

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Amendment of Section 73.622(b),)
Table of Allotments)
Digital Television Broadcast Stations)
(Derby, Kansas))

MM Docket No. 01-44
RM-10022

To: Chief, Video Services Division
Media Bureau

COMMENTS OF MONTGOMERY COMMUNICATIONS, INC.

1. Montgomery Communications, Inc. ("Montgomery") hereby submits these Comments in response to the Commission's Further Notice of Proposed Rule Making ("FNPRM") in the above-captioned proceeding.

2. Montgomery is the licensee of Station KTMJ-CA, Junction City, Kansas, a Fox Network affiliate. While KTMJ-CA currently operates on Channel 6, a major change application is pending to modify KTMJ-CA's facilities to operate on analog Channel 46, co-channel to the proposed digital television ("DTV") allotment at Derby. Montgomery's application was timely filed on August 29, 2002 (File No. BMJPTTL-20000829ATX) during a Class A/Low Power Television application window and pre-dates the request to allot DTV Channel 46 as proposed in this proceeding.¹

2. Under the Commission's Class A rules,² applicants filing rule making petitions for new DTV allotments must protect the service contours of existing Class A stations. *Class A Report and Order* at para. 50. Class A stations, on the other hand, are not required to protect pending

¹ Montgomery's application is still pending because it is mutually exclusive and will ultimately be subject to auction if no settlement is reached with the other applicants. Nevertheless, as discussed *infra*, Montgomery's application is still cut-off from conflicting proposals.

² *In the Matter of Establishment of a Class A Service*, 15 FCC Rcd 6355 (2000) ("Class A R&O"), clarified on recon., 16 FCC Rcd 8244 (2001).

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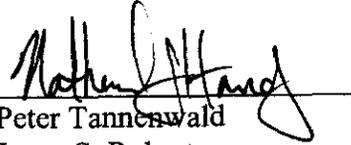
allotment proposals from new DTV entrants, “that is, petitions who do not already have a DTV authorization.” *Id.* (emphasis added). The protection afforded to Class A stations begins on the date an acceptable certificate of eligibility for Class A status is filed, a date which occurred for KTMJ-CA in 1999. When a Class A station files an application to modify its facilities, it must provide interference protection only to known DTV allotments at the time of filing, authorized DTV and NTSC TV services, and pending station proposals that full-service NTSC TV applications are required to protect. *Id.* at para. 110. Montgomery’s Channel 46 application complies with these protection requirements.

3. Pappas Telecasting of America (“Pappas”), on the other hand, did not include the pending KTMJ-CA application in the interference analysis it provided in support of its petition; but it should have, because Montgomery’s application was cut-off at the close of the year 2000 application window and so has priority over the Derby proposal. Montgomery has undertaken the missing analysis and has found that applying the methods specified in the Commission’s Rules, the predicted interfering contour of a Derby station would completely encompass the protected 74 dBu contour of KTMJ-CA. However, applying the Longley-Rice alternative method, predicted interference caused or received by the Derby proposal does not exceed the permissible threshold of 0.5% of the population to be served by either KTMJ-CA or a station at Derby. An Engineering Statement discussing these interference considerations is attached. Accordingly, it appears that DTV Channel 46 may be used at Derby, at least with the technical parameters anticipated by the FNPRM.

5. It is important, however, that the Commission, Pappas, and any other prospective applicant all recognize that any future application for a construction permit for Channel 46 at Derby

must adhere to the operating parameters on which the rule making is based and must take into account and respect the protection that must be afforded to the pending KTMJ-CA application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nathaniel J. Hardy", is written over a horizontal line.

Peter Tannenwald
Jason S. Roberts
Nathaniel J. Hardy

Irwin, Campbell & Tannenwald, P.C.

Counsel for Montgomery
Communications, Inc.

September 30, 2002

CERTIFICATE OF SERVICE

I, Daniella Mattioli Knight, do hereby certify that I have, this 30th day of September, 2002, caused a copy of the foregoing "Comments of Montgomery Communications, Inc." to the following:

Vincent J. Curtis, Esq.
Fletcher, Heald & Hildreth, PLLC
1300 North 17th St., 11th Floor
Arlington, VA 20009
Counsel for Pappas Telecasting of America


Daniella Mattioli Knight

ENGINEERING STATEMENT IN

SUPPORT OF COMMENTS

MM DOCKET 01-44

DTV CHANNEL 46 - DERBY, KS

**Montgomery Communications, Inc.
Junction City, KS**

September 30, 2002

**Prepared For: Mr. John Montgomery
Montgomery Communications, Inc.
222 W. Sixth Street
Junction City, KS 66441**

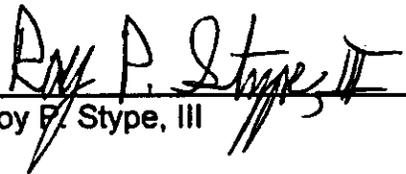
CARL E. SMITH CONSULTING ENGINEERS

ENGINEERING AFFIDAVIT

State of Ohio)
) ss:
County of Summit)

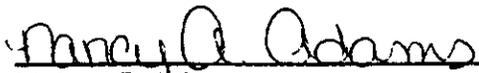
Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Montgomery Communications, Inc. to prepare the attached "Engineering Statement In Support of Comments - MM Docket 01-44 - DTV Channel 46 - Derby, KS."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.



