

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

RECEIVED

JUL - 3 2006

In the Matter of )  
)  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations. )  
(Dundee and Odessa, New York) )

Federal Communications Commission  
Office of Secretary

MB Docket No. 06-97  
RM-11254

To: Office of Secretary  
Attention: Assistant Chief, Audio Division, Media Bureau

**COMMENTS ON NOTICE OF PROPOSED RULEMAKING AND COUNTERPROPOSAL**

Bible Broadcasting Network, Inc. ("BBN"), by its attorneys, and pursuant to Section 1.420(d) of the Commission's Rules, hereby files the Counterproposal to the proposal set forth in the Commission's Notice of Proposed Rule Making, *Dundee and Odessa, New York*, DA 06-988, released May 12, 2006 ("NPRM").<sup>1</sup> In support whereof, the following is shown:

1. The NPRM was issued by the Audio Division at the request of Finger Lakes Radio Group, Inc. ("Petitioner"), requesting the reallocation and change of community of license for its Station WFLR-FM from Channel 240A at Dundee, New York, to Channel 238A at Odessa, New York.<sup>2</sup> Petitioner contends that the reallocation would satisfy Priority 3 of the FM Allotment Priorities<sup>3</sup> by authorizing a first local aural transmission service at Odessa (pop. 617), whereas

<sup>1</sup> Comments and Counterproposals are due by July 3, 2006, so this Counterproposal is timely filed.

<sup>2</sup> The NPRM indicates that a one-step application (File No. BPH-20040317AAL) was granted on April 19, 2005, to substitute Channel 238A for Channel 240A at Dundee. The Petitioner now has a construction permit for Channel 238A at Dundee but is still operating pursuant to a license on Channel 240A at Dundee.

<sup>3</sup> 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. [Co-equal weight is given to priorities (2) and (3)]. See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88, 91 (1988).

No. of Copies rec'd 0 + 4  
List A B C D E

maintaining the *status quo* would result in the retention of the station at Dundee (pop. 1,690) as a second local service would trigger less significant Priority 4.

2. BBN proposes to allot Channel 238A at Savona, NY.<sup>4</sup> Attached hereto, and incorporated herein by reference, is an Engineering Report prepared by BBN's consulting engineers. According to the 2000 Census, Savona had a population of 822 which is larger than Odessa, and the use of Channel 238A at Savona would be preferred under the FM Allotment Priorities (Priority 3 – first local service). Savona has its own U.S. Post Office, volunteer fire department, a village office, a court, a local school and a library. In addition, Savona has various commercial establishments.

3. Should the Commission allot Channel 238A to Savona, NY, BBN will file an application on FCC Form 175 during the applicable window period and, if BBN receives a construction permit, BBN will promptly construct and operate a station on Channel 238A at Savona.

Accordingly, BBN requests that the Table of Allotments be revised to read as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Dundee, New York	240A	---
Savona, New York	---	238A

---

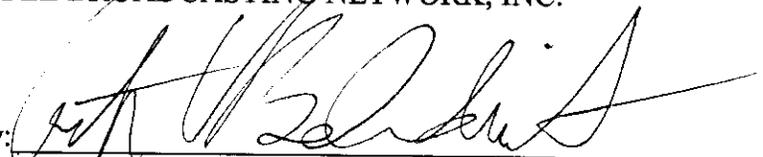
<sup>4</sup> Although BBN is a noncommercial educational licensee, if the Commission allots Channel 238A to Savona, NY, it will file FCC form 175 and bid for the construction permit since Channel 238A may not be reserved for noncommercial educational use.

In light of the foregoing, BBN respectfully requests the Commission to reserve Channel  
238A at Savona, NY.

Respectfully submitted,

BIBLE BROADCASTING NETWORK, INC.

By:



Gary S. Smithwick  
Arthur V. Belendiuk  
Its Attorneys

SMITHWICK & BELENDIUK, P.C.  
5028 Wisconsin Avenue, NW  
Suite 301  
Washington, DC 20016

202-363-4560

July 3, 2006

**ENGINEERING REPORT  
IN SUPPORT OF A  
PETITION FOR A  
COUNTERPROPOSAL  
RULEMAKING**

**New Channel 238A  
Savona, NY**

**July 2006**

COPYRIGHT 2006

**MUNN-REESE, INC.**  
Broadcast Engineering Consultants  
Coldwater, MI 49036

## **TABLE OF CONTENTS**

---

### **Petition for a Counterproposal Rulemaking**

1. Certification of Engineers
2. Discussion of Report
3. Exhibit 1.0 - Topographic Map of Special Reference Point
4. Exhibit 1.1 - Photograph of Special Reference Point
5. Exhibit 1.2 - City Coverage Study Towards Savona, NY
6. Exhibit 1.3 - Terrain Profile Study for Savona, NY
7. Exhibit 2.0 - Savona, NY Community Showing Requirements
8. Exhibit 3.0 - Tabulation of Proposed Spacings for Channel 238A at Savona, NY

### **Discrepancies as Detected in MB Docket No. 06-97; RM-11254 and BPH-20040317AAL**

9. Exhibit 4.0 - Topographic Map of Construction Permit Site in Relation to Sugar Hill Tower
10. Exhibit 4.1 - Identification of Sugar Hill Fire Tower as Historic Landmark
11. Exhibit 5.0 - Construction Permit Coverage Map Showing no need for Rulemaking
12. Exhibit 6.0 - Dates of Construction Permit and Rulemaking Filings.

