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December 27, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RECEIVED
DEC 27 2004
Federal Communications Commission
Office of Secretary

Re: **Counterproposal of Gateway Radio Works, Inc.**
MB Docket No. 04-411
RM-11096

Dear Ms. Dortch:

Transmitted herewith on behalf of Gateway Radio Works, Inc., are an original and four (4) copies of its Counterproposal submitted in connection with the above-referenced proceeding.

Should any questions arise in connection with this matter, kindly communicate directly with the undersigned.

Respectfully submitted,



Michael H. Shacter

Enclosure

No. of Copies rec'd 0+4
List ABCDE

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

RECEIVED

DEC 27 2004

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 04-411
Table of Allotments,) RM-11096
FM Broadcast Stations.)
(Georgetown, Mason, Oxford and West)
Union, Ohio, and Salt Lick, Kentucky))

To: Chief, Allocations Branch

COUNTERPROPOSAL

Gateway Radio Works, Inc. ("Gateway"), the licensee of WIVY(FM), Channel 242A, Morehead, KY (FCC Facility ID No. 23344), by its attorneys and pursuant to the Notice of Proposed Rule Making, DA 04-3513, MB Docket No. 04-411, RM-11096, released November 5, 2004 (the "NPRM"), hereby submits its counterproposal in the above-referenced rule making proceeding.¹ In support thereof, the following is respectfully submitted:

Introduction

1. In response to a Petition for Rule Making jointly filed by Balogh Broadcasting Company, Inc., licensee of FM Station WOXY, Channel 249A, Oxford, Ohio, Richard L. Plessinger, Sr., licensee of FM Station WAXZ, Channel 249A, Georgetown, Ohio, and Dreamcatcher Communications, Inc., licensee of FM Station WRAC, Channel 276A, West Union, Ohio (collectively "Joint Petitioners"), the Commission released the NPRM proposing, among other things, the reallocation of Channel 249A from Oxford to Mason, Ohio, as its first local service and modification of the Station WOXY license, reallocation of Channel 249A from

¹ The NPRM established December 27, 2004 as the deadline for filing comments and counterproposals. Accordingly, the instant Counterproposal is timely filed.

Georgetown, Ohio to Salt Lick, Kentucky, as its first local service and modification of the Station WAXZ license. To prevent the removal of sole local service from Georgetown, the Joint Petitioners also proposed the reallocation of Channel 276A from West Union to Georgetown, Ohio and modification of the Station WRAC license. The Reallocation proposal set forth in the NPRM is hereinafter referred to as the “Joint Petitioners’ Allotment Plan”. The NPRM established December 27, 2004, as the due date for filing comments and counterproposals, and January 11, 2005, as the due date for filing reply comments.

Counterproposal

2. In lieu of Joint Petitioners’ Allotment Plan, Gateway proposes the following counterproposal: the allotment of FM channel 249A to Livingston, KY as that community’s first local aural transmission service at coordinates 37-21-39 North Latitude and 84-11-00 West Longitude, and the reallocation of WIVY’s channel 242A from Morehead, KY to Salt Lick, KY. The downgrade of station WJXB-FM, Knoxville, TN on 248C to 248C0 is also proposed. The modifications to the Table of Allotments described in this paragraph are hereinafter referred to as the “Counterproposal”. Therefore, Gateway requests that the FM Table of Allotments be amended as follows:

<u>Community</u>	<u>Channel No.</u>		<u>Coordinates</u>
	<u>Present</u>	<u>Proposed</u>	
Salt Lick, KY	-----	242A	N 38-10-43 W 83-28-44
Morehead, KY	242A, 291C3	291C3	
Livingston, KY	-----	249A	N 37-21-39 W 84-11-00
Knoxville, TN	248C, etc	248C0	W 36-00-36 W 83-55-57 (WJXB-FM licensed site)

This Counterproposal will result in first local service to two communities: Livingston and Salt Lick, KY, furthering the Commission's allotment priorities. The Counterproposal is mutually exclusive with the Joint Petitioners' Allotment Plan.

3. Livingston, KY is a community listed in the 2000 U.S. Census with a population of 228² and its own zip code (40445).

4. As demonstrated in the attached Engineering Exhibit prepared by Charles M. Anderson and Associates, Channel 249A can be allotted to Livingston, KY in full compliance with FCC rules, 47 C.F.R. § 73.207, from a site located at 37-21-39 North Latitude and 84-11-00 West Longitude with the proposed downgrade of station WJXB-FM, Knoxville, TN to 248C0. WJXB-FM currently operates with less than minimum Class C facilities (100 kw/395 meters HAAT). The new Livingston allocation will serve a population of 68,282 and an area of 2,516 sq km. Exhibit E2 to the Engineering Exhibit demonstrates the proposed 249A allocation's 70 dBu coverage of Livingston, and Exhibit E3 shows that line of sight may be obtained from the proposed allocation point.

5. The attached Engineering Exhibit further demonstrates that Channel 242A can be allotted to Salt Lick, KY in full compliance with FCC rules, 47 C.F.R. § 73.207, from a site located at 38-10-43 North Latitude and 83-28-44 West Longitude. Exhibit E5 demonstrates 70 dBu coverage of Livingston, and Exhibit E6 shows that line of sight may be obtained from the proposed allocation point. Exhibit E7 demonstrates that the currently licensed WIVY facility also provides a 70 dBu to Salt Lick.

