

Statement of Compliance with Assignment Requirements

On September 11, 2001, radio station WPAT-FM's currently licensed main transmitter site at the World Trade Center (WTC) [FCC File No. BLH-19820223AR] was destroyed by terrorists. WPAT-FM is presently operating pursuant to Special Temporary Authority (STA) from the Empire State Building (ESB). By means of this application, WPAT Licensing, Inc. requests permanent authority to relocate the WPAT-FM main transmission facility to the Empire State Building.¹

The transmitter site specified herein remains fully-spaced under Section 73.207 of the FCC Rules with all pertinent co-channel, adjacent-channel and I.F.-related full service allotments, assignments and applications except as noted herein. As demonstrated below, the instant proposal satisfies the applicable assignment requirements with respect to each of the short-spaced stations.

Section 73.213(a)(2) Compliance

- Cochannel Class B station WHYN-FM, Springfield, MA

Radio station WPAT-FM has been short-spaced to cochannel Class B station WHYN-FM, Springfield, MA continuously from prior to November, 1964, to the present time. The distance separation between the former World Trade Center transmitter site and the WHYN-FM transmitter site is 204.5 kilometers. From the proposed ESB site, WPAT-FM would be 199.9 kilometers from the WHYN-FM licensed transmitter site. As required by Section 73.213(a)(2) of the FCC rules, the public interest would be served by the changes proposed herein. Further calculations under Section 73.213(a) follow.

Interference Caused to WHYN-FM

Presently, the licensed WPAT-FM main facility is predicted to cause interference to a population to 47,878 persons within an area of 144 km² within the licensed WHYN-FM protected contour.² Details of the present area of interference caused to WHYN-FM are shown in Exhibit 1. The proposed WPAT-FM facility is predicted to cause interference to a population of 46,564 persons within an area of 144 km² within the licensed WHYN-FM protected contour. Details of the proposed area of interference caused to WHYN-FM are shown in Exhibit 2.

¹ The Applicant's previous attempt to permanently license WPAT-FM at ESB was ultimately denied by the Audio Division of the FCC after 11+ years of deliberation (See WPAT-FM *Application for Construction Permit* FCC File No. BPH-20021107AD, dismissed July 28, 2003; Petition for Reconsideration denied May 23, 2014). The events of September 11, 2001, were determined to be insufficient justification for a waiver of an FCC Rule which would have allowed WPAT-FM to re-establish a technical facility at ESB equivalent to the technical facility destroyed by terrorists on WTC.

² All population figures referenced herein are based on the 2010 US Census of Population.

The population within the WHYN-FM protected service area which is predicted to receive interference from the proposed WPAT-FM facility will be decreased by 1,314 persons and the predicted area of WPAT-FM interference caused to WHYN-FM would be maintained. The entire population predicted to receive interference from WPAT-FM will continue to be well-served (by at least five aural services).

Interference Received From WHYN-FM

Presently, 64,818 persons within an area of 145 km², within the licensed WPAT-FM protected contour, are predicted to receive interference from the licensed WHYN-FM facility. Details of the present area of interference received from WHYN-FM are shown in Exhibit 3. The proposed WPAT-FM facility is predicted to receive interference from WHYN-FM within an area of 190 km² affecting a population of 83,166 persons within the proposed WPAT-FM protected contour. Details of the proposed area of interference received from WHYN-FM are shown in Exhibit 4.

The population within the WPAT-FM protected service area which is predicted to receive interference from WHYN-FM will be increased by 18,348 persons. The predicted area of WPAT-FM interference received from WHYN-FM would increase by 45 km². The increase in interference to a population of 18,348 persons represents only 0.11% of the 17,143,990 persons within the presently licensed WPAT-FM 54 dBu protected contour. This entire population predicted to receive interference from WHYN-FM will continue to be well-served by at least five aural services.

In light of the above, because the WHYN-FM population subject to co-channel interference caused by the proposed facility is not increased, the instant proposal satisfies Section 73.213(a) with respect to WHYN-FM.