## **CERTIFICATION OF ENGINEERS**

The firm of Munn-Reese, Inc., Broadcast Engineering Consultants, with offices at 385 Airport Drive, Coldwater, Michigan, has been retained for the purpose of preparing the technical data forming this report.

The data utilized in this report was taken from the FCC Secondary Database and data on file. While this information is believed accurate, errors or omissions in the database and file data are possible. This firm may not be held liable for damages as a result of such data errors or omissions.

The report has been prepared by properly trained electronics specialists under the direction of the undersigned whose qualifications are a matter of record before the Federal Communications Commission.

I declare under penalty of perjury that the contents of this report are true and accurate to the best of my knowledge and belief.

July 3, 2006

**MUNN-REESE, INC.**

By Wayne S. Reese  
Wayne S. Reese, President

By Justin W. Asher  
Justin W. Asher, Project Engineer

385 Airport Drive, PO Box 220  
Coldwater, Michigan 49036

Telephone: 517-278-7339

**MUNN-REESE, INC.**  
Broadcast Engineering Consultants  
Coldwater, MI 49036

## **Discussion**

---

The office of Munn-Reese, Inc. has been retained to prepare this engineering report for Bible Broadcasting Network, Inc. in support of a Counterproposal to amend the FM Table of Allotments found in 47 CFR §73.202(b). This Counterproposal is being filed in response to the Petition for Rule Making by Finger Lakes Radio Group in MB Docket 06-97 (RM-11254) (the "Petition").

The Petition proposes to reallocate Channel 240A from Dundee, NY to CH238A, Odessa, NY and reserve the allotment for licensed station WFLR-FM. WFLR-FM holds license BLH-19860807KB for operation on CH240A from a site north of Dundee, NY. In addition, WFLR-FM holds Construction Permit BPH-20040317AAL to relocate to CH238A from a site south of Dundee. (This Construction Permit appears to be a blocking application filed for the purpose of protecting the Finger Lakes Rulemaking proceeding, therefore the Construction Permit should be dismissed with prejudice. This issue will be discussed further in detail here-in.)

This Counterproposal requests Channel 240A remain allotted to Dundee, NY and CH238A be allotted to Savona, NY. This Engineering Report demonstrates Savona, NY is a superior community and may be allocated an FM facility on Channel 238A without the need to move or reallocate any existing service. The Counterproposal would maintain the Dundee allotment as well as create a new Savona, NY allotment available to all applicants. In addition, this counterproposal would not create any loss area as opposed to the original Rulemaking's removal of the Dundee CH240A facility in favor of the CH238A Odessa allotment.

**CH238A - Savona, NY - Special Reference Point.** As stated before, the allotment of Channel 238A for Savona, NY would result in a preferential arrangement of the allotments. A study was made of the Channel 238A allocation at Savona, NY using the special reference point defined by the coordinates: 42° 17' 02" NL and 77° 07' 15" WL. Information regarding the availability of this site has been included in **Exhibit(s) 1.0 to 1.3**. A USGS photograph and topographic map of the site has been included in **Exhibit(s) 1.0-1.1**. The proposed site is located 275 meters north of Bailey Rd., which is a reasonable distance for electrical service. 100% city coverage of Savona, NY may be accomplished by the standard 16.3 km reference arc representing 70 dBu city coverage at the allotment stage. In fact, the special reference point is roughly half that distance at only 8.1 km. City coverage has been included in **Exhibit 1.2**. It is anticipated arguments will be made that "true" line of site cannot be achieved from the special reference point to the center of Savona. However, inspection of the Savona, NY terrain profile in **Exhibit 1.3** shows the city to be located in a convergence of three river valleys with radically varying terrain elevations on essentially all sides ranging upwards of over 200 meters in as little as 4 kilometers. Because of its low valley floor elevation and the unique nature of the box-like canyon walls, "true" line of site into Savona is possible only in a small number of directions. Therefore, Savona should not be penalized solely due to this secondary factor alone.

**CH238A - Savona, NY - Community Showings.** For Section 307(b) showings, Savona, NY is a an independent village with a U.S. Census Population of 822 persons as opposed to the Odessa, NY U.S. Census Population of 617. The village of Savona houses its own US Post Office and Zip Code of 14879. In addition, the village has other independent community defining entities such as a volunteer fire department, a village office, a court, a local school and library. Savona also has other various commercial establishments which are identified with Savona. **Exhibit 2.0** includes phone numbers and addresses of various Savona

businesses and organizations obtained from a simple internet search. While sufficient evidence is believed provided to establish the community as an independent entity, additional information will be supplied upon request.

**CH238A - Savona, NY – Allotment.** Using a currently updated secondary copy of the FCC database of FM broadcast stations, the Tabulation of Allocation Spacing found in **Exhibit 3.0** was developed. Inspection of this tabulation shows under the current rules, the proposed reference point meets all domestic spacing requirements with the exception of the RADD CH238A – Odessa, NY Rulemaking against which this Counterproposal is filed, and WFLR-FM, File No. BPH-20040317AAL which has not been protected as this Construction Permit is believed to be a blocking application and filed for the express purpose of protecting the original Rulemaking. This Construction Permit should be dismissed, with prejudice, for the reasons stated below.

