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

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**NOV 7 2001**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations )  
(Au Gres, Alpena, Beaverton, )  
Frankfort, Cheboygan and )  
Standish, Michigan) )

MM Docket No. 01-115  
RM-10129  
RM-10325

TO: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**REPLY COMMENTS OF WATZ RADIO, INC.  
IN OPPOSITION TO COUNTERPROPOSAL**

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November 7, 2001

**WATZ RADIO, INC.**

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## SUMMARY

WATZ Radio, Inc. ("WATZ"), licensee of FM Broadcast Station WATZ-FM, Channel 257C2 (99.3 MHz), Alpena, Michigan, hereby respectfully submits its Reply Comments in the above-captioned proceeding and strenuously opposes the Counterproposal advanced by Crystal Clear Communications, Inc. and Fort Bend Broadcasting Company ("Crystal" and "Fort Bend", respectively), which is aimed at upgrading Channel 257 at Frankfort, Michigan to Class C1 status and modifying the license of FM Broadcast Station WBNZ, Frankfort, Michigan, accordingly, while at the same time requiring WATZ-FM to relocate from its present channel to Channel 249C2 against its will, without affording WATZ the opportunity to submit a counterproposal whereby it might advance an upgrade scenario for WATZ-FM.

Additionally, the proposed use of Channel 257C1 at Frankfort from a transmitter site over 28 miles away from Frankfort, as is called for in the "Counterproposal", violates Section 73.315(b) of the Commission's Rules, as there is a major terrain barrier between the proposed site and the community of Frankfort.

Furthermore, the public interest, convenience and necessity would be best served by preserving the allocation of FM Channel 295 at Au Gres, which in turn will permit the

allocation of first local broadcast service at another town in northeastern lower Michigan, Whittemore. WATZ has this date simultaneously filed a "Petition for Rulemaking" to seek the allocation of Channel 267A at Whittemore.

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advance an upgrade scenario for WATZ-FM. Furthermore, the public interest, convenience and necessity would be best served by preserving the allocation of FM Channel 295 at Au Gres, which in turn will permit the allocation of first local broadcast service at another town in northeastern lower Michigan, Whittemore. WATZ has this date simultaneously filed a "Petition for Rulemaking" to seek the allocation of Channel 267A at Whittemore. In so doing, the following is shown:

**Preliminary Statement**

1. The "Counterproposal" by Crystal and Fort Bend was announced by a "Correction" to ***Public Notice, Petition for Rulemaking Filed, Report No. 2506***, released October 23, 2001. According to said "Public Notice", a fifteen day period for reply comments to the counterproposal has been allowed. Today (November 7, 2001) is the fifteenth day subsequent to October 23, 2001, and therefore these Reply Comments are timely filed.

**Substance of "Counterproposal"; Potential Subterfuge**

1. As will be elaborated upon below, this whole proceeding appears "fishy" at best, and looks to the undersigned to be a scheme to force WATZ-FM to move to a less desirable channel, with WATZ-FM being denied a fair opportunity to file its own counterproposal.

2. Au Gres, Michigan is located on the west shore of Saginaw Bay near its confluence with Lake Huron, in Arenac County. According to the proponents, Au Gres' geographic coordinates are N. Lat. 44° 02' 54", W. Long. 83° 41' 44".

3. By contrast, Frankfort, Michigan is located on the shores of Lake Michigan—on the opposite side of the lower peninsula in northwestern Michigan's Benzie County. According to the proponents, Frankfort's geographic coordinates are N. Lat. 44° 38' 00", W. Long. 86° 14' 03".

4. According to the "distance tool" on the Commission's web site, the Au Gres and Frankfort reference coordinates are 132.121 miles (212.629 kilometers) apart.

5. Although Alpena is on the same side of the lower peninsula as Au Gres, it is still a substantial distance north. According to the proponents, Alpena's reference coordinates are N. Lat. 45° 03' 42", W. Long. 83° 25' 57". As a result, according to the "distance tool" on the Commission's web site, Alpena's reference coordinates are 71.164 miles (114.527 kilometers) north of Au Gres.

6. The Au Gres rulemaking proposal called for the Commission to allocate Channel 295A (106.9 MHz) there. There is no possible way that WATZ could have been put on notice that its frequency Channel 257C2 at Alpena could be placed in jeopardy as the result of the issuance of the

"Notice of Proposed Rulemaking" in the above-captioned proceeding.

7. Crystal and Fort Bend seek to upgrade FM Broadcast Station WBNZ, Channel 257C2, Frankfort, Michigan, to Class C1 status. According to Crystal and Fort Bend, as a Class C1 station, WBNZ would be 55.79 kilometers short-spaced to WATZ-FM, Alpena, Michigan; the transmitter sites of the two stations are 168.21 kilometers apart, and Section 73.207 of the Commission's Rules requires a spacing of 224 kilometers between co-channel Class C1 and C2 stations. Therefore, Crystal and Fort Bend need to find a new channel for WATZ-FM.

8. It appears to us that a scheme, or a subterfuge, may well have been crafted in this case to put forward a proposal that, under normal Commission procedures, WATZ-FM would not be entitled to offer a counterproposal. That scheme was that the proponents, Crystal and Fort Bend, created an apparently fictitious entity called Au Gres Broadcasting Company (AGBC); the principals of AGBC are not specified in the Petition for Rulemaking. AGBC filed a Petition for Rulemaking specifying a channel which, fortuitously as it turned out, was in conflict with the various channel number changes required to move WATZ-FM off of Channel 257C2. Then, on the last day for filing Comments and Counterproposals, Crystal and Fort Bend struck with

their "Counterproposal". The circumstantial evidence points to this scenario.

9. Arthur V. Belendiuk, Esquire, a partner in the Washington law firm of Smithwick and Belendiuk, is counsel of record for Fort Bend on its application for Commission consent to acquire FM Broadcast Station WSAG, Pinconning, Michigan, File No. BAPH-20010712ABV. Roy Henderson is shown as the 100% shareholder of Fort Bend (see Exhibit A, a CDBS print-out of said application). Pinconning is on the west shore of Saginaw Bay in Bay County, about 25 highway miles southwest of Au Gres. Mr. Belendiuk signed the "Petition for Rulemaking" on behalf of AGBC. Probably to try to convey the impression that AGBC and Fort Bend were independent entities, Henderson was represented by different counsel (Messrs. Shook, Hardy and Bacon) to file the "Counterproposal".