² See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 100 (1982) (requirement of an allotment to a community is generally satisfied if the community is either incorporated or listed in the U.S. Census).

6. Joint Petitioners' Allotment Plan is defective, because it will leave West Union, Ohio without local service. Joint Petitioners have proposed to backfill the Georgetown, OH allotment by reallocating WRAC, West Union, Ohio to Georgetown. Although noncommercial educational FM Station WVXW is currently licensed to West Union, it is licensed as a satellite of station WVXU-FM, Cincinnati, Ohio.³ Accordingly, WVXW is more properly considered as a Cincinnati station than as a local West Union station. Consequently, the backfilling of the Georgetown allotment with WRAC will result in the loss of local service to West Union. Moreover, the backfilling process is one that should be avoided since it will result in the unnecessary disruption of service to Georgetown.

7. The Counterproposal is in the public interest because it will result in a fair and efficient distribution of allocations by providing Livingston, KY and Salt Lick, KY and the areas surrounding the two communities with their first local aural transmission service.

8. Gateway hereby certifies that it has a present intention to file applications for Channels 249A at Livingston and 242A at Salt Lick, and when authorized will construct the facilities promptly and commence operation on the facilities when authorized.

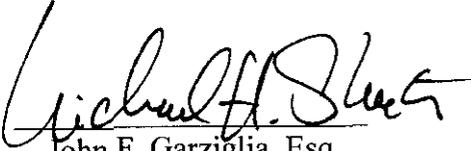
³ See FM Broadcast Station License File No. BLED-19930628KD (copy attached).

WHEREFORE, for the reasons above, the Joint Petitioners' Allotment Plan by should be denied, and the proposal of Gateway Radio Works, Inc. should be adopted in its entirety.

Respectfully submitted,

Gateway Radio Works, Inc.

December 27, 2004

By: 

John F. Garziglia, Esq.

Michael H. Shacter, Esq.

Its Attorneys

Womble Carlyle Sandridge & Rice, PLLC

1401 Eye Street, Seventh Floor

Washington, D.C. 20005

202/467-6900

Exhibit One

TECHNICAL REPORT

This technical report was developed in support of comments and a counterproposal seeking the assignment of FM channel 249A to Livingston, KY (2000 population – 228) as a first local service, and the reallocation of WIVY's channel 242A from Morehead, KY to Salt Lick, KY. The downgrade of station WJXB-FM, Knoxville, TN on 248C to 248C0 is also proposed. This proposal is in conflict with the proposed rulemaking in MM Docket No. 04-411 seeking the assignment of 249A to Salt Lick, KY (see Livingston E1), 249A to Mason, OH and 276A to Georgetown, OH.

Community	Existing	Proposed	Coordinates
Salt Lick, KY	-----	242A	N 38-10-43 W 83-28-44
Morehead, KY	242A, 291C3	291C3	
Livingston, Ky	-----	249A	N 37-21-39 W 84-11-00
Knoxville, TN	248C, etc	248C0	W 36-00-36 W 83-55-57 (WJXB-FM licensed site)

I. Allocation Analyses:

The assignment of 249A at Livingston is proposed at coordinates:

N 37-21-39 W 84-11-00.

An allocation study is included as Exhibit E1 demonstrating that the proposed allotment reference point meets all applicable Commission separation requirements with the proposed downgrade of station WJXB-FM, Knoxville, TN to 248C0. WJXB-FM currently operates with less than minimum Class C facilities

Charles M. Anderson Associates

(100 kw/395 meters HAAT). Exhibit E2 demonstrates the proposed 249A allocation's 70 dBu coverage of Livingston, and E3 shows that line of sight may be obtained from the proposed allocation point. The new Livingston allocation will serve a population of 68,282 and an area of 2,516 sq km.

The assignment of 242A at Salt Lick is proposed at coordinates:

N 38-10-43 W 83-28-44.

An allocation study is included as Exhibit E4 demonstrating that the proposed allotment reference point meets all applicable Commission separation requirements. Exhibit E5 demonstrates 70 dBu coverage of Livingston, and E6 shows that line of sight may be obtained from the proposed allocation point. Exhibit E7 demonstrates that the currently licensed WIVY facility also provides a 70 dBu to Salt Lick.

It is concluded that the proposed Livingston, KY and Salt Lick, KY allocations are in full compliance with Commission rules and policies, and will provide a first local service to Livingston, KY and a new FM service to a an area of 2,526 sq km including a population of 68,282.



