

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
)
 Amendment of Section 73.202(b),)
 Table of Allotments, FM)
 Broadcast Stations.)
 (Honor, Bear Lake, Ludington,)
 and Walhalla, Michigan))
)

MM Docket No 01-186
RM-9976

To the Chief, Allocations Branch

RESPONSE TO ORDER TO SHOW CAUSE

Lake Michigan Broadcasting, Inc. ("Lake Michigan"), licensee of broadcast radio station WKLA(FM), Ludington, Michigan, hereby responds to the Commission's Order to Show Cause, released August 10, 2001, in the above referenced proceeding.¹ By that Order, the Commission indicated that it had a Petition for Rulemaking under consideration that involved various channel substitutions and changes to the FM Table of Allotments. Among the changes proposed in that Petition is the modification of WKLA(FM)'s operating frequency by substituting Channel 254A for Channel 292A at Ludington, Michigan. Accordingly, the Commission issued an Order to Show Cause to Lake Michigan requesting that it demonstrate why its license should not be modified to specify operation on Channel 254A in lieu of Channel 292A. For the reasons

¹ In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Honor, Bear Lake, Ludington, and Walhalla, Michigan), Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 01-186, DA 01-1906, released August 10, 2001.

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articulated below, Lake Michigan opposes the proposed modification of WKLA(FM)'s established operating channel as it would not be in the public interest.

BACKGROUND

On July 18, 2000, Northern Radio of Michigan, Inc. ("Northern Radio"), the permittee of station WIAR(FM), Honor, Michigan, submitted a Petition for Rule Making proposing to change the class of WIAR(FM) from Class A to Class C3. Thus, Northern Radio sought to amend the FM Table of Allotments to substitute Channel 264C3 for Channel 264A at Honor, Michigan. Similarly, Northern Radio indicated that if the Table was amended that it would modify the license of WIAR to specify operation on the higher class channel. In order to accomplish this channel upgrade, Northern Radio's proposal requires the modification of station WSRQ(FM), Bear Lake, Michigan, from Channel 261A to Channel 291A, the modification of station WKLA(FM), Ludington, Michigan, from Channel 292A to Channel 254A, and the substitution of Channel 293A for the current vacant allotment on Channel 255A in Walhalla, Michigan. Accordingly, the Commission issued a Notice of Proposed Rule Making and Order to Show Cause in this matter instructing Lake Michigan Broadcasting, Inc. to show cause as to why WKLA(FM)'s license should not be modified, and instructing Fort Bend Broadcasting Company, the licensee of station WSRQ(FM), Bear Lake, Michigan to show cause why WSRQ's license should not be modified.

DISCUSSION

I. The Proposed Modification of WKLA(FM)'s Channel of Operation is Not in the Public Interest as It Would Be Disruptive and Threaten the Substantial Service That the Station Provides to Its Community

Pursuant to Section 316 of the Communications Act of 1934, as amended, the Commission may only modify a license or construction permit if such action is in the public interest.² In the instant situation, forcing WKLA(FM) to change its operating channel from 254A to 292A is clearly not in the public interest. Modification of WKLA(FM) would cause confusion to the listening audience, as well as causing financial harm to WKLA(FM), raising the possibility of a reduction in the substantial service that WKLA(FM) currently provides to its community. Furthermore, WKLA(FM) holds an established and unique position in its community as the source of local news, weather, and information, especially in times of emergency, thereby increasing the harm to the public of the proposed channel change.

A. Listeners in the Ludington Area Rely on WKLA(FM) Because of Its Long-Standing Service to the Community and Its Continuous Operation, Especially in Times of Emergency

WKLA(FM) is a long-standing pillar of its community, serving the Ludington area for nearly two and a half decades. WKLA(FM) is the primary source of weather, cancellations, news, sports and general community information for the residents and listeners in the Ludington community. Even more importantly, WKLA(FM) is the only station in the area with emergency generators at both its studio and its transmitter locations. Thus, not only have listeners come to rely on the operation of WKLA(FM) for vital news and information on a day-to-day basis, but its ability to operate under all circumstances has made it the place people tune for emergency

² 47 U.S.C. § 316.

information. The proposed modification of WKLA(FM)'s operating frequency would not be in the public interest as it would cause confusion among the listening audience. While in the normal course of operations this confusion may be disruptive and a nuisance, it could have potentially severe implications in times of emergency.

WKLA(FM)'s well-established position on the radio dial and in the community's minds makes it an indispensable resource for Ludington. Were the station to move from its current position of 106.3 to 98.7 on the radio dial, it would invariably result in a loss of listeners, no matter how well the change was advertised. This loss becomes critical when WKLA(FM)'s role as the station the public relies on for emergency information is considered. Battery-powered radios kept for emergencies are tuned to 106.3 and if Northern Radio's proposal is adopted, listeners will find only static there when an emergency occurs. WKLA(FM) has spent decades serving the public and building a relationship with its listeners at its current position. A modification of the station's operating channel would have a far-reaching and negative impact on the Ludington community.

In addition, during the summer months, Ludington, Michigan has a sizable tourist population, which at times increases the local population by 40,000 to 50,000 people. Many of these people are annual visitors who rely on WKLA(FM) for local weather and boating information year after year. If WKLA(FM) were required to change its operating channel, it would be impossible to notify these part-time residents of the change. While local newspaper advertisements might reach year-round residents, there would be no way to reach the annual visitors to Ludington.