**Discrepancies as Detected in MB Docket No. 06-97; RM-11254 and BPH-20040317AAL.** There are three factors in the WFLR-FM Construction Permit and Rulemaking proceedings which gives Finger Lakes an unfair advantage. It appears that the Construction Permit serves as a “blocking” application to ensure Finger Lakes exclusive access to a portion of the FM bandwidth, while excluding other potentially interested parties. Unfortunately, this “blocking” maneuver was not apparent until the Construction Permit and Rulemaking time line was looked at as a whole.

First, the Construction Permit site is located next to a historic landmark. **Exhibit 4.0** is a topographic map of the Construction Permit site in relation to the Sugar Hill Historic Fire Tower. The Sugar Hill Fire Tower is a historic landmark as noted in **Exhibit 4.1**. The tower is the property of the New York State Department of Environmental Conservation. There is a real question as to whether a tower can be built so close to a historical structure, especially in light of the Commission's recent emphasis on environmental concerns noted in the newly enforced National Programmatic Agreement. Because the WFLR-FM Construction Permit filing predated

the mandatory March 2005 "NPA" deadline, no Section 106 filing and SHPO review was submitted. *Such a review would have more than likely echoed these environmental concerns.* It is noted, however, that the Construction Permit was still in processing as of the March 2005 deadline and was not granted until April 19, 2005, therefore Section 106 and SHPO concurrence may still be retroactive. It is not known to what extent Finger Lakes has pursued the Sugar Hill Fire Tower historic site as a buildable site location or if Section 106 Filing and SHPO concurrence has been undertaken or is even applicable.

Second, a change of the community of license from Dundee to Odessa will not serve the community interest. The Rulemaking itself is not even required if Finger Lakes intends to build the granted Construction Permit. Inspection of the WFLR-FM Construction Permit BPH-20040317AAL, "Ex 22-Community Coverage Map", included here-in as **Exhibit 5.0**, shows appropriate 70 dBu coverage of the community of Dundee, NY. The Community Coverage Map also shows 70 dBu community coverage of Odessa, NY<sup>1</sup>. It follows that if Finger Lakes' intention is to serve Odessa then there would be no need for the Odessa City of License Rulemaking process at all. The Construction Permit will provided the necessary city grade coverage over Odessa while still serving Dundee. It appears that Finger Lakes never intended to build the Construction Permit, rather it was filed as a "blocking" application for the purpose of protecting its future Rulemaking plans.

Third, further evidence this is a "blocking" application is evident in the timing of the Construction Permit Application and Rulemaking proceeding itself. Given that Rulemaking Proposals and Counterproposals must protect all valid licenses, valid construction permits and valid applications, any Counterproposal to the original CH238A Odessa, NY Rulemaking would by law have to protect the WFLR-FM Construction Permit, thus ensuring exclusivity against a

---

<sup>1</sup> While Odessa, NY is not explicitly denoted on this map, community boundaries similar to the US Census 2000 Odessa city limits are present near the southeast portion of the 70 dBu coverage contour. Likewise, a map with these same boundaries denoted as Odessa, NY is noted with the original rulemaking itself.

counter-filing. Finger Lakes filed the WFLR-FM Construction Permit Application on March 18, 2004. This was then granted on April 19, 2005. The proposed Rulemaking shows an FCC received date of March 21, 2005, approximately a month before the Construction Permit grant. Copies of the filing dates have been included in **Exhibit 6.0**. Such a timeline ensured Finger Lakes any subsequent counterproposal would be precluded by their "blocking application" and that their intentions would not be made evident until after the fact. This is both contrary to the purpose of the construction permit application process and the public interest.

Therefore, this Counterproposal requests the dismissal, with prejudice, of BPH-20040317AAL, as it is believed the Construction Permit serves no purpose other than to block applicants from filing valid counterproposals. This Counterproposal also proposes the addition of CH238A into Savona, NY as a new facility available to all applicants including Finger Lakes. No modification of any existing allocation is required to achieve the goal of this Counterproposal. As stated before, the Counterproposal, which this report supports, will result in a new publicly available allotment for the superior community of Savona, NY over the lesser community of Odessa, NY. In addition, Dundee, NY would retain their FM service with an overall net gain in population and area with no loss areas created.

Therefore, it is requested the Table of Allotments found in 47 CFR §73.202(b) be amended as follows:

<u>Community</u>	<u>Present Allocation</u>	<u>Proposed Allocation</u>
Dundee, NY	240A	240A
Savona, NY	---	238A



