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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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MAR 27 2006

In the Matter of

Federal Communications Commission
Office of Secretary

Amendment of Section 73.202(b))	
Table of Allotments)	MB Docket No. 03-44
FM Broadcast Stations)	RM - 10650
(Water Mill and Noyack, New York))	
)	

To: Office of the Secretary
Attn: Audio Division, Media Bureau

PETITION FOR RECONSIDERATION

Sacred Heart University, Inc. ("SHU"), by its counsel, hereby petitions for reconsideration of the decision by the Media Bureau (the "Bureau") in the above captioned proceeding.¹ SHU does not disagree with the Bureau's decision to allot Channel 233A instead of the proposed Channel 277A at Water Mill, New York; however, the Bureau erred in failing to consider SHU's counterproposal requesting the reservation of Channel *277A at Noyack, New York and the modification of SHU's license for NCE Station WSUF(FM) to specify that channel.² In support hereof, SHU states as follows:

I. Background.

1. SHU operates FM translator W277AB at Noyack, New York and the allotment of Channel 277A at Water Mill as proposed would have forced SHU to cease operation of its translator. Thus, SHU filed Comments and a Counterproposal in this proceeding on April 11, 2003, which proposed an alternate channel (Channel 233A) at Water Mill that would (i) satisfy

¹ Public Notice of the Bureau's decision was released on February 23, 2006. See 71 Fed. Reg. 9266. Thus, this petition is timely filed. See 47 C.F.R. 1.106(f); 1.429(d).

² Monroe Board of Education ("Monroe") filed a Petition for Reconsideration on March 22, 2006. Public Notice of Monroe's Petition was released on March 24, 2006. See Report No. 2766. SHU intends to file an opposition pleading to the Petition within the time limit for filing such oppositions.

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the interest in operating a station at Water Mill expressed by the Petitioner, Isabel Sepulveda, and (ii) allow SHU to continue operating its translator. SHU also proposed, in lieu of allotting Channel 277A at Water Mill, the allotment of Channel *277A to Noyack, New York, which would actually constitute an improvement for WSUF(FM)'s signal. The Bureau granted SHU's request to allot Channel 233A at Water Mill, but completely ignored SHU's request to allot Channel *277A at Noyack. Thus, SHU requests reconsideration of its proposal to allot Channel *277A at Noyack because this proposal is in the public interest.

2. SHU's proposal for Channel *277A at Noyack was a Counterproposal to the allotment of Channel 277A at Water Mill. SHU proposed that this channel be reserved for noncommercial educational (NCE) use and that the license for SHU's NCE Station WSUF(FM) be modified to specify Channel *277A instead of Channel 210B1. SHU demonstrated that (i) this proposal was mutually exclusive with the proposal for Channel 277A at Water Mill, (ii) the proposal was in the public interest because it would permit Station WSUF(FM) to eliminate the protection it must provide to a Channel 6 TV station, and (iii) the Commission had the authority to modify the license of a NCE station to specify a reserved channel in the commercial band.³ SHU also indicated that it would apply for Channel *277A and construct the facilities as authorized.

3. The proposal, if granted, will permit SHU to operate NCE Station WSUF(FM) with optimal facilities and to expand its valuable local NCE programming to a larger audience. The Commission has held that, in order to justify reservation of a commercial channel for NCE use (here Channel *277A), a party must demonstrate that the NCE band (Channels 201-220) is

³ See e.g., *Siloam Springs, Arkansas*, 2 FCC Rcd 7485 (1989) *aff'd* 4 FCC Rcd 4920 (1989); *Bulls Gap, Tennessee*, 10 FCC Rcd 10444 (1995).

precluded from being used.⁴ Traditionally preclusion can be demonstrated by the presence of a TV channel 6 Grade B contour overlapping the reference coordinates of the proposed NCE station, and SHU submitted technical exhibits that demonstrated that (i) NCE Station WSUF(FM) on Channel 210B1 currently operates with a directional antenna that is vertically polarized to protect TV Channel 6 Station WLNE, New Bedford, Massachusetts, and (ii) no other channels in the reserved portion of the FM band were available. SHU recognizes that it is asking the Commission to modify its facilities to go from Class B1 to Class A. This change, however, actually results in an improvement in WSUF(FM)'s facilities because, by operating on Channel *277A (instead of Channel 210B1), WSUF(FM) will no longer need to use a directional antenna to protect Channel 6 Station WLNE.

