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*Please reply to JOHN M. PELKEY  
jpelkey@gsblaw.com TEL EXT 2528*

May 9, 2005

ORIGINAL

Our File No. 20939-0100-60

**VIA HAND DELIVERY**

Ms. Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., TW-A325  
Washington, D.C. 20554

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MAY - 9 2005

Federal Communications Commission  
Office of Secretary

Re: **Comments of Vernal Enterprises, Inc.**  
Amendment of Section 73.202(b)  
FM Table of Allotments  
FM Broadcast Stations  
(Barnesboro and Gallitzin, PA)  
MB Docket No. 05-103  
RM-11205

Dear Ms. Dortch:

Transmitted herewith on behalf of Vernal Enterprises, Inc., licensee of WHPA(FM), Barnesboro, Pennsylvania, are an original and four copies of its Comments in the above-referenced matter.

If there are any questions concerning this submission, please contact the undersigned directly.

Sincerely,

John M. Pelkey

Enclosures  
JMP:yg

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Before The  
**Federal Communications Commission**

Washington, D.C. 20554

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MAY - 9 2005

Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
Amendment of Section 73.202(b) ) MB Docket No. 05-103  
FM Table of Allotments ) RM- 11205  
FM Broadcast Stations )  
(Barnesboro and )  
Gallitzin, PA) )

To: Office of the Secretary

Attention: Assistant Chief, Audio Division  
Media Bureau

### Comments of Vernal Enterprises, Inc.

Through a Petition for Rule Making (the "Petition") filed on July 30, 2004, Vernal Enterprises, Inc. ("Vernal"), requested that the Commission amend Section 73.202(b) of the Commission's rules, the Table of FM Allotments, to reallocate Channel 228A from Barnesboro (Northern Cambria), Pennsylvania, to Gallitzin, Pennsylvania, and to modify the license of WHPA(FM) to specify operation on Channel 228A at Gallitzin, Pennsylvania. In response, the Commission released a *Notice of Proposed Rule Making* ("NPRM") in the above-captioned proceeding proposing the requested change to the Table of Allotments and soliciting the submission of comments by May 9, 2005.<sup>1</sup> Vernal, through counsel, hereby submits its comments in support of the proposal set forth in the

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<sup>1</sup> See NPRM, MB Docket No.05-103 (RM-11205), DA 05-649 (adopted March 16, 2005; released March 18, 2005).

*NPRM.* That proposal is consistent with Commission policy and advances the public interest. As a result, the proposed rule making should be adopted.

I. The Proposed Allocation Satisfies the Highest of the Unsatisfied Allotment Priorities and Can be Made in Full Compliance with the Commission's Technical Requirements.

Vernal is the licensee of WHPA(FM), which operates on Channel 228A.

WHPA(FM)'s community of license, as specified in Section 73.202(b) of the Commission's rules, is Barnesboro, Pennsylvania. Barnesboro no longer exists, however. The communities of Barnesboro, Pennsylvania, and Spangler, Pennsylvania, were consolidated into a new entity known as the Borough of Northern Cambria effective January 1, 2000, with the result that the community of Barnesboro is no longer a legal entity.

In its Petition, Vernal sought to change WHPA(FM)'s community of license from Barnesboro (Northern Cambria), Pennsylvania, to Gallitzin, Pennsylvania, because Gallitzin, Pennsylvania, has a need for local service whereas Barnesboro and Northern Cambria are amply served by other stations. Specifically, although Gallitzin has no local service, the consolidated community of Northern Cambria currently has two stations, AM station WNCC(AM) and FM station WPCL(FM), in addition to WHPA(FM) licensed to it.

As Vernal explained in its Petition, which is hereby incorporated by reference,<sup>2</sup> Gallitzin is a community in need of service. It is an incorporated community of 1,756 people with its own government, consisting of an elected borough council and mayor. It

has its own police force, fire department and post office with its own zip code (16641). It supports churches and, as home to the Gallitzin Tunnels Park, is a tourist attraction. It is home to the Gallitzin Public Library and is the site of the Middle School for the Penn Cambria School District. It also supports an American Legion Post. It has no local broadcast service, however. Vernal's proposal would address this deficiency and, in so doing, provide first local service to Gallitzin's 1,756 people. As the Commission has acknowledged, because "there are virtually no populated areas of the country where our higher allotment priorities, such as first reception service, have not been attained[,] . . . as a practical matter, provision of first local service is the highest of our allotment priorities which remains in any significant degree unsatisfied." *See Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7096 (1990).<sup>3</sup> Because it would provide such first local service, the proposed rule making helps to satisfy this *de facto* highest of the allotment criteria. As a result, adoption of the proposal would be in the public interest.

