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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 01-33
FM Table of Allotments) RM-10060
FM Broadcast Stations)

(Caro and Cass City, Michigan)

To: Mass Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Edwards Communications, LC ("Edwards") licensee of station WIDL(FM) Caro, Michigan, by its attorney, hereby opposes the Petition for Reconsideration filed with the Commission by Edward T. Czelada, ("Czelada") on June 11, 2001. In support thereof, the following is shown.

The Commission issued a Notice of Proposed Rule Making (DA 01-286, released February 9, 2001) ("NPRM") in this proceeding seeking comment on Edwards' Petition for Rule Making. Therein, Edward's sought to substitute Channel 221C3 for Channel 221A at Caro, Michigan, realLOT Channel 221C3 from Caro to Cass City, Michigan, as the community's first local transmission service, and modify Station WIDL(FM)'s authorization to specify Cass City as the station's community of license. On April 2, 2001, Czelada filed a counterproposal to the NPRM requesting that the Commission allot Channel 297C3 at Cass City rather than Channel 221C3, and further allot Channel 218C3 at Ubyly, Michigan, as a non-commercial allotment.

By Report and Order (DA 01-1153, released May 4, 2001) the

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Commission granted the NPRM without reference to Czelada's counterproposal. By Erratum released May 11, 2001, the Commission addressed this oversight and explained that a footnote concerning the counterproposal had been inadvertently omitted from the Report and Order. In addition, the Erratum stated that Czelada's counterproposal was dismissed because, 1) it was defective when filed, as the proposal for Channel 297C3 did not meet the minimum distance separation and principal community coverage requirements of the Commission rules, and 2) the Allocations Branch is not generally authorized to make allotments in the portion of the FM band reserved for noncommercial, educational, use.

Czelada seeks reconsideration of the Report and Order and subsequent Erratum on the basis that 1) the Report and Order's initial failure to acknowledge the counterproposal shows that the filing was "misplaced" and not properly considered; 2) allotting Channel 221C3 at Cass City in lieu of the counterproposed Channel 297C3 would preclude the use of the reserved, noncommercial, FM channel 218C3 at Uibly in violation of Section 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. 307(b), which requires the "fair, efficient, and equitable distribution of radio service" among the several states and communities; and 3) a correction to the allotment reference coordinates proposed for Channel 297C3 would cure the counterproposal's technical defects.

Czelada's claim that the Commission "misplaced or over-

looked" the counterproposal until after the Report and Order was issued is self-serving and speculative, and may be disregarded as such. Moreover, the record in this proceeding, taken as a whole, demonstrates that the counterproposal received full consideration. Each of the Erratum's stated reasons to dismiss the counterproposal was sufficient in and of itself to warrant the action taken.¹ Accordingly, the Erratum caused no procedural harm to Czelada or the Commission's processes.

Counterproposals are required to be "technically correct and substantially complete" at the time they are filed. Failure to meet this requirement is grounds for dismissal without further consideration. See, e.g., Fort Bragg, California, 6 FCC Rcd 5817 (1991). Czelada concedes that the reference coordinates which he

¹Although not addressed by the Erratum, the counterproposal could have been dismissed for at least three additional reasons. Section 1.52 of the Commission's rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of §1.52 regarding subscription and verification. Czelada failed to verify his Counterproposal and Petition for Reconsideration.

Paragraph 2 of the Appendix to the NPRM, requires that the proponent of an allotment proposal must state an interest in the channel, a present intention to apply for the channel if the allotment is granted, as well as an intention to construct a station promptly. While the counterproposal states an intention to apply for Channel 218, Czelada failed to state any intention to construct such a facility.

Only non-profit entities are eligible to hold a construction permit or broadcast license for a non-commercial radio station on a channel the reserved FM band. As a sole proprietor, Czelada would not qualify as a non-profit entity and, therefore, would be ineligible to apply for Channel 218C3.

proposed for Channel 297C3 in his initial counterproposal to the NPRM were short-spaced. This fact, alone, mandates dismissal of the counterproposal. Moreover, even his attempt to rectify that deficiency with the revised coordinates presented for the first time in his Petition for Reconsideration is flawed. As shown by attached engineering statement prepared by Evans Associates, Czelada's amended coordinates for Channel 297C3 continue to violate the minimum distance separation and principal community coverage requirements of the Commission rules. Czelada fails to show that a Petition for Reconsideration is a proper vehicle by which to cure a defective counterproposal, presents no basis for the Commission to make a defective allotment, and fails to show any basis for the Commission to reconsider its original action.