**USGS**  
 science for a changing world

42°17'24"N  
 77°7'15"W  
 Map Extent  
 77°6'38"W  
 42°18'40"N

**The National Map**  
<http://nationalmap.gov/>  
 Geographic Coordinate System (WGS84)

77°7'45"W

77°7'30"W

77°7'15"W

77°7'0"W

77°6'45"W

42°17'20"N

42°17'10"N

42°17'0"N

42°16'50"N

42°16'40"N

42°17'20"N

42°17'10"N

42°17'0"N

42°16'50"N

42°16'40"N



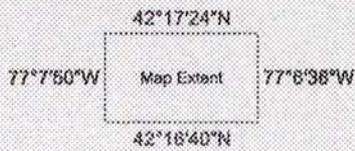
77°7'45"W

77°7'30"W

77°7'15"W

77°7'0"W

77°6'45"W



<http://nationalmap.gov/>

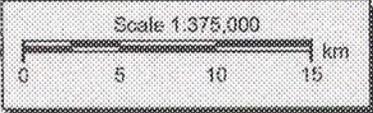
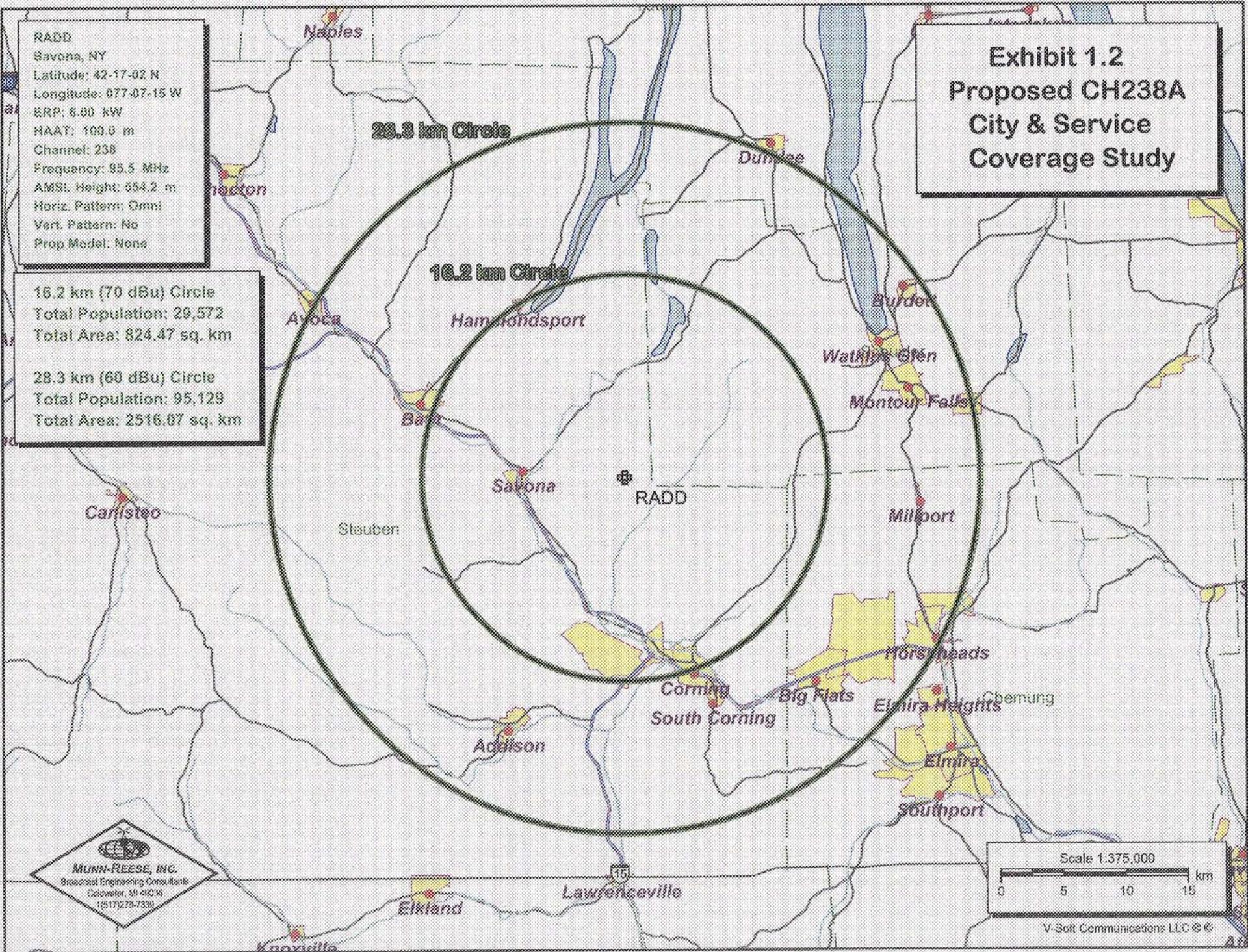
Geographic Coordinate System (WGS84)

**RADD**  
 Savona, NY  
 Latitude: 42-17-02 N  
 Longitude: 077-07-15 W  
 ERP: 6.00 kW  
 HAAT: 100.0 m  
 Channel: 238  
 Frequency: 95.5 MHz  
 AMSL Height: 554.2 m  
 Horiz. Pattern: Omni  
 Vert. Pattern: No  
 Prop Model: Nons