4. The Bureau, however, did not issue a Public Notice and request comments. While the Bureau did mention the existence of SHU's proposal for Channel *277A at Noyack in the *R&O*, it did not state why the proposal was not accepted and considered. For that reason, SHU requests that the Bureau reconsider its decision and accept SHU's proposal to allot Channel *277A at Noyack. It can do so by issuing a Public Notice soliciting comment. This will permit the original Petitioner, Isabel Sepulveda, and other interested parties to comment on this proposal as well as the Channel 233A alternate proposal for Water Mill. In addition, this Public Notice would allow the Commission to consider if there is still an expression of interest in allotting a channel at Water Mill. The original Petitioner, Isabel Sepulveda, has not filed a pleading in this proceeding for over three years and it is possible that she is no longer interested in a channel at Water Mill. Thus, in order to ensure that the public interest is served by an allotment at Water

⁴ See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 15 FCC Rcd 7386 (2000).

Mill (to the detriment of a number of translator stations that provide valuable local service) the Commission should specifically request that Ms. Sepulveda continue to express her interest.

II. Monroe's Arguments do not Warrant Reversal of the Decision.

5. Monroe's single substantive argument is that the allotment of Channel 233A at Water Mill "will cause severe interference to Monroe's three licensed translator stations."⁵ However, as Monroe acknowledges, translators are a secondary service and are not entitled to any protection from full-power stations.⁶ The Commission can, and often does, allot full power FM channels or permit modifications to existing FM stations that, unfortunately, force translators to modify their facilities or cease operating. For this reason alone, Monroe's Petition for Reconsideration should be dismissed because it does not allege a cognizable harm that the Commission can remedy.

6. There are also several procedural and legal defects associated with Monroe's Petition, which SHU will comment on when it files its opposition pleading. However, at this time, SHU would like to comment on the technical allegations made by Monroe. Specifically, Monroe alleges that the allotment of Channel 233A at Water Mill "will cause severe interference to Monroe's three licensed translator stations: W233AI (Sag Harbor, New York), W233AJ (Old Saybrook, Connecticut), and W233AG (New London, Connecticut). In regard to Station W233AG, this statement is wrong and in regard to the other two stations (W233AI and W233AJ), Monroe can make minor modifications to these facilities that will eliminate any interference without impacting the population served by Monroe.

7. As demonstrated in the attached Engineering Statement, the allotment of Channel 233A at Water Mill does not create any prohibited overlap to Station W233AG and Monroe can

⁵ See *Monroe Petition*, at p. 2.

⁶ 47 C.F.R. § 74.1203.

continue to operate that station without modifying its facilities.⁷ In regard to Station W233AJ, the Engineering Statement demonstrates that Monroe can make a slight modification to its facilities in order to avoid prohibited overlap to Channel 233A at Water Mill. *See* Figure 2 to the attached Engineering Statement. This modification will not result in the loss of any population served. Finally, in regard to Station W233AI, the Engineering Statement shows that Monroe can file a minor change application to specify operation on Channel 286. This is considered a minor modification because Channel 286 is on an intermediate frequency (IF) channel.⁸ The Engineering Statement clearly demonstrates that the technical problems asserted by Monroe can be overcome with modifications to its own facilities for two of the translators (W233AI and W233AJ) and that alleged interference to the third translator (W233AG) has no basis under the Commission's Rules.

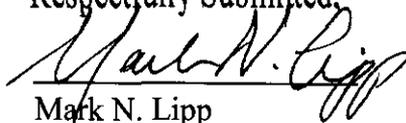
III. Conclusion.

As stated above, SHU believes that the Bureau erred in not considering its proposal to allot Channel *277A at Noyack and reserve it for NCE use. Thus, SHU requests that the Bureau reconsider its decision and evaluate the public interest benefits of SHU's proposal by issuing a Public Notice. As for Monroe's Petition for Reconsideration, Monroe overstates the harm that the allotment of Channel 233A at Water Mill can cause to its translators. Therefore, there is no basis to reverse the allotment of Channel 233A to Water Mill, New York.

⁷ Specifically, Figure 1 to the attached Engineering Statement demonstrates that the protected contour of Channel 233A at Water Mill (the 60 dBu contour) does not overlap the interfering contour of Station W233AG (the 40 dBu contour).

⁸ *See* 47 C.F.R. § 74.1233(a)(1).

Respectfully Submitted,



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March 27, 2006

**ENGINEERING STATEMENT IN
SUPPORT OF
PETITION FOR RECONSIDERATION
MB DOCKET NO. 03-44 RM-10650
WATER MILL AND NOYACK, NEW YORK**

MARCH 2006

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SUMMARY

The following engineering statement has been prepared on behalf of **Sacred Heart University, Inc.** (“**Sacred Heart**”), licensee of FM translator W277AB and station WSUF(FM), both Noyack, New York. **Sacred Heart** offered a counterproposal in the above noted Rule Making proceeding, seeking to protect Channel 277 at Noyack by proposing, in part, Channel 233A for Water Mill. The Audio Division granted that part of **Sacred Heart’s** counterproposal, allotting Channel 233A to Water Mill.

