

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of

Federal Communications Commission  
Office of Secretary

Amendment of Section 73.202(b)	)	
Table of Allotments	)	MB Docket No. 05-282
FM Broadcast Stations	)	RM - 11229
(Rockmart and Aragon, Georgia, and	)	
Lynchburg and Chattanooga, Tennessee)	)	
	)	

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

**REPLY COMMENTS**

J. L. Brewer Broadcasting of Cleveland, LLC, licensee of Station WAYA(FM), Spring City, Tennessee, and J. L. Brewer Broadcasting, LLC, licensee of Station WMPZ(FM), Ringgold, Georgia, ("Brewer"), by its counsel, hereby submits Reply Comments in response to the Public Notice issued July 20, 2006.<sup>1</sup> These Reply Comments are directed at two previously filed "Reply Comments" submitted by Tri-State Communications, Inc. ("Tri-State") on December 20, 2005 and July 3, 2006.<sup>2</sup> Tri-State alleged that two defects existed in Brewer's Counterproposal (filed on December 5, 2005)<sup>3</sup>. First, Tri-State claimed that Brewer's proposal to allot Channel 228A at Harrison, Tennessee is unable to provide line-of-sight coverage over all of Harrison. Second, Tri-

<sup>1</sup> Public Notice Report No. 2781.

<sup>2</sup> As a preliminary matter, Tri-State has tried to justify filing a Reply against Brewer's proposal in response to the Public Notice seeking Reply Comments on Bart Walker's proposal for Wartrace, TN by stating that Brewer's proposed use of Channel 230C3 at Decatur conflicts with Bart Walker's proposal for Channel 230C3 at Wartrace, TN. However, in Brewer's Joint Reply Comments filed December 20, 2005, that conflict was eliminated. Thus, Tri-State has no basis for raising any issues against Brewer in the July 3, 2006 Reply pleading and that Reply should not be considered.

<sup>3</sup> Brewer filed "Response to Reply Comments" on January 6, 2006 with a "Motion to Accept". Tri-State opposed the "Motion to Accept", alleging that the "Response to Reply Comments" was filed late and not authorized by any other filing periods. However, by virtue of the issuance of the Public Notice on July 20, 2006, the Commission can accept Brewer's January 6, 2006 pleading as having been filed timely to this Public Notice. No other parties have filed comments in opposition.

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State claimed that Harrison is not independent of the Chattanooga Urbanized Area under the *Tuck*<sup>4</sup> criteria. As Brewer demonstrated previously and will supplement herein, Tri-State is wrong on both points. In support hereof, Brewer states as follows:

**I. Brewer's Proposal to Allot Channel 228A at Harrison, Tennessee Complies with the Commission's Line-of-Sight Rules and Policies.**

1. In Tri-State's Reply of December 20, 2005, Tri-State claimed that Brewer's proposal to allot Channel 228A at Harrison, Tennessee did not provide sufficient line-of-sight to Harrison in violation of Section 73.315 of the Commission's Rules. In support of its claim, Tri-State submitted four terrain profiles on azimuths 84-87 degrees, which purported to show a line-of-sight obstruction. However, Brewer demonstrated that Tri-State's evidence, at best, shows some minor shadowing to a small section of Harrison from the proposed site. Under Commission's rules and policies, such shadowing does not constitute a violation of Section 73.315, which requires a "major obstruction" for a line-of-sight defect to occur<sup>5</sup> and Tri-State did not cite any case law to support its claim that the minor obstruction would constitute a defect under the present circumstances.

2. On the other hand, Brewer noted that line-of-sight issues are evaluated based on whether a 70 dBu signal will extend beyond the proposed community thereby overcoming the obstructions. *See Halls Crossroads, Tennessee, et al.*, DA 05-3059, ¶10 (2005); *The Dalles, Oregon, et al.*, 19 FCC Rcd 10068, ¶¶16-17 (2004); *Jackson and Salyersville, Kentucky*, 17 FCC Rcd 4662, 4664 (2002); *Madison, Indiana*, 14 FCC Rcd 9518, 9519 (1999); and *Vacaville and Middletown, California*, 4 FCC Rcd 8315, ¶13 (1989).

3. In its July 3, 2006 Reply Comments, Tri-State merely states that "there appears to be line of sight problems with the proposed transmitter site." Reply at para.5. Tri-State's choice of words and its failure to rebut Brewer's showing would indicate that it has conceded on this point.