10. Because of the unusual nature of this case, WATZ requests the Commission to investigate the facts and circumstances regarding the circumstances surrounding the filing of the Au Gres and Frankfort proposals. Should it turn out that these filings were done in concert or were otherwise a subterfuge, they should be immediately dismissed or denied<sup>1</sup>. See **Amendment of Section 1.420 and 73.3584 of**

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<sup>1</sup>This is not the first time that Henderson has been implicated in a scheme of this type—that is, to try to ram through a change in the FM Table of Allotments and prevent the opportunity for counterproposals.

**the Commission's Rules Concerning Abuses of the Commission Processes ("Abuses of Processes"), 5 FCC Rcd 3911 (1990).**

**The "Counterproposal" Is Not a Proper Counterproposal**

11. The use of Channel 257 at Frankfort, at whatever class and power level, is not mutually-exclusive with the use of Channel 295 at Au Gres, at whatever class and power level. In rulemaking proceedings, the Commission must "fairly apprise interested persons of the subjects and issues [of the rule making]". ***Small Refiner Lead Phase-Down Task Force v. EPA, 705 F.2d 506, 547 (D.C.Cir.1983).*** Indeed, the Commission held in ***FM Table of Allotments, Milton, West Virginia and Flemingsburg, Kentucky***, 11 FCC Rcd 6374 (1996), that, to have a valid "counterproposal", the channel proposed must be "in conflict", not "contingent upon". The channel in which Crystal and Fort Bend have an interest, Channel 257 in Frankfort, is in no way "in conflict" with Channel 295 in Au Gres. Rather, the Crystal/Fort Bend "counterproposal" is "contingent" upon the changing of four channel assignments in northern Michigan, one of which, Channel 295 in lieu of 245A at Standish, Michigan, is fortuitously in conflict with Channel 295A at Au Gres. However, Crystal and Fort Bend have no standing to seek channel changes for other licensees; and their proposal

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***FM Table of Allotments, Pitkin, Louisiana et al (MM Docket No. 99-26)***, 15 FCC Rcd 17311 (2000). While Henderson was cleared of wrongdoing in

to upgrade the Frankfort allocation cannot be considered as a valid "counterproposal" in the context of the Au Gres proceeding.

12. It is blatantly unfair to WATZ, and a violation of the Administrative Procedure Act, 5 U.S.C. §551 et seq., to consider changing WATZ-FM's channel number from 257C2 to 249C2 when WATZ had no proper opportunity to advance a counterproposal, when it could not have possibly known or anticipated that the Au Gres proceeding would lead to a modification of WATZ-FM's license.

13. In order to pull off a linkage between Au Gres and Frankfort, Crystal and Fort Bend need to change the frequencies of allocations at **FOUR** different cities; at Alpena, Beaverton, Standish and Cheboygan. WATZ categorically objects to having its channel assignment changed. Proponents reported that as of the date of filing of their "Counterproposal", they had not reached a deal with the Beaverton (WMRX(FM)) licensee; and Proponents report that their "Counterproposal" is expressly contingent upon an having Channel 271C3 allocated to Cheboygan in place of the Channel 249C3 allotment proposed in MM Docket No. 00-69.

14. The Commission has recognized that channel substitutions impose a burden on licensees and cause inconvenience for listeners and thus permits such

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that docket, the circumstances in the AuGres/Frankfort proceeding are

substitutions only upon a finding that these disruptions are justified by public interest benefits. **FM Table of Allotments, Blair, Nebraska**, 8 FCC Rcd 4086, n. 8 (1993).

15. The Crystal/Fort Bend proposal advances only the private interests of those parties, and not the public interest. Crystal and Fort Bend propose a substandard upgraded channel, operating from a site which will cause "shadowing" to the town of Frankfort. In order to effectuate this substandard allotment, Crystal and Fort Bend propose changes in the frequency assignments of three operating stations, thereby promoting confusion in the minds of the public in the service areas of those stations, and the change in the frequency assignment of a fourth (unbuilt) station at Cheboygan, Michigan.

16. Therefore, the Commission erroneously accepted for filing the "Counterproposal" lodged by Crystal and Fort Bend, and that "Counterproposal" must now be summarily dismissed or denied.

**The Frankfort Counterproposal Violates  
Section 73.315(b) of the Commission's Rules**

17. The consulting radio engineering firm of Munn-Reese, Inc. of Coldwater, Michigan prepared a study that demonstrates that a WBNZ Class C1 operation located at the coordinates stated in the Counterproposal, N. Lat. 44° 42'

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disturbing, and worthy of investigation by the Commission.

05", W. Long. 85° 39' 24" (28.84 miles from the Frankfort reference point) will not be able to provide the requisite 70 dBu signal strength to Frankfort, because of a major terrain obstruction east of Frankfort. The Munn-Reese study is appended hereto as Exhibit B. WBNZ would not be able to move a Class C1 transmitter site appreciably closer to Frankfort, because of a short-spacing to WOWN(FM), Shawano, Wisconsin that would occur were WBNZ to locate over 1.15 kilometers west of the reference coordinates stated in the Counterproposal.

18. Section 73.315(b) of the FCC Rules provides in pertinent part: **"The location of the antenna should be so chosen that line-of-sight can be obtained from the antenna over the principal city or cities to be served; in no event should there be a major obstruction in this path."** As has been shown by the Munn-Reese study, there is a significant terrain barrier between the WBNZ proposed Class C1 transmitter site and the community of Frankfort. The cases are clear that where there is a terrain barrier which precludes line-of-sight coverage of the proposed community, the proposal will be denied. ***FM Table of Allotments, Blairsville, Georgia***, 16 FCC Rcd 2588 (2001); ***FM Table of Allotments, Eugene, Oregon***, 10 FCC Rcd 9793 (1995); ***FM Table of Allotments, Jonesville, Virginia and Cumberland Gap, Tennessee***, 10 FCC Rcd 12207 (1995), *recons. den.* 13 FCC Rcd

2303 (1998); **FM Table of Allotments, Bald Knob and Clarendon, Arkansas**, 6 FCC Rcd 7435 (1991); **FM Table of Allotments, Creswell, Oregon**, 3 FCC Rcd 4608 (1988).

19. It is Commission policy not to allot channels unless compliance with the Commission's technical requirements can be shown at the rule making stage to avoid the allotment of substandard frequencies. **FM Table of Allotments, Ocracoke, North Carolina et al**, 9 FCC Rcd 2011 (1994); see also **FM Table of Allotments, Hartford, Vermont**, 8 FCC Rcd 4920 (1993); **Television Table of Allotments, Wilmington, North Carolina et al**, 6 FCC Rcd 6969, 6971 (1991).