B. The Proposed Modification of WKLA(FM)'s Channel May Be Financially Detrimental to the Station, Which Could Result in a Reduction of the Substantial Service That WKLA(FM) Currently Provides to Its Community

Currently, WKLA(FM) is a “full service” broadcast radio station providing a wide array of locally-produced programming to its listeners. WKLA(FM) has a full-time News Director, Sports Director, and live announcers, as well as remote broadcast operations and live coverage of high school sports. Because of the service WKLA(FM) provides, it is an integral and valuable resource for the Ludington community. However, if WKLA(FM) were to be financially damaged by the forced modification of its frequency, some of these “full service” features might have to be discontinued in the future. The economic realities of small market broadcasting could force a reduction in programming in order to offset any losses from the proposed modification. Such a result would clearly not be in the public interest, as WKLA(FM) currently provides substantial and reliable service to the public.

C. Modification of WKLA(FM)'s Operating Channel Would Increase the Potential for Harmful Interference

The proposed modification of WKLA(FM) to Channel 254A would increase the likelihood of intermittent interference to the station due to the “lake effect” experienced in the area, and thus is not in the public interest. Several FM broadcast radio stations located along Lake Michigan experience interference from stations broadcasting from across the lake. On average, the interference occurs a few times a month, depending on atmospheric conditions. Currently, WKLA(FM) does not experience any interference from FM stations that operate across the lake on adjacent channels. However, substitution of Channel 254A would expose WKLA(FM) to the increased possibility of harmful interference due to an allotment on Channel

255A located across the lake from WKLA(FM) at Two Rivers, Wisconsin.³ The facility allotted on Channel 255A at Two Rivers is located only 99.8 kilometers from WKLA(FM). As the normal required separation between the channels is 72 kilometers, the clearance afforded to WKLA(FM) by the Two Rivers allotment is 27.9 kilometers. This is substantially less than the clearance WKLA(FM) now has from stations located across the lake that are first adjacent to WKLA(FM)'s current Channel 292A. This reduction in the clearance from a first adjacent station located across the lake could cause an increase in "lake effect" interference to WKLA(FM), and lead to a disruption of service to WKLA(FM)'s listening audience. In particular, the risk of such interference to WKLA(FM)'s emergency operations is worrisome. As a change in WKLA(FM)'s operating frequency would increase the potential for this harmful interference, the proposed modification is not in the public interest.

II. Northern Radio's Proposal Does Not Comply with Established Commission Policy

A. The Modification of Existing Stations Is Disruptive and Should Be Avoided

The modification of an existing station's operating channel, and hence the relocation of the station's position on the radio dial, is an invasive and disruptive event. The Commission has stated in the past its "concerns with respect to proposals involving multiple FM or television channel substitutions."⁴ In addition to the time consuming problem of agreeing on an appropriate amount of reimbursement for the channel changes, the Commission has stated that

[t]here can also be a significant amount of confusion to the public from stations changing frequencies. Even though stations do attempt to inform the public of

³ See Response to Order to Show Cause, submitted by Lake Michigan Broadcasting, Inc. on August 3, 2001, in rule making MM Docket No. 00-69 for further engineering detailing this "lake effect."

⁴ Amendment of Section 73.303(B) Table of Allotments, FM Broadcast Stations, (Columbus, Central City, Crookston, Kearney, Lexington, McCook, and Valentine, Nebraska, and Hill City, Kansas), Report and Order, 59 RR 2d 1184, at ¶ 4 (1986).

their change in frequency, these efforts are not often immediately successful and can result in disruptions to listening and viewing habits and losses of audience. ...[C]hanging a station's frequency is a significant action which can cause substantial disruptions to a station's business.⁵

This is clearly the case in the instant proceeding, as Northern Radio's proposal would require not only the modification of WKLA(FM)'s operating channel, but also the modification of the operating channel of Fort Bend Broadcasting Company's station WSRQ(FM). These changes will cause substantial disruption to the listening audiences of these stations and will invariably result in the loss of listeners and revenue.

B. Northern Radio's Proposal Is Fatally Flawed

As detailed in the attached engineering discussion prepared by Munn-Reese, Inc. on behalf of Lake Michigan, Northern Radio's proposal is technically deficient and cannot be granted. See Exhibit 1. Specifically, the proposed modification of WSRQ(FM), Bear Lake, Michigan, from Channel 261A to Channel 291A would result in the inability of WSRQ to provide Bear Lake, its community of license, with the required signal coverage. Pursuant to Section 73.315(a) of the Commission's Rules, an FM radio station must locate its transmitter so that it is able to provide a signal of 70 dB to the entire community of license.⁶ As detailed in the attached engineering, although the reference point for Channel 291A has been located as close to Bear Lake as spacing limitations permit, operation from the reference coordinates specified

⁵ Id.

⁶ 47 C.F.R. 73.315(a). See also Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Station. (Eugene, Oregon), 10 FCC Rcd 9793 (Chief, Allocations Branch 1995) (denying a petition for rule making to amend the FM table due to the inability to comply with the requirements of Sections 73.315(a) and 73.315(b)); Harden Broadcasting Corp., 36 RR 2d 1274 (Chief, Broadcast Bureau 1976) (denying request for waiver of 73.315(a) to reduce community coverage in order to improve station's line of sight to the community).

would not permit the station to cover any portion of Bear Lake with the required 70 dB signal with the maximum facilities permitted under Section 73.211(b).⁷ Moreover, due to spacing restrictions from other stations, the reference point for WSRQ's transmitter cannot be moved any closer to Bear Lake. Therefore, the Commission must deny Northern Radio's petition for rule making as the proposal fails to comply with Section 73.315(a) of the Commission's Rules.

In addition to the inability to cover the community of license, the attached engineering study demonstrates that there are multiple intervening terrain features that would prevent WSRQ from obtaining a line of sight from the reference coordinates to the community of Bear Lake as required by Section 73.315(b).⁸ *See Exhibit 1.* Moreover, even if WSRQ could construct a tower tall enough to obtain line of sight into Bear Lake it would not succeed in providing the community with the required signal coverage. Accordingly, the proposed modification of WSRQ fails to comply with two of the Commission's most basic requirements, rendering Northern Radio's proposal defective.