The Monroe Board of Education (“**MBE**”) opposes the decision, citing that three translators it operates in Connecticut and New York on Channel 233 would be displaced. The purpose of this statement is to demonstrate that **MBE’s** two Connecticut translators can remain on Channel 233 without violating the Commission’s technical Rules and that the New York translator can be moved to Channel 286 and continue to provide service to the public without any loss of population in the predicted 60 dBu.

MONROE CH 233 TRANSLATORS LOCATED IN CONNECTICUT

MBE owns W233AJ Old Saybrook, Connecticut and W233AG New London, Connecticut. *Figure 1* depicts the licensed W233AJ and W233AG 60 dBu F(50,50) and 40 dBu F(50,10) contours in relation to the 60 dBu contour for Channel 233A at the Water Mill, New York allotment coordinates. It is seen that the W233AG 40 dBu contour does not overlap the Water Mill 60 dBu contour. The W233AG translator facilities complies fully with *FCC Rule Section 74.1204* and will not be required to leave the air due to prohibited contour overlap.

Figure 2 depicts a minor modification to the W233AJ facility for purposes of removing the minor prohibited contour overlap to the Water Mill 60 dBu on Long Island. The modification is achieved by adding a slight null to the antenna pattern as depicted on Figure 3. It is noted that the 60 dBu contour still extends out to the south to the water, indicating no loss of population served. 15,836 persons are located in the licensed 60 dBu contour and that same population is located in the modified 60 dBu contour.

Based on the analysis herein, both W233AJ and W233AG may continue to operate on Channel 233 in compliance with *FCC Rule Section 74.1204* providing full contour protection to the Water Mill 60 dBu contour.

MONROE, NEW YORK TRANSLATOR W233AI

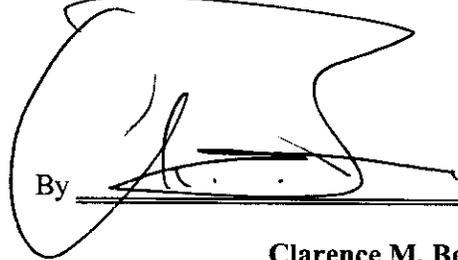
Figure 4 depicts the MBE W233AI 60 dBu and the **Sacred Heart** W277AB 60 dBu. The W277AB facility is grandfathered and cannot be replicated if required to change frequency. There are 33,380 persons in the W277AB 60 dBu contour. W233AI is a translator which complies with 74.1235 and can change channel without loss of service. There are 11,273 persons in the W233AI 60 dBu.

Channel 286 is available for use by W233AI at this time. As an I.F. related channel to Channel 233, an application specifying Channel 286 would be a minor change application and can be filed by MBE at any time. Map Figure 5 is an allocation map demonstrating compliance with FCC interference *Rule Section 74.1204* for the authorized W233AI ERP and HAAT on Channel 286.

CONCLUSION

It has been demonstrated herein that Monroe Board of Education's Petition for Reconsideration is in error. The Petition states that, if Channel 233A is allotted, the services of W233AG, W233AJ and W233AI will be displaced. That is not correct. It has been shown herein that W233AG is in full compliance with the interference protection rules found in Part 74, Subpart L of the Rules. It has been demonstrated that the W233AJ facility can be easily modified to comply with the interference protection rules with no loss of population in the 60 dBu contour. Finally, it has been demonstrated that W233AI may move to Channel 286D, as a minor change, with no loss of service.