Roy P. Stype, III

Subscribed and sworn to before me on **September 30, 2002.**



Notary Public

NANCY A. ADAMS, Notary Public
Residence - Cuyahoga County
State Wide Jurisdiction, Ohio
My Commission Expires Sept. 5, 2006

/SEAL/

ENGINEERING STATEMENT

This engineering statement is prepared on behalf of Montgomery Communications, Inc., licensee of Class A TV Station KTMJ-CA - Junction City, Kansas. It supports comments in MM Docket 01-44.

KTMJ-CA was granted a Class A license on August 30, 2001 and presently operates on Channel 6 with a nondirectional effective radiated power of 0.016 kilowatts. KTMJ-CA also has pending a "short form" major change application (BMJPTTL-20000829ATX), which was filed during the LPTV/Class A TV/TV Translator major change auction window which closed on August 31, 2000. This pending application specifies operation on Channel 46 with a maximum effective radiated power of 150 kilowatts utilizing a directional antenna.

On March 8, 2002, Pappas Telecasting of America submitted a petition for rulemaking, which was treated as an amended proposal in MM Docket 01-44, to allot DTV Channel 46 to Derby, Kansas as a new DTV allotment which would not be paired with any NTSC allotment. On August 9, 2002, in response to this rulemaking petition, the FCC released a Further Notice of Proposed Rulemaking in MM Docket 01-44 proposing to allot DTV Channel 46 to Derby, Kansas. Since the Channel 46 DTV rulemaking petition for Derby was filed both after KTMJ-CA had been granted a Class A license and after the close of the auction window during which the KTMJ-CA "short form" major change application was filed, the facilities proposed in the KTMJ-CA application are entitled to protection from the DTV facilities proposed in the Derby rulemaking petition and the ultimate permittee of DTV Channel 46 in Derby must accept any interference which it receives from the facilities specified in the KTMJ-CA application.

The protection which proposed DTV facilities must provide to Class A TV stations is outlined in Section 73.623(c)(5) of the FCC Rules. In this particular case, this rule section prohibits any overlap between the 40 dBu interfering contour for the proposed Derby DTV facilities and the 74 dBu protected contour for the facilities proposed in the KTMJ-CA application. Figure 1.0 is a map exhibit depicting the predicted 40 dBu contour for the proposed Derby DTV facilities in relation to the predicted 74 dBu contour for the facilities proposed in the KTMJ-CA application. As shown in this map exhibit, the interfering contour for the proposed Derby DTV facilities will totally encompass the protected contour for the facilities specified in the KTMJ-CA application. Thus, the proposed Derby DTV facilities fail to provide the contour protection required by Section 73.623(c)(5) of the FCC Rules to the facilities proposed in the KTMJ-CA application.

Although the Derby rulemaking petition has made no effort to do so,¹ Section 73.623(c)(5)(iii) of the FCC Rules permits the methodology outlined in OET Bulletin 69 to be employed in this situation to support a request for a waiver of the contour protection requirements outlined in Section 73.623(c)(5) of the FCC Rules. In this particular case, an OET 69 analysis shows that the DTV facilities proposed in the Derby rulemaking petition will result in new interference to the KTMJ-CA application facilities for 29 persons, or 0.06% of the population predicted to receive 74 dBu interference free service from the facilities proposed in the KTMJ-CA application. Since this is less than the 0.5% rounding tolerance permitted in this situation, the proposed Derby DTV facili-

¹The engineering statement prepared to support the Derby DTV rulemaking petition does not even acknowledge that the facilities proposed in the KTMJ-CA "short form" major change application are entitled to protection as a Class A facility.

ties are considered to provide the required protection to the KTMJ-CA application facilities when this alternative methodology is employed.

Section 73.6013 of the FCC Rules specifies that the methodology outlined in OET Bulletin 69 is to be utilized to evaluate the predicted interference to a DTV facility from an analog Class A TV station such as KTMJ-CA. In this case, an OET 69 analysis shows that the facilities proposed in the KTMJ-CA application will result in new interference to the proposed Derby DTV facilities for 619 persons, or 0.10% of the population predicted to receive interference free noise limited service from the DTV facilities proposed in the Derby rulemaking proposal. Since this interference is less than the 0.5% rounding tolerance permitted in this situation, this interference is not cognizable. It is possible, however, that, if this DTV channel is ultimately allotted to Derby as proposed, an applicant for this allotment could propose operating facilities which would be predicted to receive interference from the KTMJ-CA application facilities exceeding this 0.5% rounding tolerance. In such a situation, it would be necessary for such an applicant to accept any such interference from the KTMJ-CA application facilities, since, as noted above, they have priority over the proposed Derby DTV allotment.