⁷ 47 C.F.R. 73.211(b).

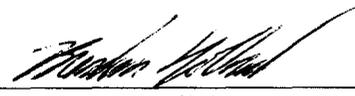
⁸ 47 C.F.R. 73.315(b).

CONCLUSION

For the reasons stated above, the proposed modification of WKLA(FM) advanced in the proposal submitted by Northern Radio is clearly not in the public interest, and the Commission should reject that proposal.

Respectfully submitted,

LAKE MICHIGAN BROADCASTING, INC.

By: 

Scott R. Flick
Brendan Holland

Its Attorneys

SHAW PITTMAN LLP
2300 N Street, NW
Washington, DC 20037
(202) 663-8000

Date: October 1, 2001

EXHIBIT 1

ENGINEERING REPORT
Response to
Petition to Show Cause
for
WKLA(FM) – Ludington, Michigan

October 2001

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MUNN-REESE, INC.
Broadcast Engineering Consultants
Coldwater, MI 49036

TABLE OF CONTENTS

1. Certification of Engineers
2. Discussion of Report
3. Figure 1 – Topographical Map of Special Reference Point
4. Figure 2 – Tabulation of Channel 291A Allocation
5. Figure 2A – Expanded view of Channel 291A Allocation
6. Figure 3 – Map showing lack of City Coverage for Channel 291A
7. Figure 3A – Expanded view of lack of City Coverage for Channel 291A
8. Figure 4 – Terrain Profile showing lack of Line of Site Coverage towards Bear Lake, MI
9. Figure 4A – Terrain Profile showing required Line of Site Coverage towards Bear Lake, MI

CERTIFICATION OF ENGINEERS

The firm of Munn-Reese, Inc., Broadcast Engineering Consultants, with offices at 100 Airport Drive, Coldwater, Michigan, has been retained for the purpose of preparing the technical data forming this report.

The data utilized in this report was taken from the FCC Secondary Database and data on file. While this information is believed accurate, errors or omissions in the database and file data are possible. This firm may not be held liable for damages as a result of such data errors or omissions.

The report has been prepared by properly trained electronics specialists under the direction of the undersigned whose qualifications are a matter of record before the Federal Communications Commission.

I declare under penalty of perjury that the contents of this report are true and accurate to the best of my knowledge and belief.

October 1, 2001

MUNN-REESE, INC.

By Wayne S. Reese
Wayne S. Reese, President

By Justin W. Asher
Justin W. Asher, Project Engineer

100 Airport Drive, PO Box 220
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Broadcast Engineering Consultants
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DISCUSSION

This firm was retained by Lake Michigan Broadcasting, Inc. (LMBI), licensee of Radio Station WKLA(FM), Ludington, MI to prepare selected engineering exhibits with respect to the Proposed Rule Making, MM Docket No. 01-186, RM-9976, by Northern Radio of Michigan, Inc. (Northern) and the FCC's Order to Show Cause on WKLA(FM). This engineering will show that the proposal to substitute Channel 291A for Channel 261A will not satisfy §73.315(a) and (b) of the FCC rules.

Before the Commission for consideration is a petition for rule making filed by Northern proposing the substitution of Channel 264C3 for Channel 264A at Honor, MI, and the modification of its license for Station WIAR to specify operation on the higher class channel. Northern also requests the substitution of Channel 291A for Channel 261A at Bear Lake, MI, substitution of Channel 254A for Channel 292A at Ludington, MI and the substitution of Channel 293A for vacant Channel 255A at Walhalla, MI. The Commission has ordered, pursuant to Section 316(a) of the Communications Act of 1934, as amended, LMBI to Show Cause why its license should not be modified to specify operation on Channel 291A in lieu of Channel 261A.

LMBI, by its consulting engineer, submits that a portion of this rulemaking is patently defective since city grade coverage and line of sight at maximum facilities is not attainable in the Bear Lake allocation.

Proposed Allocation: As part of the Northern proposal, Channel 291A was proposed as a replacement for Channel 261A at Bear Lake, MI. A special reference point was proposed at coordinates NL 44°17'30" and WL 86°13'30". This transmitter reference point is 15.6 kilometers south-southwest of the community of Bear Lake, whose reference coordinates are NL 44°25'15" and WL 86°08'53". **Figure 1** is a portion of the Onekama, MI 1:24,000 scale topographical map showing the reference site.

