice propagation model shows that 55 dBu service is provided to all of KPXG-DT's community of license.

Acme next asserts that KPXG-DT would fail some unspecified standard for replicating KPXG(TV)'s existing NTSC service area.⁹ This is the heart of Acme's opposition to KPXG-

³ Opposition at 1-3, *citing* Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MM Docket No. 00-39, *Notice of Proposed Rule Making*, 15 FCC Rcd 5257 (rel. Mar. 8, 2000) ("*DTV Biennial Review NPRM*").

⁴ *See* 5 U.S.C. § 553(c).

⁵ 47 C.F.R. § 1.427(a).

⁶ *See* 5 U.S.C. § 551(4).

⁷ *See, e.g.*, Telmex/Sprint Communications L.L.C.; Application for Authority under Section 214 of the Communications Act, *Order, Authorization and Certificate*, 12 FCC Rcd 17551, ¶10 (1997).

⁸ Exhibit A.

⁹ Opposition at 3-4.

DT's proposal. As Acme no doubt discovered in its analysis of the *Petition*, the proposed operation of KPXG-DT on Channel 4 would provide *better* replication than the proposed facilities of its own digital station, KWBP-DT, which would be located at the same site.¹⁰ Plainly, KPXG-DT's superior replication would be a competitive threat to Acme. That such improved digital coverage should serve as a basis for Acme's opposition, however, is entirely unreasonable. At best, Acme's argument only would support the dismissal of KWBP-DT's proposed inferior replication.

Acme pointedly disputes Paxson's determination that KPXG-DT could not relocate to the KOIN-TV tower and use its initially allotted Channel 20.¹¹ Paxson stands by its determination and, indeed, reanalyzed the data to verify the findings. If KPXG-DT operated on Channel 20 at the KOIN-TV site, it would cause interference to 6% of the population in its analog service area,¹² impermissible under the Commission's *de minimis* standard.¹³

Acme's next argument is that the loss of service of its recently acquired low power station KWBP-LP is not in the public interest.¹⁴ Again, in supporting its assertions, Acme fails to cite any actual or effective rule or policy. We will. In implementing digital television, the Commission has explicitly, continuously, and notoriously affirmed the secondary status of LPTV and TV translator stations,¹⁵ in accordance with the clear priorities in implementing a novel and

¹⁰ FCC File No. BPCDT-19981007KE. *See* Technical Statement at 5 (Exhibit A).

¹¹ Opposition, Engineering Statement at 3.

¹² Technical Statement at 6 (Exhibit A).

¹³ 47 C.F.R. § 73.623(c)(2).

¹⁴ Opposition at 4-5.

¹⁵ Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, *Sixth Report and Order*, 12 FCC Rcd 14588, ¶141 (1997); Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418,

critical service. The Commission nonetheless expressed concern about the DTV transition's adverse impact on LPTV and translator stations and adopted numerous mitigating administrative and technical measures primarily designed to create additional vacancies to which displaced stations could relocate.¹⁶ In considering modifications of the DTV Table, the Commission plainly stated that it would "review all requests . . . for their impact on low power stations [and translators],"¹⁷ but it refused to modify the primary status of full power digital stations.

Paxson's proposal accommodates the interests of low power stations in a manner consistent with the balance that the Commission has struck. Whether or not the Commission grants KPXG-DT's channel substitution, one secondary station will be displaced: either KWBP-LP or K20DD. Given that the Commission was willing to displace K20DD by initially allotting Channel 20 to KPXG-DT, it already has concluded that the loss of a secondary station in these circumstances is in the public interest. Paxson has no desire to impose any greater cost than what the Commission already considered appropriate. Accordingly, the Commission should not have heightened concern at displacing KWBP-LP rather than K20DD.

Acme attempts to suggest, however, that there is a "substantive difference"¹⁸ between the two secondary stations that would justify preferential treatment for KWBP-LP. Acme states, for example, that it recently invested \$250,000 in improving KWBP-LP's facilities. Acme, however, plainly was on notice that low power stations continued to be secondary to full power

¶106 (1998); *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1348, ¶88 (1998).

¹⁶ *Sixth Report and Order* at ¶¶142-147.

¹⁷ *Id.* at ¶182.

¹⁸ *Opposition* at 4.

stations and that the risk of displacement was still high during the early stages of the DTV transition. Indeed, these circumstances prompted Congress to establish exactly the type of “substantive difference” to which Acme wishes to ascribe – a new Class A service that permits certain low power stations to obtain quasi-primary status.¹⁹ The Commission, however, ruled that KWBP-LP did not qualify for Class A status,²⁰ so Acme cannot reasonably ask for preferential treatment.

The Commission, of course, has established well-reasoned and balanced policies to address the circumstances of which Acme complains. KWBP-LP can seek a vacant displacement relief channel, as did K20DD.²¹ Acme, however, in spite of providing an ostensibly extensive analysis of KPXG-DT’s proposal, declines to conduct a similar analysis of vacant channels for displacement relief, citing yet another fanciful and unattributable standard. Acme seeks to force the Commission’s amendment of the DTV Table of Allotments to be contingent upon KWBP-LP obtaining a displacement relief channel “*and* reimbursement by Paxson of *all* associated costs.”²²

Once again, Paxson is obliged to refute imagination with fact. Acme cannot cite any Commission precedent for the proposition that modifications to the DTV Table be made contingent to secondary services – because there is none. Furthermore, the Commission already has explicitly addressed the issue of reimbursement, stating that it was not “appropriate to

¹⁹ 47 U.S.C. § 336(f).

²⁰ *Public Notice*, DA 00-1227 (rel. June 9, 2000) [under the former call sign KENY-LP]. Even if KWBP-LP qualified for Class A status, because Paxson seeks to resolve a technical problem in a timely fashion, KWBP-LP still would not warrant preferential treatment.

²¹ FCC File No. BPTTL-1990216JG. Grant of KPXG-DT’s channel substitution would make it unnecessary for K20DD to obtain the displacement relief sought in this pending application.

²² Opposition at 5 (emphasis in original).

require broadcasters to implement DTV and at the same time require them to compensate secondary low power stations that are affected by this required implementation.”²³ The Commission was not prepared to compensate K20DD for displacement. It should treat KWBP-LP no differently.

Paxson is a responsible broadcaster and is prepared to cooperate with Acme to identify a vacant channel for displacement relief purposes. Paxson can provide Acme with the technical assistance it needs to evaluate the compliance of a proposed facility. Paxson also is willing to assist Acme in identifying funding sources that may be necessary to effectuate displacement relief. Paxson, however, is in no way obliged to reimburse Acme for “all associated costs” or have its proposal made contingent on a fabricated standard.