Charles M. Anderson 12-24-2004
1519 Euclid Avenue
Bowling Green, KY 42103
270-782-0246
cmanderson43@yahoo.com

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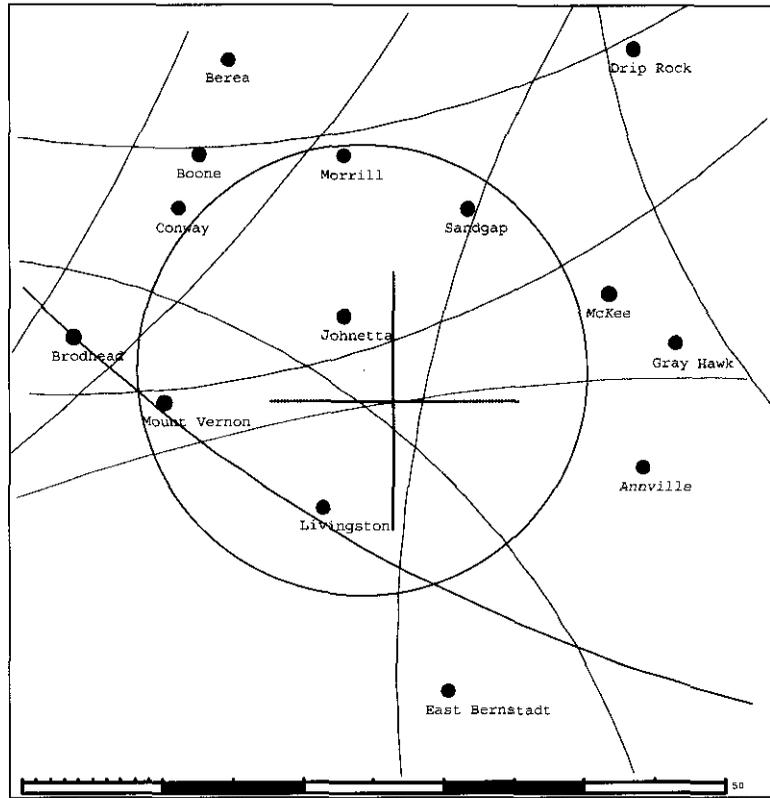
E1 LIVINGSTON