- First-Adjacent channel Class B station WMMR(FM), Philadelphia, PA

Radio station WPAT-FM has been short-spaced to first-adjacent channel Class B station WMMR(FM), Philadelphia, PA continuously from prior to November, 1964, to the present time. The distance separation between the former World Trade Center transmitter site and the WMMR(FM) transmitter site is 129.4 kilometers. From the proposed ESB site, WPAT-FM would be 133.8 kilometers from the WMMR(FM) licensed transmitter site. As required by Section 73.213(a)(2) of the FCC rules, the public interest would be served by the changes proposed herein. Further calculations under Section 73.213(a) follow.

Interference Caused to WMMR(FM)

The licensed WPAT-FM facility is predicted to cause interference to a population of 191,693 persons within an area of 933 km² within the licensed WMMR(FM) protected contour. Details of the present area of interference caused to WMMR(FM) are shown in Exhibit 5. The proposed WPAT-FM facility is predicted to cause interference to a population of 137,284 persons within an area of 661 km² within the licensed WMMR(FM) protected contour. Details of the proposed area of interference caused to WMMR(FM) are shown in Exhibit 6. Therefore, the WPAT-FM predicted

area of interference caused to WMMR(FM) will decrease by 272 km² and the population which is predicted to receive interference from WPAT-FM will be reduced by 54,409 persons.

Interference Received From WMMR(FM)

Presently, 328,278 persons within an area of 928 km², within the licensed WPAT-FM protected contour, are predicted to receive interference from the licensed WMMR(FM) facility. Details of the present area of interference received from WMMR(FM) are shown in Exhibit 7. The proposed WPAT-FM facility is predicted to receive interference from WMMR(FM) licensed facility within an area of 660 km² affecting a population of 310,511 persons within the proposed WPAT-FM protected contour. Details of the proposed area of interference received from WMMR(FM) are shown in Exhibit 8. Therefore, the WPAT-FM predicted area of interference received from WMMR(FM) will decrease by 268 km² while the population within the WPAT-FM protected service area which is predicted to receive interference from WMMR(FM) will decrease by 17,767 persons.

In light of the above, because the WMMR(FM) population subject to first-adjacent channel interference caused by the proposed facility is not increased, the instant proposal satisfies Section 73.213(a) with respect to WMMR(FM).

Net Interference Caused and Received with respect to WMMR and WHYN-FM

With respect to WHYN-FM, the proposed WPAT-FM facility at ESB will result in a 17,034 person net increase in "interference population" (i.e. the population within the area of WPAT-FM interference caused plus the population within the area of WPAT-FM interference received). With respect to WMMR, the proposal will result in a 72,176 person net decrease in "interference population". Considered together, the instant proposal will result in a net decrease in "interference population" of 55,142 persons. The net "interference area" will also decrease by 495 km². As stated above, all the predicted areas of interference are well-served by five or more aural services.

- First-Adjacent channel Class B station WMGS(FM), Wilkes-Barre, PA

Radio station WPAT-FM has been short-spaced to first-adjacent channel Class B station WMGS(FM), Wilkes-Barre, PA continuously from prior to November, 1964, to the present time.³ The distance separation between the former World Trade Center transmitter site and the WMGS(FM) transmitter site is 165.0 kilometers. From the proposed ESB site, WPAT-FM would be 166.0 kilometers from the WMGS(FM) licensed transmitter site. As demonstrated in Exhibit 9, neither the presently licensed nor the proposed WPAT-FM facility causes or receives interference with respect to WMGS(FM). Therefore, as required by Section 73.213(a)(2) of the FCC rules, the public interest

³ Radio station WMGS(FM) [formerly WYZZ] was first licensed at its current transmitter site on Penobscot Mountain on 103.3 MHz (Channel 277) on July 10, 1959. On October 3, 1963, a modification of the WMGS(FM) license was granted pursuant to Docket No. 14181 (*Order* dated July 25, 1963) which changed the WMGS(FM) frequency to 92.9 MHz (Channel 225) and created the longstanding short-spacing to first-adjacent channel station WPAT-FM.

would be served by the changes proposed herein and no further calculations under Section 73.213(a) are required.

Section 73.213(a)(4) Compliance

Radio station WPAT-FM (Channel 226B) has been short-spaced to two second-adjacent channel stations continuously from prior to November, 1964, to the present time. These stations, WQBU-FM, Garden City, NY (Channel 224A), and WVIP(FM), New Rochelle, NY (Channel 228A), are considered to be pre-1964 grandfathered short-spaced stations. Pursuant to Section 73.213(a)(4), there are no distance separation or interference protection requirements to these second-adjacent channel pre-1964 grandfathered short-spaced stations.

