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

In the Matter of	)	
	)	
Advanced Television Systems	)	
And Their Impact Upon The Existing	)	MB Docket No. 87-268
Television Broadcast Service	)	

To: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

Sonshine Family Television, Inc. ("SFTI"), licensee of digital television broadcast station WBPH-DT, Channel 9, Bethlehem, Pennsylvania, through counsel and pursuant to Section 1.429(f) of the Rules, hereby opposes, in part, the Joint Petition for Reconsideration in this proceeding by Allbritton Communications Company ("ACC") and Gannett Co., Inc. ("Gannett"), on October 10, 2007 (the "*Joint Petition*"). In the Joint Petition, ACC and Gannett ask the FCC to revise the allotments for their Washington, D.C., digital television stations, WJLA-DT and WUSA-DT, respectively (listed in Appendix B to the *Seventh Report and Order and Eighth Further Notice of Proposed Rule Making* in MM Docket No. 87-268, FCC 07-138, released August 6, 2007), to reflect use of an existing shared analog antenna for post-transition digital operations on Channels 7 and 9. SFTI takes no position on the request by ACC. However, Gannett's request, if granted, would cause significant additional post-transition interference to WBPH-DT, is untimely, assumes facts that have not been substantiated (*e.g.*, the asserted infeasibility of constructing facilities that replicate the pattern utilized by the FCC in Appendix B), violates existing FCC

policies and procedures, and would substantially exceed every limitation even *considered* by the FCC for causing additional interference to post-transition operations.[1]

The Joint Petition is devoid of any supporting engineering analysis. (See Note 1, below.) The engineering statement attached hereto, by SFTI's consulting engineer, Larry

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[1] On October 25, 2007, Gannett filed a further "Petition for Reconsideration" which referenced the October 10 "Joint Petition." *Petition*, n. 2 and p. 3. In that *Petition*, Gannett promised that "[s]upplemental engineering analysis will be filed within 15 days," which presumably means by this Friday, November 9. In the meantime, SFTI is in the position of having to file this Opposition by the deadline established in the rules, without the opportunity to review any information offered in support of Gannett's proposition. SFTI specifically asserts and reserves the right to supplement *its* pleadings, (1) following receipt of Gannett's "supplemental engineering analysis," (2) in opposition to the October 25 *Petition*, and (3) in response to any further engineering documents filed by Gannett in this highly irregular process.

Indeed, it appears possible that Gannett has already provided documents to the FCC staff that have not properly been made part of the record. The on-line docket file includes a letter dated October 2, 2007, from counsel for ACC, concerning an *ex parte* presentation by representatives of ACC and Gannett to members of the FCC staff on October 1. The letter summarizes elements of the October 10 *Joint Petition*, but also states that "[t]he parties referred to the attached handouts during the meeting." Those handouts, however, are not included with the copy of the letter contained in the Electronic Comment Filing System.

Apparently, the FCC staff treated this as a "permit-but-disclose" proceeding under Section 1.1206 of the Rules, even though (1) Section 1.1204(b)(2) makes clear that broadcast channel allotment proceedings are not exempt from limitations on *ex parte* communications; (2) Section 1.1206(a)(1), classifying "permit-but-disclose" proceedings, contains an exception for "proceeding[s] for the allotment of a broadcast channel," and (3) Section 1.1208 prohibits *ex parte* communications in proceedings which are neither exempt under Section 1.1204 or "permit-but-disclose" under Section 1.1206. Since *Sangamon Valley Television Corp.* v. *United States*, 269 F.2d 9 (D.C. Cir. 1959), *ex parte* communications in TV and FM channel allotment proceedings have been prohibited, in part because of their potential to prejudice persons whose identity at the time may not be readily apparent to the FCC. The FCC should immediately take steps to ensure that the ACC/Gannett "handouts" are available through the Electronic Comment Filing System, and should decline any further *ex parte* presentations by either ACC or Gannett unless SFTI is afforded the opportunity to participate or respond to fully-explicated details of the presentation.

H. Will, P.E., shows that, operating as proposed in the *Joint Petition*, WUSA-DT would cause new, post-transition interference to WBPH-DT for 200,024 persons, or *3.744 percent* of the WBPH-DT's total post-transition interference-free population.