Moreover, allocation of Channel 228A can take place in full conformity with the Commission's technical requirements. As noted in the *NPRM* and Vernal's Petition, the proposed allocation complies with the Commission's spacing requirements at the

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<sup>2</sup> A copy of Vernal's Petition is attached hereto for the convenience of the Commission staff.

<sup>3</sup> The four allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (with co-equal weight being given to priorities (2) and (3)). *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 91 (1982).

proposed reference coordinates.<sup>4</sup> In addition, as is demonstrated in the Petition, principal community coverage of Gallitzin is achieved from the reference coordinates.<sup>5</sup>

II. Vernal Reaffirms its Commitment to Apply for the Requested Facilities and Construct those Facilities Promptly.

In its Petition, Vernal committed that, if the proposed amendment to the Table of Allotments were adopted, it would promptly apply for an authorization to construct the new facilities and, if it were awarded the construction permit, to construct the new facilities promptly.<sup>6</sup> Vernal hereby reaffirms that earlier commitment and, in accordance with paragraph 2 of the Appendix to the *NPRM*, specifically states its intention to apply for facilities to operate on Channel 228A at Gallitzin if that channel is allocated to Gallitzin, and, if authorized, to promptly construct the new facilities, place the facilities in operation, and seek a license covering the construction of the facilities.

III. Conclusion

The above facts demonstrate that the Commission's allocation criteria would be best served by the allocation of Channel 228A to Gallitzin, Pennsylvania, as such allocation would provide that community with its first local service. In addition, inasmuch as the allocation to Gallitzin complies with all separations requirements and would allow city grade coverage of all of Gallitzin, the proposal is consistent in all respects with the Commission's rules.

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<sup>4</sup> *NPRM* at ¶ 5; Petition at 4 and Engineering Report of Wheeler Broadcast Consulting, Exhibit 1.

<sup>5</sup> Petition at 4 and Engineering Report of Wheeler Broadcast Consulting, Exhibits 2 and 3.

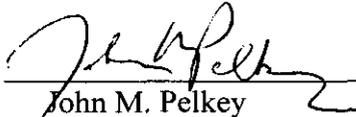
<sup>6</sup> Petition at 5.

Accordingly, Vernal respectfully requests that the Table of FM Allotments be amended as follows:

Community	Present Allotment	Proposed Allotment
Gallitzin, Pennsylvania	--	228A

Respectfully submitted,

Vernal Enterprises, Inc.

By:   
John M. Pelkey  
Its Attorney

Garvey Schubert Barer  
5<sup>th</sup> Floor, 1000 Potomac Street, N.W.  
Washington, DC 20007

202/965-7880

Date: May 9, 2005

Before The  
**Federal Communications Commission**

Washington, D.C. 20554

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In the Matter of ]  
] ]  
Amendment of Section 73.202(b) ]  
] ]  
Table of Allotments ]  
FM Broadcast Stations ]  
Barnesboro (Northern Cambria), Pennsylvania ]  
and ]  
Gallitzin, Pennsylvania ]

File No.

JUL 30 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch

### Petition for Rule Making

Vernal Enterprises, Inc. ("Vernal"), licensee of WHPA(FM), Barnesboro (Northern Cambria), Pennsylvania, through counsel, hereby respectfully requests that the Commission institute a rule making to amend Section 73.202(b) of the Commission's rules, the Table of FM Allotments, to reallocate Channel 228A from Barnesboro (Northern Cambria), Pennsylvania, to Gallitzin, Pennsylvania, and to modify the license of WHPA(FM) to specify operation on Channel 228A at Gallitzin, Pennsylvania.<sup>1</sup> In support of this proposal, Vernal states as follows:

Vernal is the licensee of WHPA(FM), which operates on Channel 228A. WHPA(FM)'s community of license, as specified in Section 73.202(b) of the Commission's rules, is Barnesboro, Pennsylvania. Barnesboro no longer exists, however. The communities of Barnesboro, Pennsylvania, and Spangler, Pennsylvania, were

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<sup>1</sup> Because the requested allocation of Channel 228 to Gallitzin is mutually exclusive with the currently licensed WHPA(FM) facilities, the proposal qualifies for treatment under Section 1.420(i) of the Commission's rules.

consolidated into a new entity known as the Borough of Northern Cambria effective January 1, 2000, with the result that the community of Barnesboro is no longer a legal entity.