20. Because Channel 257C1 cannot be allocated to Frankfort in accordance with Section 73.315(b) of the Rules, the rest of the Counterproposal falls, and it must be dismissed or denied. WATZ categorically objects to having to change channels, and perhaps even to be denied its own opportunity to pursue an upgrade to Class C1 status, while the Commission grants a flawed proposal, which is being considered in a forum which has denied WATZ its rights to administrative due process.

**Fort Bend/Roy Henderson**  
**FM Table of Allocation Activities**

21. Fort Bend and its principal, Roy Henderson, have been unusually busy in trying to substantially reauthor in

their favor the FM Table of Allotments for northern Michigan.

22. In **MM Docket No. 00-69**, Fort Bend counterproposed the substitution of Channel 260C2 for Channel 261A at Bear Lake, Michigan, and reallocation of Channel 260C1 to Bellaire, Michigan. To accommodate the proposal for Bellaire, Fort Bend further requested the substitution of Channel 292C2 for Channel 260C2 at Rogers City, Michigan, substitution of Channel 293A for Channel 255A at Walhalla, Michigan, allotment of Channel 259A at Rapid River, Michigan, allotment of Channel 291A at Bear Lake, Michigan, substitution of Channel 265A for Channel 260A at Manistique, Michigan, and the substitution of Channel 254A for Channel 292A at Ludington, Michigan. See 16 FCC Rcd 9548 (May 11, 2001). Fort Bend did all of this in order to move its WCUZ(FM), Bear Lake, to Bellaire. And, as it turns out, Bellaire is not the community that WCUZ(FM) would be primarily serving were Henderson to prevail in Docket No. 00-69, as a site restriction substantially north of Bellaire would fortuitously require Henderson to construct a transmitter site roughly halfway between Petoskey and Charlevoix, the two most desirable communities in northern Michigan between Traverse City and the Mackinac Bridge.

23. Mr. Belendiuk<sup>2</sup>, representing an entity called "Mason County Broadcasting Company", filed a counterproposal on October 1, 2001 in MM Docket No. 01-186 seeking the allocation of Channel 263A at Custer, Michigan, in conflict with a proposal to upgrade Channel 264A at Honor, Michigan to Class C3 status (and to modify the license of FM Broadcast Station WIAR accordingly). The pleadings in that proceeding reveal that Mr. Henderson had some kind of a reimbursement agreement with the licensee of WIAR, Northern Radio, Inc. ("Northern"), and that some tension had arisen between Northern and Henderson.

24. In addition, Henderson has purchased two other FM stations in northern Michigan where he is seeking "one-step" upgrades: (1) WOUF(FM), Beulah, Michigan, Channel 222A, proposed upgrade to Class C2, File No. BPH-20010329AAE; and (2) WTCU(FM), Fife Lake, Michigan, Channel 240A, proposed upgrade to Class C2, File No. BMPH-20010607ABA.

25. Therefore, Mr. Henderson is trying to do a lot of things in northern Michigan. Our interest is that he do them legally, without subterfuge, and without a violation of our administrative rights. The instant "Counterproposal" is

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<sup>2</sup>Mr. Belendiuk is also counsel of record for something called "McBain Broadcasting Company", which filed a Petition for Rulemaking to allocate FM Channel 300A to McBain, Michigan (MM Docket No. 01-213; RM-10226). McBain is located some 15 highway miles southeast of Cadillac, Michigan, and the proposed allocation is co-channel to WCZW(FM), Charlevoix, Michigan, which is licensed to a sister company of WATZ.

an invalid one for all of the reasons assigned above, and it must be categorically dismissed or denied.

**Au Gres and Whittemore**

26. The forgotten community in this whole docket is Au Gres. WATZ believes that Au Gres, like other small communities in northern Michigan, should have its own local broadcast service<sup>3</sup>. However, the institution of new broadcast service at Au Gres should not preclude another small community from having its own station. Therefore, today WATZ has filed a "Petition for Rulemaking" for the purpose of seeking the allocation of FM Channel 267A to Whittemore, Michigan, an incorporated city in Iosco County, approximately 20 highway miles north of Au Gres. WATZ would construct and operate the station there in the event that the channel is allocated and its subsequent application for construction permit were granted.

27. By maintaining the allocation of Channel 295A at Au Gres, the allocation of Channel 267A at Whittemore is possible. The allocation of Channel 267A at Whittemore is not in conflict in any way with the allocation of Channel 295A at Au Gres. Since the Crystal/Fort Bend

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<sup>3</sup>WATZ and its parent organization, Midwestern Broadcasting Company, are the undisputed pioneers of broadcasting in northern lower Michigan. Their founder, the late Lester M. Biederman, founded WTCM(AM) in Traverse City in 1941, and then founded WATT(AM) in Cadillac in 1945 and WATZ(AM) in Alpena and WMBN(AM) in Petoskey in 1946. On information and belief, these were the first commercial broadcast stations founded in the region.

"Counterproposal" was inadvertently accepted for filing, the Whittemore proposal is entitled to stand on its own, and have a "Notice of Proposed Rulemaking" issued.

**Conclusion**

**WHEREFORE**, WATZ Radio, Inc. urges that (1) the "Counterproposal" advanced by Crystal Clear Communications, Inc. and Fort Bend Broadcasting Company **BE DISMISSED OR DENIED** as an improper "Counterproposal" in violation of Section 1.420(d) of the Rules and the case law decided pursuant to that subsection, **OR, IN THE ALTERNATIVE**, that said "Counterproposal" **BE DENIED** because the proposed allocation of Channel 257C1 at Frankfort, Michigan would violate Section 73.315(b) of the Commission's Rules; and (2) the Commission **ALLOCATE** Channel 295A at Au Gres, Michigan, which in turn will permit the Commission to consider WATZ's "Petition for Rulemaking" to allocate Channel 267A at Whittemore, Michigan.