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<sup>4</sup> *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*").

<sup>5</sup> 47 C.F.R. § 73.315(b).

Brewer's Engineering Consultant has provided an updated Technical Report in which he confirms the earlier line of sight evaluation and concludes that the proposed 70 dBu coverage over Harrison complies with Sec. 73.315 of the Commission's Rules. In addition, Exhibit E3 is provided demonstrating clear line of sight to Harrison at its reference point.

## **II. Harrison, Tennessee is an Independent Community.**

4. Tri-State continues to ignore the fact that the proposed relocation of Station WMPZ to Harrison, TN does not implicate the Commission's policy concerning the migration of stations from rural areas to urban areas because both Ringgold, Georgia and Harrison, Tennessee are both located in the Chattanooga, Tennessee Urbanized Area.<sup>6</sup> Therefore, a *Tuck* showing is not required. Brewer stated this fact in its Counterproposal, but nevertheless provided a *Tuck* showing for informational purposes. It is worth repeating, however, that Tri-State has not challenged this assertion in either of its Reply Comment filings. Accordingly, the WMPZ proposal does not involve a move from an urbanized rural area to an urban area.

5. Nevertheless, in its Counterproposal, Brewer provided conclusive evidence that Harrison is independent of the Chattanooga Urbanized Area. This included the fact that, (i) Harrison is home to approximately 100 business and commercial establishments; (ii) there are two newspapers and a number of radio stations that provide local media coverage to the community of Harrison; (iii) Harrison has a rich history; (iv) a number of residents and business owners believe that Harrison is an independent community,<sup>7</sup> therefore, a *Tuck* showing is not required; (v) Harrison

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<sup>6</sup> See e.g., *Ardmore, Alabama, et. al.*, 17 FCC Rcd 16332 (2002), *petition for reconsideration denied* 18 FCC Rcd 6390 (2003) (the Commission stated that its concern with migration to Urbanized Areas is lessened by the fact that a reallocation proposal involves reallocating a channel from one community in an Urbanized Area to another community in same Urbanized Area); *Boulder and Lafayette, Colorado*, 11 FCC Rcd 3632 (1996) (granting a proposal to reallocate a channel from one community in an Urbanized Area to another community in same Urbanized Area without a *Tuck* showing); *East Los Angeles, Long Beach and Frazier Park, California*, 10 FCC Rcd 2864 (1995) (stating that the concern with migration to Urbanized Areas does not exist when a proposal involves reallocating a channel from one community in an Urbanized Area to another community in same Urbanized Area).

<sup>7</sup> Brewer submitted statements of residents and businesses owners to support this point.

is home to a number of local governmental organizations; (vi) Harrison has a post office and zip code; (vii) Harrison has schools and a volunteer fire department; (ix) Harrison has health care facilities and local transportation; and (x) Harrison has municipal services that are not provided by Chattanooga. Tri-State did little to refute this evidence. Accordingly, in view of the evidence presented in the Counterproposal and case law cited in the January 6, 2006 Response to Reply Comments,<sup>8</sup> the Commission should find that Harrison satisfies a majority of the *Tuck* criteria.

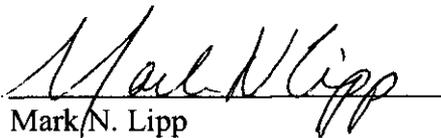
### III. Conclusion.

6. Tri-State has raised nothing in its Reply Comments that warrant dismissal of Brewer's Counterproposal. Based on established case law and the showings provided, Brewer's proposal provides the necessary line-of-sight to Harrison. Furthermore, Brewer's proposal for Harrison does not need to comply with the *Tuck* criteria. However, Brewer has demonstrated that Harrison is an independent community under the eight *Tuck* factors. Thus, the Commission should grant Brewer's proposal.