Vernal seeks to change WHPA(FM)'s community of license from Barnesboro (Northern Cambria), Pennsylvania, to Gallitzin, Pennsylvania, because Gallitzin, Pennsylvania, has a need for local service whereas Barnesboro and Northern Cambria are amply served by other stations. *See Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) (hereinafter referred to as "*Modification of FM and TV Authorizations*").

- I. Allocation of Channel 228 to Gallitzin rather than Barnesboro (Northern Cambria) would Better Serve the Commission's Allocations Priorities.

Gallitzin, Pennsylvania, is an incorporated community. According to the 2000 census, Gallitzin has a population of 1,756. Government of the community is through an elected borough council and mayor. The borough supports its own police force, located at 411 Convent Street in Gallitzin, and a fire department, located on Saint Thomas Street in Gallitzin. It has its own post office and zip code (16641). It is home to the Gallitzin Public Library and is the site of the Middle School for the Penn Cambria School District. Gallitzin also supports the United Methodist Church located on Church Street in Gallitzin. The American Legion maintains a post on Hemlock Street in Gallitzin. Gallitzin is also a tourist attraction as a result of its proximity to the Gallitzin Tunnels Park, site of the Gallitzin Tunnels that permitted the Pennsylvania Railroad to circumvent

the Allegheny Summit in 1854. Despite its prominence, however, Gallitzin currently has no broadcasting service allocated to it, however.

By contrast, the now defunct community of Barnesboro, which presently is WHPA(FM)'s community of license according to CDBS, currently enjoys service from one AM station, WNCC(AM), and Northern Cambria, which is the community that resulted from the merger of Barnesboro and Spangler, also enjoys service from WPCL(FM). Thus, as matters currently stand, Barnesboro, with a 1990 population of 2,530, has two stations and Northern Cambria, with a 2000 population of 4,199 persons, has three stations if the current Barnesboro stations are added to the Northern Cambria station, whereas Gallitzin, with a population of 1,756, has no broadcast outlet.

As the Commission explained in *Revision of FM Assignment Policies and Procedures*, the FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (with co-equal weight being given to priorities (2) and (3)). 90 FCC2d 88, 91 (1982). More recently, the Commission has acknowledged that, because "there are virtually no populated areas of the country where our higher allotment priorities, such as first reception service, have not been attained[,] . . . as a practical matter, provision of first local service is the highest of our allotment priorities which remains in any significant degree unsatisfied." *Modification of FM and TV Authorizations*, 5 FCC Rcd at 7096 (¶ 16). Reallocation of Channel 228 from Barnesboro to Gallitzin would allow the Commission to achieve this de facto highest of allotment priorities.

II. The Reallocation of Channel 228 from Barnesboro to Gallitzin Can be Accomplished in Full Compliance With the Commission's Policies and Engineering Criteria.

Moreover, the proposed reallocation can be effectuated in full compliance with the Commission's policies and rules. In that regard, two criteria come into play: first, does the proposal allow the continuation of service in the former community of license?; second, does the proposal satisfy the Commission's engineering standards? The instant proposal satisfies both of these criteria.

With respect to the first criterion, because Barnesboro and Northern Cambria would continue to enjoy service from other broadcast outlets after Channel 228 is reallocated to Gallitzin, the proposal is consistent with the procedures for reallocating a channel from one community to another that were sanctioned by the Commission in *Modification of FM and TV Authorizations*.

The proposal also satisfies the second criterion inasmuch as it complies with the Commission's spacing and city-grade coverage requirements. As is set forth in the attached *Engineering Report of Wheeler Broadcast Consulting ("Engineering Report")*, Channel 228A can be allocated to Gallitzin in full compliance with the spacing rules through the imposition of a 14.66 km site restriction.<sup>2</sup> The maps included as Exhibits 2 and 3 to the *Engineering Report* depict that, from the specified reference coordinates, the facility would be able to achieve coverage of all of Gallitzin with a principal community contour.