Section 73.213(c)(1) Compliance

The WPAT-FM licensed transmitter site became 3.33 kilometers short-spaced to first-adjacent channel Class A station WBWZ(FM), New Paltz, New York, as a result of the Commission's revision of the minimum distance spacing requirements for Class A facilities (See *Second Report and Order*, MM Docket 88-375, 4 FCC Rcd 6375 (1989)). Accordingly, the minimum distance spacing relationship between WPAT-FM and WBWZ(FM) is governed by Section 73.213(c)(1) of the FCC Rules.

From the ESB site, WPAT-FM would be separated from WBWZ(FM) by 105.6 kilometers. Pursuant to Section 73.213(c)(1) of the FCC Rules, the minimum distance spacing requirement between WPAT-FM and WBWZ(FM) is 105 km. As a result, the proposed WPAT-FM transmitter site satisfies the spacing requirements contained in Section 73.213(c)(1) with respect to WBWZ(FM).

Other concerns

First-adjacent channel station WEHM(FM), Manorville, NY, filed an application for Construction Permit (FCC File No. BPH-20070119AAC, granted October 2, 2007) and requested processing in accordance with Section 73.215 of the FCC Rules because the application created a new 6.8 km short-spacing to the currently licensed WPAT-FM facility and a new 9.7 km short-spacing to the WPAT-FM Application at ESB that was active at the time.⁴ As a result, WEHM(FM) is presently licensed to operate as "Section 73.215 Authorization" with respect to WPAT-FM.

⁴ See *supra* note 1.

Because the instant proposal involves no change in the WPAT-FM/WEHM spacing and because no new contour overlap will occur as a result of the instant proposal (See Exhibit 9), the Applicant **does not** request processing under Section 73.215 with respect to WEHM(FM).⁵

Dated: March 12, 2021


William J. Getz

⁵ This is consistent with the intent of the rule and the policy adopted by the Audio Services Division of the FCC. See WCLG-FM, Morgantown, WV, *Application for Construction Permit*, FCC File No. BPH-19900518IH, granted 12/4/90; WXYT-FM [formerly WJOI(FM)] Detroit, MI, *Application for Construction Permit*, FCC File No. BPH-19930826IC, granted 1/25/94; WPPN [formerly WZFS(FM) and WYLL(FM)] Des Plaines, IL, *Application for Construction Permit*, FCC File No. BPH-19980910IE, granted 12/23/98; and, KDEY-FM [formerly KFSB(FM)] Ontario, CA, *Application for Construction Permit*, FCC File No. BPH-20021106AAT, granted 03/10/03. Applications short-spaced to 73.215 authorizations were not required to request processing under Section 73.215.

WHYN-FM, Springfield, MA (226B)
FCC File No. BMLH-19990121KA
8.90 kW ERP, 305 m HAAT

WHYN-FM

Springfield

Ulster

Sullivan

CoChannel D/U Ratio < 20 dB
Area of Interference (144 km²)
Population = 47,878 persons

Litchfield

Hartford

Tolland

New London

Orange

New Haven

Middlesex

New Haven

Fairfield

Bridgeport

Norwalk

Stamford

Present Interference Caused to WHYN-FM
WPAT-FM, Paterson, NJ
LICENSE: Ch. 226B, 5.4 kW ERP, 433 m HAAT
APP: Ch. 226B, 4.8 kW ERP, 415 m HAAT

Exhibit 1

March, 2021

Scale 1:1,000,000

0 10 20 30 40 50 km

WHYN-FM, Springfield, MA (226B)
FCC File No. BMLH-19990121KA
8.90 kW ERP, 305 m HAAT

WHYN-FM

Springfield

Ulster

Sullivan

Orange

Putnam

Westchester

Stamford

Norwalk

Fairfield

New Haven

New Haven

Bridgeport

Middlesex

New London

34 - 36 dBu
F(50,10)

54 - 56 dBu
F(50,50)