Conclusion

KPXG-DT’s proposed channel substitution complies with the Commission’s Rules. Acme cannot refute this and its comments provide no reasonable basis for opposition. Its arguments are so fabricated, Paxson can only conclude that Acme’s real concern is that KPXG-DT’s channel change would increase broadcast competition. There is no question that KPXG-DT’s proposed co-location with KWBP-DT would significantly improve digital service to the community, resulting in a more efficient use of the broadcast spectrum.

THEREFORE, for the reasons previously set forth in the *Petition* and provided herein, Paxson respectfully requests that the Commission promptly adopt the changes proposed and

²³ *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418, at ¶127.

amend Section 73.622(b) of its Rules to substitute Channel 4 for Channel 20 for use by KPXG-DT.

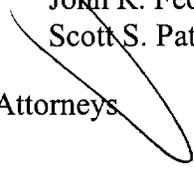
Respectfully Submitted,

PAXSON SALEM LICENSE, INC.

By: 

John R. Feore, Jr.

Scott S. Patrick

Its Attorneys 

Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802
202-776-2000

Dated: September 5, 2000

CERTIFICATE OF SERVICE

I, Sandra Dallas, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 5th day of September, 2000, the foregoing "REPLY COMMENTS OF PAXSON SALEM LICENSE, INC." were served via first class mail (except where hand delivery is noted by an asterisk) to the following:

Lewis J. Paper
Harold K. McCombs, Jr.
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, NW
Washington, DC 20037-1526
(ACME Television Licenses of Oregon, LLC)

A handwritten signature in cursive script that reads "Sandra Dallas". The signature is written in black ink and is positioned above a horizontal line.

Sandra Dallas

TECHNICAL STATEMENT
CONCERNING A REPLY TO THE OPPOSITION FILED BY
ACME TELEVISION LICENSES OF OREGON, LLC
TO THE PROPOSAL TO CHANGE DTV ALLOTMENT CHANNEL
STATION KPXG
PAXSON SALEM LICENSE, INC.
SALEM, OREGON

This Technical Statement provides technical comments in reply to the opposition filed by ACME Television Licenses of Oregon, LLC (ACME) to the proposal from Paxson Salem License, Inc. to change the DTV allotment channel for station KPXG from channel 20 to channel 4. The proposal is contained in the Federal Communications Commission (FCC) Notice of Proposed Rule Making (NPRM) in MM Docket No. 00-117.

ACME is the licensee of full service television (TV) station KWBP on analog (NTSC) channel 32 at Salem, Oregon. It is also the licensee of low power television (LPTV) station KWBP-LP on channel 4 at Reedville, Oregon.

According to the FCC's TV database, station KPXG operates on analog channel 22 with a non-directional antenna system. The visual effective radiated power (ERP) is 1700 kilowatts (kW). The antenna height above average terrain (HAAT) is 363 meters.

The FCC allotted DTV channel 20 to KPXG at its current site. The allotment was assigned an ERP of 54.6 kW and antenna HAAT of 363 meters.

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Station KPXG filed a petition for rule making to change the DTV allotment frequency to channel 4 (RM-9810). An ERP of 17 kW and antenna HAAT of 455 meters is proposed for the channel 4 DTV allotment. The proposed channel 4 DTV allotment is based on use of the KOIN site in Portland, Oregon (45-30-58, 122-43-59), the same location as proposed by ACME's station KWBP-DT on DTV channel 33 at Salem, Oregon (BPCDT-19981007KE).

ACME's opposition appears to be based on allegations of failure to provide principal city coverage, poor coverage replication, and displacement of its secondary service LPTV operation at Reedville.

Section 73.625(a) of the FCC rules clearly requires that a predicted 28 dBu f(50,90) contour must be provided over the entire community of license for a low VHF channel DTV station (i.e., channels 2 through 6). The KPXG channel 4 DTV proposal meets this requirement. ACME's opposition revolves around a proposal made in the NPRM in MM Docket No. 00-39 where the FCC is considering adoption of a requirement for the predicted 55 dBu f(50,90) contour to encompass the principal city for a low VHF channel DTV station. It is noted that this 55 dBu level is a proposal under consideration, and not a current requirement. In any event, as will be shown below, the matter should be considered moot.

Figure 1 is a map showing the predicted 28 dBu and 55 dBu f(50,90) contours for the proposed KPXG channel 4 DTV allotment. The extent of the contours is based on the FCC's normal prediction method using a digitized terrain database. Calculations were made at 10 degree azimuth increments. The city

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limits of Salem, Oregon are outlined based on information contained in the US Census for Oregon. The predicted 28 dBu contour extends well beyond Salem in compliance with the FCC's principal city coverage requirement. The predicted 55 dBu contour encompasses about 30% of the area inside of the Salem city limits. However, using the Longley-Rice propagation model, 55 dBu service is provided to Salem. The Longley-Rice propagation model is well known to the FCC and is employed for DTV service and interference calculations.

Figure 2 is a map showing the calculated 55 dBu f(50,90) service area from the proposed KPXG channel 4 DTV allotment using the Longley-Rice propagation model. The predicted 55 dBu contour is included for reference. A 3 second digitized terrain database and a receiving antenna height of 9.1 meters (30 feet) are employed. Calculations have been made using a 1 square kilometer grid basis. The clear or unshaded area indicates a Longley-Rice calculated signal of 55 dBu or greater. The cross-hatched area indicates a calculated signal of less than 55 dBu.

Figure 3 is another map showing the predicted 55 dBu contour and Salem city limits. The map also includes 3 radials along which Longley-Rice field strength calculations were made (194, 198 & 202 degrees True). Figures 4A through 4C are graphs of the calculated field strength versus distance along the 3 radials. Calculations were made at 0.5 kilometer intervals out to 85 kilometers. A polynomial curve fit to the calculations is provided. The graphs include the location of the Salem city limits. Figure 3 shows the location of the calculated 55 dBu arc over Salem based on these 3 graphs. Even assuming a 5 dB clutter factor, a 55 dBu f(50,90) median signal is provided to Salem.

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As shown above, even if the proposed 55 dBu signal requirement is considered applicable, the proposed KPXG channel 4 DTV allotment would comply based on the Longley-Rice propagation model using either a grid or radial method.

In developing the DTV allotment table, the FCC used a method based on replicating the analog Grade B service with the proposed DTV allotment service. This was recognized in the KPXG petition. Figure 5 is a map showing the predicted Grade B contour for the KPXG analog operation on channel 22. The KPXG Grade B is virtually identical to the predicted 41 dBu contour for the channel 20 DTV allotment. The map includes the predicted 28 dBu f(50,90) contour for the proposed channel 4 DTV allotment.

The following is an estimate of the population (1990 Census) and area within the contours.