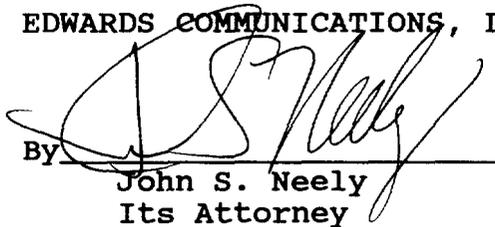
Czelada claims that allotting channel 221C3 at Cass City will have a "preclusionary effect" on his plans to apply for channel 218C3 at Ubly, Michigan. However, as shown by the attached engineering exhibit, any construction permit application filed as proposed for Channel 218C3 at Ubly would be impermissibly short-spaced to a pending application for Channel 218 at Bridgeport, Michigan, (FCC File No. BNPED-20000214ABC) and to a vacant allotment for Channel 218A at Exeter, Ontario. Accordingly, Czelada's proposal for Ubly is defective and he presents no showing that the Commission would ever accept such an application for filing. Regardless of any speculative preclusionary effect, there is no basis to adjust the NPRM in order to accommodate an ungrantable proposal for a station in the reserved FM

band.

Czelada's counterproposal is shown to be fatally defective in numerous areas. He has failed to meet his burden of proof or present a prima facie case warranting reconsideration of the Report and Order and Erratum. The petition must, therefore, be denied.

Respectfully Submitted,

EDWARDS COMMUNICATIONS, LC

BY  _____
John S. Neely
Its Attorney

June 26, 2001

Miller & Miller, P.C.
P.O. Box 33003
Washington, DC 20033

Engineering Statement

This Engineering Statement and the attached exhibits have been prepared by B. Benjamin Evans, P.E. of Evans Associates, Consulting Communications Engineers in Thiensville, Wisconsin, on behalf of Edwards Communications, licensee of Radio Station WIDL((FM) in Caro, Michigan.

Edwards Communications, by an initial FCC decision, has been granted a modification of the license of WIDL(FM) to specify Channel 221C3 at Cass City, Michigan in lieu of its present Channel 221A at Caro, Michigan. A petition for reconsideration, filed by Edward T. Czelada, was filed, stating that Czelada's counterproposal submitted to the FCC on April 2, 2001, should have received further consideration. Czelada proposed to assign Channel 297C3 to WIDL in Cass City instead of Channel 221C3, which would, according to Czelada, make noncommercial reserved Channel 218C3 available at Ubly, Michigan.

This engineer has examined Czelada's original counterproposal and his petition for reconsideration, and has determined that Czelada's proposed allocation scenario has several problems, which are detailed below.

Czelada has not submitted any acceptable set of coordinates for Channel 297C3.

In his counterproposal dated April 2, 2001, Czelada proposed the following coordinates for the allocation of Channel 297C3 at Cass City: 43-39-25 NL, 82-54-15 WL. However, as shown in attached Figure 1, this location short-spaces WSAQ, Channel 296A, Port Huron, MI, as well as other FM assignments.

In his petition for reconsideration, Czelada proposes revised coordinates of 43-42-00 NL, 83-55-30 WL. This location, as shown in attached Figure 2, as a site for Channel 297C3, is short-spaced by 73 kilometers to WODJ, Channel 297B, Greenville, MI, and is 51 kilometers short-spaced to WTLZ, Channel 296A, Saginaw, MI.

Thus, Czelada has not proposed a non-shortspaced site for Channel 297C3, either in his original counterproposal or his petition for reconsideration.

Channel 297C3 would not comply with the community of license coverage requirement.

It has been determined by this engineer that the non-shortspaced site for Channel 297C3 that is closest to Cass City is at coordinates 43-42-29 NL, 82-55-22 WL. This site is about 24 kilometers northeast of Cass City. In contrast, the Channel 221C3 reference point is only 5 kilometers northeast of Cass City.