Respectfully submitted,

**WATZ RADIO, INC.**

By



Dennis J. Kelly  
(D. C. Bar #292631)  
Its Attorney

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November 7, 2001

**EXHIBIT A**

Federal Communications Commission Washington, D.C. 20554  <p style="text-align: center;">FCC 314</p>	Approved by OMB 3060-0031 (April 2001)  FOR FCC USE ONLY
APPLICATION FOR CONSENT TO ASSIGNMENT OF BROADCAST STATION CONSTRUCTION PERMIT OR LICENSE  Read INSTRUCTIONS Before Filling Out Form	FOR COMMISSION USE ONLY FILE NO. BAPH - 20010712ABV

**Section I - General Information**

1. Legal Name of the Licensee/Permittee		
RUSSELL JAMES LAFAVE		
Mailing Address		
1613 FOXWOOD CT.		
City	State or Country (if foreign address)	Zip Code
MIDLAND	MI	48642 -
Telephone Number (include area code)	E-Mail Address (if available)	
5178792211	RLAFAVE@SCHAFERAUTOMALL.COM	
	Call Sign	Facility ID Number
	WSAG	87624
2. Contact Representative (if other than licensee/permittee)		Firm or Company Name
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
		-
Telephone Number (include area code)		E-Mail Address (if available)
3. Legal Name of the Assignee		
FORT BEND BROADCASTING COMPANY, INC.		
Mailing Address		
P.O. BOX 948		
City	State or Country (if foreign address)	ZIP Code
HOUSTON	TX	77001 -
	Telephone Number (include area code)	E-Mail Address (if available)
	(817) 4309444	BAYPORT@BAYPORT.COM
4. Contact Representative (if other than assignee)		Firm or Company Name
ARTHUR V. BELENDIUK		SMITHWICK & BELENDIUK, P.C.
Mailing Address		
5028 WISCONSIN AVE., NW SUITE 301		
City	State or Country (if foreign address)	Zip Code
WASHINGTON	DC	20016 - 4118
	Telephone Number (include area code)	E-Mail Address (if available)
	(202) 3631141	ABELENDIUK@FCCWORLD.COM
5. If this application has been submitted without a fee, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114):		
<input type="radio"/> Governmental Entity <input type="radio"/> Noncommercial Educational Licensee/Permittee <input type="radio"/> Other		
6.		

**Purpose of Application:**  
 Assignment of license  
 Assignment of construction permit  
 Amendment to pending application  
 File number of pending application: -  
 If an amendment, **submit as an Exhibit** a listing by Section and Question Number of the portions of the pending application that are being revised. [Exhibit 1]

7. Were any of the authorizations that are the subject of this application obtained through the Commission's competitive bidding procedures (see 47 C.F.R. Sections 1.2111(a) and 73.5001)?  Yes  No  
 If yes, list pertinent authorizations in an Exhibit. [Exhibit 2]

8. a. Were any of the authorizations that are the subject of this application obtained through the Commission's point system for reserved channel noncommercial educational stations (see 47 C.F.R. Sections 73.7001 and 73.7003)?  Yes  No

b. If yes to 8(a), have all such stations operated for at least 4 years with a minimum operating schedule since grant pursuant to the point system?  Yes  No

If no, list pertinent authorizations in an Exhibit and include in the Exhibit a showing that the transaction is consistent with the holding period requirements of 47 C.F.R. Section 73.7005 (a). [Exhibit 3]

**Section II - Assignor**

1. **Certification.** Licensee/permittee certifies that it has answered each question in this application based on its review of the application instructions and worksheets. Licensee further certifies that where it has made an affirmative certification below, this certification constitutes its representation that the application satisfies each of the pertinent standards and criteria set forth in the application instructions and worksheets.  Yes  No

2. **Authorizations to be Assigned.** List the authorized stations and construction permits to be assigned. Provide the Facility Identification Number and the Call Sign, or the Facility Identification Number and the File Number of the Construction Permit, and the location, for each station to be assigned. Include main stations, FM and/or TV translator stations, LPTV stations, SCA, FM and/or TV booster stations, and associated auxiliary service stations.  
 [Enter Station Information]

List the authorized stations and construction permits to be assigned. Provide the Facility Identification Number and the Call Sign, or the Facility Identification Number and the File Number of the Construction Permit, and the location, for each station to be assigned. Include main stations, FM and/or TV translator stations, LPTV stations, SCA, FM and/or TV booster stations, and associated auxiliary service stations.

Facility ID Number	Call Sign or Construction Permit File Number	City	State
87624	WSAG BPH- 19970772MO	PINCONNING	MI

3. **Agreements for Sale of Station.** Licensee/permittee certifies that:  Yes  No

<p>a. it has placed in its public inspection file(s) and submitted as an exhibit to this item copies of all agreements for the sale of the station(s);</p> <p>b. these documents embody the complete and final understanding between licensee/permittee and assignee; and</p> <p>c. these agreements comply fully with the Commission's rules and policies.</p> <p><b>Exhibit Required</b></p>	<p>[Exhibit 4]</p>
<p>4. <b>Other Authorizations.</b> List call signs, locations and facility identifiers of all other broadcast stations in which licensee/permittee or any party to the application has an attributable interest.</p>	<p><input checked="" type="checkbox"/> N/A [Exhibit 5]</p>
<p>5. <b>Character Issues.</b> Licensee/permittee certifies that neither licensee/permittee nor any party to the application has or has had any interest in, or connection with:</p> <p>a. any broadcast application in any proceeding where character issues were left unresolved or were resolved adversely against the applicant or any party to the application; or</p> <p>b. any pending broadcast application in which character issues have been raised.</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No  See Explanation in [Exhibit 6]</p>
<p>6. <b>Adverse Findings.</b> Licensee/permittee certifies that, with respect to the licensee/permittee and each party to the application, no adverse finding has been made, nor has an adverse final action been taken by any court or administrative body in a civil or criminal proceeding brought under the provisions of any law related to any of the following: any felony; mass mediarelated antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination.</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No  See Explanation in [Exhibit 7]</p>
<p>7. <b>Local Public Notice.</b> Licensee/permittee certifies that it has or will comply with the public notice requirements of 47 C.F.R. Section 73.3580.</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No</p>
<p>8. <b>Auction Authorization.</b> Licensee/permittee certifies that more than five years have passed since the issuance of the construction permit for the station being assigned, where that permit was acquired in an auction through the use of a bidding credit or other special measure.</p>	<p><input type="radio"/> Yes <input type="radio"/> No  <input checked="" type="radio"/> N/A  See Explanation in [Exhibit 8]</p>
<p>9. <b>Anti-Drug Abuse Act Certification.</b> Licensee/permittee certifies that neither licensee/permittee nor any party to the application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No</p>

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations.

<p>Typed or Printed Name of Person Signing RUSSELL J. LAFAVE</p>	<p>Typed or Printed Title of Person Signing INDIVIDUAL</p>
<p>Signature</p>	<p>Date 07/11/2001</p>

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

**Section III - Assignee**

<p>1. <b>Certification.</b> Assignee certifies that it has answered each question in this application based on its review of the application instructions and worksheets. Assignee further certifies that where it has made an affirmative certification below, this certification constitutes its representation that the application satisfies each of the pertinent standards and criteria set forth in the application instructions and worksheets.</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No</p>
<p>2. Assignee is:</p> <p><input type="radio"/> an individual      <input type="radio"/> a general partnership      <input checked="" type="radio"/> a for-profit corporation</p>	

a limited partnership     
  a not-for-profit corporation     
  a limited liability company (LLC/LC)

other

a. If "other", describe nature of applicant in an Exhibit. [Exhibit 9]

3. **Agreements for Sale of Station.** Assignee certifies that:

a. the written agreements in the licensee/permittee's public inspection file and submitted to the Commission embody the complete and final agreement for the sale of the station(s) which are to be assigned; and

b. these agreements comply fully with the Commission's rules and policies.