<u>Description</u>	<u>Population</u>	<u>Land Area</u>
Channel 20 DTV allotment 41 dbu (considered same as analog Grade B)	1,911,000	19,900 sq km
Proposed channel 4 DTV 28 dBu	2,168,000	44,010
Area losing channel 20 DTV 41 dBu	14,774	624
Area gaining channel 4 DTV 28 dBu	271,774	24,734

It is interesting that ACME has raised a replication issue when one considers the proposed DTV operation for its station KWBP, also at Salem, Oregon (BPCDT-19981007KE, Ch. 33, 750 kW, 523 m). Figure 6 is a map showing the predicted 41 dBu contour for its DTV proposal at the KOIN tower (same location as

proposed by KPXG for DTV channel 4). The map also shows the predicted 41 dBu contour for the KWBP channel 33 DTV allotment.

<u>Description</u>	<u>Population</u>	<u>Land Area</u>
KWBP Channel 33 DTV Allotment 41 dBu	1,955,079	28,958 sq km
KWBP-DT Channel 33 DTV Application 41 dBu	2,078,513	38,770
Area losing KWBP channel DTV allotment 41 dBu	49,913	6,698
Area gaining KWBP channel 33 DTV App. 41 dBu	173,347	16,510

It is our opinion that KPXG provides a better replication with its proposed allotment than KWBP does with its pending application.

ACME alleges that KPXG can locate DTV channel 20 at the KOIN tower and operate with a non-directional antenna ERP of 1000 kW and antenna HAAT of 455 meters with only a minimal increase in interference to its analog operation. We disagree.

Interference calculations have been made using the procedures outlined in the FCC's OET-69 Bulletin and a 1 square kilometer grid. The calculated interference from the assumed KPXG-DT channel 20 operation at the KOIN tower (1000 kW, 455 m) to KPXG's channel 22 analog service is 573,434 people. This calculated interference (573,434 people) represents 30% of KPXG's analog service population (1,906,829 people).

Consideration has been given to interference caused by other authorized analog assignments, and DTV assignments and allotments. The KPXG analog operation receives calculated

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interference from:

KTWB-TV, NTSC-22, Tacoma, WA	2,283 people
KNMT, NTSC-24, Portland, OR	459,907
KVAL-DT, DTV-25, Eugene, OR	63
KPTV-DT, DTV-30, Portland, OR	25,739

The amount of new or unique interference caused by the assumed KPXG channel 20 DTV operation at the KOIN tower to KPXG analog service is 113,509 people (6%).

It is noted that KWBP has proposed to operate it adjacent channel DTV operation (Ch.33) at the KOIN site, some 64 kilometers northwest of its analog site (Ch.32). The proposed KWBP-DT channel 32 DTV operation causes calculated interference to 130,630 people within the KWBP channel 33 analog service area (1,945,962 people). Approximately 40,000 people would be expected to receive new or unique interference. In addition, the KWBP analog operation is calculated to cause interference to 22,125 people within the proposed KWBP-DT channel 32 DTV service area (1,976,000 people), nearly all of which would be new or unique interference. Contrary to ACME's apparent attitude, KPXG wishes to avoid causing self-inflicted interference.

ACME objects to the proposed KPXG channel 4 DTV allotment because it will displace the secondary service from its LPTV station KWBP-LP on channel 4 at Reedville, Oregon. From the ACME comments, station KWBP-LP apparently rebroadcasts the service of its parent station KWBP(TV) on channel 32 at Salem, Oregon. According to the FCC's TV database, station KWBP-LP is licensed to operate on channel 4 with a directional antenna (DA) system and maximum ERP of 0.038 kW. Station KWBP-LP also appears to

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have a special temporary authorization (STA) to operate at a different site with a maximum ERP of 3 kW. Figure 7 is a map showing the predicted 62 dBu LPTV contours for the KWBP-LP license and STA operations, as well as the predicted Grade B contour for the parent station, KWBP.

As recognized by ACME, KPXG operating on DTV channel 20 will displace LPTV station K20DD on channel 20 at Albany, Oregon. With KPXG changing its DTV allotment from channel 20 to channel 4, LPTV station K20DD is no longer displaced. Interference calculations using the procedures outlined in the FCC's OET-69 Bulletin and a 1 square kilometer grid demonstrate that K20DD has no other interference problems. Hence, it will not be necessary for K20DD to change to channel 38 as proposed in its pending application (BPTTL-19990316JG).

If there are questions concerning this Technical Statement, please communicate with the office of the undersigned.



