

**Federal Communications Commission**  
WASHINGTON, D.C. 20554

In the Matter of )  
)  
Amendment of Section 73.606(b), )  
Table of Allotments, )  
Television Broadcast Stations. )  
(Bend, Oregon) )

MM Docket No. 01-82 /  
RM-10068 **RECEIVED**

MAY 31 2001

To: Barbara A. Kreisman, Chief  
Video Services Division

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**COMMENTS OF BEND LICENSES, LIMITED PARTNERSHIP**

Bend Licenses, Limited Partnership ("Bend Licenses"), pursuant to Section 1.420(a) of the Commission's Rules, hereby submits its Comments in response to the Notice of Proposed Rule Making ("NPRM"), DA 01-861 (released April 9, 2001), in the above-captioned proceeding. Bend Licenses is the licensee of Television Station KTVZ, Bend, Oregon. The NPRM was issued in response to an amended petition for rule making filed by 3-J Broadcasting Company ("3-J") and proposes the allotment of NTSC Channel 51 to Bend, Oregon as that community's second local television service. For the reasons set forth herein, Bend opposes the proposed allotment of Channel 51 to Bend, Oregon.

No. of Copies rec'd 014  
List A B C D E

**I. The Proposed Allotment Of NTSC Channel 51 To Bend, Oregon Is Technically Deficient.**

The Commission should not allot Channel 51 to Bend, Oregon as proposed in the NPRM because 3-J's rule making proposal is technically deficient. As set forth more fully in the attached Engineering Statement prepared by Joseph M. Davis, Bend Licenses' consulting engineer, the proposed allotment of Channel 51 to Bend will not provide adequate standard contour protection to the authorized facilities of Class A LPTV Station KOXO-CA, Channel 51, Newburg, Oregon (Facility ID 71080) (*see* FCC File No. BLTTA-20001211AFH, granted February 8, 2001). Engineering Statement at 1-3. As the Commission recently made clear in the Class A LPTV proceeding, "Congress intended that qualified LPTV stations be accorded priority over pending conflicting rulemaking petitions." *Establishment of a Class A Television Service*, Memorandum Opinion and Order on Reconsideration (FCC 01-123), MM Docket No. 00-10 (released April 13, 2001) at ¶ 56. Because 3-J's proposed does not provide the requisite protection to the authorized facilities of Class A LPTV Station KOXO-CA, the Commission should reject 3-J's proposed amendment to TV Table of Allotments.

**II. Grant Of The Proposed Allotment Of A New NTSC Channel 51 To Bend, Oregon Would Constitute An Inefficient Use Of The Broadcast Spectrum And Would Not Advance The Public Interest.**

3-J's proposed allotment of a new NTSC Channel 51 to Bend, Oregon does not warrant further consideration by the Commission on the grounds that whatever broadcast service benefits the new analog television station might bring to the residents of the Bend area would be short-lived and would be far outweighed by the widespread disruption to existing television services in the area that would result from the allocation.

As the Commission is well aware, the transition from analog television to digital television is well underway. Indeed, the target date for the completion of this transition and the ultimate recovery of the analog broadcast spectrum is December 31, 2006, a date codified by Congress (with certain exceptions) in the Balanced Budget Act of 1997. *See* 47 U.S.C.

§309(j)(14)(A) (“A television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond December 31, 2006.”).

Because of the protracted nature of new television allotment proceedings and the very limited life span of any new NTSC authorization, Bend Licenses questions whether the public interest would be served by adopting any further amendments to the TV Table of Allotments, especially where, as in this instance, the construction of a new NTSC television station would result in the displacement of a number of operating LPTV/TV Translator stations. As indicated in the Engineering Statement, construction of a new NTSC television station on Channel 51 in Bend would displace the following LPTV/TV Translator stations (both licensed and proposed) in the Bend market:

<u>Call Sign</u>	<u>Community</u>	<u>Status</u>
KMOR-LP	Eugene, OR	Licensed
K51EY	London Springs, OR	Licensed
K51BV	Cave Junction, OR	Licensed
K51DFMilton, OR	Licensed	
K51EH	The Dalles, OR	Licensed
K50DN	Prineville, OR	Licensed
K52AK	Prineville, OR	Licensed
K65AE	Terrebonne, OR	Licensed
K58GK	Prineville, OR	CP
K66BC	Madras, OR	Licensed
K44AH	Prineville, OR	Licensed

<u>Call Sign</u>	<u>Community</u>	<u>Status</u>
K66BC	Madras, OR	CP (Channel 52)
K66BF	Roseburg, OR BPTT-20000712AAS	
New	Black Butte Ranch, OR	BNPTTL-20000830BGJ
New	Bend, OR	BNPTTL-20000830AIY
New	Bend, OR	BNPTTL-20000830ASC

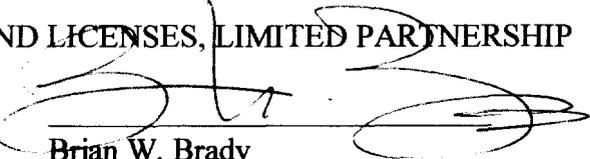
Bend Licenses recognizes that under the Commission's rules LPTV and TV