Yes    No  
 See Explanation in [Exhibit 10]

4. **Parties to the Application.**

a. List the assignee, and, if other than a natural person, its officers, directors, stockholders with attributable interests, non-insulated partners and/or members. If a corporation or partnership holds an attributable interest in the assignee, list separately its officers, directors, stockholders with attributable interests, non-insulated partners and/or members. Create a separate row for each individual or entity. Attach additional pages if necessary.

(1) Name and address of the assignee and each party to the application holding an attributable interest (if other than individual also show name, address and citizenship of natural person authorized to vote the stock or holding the attributable interest). List the assignee first, officers next, then directors and, thereafter, remaining stockholders and other entities with attributable interests, and partners.

(2) Citizenship.

(3) Positional Interest: Officer, director, general partner, limited partner, LLC member, investor/creditor attributable under the Commission's **equity/debt plus** standard., etc.

(4) Percentage of votes.

(5) Percentage of total assets (debt plus equity).

[Enter Parties/Owners Information]

**4a. Parties to the Application**

List the assignee, and, if other than a natural person, its officers, directors, stockholders with attributable interests, non-insulated partners and/or members. If a corporation or partnership holds an attributable interest in the assignee, list separately its officers, directors, stockholders with attributable interests, non-insulated partners and/or members. Create a separate row for each individual or entity.

- (1) Name and address of the assignee and each party to the application holding an attributable interest (if other than individual also show name, address and citizenship of natural person authorized to vote the stock or holding the attributable interest). List the assignee first, officers next, then directors and, thereafter, remaining stockholders and other entities with attributable interests, and partners.
- (2) Citizenship.
- (3) Positional Interest: Officer, director, general partner, limited partner, LLC member, investor/creditor attributable under the Commission's **equity/debt plus** standard., etc.
- (4) Percentage of votes.
- (5) Percentage of total assets(debt plus equity).

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets (debt plus equity)
FORT BEND BROADCASTING COMPANY, INC., P.O. BOX 948, HOUSTON, TEXAS 77001	US	ASSIGNEE	100	100

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets (debt plus equity)
ROY E. HENDERSON, 2809 CREEKVIEW DRIVE, FLOWER	US	PRESIDENT, SOLE	100	100

MOUND, TEXAS 75022	OFFICER, DIRECTOR AND STOCKHOLDER
or [Exhibit 11]	
b. Assignee certifies that equity interests not set forth above are non-attributable.	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A
See Explanation in [Exhibit 12]	
5. <b>Other Authorizations.</b> List call signs, locations and facility identifiers of all other broadcast stations in which licensee/permittee or any party to the application has an attributable interest.	<input checked="" type="checkbox"/> N/A [Exhibit 13]
6. <b>Multiple Ownership.</b> a. Assignee certifies that the proposed assignment: <ol style="list-style-type: none"> <li>1. complies with the Commission's multiple and cross-ownership rules;</li> <li>2. does not present an issue under the Commission's policies relating to media interests of immediate family members;</li> <li>3. complies with the Commission's policies relating to future ownership interests; and</li> <li>4. complies with the Commission's restrictions relating to the insulation and non-participation of non-party investors and creditors.</li> </ol>	<input checked="" type="radio"/> Yes <input type="radio"/> No  See Explanation in [Exhibit 14]
b. Radio Applicants Only. If the assignment of the station would result in certain principal community service contour overlaps, see Local Radio Ownership Worksheet, Question 1, applicant certifies that all relevant information has been placed in public inspection file(s) and submitted to the Commission.	<input type="radio"/> Yes <input type="radio"/> No  <input checked="" type="radio"/> N/A  See Explanation in [Exhibit 15]
7. <b>Character Issues.</b> Assignee certifies that neither assignee nor any party to the application has or has had any interest in, or connection with: <ol style="list-style-type: none"> <li>a. any broadcast application in any proceeding where character issues were left unresolved or were resolved adversely against the applicant or any party to the application; or</li> <li>b. any pending broadcast application in which character issues have been raised.</li> </ol>	<input checked="" type="radio"/> Yes <input type="radio"/> No  See Explanation in [Exhibit 16]
8. <b>Adverse Findings.</b> Assignee certifies that, with respect to the assignee and each party to the application, no adverse finding has been made, nor has an adverse final action been taken by any court or administrative body in a civil or criminal proceeding brought under the provisions of any law related to any of the following: any felony; mass mediarelated antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination.	<input checked="" type="radio"/> Yes <input type="radio"/> No  See Explanation in [Exhibit 17]
9. <b>Alien Ownership and Control.</b> Assignee certifies that it complies with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments.	<input checked="" type="radio"/> Yes <input type="radio"/> No  See Explanation in [Exhibit 18]
10. <b>Financial Qualifications.</b> Assignee certifies that sufficient net liquid assets are on hand or are available from committed sources to consummate the transaction and operate the station(s) for three months.	<input checked="" type="radio"/> Yes <input type="radio"/> No  See Explanation in [Exhibit 19]
11. <b>Program Service Certification.</b> Assignee certifies that it is cognizant of and will comply with its obligations as a Commission licensee to present a program service responsive to the issues of public concern facing the station's community of license and service area.	<input checked="" type="radio"/> Yes <input type="radio"/> No
12. <b>Auction Authorization.</b> Assignee certifies that where less than five years have passed since the issuance of the construction permit and the permit had been acquired in an auction through the use of a bidding credit or other special measure, it would qualify for such credit or other special measure.	<input type="radio"/> Yes <input type="radio"/> No  <input checked="" type="radio"/> N/A

		See Explanation in [Exhibit 20]
13.	<b>Anti-Drug Abuse Act Certification.</b> Assignee certifies that neither assignee nor any party to the application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.	<input checked="" type="radio"/> Yes <input type="radio"/> No
14.	<b>Equal Employment Opportunity (EEO).</b> If the applicant proposes to employ five or more full-time employees, applicant certifies that it is filing simultaneously with this application a Model EEO Program Report on FCC Form 396-A.	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations. I hereby waive any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and request an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

Typed or Printed Name of Person Signing ROY HENDERSON	Typed or Printed Title of Person Signing PRESIDENT
Signature	Date 07/11/2001

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

**Exhibits**

**Attachment 4**

Description	Type
Purchase Agreement	Adobe Acrobat File

**Attachment 13**

Description	Type
Ownership Interests of Roy E. Henderson	Adobe Acrobat File

# **EXHIBIT B**

CERTIFICATION OF ENGINEER

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.