There is currently in effect a "freeze" on applications by digital television stations that would result in an increase in a station's 36 dBu contour in any direction; the Gannett proposal violates that standard. Section 73.623(c) of the Rules requires applicants for modification of the DTV Table of Allotments, for new stations, or for changes in authorized DTV facilities to demonstrate that "the requested change would not result in more than an additional 2 percent the population served by another station being subject to interference; the Gannett proposal violates that requirement. As a practical matter, since the freeze went into effect, modifications to the Table of Allotments have been subject to a much stricter standard, even more clearly violated by the Gannett proposal: during the channel election process, "new interference was considered to constitute a conflict when the new interference when the new interference affected more than 0.1 percent of the population predicted to be served by the station in the absence of that new interference." *Third Periodic Review NPRM*, n. 203, citing *Second Periodic DTV Report and Order*, 19 FCC Rcd 18279 at 294 (2004). An exception was provided for stations with *out-of-core* DTV assignments – which would not have included WUSA-TV – to elect to operate on their in-core analog channels. *Id*.[2] In the *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, FCC 07-70, released May 18, 2007,

[2] Where conflicts were identified, the parties were directed to resolve their conflicts by (1) accepting interference, (2) reducing facilities, or (3) negotiating an agreement.

the FCC proposes to permit, post-transition, additional interference of up to 0.5 percent from any individual station; the Gannett proposal exceeds that by more than seven-fold. In fact, the incursion on WBPH-DT's post-transition service is even more egregious, as the synthesized pattern utilized in Appendix B already permits interference from WUSA-DT to 253,521 persons within WBPH-DT's coverage contour, and the Gannett proposal is for interference *on top of that!*[3]

Not only does the *Joint Petition* ignore impermissible levels of additional interference to WBPH-DT, it also fails to make any specific allegations concerning the consequences of the Appendix B allotment for WUSA-DT. It refers, *Joint Petition*, p. 2, to temporary service losses if the existing antenna is required to be removed and replaced, but says absolutely nothing about post-transition effects on WUSA-DT. As shown in Mr. Will's engineering statement, the predicted coverage of the Appendix B WUSA-DT would be very similar to WUSA-TV's analog coverage.[4]

It would be disingenuous for Gannett to suggest that this conflict is somehow new and unanticipated. WBPH-DT's intentions with respect the use of Channel 9 have been a matter of public record since 2003; its application to operate with the facilities listed in Appendix B was granted in February 2004, and in November 2004, SFTI certified its

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[3] In fact, it seems likely that, under the standards proposed in the *Third Periodic Review NPRM*, even the permitted 0.5 percent additional interference would be unavailable to WUSA-DT. In that proceeding, the FCC proposes, in lieu of the present cap on total inference of 10 percent from all sources, to not allow *any* additional interference from stations that already cause 0.5 percent interference.

[4] In contrast, the predicted service contour for the facilities proposed by Gannett in the *Joint Petition* would exceed WUSA-TV's NTSC coverage at every point on the compass. *See,* Will Engineering Statement, Figure 1.

intention to maximize its facilities in accordance with that construction permit – six months before Gannett filed an election to return to Channel 9 following the transition.

For the foregoing reasons, the proposal advanced by Gannett in the *Joint Petition* should be denied.

Respectfully submitted,

SONSHINE FAMILY TELEVISION, INC.

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November 6, 2007

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SONSHINE FAMILY TELEVISION CORPORATION

LICENSEE OF WBPH-DT

DTV CHANNEL 9

BETHLEHEM, PENNSYLVANIA

FAC ID# 60850

FCC FILE # BLCDT-20060609AAH

ENGINEERING EXHIBIT IN SUPPORT OF A
PETITION FOR PARTIAL DENIAL OF THE JOINT PETITION FOR RECONSIDERATION OF ALLBRITTON COMMUNICATIONS COMPANY AND GANNETT CO., INC