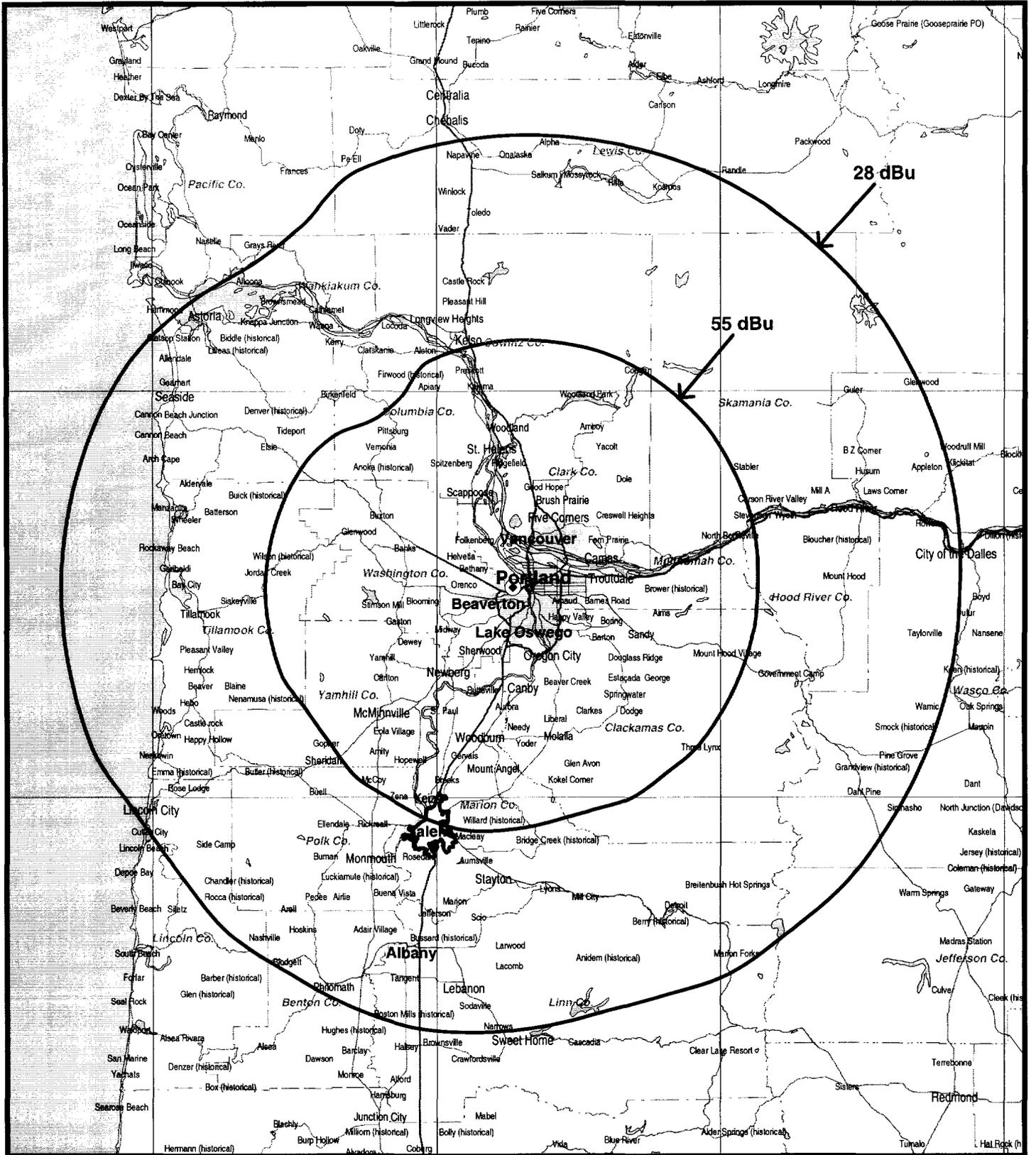
John A. Lundin

du Treil, Lundin & Rackley, Inc.
201 Fletcher Avenue
Sarasota, Florida 34237

(941) 329-6000

August 31, 2000

Figure 1



30 0 30 60 90

