



Wiley Rein & Fielding LLP

ORIGINAL

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

Virginia Office
7925 JONES BRANCH DRIVE
SUITE 6200
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wrf.com

September 27, 2001

BY HAND DELIVERY

RECEIVED

Marjorie J. Dickman
202.719.3178
mdickman@wrf.com

SEP 27 2001

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, SW
12th Street Lobby, TW-A325
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

02-92

Re: **WXXA-DT, Albany, New York (Facility ID No. 11970)**
Petition for Reconsideration
1800E3-JLB

Dear Ms. Salas:

On behalf of Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), the licensee of commercial television station WXXA-TV, Albany, New York, enclosed for filing is a "Petition for Reconsideration" of the decision of the Video Services Division to dismiss Clear Channel's petition for rulemaking to change the digital television Table of Allotments to specify Channel 7 in lieu of Channel 4 at Albany.

Please contact John M. Burgett of this office, at 202.719.4239, or the undersigned, should you have any questions.

Sincerely,

Marjorie J. Dickman

Enclosure

cc: Sarge Catthral
Brian Coombs
Jennifer A. Johnson, Esq.
Howard M. Liberman, Esq.

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

In the Matter of)
)
Amendment of Section 73.622(b) of)
the Commission's Rules,)
DTV Table of Allotments)
(Albany, NY))

RECEIVED
02-92 SEP 27 2001
MM Docket No. 02-92
RM No. 10363
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Chief, Video Services Division

PETITION FOR RECONSIDERATION

Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), by its attorneys and pursuant to Sections 1.106 and 1.429 of the Commission's rules, hereby submits this petition for reconsideration of the decision of the Video Services Division to dismiss Clear Channel's "Petition for Rulemaking" to change the Table of Allotments for digital television ("DTV") service to specify Channel 7 in lieu of Channel 4 as the initial DTV channel allotment for station WXAA-DT, Albany, New York.¹ As demonstrated herein, the Commission should continue to entertain Clear Channel's petition for rulemaking because it proposes a preferential arrangement of DTV allotments that will better serve the public interest. Moreover, the technical exhibit submitted herewith as an amendment to the petition for rulemaking completely cures the interference to WWNY-TV, Carthage, New York that the FCC staff cited as its reason for dismissing the petition.

Clear Channel is the licensee of commercial television station WXXA-TV, Albany, New York, which currently operates on NTSC Channel 23. Station WXXA-TV has been allotted

¹ Letter from Clay C. Pendarvis, Chief, Television Branch, Video Services Division, to Clear Channel Broadcasting Licenses, Inc., 1800E3-JLB (Aug. 28, 2001).

DTV Channel 4 for its digital operations. On October 29, 1999, Clear Channel filed a petition for rulemaking proposing to change the DTV channel allotment for WXXA-DT from Channel 4 to Channel 7. The petition for rulemaking demonstrated that a change in WXXA-DT's allotment to Channel 7 would eliminate the potential for interference by WXXA-DT to videocassette recorders in its service area that typically operate on Channels 3 or 4.

Subsequent to filing the petition for rulemaking, Clear Channel checked on the status of its proposal and was advised informally by the FCC staff that the allocation of DTV Channel 7 to Albany, New York for use by WXXA-DT would cause objectionable interference to slightly more than two percent of the population served by WWNY-TV, Carthage, New York, in violation of the agency's *de minimis* interference standard set forth in Section 73.623(c)(2) of the Commission's rules. Clear Channel promptly commissioned an engineering study to examine this issue.

Attached hereto is a technical exhibit which modifies the facilities originally proposed in Clear Channel's petition for rulemaking and eliminates the interference to WWNY-TV. The technical exhibit demonstrates that, as modified, the proposed digital service of WXXA-DT on Channel 7 fully complies with the Commission's 2%/10% interference criteria pursuant to Section 73.623(c)(2) of its rules. Additionally, as the technical statement demonstrates, the proposed Channel 7 allotment will continue to comply with the community coverage requirements set forth in Section 73.625(a) of the Commission's rules.

