

## **WAIVER REQUEST**

Southern Illinois University  
DTDRT for Station WSIU-TV  
Channel 28 in Cape Girardeau, Missouri

The Board of Trustees of Southern Illinois University (“SIU”) is the licensee of Station WSIU-TV, Channel 8, Carbondale, Illinois. SIU seeks a new digital-to-digital replacement translator (DTDRT) to replace coverage of Station WSIU in the Southern Illinois/Southeast Missouri area and a waiver of the DTDRT eligibility requirements in Section 74.787(a)(5)(v) of the FCC rules. SIU does not seek DTDRT priority over other applications filed in this Special Displacement Window.

### **BACKGROUND**

SIU is the long time licensee of Station WSIU. WSIU first signed on in 1961 on VHF Channel 8 and has provided public television service to 27 counties in Southern Illinois and portions of Southeast Missouri since that time, including sole public television (PBS) service to numerous rural, sparsely populated agricultural counties in the region.

From 1961 until its digital transition, WSIU provided reliable “Grade B” service on VHF Channel 8 in seven (7) rural counties along the Missouri River bluffs between Southern Illinois and Southeast Missouri, including Cape Girardeau County, Missouri, where the community of Cape Girardeau is located. WSIU provided the only over-the-air (OTA) public television (PBS) service in areas of Southern Illinois/Southeast Missouri, including the rural Southeast Missouri counties of: Cape Girardeau (population 75,674 people, approximately 119 people per square mile, Perry (population 18,971, approximately 38 people per square mile, Bollinger (population 12,029 people, approximately 19 people per square mile), and Scott (population 39,191 people and approximately 96 people per square mile), as well the Illinois counties of Alexander (population 8,238 people, approximately 35 people per square mile) and Pulaski (population 6,161, approximately 39 people per square mile).<sup>1</sup>

As part of the DTV transition, WSIU operated on analog VHF Channel 8, digital UHF Channel 40, then finally transitioned to digital VHF Channel 8. WSIU lost both geographic and population coverage during this VHF-UHF-VHF move. While WSIU’s predicted contour on its current VHF Channel 8 shows OTA service to Cape Girardeau County, there is, in fact, limited to no actual OTA service reception in that area, as demonstrated by the attached email from WSIU’s donor. As the FCC acknowledged in creating the DRT and DTDRT services and in the TV repack generally, OTA service can be lost due to technical changes of full-service facilities (including UHF to VHF channel moves).<sup>2</sup> In creating DRTs and DTDRTs, the FCC further

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<sup>1</sup> Population information from Wikipedia.

<sup>2</sup> As explained in the Incentive Auction R&O, because radio signals propagate differently on different frequencies, the signal of a station reassigned to a different channel will generally not be receivable in precisely the same locations within a station’s contour as it was on its original channel. Incentive Auction R&O, 29 FCC Rcd at 6646, para. 170; In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268, Third Report and Order and First Order on Reconsideration, FCC 15-141 (rel.

acknowledged that the public interest is served when continuity of service is maintained. Thus, WSIU seeks waiver of the FCC rules in order to serve the underlying purposes of the DRT and DTDRT services. In short, WSIU seeks to replace lost OTA public television (PBS) service to Southern Illinois and Southeast Missouri, including Cape Girardeau County, Missouri so that there is available OTA public TV (PBS) service to the areas.

## **DIGITAL TO DIGITAL REPLACEMENT ELIGIBILITY RULE AND WAIVER STANDARD**

Section 74.787(a)(5)(v) of the FCC's rules sets forth the eligibility requirements for a digital-to-digital replacement translator and provides:

“A license for a digital-to-digital replacement television translator will be issued only to a full-power television broadcast station licensee that demonstrates in its application a loss in the station's pre-auction digital service area as a result of the broadcast television spectrum incentive auction, including the repacking process, conducted under section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96). “Pre-auction digital service area” is defined as the geographic area within the full power station's noise-limited contour (as set forth in Public Notice, DA 15-1296, released November 12, 2015).”

WSIU cannot meet this eligibility requirement, as WSIU cannot demonstrate a loss of WSIU's “pre-auction digital service area”. However, WSIU has already demonstrated a loss to its service area in Southeast Missouri and Southern Illinois related to its analog to digital conversion. See FCC File No. BDRTEdt-20100830ABG, granted December 28, 2011. Thus, under the unique circumstances of its situation as described in this request, WSIU submits that a waiver of Section 74.787(a)(5)(v) of the FCC's rules would best serve the public interest, as a rule waiver would allow WSIU to restore OTA public TV (PBS) service to Southeast Missouri and Southern Illinois – reception service that currently exists on paper, but not in actuality.

The FCC may grant a waiver for good cause shown.<sup>3</sup> A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.<sup>4</sup> In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>5</sup> Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>6</sup>

As demonstrated in this request, good cause exists for waiver of the DTDRT eligibility rule in this instance as there are considerations of hardship, equity and effective implement of the policy rationales underlying DRTs and DTDRTs. Waiver will serve the public interest by restoring lost OTA public TV (PBS) service to Southeast Missouri and Southern Illinois –

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Oct. 26, 2015) at para. 85 (Third Report and Order and First Order on Reconsideration).