This 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.

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

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

August 17, 2001

MUNN-REESE, INC.

By   
Wayne S. Reese, President

100 Airport Drive, P. O. Box 220  
Coldwater, Michigan 49036

Telephone: (517) 278-7339  
Telecopier: (517) 278-6973

e-mail: wayne@munn-reese.com

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

## DISCUSSION

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This firm was retained to prepare this engineering study in response to a proposal by Crystal Clear Communications, Inc. along with Fort Bend Broadcasting Company in MM Docket #01-115, RM-10129 to upgrade Channel 257C2 to Channel 257C1 for WBNZ, Frankfort, MI. Four (4) other allotments are required to be changed to make this proposal successful.

As part of this rulemaking proceeding, it is proposed to change the channel of WATZ-FM, Alpena, MI from Channel 257C2 to Channel 249C2. With this allotment being removed from the WBNZ allocation, it is proposed to upgrade the facilities of WBNZ to Class C1 from reference coordinates NL 44°42'05", WL 85°39'24". These reference point coordinates are 46.42 kilometers (28.84 miles) from the reference point of the community of Frankfort at NL 44°38'00", WL 86°14'03". The City of Frankfort is located on the shore of Lake Michigan. Just to the east of the city, the ground elevation is drastically higher than the elevation of the bulk of Frankfort. Due to this and other intervening terrain, the city will be totally "shadowed" from line-of-sight propagation required under 47 C.F.R. §73.315(b). Specifically, this rule states, **"in no event should there be a major obstruction in this path."** Figure 1 of this engineering report is a plot of the terrain from the proposed reference point for WBNZ and the reference coordinates for the City of Frankfort. The red line on this graph is a plot of the terrain profile. This graph clearly shows a major terrain obstruction at approximately 40 kilometers from the WBNZ reference point. The light blue line is a plot of the signal strength along the path. As shown, the signal level drops below the required 70 dBu (3.16 mV/m) city grade signal strength required for coverage of the city of license. To be able to clear the peak at the 40 kilometer mark on the path and provide line-of-sight to the community would require a radiation height above ground level of over 5,280 feet or one mile. The FAA would never authorize a tower of this height.

A second study was made using the Longley-Rice Propagation Model to determine the signal strength in the area of Frankfort and at the reference point coordinates. Figures 2A and 2B are Longley-Rice coverage maps employed for this study. A shading of red was used to denote a signal level of 70 dBu or greater. A shading of green was employed to show a signal level of between 60 and 70 dBu. As shown in Figure 2A, the bulk of the City of Frankfort does not receive the required 70 dBu signal

## DISCUSSION

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level. The actual signal level at the Frankfort reference point is 67.363 dBu as shown in Figure 2B.

Figure 3 is a tabulation of the proposed spacings for this channel showing that a preclusion from co-channel station WOWN, Shawano, WI, prevents the WBNZ transmitter site from moving more than 1.15 kilometers closer to Frankfort from the rulemaking reference point. Therefore, there is no way for this proposed allotment to provide the required line-of-sight path or city grade signal to the community of license.

In summary, the proposal to upgrade the facilities of WBNZ, Frankfort, MI does not comply with §73.315(a) or (b) of the FCC rules and, therefore, should not be granted.