Translator stations are secondary to full service stations and therefore do not receive the same degree of protection from interference that is enjoyed by such full service stations. However, many of these displaced LPTV/TV Translator stations, including Bend Licenses' K66BC, which is licensed to Madras, Oregon, and K58GK, which is licensed to Prineville, Oregon, have been providing valuable broadcast services to their respective communities for many years, and the residents of these communities have come to rely on these stations as important sources of information. Moreover, because many - if not all - of these displaced stations will be unable to relocate to a suitable replacement channel due to spectrum congestion in the Bend area, the disruption that would be caused by the allocation of Channel 51 to Bend may well be permanent. Taking into consideration the statutory limits on the duration of any NTSC authorization and the widespread - and perhaps permanent - disruption to existing broadcast services that would be caused by the construction of a new NTSC station on Channel 51 in Bend, Bend Licenses submits that the public interest would not be served by the adoption of the proposed amendment to the TV Table of Allotments.

For the reasons set forth herein, Bend Licenses respectfully requests that the Commission deny 3-J's proposed amendment to TV Table of Allotments.

Respectfully submitted,

BEND LICENSES, LIMITED PARTNERSHIP

By: 

Brian W. Brady  
President of the General Partner

May 31, 2001

**ENGINEERING STATEMENT**  
prepared for  
**Bend Licenses, Limited Partnership**  
MM Docket 01-82

This engineering statement has been prepared on behalf of *Bend Licenses, Limited Partnership*, in support of *Comments* in a Notice of Proposed Rulemaking (“NPRM”), Mass Media Docket 01-82.<sup>1</sup> The subject docket proposes to allot NTSC Channel 51 to Bend, Oregon.

An engineering review of the NPRM showed that the proposed allotment does not provide requisite standard contour protection to the Class A Construction Permit (“CP”) for station KOXO-CA (NTSC Ch. 51, Newberg, OR, facility ID 71080, file number BPTTL-19980601WV). Additionally, numerous Low Power Television (“LPTV”) stations will be displaced by the proposed allotment.

**Discussion - Class A Stations**

In the Commission’s proceeding on Class A Television,<sup>2</sup> protection is provided to Class A stations and stations eligible for Class A status from new NTSC stations and certain modifications of authorized NTSC facilities. KOXO-CA, formerly K66EJ, is on the Commission’s June 2, 2000 list of stations deemed eligible to file an application for Class A station status<sup>3</sup>. According to the Commission’s database, KOXO-CA’s application for Class A Television Station Construction Permit (file number BLTTA-20001211AFH was granted on February 8, 2001.

Contour overlap that would be prohibited under §73.613(f) of the Commission’s Rules from the proposed Bend, OR NTSC Ch. 51 facility would exist with respect to the KOXO-CA CP facility. The attached **Figure 1** depicts the overlap between the Bend, OR facility 29 dB $\mu$  interfering contour and the KOXO-CA 74 dB $\mu$  service contour. The overlap totally encompasses the KOXO-CA service area.

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<sup>1</sup>See *Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations (Bend, Oregon)*, MM Docket No. 01-82, RM 10068, DA 01-861, released April 6, 2001.

<sup>2</sup>See *Establishment of a Class A Television Service*, MM Docket 00-10, FCC 00-115, released April 4, 2000.

<sup>3</sup>See June 2, 2000 Public Notice *Certificates of Eligibility for Class A Television Station Status*, DA 00-1224.

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Since the underlying Petition for Rulemaking specifies only an allotment point without any further technical specifications, the interfering contour depicted in **Figure 1** assumes a maximum NTSC facility of 5000 kW effective radiated power (“ERP”) at an antenna height above average terrain (“HAAT”) of 600 meters for Ch. 51 at Bend. Since an antenna HAAT of 600 meters might not actually be achieved (due to airspace, local zoning, or other reasons), it would be reasonable to assume that an actual NTSC Ch. 51 facility might co-locate with or near an existing television station currently licensed to Bend. **Figure 1** also depicts the 29 dB $\mu$  interfering contour from a Ch. 51 facility if located at the same site and antenna height (197 meters HAAT) as that licensed for KTVZ (TV) (NTSC Ch. 21, Bend, OR).<sup>4</sup> In this case, the Bend NTSC Ch. 51 facility’s interfering contour would also totally encompass the authorized KOXO-CA Ch. 51 service area, which would not comply with §73.613(f) of the Commission’s Rules.

Regarding LPTV stations eligible for Class A status but operating on a channel out of the core, such as the licensed KOXO-CA facility on Ch. 66, the Commission stated in its April 4, 2000 Order on Class A television<sup>5</sup> that protection to a facility eligible for Class A status would begin on the date of grant of CP for displacement to an in-core channel (paragraph 103). The Commission’s database shows that the KOXO-CA CP for in-core channel 51 was granted on September 29, 2000. The subject NPRM was issued well after that date, on April 9, 2001.