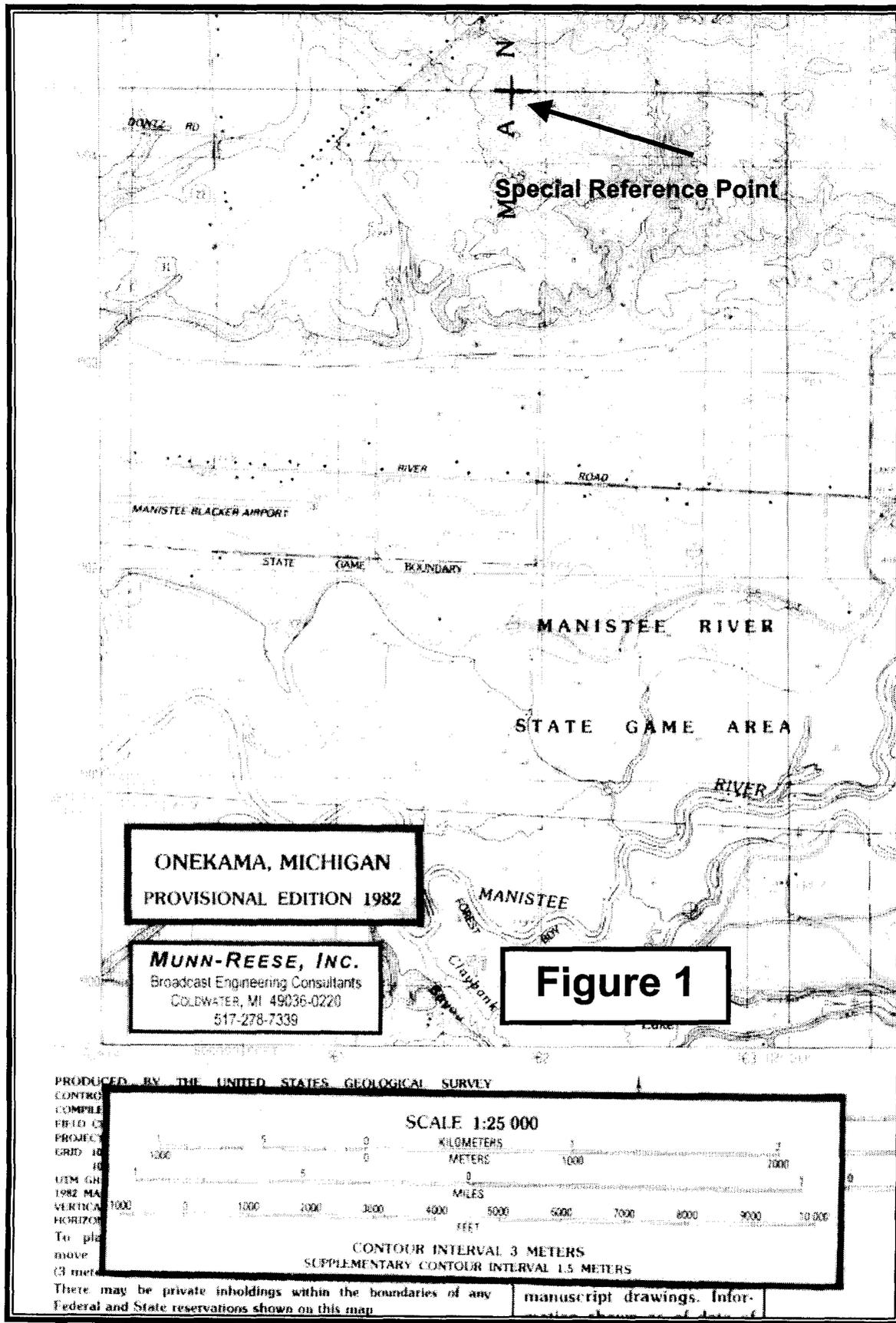
Figure(s) 2 and 2A are plots and tabulations of the spacings making up the proposed Bear Lake allocation on Channel 291A. As shown, the proposed reference point for the channel has been selected as close to Bear Lake as possible. The reference point is up tight against the restriction from WKHQ-FM, Charlevoix, MI, with only a margin of 0.16 kilometers.

DISCUSSION

City Coverage Issue: *Figure(s) 3 and 3A* are Probe II™ city grade (70 dBu, 3.16 mV/m) coverage maps that show a full facility (6 kW ERP @ 100 meters HAAT) Class A operation from the proposed reference point employing the FCC curves method of calculation from §73.313 of the rules. These maps demonstrate that no portion of the City of Bear Lake will receive the coverage required under §73.315(a) of the rules. Per §73.313(d)(2), radials 270° and 315° were truncated where they entered Lake Michigan beyond 3.0 kilometers. *Figure 3B* is a tabulation of the data employed to calculate the contour. However, it is noted that the contour shown in *Figure(s) 3 and 3A* have been calculated in 1° increments based on the radiation center height above mean sea level of 309 meters. As shown in *Figure(s) 2 and 2A*, the reference point cannot be moved closer to Bear Lake because of WKHQ-FM to improve the deficiency in city coverage.

Line of Sight Issue: *Figure 4* is a terrain plot of the path between the proposed reference point and the community reference point of Bear Lake. The height on the left-side of the plot is shown at 309 meters AMSL, which is the height required for 100 meters height above average terrain (HAAT). This exhibit demonstrates that there are multiple terrain obstructions between the allocation reference point and Bear Lake in contravention of §73.315(b). In addition, *Figure 1* of this report also shows that the reference point is only 1.38 miles from the end of the runway for Manistee-Blacker Airport. It is not likely that airspace approval for a tower height required making 100 meters HAAT could be attained. *Figure 4A* is a terrain plot of the same path showing that it would take a tower in excess of 850 feet (259.1 meters) AGL to achieve line-of-sight. This tower would still not guarantee 70 dBu coverage of Bear Lake. Regardless, it would be impossible to get FAA approval for a tower of this height.

Conclusion: Based on these technical problems with the Bear Lake channel substitution, this proposal should not be adopted. It is clear that the Bear Lake proposal fails allocation rules, §73.315(a) regarding city grade coverage of the community and §73.315(b) providing line of sight propagation from the transmitter site to the community.