# Alternate WBNZ Site to Frankfort Reference Point

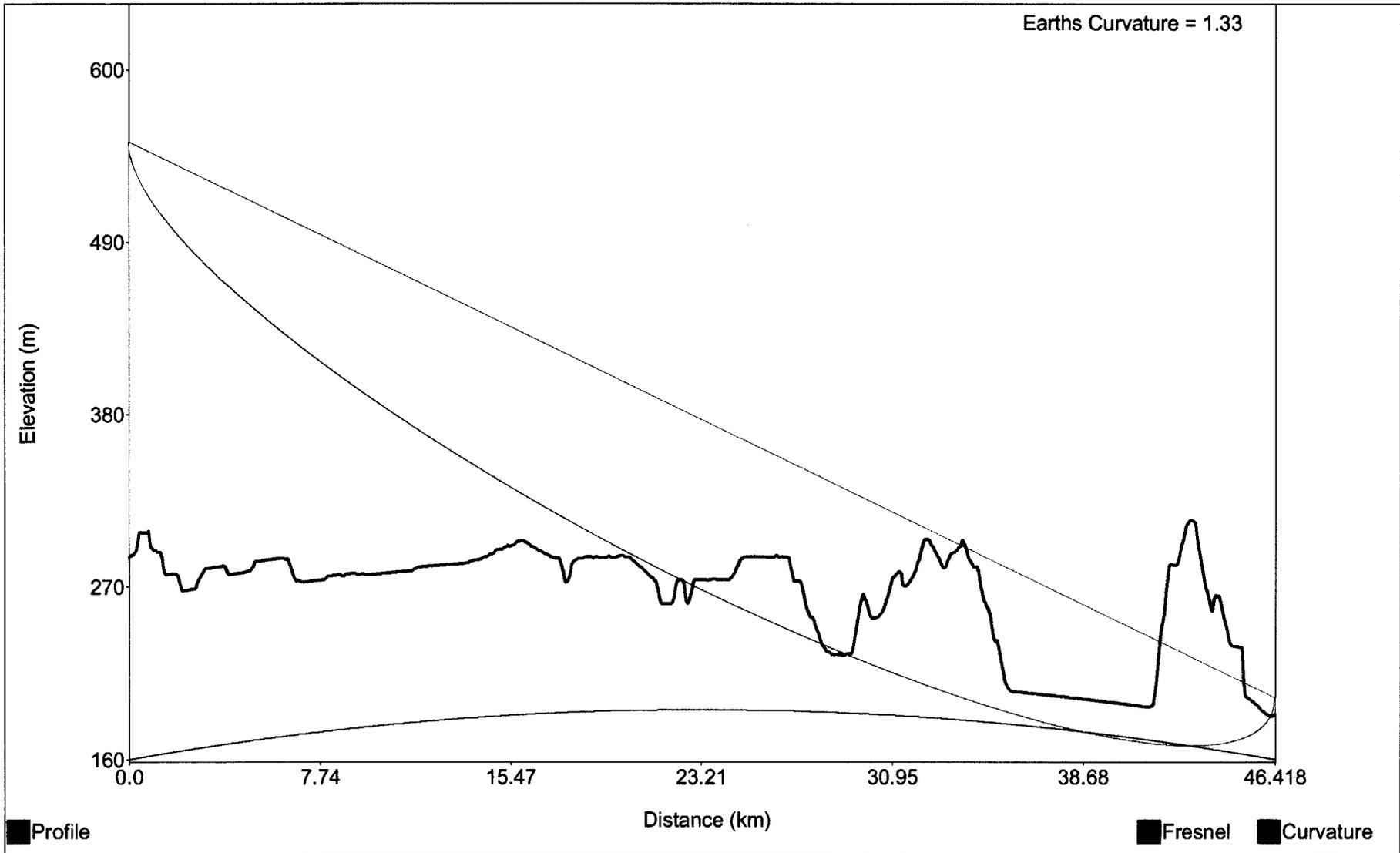


FIGURE 1

Starting Latitude: 44-42-05 N  
Starting Longitude: 085-39-24 W

End Latitude: 44-38-00 N  
End Longitude: 086-14-03 W

Distance: 46.418082506 km  
Bearing: 260.826 deg

Transmitter Height (AG) = 264.9 m  
Receiver Height (AG) = 10.0 m

Transmitter Elevation = 289.1 m  
Receiver Elevation = 189.1 m

Frequency = 99.3 MHz  
Fresnel Zone: 0.6

**WBNZ-Alt**  
BLH19920706KC  
Latitude: 44-42-05 N  
Longitude: 085-39-24 W  
Power: 100.00 kW  
Channel: 257  
Frequency: 99.3 MHz  
AMSL Height: 554.0 m  
Elevation: 289.09 m  
Horiz. Pattern: Omni  
Vert. Pattern: No  
Prop Model: Longley/Rice  
Climate: Cont temperate  
Conductivity: 0.0020  
Dielec Const: 15.0  
Refractivity: 312.0  
Receiver Ht AG: 10.0 m  
Receiver Gain: 0 dB  
Time Variability: 50.0%  
Sit. Variability: 50.0%  
ITM Mode: Broadcast

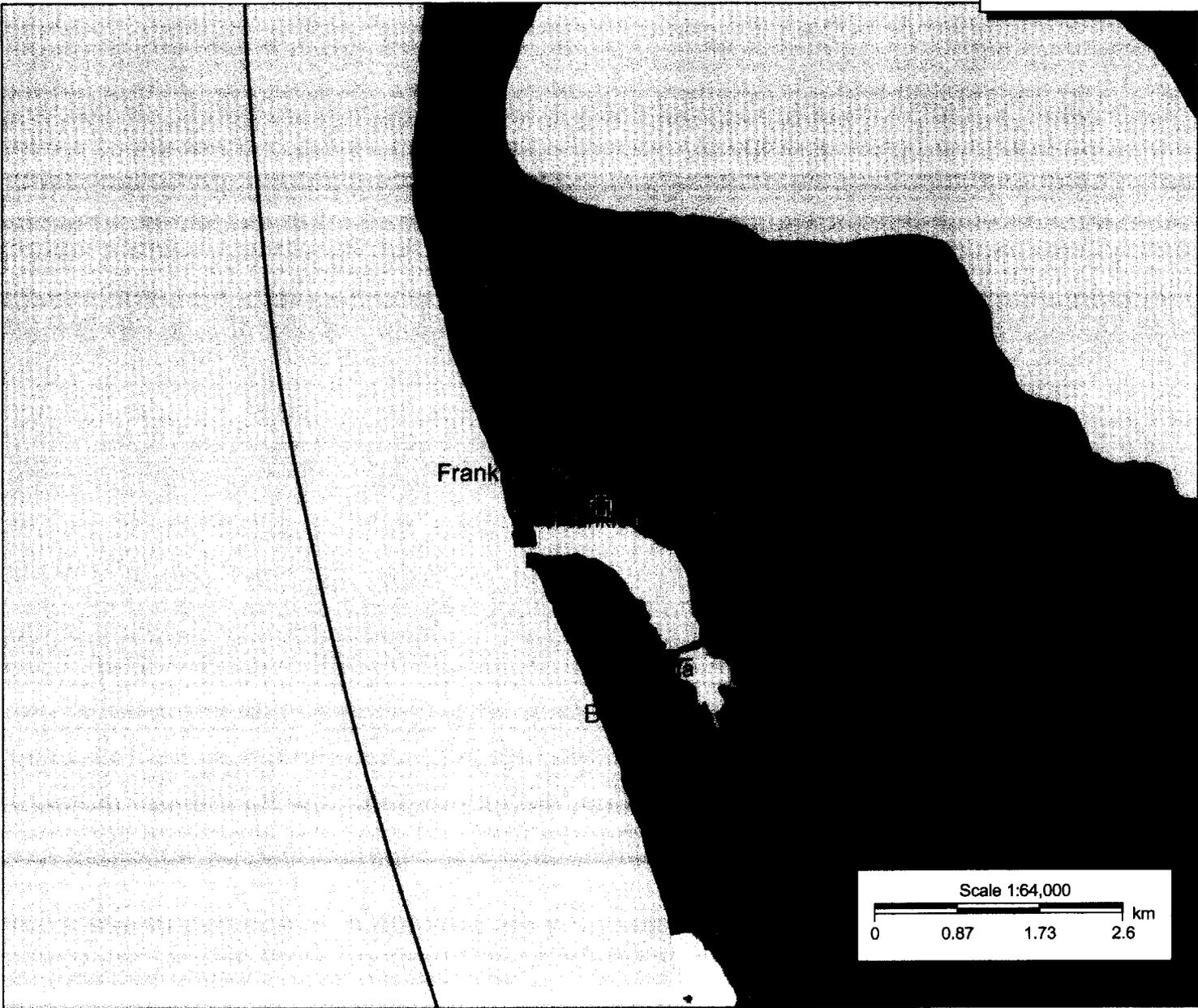
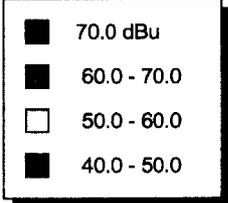