FMCONT^(TM) LOCATE STUDY

Ch 249 A
97.7 MHz

N. Lat. 37 21 39
W. Lng. 84 11 00

Dates:
Data:12-24-04
Job :12-24-04

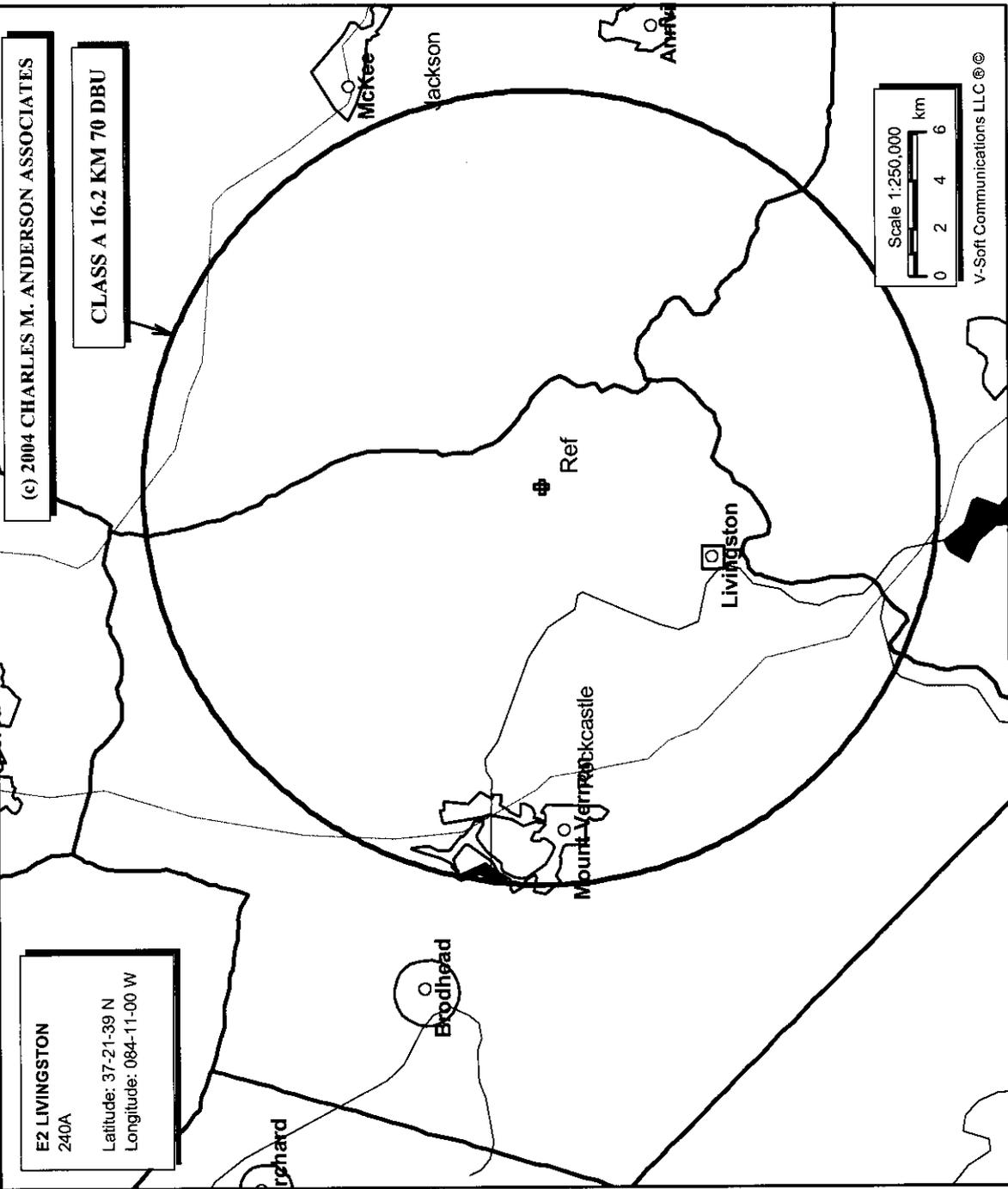


Scale= 1:500,000

V-Soft Com[®] ©

Call	CH#	Type	Location		D-KM	Azi	FCC	Margin	
WJXBFM	248C*	LIC	Knoxville	TN	151.56	171.5	151.5	0.06	*Downgrade proposed.
RADD	249A	ADD	Salt Lick	KY	104.65	30.5	114.5	-9.85	
WSEK	246C2	LIC	Somerset	KY	56.02	217.6	54.5	1.52	
WZQQ	250C3	LIC	Hyden	KY	90.52	101.6	88.5	2.02	
WBULEFM	251C1	LIC	Lexington	KY	78.47	342.7	74.5	3.97	
WAMZ.C	248C1	CP	Louisville	KY	148.35	312.8	132.5	15.85	
WBULFC	251C1	CP N	Lexington	KY	93.33	349.9	74.5	18.83	
WJSNFC	247C2	CP	Jackson	KY	76.92	63.0	54.5	22.42	
AL247	247C2	RSV	Jackson	KY	76.92	63.0	54.5	22.42	
WAMZ	248C1	LIC	Louisville	KY	157.19	300.3	132.5	24.69	
WAXZ.A	249A	APP N	Georgetown	OH	160.03	9.9	114.5	45.53	
WAXZ.A	249A	APP	Georgetown	OH	160.03	9.9	114.5	45.53	
WAXZ.A	249A	APP N	Georgetown	OH	160.03	9.9	114.5	45.53	
WHAY	252A	LIC	Whitley City	KY	81.14	196.9	30.5	50.64	
WAXZ	249A	LIC	Georgetown	OH	170.37	10.9	114.5	55.87	
RDEL	249A	DEL	Georgetown	OH	170.37	10.9	114.5	55.87	
WRLVFM	247C3	LIC N	Salyersville	KY	108.26	65.6	41.5	66.76	

(* indicates downgraded class C station)