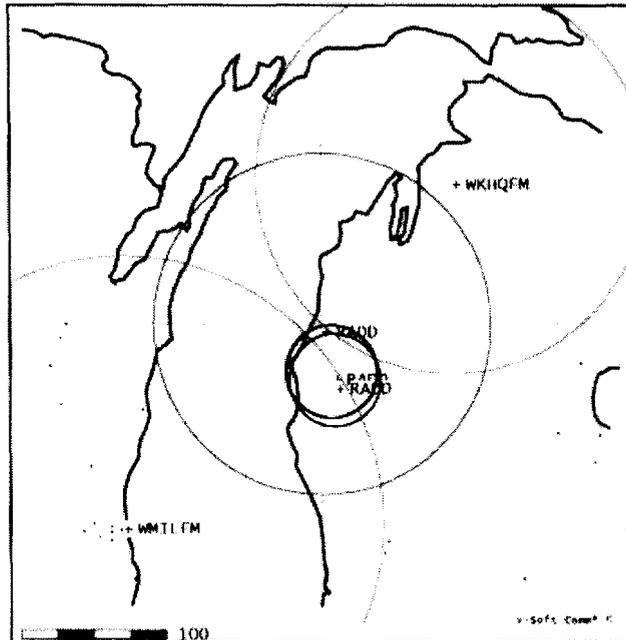
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Coldwater, MI 49036

Figure 2 - Northern Radio of Michigan Channel Substitution for WSRQ - Bear Lake MI

FMCONT™ LOCATE STUDY

Ch 291 A
106.1 MHz

N. Lat. 44 17 30
W. Lng. 86 13 30



Call	CH#	Location		D-KM	Azi	FCC	Margin
RADD	291A	Bear Lake	MI	0.00	0.0	115.0	-115.00
WKHQFM	290C1	Charlevoix	MI	133.16	41.6	133.0	0.16
RADD	293A	WALHALLA	MI	32.41	169.1	31.0	1.41
RADD	293A	Walhalla	MI	32.61	167.7	31.0	1.61
RADD	293A	walhalla	MI	38.59	166.8	31.0	7.59
WMILFM	291B	waukesha	WI	190.31	225.8	178.0	12.31

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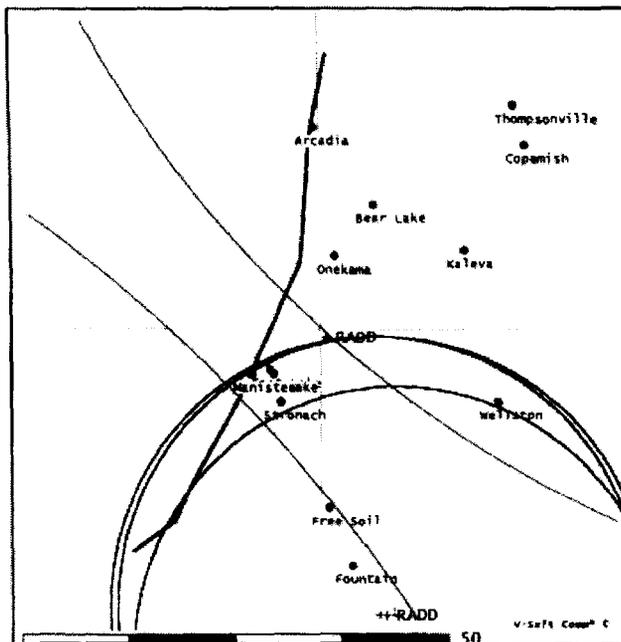
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Figure 2A - Northern Radio of Michigan Channel Substitution for WSRQ - Bear Lake MI

FMCONT™(TM) LOCATE STUDY

Ch 291 A
106.1 MHz

N. Lat. 44 17 30
W. Lng. 86 13 30



Call	CH#	Location		D-KM	Azi	FCC	Margin
RADD	291A	Bear Lake	MI	0.00	0.0	115.0	-115.00
WKHQFM	290C1	Charlevoix	MI	133.16	41.6	133.0	0.16
RADD	293A	WALHALLA	MI	32.41	169.1	31.0	1.41
RADD	293A	walhalla	MI	32.61	167.7	31.0	1.61
RADD	293A	walhalla	MI	38.59	166.8	31.0	7.59
WMILFM	291B	waukesha	WI	190.31	225.8	178.0	12.31

Munn-Reese Inc. Coldwater MI 49036

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RADD
Latitude: 44-17-30 N
Longitude: 086-13-30 W
Power: 6.00 kW
Channel: 291
Frequency: 106.1 MHz
AMSL Height: 309 m
Elevation: 212.91 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: None