Clear Channel had intended to file the attached technical exhibit as an amendment to its petition for rulemaking several weeks ago, but in the course of preparing the technical exhibit, Clear Channel learned that its Channel 7 allotment proposal for WXXA-DT had become mutually exclusive with a subsequent DTV channel change proposal filed by Vermont ETV, Inc.

("Vermont ETV"), the licensee of non-commercial educational television station WVER(TV), Rutland, Vermont. Station WVER(TV), which currently operates on NTSC Channel 28, has been allotted DTV Channel 56 for its digital operations. On April 27, 2000, Vermont ETV filed a petition for rulemaking proposing to change the DTV channel allotment for WVER-DT from Channel 56 to Channel 7. Given the proximity of the two stations, the WXXA-DT and WVER-DT channel change proposals for Channel 7 are mutually exclusive.

In order to resolve this conflict and expedite the initiation of DTV service to the Albany, New York and Rutland, Vermont communities, Clear Channel promptly commissioned another engineering study, found another suitable DTV channel for use by WVER-DT and began working cooperatively with Vermont ETV on the preparation of a joint petition for rulemaking to propose that (i) DTV Channel 7 be allotted to Albany, New York for use by WXXA-DT and (ii) DTV Channel 9 be allotted to Rutland, Vermont for use by WVER-DT.² It was Clear Channel's intention that this joint petition would also include the attached technical exhibit eliminating the interference issue with WWNY-TV, Carthage, New York.

Before the parties could submit the joint petition, however, the FCC staff unexpectedly dismissed Clear Channel's petition for rulemaking based upon the interference issue with WWNY-TV. Nevertheless, Clear Channel and Vermont ETV are continuing to work cooperatively to change their respective DTV allotments such that stations WXXA-DT and WVER-DT can initiate digital television service to their communities as effectively and efficiently as possible. To this end, rather than submitting a joint petition, Vermont ETV has now agreed to file an amendment to its own pending petition for rulemaking to specify DTV

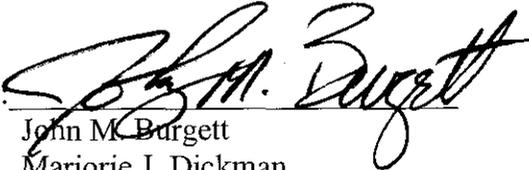
² A change in WVER-DT's allotment to Channel 9 (rather than Channel 7) will continue to serve the objective of allowing WVER-DT to operate on a core channel from the outset of service, rather than commencing operation on a non-core channel and moving to the core in the future.

Channel 9 (instead of DTV Channel 7) for use by WVER-DT. It is Clear Channel's understanding that Vermont ETV will be filing this amendment in the very near future, thereby resolving the mutual exclusivity issue with WXXA-DT.

In view of these cooperative efforts and Clear Channel's ability to eliminate interference to WWNY-TV (as demonstrated by the attached technical exhibit), Clear Channel respectfully requests that the Commission reinstate WXXA-DT's petition for rulemaking so as to expedite the station's ability to commence digital broadcasting on a channel that will better serve its community.

Respectfully submitted,

**CLEAR CHANNEL BROADCASTING
LICENSES, INC.**

By: 
John M. Burgett
Marjorie J. Dickman

WILEY REIN & FIELDING LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000

Its Attorneys

September 27, 2001

TECHNICAL EXHIBIT
PREPARED IN SUPPORT OF
AN AMENDMENT TO A
PETITION FOR RULE MAKING TO
MODIFY THE DTV ALLOTMENT TABLE
STATION WXXA-TV
ALBANY, NEW YORK

September 21, 2001

CH 7 10 KW 434 M

TECHNICAL EXHIBIT
PREPARED IN SUPPORT OF
AN AMENDMENT TO A
PETITION FOR RULE MAKING TO
MODIFY THE DTV ALLOTMENT TABLE
STATION WXXA-TV
ALBANY, NEW YORK