(c) 2004 CHARLES M. ANDERSON ASSOCIATES

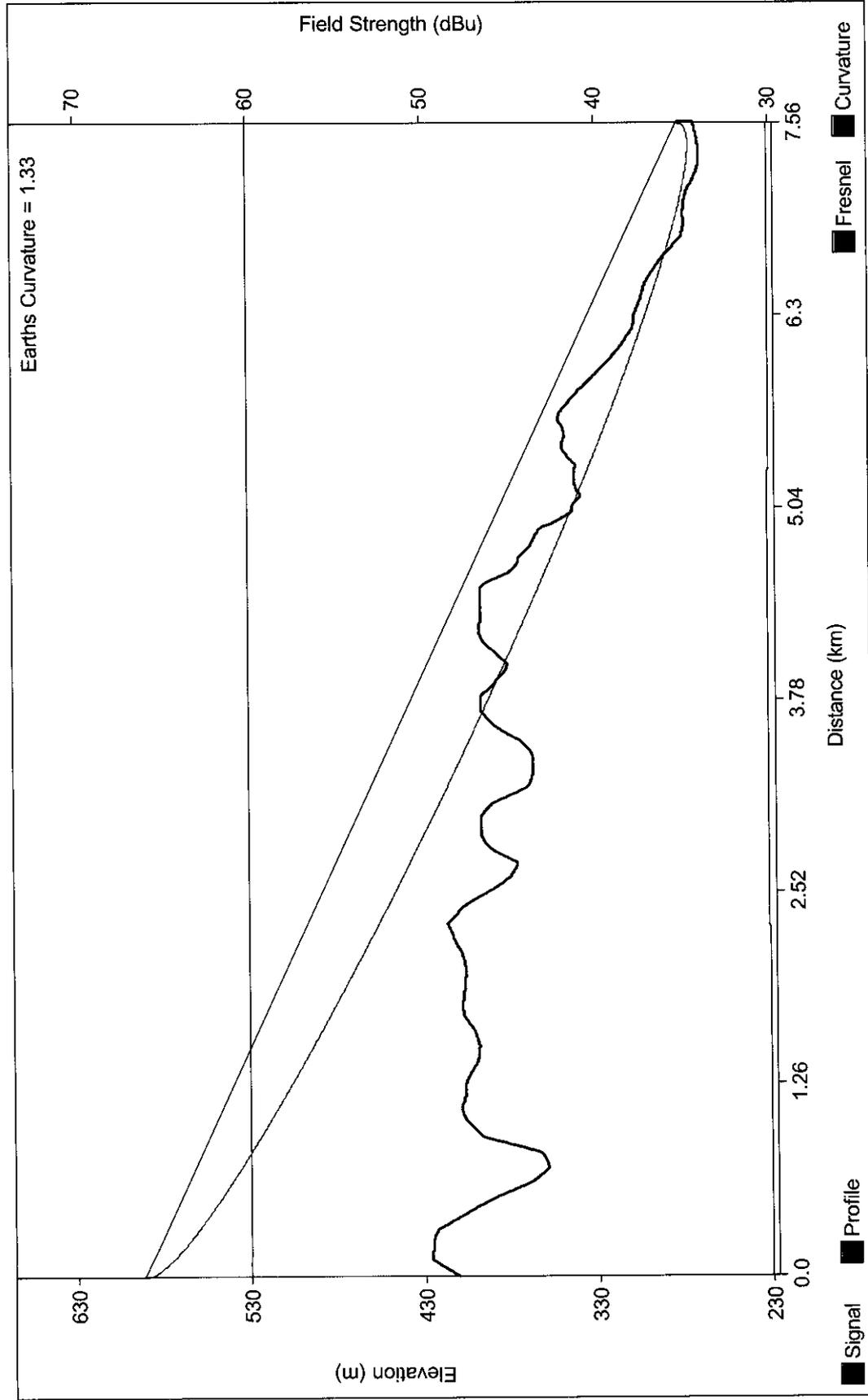
CLASS A 16.2 KM 70 DBU

E2 LIVINGSTON
240A
Latitude: 37-21-39 N
Longitude: 084-11-00 W

Scale 1:250,000
0 2 4 6 km

V-Soft Communications LLC ©

E3 LIVINGSTON 249A LINE OF SIGHT



Starting Latitude: 37-21-39 N **End Latitude:** 37-17-51.92 N **Distance:** 7.56 km
Starting Longitude: 084-11-00 W **End Longitude:** 084-12-55.53 W **Bearing:** 202.12 deg

Transmitter Height (AG): 152.4 m **Transmitter Elevation:** 439.8 m **Frequency:** 97.7 MHz
Receiver Height (AG): 9.1 m **Receiver Elevation:** 272.4 m **Fresnel Zone:** 0.6