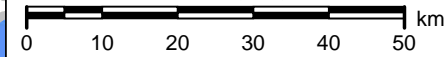
CoChannel D/U Ratio < 20 dB
Area of Interference (144 km²)
Population = 46,564 persons

Proposed Interference Caused to WHYN-FM
WPAT-FM, Paterson, NJ
LICENSE: Ch. 226B, 5.4 kW ERP, 433 m HAAT
APP: Ch. 226B, 4.8 kW ERP, 415 m HAAT

Exhibit 2

March, 2021

Scale 1:1,000,000



Present Interference Received From WHYN-FM
WPAT-FM, Paterson, NJ
LICENSE: Ch. 226B, 5.4 kW ERP, 433 m HAAT
APP: Ch. 226B, 4.8 kW ERP, 415 m HAAT

Exhibit 3

March, 2021



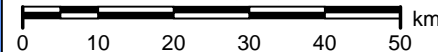
WHYN-FM, Springfield, MA (226B)
FCC File No. BMLH-19990121KA
8.90 kW ERP, 305 m HAAT

CoChannel D/U Ratio < 20 dB
Area of Interference (145 km²)
Population = 64,818 persons

54 - 56 dBu
F(50,50)

34 - 36 dBu
F(50,10)

Scale 1:1,000,000



Proposed Interference Received From WHYN-FM

WPAT-FM, Paterson, NJ

LICENSE: Ch. 226B, 5.4 kW ERP, 433 m HAAT

APP: Ch. 226B, 4.8 kW ERP, 415 m HAAT

Exhibit 4

March, 2021

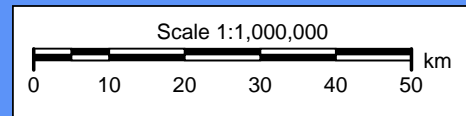


WHYN-FM, Springfield, MA (226B)
FCC File No. BMLH-19990121KA
8.90 kW ERP, 305 m HAAT

CoChannel D/U Ratio < 20 dB
Area of Interference (190 km²)
Population = 83,166 persons

54 - 56 dBu
F(50,50)

34 - 36 dBu
F(50,10)



Present Interference Caused to WMMR(FM)

WPAT-FM, Paterson, NJ

LICENSE: Ch. 226B, 5.4 kW ERP, 433 m HAAT

APP: Ch. 226B, 4.8 kW ERP, 415 m HAAT

Exhibit 5

March, 2021

First-Adjacent Channel D/U Ratio < 6 dB

Area of Interference (933 km²)

Population = 191,693 persons

WMMR(FM), Philadelphia, PA (227B)
FCC File No. BMLH-20061205ADU
16.5 kW ERP, 264 m HAAT



Scale 1:1,500,000



Proposed Interference Caused to WMMR(FM)

WPAT-FM, Paterson, NJ

LICENSE: Ch. 226B, 5.4 kW ERP, 433 m HAAT

APP: Ch. 226B, 4.8 kW ERP, 415 m HAAT

Exhibit 6

March, 2021

First-Adjacent Channel D/U Ratio < 6 dB
Area of Interference (661 km²)
Population = 137,284 persons

WMMR(FM), Philadelphia, PA (227B)
FCC File No. BMLH-20061205ADU
16.5 kW ERP, 264 m HAAT

48 - 53 dBu
F(50,10)

54 - 59 dBu
F(50,50)



Scale 1:1,500,000



Present Interference Received From WMMR(FM)