FIGURE 2A

# Signal Strength at Reference Point

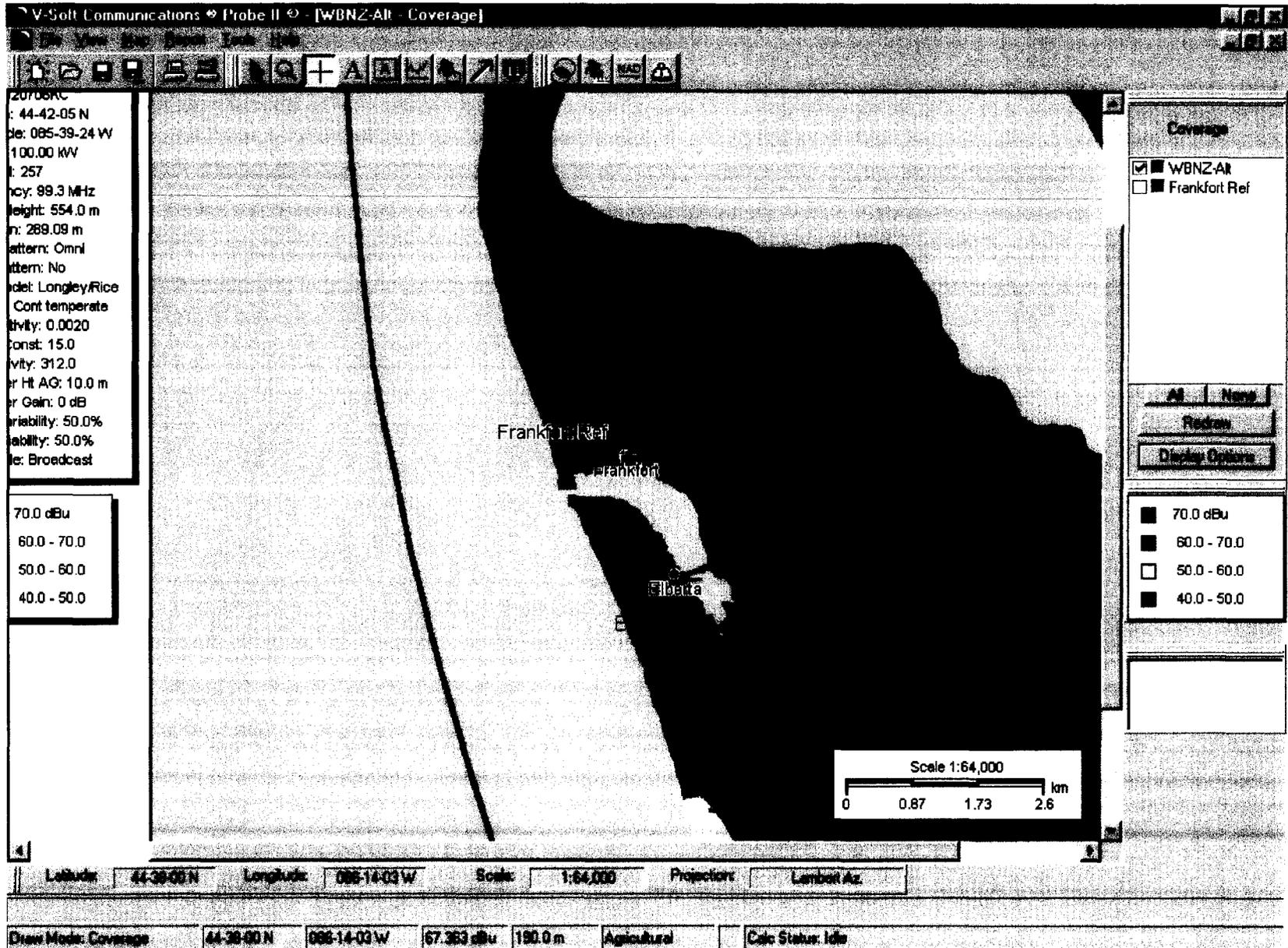


FIGURE 2B

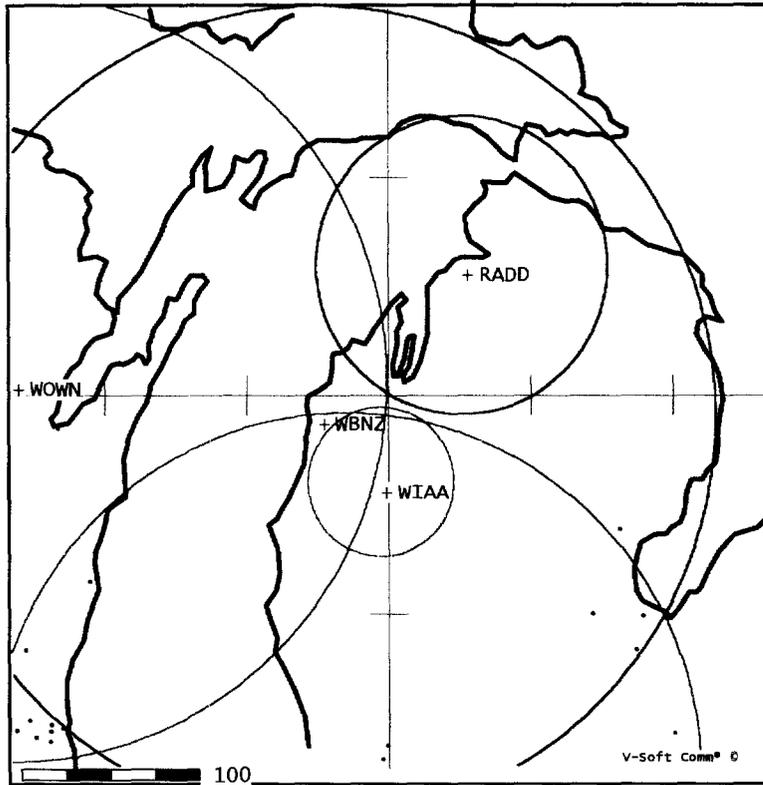
**FIGURE 3**

Reference Coordinate Location for Class C1 Operation  
 WBNZ - Frankfort MI

FMCONT<sup>(TM)</sup> LOCATE STUDY

Ch 257 C1  
 99.3 MHz

N. Lat. 44 42 05  
 W. Lng. 85 39 24



Call	CH#	Location		D-KM	Azi	FCC	Margin
WBNZ	257C2	Frankfort	MI	41.22	256.0	224.0	-182.78
RADD	260C1	BELLAIRE	MI	82.88	29.8	82.0	0.88
RADD	260C1	Bellaire	MI	82.88	29.8	82.0	0.88
WOWN	257C3	Shawano	WI	212.15	272.5	211.0	1.15
WIAA	204C*	Interlochen	MI	47.50	185.5	41.0	6.50
WJQK	257A	zeeland	MI	210.82	186.7	200.0	10.82

**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing "Reply Comments of WATZ Radio, Inc., etc." were served by first-class United States mail, postage prepaid, on this 7<sup>th</sup> day of November, 2001 upon the following:

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