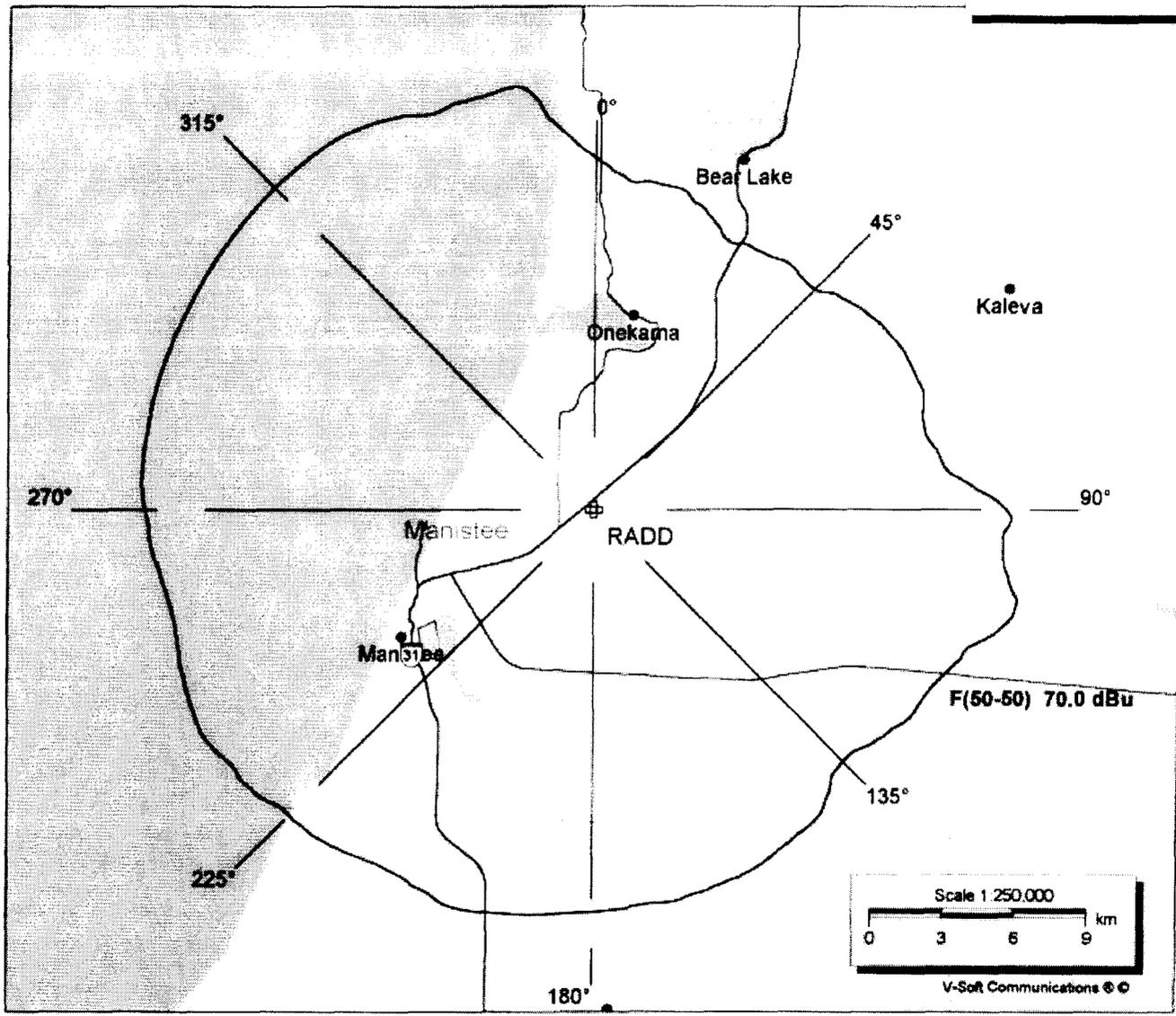


FIGURE 3

RADD
Latitude: 44-17-30 N
Longitude: 086-13-30 W
Power: 6.00 kW
Channel: 291
Frequency: 106.1 MHz
AMSL Height: 309 m
Elevation: 212.91 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: None