**16.2 km (70 dBu) Circle**  
 Total Population: 29,572  
 Total Area: 824.47 sq. km

**28.3 km (60 dBu) Circle**  
 Total Population: 95,129  
 Total Area: 2516.07 sq. km

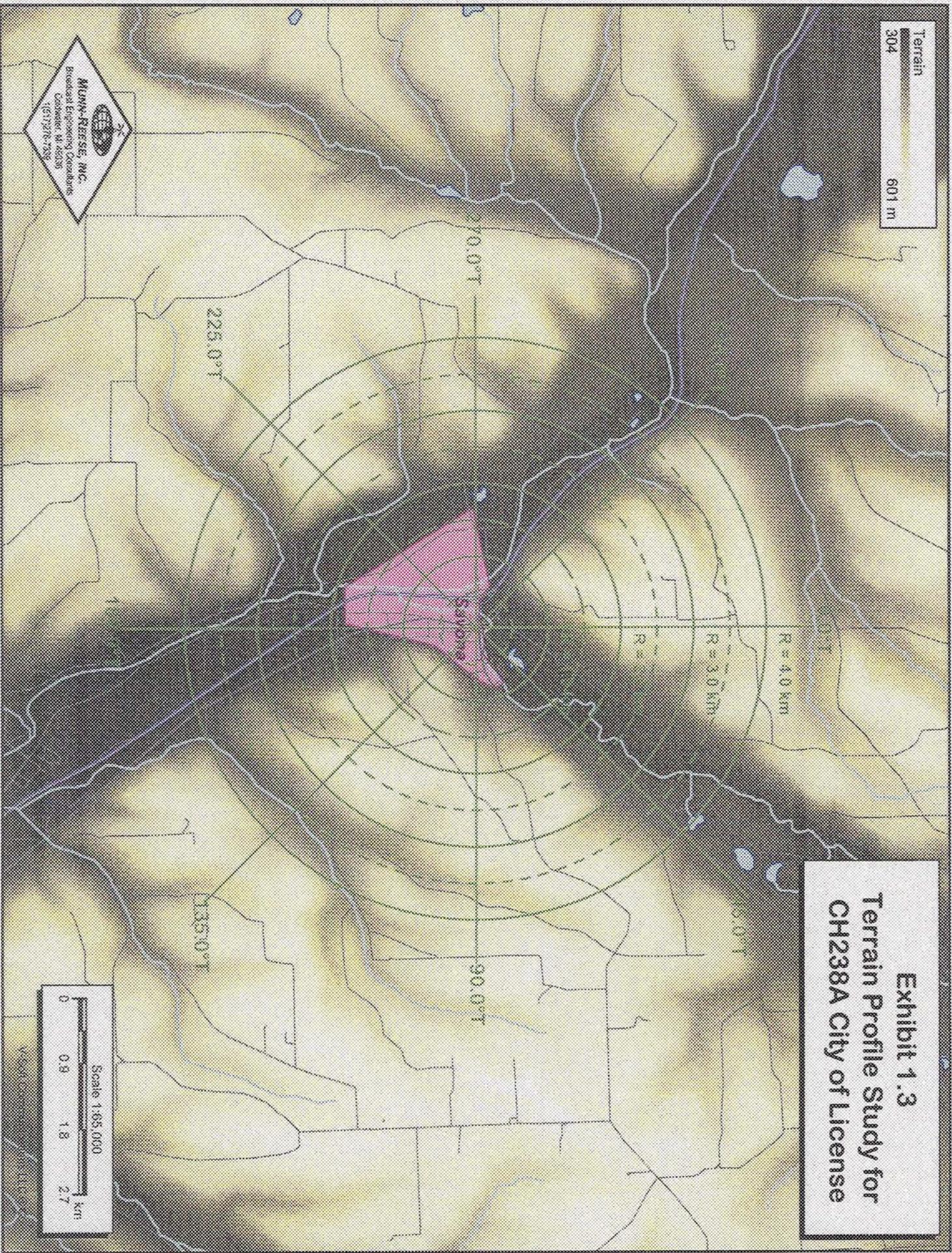
**Exhibit 1.2**  
**Proposed CH238A**  
**City & Service**  
**Coverage Study**



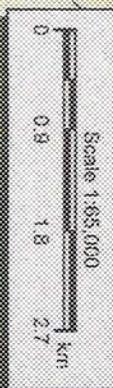
V-Soft Communications LLC ©



**Exhibit 1.3**  
**Terrain Profile Study for**  
**CH238A City of License**



**MUNN-REESE, INC.**  
 Broadcast Engineering Consultants  
 Columbia, MO 65206  
 (314) 778-7292



View Date: 11/11/11

Tabulations of contours will be supplied upon request.  
Finger Lakes Radio Group, Inc

REFERENCE		DISPLAY DATES
42 17 02 N.	CLASS = A	DATA 06-24-06
77 07 15 W.	Current Spacings	SEARCH 06-30-06
----- Channel 238 - 95.5 MHz -----		

Call	Channel	Location	Azi	Dist	FCC	Margin	
Lat.	Lng.	Ant	Power	HAAT			
WFLRFM CP	238A	Dundee	NY	40.0	14.86	114.5	-99.64
42 23 10	77 00 16	CX	0.880 kW	261 M			
Finger Lakes Radio Group,			BPH20040317AAL				
RADD ADD	238A	Odessa	NY	71.0	20.61	114.5	-93.89
42 20 38	76 53 03		6.000 kW	100 M			
Finger Lakes Radio Group,							
CJOJ-F AU -D	238C1	Belleville	ON	351.9	222.64	222.5	0.14
44 16 04	77 30 47	DHN	64.000 kW-D	153 M			
Cjoj-fm(1)			5084				
RDEL DEL	240A	Dundee	NY	19.9	30.79	30.5	0.29
42 32 40	76 59 35		6.000 kW	100 M			
Finger Lakes Radio Group,							
WFLRFM LIC	240A	Dundee	NY	19.9	30.79	30.5	0.29
42 32 40	76 59 35	CN	0.780 kW	183 M			
Finger Lakes Radio Group,			BLH19860807KB				
WPIG LIC	239B	Olean	NY	256.3	112.97	112.5	0.47
42 02 08	78 26 47	CN	43.000 kW	226 M			
Backyard Broadcasting Olea			BLH4110				
GRANDFATHERED AT 43KW @ 226M HAAT.							
WNKI LIC	291B	Corning	NY	153.1	15.19	14.5	0.69
42 09 43	77 02 15	CN	40.000 kW	162 M			
Backyard Broadcasting Elmi			BLH19801118AH				
WBYL LIC	238A	Salladasburg	PA	183.4	116.88	114.5	2.38
41 14 00	77 12 10	C	3.900 kW	73 M			
Clear Channel Broadcasting			BMLH19960517KE				
CJOJ-F OP -D	238C1	Belleville	ON	358.3	225.43	222.5	2.93
44 18 45	77 12 25	DHN	100.000 kW-D	130 M			
Cjoj-fm			5084				
WTTCFM LIC	237A	Towanda	PA	137.5	77.98	71.5	6.48
41 45 55	76 29 10	CN	3.000 kW	38 M			
Cantroair Communications,			BLH7188				