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<sup>2</sup> The reference coordinates used in the spacing study are: 40°-36'-31" NL; 78°-36'-21" WL.

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In addition, although favorable action on this proposal would result in a small loss area, that area receives service from at least 11 other stations. *See Engineering Report* at p.2 and Ex. 4.

III. Vernal Will Apply for and Construct the Facilities Necessary to Allow WHPA(FM) to Place the Requisite City-Grade Signal Over Gallitzin.

Vernal hereby commits that, if Channel 228A is allocated to Gallitzin, it will file the requisite application for WHPA(FM) so as to allow the station to place the requisite signal over Gallitzin and to promptly construct those facilities upon grant of the application. As a result, favorable action on the instant proposal would permit an immediate commencement of first local service to Gallitzin.

Conclusion

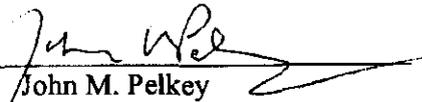
For the reasons stated above, the public interest would be served by the reallocation of Channel 228A from Barnesboro, Pennsylvania, to Gallitzin, Pennsylvania. Accordingly, Vernal respectfully requests that the Commission institute a rule making proceeding that would amend the FM Table of Allotments as follows:

Community	Present	Proposed
Barnesboro, Pennsylvania	228A	-----
Gallitzin, Pennsylvania	-----	228A

Vernal also requests that the WHPA(FM) license be modified to specify Gallitzin as the station's community of license.

Respectfully submitted,

VERNAL ENTERPRISES, INC.

By:   
John M. Pelkey  
Its Attorney

Garvey, Schubert Barer  
5<sup>th</sup> Floor, 1000 Potomac Street, N.W.  
Washington, DC 20007

202/965-7880

Date: July 30, 2004

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# **ENGINEERING REPORT**



# WHEELER BROADCAST CONSULTING

## **Engineering Report**

Vernal Enterprises, Inc.  
Amendment to 47 CFR 73.202 (b)

This consultant has been retained by Vernal Enterprises, Inc. (Vernal), Licensee of WHPA in Barnesboro, PA to provide technical support to a petition for rule making which seeks to amend 47 CFR 73.202 (b) of the Commission's Rules.

### **Proposed Amendment**

WHPA is currently licensed to Barnesboro, PA. On January 1, 2000 Barnesboro, PA and the adjoining community of Spangler, PA merged to create a new community called Northern Cambria, PA. As such, WHPA is licensed to a community which no longer exists. Vernal proposes that Channel 228 A be reallocated from Barnesboro, PA to Gallitzin, PA as that community's first local service.

Gallitzin, PA is listed in the United States Census with reference coordinates of 40° 28' 56" N by 78° 33' 21" W. The point nearest Gallitzin where Channel 228 A meets the minimum spacing requirements of 47 CFR 73.207 is located at 40° 36' 31" N by 78° 36' 21" W which serves as the proposed allocation reference point. The allocation reference point is suitable for a FM transmission facility. The allocation reference point is 14.66 km NNW of Gallitzin, PA at a bearing of 343.2°. The allocation point is 9.33 km distant from the licensed Channel 228 A WHPA operation and, as such, is mutually exclusive with the presently licensed operation. Exhibit 1 of this report is a search of the Commission's CDBS database which demonstrates that the proposed allocation site is in full compliance with the spacing requirements of 47 CFR 73.207.

Exhibit 2 of this report is a digitally generated map which shows the corporate limits of Gallitzin, PA as well as a 16.2 km radius, 70 dBu allocation reference circle centered at the allocation reference site. As shown in Exhibit 2, the community of Gallitzin is entirely contained within the reference circle. Exhibit 3 is a 1:80,000 detail map which conclusively shows the same.

As shown above, the proposed Channel 228 A allocation at Gallitzin, PA is compliant with 47 CFR 73.207 and 47 CFR 73.215 of the Commission's Rules.

### **Other Aural Services**

There are presently three radio broadcast stations licensed to Barnesboro, PA or Spangler, PA, WHPA (FM), WNCC (AM), and WPCL (FM). WPCL (FM) is listed in the Commission's CDBS database as being licensed to Northern Cambria. The reallocation of WHPA (FM) would thus not leave Northern Cambria without local service.