This engineer has prepared a contour map, Figure 3, showing the predicted 70 dBu contour of a full Class C3 facility (25 KW ERP, 100 meters HAAT) located at those coordinates. As clearly seen on the map, the 70 dBu contour would not encompass the entire city of Cass City. Czelada states that "the 70 dBu F(50,50) does cover the entire community of Cass City", but he does not supply a map to back his claim, as the FCC normally requires in rulemaking proceedings.

In any proposed rulemaking to assign an FM channel, the petitioner must unambiguously demonstrate that the entire community of license would be served by a predicted 70 dBu signal from the site described by the reference coordinates. Approximately 45% of the community of Cass City is missed by the Channel 297C3 community coverage contour.

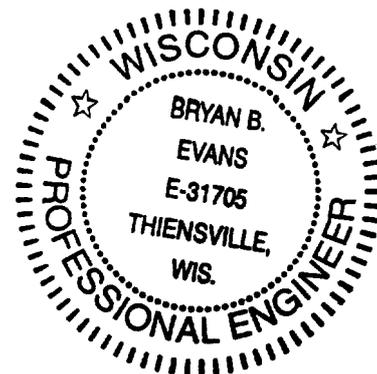
Channel 218C3 cannot be assigned at Ubly.

According to this engineer's study of Channel 218C3 at Ubly, a proposed Class C3 facility located at 43-39-25 NL, 82-54-15 WL would have severe contour overlap problems. As seen in attached Figures 5 and 6, even at minimum Class C3 facilities of 6.1 KW ERP at 100 meters antenna HAAT, contour overlap would be created with an applied-for facility on Channel 218A at Bridgeport, MI, and a vacant allotment on Channel 218A at Exeter, Ontario, Canada. Thus, Channel 218C3 cannot be assigned at this location.



B. Benjamin Evans, P.E.

June 25, 2001



ATTACHED FIGURES:

- Figure 1 - - - Channel 297C3, Cass City MI Spacings from Original Czelada Coordinates
- Figure 2 - - - Channel 297C3 Cass City MI Spacings from Revised Czelada Coordinates
- Figure 3 - - - Community Coverage Contour Study – Channel 297C3, Cass City, MI
- Figure 4 - - - Interference Study Tabulation – Channel 218C3, Ubly, MI
- Figure 5 - - - Contour Overlap Study – Ch 218C3 Ubly MI & App Ch 218A Bridgeport MI
- Figure 6 - - - Contour Overlap Study – Ch 218C3 Ubly MI & Allot Ch 218A Exeter ON

Figure 1

Frequency Search for Cass City MI
Site as Proposed by Czelada on 4/2/2001

REFERENCE
43 39 25 N
82 54 15 W

CLASS = C3
Current Spacings

DISPLAY DATES
DATA 06-13-01
SEARCH 06-25-01

----- Channel 297 - 107.3 MHz -----

Call	Channel	Location		Dist	Azi	FCC	Margin
WSAQ	LIC 296A	Port Huron	MI	83.54	154.7	89.0	-5.46
WODJ	LIC 297B	Greenville	MI	210.57	251.1	211.0	-0.43
WTLZ	LIC 296A	Saginaw	MI	88.66	248.0	89.0	-0.34
WGPR	LIC 298B	Detroit	MI	144.93	185.2	145.0	-0.07
WCRZ	LIC 300B	Flint	MI	92.94	216.1	71.0	21.94
RADD	ADD 295A	Au Gres	MI	77.11	304.7	42.0	35.11
	298	Stratford	ON	161.24	100.9	119.0	42.24
WNWV	LIC 297B	Elyria	OH	275.34	164.2	211.0	64.34

Frequency Search for Cass City MI
Site as Proposed by Czelada on 6/11/2001

REFERENCE
43 42 00 N
83 55 30 W

CLASS = C3
Current Spacings

DISPLAY DATES
DATA 06-13-01
SEARCH 06-25-01

----- Channel 297 - 107.3 MHz -----

Call	Channel	Location		Dist	Azi	FCC	Margin
WODJ	LIC 297B	Greenville	MI	138.02	237.2	211.0	-72.98
WTLZ	LIC 296A	Saginaw	MI	38.46	179.2	89.0	-50.54
RADD	ADD 295A	Au Gres	MI	42.89	25.3	42.0	0.89
WCRZ	LIC 300B	Flint	MI	84.77	160.5	71.0	13.77
WGPR	LIC 298B	Detroit	MI	164.74	154.6	145.0	19.74
WCKC	LIC 296A	Cadillac	MI	124.87	295.3	89.0	35.87
WSAQ	LIC 296A	Port Huron	MI	143.11	123.7	89.0	54.11
	297	Sault Ste Marie	ON	314.61	354.3	259.0	55.61
WCCWFM	LIC 298C2	Traverse City	MI	184.28	310.8	117.0	67.28
WQKL	LIC 296A	Ann Arbor	MI	158.67	174.6	89.0	69.67