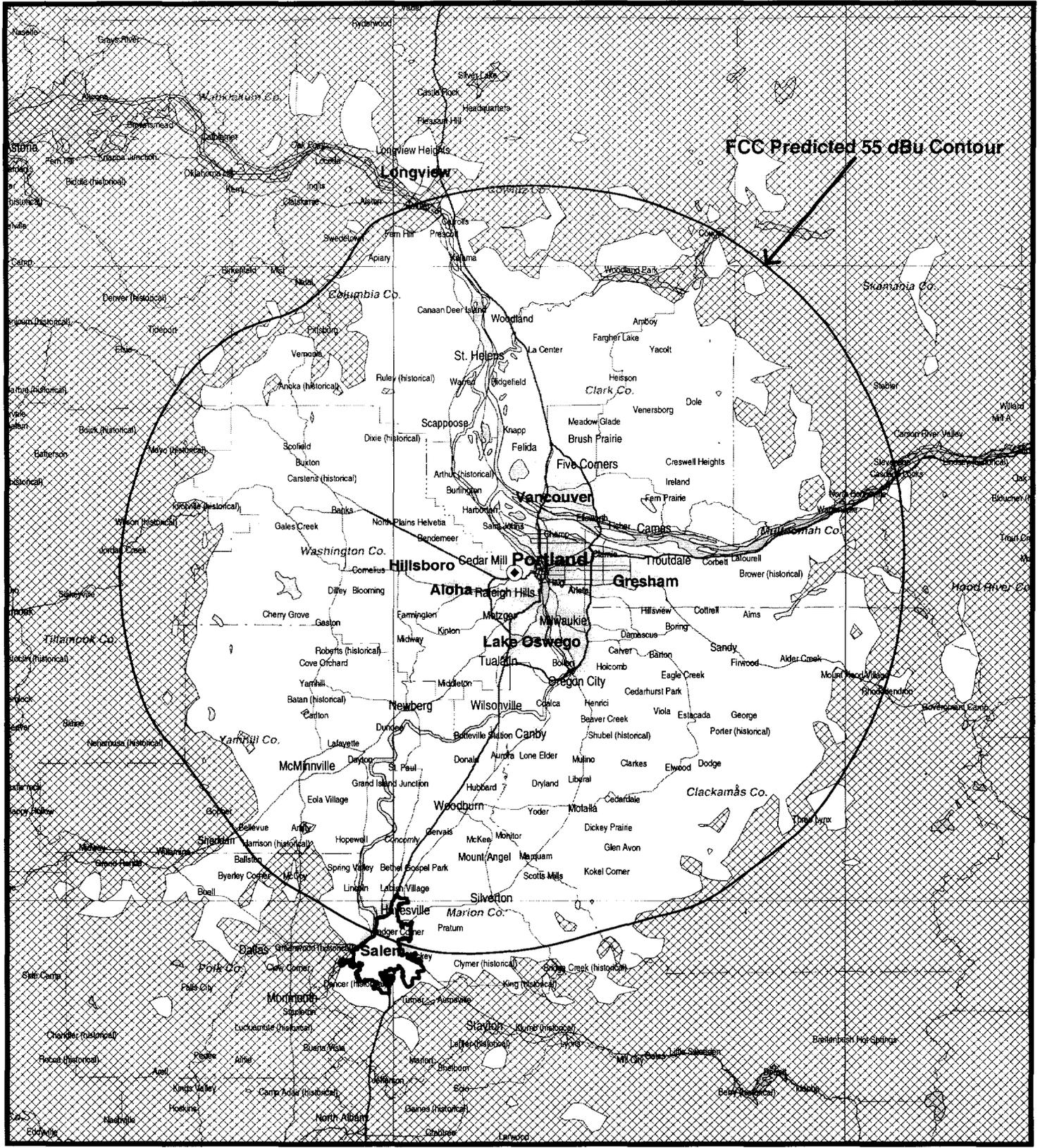
Kilometers

PREDICTED COVERAGE CONTOURS

KPXG DTV CH 4

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Figure 2

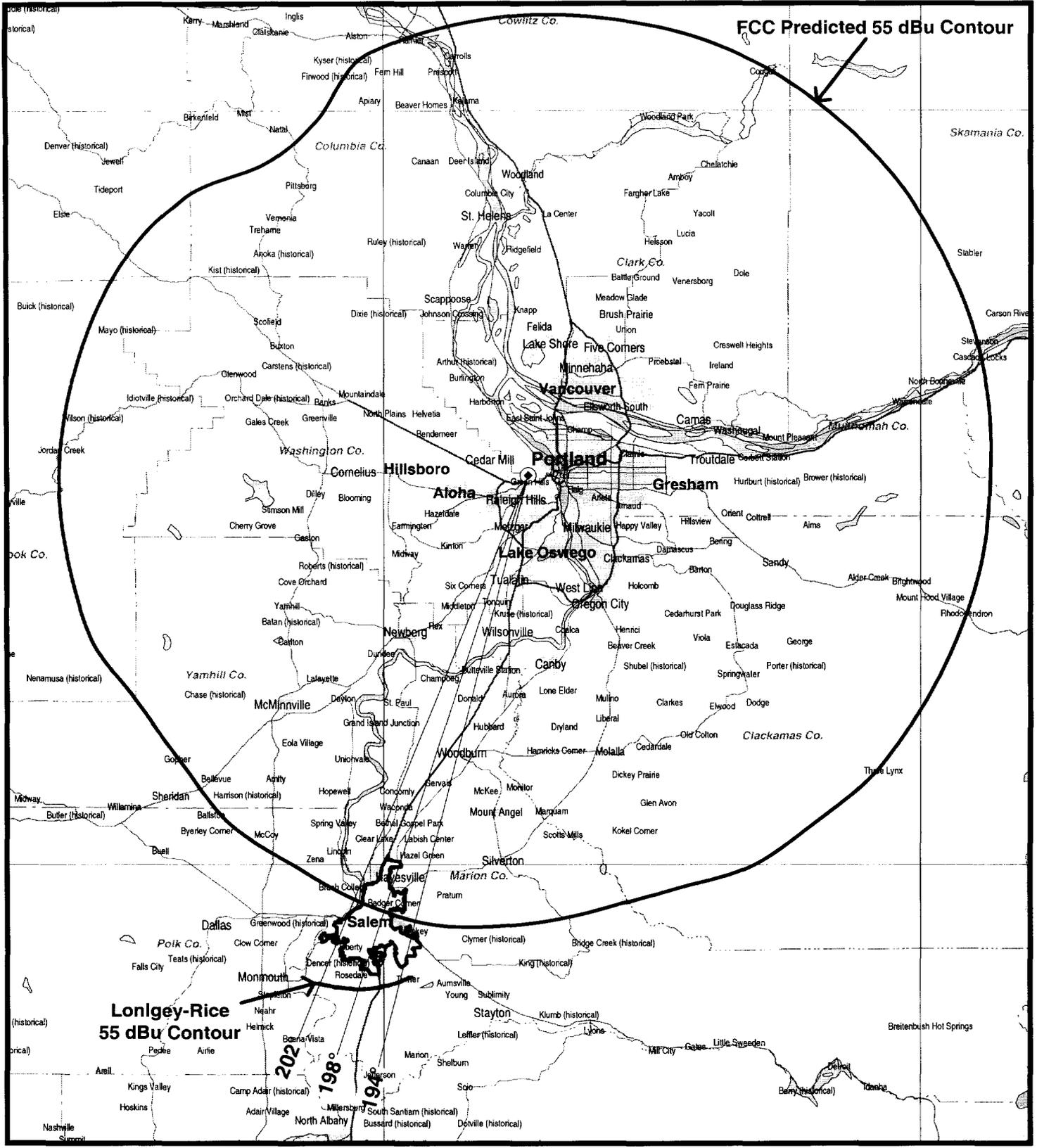


PREDICTED LONGLEY-RICE COVERAGE