The proposed Gallitzin allocation would result in a small area of lost service<sup>1</sup>. Exhibit 4 of this report is a digitally generated map which shows the existing, licensed, WHPA 60 dBu protected contour, a 28 km radius allocation reference circle from the proposed Gallitzin allocation reference site, and the protected contours of an additional 11 radio stations<sup>2</sup> that provide protected service to all or part of the loss area.

### **Urbanized Areas**

The Borough of Gallitzin, PA is not located in an Urbanized Area. The nearest Urbanized Area is the Altoona, PA Urbanized Area. Exhibit 5 of this report details the 70 dBu reference contour of the proposed Channel 228 A operation at Gallitzin, PA and the Altoona, PA Urbanized Area. The 16.2 km allocation radius overlaps with a small part of the Altoona, PA Urbanized Area, however, that overlap is less than 1% of the total area in the Urbanized Area. The overlap is clearly much less than 50% and, as such, a "Tuck" analysis is not required.

<sup>1</sup> The WHPA Channel 228 A operation at Barnesboro was allocated prior to Docket 80-90 as a 3 kW Class A operation.

<sup>2</sup> The protected contours shown in Exhibit 3 do not represent all of the aural services available in the loss area. So as to limit the clutter on the map exhibit only a sufficient number to conclusively demonstrate that the loss area is "well served" were included.

**Population Study**

The US Census Bureau reports that the community of Gallitzin has a population of 1,756 persons. In the 1990 Census, the last available census for Barnesboro as a community, the population was 2,530 persons. As such, Gallitzin and Barnesboro are similarly sized communities. The total population served by the licensed WHPA operation totals 68,102 Persons whereas the proposed Channel 228 A operation at Gallitzin would serve a population of 176,779 persons<sup>3</sup>. The additional 108,677 persons represents an increase of 159 % in total population served.

**Conclusion**

The public interest is clearly served by the reallocation of Channel 228 A from Barnesboro, PA, a community which no longer exists, to Gallitzin, PA as that community's first local service. Barnesboro, PA (now part of Northern Cambria, PA) will continue to have local service from WNCC (AM) and WPCL (FM). It is therefore appropriate to amend the Table of Allotments, 47 CFR 73.202 (b) as follows:

Community	Present Allocation	Proposed Allocation
Barnesboro, PA, Spangler, PA <sup>4</sup>	228 A, 247 A	----
Northern Cambria, PA	247 A	247 A
Gallitzin, PA	----	228 A

**Certification**

All information in this report and its associated exhibits is true and accurate to the best of my belief. Having had numerous matters before the Commission, my qualifications are a matter of record.

July 27, 2004  
Date

R. Lee Wheeler  
R. Lee Wheeler

<sup>3</sup> The Gallitzin operation 60 dBu service population was determined by assuming flat earth and a Class A contour radius of 28 km.  
<sup>4</sup> The CDBS data entry for WPCL (FM) is ambiguous as it references both Spangler, PA and Northern Cambria, PA. The table of allotments, 47 CFR 73.202 (b), Oct. 2003, Shows WPCL (FM) being licensed to Spangler, PA.

# EXHIBIT 1

Wheeler Broadcast Consulting  
 3718 W. 52nd Terrace Shawnee Mission KS 66205

Vernal Enterprises, Inc.  
 Gallitzin, PA

REFERENCE		DISPLAY DATES
40 36 31 N	CLASS A	DATA 06-06-04
78 36 21 W	Current rules spacings	SEARCH 07-28-04
----- CHANNEL 228 - 93.5 MHz -----		