NEW

Latitude: 43-42-29 N
Longitude: 082-55-22 W
Power: 25.00 kW
Channel: 297
Frequency: 107.3 MHz
AMSL Height: 336.42 m
Elevation: 241.92 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: None

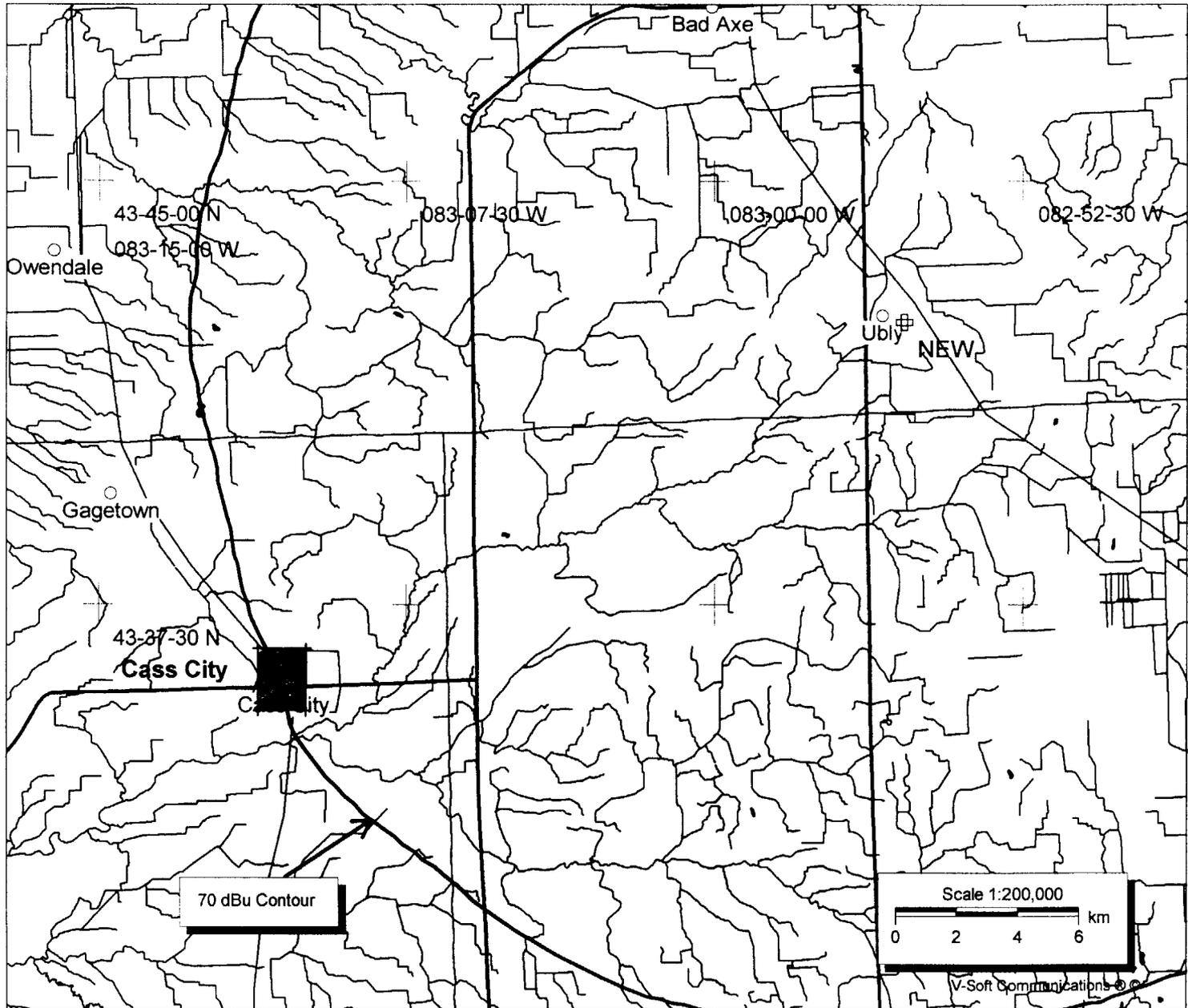
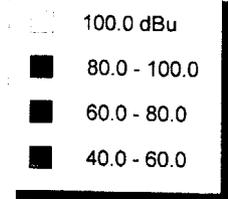