November 5, 2007

SONSHINE FAMILY TELEVISION CORPORATION

LICENSEE OF WBPH-DT

DTV CHANNEL 9

BETHLEHEM, PENNSYLVANIA

FAC ID# 60850

FCC FILE # BLCDT-20060609AAH

ENGINEERING STATEMENT

TEMPORARY FACILITIES REQUESTED

Sonshine Family Television Corporation ("SFTI") is licensed at WBPH-DT on Channel 9 (File # BLCDT-20060609AAH). WBPH-DT initially operated its analog station out of core (Channel 60) and received an out of core digital allotment (Channel 59). SFTI aggressively, at its own expense, decided early to find a final in core DTV channel so as to be able to initiate DTV operations quickly without having to build a "throw away" out of core facility. SFTI received commission approval to change its DTV allotment from Channel 59 to channel 9 on February 26, 2004 and began operation under an STA on November 18, 2004. WBPH-DT has certified its post transition operation on a different channel than either its licensed analog channel (Channel 60) or it original allotted DTV channel (Channel 59) in MM Docket 87-268[1]. Further, WBPH-DT elected to remain on its now allotted DTV channel that affords WBPH-DT continued interference protection. SFTI files these comments in partial opposition to a Joint Petition for Reconsideration in Docket MM 87-268 filed jointly by ALBRITTON COMMUNICATIONS COMPANY and GANNETT CO., INC. on October 10, 2007 (the "Joint Petitioners").

[1] See 2nd Report and Order on reconsideration in MM Docket 87-268, Table of Allotments.

Both WUSA and WJLA were allotted DTV facilities post transition on their currently licensed analog channels with new directional antenna patterns generated by the commission staff and shown in Appendix B of the 7th Report and order and 8th FNPRM in MM Docket 87-268. Specifically, the Joint Petitioners, rather than replace the currently licensed analog antenna with a new one meeting the Appendix B values, are simply proposing to substitute the currently licensed analog antenna pattern for the one proposed in Appendix B[2]. The Joint Petitioners provided no engineering information with their Petition for Reconsideration supporting their request to demonstrate that there would continue to be di minimis interference caused to any other station as a result of this proposed change[3]. In the Joint Petition, GANNETT has not provided a comparison of the licensed Channel 9 analog antenna as compared to the Appendix B proposed Channel 9 digital antenna[4].

SFTI directs these comments solely to the technical proposal of GANNET CO., INC., Licensee of WUSA, Channel 9.

First GANNETT states that failure to make this change will result in a significant loss of service to WUSA-DT over that of WUSA-TV but does not provide any supporting engineering. Figure 1 attached shows that the predicted coverage of the Appendix B WUSA-DT Channel 9 facilities are very similar to that of WUSA-TV.

Second, the results of a Longley-Rice study prepared for SFTI by Meintel, Sgrignoli, & Wallace, Inc ("MSW") shows the following regarding the proposed WUSA-DT changes[5]:

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[2] The Appendix B WUSA-DT antenna is at 327 meters HAAT while the presently licensed WUSA-TV analog antenna is at 308 meters HAAT.

[3] GANNETT has not proposed a reduction in ERP to match the FCC 7th R&O and 8th FNPRM Appendix B facilities.

[4] Broadband multiuse antennas rarely have identical azimuth and elevation patterns on different channels (frequencies).

[5] Even though the licensed WUSA-TV antenna pattern is non-directional, MSW has synthesized the actual licensed WUSA-TV Channel 9 antenna directional pattern from the standard Dielectric pattern data.

Appendix B WBPH-DT Total Interference Free Population:	5,342,522
Interference to WBPH-DT from WUSA (Appendix B):	253,521
Interference to WBPH-DT proposed by Joint Petition:	461,188
Total NEW interference to WBPH-DT:	200,024
Percent increase in interference by proposal:	**3.744%**