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
WHPA	228A	Barnesboro	PA	266.0	9.33	115.0	-105.67 *
LIC C	40 36 10	78 42 57	1.300 kW	152M	5.8	71.5	
	Vernal Enterprises Inc.			BLH19990816KB			16
WDHC	228A	Berkeley Springs	WV	163.2	115.00	115.0	0.00 *
LIC CN	39 37 01	78 13 00	3.000 kW	21M	71.5	71.5	
	Capper Broadcasting Company			BMLH19970513KA			23
WBUS	229A	Boalsburg	PA	77.2	73.72	72.0	1.72 <
LIC CN	40 45 08	77 45 16	0.330 kW	415M	45.8	44.8	
	Dame Broadcasting, Llc			BLH19980108KD			08
WQYX	226B1	Clearfield	PA	15.3	49.95	48.0	1.95 <
AUX CN	41 02 32	78 26 54	3.000 kW	29M	31.0	29.8	
	Clearfield Broadcasters, Inc.			BMLH19970508KD			04
WQYX	226B1	Clearfield	PA	8.1	51.54	48.0	3.54
LICNCN	41 04 05	78 31 08	1.700 kW	287M	32.0	29.8	
	Clearfield Broadcasters, Inc.			BLH19960917KA			14
WBZZ	229B	Pittsburgh	PA	261.6	121.73	113.0	8.73
AUX CN	40 26 28	80 01 32	22.500 kW	158M	75.7	70.2	
	Infinity Radio Subsidiary Ope			BLH19920430KH			01
WBZZ	229B	Pittsburgh	PA	261.6	121.73	113.0	8.73
LIC CN	40 26 28	80 01 32	41.000 kW	167M	75.7	70.2	
	Infinity Radio Subsidiary Ope			BMLH19911212KC			28
WQZS	227A	Meyersdale	PA	208.1	102.05	72.0	30.05
LIC C	39 47 49	79 10 05	0.630 kW	294M	63.4	44.8	
	Roger Wahl			BMLH19991118ABA			17
WKBIFM	230B1	St. Marys	PA	355.2	86.68	48.0	38.68
LICNCN	41 23 11	78 41 32	2.350 kW	244M	53.9	29.8	
	The Elk- Cameron Broadcasting			BLH19960925KE			24
WTPA	228A	Mechanicsburg	PA	107.6	154.39	115.0	39.39
LIC CN	40 10 38	76 52 38	1.250 kW	219M	95.9	71.5	
	Cumulus Licensing Corp.			BLH19930409KE			98080 19

Wheeler Broadcast Consulting  
3718 W. 52nd Terrace Shawnee Mission KS 66205

## CLASS A

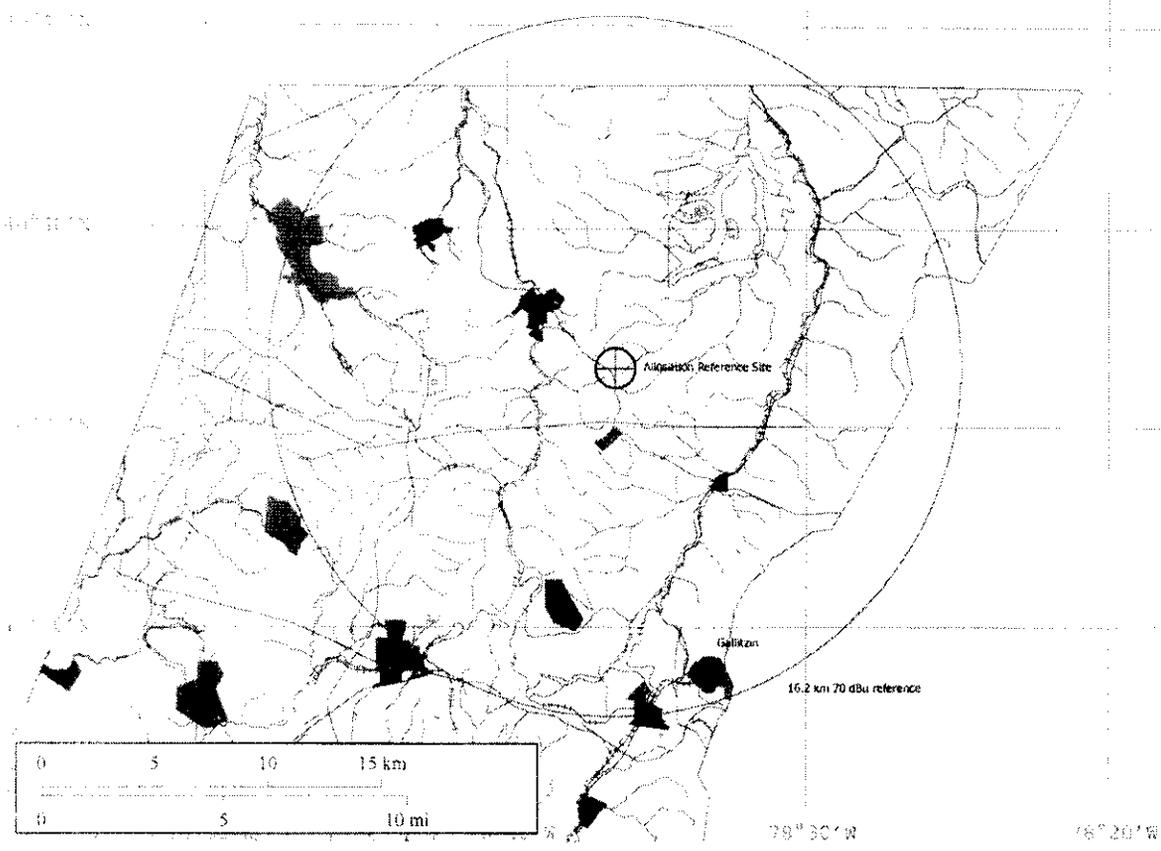
CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
WPXZFM	281A	Punxsutawney	PA	319.6	51.40	10.0	41.40
LIC CN	40 57 36	79 00 08	3.000 kW	90M	32.0	6.2	
	Renda Broadcasting Corporatio			BMLH19980403KF			04