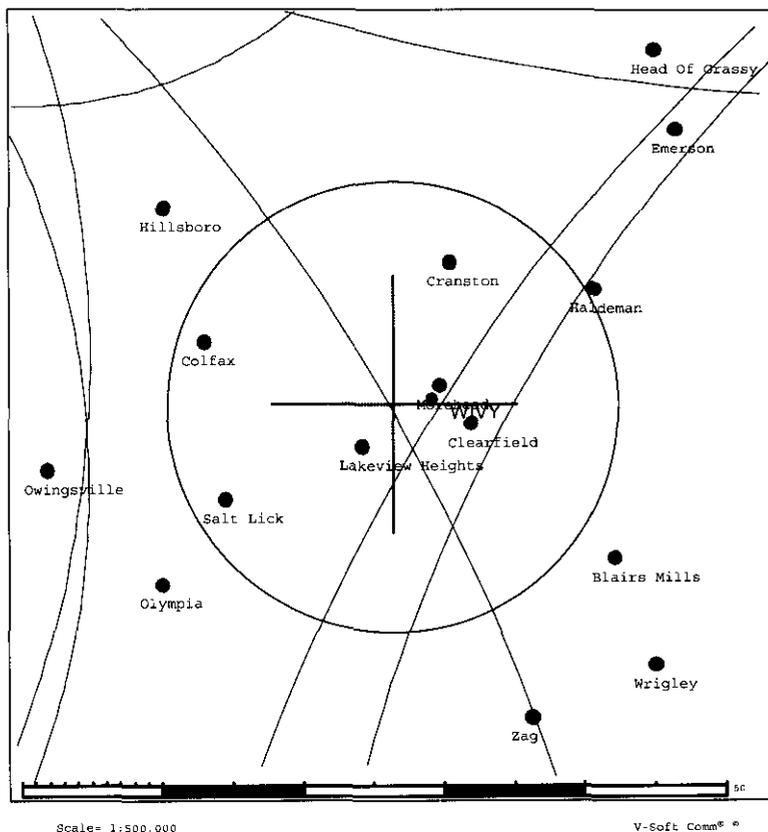
E4 SALT LICK

FMCONT^(TM) LOCATE STUDY

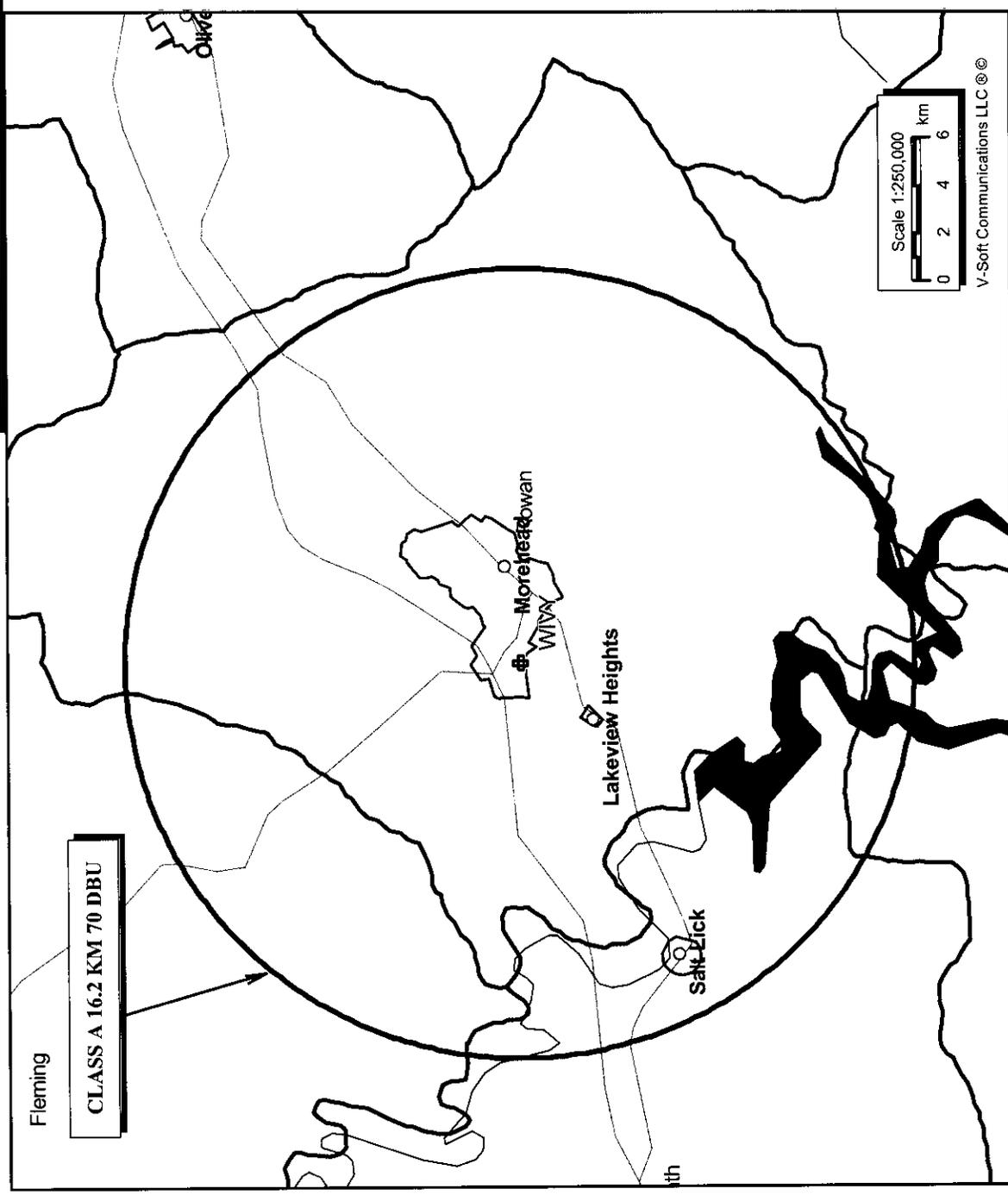
Ch 242 A
96.3 MHz

N. Lat. 38 10 43
W. Lng. 83 28 44

Dates:
Data:12-24-04
Job :12-24-04

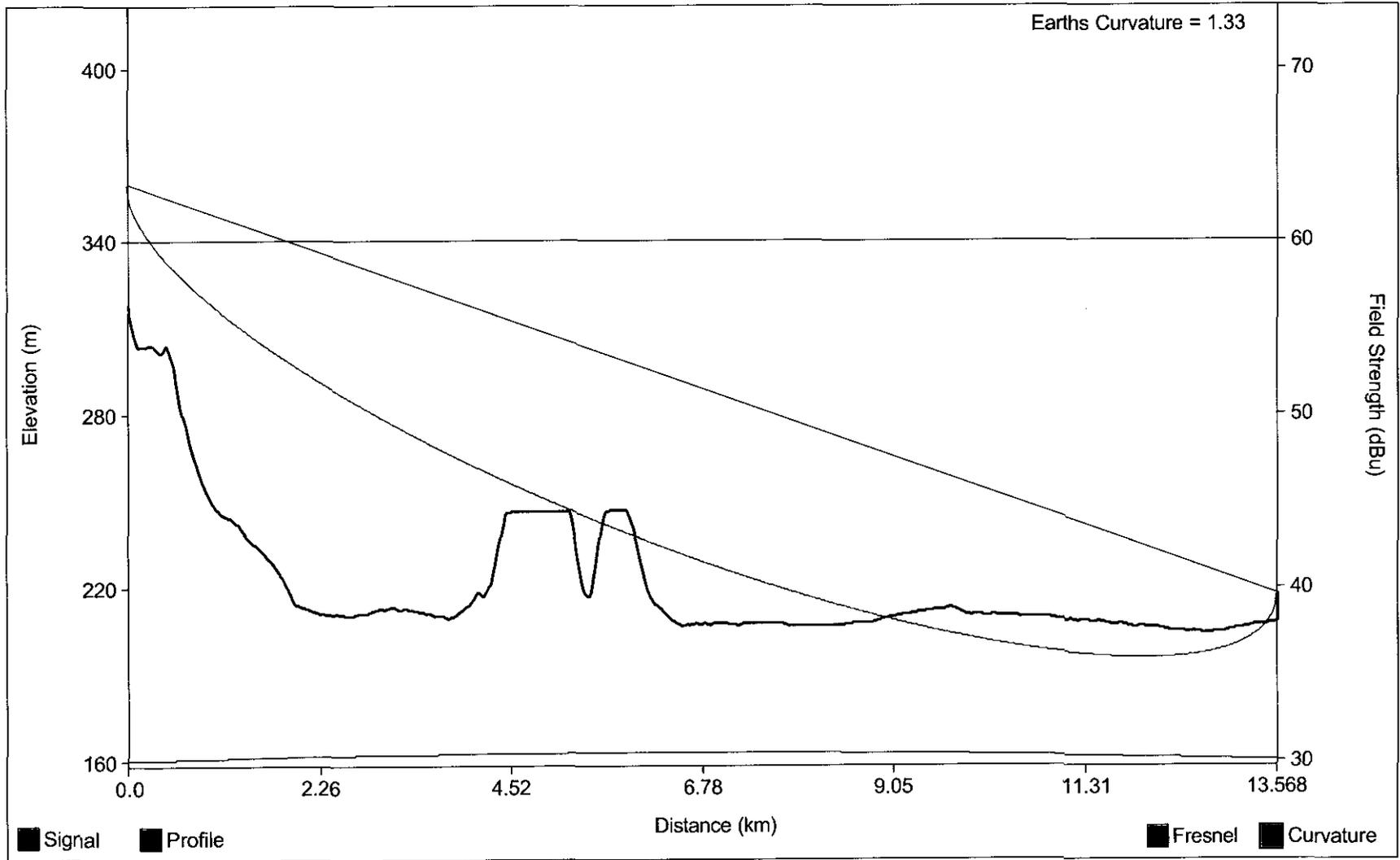


Call	CH#	Type	Location	D-KM	Azi	FCC	Margin
WIVY	242A	LIC	Morehead	KY 2.65	81.3	115.0	-112.35
WXKYFC	242C3	CP	Stanford	KY 142.35	239.6	142.0	0.35
WXKYFM	242C3	LIC	Stanford	KY 142.35	239.6	142.0	0.35
WXCC	243C1	RSV	Williamson	WV 135.75	122.4	133.0	2.75
WXCC	243B	LIC	Williamson	WV 120.46	117.7	113.0	7.46
WLXO	241A	LIC-Z	Stamping Ground	KY 93.65	272.1	72.0	21.65
WLXO.C	241A	CP -Z	Stamping Ground	KY 93.65	272.1	72.0	21.65
WGKS	245C2	LIC	Paris	KY 76.87	265.9	55.0	21.87
WLXQ	242B	LIC	Columbus	OH 202.78	10.9	178.0	24.78
WFTMFM	240A	LIC	Maysville	KY 57.86	333.2	31.0	26.86
WYGY	243B	LIC	Lebanon	OH 149.68	330.9	113.0	36.68
WKWS	241B	LIC	Charleston	WV 151.11	81.6	113.0	38.11
WKKQ	241C3	LIC N	Barbourville	KY 150.40	194.4	89.0	61.40
WBKS	296A	LIC-Z	Ironton	OH 81.68	61.7	10.0	71.68
WKOVFM	244B1	LIC	Wellston	OH 121.69	38.7	48.0	73.69
RADD	244A	ADD	Manchester	KY 109.58	198.9	31.0	78.58
VA244	244A	VAC	Annvile	KY 110.01	199.4	31.0	79.01



E-5
SALT LICK- WIVY
BLH19940601KD
Latitude: 38-10-43 N
Longitude: 083-28-44 W
ERP: 6.00 KW
Channel: 242
Frequency: 96.3 MHz
AMSL Height: 385.91 m
Elevation: 344.4 m
Horiz. Pattern: Omni