Respectfully submitted,

J. L. BREWER BROADCASTING OF  
CLEVELAND, LLC

J. L. BREWER BROADCASTING, LLC

By:   
Mark N. Lipp  
Scott Woodworth  
Vinson & Elkins L.L.P.  
1455 Pennsylvania Ave, NW  
Suite 600  
Washington, DC 20004-1008  
(202) 639-6500

Their Counsel

August 4, 2006

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<sup>8</sup> See e.g., *Halls Crossroads, Tennessee, et al.*, DA 05-3059, ¶12 (2005); *Wallace, Idaho and Lolo, Montana*, 14 FCC Rcd 21110 (1999); *Parker and Port St. Joe, Florida*, 11 FCC Rcd 1095, ¶9 (1995)

**TECHNICAL REPORT IN SUPPORT OF A RESPONSE TO  
TRI-SATE COMMUNICATIONS, INC. COMMENTS REGARDING  
THE BREWER COUNTERPROPOSAL IN MB DOCKET NO. 05-282**

**August 2, 2006**

Tri-State Communications, Inc. (Tri-States) filed comments regarding the J.L. Brewer Broadcasting, LLC (Brewer) proposal to reallocate station WMPZ to Harrison, TN on FM Channel 228A alleging that "...terrain obstacles will prevent this proposed station from providing line-of-sight 70 dBu coverage to Harrison".

Tri-States did not submit any detailed showings or calculations as the Commission has required in previous cases (e.g. The Dalles, OR et al., FCC 04-118 at paragraph 17) that the minor terrain obstacles to a small portion of Harrison would prevent the delivery of a 70 dBu (50/50) signal over the entire community. Tri-State only submitted four terrain profiles on azimuths 84 to 87 degrees characterizing them as demonstrating "severe pockets of shadowing". In fact, the terrain obstacles depicted are minor, and do not qualify as a major obstacle as contemplated by Section 73.315.

**Brewer's proposal will provide line of sight to 90% of the Harrison community:**

Exhibit E1 demonstrates that the channel Harrison 228A proposal will achieve line of sight to 90.9% of the area within the Harrison boundaries. This exhibit was prepared with the V-Soft Probe 3 software using a 205 meter tower at the proposed reference point and .1 km cells. Furthermore, the proposed Harrison 228A reference point has line of sight to the Harrison community reference point (see E3).

**Brewer's Harrison proposal will provide a 70 dBu signal over all of Harrison based on the Commission's standard method and the use of Longley-Rice:**

The Commission has held in several cases that line of sight is not required over an entire community. In fact, in the Madison, IN, Report and Order (MM Docket No. 98-105) the Commission stated:

Our studies further indicate that considering the terrain obstruction between the proposed site for channel 266A and the community of Madison, the 70 dBu signal will be attenuated once it reaches Madison, but in any event it will not fall below the required level of service over the city of Madison (paragraph 5).

Furthermore, in the Vacaville and Middletown, CA First Report and Order (MM Docket No. 88-491), the Commission clearly enunciated the fact that line of sight is not required:

Where it is alleged that a site cannot be found that allows line-of-sight coverage over the community or a transmission path free of a major obstruction, as required by Section 73.315 of the Commission's Rules, the proponent must demonstrate by

## Charles M. Anderson Associates

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an engineering showing that the received signal strength as transmitted from the site will exceed 70 dBu and will encompass the entire community (paragraph 13).

The FCC's standard method and the Longley-Rice method predict that a signal level significantly greater than 70 dBu will be delivered to the entire Harrison community. In fact, the FCC method predicts a 78 dBu or greater signal and Longley-Rice predicts a 74.8 dBu or greater signal (see E2). Both analyses were conducted for the Channel 228A facility at the proposed reference point (N35-07-06 W 85-14-29) at a distance of 5.2 km to the closest point on the Harrison boundary and 9.4 km to the community reference point<sup>1</sup>. The study used a 3.6 kW/ 131 meter HAAT facility (6 kW/100 meter equivalent). A 205 meter tower was used for this study as permitted for a Class A facility for the purpose of line of sight analysis in the recent Halls Crossroads and Lake City, TN case (MB Docket No. 03-120 Report and Order). The proponent commits to the construction of a 205 meter tower if required.

This analysis was conducted using V-Soft Communications' Probe 3 software, a recognized standard in the industry based on the Department of Commerce-NTIA algorithms, and the V-Soft 30 second terrain database. The Longley-Rice parameters used are standard for the geography involved, and are enumerated on the exhibit.

### **Conclusion:**

It is concluded that the proposed Channel 228A allocation will provide a 70 dBu or greater signal to the entire community of Harrison, TN in accordance with Section 73.315 and established Commission policies and precedents.