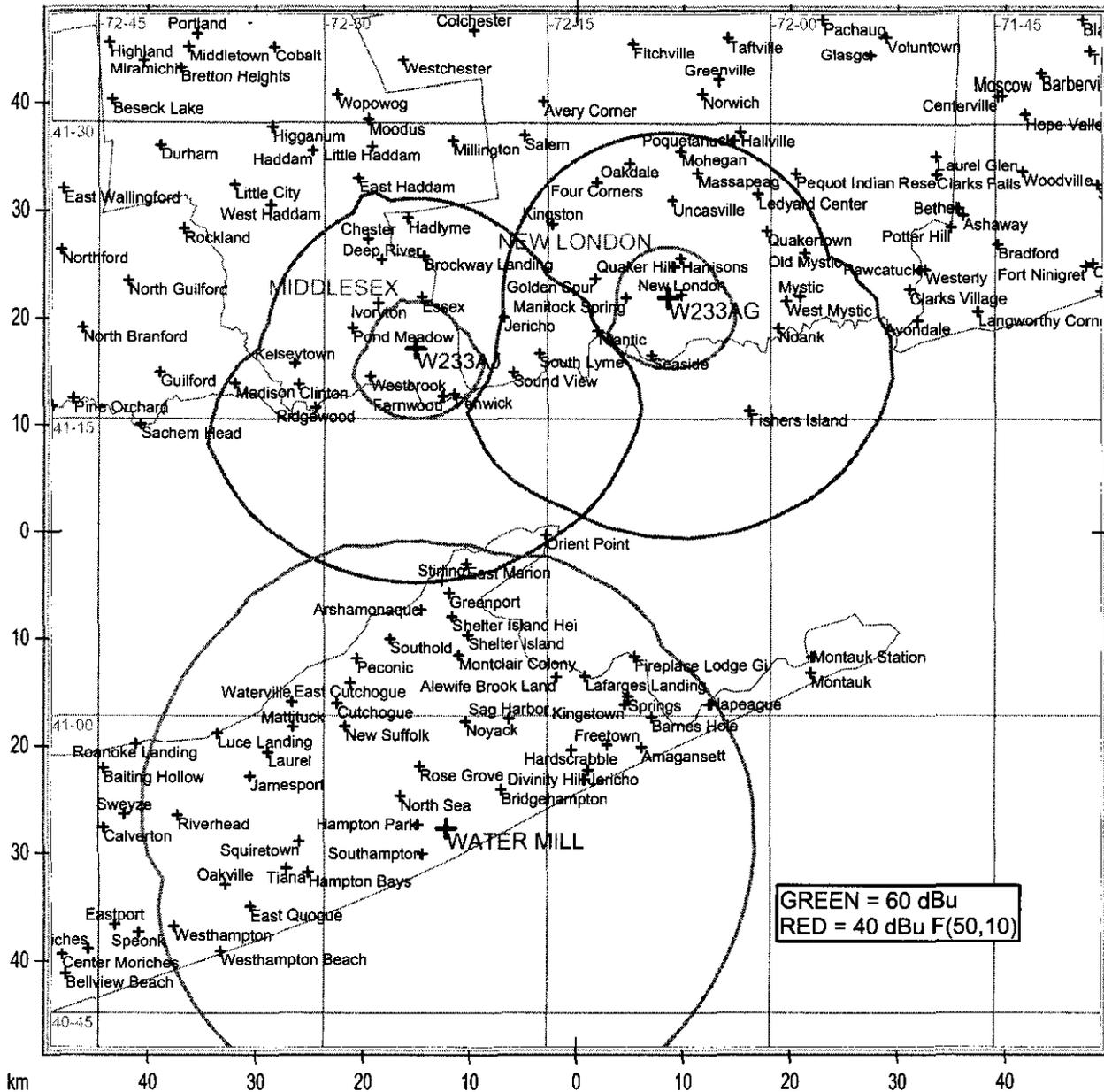
The foregoing was prepared on behalf of **Sacred Heart University, Inc.** by Clarence M. Beverage of *Communications Technologies, Inc.*, Marlton, New Jersey, whose qualifications are a matter of record with the Federal Communications Commission. The undersigned certifies, under penalty of perjury, that the statements herein are true and correct of his own knowledge, except such statements made on information and belief, and as to these statements he believes them to be true and correct.