Table of Contents

Technical Narrative

Figure 1	DTV-TV Allocation Study
Figure 2	Interference-Service Summary
Figure 3	Predicted Coverage Contours
Figure 4	Canadian TV-DTV Within

TECHNICAL EXHIBIT
PREPARED IN SUPPORT OF
AN AMENDMENT TO A
PETITION FOR RULE MAKING TO
MODIFY THE DTV ALLOTMENT TABLE
STATION WXXA-TV
ALBANY, NEW YORK

Technical Summary

This technical narrative and associated exhibits have been prepared on behalf of WXXA-TV in support of an amendment to a pending Petition for Rule Making to modify the DTV allotment of WXXA-TV (BPRM-20000718AAA) from VHF channel 4 to VHF channel 7.

Specifically, it is proposed to amend the pending WXXA-DT petition by proposing an alternate transmitter site location and increasing the proposed antenna radiation center height above mean sea level (RCAMSL). No change in ERP is proposed. By operating from the new site location with modified facilities, WXXA-DT will eliminate prohibited interference toward the licensed and authorized construction permit facilities of station WWNY-TV, Ch. 7 at Carthage, New York.¹

Station WXXA-TV was allotted VHF channel 4 for its DTV operation with an ERP of 1 kW and an HAAT of 366 meters. However, station WXXA-TV filed a petition to allot VHF channel 7 instead of channel 4 at Latitude 42°37'01", Longitude 74°00'46". The petition proposed operation with an antenna radiation center height above mean sea level (RCAMSL) of 633

¹ An FCC processing engineer notified WXXA-DT that the original petition for rule making would cause prohibited interference toward WWNY-TV at Carthage, New York. However, based on operation from a new location with modified facilities, and employing a nominal grid size resolution of 1 km, the proposed WXXA-DT will not cause prohibited interference to WWNY-TV.

meters, an antenna radiation HAAT of 366 meters and a non-directional antenna maximum ERP of 10 kW.

This amendment proposes to amend the pending petition by proposing operation on channel 7 at Latitude 42°37'31", Longitude 74°00'38". It is also proposed to operate with a non-directional ERP of 10 kilowatts and an antenna radiation center height above mean sea level (RCAMSL) of 692 meters.

DTV channel 7 can be substituted and allotted to Albany, New York in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates Latitude 42°37'31", Longitude 74°00'38". In addition, operation on DTV channel 7 appears possible with an effective radiated power (ERP) of up to 10 kW utilizing a nondirectional antenna and an RCAMSL of 692 meters. The proposed channel change is acceptable under the 2 percent criterion for *de minimis* impact applicable to DTV allotment modifications under Section 73.623(c)(2). Therefore, it is proposed to modify WXXA-TV's authorization to specify operation on the alternate DTV channel with the following specifications:

State & City	DTV Channel	DTV ERP (kW)	Antenna HAAT (m)
NY, Albany	7	10	434

It is also proposed to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Albany, New York	4, 12, 26	7, 12, 26

Figure 1 is a separation study toward other NTSC and DTV allotments based on a 161 kilometer "buffer". Although the

separation requirements are only applicable to new DTV allotments, they can be used as an indication of which stations have the potential of receiving interference from the proposed channel 7 DTV operation.

Figure 2 provides a summary of interference and service for the proposed channel 7 allotment. Determination of interference and service was based on the procedures outlined in OET Bulletin No. 69 and criteria contained in Sections 73.622 and 73.623 of the FCC's rules and employing a grid size resolution of 1 km.² It is believed that the proposed channel 7 operation is in full compliance with the FCC's 2%/10% interference criteria with respect to all pertinent stations, except with respect to the pending digital rulemaking petition (BPRM-20000803AAC) of station WVER-TV. Station WVER-TV proposes a DTV operation on channel 7 at Rutland, Vermont. The WVER-TV transmitter site is located only 136.4 kilometers from the proposed WXXA-DT site, therefore the two facilities are mutually exclusive.