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## **EXHIBIT 2**



# MARPLOT - Cambria County, PA

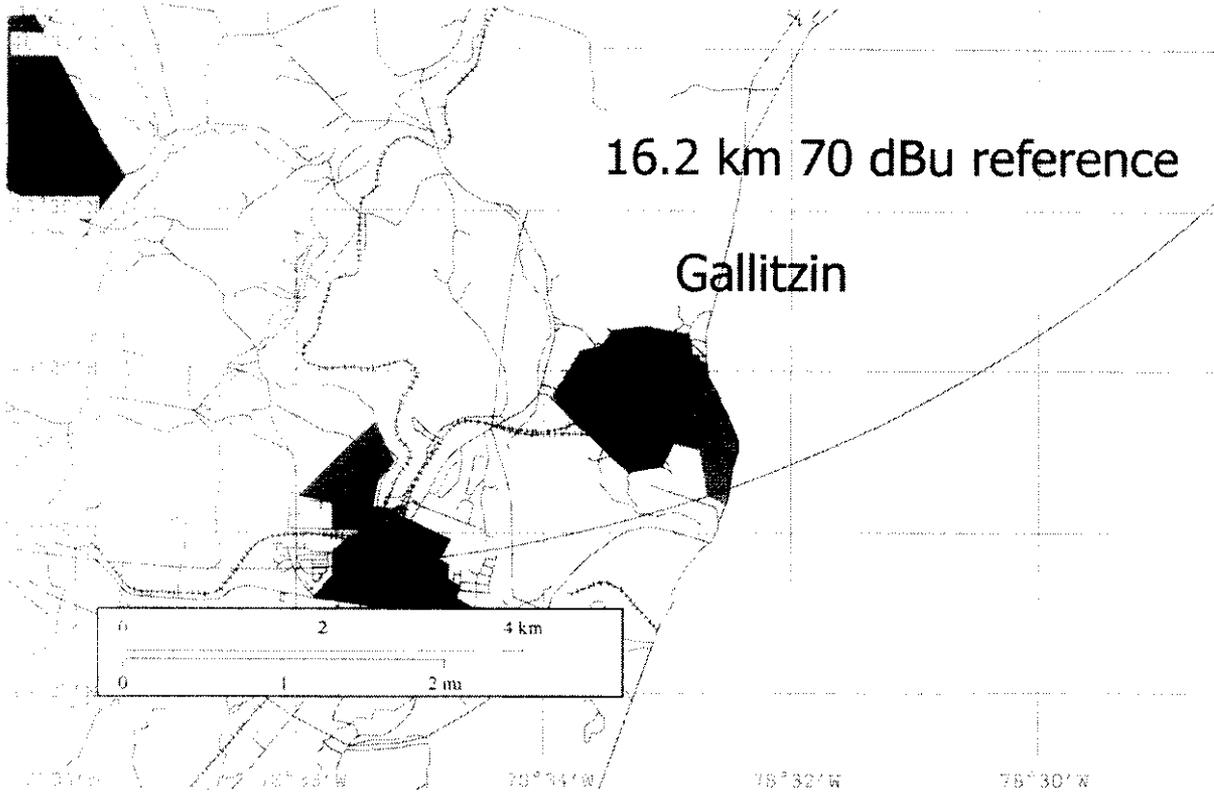


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**EXHIBIT 3**



# MARPLLOT - Cambria County, PA



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**EXHIBIT 4**

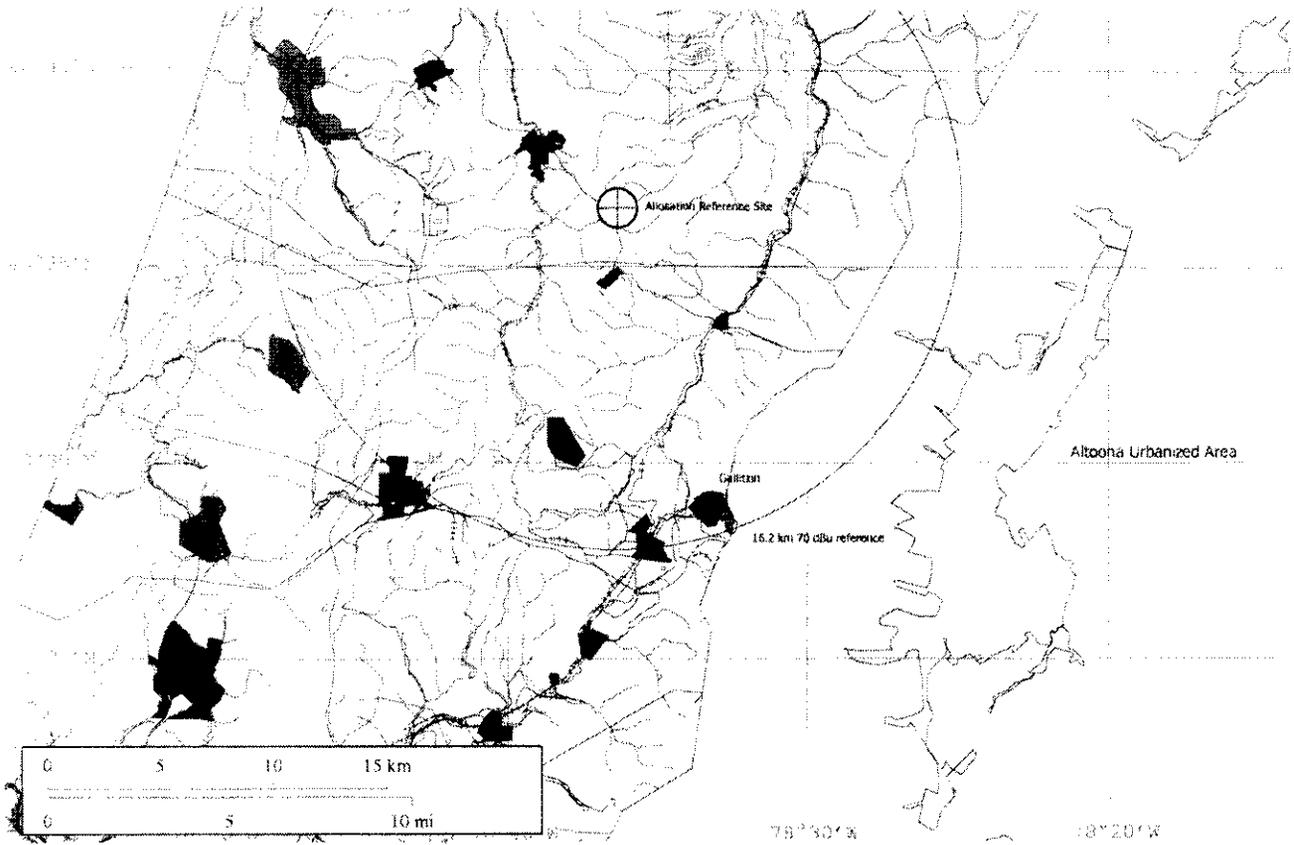


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**EXHIBIT 5**



# MARPLOT - Cambria County, PA



Certificate of Service

I, Yvette J. Graves, hereby certify that on this 9th day of May, 2005, copies of the foregoing "Comments of Vernal Enterprises, Inc." have been served to the following:

\*Deborah A. Dupont  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 2-A762  
Washington, D.C. 20554

  
Yvette J. Graves

\*Via Hand Delivery