KPXG DTV CH 4

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Figure 3



PREDICTED LONGLEY-RICE COVERAGE

KPXG DTV CH 4

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

KPXG 194° True

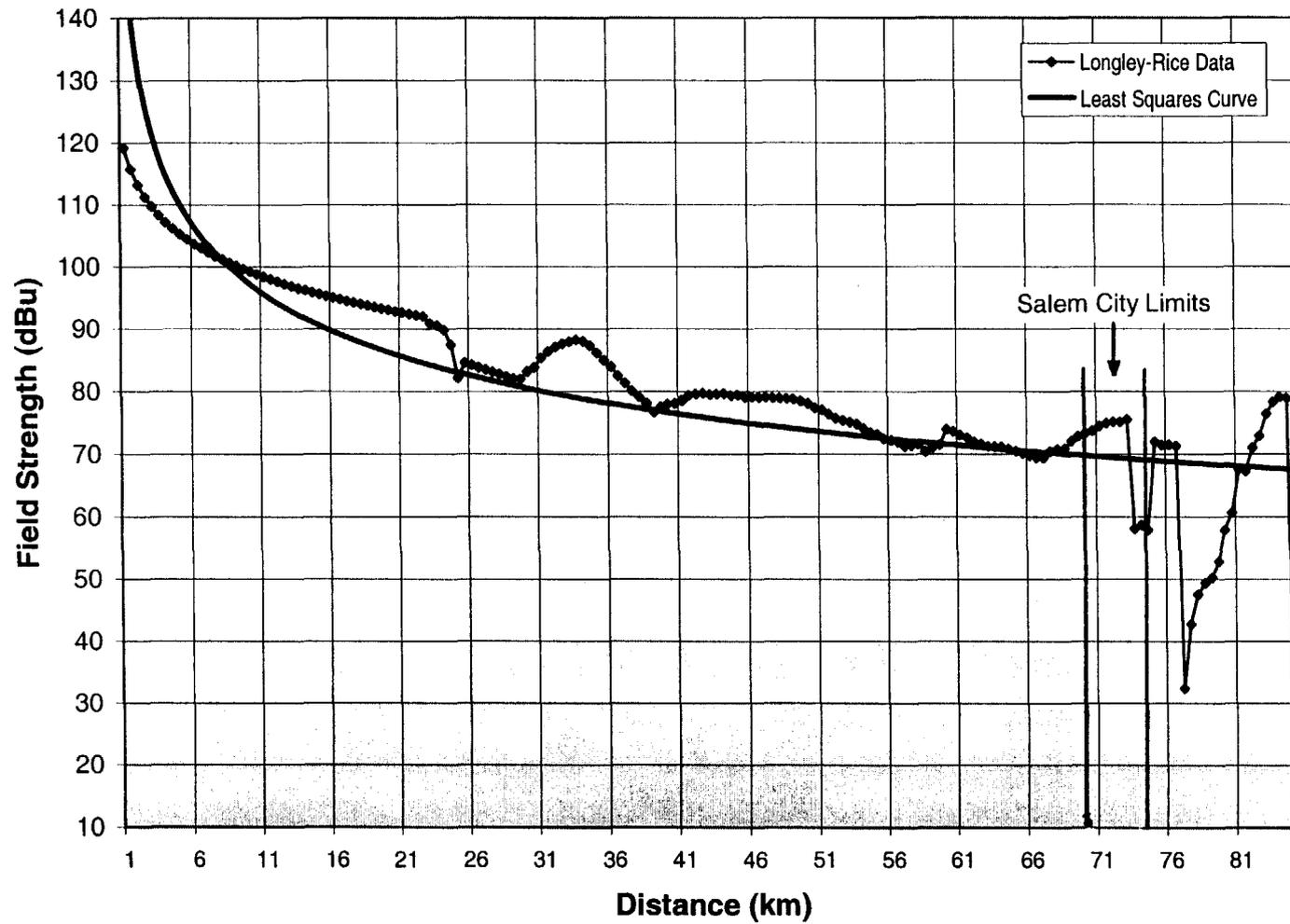


Figure 4A

KPXG 198° True

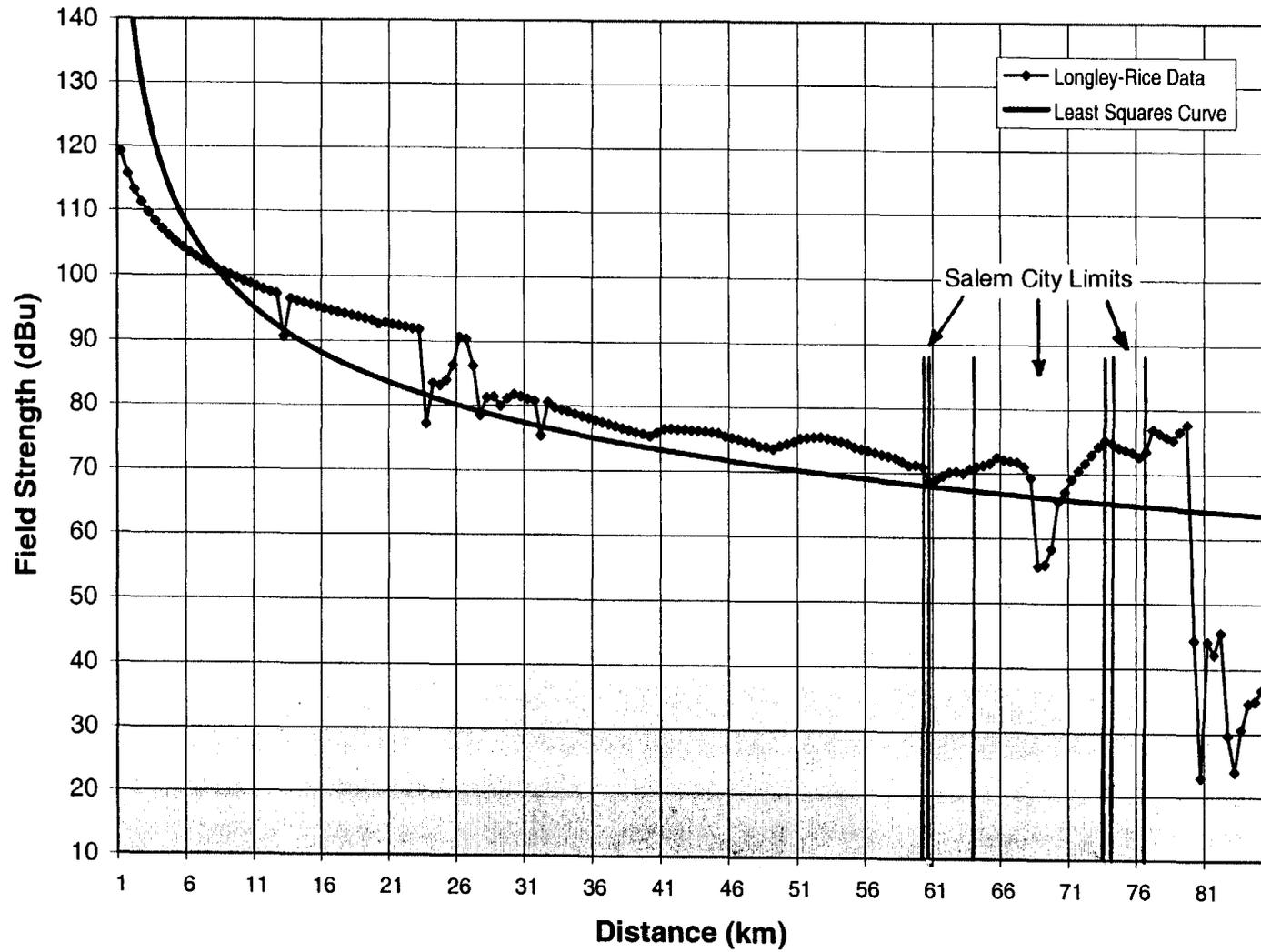


Figure 4B

KPXG 202° True

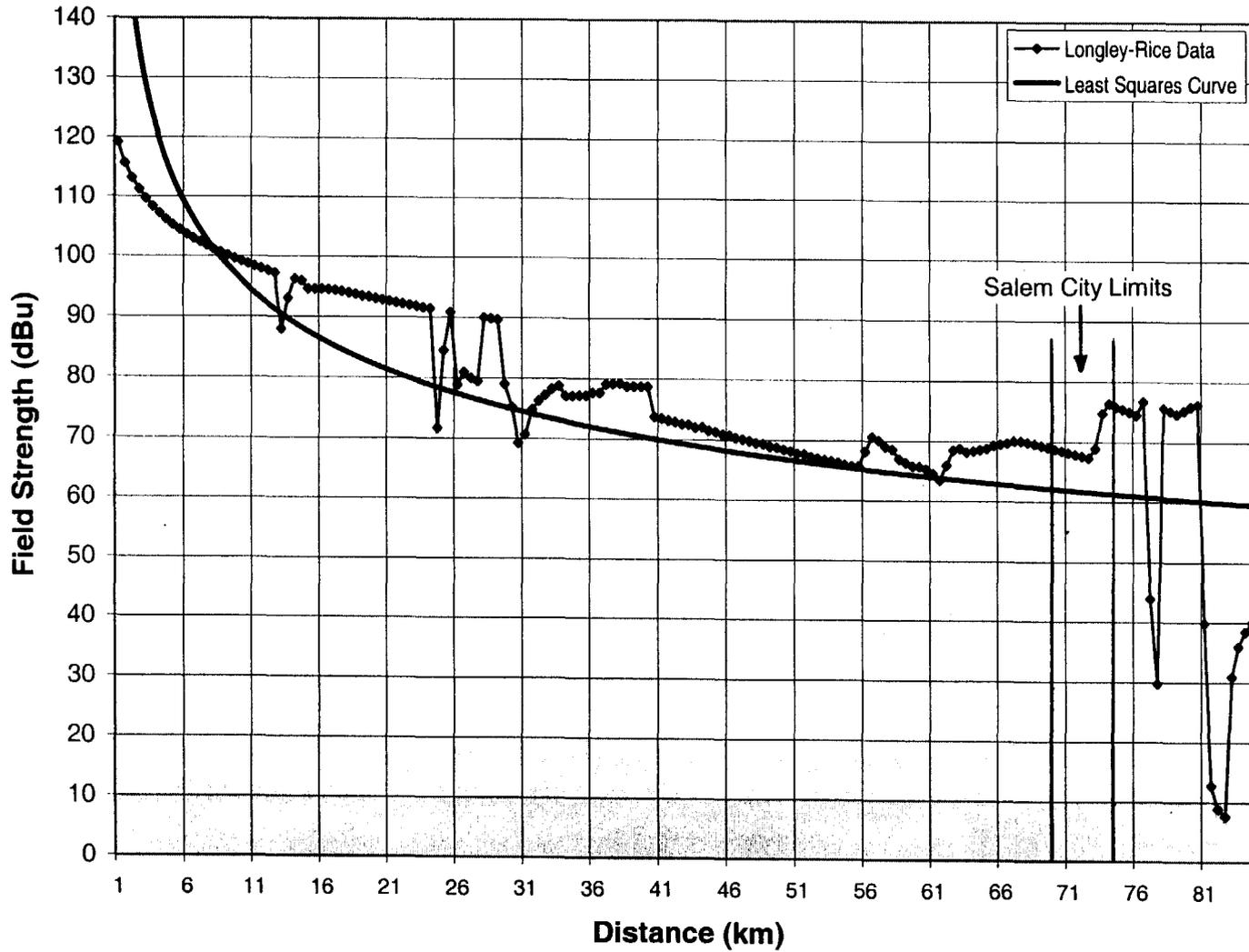
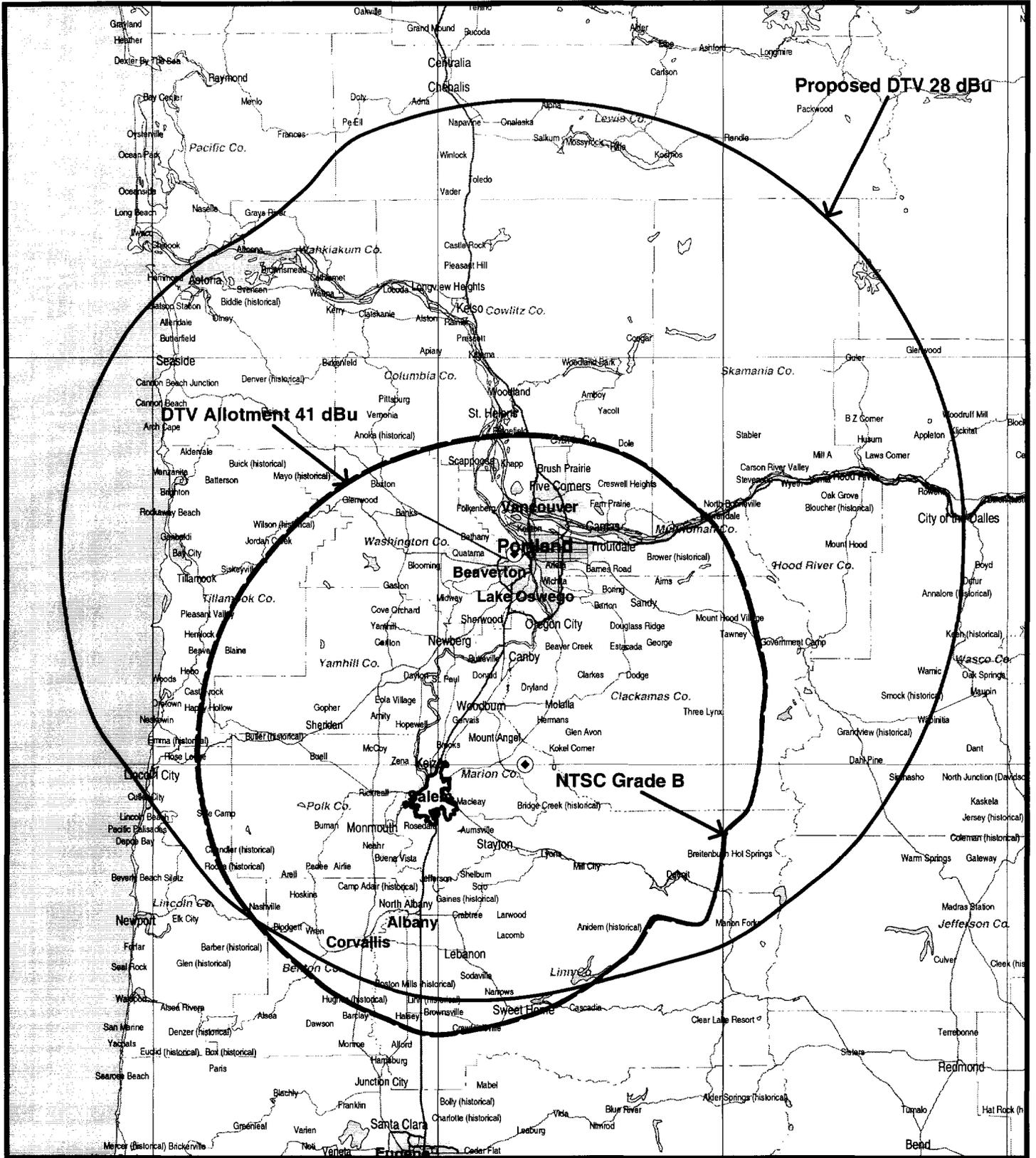