WPAT-FM, Paterson, NJ

LICENSE: Ch. 226B, 5.4 kW ERP, 433 m HAAT

APP: Ch. 226B, 4.8 kW ERP, 415 m HAAT

Exhibit 7

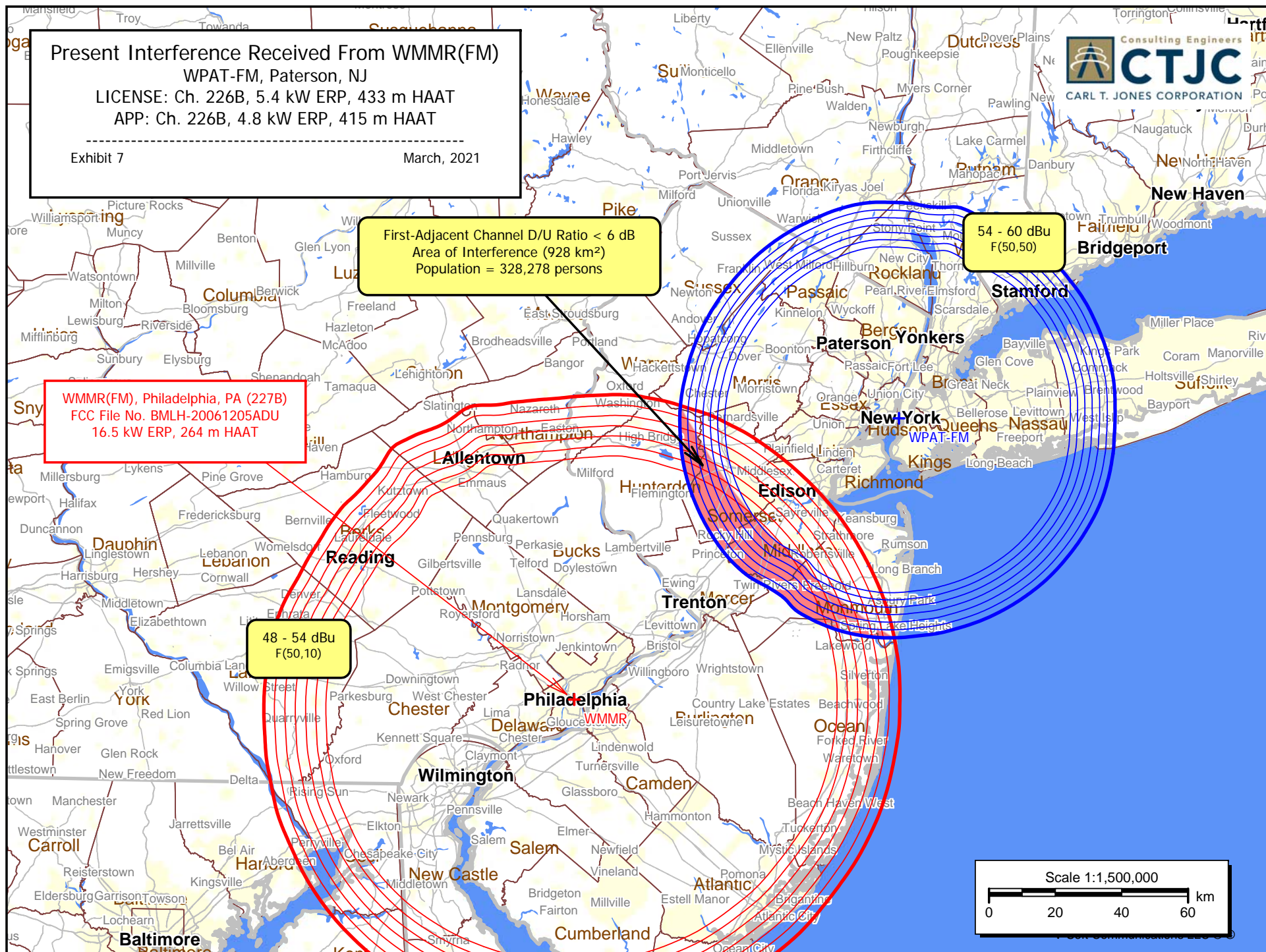
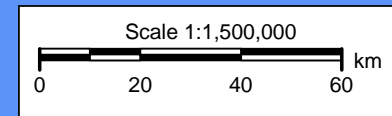
March, 2021

First-Adjacent Channel D/U Ratio < 6 dB
Area of Interference (928 km²)
Population = 328,278 persons

54 - 60 dBu
F(50,50)

WMMR(FM), Philadelphia, PA (227B)
FCC File No. BMLH-20061205ADU
16.5 kW ERP, 264 m HAAT

48 - 54 dBu
F(50,10)



Proposed Interference Received From WMMR(FM)