Figure 3

Figure 4

Frequency Study for Ubyly MI

Site as Proposed by Czelada on 4/2/2001

REFERENCE CH# 218C3 - 91.5 MHz, Pwr= 6.1 kW, HAAT=100.0 M, COR= 338 M DISPLAY DATES
 43 39 25 N Average Protected F(50-50)= 28.4 km DATA 06-13-01
 82 54 15 W Ave. F(50-10) 40 dBu= 86.9 54 dBu= 43.9 80 dBu= 9.1 100 dBu= 2.8 SEARCH 06-25-01

CH	CALL	TYPE	AZL.	DIST	LAT.	Pwr(kW)	COR(M)	PRO(km)	*IN*	*OUT*
CITY	STATE	FILE #	<--		LNG.	HAAT(M)	INT(km)	LICENSEE	(Overlap in km)	
218	*ALLO		106.1	120.10	43 21 00	6.000	100	38.7	6.16	-30.11
Exeter	ON	286.1 RM9548			81 28 48	100	86.7			
> Reference HAAT at 106.1°= 91.8 M, Pwr= 6.1 kW, Pro. Dist. = 27.28 km, Int Dist. = 111.49 km										
218A	*AP218	APP VX	248.0	88.66	43 21 14	0.330	263	11.5	19.36	-11.40
Bridgeport	MI	68.0 BNPED20000214ABC			83 55 06	69	39.7	Pensacola Christian Colleg		
> Reference HAAT at 248.0°= 109.7 M, Pwr= 6.1 kW, Pro. Dist. = 29.64 km, Int Dist. = 88.52 km										
218A	*AP218	APP EX	254.4	109.59	43 23 05	0.700	248	13.4	32.66	7.72
Fremont Township	MI	74.4 BNPED20000307AAA			84 12 25	64	47.3	Great Lakes Community Broa		
> Reference HAAT at 254.4°= 109.5 M, Pwr= 6.1 kW, Pro. Dist. = 29.62 km, Int Dist. = 88.49 km										
217A	*WCHWEM	LIC HN	264.8	78.68	43 35 19	0.110	219	6.6	39.36	26.07
Bay City	MI	84.8 BLED19820112AC			83 52 28	40	9.5	School District, Bay City		
> Reference HAAT at 264.8°= 111.1 M, Pwr= 6.1 kW, Pro. Dist. = 29.82 km, Int Dist. = 45.99 km										
217A	*WSGREFM	LIC CN	152.8	84.64	42 58 43	0.120	211	5.9	47.56	34.40
Port Huron	MI	332.8 BLED19860124KB			82 25 45	24	8.4	St. Clair County Community		
> Reference HAAT at 152.8°= 102.1 M, Pwr= 6.1 kW, Pro. Dist. = 28.69 km, Int Dist. = 44.34 km										
218C3	*WMHWEM	APP DVX	267.2	151.27	43 34 33	2.435	380	28.4	39.28	34.40
Mt. Pleasant	MI	87.2 BNPED20010517ABQ			84 46 29	160	82.3	Central Michigan Universit		
> Reference HAAT at 267.2°= 109.7 M, Pwr= 6.1 kW, Pro. Dist. = 29.65 km, Int Dist. = 88.52 km										
217A	*980320	APP DVN	323.1	95.07	44 20 18	5.400	319	30.7	19.55	20.27