By  _____

Clarence M. Beverage
for Communications Technologies, Inc.
Marlton, New Jersey

March 24, 2006

W233AJ & W233AG LICENSED CONTOURS IN RELATION TO CH 233A WATER MILL, NY 60 dBu



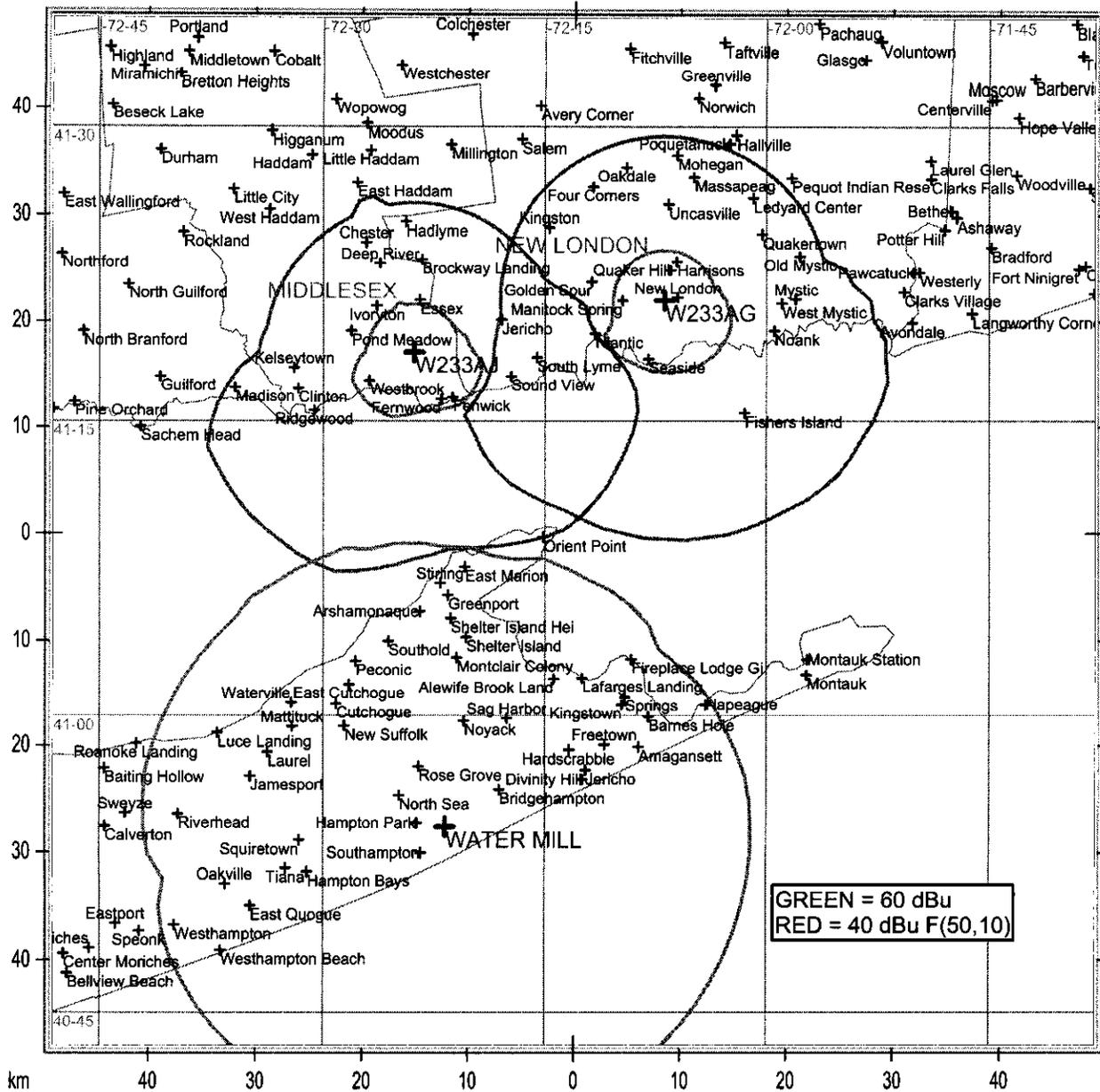
Communications Technologies, Inc. Marlton, New Jersey