WPAT-FM, Paterson, NJ

LICENSE: Ch. 226B, 5.4 kW ERP, 433 m HAAT

APP: Ch. 226B, 4.8 kW ERP, 415 m HAAT

Exhibit 8

March, 2021

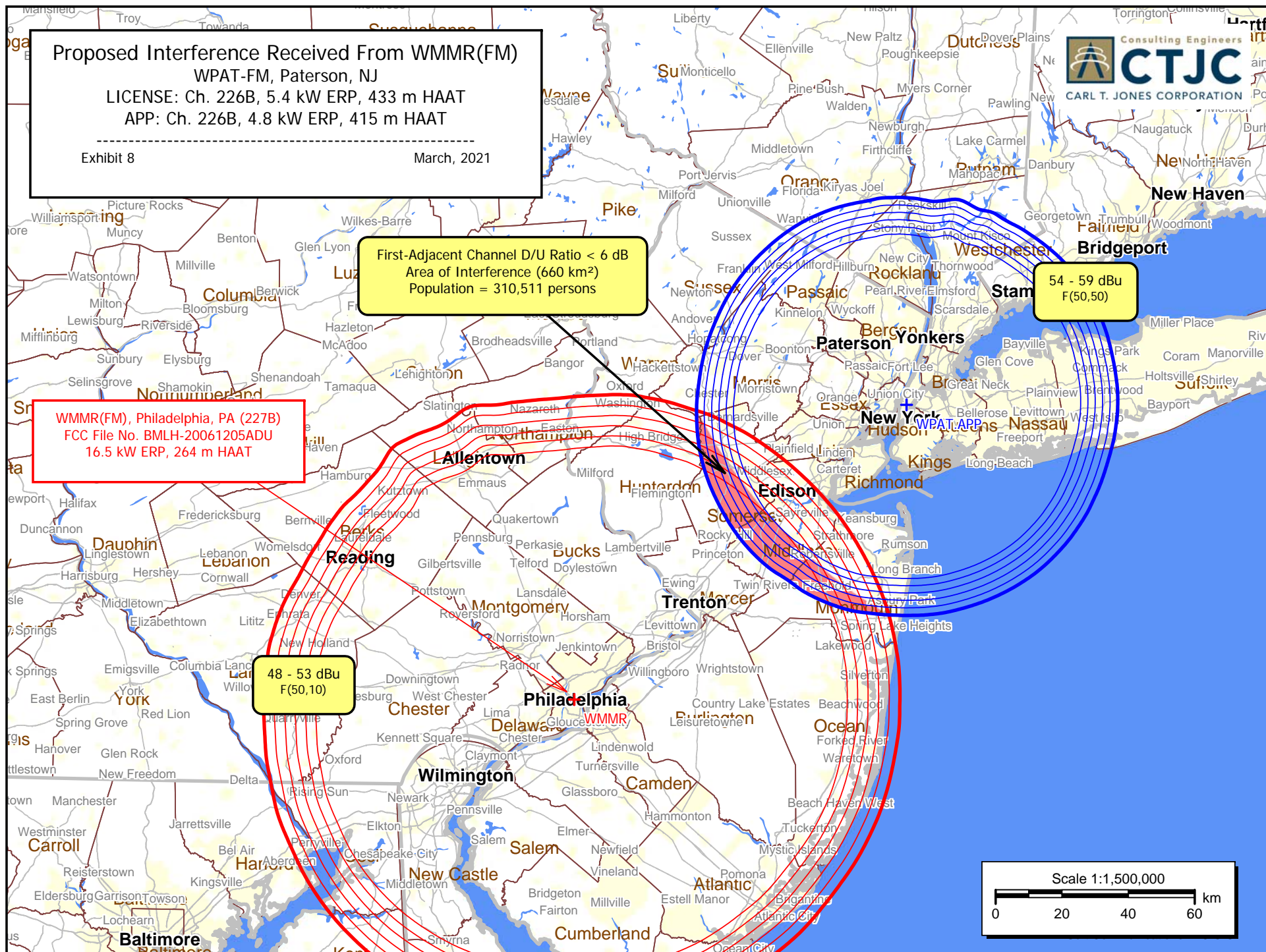
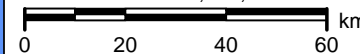
First-Adjacent Channel D/U Ratio < 6 dB
Area of Interference (660 km²)
Population = 310,511 persons