1519 Euclid Avenue  
Bowling Green, KY 42103  
270-782-0246  
270-793-9129 FAX  
[charlesmanderson@bellsouth.net](mailto:charlesmanderson@bellsouth.net)  
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<sup>1</sup> There is considerable flexibility in the selection of a site for the proposed WMPZ Channel 228A facility that will meet spacing requirements. In fact, the site may be located even closer to Harrison thereby increasing the signal level (e.g. N 35-08-06 W 85-13-41).

**E1 WMPZ**

Latitude: 35-07-06 N  
Longitude: 085-14-29 W  
ERP: 6.00 kW  
Channel: 228  
Frequency: 93.5 MHz  
AMSL Height: 409.2 m  
Elevation: 204.2 m

**E1 HARRISON 228A**  
**LINE OF SIGHT STUDY**  
RECEIVER HEIGHT = 9.1 M  
TRANSMITTER HEIGHT AGL = 205M  
CELL SIZE = .1 KM

**HARRISON, TN CITY BOUNDARIES**  
23.66 SQ KM

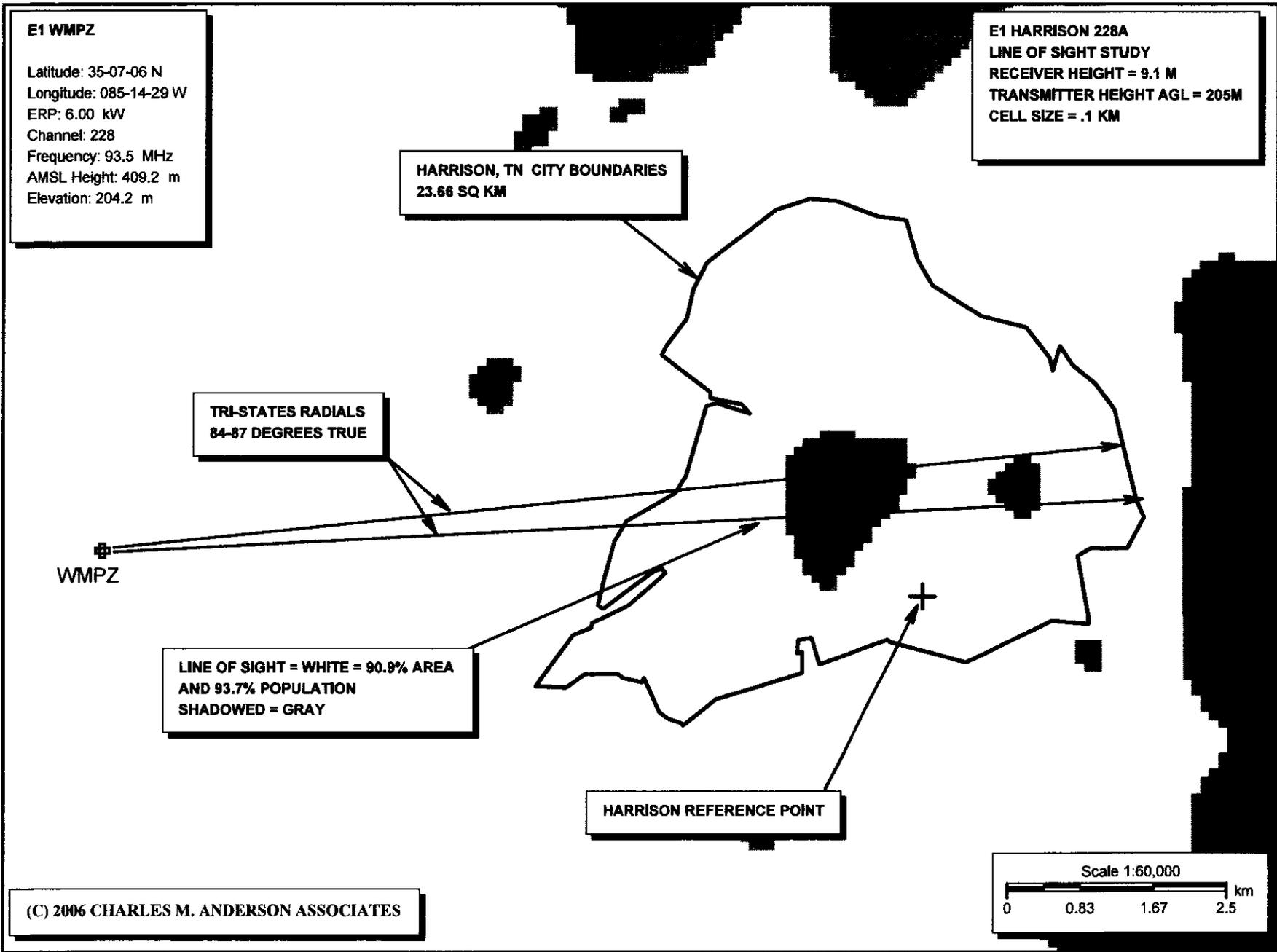
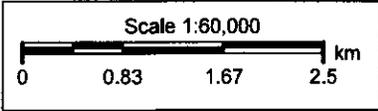
**TRI-STATES RADIALS**  
84-87 DEGREES TRUE