## Yahoo! Yellow Pages

Your Search:

Search by Category or Business Name (e.g. Hotel or Holiday Inn)

Location:  Savona, NY  
[Save Location](#) | [Change Location](#)

[Top](#) > Search for: **savona**

Showing 1 to 10 of 10

### All Businesses

Business Name:

[Campbell-Savona Central School](#)  
(607) 583-4611

[Mom's Savona Diner](#)  
(607) 583-4735

[Savona Arrow Mart](#)  
(607) 583-2341

[Savona Federated Church](#)  
(607) 583-2409

[Savona Fire Dept Non-Emergency](#)  
(607) 583-2620

[Savona Free Library](#)  
(607) 583-4426

[Savona Sand & Gravel Inc](#)  
(607) 583-2400

[Savona Storage](#)  
(607) 583-4733

[Savona Village Court](#)  
(607) 583-7618

[Village Of Savona](#)  
(607) 583-2124

Address:

64 E Lamoka Ave  
Savona, NY [Map](#)

82 Main St  
Savona, NY [Map](#)

11 W Lamoka Ave  
Savona, NY [Map](#)

20 Church St  
Savona, NY [Map](#)

Mccooy  
Savona, NY [Map](#)

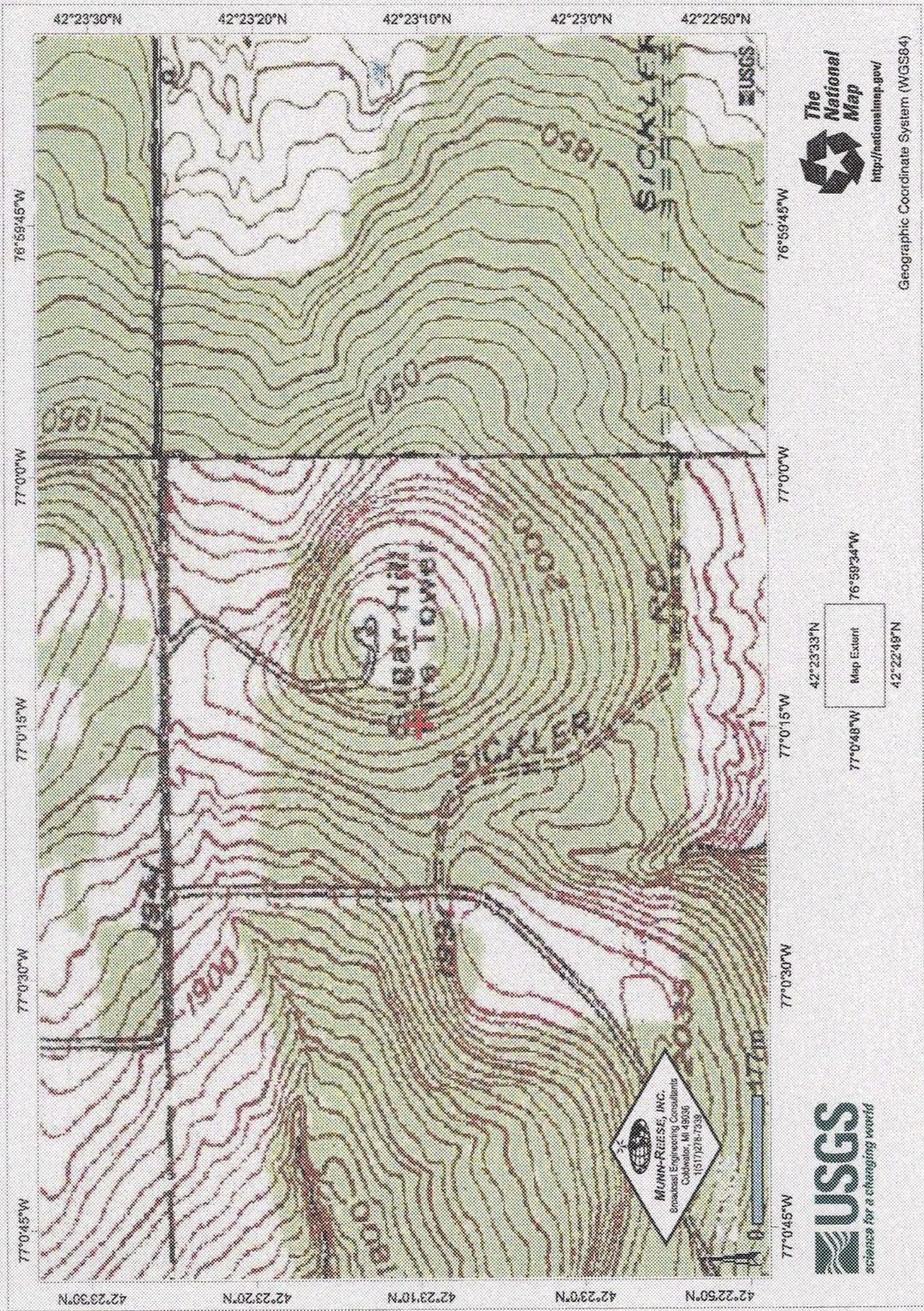
15 Mccooy St  
Savona, NY [Map](#)