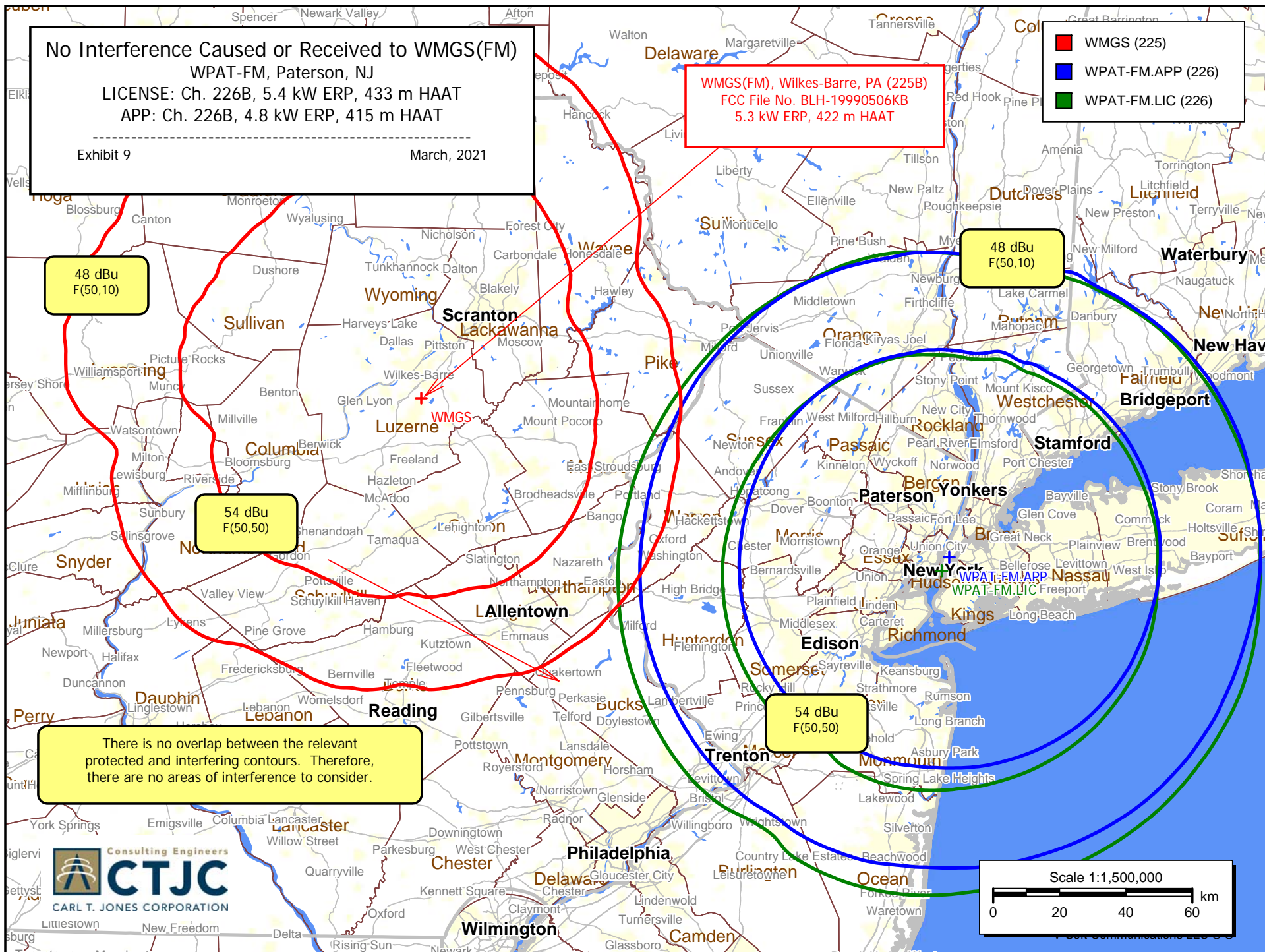
WMMR(FM), Philadelphia, PA (227B)
FCC File No. BMLH-20061205ADU
16.5 kW ERP, 264 m HAAT

54 - 59 dBu
F(50,50)

48 - 53 dBu
F(50,10)

Scale 1:1,500,000







Section 73.215 Contours

WPAT-FM, Paterson, NJ

LIC: Ch. 226B, 5.4 kW ERP, 433 m HAAT

APP: Ch. 226B, 4.8 kW ERP, 415 m HAAT

March, 2021