WMPZ

**LINE OF SIGHT = WHITE = 90.9% AREA  
AND 93.7% POPULATION  
SHADOWED = GRAY**

**HARRISON REFERENCE POINT**

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**WMPZ**

Latitude: 35-07-06 N  
Longitude: 085-14-29 W  
ERP: 3.60 kW  
Channel: 228  
Frequency: 93.5 MHz  
AMSL Height: 409.2 m  
Elevation: 204.2 m  
Horiz. Pattern: Omni  
Vert. Pattern: No  
Prop Model: Longley/Rice  
Climate: Cont temperate  
Conductivity: 0.0050  
Dielec Const: 15.0  
Refractivity: 311.0  
Receiver Ht AG: 9.1 m  
Receiver Gain: 0 dB  
Time Variability: 50.0%  
Sit. Variability: 50.0%  
ITM Mode: Broadcast

**E2 228A 3.6 KW/ 131 METER HAAT  
USING 205 METER TOWER**

**THE STUDY USED .1 KM CELLS TO CALCULATE  
THE LONGLEY-RICE CONTOUR. NOTE THAT  
ALL OF HARRISON RECEIVES A 74.8 DBU OR  
GREATER SIGNAL BASED ON THE MOST CONSERVATIVE  
FIRST OCCURRENCE METHODOLOGY.**