In its Reconsideration Order in the Class A proceeding,<sup>6</sup> the Commission addressed potential conflicts between rulemaking petitions and Class A stations. Specifically, at paragraph 56:

“We also decline to require Class A applicants to protect pending analog allotment petitions for rulemaking, as KM supports. The CBPA does not contemplate protection of these petitions. Moreover, although rulemaking petitions contain certain information identifying the coordinates, channel, and class of the facilities the petitioner seeks to

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<sup>4</sup>*Bend Licenses, Limited Partnership* is the licensee of KTVZ. Other authorized television stations in close proximity to the KTVZ transmitter site include KOAB-TV (NTSC Ch. 3, 0.18 km distant) and KABH-CA (NTSC Ch. 15, 0.32 km), both licensed to Bend, OR.

<sup>5</sup> *See Establishment of a Class A Television Service*, MM Docket 00-10, FCC 00-115, released April 4, 2000.

<sup>6</sup>*See Establishment of a Class A Television Service*, Memorandum Opinion and Order on Reconsideration, MM Docket 00-10, FCC 01-123, released April 13, 2001.

## ENGINEERING STATEMENT

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establish, the petitioner may not ultimately be the successful applicant for these facilities and the facilities specified in the successful application may, and often do, differ from what was proposed in the rulemaking petition. Thus, rulemaking petitions do not specify facilities such that there is a reasonably ascertainable Grade B contour for Class A stations to protect. Under these circumstances, we continue to believe that Congress intended that qualified LPTV stations be accorded priority over pending conflicting rulemaking petitions.”

Thus, some priority is afforded to Class A stations over rulemaking petitions for analog allotment petitions for rulemaking, such as the case at hand.

The Commission’s NPRM indicates that the petitioner, *3-J Broadcasting Company (“3-J”)*, asserted that stations eligible for Class A status are protected. Indeed, the underlying *3-J* petition references an accompanying engineering statement and states that the proposal would fully protect low power stations that filed Statements of Eligibility. However, the engineering statement supporting 3-J’s petition does not address protection of stations eligible for Class A status for the Ch. 51 proposal.<sup>7</sup> The petition does not address KOXO-CA in any way, or state how interference protection will be provided.

### Low Power Television Stations

Numerous LPTV stations are potentially displaced by the NPRM’s subject Ch. 51 facility, either due to contour overlap or a newly created deficiency in minimum distance separations as determined by §74.705 and/or §74.707<sup>8</sup> of the Commission’s Rules. The LPTV facilities listed below are affected by the proposed Ch. 51 facility (assuming the facility employs 5000 kW at the KTVZ site).

<u>Call</u>		<u>Ch.</u>	<u>City, State</u>
K44AH	Lic	44	Prineville, OR
K50DN	Lic	50	Prineville, OR
KMOR-LP	Lic	51	Eugene, OR
K51EY	Lic	51	London Springs, OR
K66BF	App	51	Roseburg, OR

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<sup>7</sup>Some discussion of Class A eligible stations was provided regarding the previously proposed Ch. 38, however, there is no discussion regarding Channel 51 and Class A eligible stations.

<sup>8</sup>This rule section was employed to determine incoming interference to an affected LPTV station from the Ch. 51 NPRM facility.

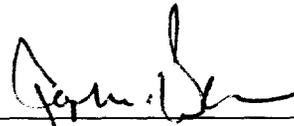
## ENGINEERING STATEMENT

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K51BV	Lic	51	Cave Junction, OR	
K51DF	Lic	51	Milton, OR	
K51EH	Lic	51	The Dalles, OR	
New	App	51	Black Butte Ranch, OR	BNPTTL-20000830BGJ
New	App	51	Bend, OR	BNPTTL-20000830AIY
New	App	51	Bend, OR	BNPTTL-20000830ASC
K52AK	Lic	52	Prineville, OR	
K66BC	CP	52	Madras, OR	
K65AE	Lic	65	Terrebonne, OR	
K58GK	Lic	66	Prineville, OR	
K66BC	Lic	66	Madras, OR	

### Certification

The undersigned hereby certifies that the foregoing statement was prepared by him or under his direction, and that it is true and correct to the best of his knowledge and belief. Mr. Davis is a principal in the firm of *Cavell, Mertz & Davis, Inc.*, is a Registered Professional Engineer in Virginia, holds a Bachelor of Science degree from Old Dominion University in Electrical Engineering Technology, and has submitted numerous engineering exhibits to various local governmental authorities and the Federal Communications Commission. His qualifications are a matter of record with that entity.