County Borders Lat/Lon Grid

Map Scale: 1:599808 1 cm = 6.00 km V/H Size: 96.15 x 97.76 km

Figure 1

W233AJ MODIFIED & W233AG LICENSED CONTOURS IN RELATION TO CH 233A WATER MILL, NY 60 dBu

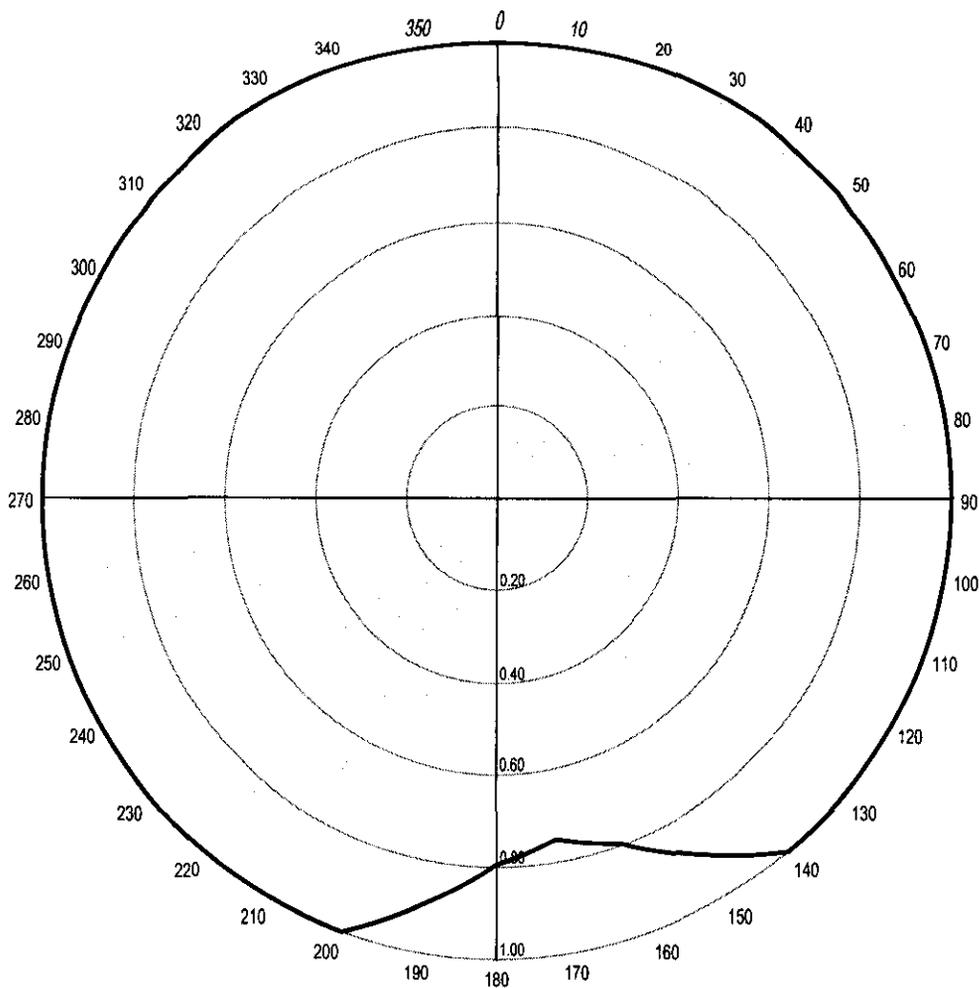


Communications Technologies, Inc. Marlton, New Jersey

County Borders Lat/Lon Grid

Map Scale: 1:599808 1 cm = 6.00 km V/H Size: 96.15 x 97.76 km

Figure 2



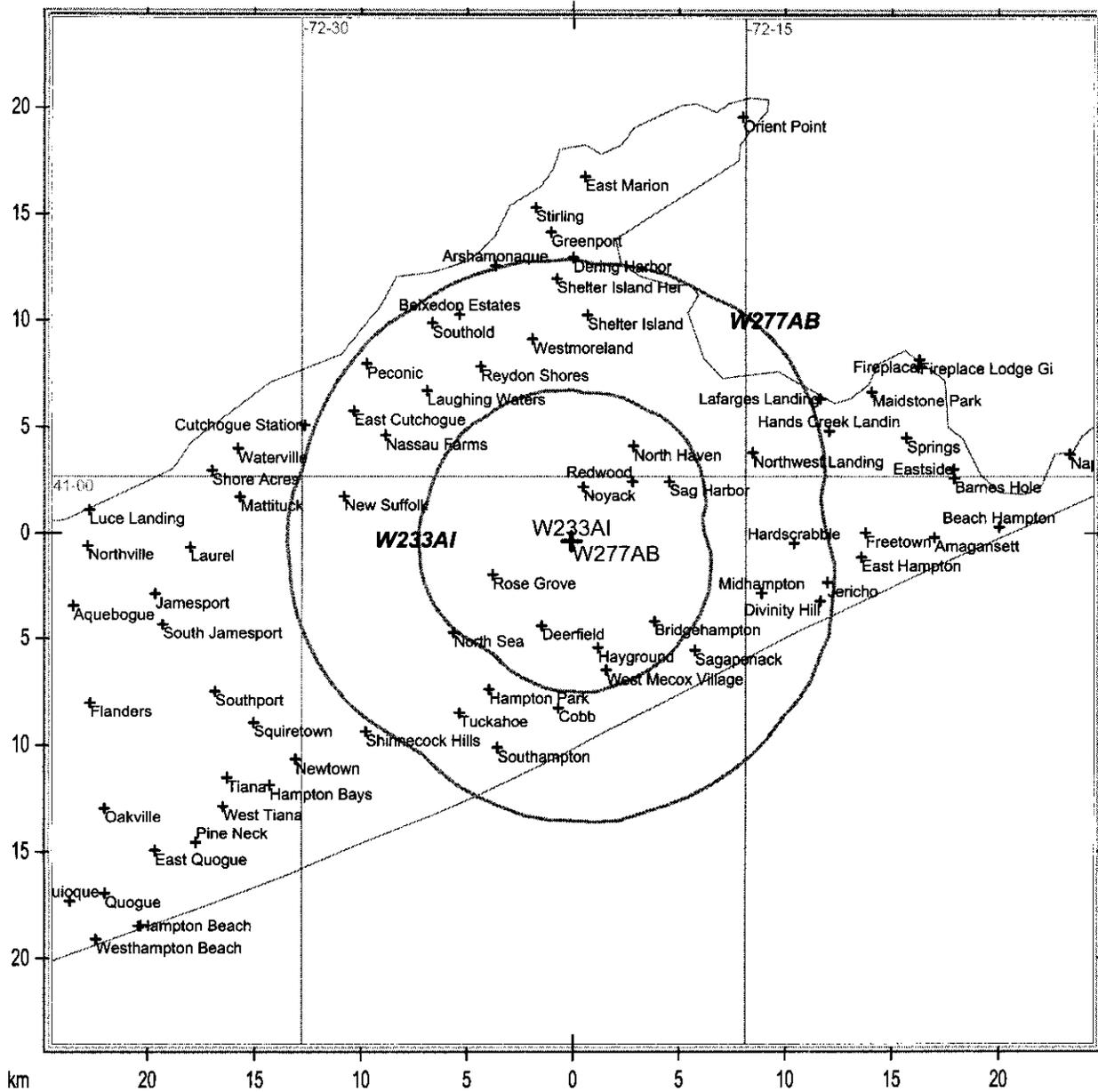
Azim	Rel.FS	ERP [W]	dBk
0.0	1.000	38.000	-14.202
5.0	1.000	38.000	-14.202
10.0	1.000	38.000	-14.202
15.0	1.000	38.000	-14.202
20.0	1.000	38.000	-14.202
25.0	1.000	38.000	-14.202
30.0	1.000	38.000	-14.202
35.0	1.000	38.000	-14.202
40.0	1.000	38.000	-14.202
45.0	1.000	38.000	-14.202
50.0	1.000	38.000	-14.202
55.0	1.000	38.000	-14.202
60.0	1.000	38.000	-14.202
65.0	1.000	38.000	-14.202
70.0	1.000	38.000	-14.202
75.0	1.000	38.000	-14.202
80.0	1.000	38.000	-14.202
85.0	1.000	38.000	-14.202