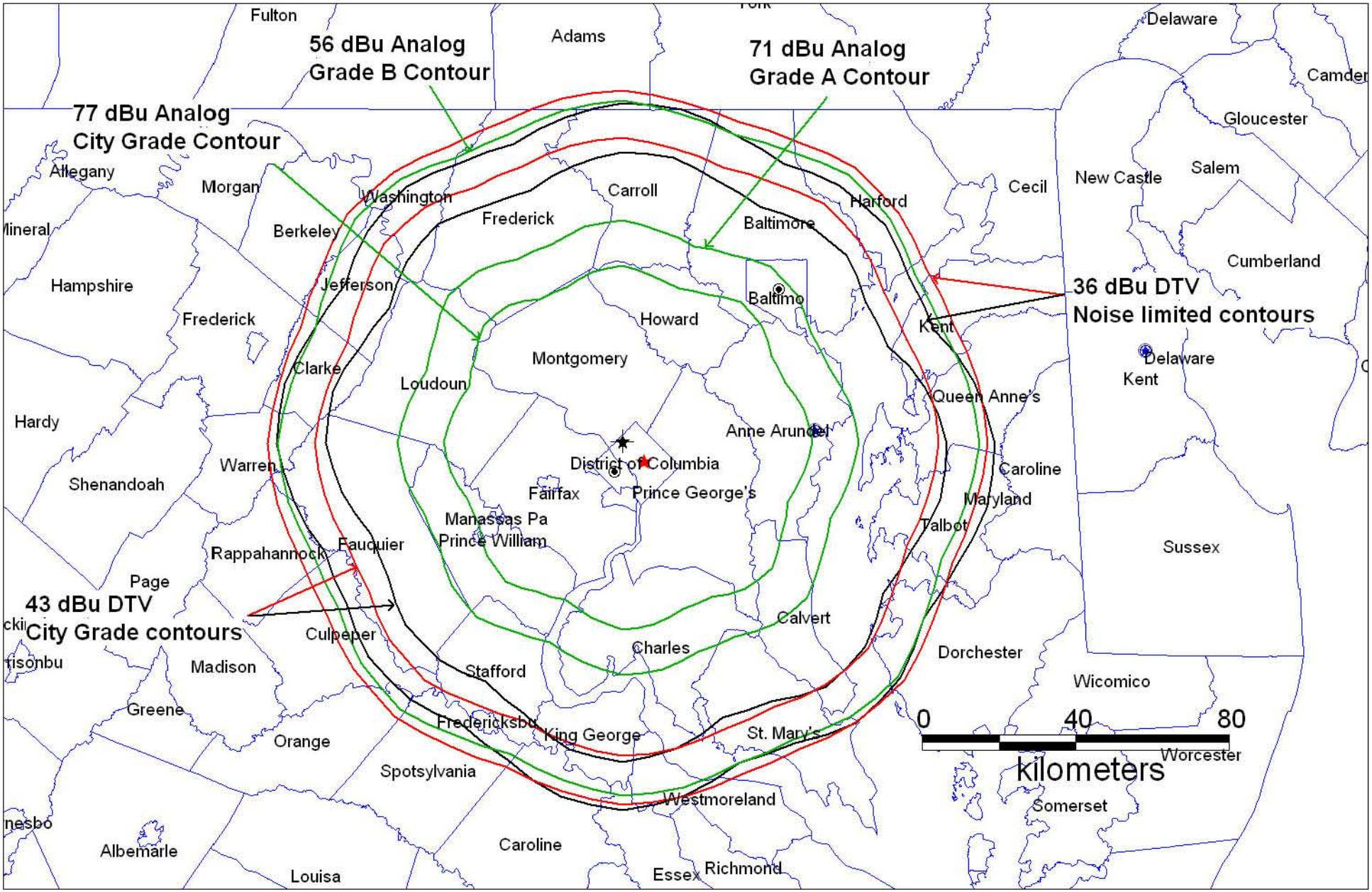
The facilities proposed by GANNETT for WUSA-DT, Channel 9 exceed the permitted 0.1% additional interference currently permitted by the FCC by 3.644%. In addition, and as shown in Figure 2, the GANNETT proposal for WUSA results in an increase of the WUSA-DT 36 dBu F(50,90) service contour over many azimuths, again, in violation of the current "freeze" on expansion of DTV facilities.

Figures 3 and 4 show the WBPH-DT Channel 9 Longley-Rice coverage and interference both with WUSA-DT as allotted in Appendix B (Figure 3) and as proposed by GANNETT (Figure 4). The effect of increased interference is clearly visible.

Based on further calculations by this office, SFTI believes that, in order for WUSA to operate post transition with 17 kW ERP and its currently licensed VHF combined Channel 7 and 9 antenna, WUSA would be required to reduce power from the Appendix B proposal of 17 kW to a maximum of 4.6 kW in order to not increase caused interference to WBPH-DT in excess of the permitted 0.1%.