Joseph M. Davis, P.E.  
May 25, 2001

Cavell, Mertz & Davis, Inc.  
10300 Eaton Place Suite 200  
Fairfax, VA 22030  
(703) 591-0110

### List of Attachments:

Figure 1 Contour Overlap



**FIGURE 1  
CONTOUR OVERLAP**

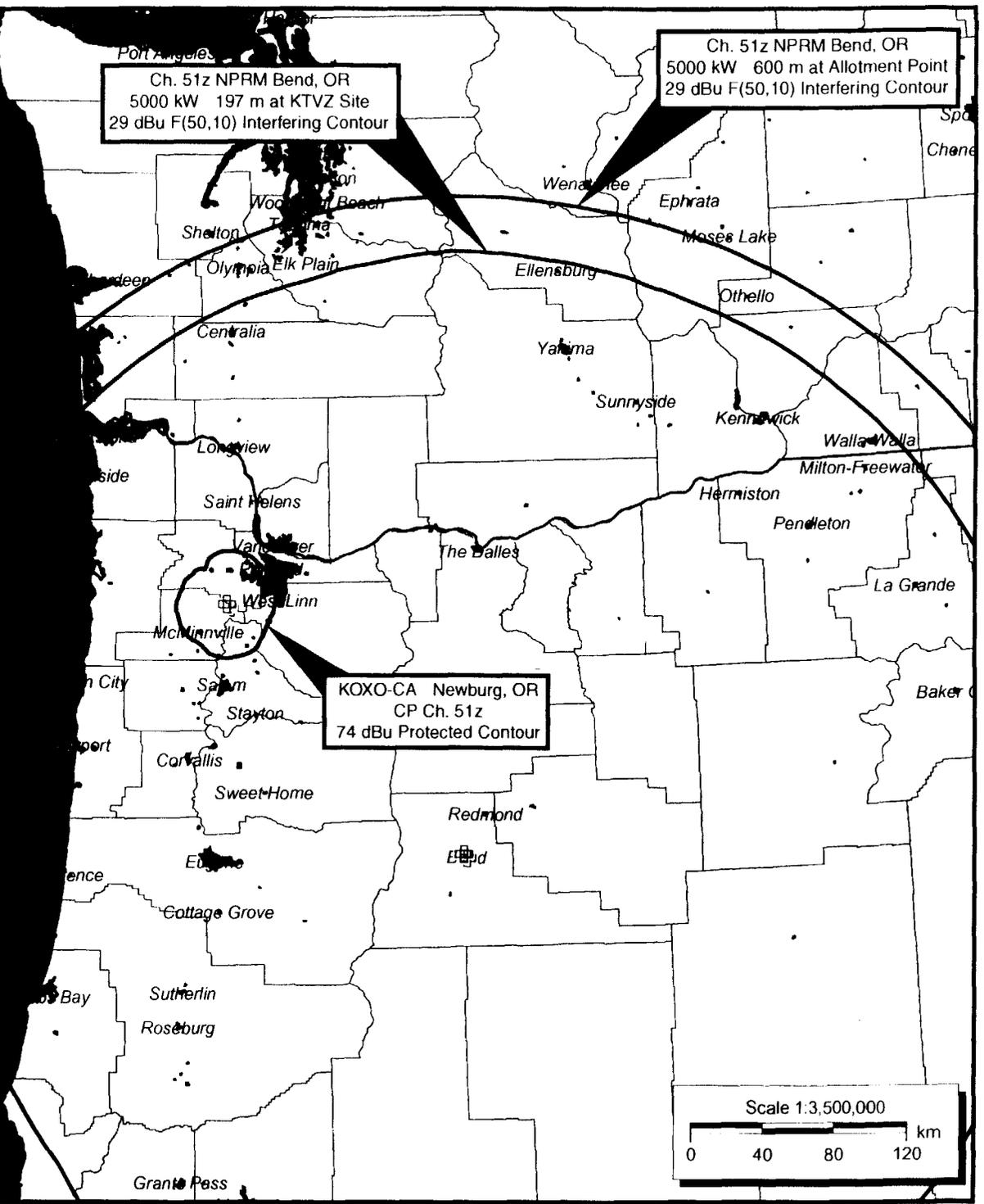
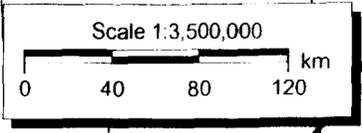
prepared May 2001 for  
**Bend Licenses, Limited Partnership**

**Cavell, Mertz & Davis, Inc.**  
Fairfax, Virginia

Ch. 51z NPRM Bend, OR  
5000 kW 197 m at KTVZ Site  
29 dBu F(50,10) Interfering Contour

Ch. 51z NPRM Bend, OR  
5000 kW 600 m at Allotment Point  
29 dBu F(50,10) Interfering Contour