Based on the above information, the licensee of KTMJ-CA does not oppose the allotment of DTV Channel 46 to Derby, Kansas, as proposed in this proceeding, so long as all potential applicants for this channel are aware of both the requirement to protect the facilities proposed in the KTMJ-CA application and the requirement to accept whatever interference might be caused to their proposed operating facilities from the facilities proposed in the KTMJ-CA application.

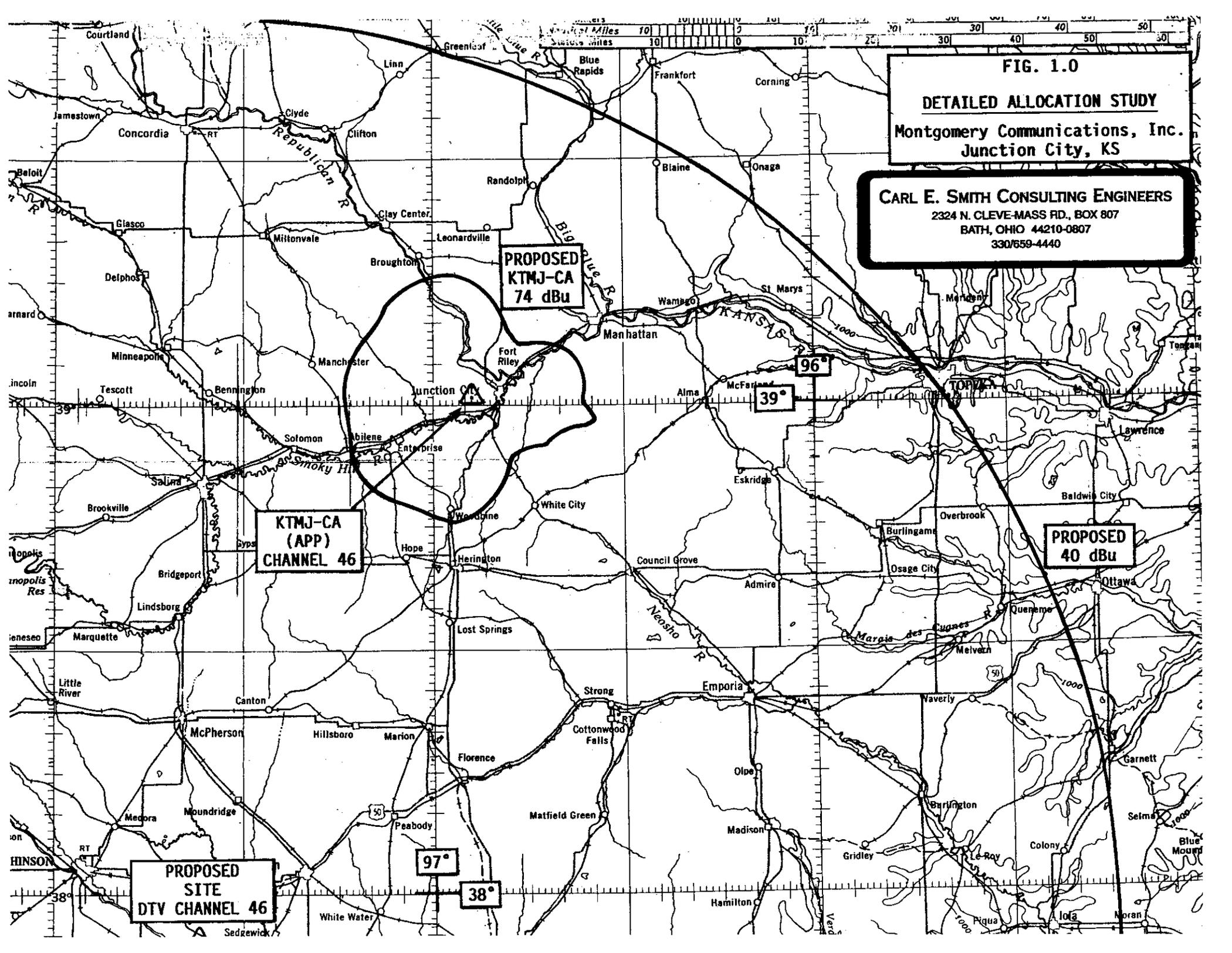


FIG. 1.0
DETAILED ALLOCATION STUDY
Montgomery Communications, Inc.
Junction City, KS

CARL E. SMITH CONSULTING ENGINEERS
 2324 N. CLEVE-MASS RD., BOX 807
 BATH, OHIO 44210-0807
 330/659-4440

**PROPOSED
 KTMJ-CA
 74 dBu**

**KTMJ-CA
 (APP)
 CHANNEL 46**

**PROPOSED
 40 dBu**

**PROPOSED
 SITE
 DTV CHANNEL 46**

97°

38°

39°

96°

38°

97°

50

96

39°

50

50

96

50

50