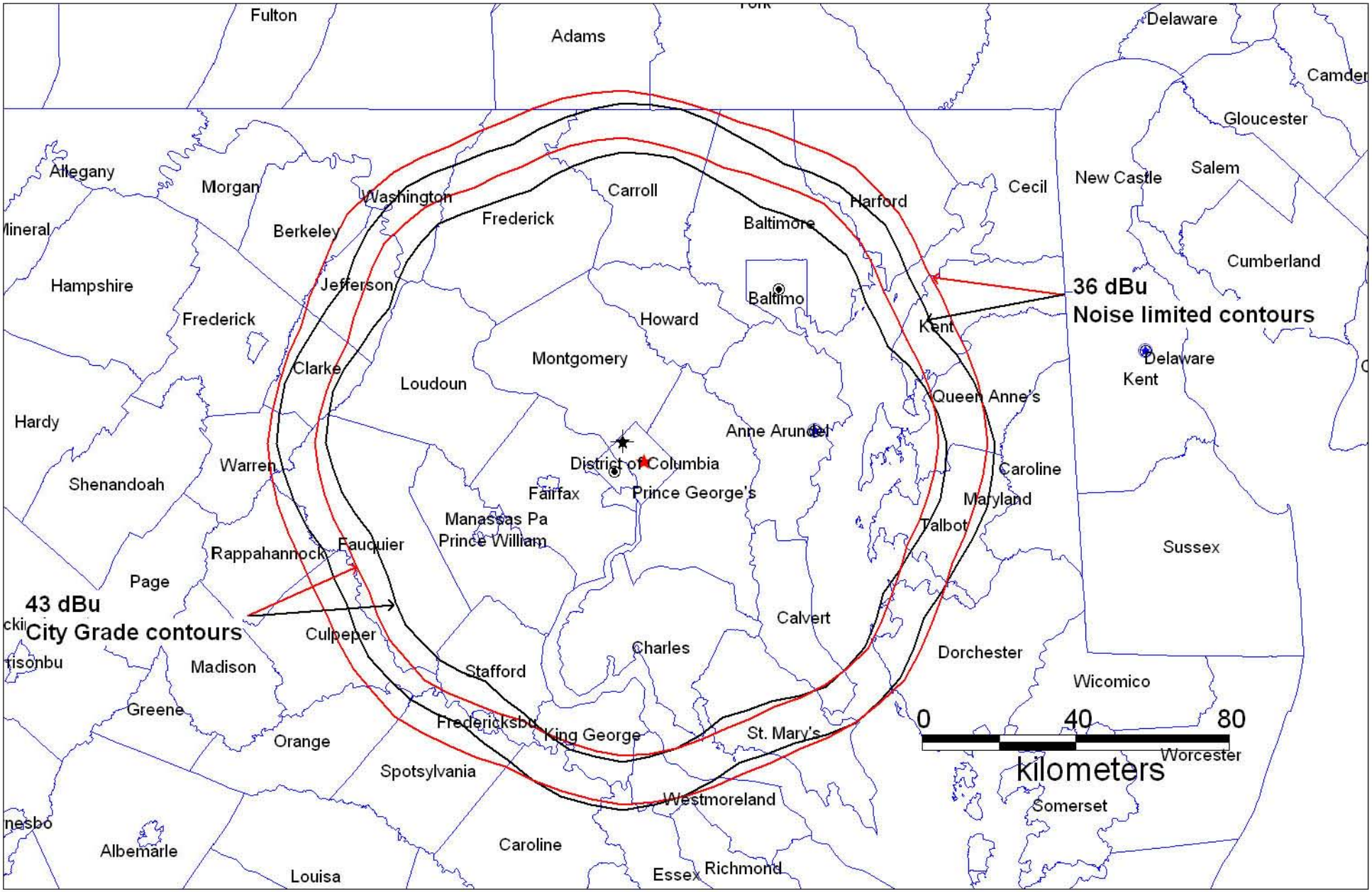
Based on these engineering studies and on commission policy, SFTI hereby objects to any change to the permitted post transition facilities of WUSA, Channel 9, that do not continue to meet the commission's di minimis requirements with respect to WBPH-DT.