**THE FCC STANDARD METHOD 70 DBU CONTOUR  
ENCOMPASSES THE ENTIRE COMMUNITY AS WELL.**

**LONGLEY-RICE 74.8 DBU  
FIRST OCCURRENCE**

**FCC 70 DBU**

⊕ WMPZ

**HARRISON, TN CITY BOUNDARIES**

**FCC 78 DBU CONTOUR**

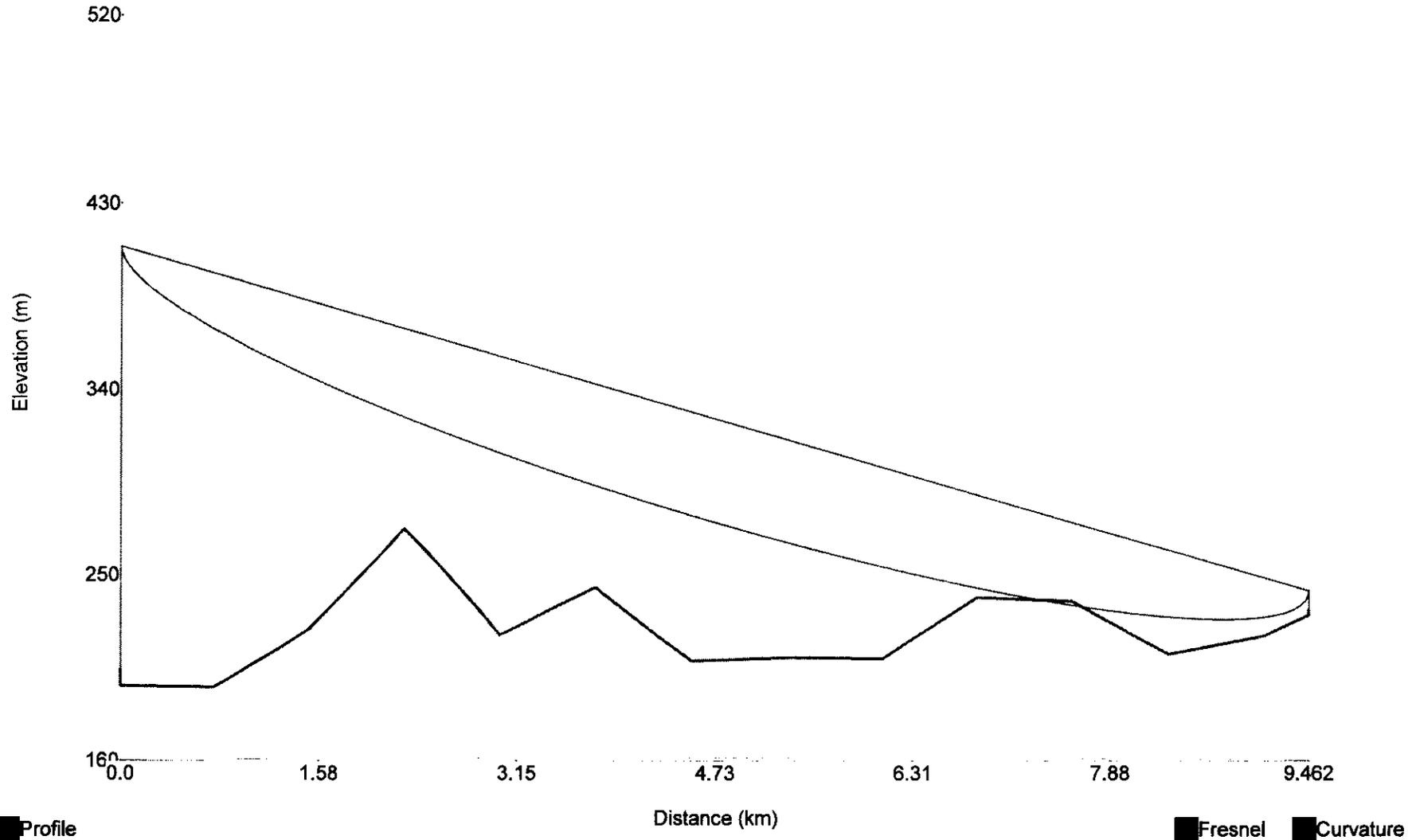
**(C) 2006 CHARLES M. ANDERSON ASSOCIATES**

Scale 1:150,000



# E3 228A REFERENCE POINT LINE OF SIGHT TO HARRISON REFERENCE POINT

Earths Curvature = 1.33



Starting Latitude: 35-07-06 N  
Starting Longitude: 085-14-29 W

End Latitude: 35-06-48 N  
End Longitude: 085-08-16 W

Distance: 9.461612022 km  
Bearing: 93.331 deg

Transmitter Height (AG) = 205.0 m  
Receiver Height (AG) = 9.1 m

Transmitter Elevation = 204.2 m  
Receiver Elevation = 233.1 m

Frequency = 93.5 MHz  
Fresnel Zone: 0.6

**CERTIFICATE OF SERVICE**

I, Diana Gonzales in the law firm of Vinson & Elkins, do hereby certify that I have on this 4th day of August, 2006, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**Reply Comments**" to the following:

\*Deborah A. Dupont  
Audio Division, Media Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

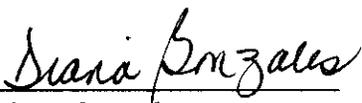
Lauren A. Colby, Esq.  
Law Office of Lauren A. Colby  
10 East 4th Street  
Frederick, MD 21701  
(*Counsel to Woman's World Broadcasting, Inc.*)

Dennis J. Kelly, Esq.  
Law Office of Dennis J. Kelly  
PO Box 6648  
Annapolis, MD 21401  
(*Counsel to Tri-State Communications, Inc.*)

Brian M. Madden, Esq.  
Leventhal Senter & Lerman, PLLC  
Suite 600  
2000 K Street, NW  
Washington DC 20006  
(*Counsel to Entercom Greenville License, LLC*)

Citadel Broadcasting Company  
7201 W. Lake Mead Blvd.  
Suite 400  
Las Vegas, NV 89128

Richard Swift, Esq.  
Irwin Campbell & Tannenwald, PC  
1730 Rhode Island Avenue, NW  
Suite 200  
Washington DC 20036-3101  
(*Counsel to Bart Walker*)

  
Diana Gonzales

\* HAND DELIVERED