Azim	Rel.FS	ERP [W]	dBk
90.0	1.000	38.000	-14.202
95.0	1.000	38.000	-14.202
100.0	1.000	38.000	-14.202
105.0	1.000	38.000	-14.202
110.0	1.000	38.000	-14.202
115.0	1.000	38.000	-14.202
120.0	1.000	38.000	-14.202
125.0	1.000	38.000	-14.202
130.0	1.000	38.000	-14.202
135.0	1.000	38.000	-14.202
140.0	1.000	38.000	-14.202
145.0	0.945	33.935	-14.694
150.0	0.891	30.167	-15.205
155.0	0.842	26.941	-15.696
160.0	0.794	23.957	-16.206
165.0	0.771	22.589	-16.461
170.0	0.749	21.318	-16.713
175.0	0.771	22.589	-16.461

Azim	Rel.FS	ERP [W]	dBk
180.0	0.794	23.957	-16.206
185.0	0.842	26.941	-15.696
190.0	0.891	30.167	-15.205
195.0	0.945	33.935	-14.694
200.0	1.000	38.000	-14.202
205.0	1.000	38.000	-14.202
210.0	1.000	38.000	-14.202
215.0	1.000	38.000	-14.202
220.0	1.000	38.000	-14.202
225.0	1.000	38.000	-14.202
230.0	1.000	38.000	-14.202
235.0	1.000	38.000	-14.202
240.0	1.000	38.000	-14.202
245.0	1.000	38.000	-14.202
250.0	1.000	38.000	-14.202
255.0	1.000	38.000	-14.202
260.0	1.000	38.000	-14.202
265.0	1.000	38.000	-14.202

Azim	Rel.FS	ERP [W]	dBk
270.0	1.000	38.000	-14.202
275.0	1.000	38.000	-14.202
280.0	1.000	38.000	-14.202
285.0	1.000	38.000	-14.202
290.0	1.000	38.000	-14.202
295.0	1.000	38.000	-14.202
300.0	1.000	38.000	-14.202
305.0	1.000	38.000	-14.202
310.0	1.000	38.000	-14.202
315.0	1.000	38.000	-14.202
320.0	1.000	38.000	-14.202
325.0	1.000	38.000	-14.202
330.0	1.000	38.000	-14.202
335.0	1.000	38.000	-14.202
340.0	1.000	38.000	-14.202
345.0	1.000	38.000	-14.202
350.0	1.000	38.000	-14.202
355.0	1.000	38.000	-14.202