KOXO-CA Newburg, OR  
CP Ch. 51z  
74 dBu Protected Contour



**FIGURE 1  
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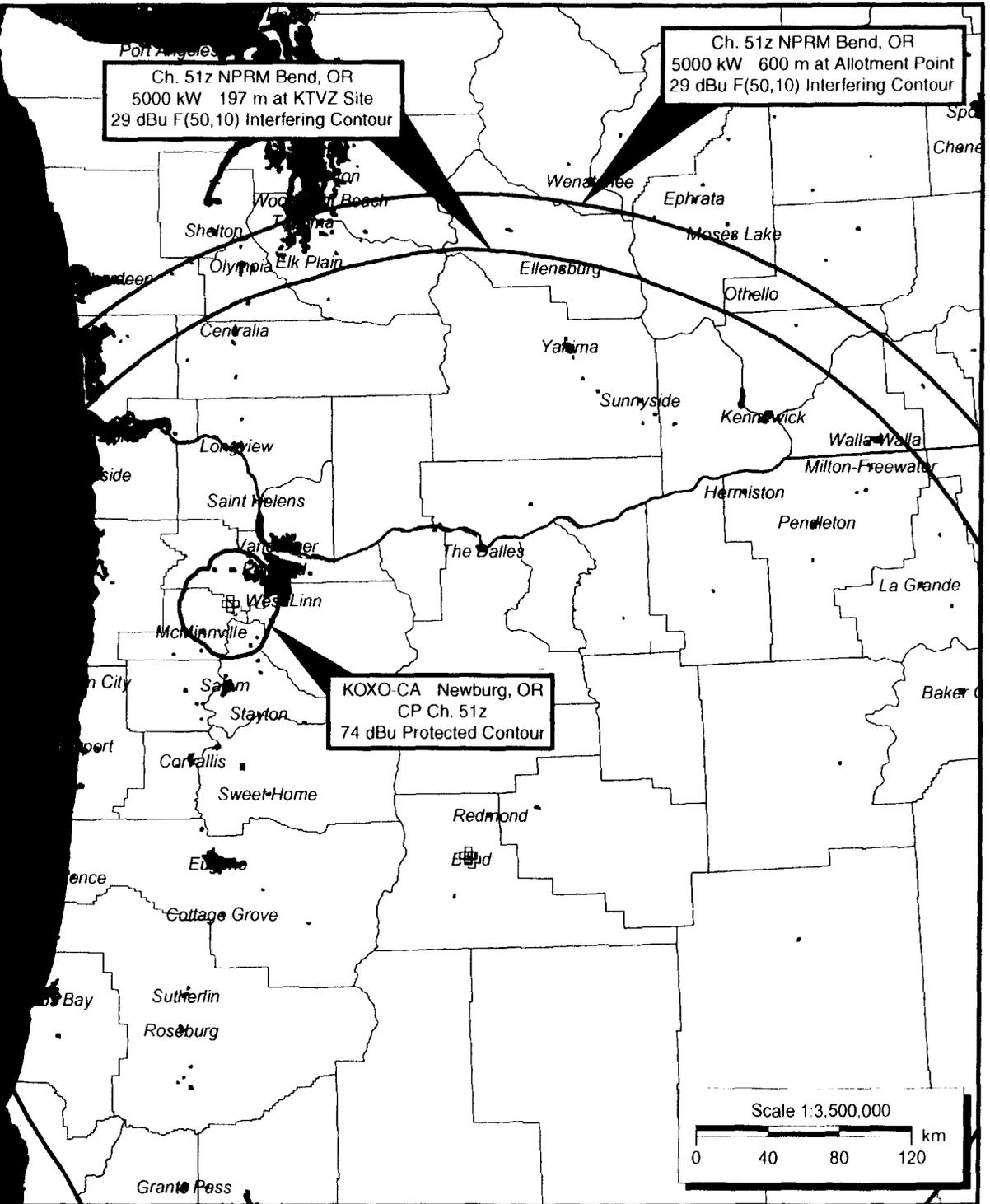
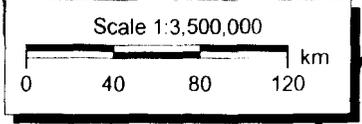
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