East Tawas	MI	143.1 BPED19980320MF			83 37 16	127	47.0	Northern Christian Radio I		
> Reference HAAT at 323.1°= 101.0 M, Pwr= 6.1 kW, Pro. Dist. = 28.53 km, Int Dist. = 44.12 km										
218A	*WMHWEM	LIC HN	267.7	151.07	43 35 12	0.340	274	10.5	85.73	52.12
Mount Pleasant	MI	87.7 BLED19820630AQ			84 46 24	55	35.8	Central Michigan Universit		
> Reference HAAT at 267.7°= 109.0 M, Pwr= 6.1 kW, Pro. Dist. = 29.56 km, Int Dist. = 88.41 km										
218A	*WMHWEM	CP CN	267.2	151.27	43 34 33	0.340	279	10.9	84.64	51.89
Mt. Pleasant	MI	87.2 BPED20000815ACD			84 46 29	59	37.0	Central Michigan Universit		
> Reference HAAT at 267.2°= 109.7 M, Pwr= 6.1 kW, Pro. Dist. = 29.65 km, Int Dist. = 88.52 km										
271C2	WLEWEM	LIC CN	326.0	31.46	43 53 28	50.000	350	52.2	17.0R	14.5M
Bad Axe	MI	146.0 BLH19890117KK			83 07 26	150	0.0	Thumb Broadcasting, Inc.		
219B	*WUOM	LIC CN	210.9	161.36	42 24 27	93.000	513	66.8	34.22	49.84
Ann Arbor	MI	30.9 BLED19990204KA			83 54 50	241	98.2	The Regents Of The Univ. O		
> Reference HAAT at 210.9°= 104.0 M, Pwr= 6.1 kW, Pro. Dist. = 28.93 km, Int Dist. = 44.7 km										
219C	*WCMLFM	LIC CN	329.2	192.70	45 08 17	100.000	631	75.9	52.92	72.59
Alpena	MI	149.2 BLED1785			84 09 44	348	111.2	Central Michigan Universit		
> Reference HAAT at 329.2°= 101.4 M, Pwr= 6.1 kW, Pro. Dist. = 28.59 km, Int Dist. = 44.2 km										
216B	*WFUMFM	LIC DCN	208.4	95.58	42 53 57	16.919	439	44.6	62.17	48.18
Flint	MI	28.4 BLED19930906KA			83 27 42	167	4.7	The Regents Of The Univ. O		
> Reference HAAT at 208.4°= 102.6 M, Pwr= 6.1 kW, Pro. Dist. = 28.75 km, Int Dist. = 2.79 km										
217	*ALLO		153.3	149.80	42 27 00	6.000	0	22.4	97.64	67.16
Chatham	ON	333.3 BLH3814			82 05 00	-183	23.5			
> Reference HAAT at 153.3°= 102.1 M, Pwr= 6.1 kW, Pro. Dist. = 28.69 km, Int Dist. = 60.21 km										
06-1C	WLNSTV	LI HN	228.4	161.05	42 41 14	100.000	566	104.0	To Grd B=	57.08
Lansing	MI	48.4 BLCT652			84 22 35	305	0.0	Young Broadcasting Of Lans		