Figure 3 is a map which depicts both the 36 dBu noise limited contour and the 43 dBu city coverage contour for the proposed channel 7 DTV operation. Also shown are the city limits of Albany based on 1990 Census data. As indicated, all of Albany is located within the 43 dBu contour. Therefore, the proposed channel 7 DTV allotment will comply with the modified DTV city coverage requirements, as set forth in MM Docket No. 00-39, Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television. Figure 3 also displays

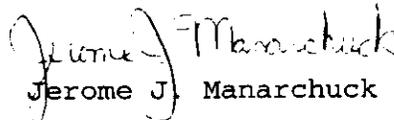
² The du Treil, Lundin & Rackley, Inc. DTV interference analysis program is based on the program and procedures outlined by the FCC in the Sixth Report and Order; subsequent Memorandum Opinion and Order; and FCC OET Bulletin No. 69. A nominal grid size resolution of 1 km was employed. An Alpha based processor computer system was employed. The results have been found to be in very close agreement with the results of the FCC implementation of OET Bulletin No. 69.

the 64 dBu contour for WXXA-TV's currently authorized NTSC channel 23 operation (BLCT-820810KG). As indicated, the proposed channel 7 DTV operation will provide full replication of the current NTSC channel 23 coverage.

As the community of Albany, New York is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government will likely be required for this proposal. Figure 4 is a tabulation of all known Canadian NTSC and DTV allotments on channels 7 and 8 located within 400 km of the proposed site. All the Canadian NTSC and DTV allotments are located at distances greater than the minimum distance set forth in Appendix 2 (Planning and Separation Criteria) of the Letter of Understanding between the Federal Communications Commission of the United States of America and Industry Canada Related to the Use of the 54-72 MHz, 76-88 MHz, 174-216 MHz and 470-806 MHz Bands of the Digital Television Broadcasting Service Along The Common Border (September 22, 2000).

Conclusion

VHF channel 7 can be substituted for the current VHF DTV channel 4 allotment of WXXA-TV in compliance with the FCC's rules concerning DTV allotment changes.


Jerome J. Manarchuck

du Treil, Lundin & Rackley, Inc.
201 Fletcher Avenue
Sarasota, Florida 34237
(941) 329-6000

September 21, 2001

DTV - TV Separation Study

Job Title :WXXA-DT
Zone : 1
Channel 7 (174-180 MHz)

Separation Buffer 161 km
FCC TV DB Date : 08/28/01
Coordinates : 42-37-31 74-00-38

Call Status	City St	FCC File No.	Channel Zone	ERP(kW) HAAT(m)	Latitude Longitude	Bear. True	Dist. (km)	Req. (km)
WWNY-T CP	CARTHAGE NY BPCT	-19890619	7(-) II	316 221	43-57-16 75-43-45	317.3	203.14 -41.46	244.6 SHORT
WWNY-T LIC	CARTHAGE NY BLCT	-2160	7(-) II	316 219	43-57-16 75-43-45	317.3	203.14 -41.46	244.6 SHORT
WABC-T LIC	NEW YORK NY BLCT	-19800730	7(o) I	64.6 491	40-42-43 74-00-49	180.1	212.52 -32.08	244.6 SHORT
WHDH-T LIC	BOSTON MA BMLCT	-19940831	7(+) I	316 306	42-18-40 71-13-00	97.7	232.42 -12.18	244.6 SHORT
CHLTTV LIC	SHERBROOKE QU	-	7(o) I	300 585	45-18-43 72-14-32	24.7	330.53 55.53	275.0 CLEAR
WKBW-T LIC	BUFFALO NY BLCT	-2258	7(+) I	100 433	42-38-15 78-37-12	271.8	378.11 133.51	244.6 CLEAR
WTNH LIC	NEW HAVEN CT BLCT	-2555	8(o) I	166 369	41-25-23 72-57-06	146.4	159.77 34.77	9.0/125.0 CLEAR
WTNH CP	NEW HAVEN CT BPCT	-19950712	8(o) I	174 363	41-25-23 72-57-06	146.4	159.77 34.77	9.0/125.0 CLEAR
WMTW-T LIC	POLAND SPRING ME BLCT	-19850715	8(-) II	105 1173	44-16-13 71-18-13	49.1	285.35 160.35	9.0/125.0 CLEAR