FIGURE 1



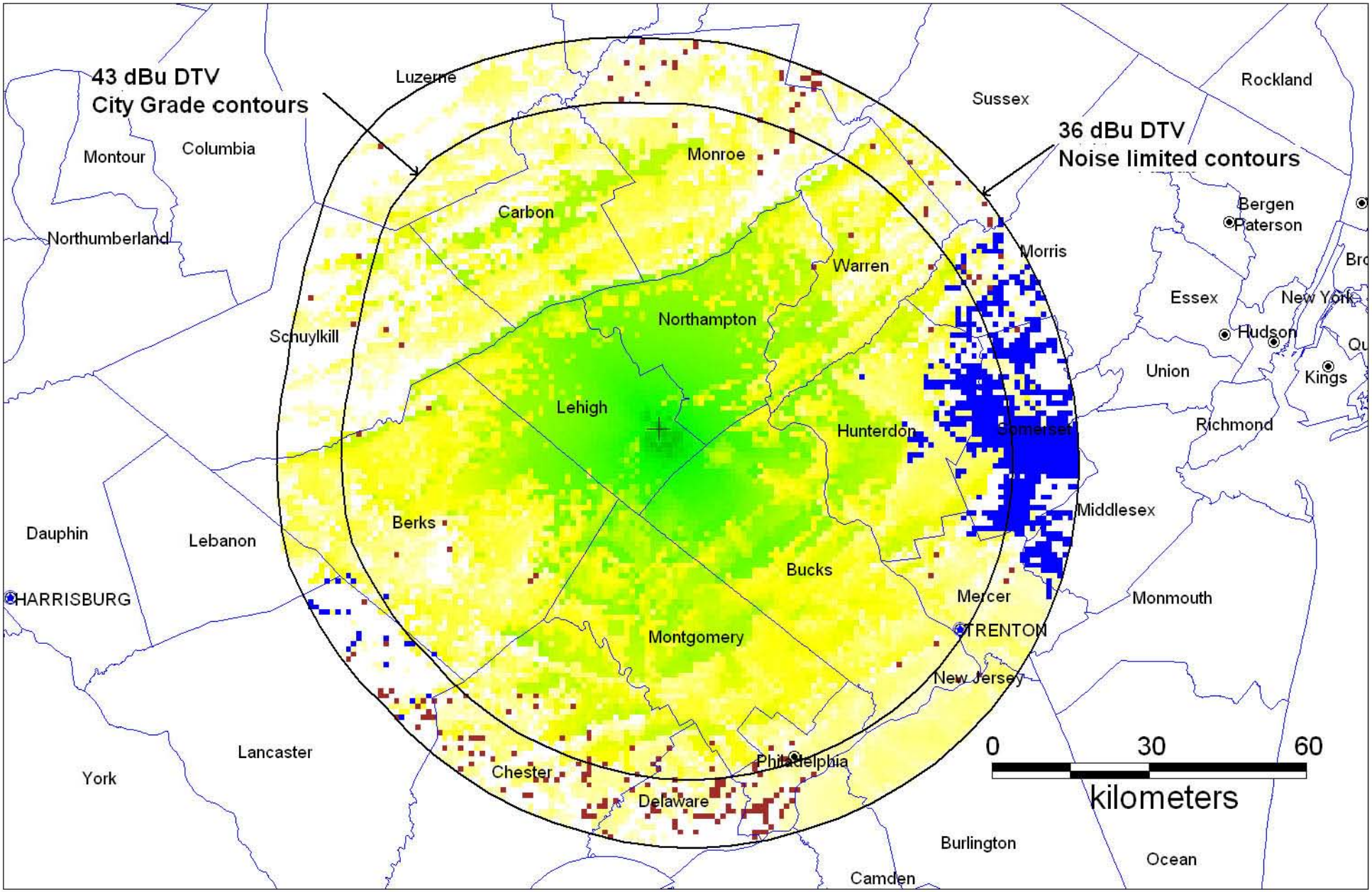
WUSA DTV Channel 9 Washington, DC
Predicted Post Transition Service Contours @ 17.016 kW
Appendix B Allotted Facility Contours (BLACK)
Proposed Facility Using Current Analog Antenna (RED)
Current NTSC Predicted Service (GREEN)

FIGURE 2



WUSA DTV Channel 9 Washington, DC
Predicted Post Transition Service Contours @ 17.016 kW
Appendix B Allotted Facility Contours (BLACK)
Proposed Facility Using Current Analog Antenna (RED)