W277AB NOYACK, NY AND W233AI SAG HARBOR, NY



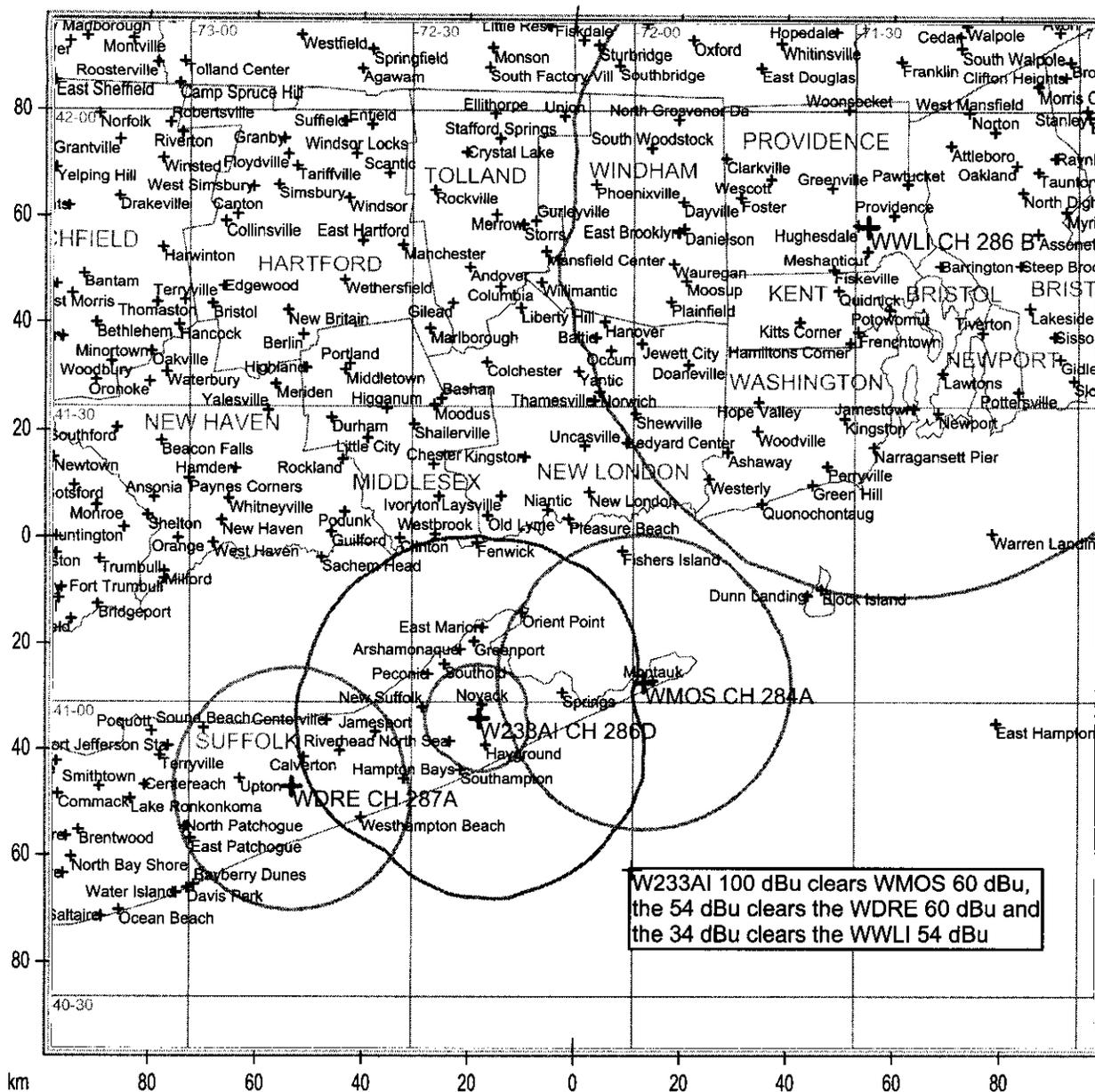
Communications Technologies, Inc. Marlton, New Jersey

County Borders Lat/Lon Grid

Map Scale: 1:299904 1 cm = 3.00 km V/H Size: 48.08 x 48.88 km

Figure 4

W233AI SAG HARBOR, NY PROPOSED CH 286D ERP 27 WATTS @ 48 M HAAT



Communications Technologies, Inc. Marlton, New Jersey

County Borders Lat/Lon Grid

Map Scale: 1:1199616 1 cm = 12.00 km V/H Size: 192.30 x 195.53 km

Figure 5

CERTIFICATE OF SERVICE

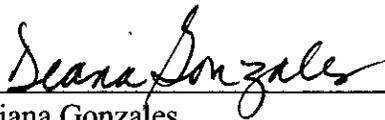
I, Diana Gonzales, hereby certify that on this 27th day of March, 2006, copies of the foregoing "**Petition for Reconsideration**" unless otherwise noted were sent via first-class mail, postage prepaid, to the following:

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