6130 Robie Rd  
Savona, NY [Map](#)

6220 State Route 415  
Savona, NY [Map](#)

15 Mccooy St  
Savona, NY [Map](#)

15 Mccooy St  
Savona, NY [Map](#)



42°23'30"N 42°23'20"N 42°23'10"N 42°23'0"N 42°22'50"N

76°59'45"W

77°00'W

77°01'15"W

77°03'0"W

77°04'5"W

42°23'30"N 42°23'20"N 42°23'10"N 42°23'0"N 42°22'50"N

76°59'45"W

77°00'W

77°01'15"W

77°03'0"W

77°04'5"W



42°23'33"N  
77°0'48"W

Map Extent

76°59'34"W  
42°22'48"N



Geographic Coordinate System (WGS84)

**MUNN-REESE, INC.**  
 Geological Engineering Consultants  
 Calhoun, MI 49806  
 1517/268-1239














[Home](#) | [Contact How to](#) | [FAQ](#) | [Business Comm.](#) | [Regrets](#) | [Rentals](#) | [What's New](#) | [NELA](#)

PreviousUS  
PreviousUS:State

NHLR listing for US#016 NY#02, Sugar Hill Fire Tower  
To New York list

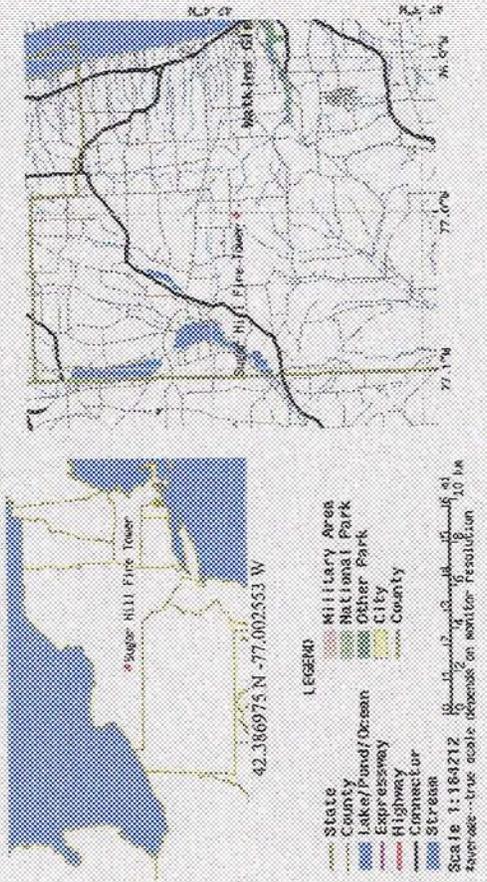
NextUS  
NextUS:State

## Sugar Hill Fire Tower New York Dept. Env. Cons., New York



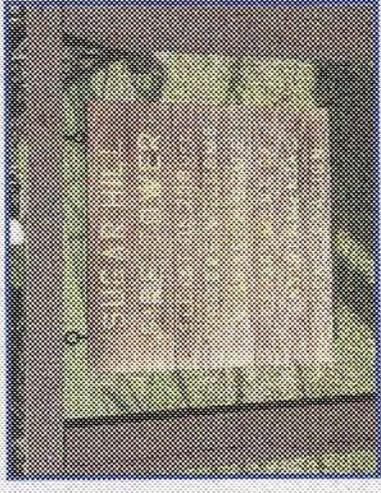
Visit the Topographic USGS topographic quadrangle map server, centered on this location.

U.S. Census Bureau TIGER/Line Shapefiles maps of the area



Submit a correction to this page via email

Copyright 1999, 2000, 2001, 2002, 2003, 2004 American Resources Group® | Created by JanWho Panatomic Imaging, www.lanwho.com | Built with Adobe GoLive 6.0 | Last updated 6:53 am Thursday, May 20, 2014 | [Send feedback comments to webmaster](#)