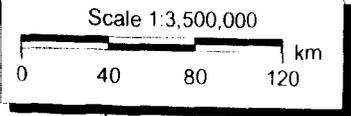
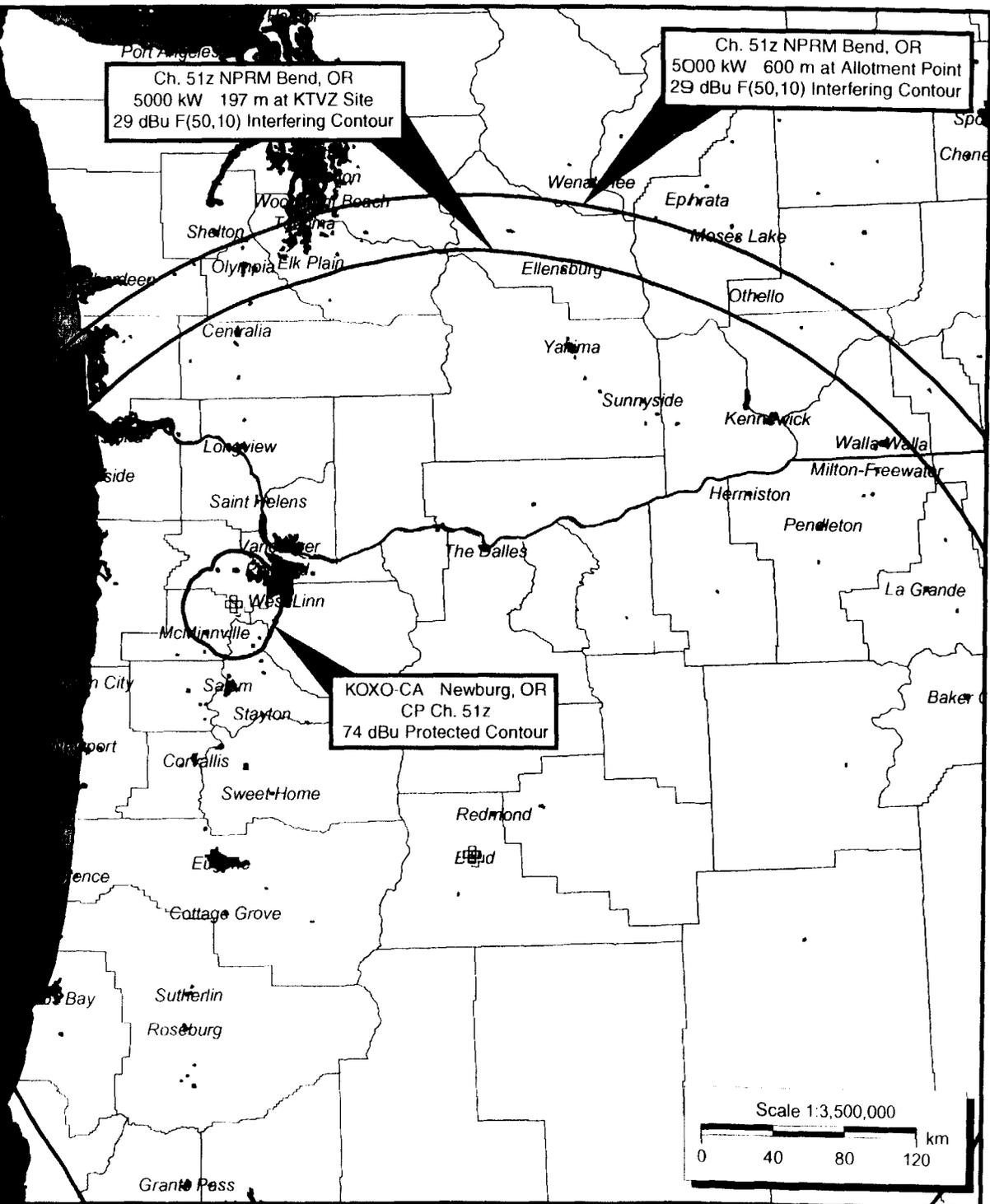
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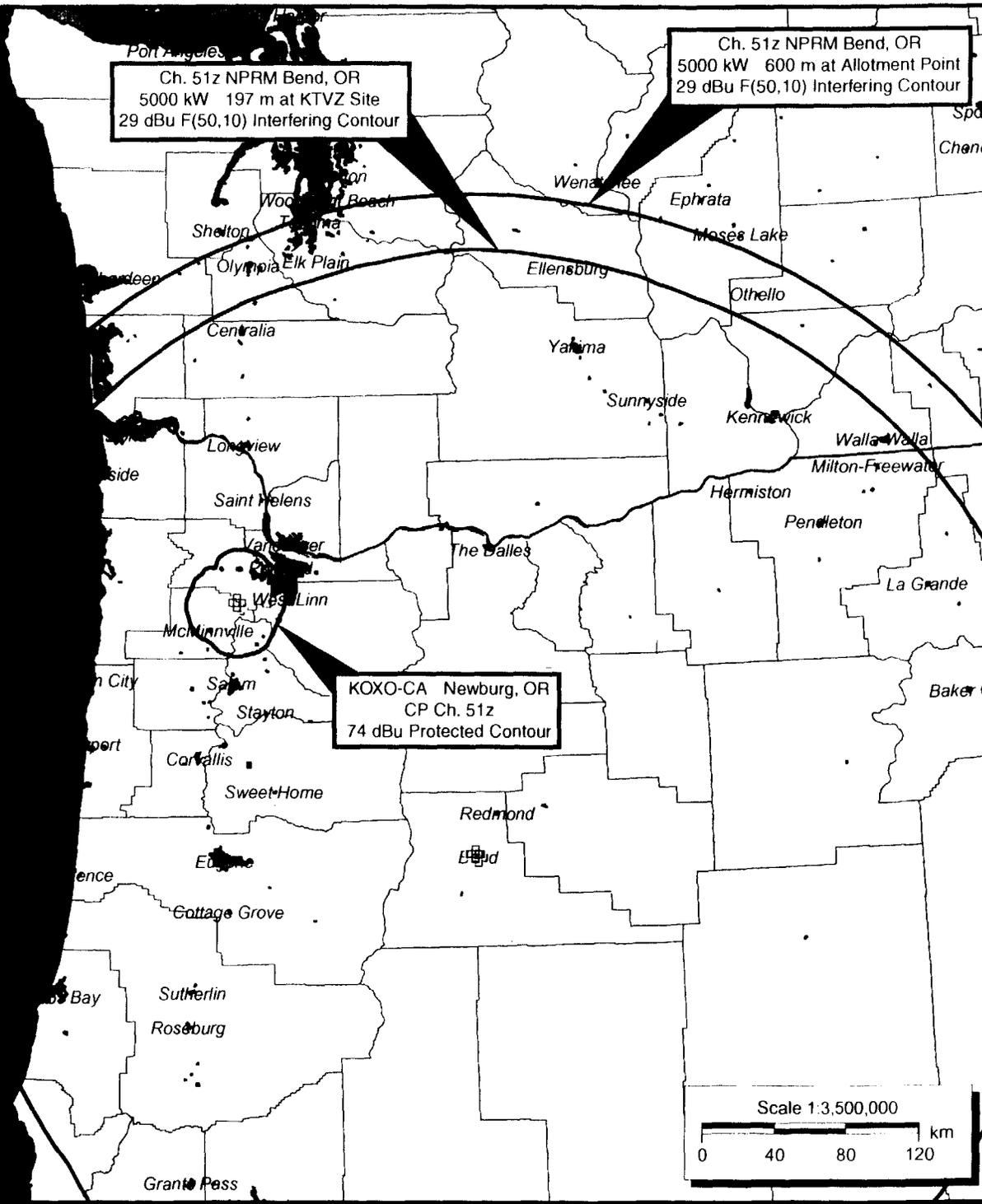
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**FIGURE 1  
CONTOUR OVERLAP**