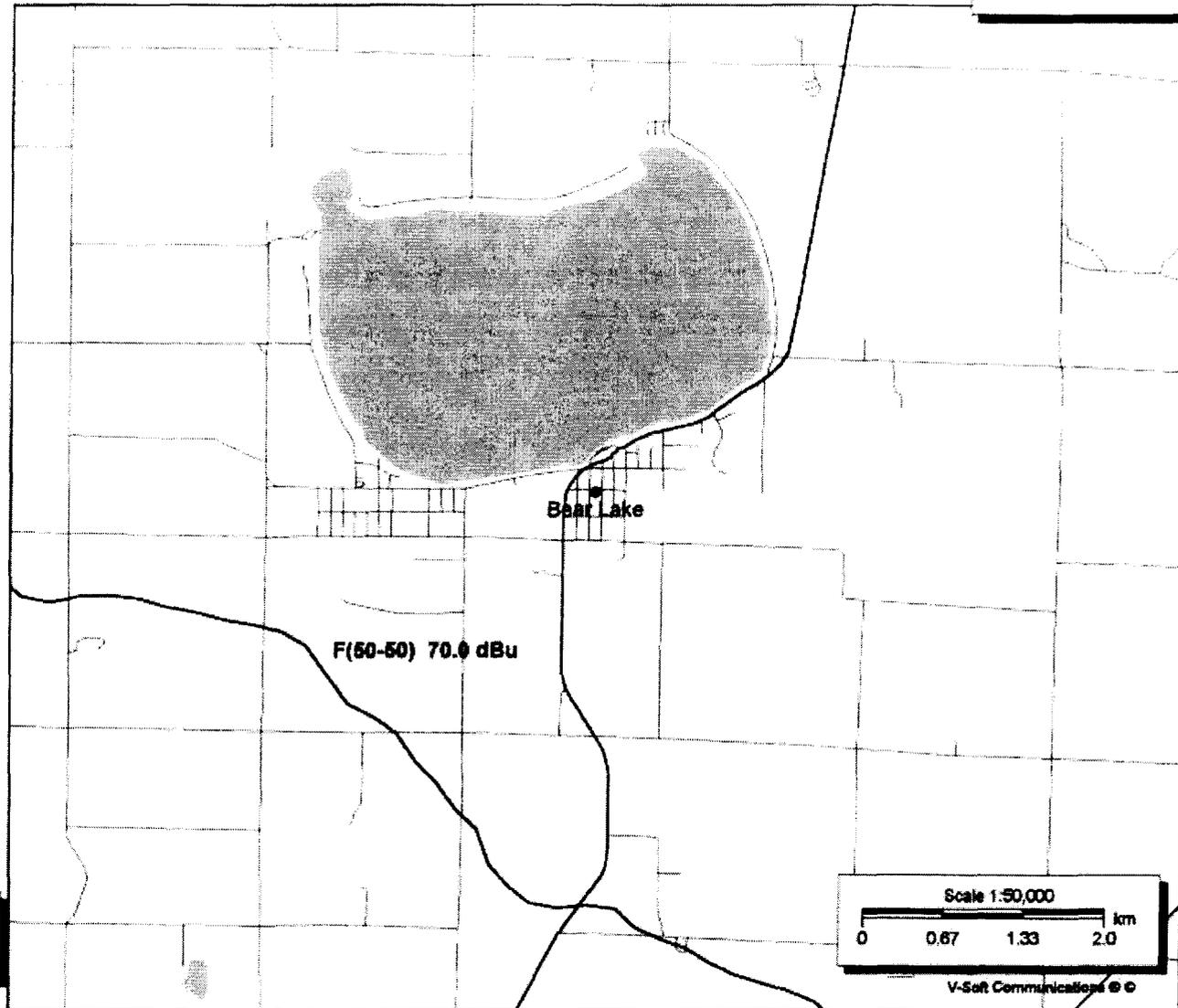


FIGURE 3A

Figure 3B

Tabulation of Distances to City Grade Contour Channel 291A - Bear Lake, Michigan

Munn-Reese, Inc. - Coldwater, MI 49036
 N. Lat. = 44 17 30 W. Lng. = 86 13 30
 HAAT and Distance to Contour - FCC Method - 03 Arc Sec.

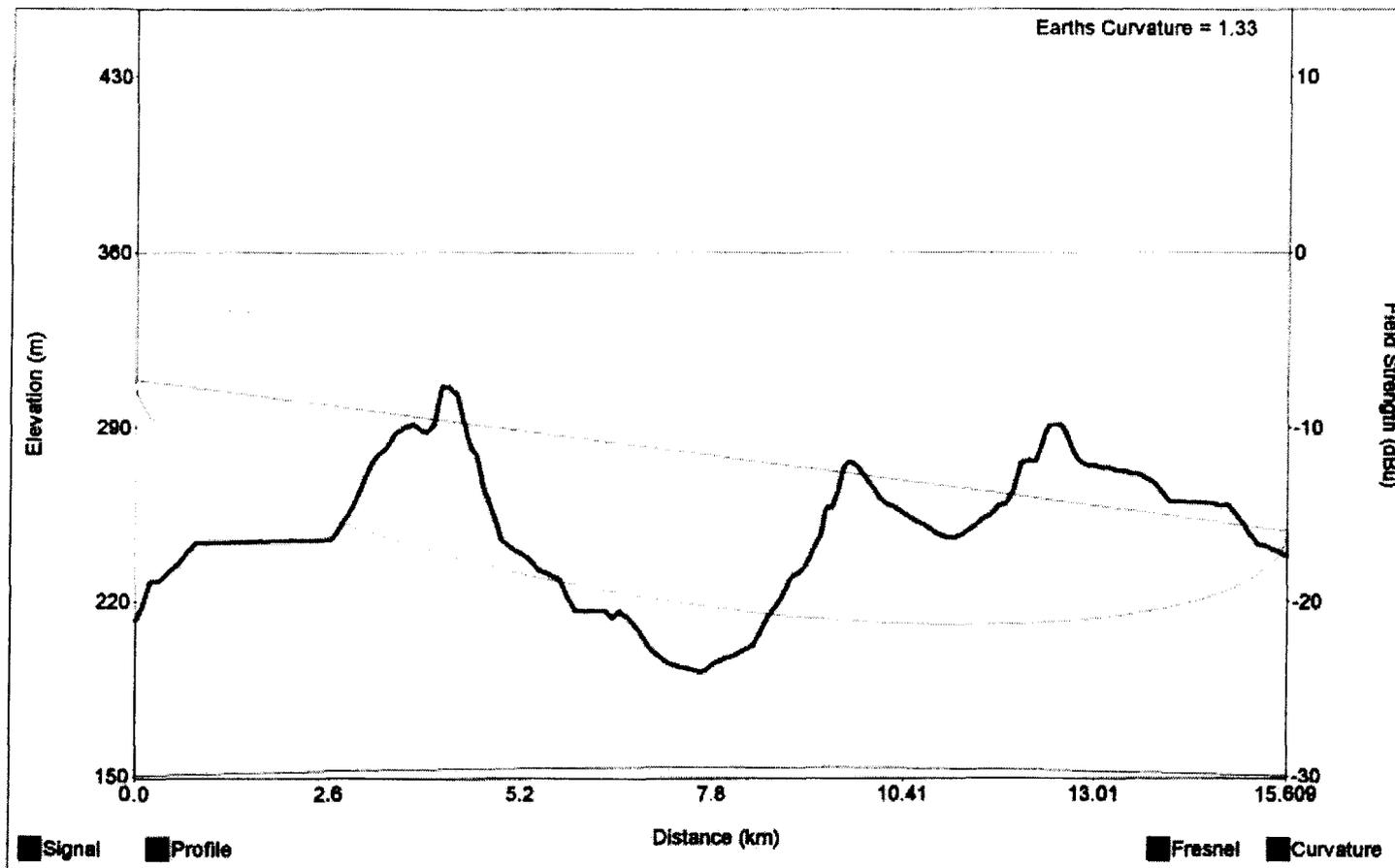
Azi.	AV EL	HAAT	kW	dBk	Field	60 .5
000	227.0	82.0	6.0000	7.78	1.000	25.77
045	245.7	63.3	6.0000	7.78	1.000	22.97
090	199.6	109.4	6.0000	7.78	1.000	29.50
135	225.3	83.7	6.0000	7.78	1.000	26.02
180	205.5	103.5	6.0000	7.78	1.000	28.75
225	191.1	117.9	6.0000	7.78	1.000	30.50
270*	191.7	117.3	6.0000	7.78	1.000	30.43
315*	182.9	126.1	6.0000	7.78	1.000	31.38

Ave El= 209.54 M HAAT= 100.41 M AMSL= 309 M

**Radials have been truncated in accordance with §73.313(d)(2). Portions of 3 to 16 km radials extending over Lake Michigan have been excluded from HAAT average. No portions of the affected radials encounter land within the 34 dBu (50;50) contour.*