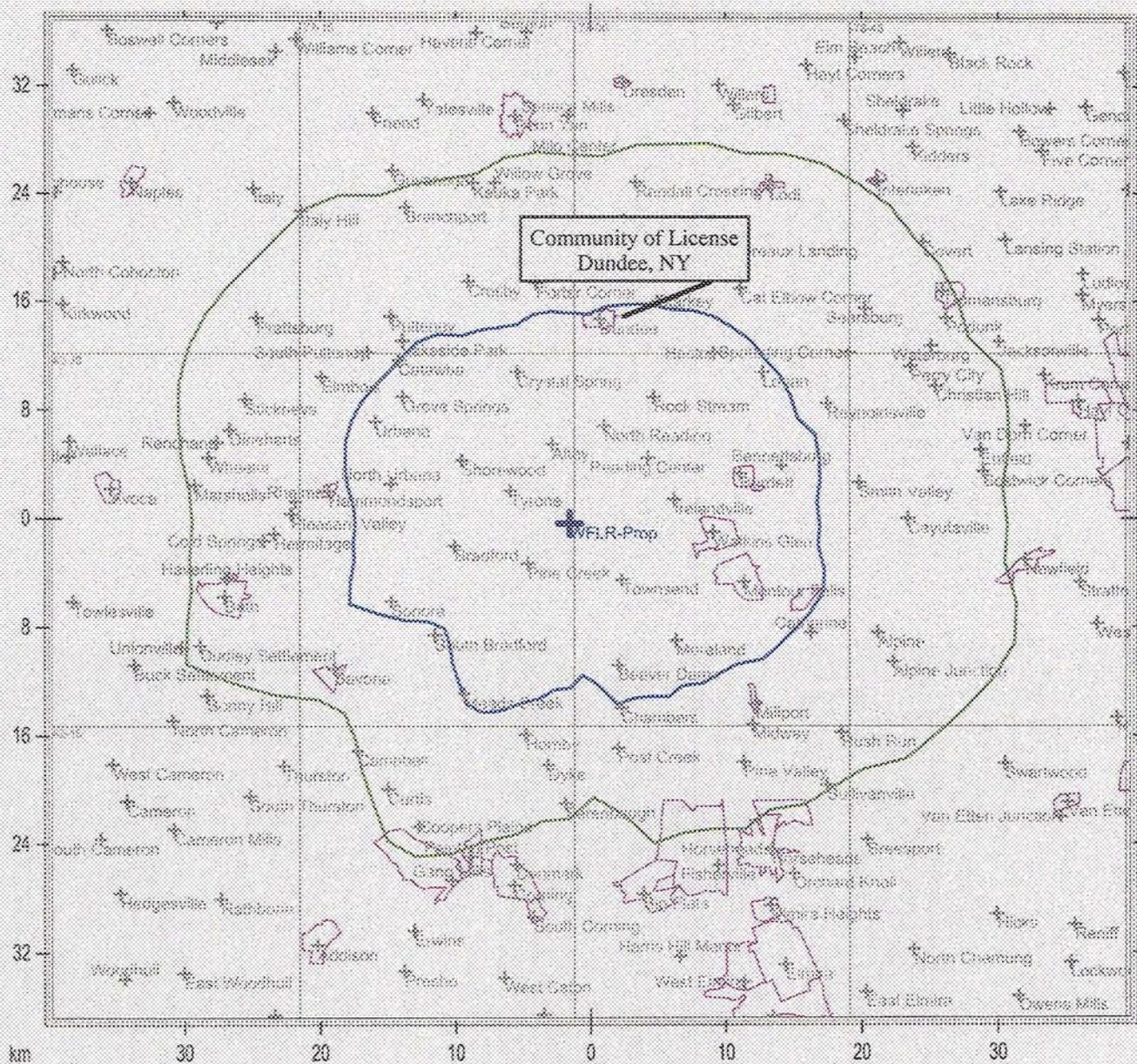
Current Photograph of Sugar Hill Fire Tower Historic Site as a entity of the New York State Department of Environmental Conservation



Historic Photograph of Sugar Hill Fire Tower Historic Site, Schuyler County New York. (Photograph taken at unknown date.)

**Munn-Reese, Inc.**  
 Broadcast Engineering Consultants  
 Coldwater, MI 49036

WFLR-FM Proposed Service Contours and Principal Community Coverage of Dundee



60 dbu (Green) and 70 dbu (Blue) F(50,50)



## Application Search Details

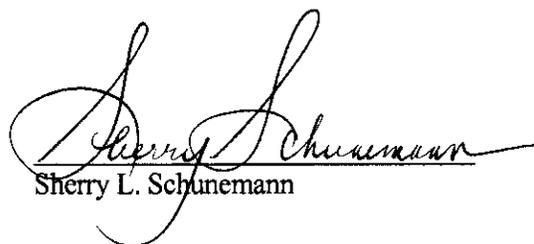
**File Number:** BPH-20040317AAL  
**Call Sign:** WFLR-FM  
**Facility Id:** 36406  
**FRN:** 0010537561  
**Applicant Name:** THE FINGERLAKES RADIO GROUP, INC.  
**Frequency:** 95.5  
**Channel:** 238  
**Community of License:** DUNDEE, NY  
**Application Type:** MINOR CHANGE TO A LICENSED FACILITY  
**Status:** GRANTED  
**Status Date:** 04/19/2005  
**Expiration Date:** 04/19/2008  
**Tolling Code:**  
**Application Service:** FM  
**Disposed Date:** 04/19/2005  
**Accepted Date:** 03/18/2004  
**Amendment Received Date:** 10/28/2004  
**Last Public Notice:** 04/22/2005  
**Last Report Number:** 45969  
**Authorization** [View Authorization](#)  
**Engineering Data** [View Engineering Data](#)  
**Legal Actions** [View Legal Actions](#)  
**Positional Interest Info** [View Positional Interest Info](#)  
**PN Comment** [Public Notice Comment](#)  
**Correspondence Folder** [View Correspondence Folder](#)



## CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, do hereby certify that a copy of the foregoing "Comments on Notice of Proposed Rulemaking and Counterproposal" was mailed by First Class U.S. Mail, postage prepaid, this 3rd day of July, 2006, 2004, to the following:

James L. Oyster, Esq.  
108 Oyster Lane  
Castleton, Virginia 22716-2839  
(Counsel for Finger Lakes Radio Group, Inc.)



Sherry L. Schunemann