* = ERP and HAAT on direct line to and from reference station.

Figure 5

Frequency Study for Ubyly, MI
Overlap With Ch 218A Bridgeport MI

EMCONT Allocation Study

06-25-2001

NEW on CH 218 C3
6.1 kW 338M COR
Prot. = 60 dBu
Intef. = 40 dBu

AP218 CH 218 A
.33kW, 263 M COR
Prot. = 60 dBu
Intef. = 40 dBu

1:1,562,500

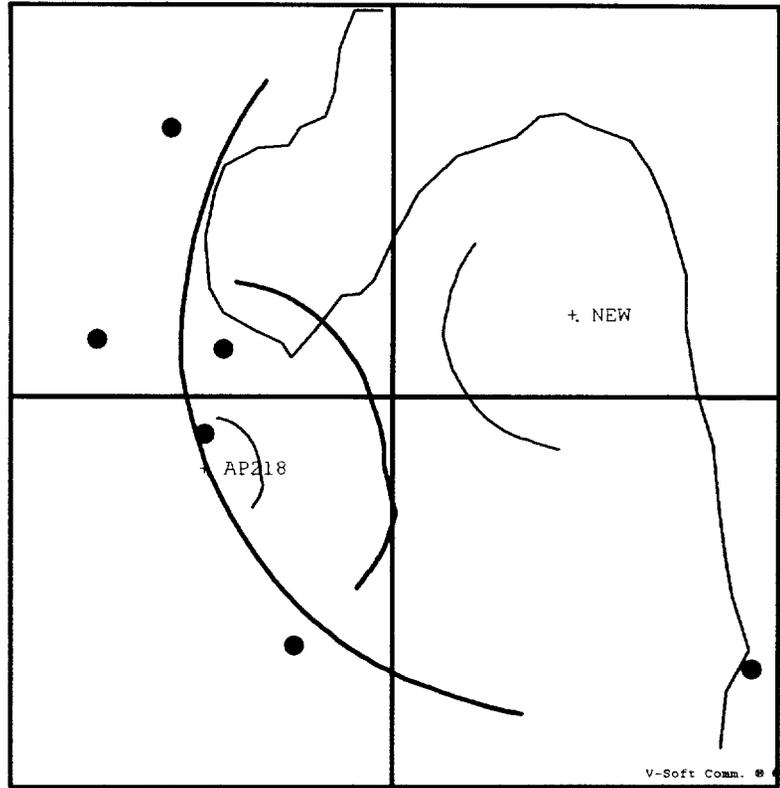


Figure 6

Frequency Study for Ubly, MI
Overlap With Ch 218A Exeter ON

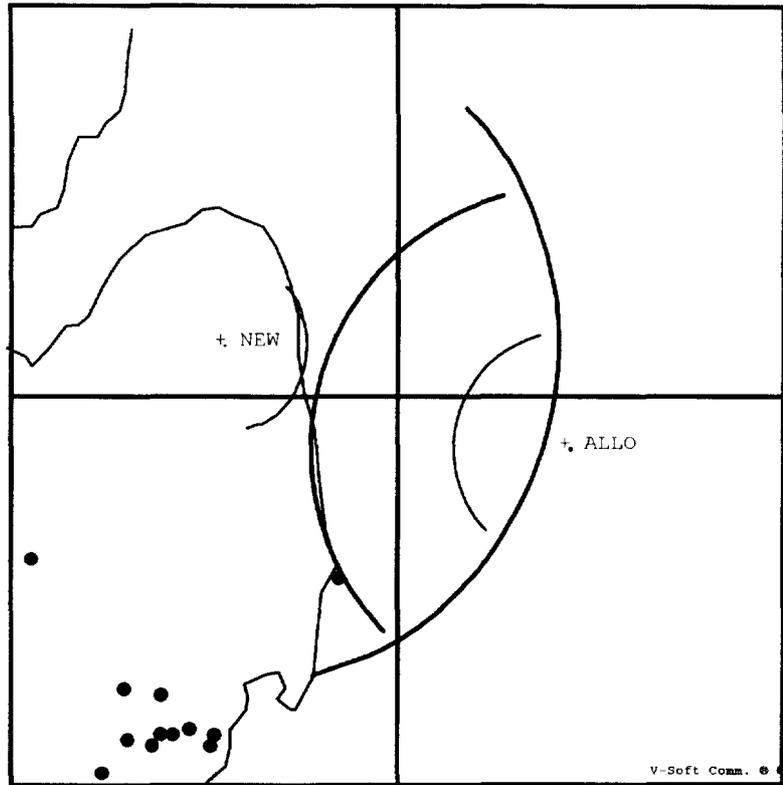
FMCONT Allocation Study

06-25-2001

NEW on CH 218 C3
6.1 kW 338M COR
Prot. = 60 dBu
Intef. = 34 dBu

ALLO CH 218 A
6kW, 100 M COR
Prot. = 54 dBu
Intef. = 40 dBu

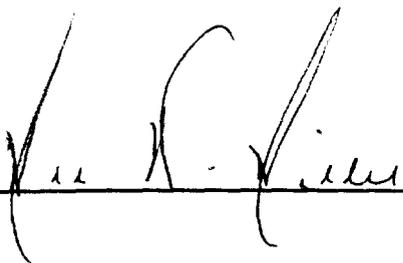
1:2,343,750



CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June, 20⁰¹,
a copy of the foregoing document was placed in the United States
mail, first class postage prepaid, addressed to the following:

Edward T. Czelada
3302 N. Van Dyke
Imlay City, MI 48444



A handwritten signature in black ink, appearing to read "Edward T. Czelada", is written over a solid horizontal line.