FIGURE 3

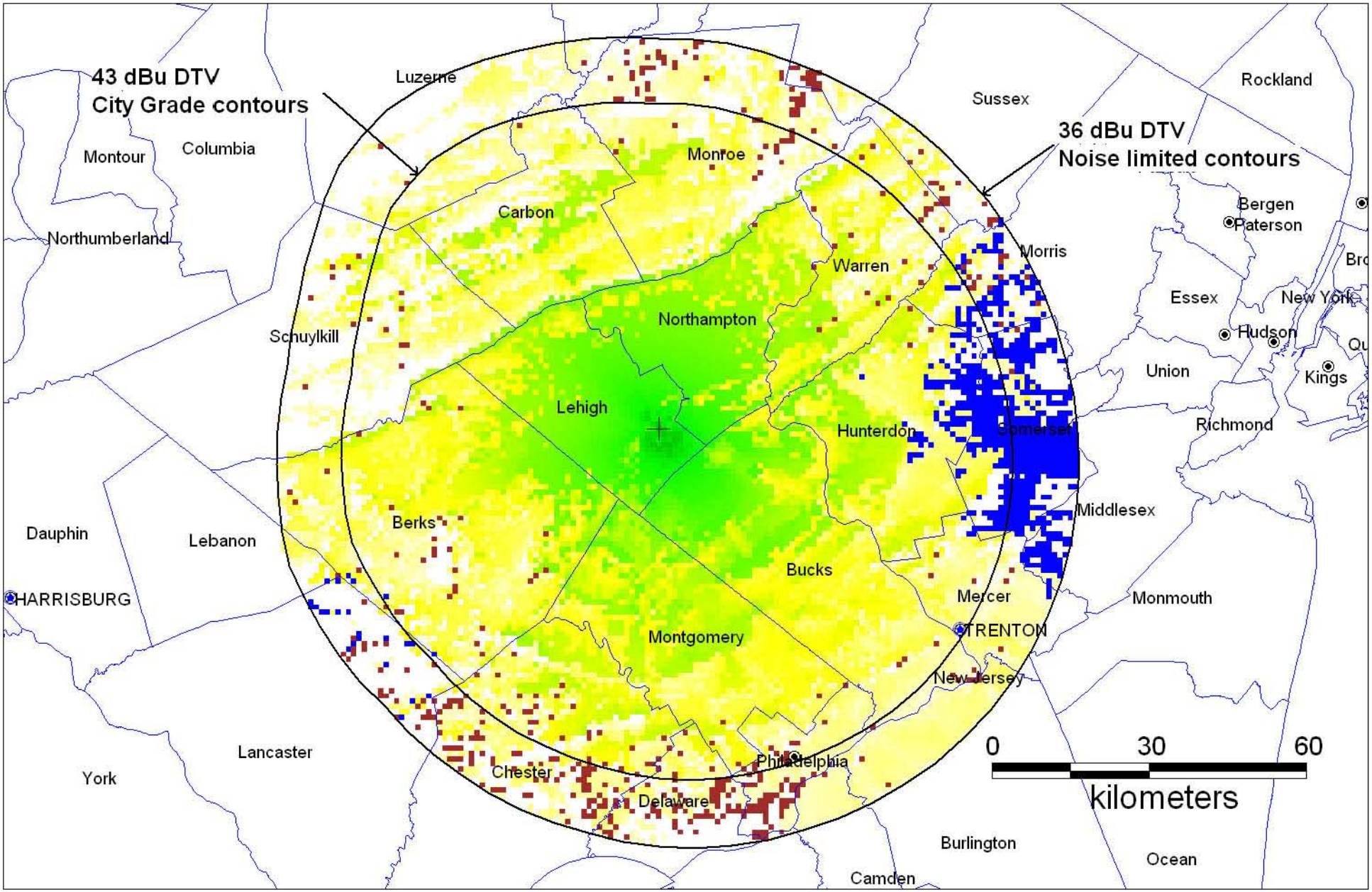


WBPH Channe 9 Bethlehem, PA
Predicted Post Transition Allotted Service Contours

Blue indicates DTV interference (without WUSA)
Brown indicates interference with WUSA Appendix B Allotment

Green indicates high field strength fading to yellow and then to white at the noise limited threshold

FIGURE 4



WBPH Channe 9 Bethlehem, PA
Predicted Post Transition Allotted Service Contours

Blue indicates DTV interference (without WUSA)
Brown indicates interference with WUSA using analog antenna

Green indicates high field strength fading to yellow and then to white at the noise limited threshold

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Opposition to Petition for Reconsideration were served, by first-class United States mail, postage prepaid, this 6th day of November 2007, on:

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