RADD 291A to Bear Lake, MI

Figure 4



Starting Latitude: 44-17-30 N
Starting Longitude: 088-13-30 W

End Latitude: 44-25-15 N
End Longitude: 088-08-53 W

Distance: 15.608791582 km
Bearing: 23.116 deg

Transmitter Height (AG) = 96.1 m
Receiver Height (AG) = 10.0 m

Transmitter Elevation = 212.9 m
Receiver Elevation = 238.3 m

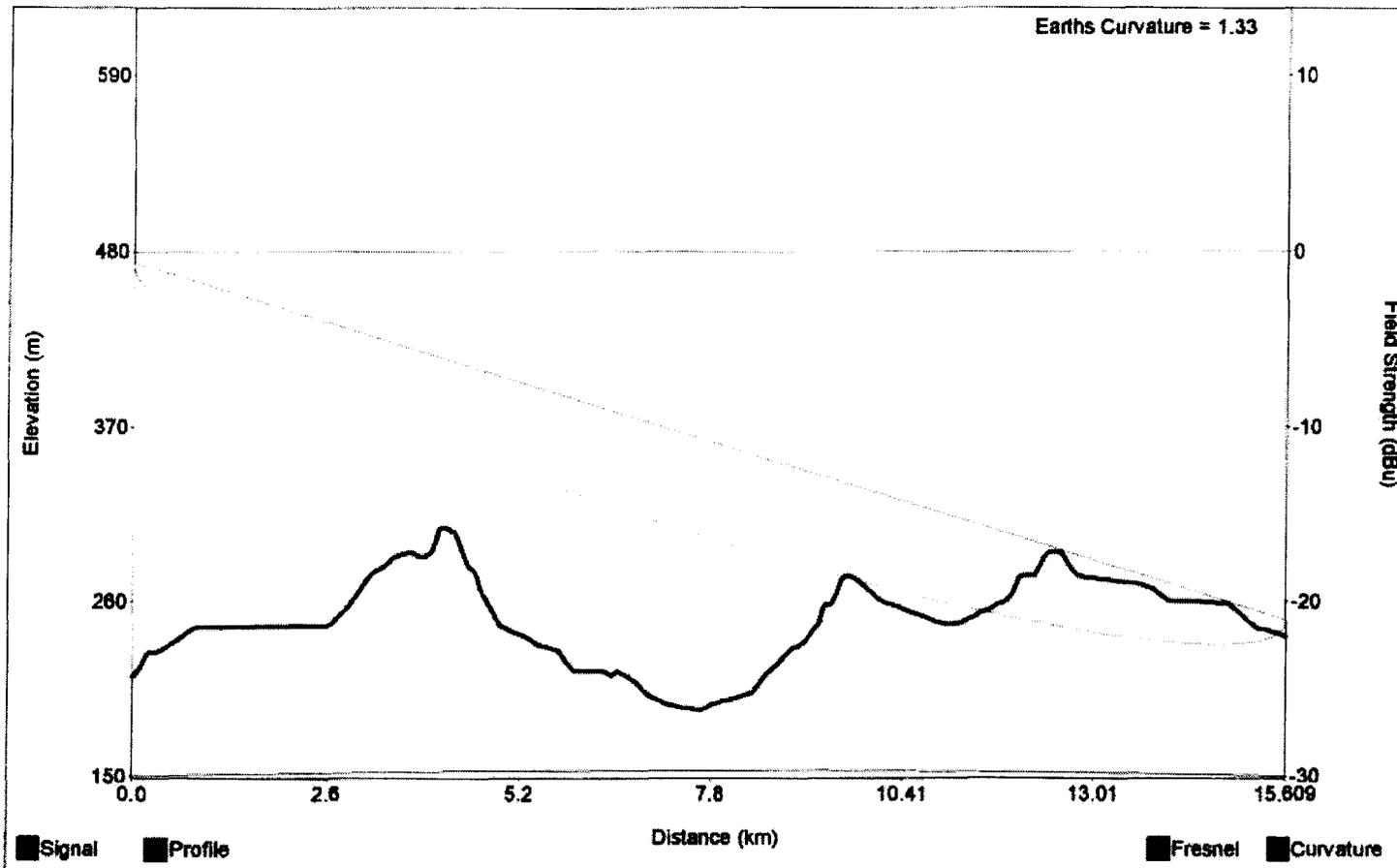
Frequency = 106.1 MHz
Fresnel Zone: 0.6

V-Soft Communications

MUNN-REESE, INC.
Broadcast Engineering Consultants
Coldwater, MI 49036

RADD291A to Bear Lake, MI

Figure 4A



Starting Latitude: 44-17-30 N
Starting Longitude: 088-13-30 W

End Latitude: 44-25-15 N
End Longitude: 088-08-53 W

Distance: 15.608791582 km
Bearing: 23.116 deg

Transmitter Height (AG) = 260.0 m
Receiver Height (AG) = 10.0 m

Transmitter Elevation = 212.9 m
Receiver Elevation = 238.3 m

Frequency = 106.1 MHz
Fresnel Zone: 0.6

V-Soft Communications

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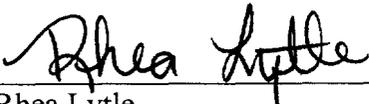
CERTIFICATE OF SERVICE

I, Rhea Lytle, a secretary in the law firm of Shaw Pittman LLP, do hereby certify that true copies of the foregoing **Response to Order to Show Cause** were sent via U.S. Mail this 1st day of October, 2001, to the following:

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Washington, D.C. 20554

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Rhea Lytle

***Via Hand Delivery**