TECHNICAL EXHIBIT
 PREPARED IN SUPPORT OF AN
 AMENDMENT TO A
 PETITION FOR RULE MAKING TO
 MODIFY THE DTV ALLOTMENT TABLE
 STATION WXXA-TV
 ALBANY, NEW YORK

Interference and Service Summary

I. Interference Caused

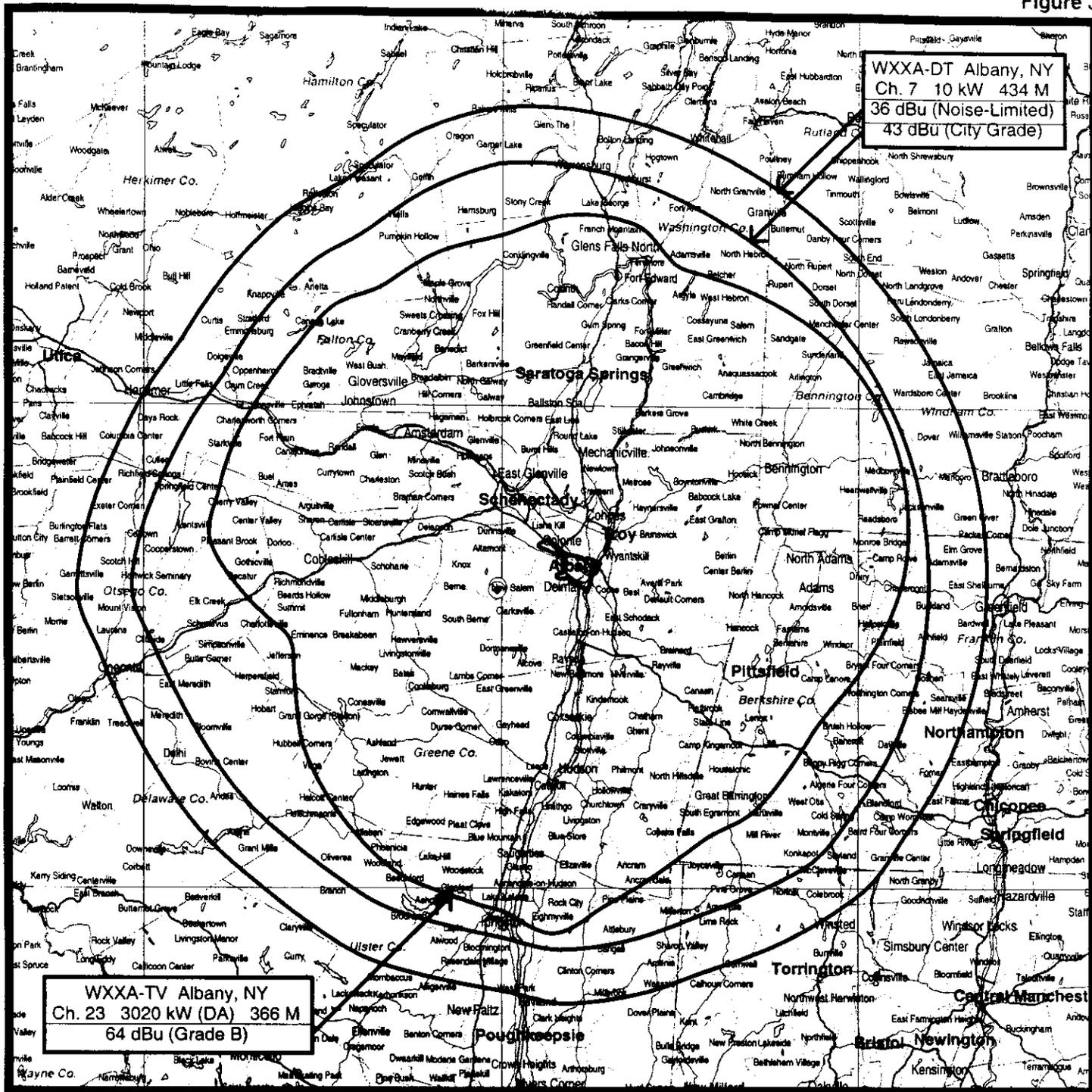
Protected NTSC/DTV Station	FCC Service Population	Unique Interference Population*
WHDH-TV, NTSC Ch. 7 Boston, MA	6,720,842	5,321 (0.08%)
WENG-TV, DTV Ch. 7 Binghamton, NY Allotment Application	871,726 871,726	2,610 (0.30%) 4,222 (0.48%)
WKBW-TV, NTSC Ch. 7 Buffalo, NY	No Interference Calculated	
WVNY-TV, NTSC Ch. 7 Carthage, NY License CP	286,527 287,413	5,624 (1.96%) 5,521 (1.92%)
WABC-TV, NTSC Ch. 7 New York NY	18,267,656	36,040 (0.20%)
CHLTTV, NTSC, Ch. 7 Sherbrooke, QU	No Interference Calculated	
WINH, NTSC Ch. 8 New Haven, CT License CP	No Interference Calculated	
WNJB-DT, DTV Ch. 8 New Brunswick, NJ CP Application	No Interference Calculated	
WMBC-DT, DTV Ch. 8 Newton, NJ Allotment	No Interference Calculated	
WICZ-DT, DTV Ch. 8 Binghamton, NY Allotment CP	No Interference Calculated	