prepared May 2001 for  
**Bend Licenses, Limited Partnership**

**Cavell, Mertz & Davis, Inc.**  
Fairfax, Virginia



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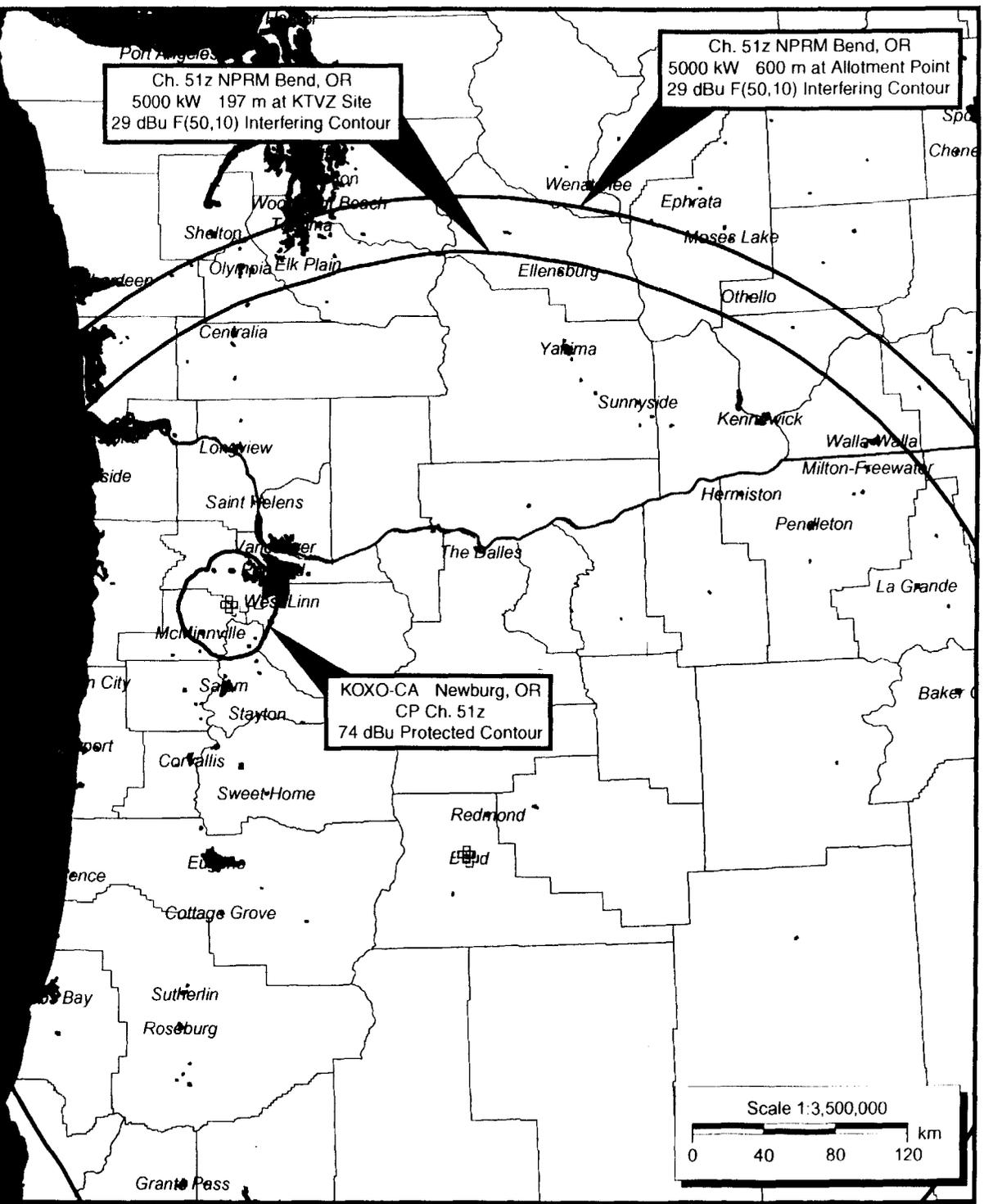
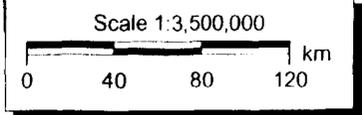
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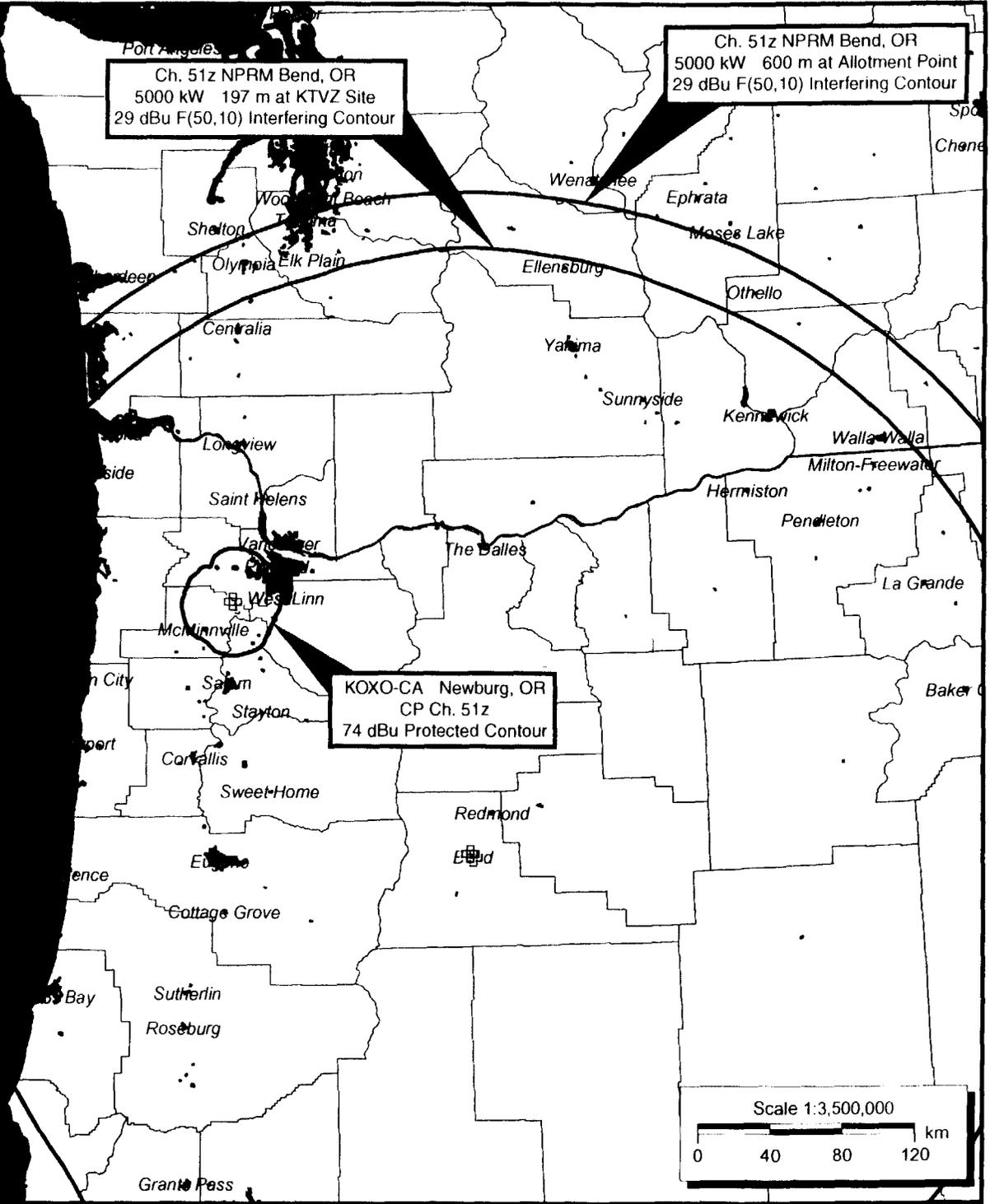
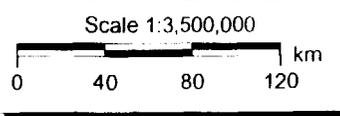
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**CERTIFICATE OF SERVICE**

I, [insert name], do hereby certify that a copy of the foregoing **Comments** have been mailed by first-class mail, postage prepaid, this 31<sup>st</sup> day of May, 2001, to the following:

Harry F. Cole, Esq.  
Bechtel & Cole, Chartered  
1901 L Street, NW, Suite 250  
Washington, DC 20036

~~BRETT CONNOR~~  
Brett Connor

[insert name]