E6 WIVY-SALT LICK



Starting Latitude: 38-10-43 N
 Starting Longitude: 083-28-44 W

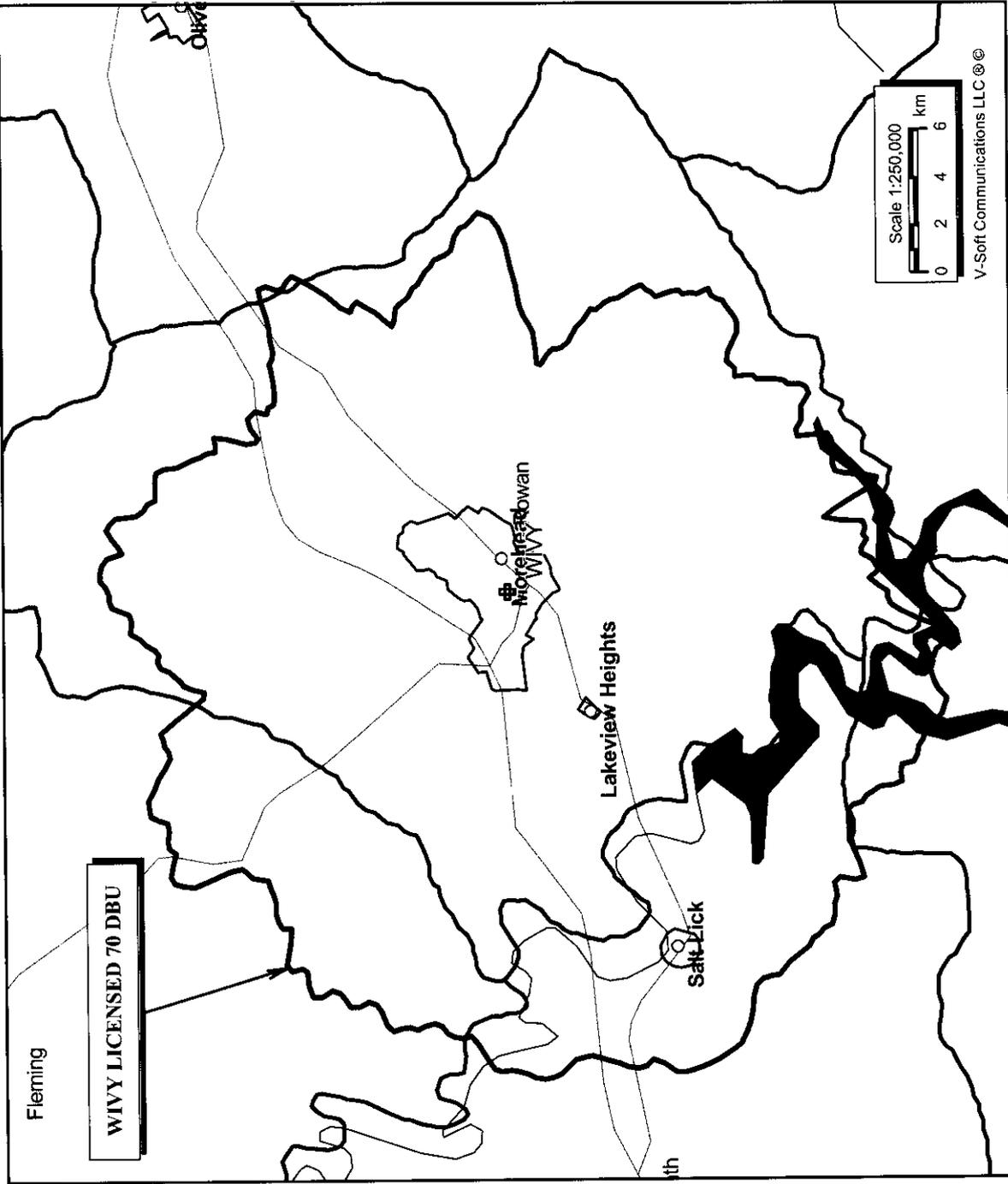
End Latitude: 38-07-12 N
 End Longitude: 083-36-53 W

Distance: 13.568036376 km
 Bearing: 241.390 deg

Transmitter Height (AG) = 41.5 m
 Receiver Height (AG) = 9.1 m

Transmitter Elevation = 317.9 m
 Receiver Elevation = 207.8 m

Frequency = 96.3 MHz
 Fresnel Zone: 0.6



E-7

SALT LICK- WIVY]
BLH19940601KD
Latitude: 38-10-56 N
Longitude: 083-26-56 W
ERP: 6.00 kW
Channel: 242
Frequency: 96.3 MHz
AMSL Height: 384.0 m
Elevation: 306.0 m
Horiz. Pattern: Omni

Exhibit Two

United States of America
FEDERAL COMMUNICATIONS COMMISSION
FM BROADCAST STATION LICENSE

Authorizing Official:

Official Mailing Address:

XAVIER UNIVERSITY
3800 VICTORY PARKWAY
CINCINNATI OH 45207

Mary Houser
Supr Applications Examiner
Audio Division
Media Bureau

Facility Id: 74301

Call Sign: WVXW

License File Number: BLED-19930628KD

Grant Date: November 29, 1993

This license expires 3:00 a.m.
local time, October 01, 1996.

This license covers Permit No.: BPED-19930127IE

Subject to the provisions of the Communications Act of 1934, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this license, the licensee is hereby authorized to use and operate the radio transmitting apparatus herein described.

This license is issued on the licensee's representation that the statements contained in licensee's application are true and that the undertakings therein contained so far as they are consistent herewith, will be carried out in good faith. The licensee shall, during the term of this license, render such broadcasting service as will serve the public interest, convenience, or necessity to the full extent of the privileges herein conferred.

This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein. Neither the license nor the right granted hereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934. This license is subject to the right of use or control by the Government of the United States conferred by Section 606 of the Communications Act of 1934.

CERTIFICATE OF SERVICE

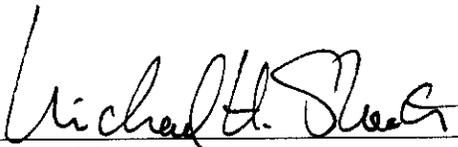
I, Michael H. Shacter, do hereby certify that true copies of the foregoing
“Counterproposal” were sent this 27th day of December, 2004 by U.S. first class mail, postage
prepaid, to the following:

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Coe W. Ramsey, Esq.
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