Figure 5

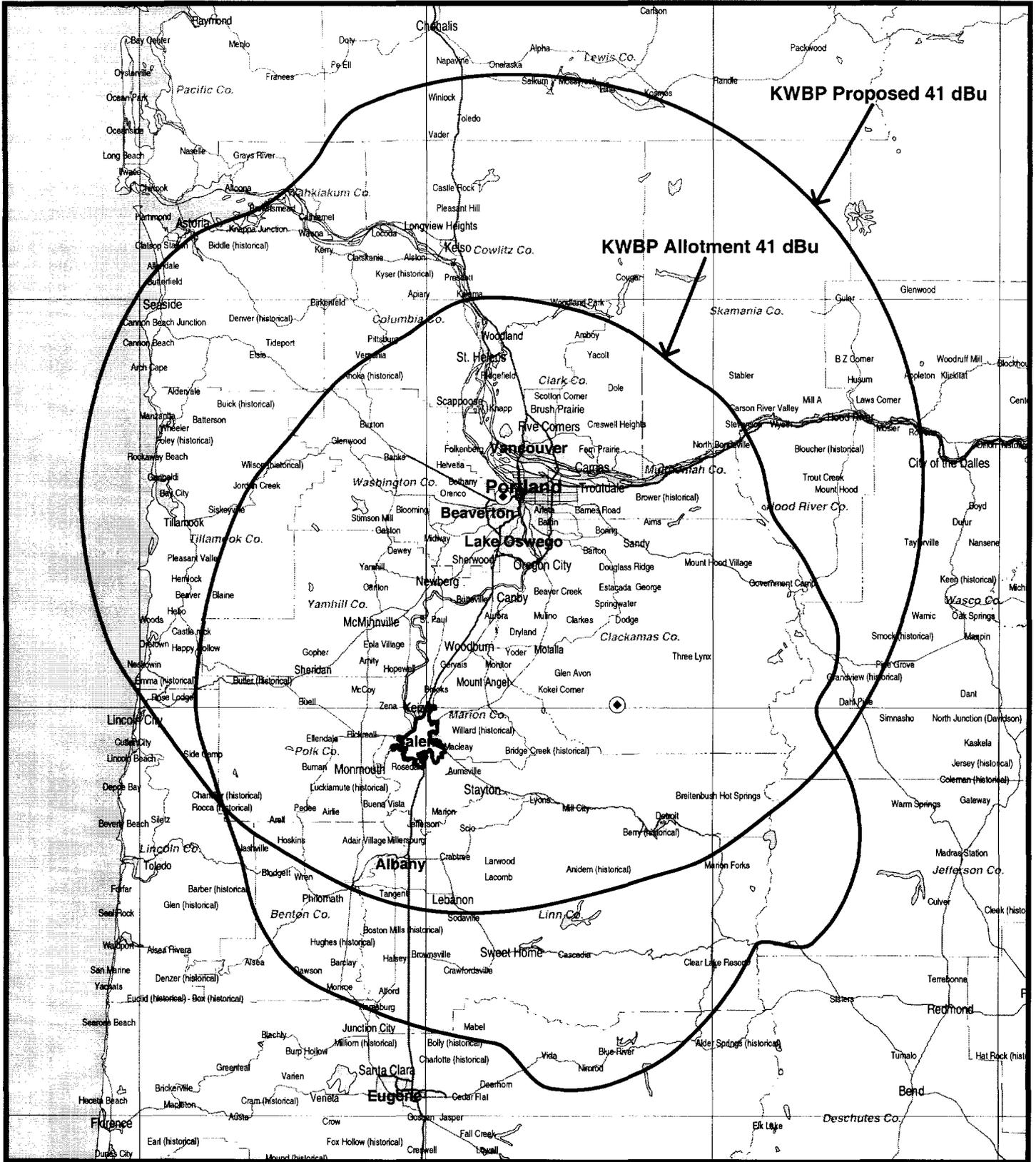


30 0 30 60 90
Kilometers

PREDICTED COVERAGE CONTOURS
KPXG DTV CH 4

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

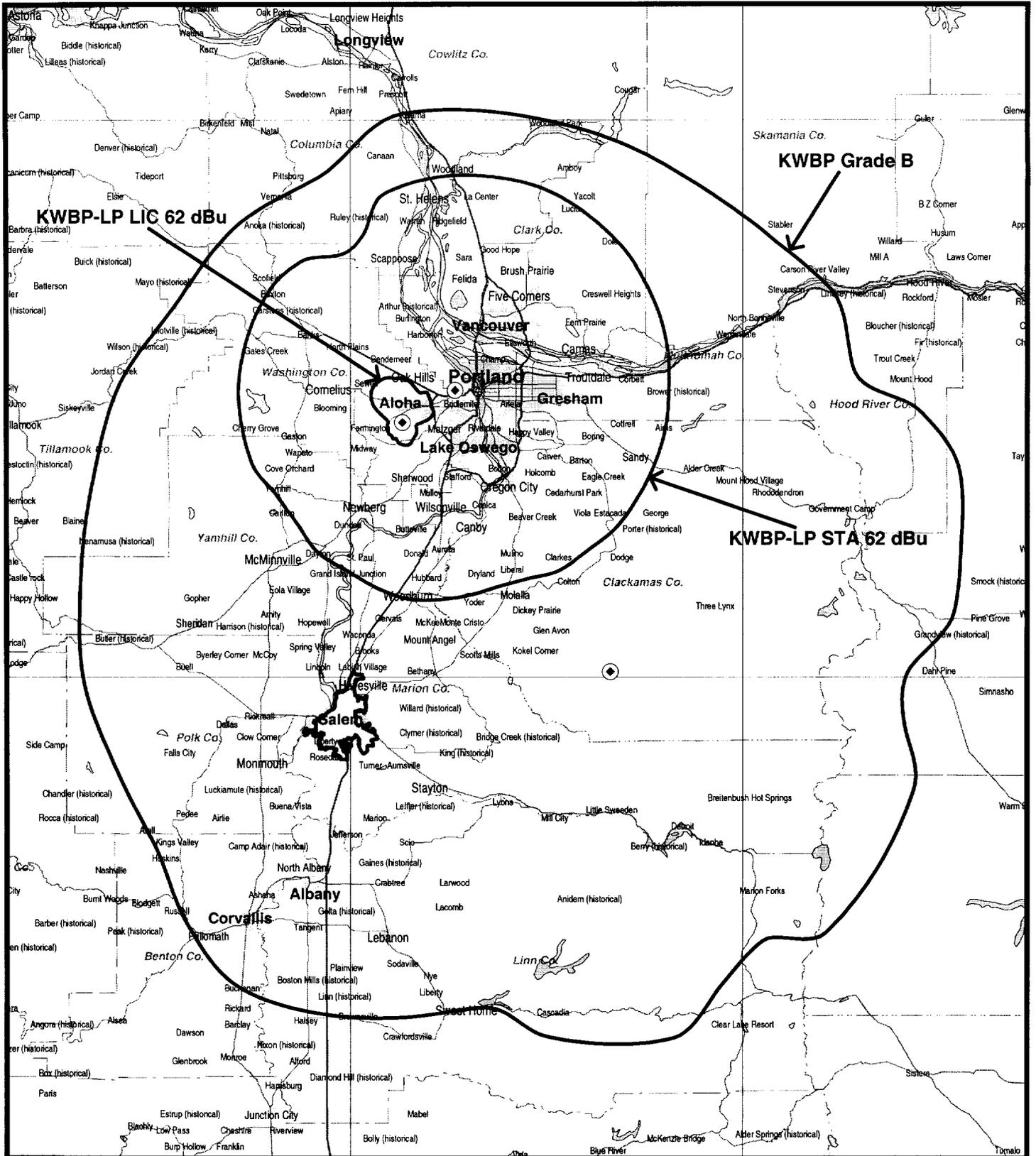
Figure 6



PREDICTED COVERAGE CONTOURS

KPXG DTV CH 4

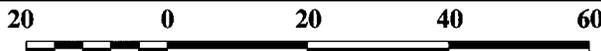
du Treil, Lundin & Rackley, Inc. Sarasota, Florida



KWBP Grade B

KWBP-LP LIC 62 dBu

KWBP-LP STA 62 dBu



Kilometers

PREDICTED COVERAGE CONTOURS

KPXG DTV CH 4

du Treil, Lundin & Rackley, Inc. Sarasota, Florida