*Considers interference "masking" from other NTSC and DTV assignments.

II. Service

	Population
Within Noise Limited Contour	1,612,004
Not Affected by Terrain Losses	1,478,259
Lost to NTSC Interference	32,559
Lost to DTV Interference	3,577
Total Service	1,442,123

Figure 3



PREDICTED COVERAGE CONTOURS

STATION WXXA-DT
ALBANY, NEW YORK
CH 7 10 KW 434 M

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

TECHNICAL EXHIBIT
 PREPARED IN SUPPORT OF
 AN AMENDMENT TO A
 PETITION FOR RULE MAKING TO
 MODIFY THE DTV ALLOTMENT TABLE
 STATION WXXA-TV
 ALBANY, NEW YORK

CANADIAN TV/DTV WITHIN STUDY

Job Title :WXXA-DT
 Sorted by Distance
 Channels 7 to 8

TV/DTV Within 400.0 km
 FCC TV DB Date : 08/28/01
 Coordinates : 42-37-31 74-00-38

Call Status	City State	FCC File No.	Channel Zone	ERP(kw) HAAT(m)	Latitude Longitude	Bearing deg-True	Distance (km) (mile)
CHLTV LIC	SHERBROOKE QU	-	7(o) I	300 585	45-18-43 72-14-32	24.74	330.53 205.43
CHLT-TV NTSCVU	SHERBROOKE QU		7		45-18-42 72-14-31	24.74	330.53 205.43
CIII-TV DTVVL	BANCROFT ON		8		45- 3-33 77-11-59	317.71	372.74 231.66
CJOHTV NTSCVU	CORNWALL ON		8		45-10-35 74-31-38	351.88	286.48 178.00
CJOHTV8 LIC	CORNWALL ON		8(+) I	260 DA 188	45-10-35 74-31-38	351.88	286.48 178.00

TO BE LOC NOT LESS THAN 274 KM FROM WMTH-TV PORTLAND SPRING, ME