<sup>3</sup> 47 C.F.R. § 1.3.

<sup>4</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>5</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

<sup>6</sup> *Northeast Cellular*, 897 F.2d at 1166.

“broadcast service that the public has come to depend upon and enjoy.”<sup>7</sup> Moreover, the waiver will not harm other displaced DRTs, existing LPTVs or existing TV translators because it does seek any priority over those applications or stations. Instead, WSIU’s purpose is only to restore what was lost – the only OTA public TV (PBS) service to the Southeast Missouri and Southern Illinois area.

## **PUBLIC INTEREST BENEFITS**

The public interest would be served by waiving the DTDRT eligibility rules in this particular instance. Section 396(a)(9) of the Communications Act states that “it is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications services through all appropriate available telecommunications distribution technologies.” Waiver of the eligible rule would permit restoration of high quality noncommercial educational public television service to citizens in the area that rely on OTA coverage. Citizens in the area, including children and families, could benefit from the educational offerings provided by WSIU’s PBS program service. Moreover, a donor to Station WSIU that resides in the area has already identified this public interest need in the Cape Girardeau area and is willing to provide the necessary funding for this DTDRT station for WSIU.

Background on the DTDRT Service Area. The counties in Southeast Missouri and Southern Illinois, including those in and around Cape Girardeau that would benefit from the DTDRT coverage, are rural, sparsely populated and impoverished. According to census data the percentage of those under age 18 under the poverty line<sup>8</sup> for the counties in Southeast Missouri and Southern Illinois are: 11.4% children in poverty in Cape Girardeau County; 8.9% children in poverty for Perry County; 15.4% children in poverty for Bollinger County; and 23.5% children in poverty for Scott County; 33.1 % children in poverty for Alexander County, Illinois and 32% children in poverty for Pulaski County, Illinois.<sup>9</sup>

Population areas like these are most in need of the public television service benefits that the proposed DTDRT could bring to the area, including, for example, the PBS KIDS Ready to Learn program. Major research efficacy studies have demonstrated that exposure to PBS KIDS Ready to Learn content significantly enhances children’s early literacy and math skills, and also has significant effects on family engagement and educator capacity.<sup>10</sup> For more detailed information about Ready to Learn, see <https://www.cpb.org/ready-to-learn> and <http://pbskids.org/island/about/rtl-grant.html>

Moreover, WSIU had already identified and tried to bring DRT service to this area, albeit unsuccessfully, due to a combination of rapid regulatory changes and state fiscal challenges that derailed its original DRT effort.

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<sup>7</sup> See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations*, MB Docket No. 08-253, Report and Order, 24 FCC Rcd 5931, 5932, para. 3 (2009) (*DRT R&O*).

<sup>8</sup> In 2015, the United States poverty threshold for a family group of four, including two children, was \$24,250.

<sup>9</sup> Information from Wikipedia.

<sup>10</sup> See studies cited at <https://www.cpb.org/ready-to-learn>

Timeline and Background on Prior Efforts to Restore Service to the Area. In 2010, WSIU filed for four (4) DRTs, including a DRT for the Cape Girardeau area, to compensate for lost coverage resulting from WSIU's move to digital broadcasting. See, for example, FCC File No. BDRTE DT - 20100830ABG. WSIU received a permit for its Southeast Missouri and Southern Illinois DRT in December 2011 with an initial permit build out deadline of December 28, 2014. In February 2012, Congress passed the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act"). Unfortunately, the Spectrum Act did not address how the auction and repacking would impact existing translator service. The Spectrum Act had an immediate chilling effect on WSIU's plans for its DRTs as it was faced with the Hobson's choice of building the DRTs (and allocating scarce resources to build out DRTs that might subsequently be forced off the air or forced to change channels with no reimbursement of its relocation costs) or not building the DRTs at all, both of which would result in losing service to the areas the DRTs would serve.

In May 2014, when the FCC adopted the *Incentive Auction Report and Order*, it became clear that some LPTV and TV translator stations would be displaced as a result of the auction or repacking process, but it was not yet possible to identify which translators would be displaced.<sup>11</sup>

Seeking more time for clarity about its options and its potentially stranded investment in DRTs, on July 30, 2014, WSIU sought and was granted an extension of time, until February 2, 2015 to construct its DRT. On October 14, 2014, the FCC also issued the *Third Notice of Proposed Rulemaking*, which sought comments on proposals to help LPTV and TV translators and considered additional means to mitigate the potential impact of the incentive auction and the repacking process on LPTV and TV translator stations.<sup>12</sup> The *Third Notice of Proposed Rulemaking* stated, in Paragraph 12:

"Finally, the September 1, 2015 digital transition date does not apply to holders of unbuilt construction permits for new digital LPTV and TV translator stations. These permits are issued a three year construction deadline at the time the initial construction permit is granted. Many of the more than 1,700 outstanding new digital LPTV and TV translator station permittees have been granted two extensions of time to construct by the Media Bureau staff and some have filed applications requesting a third extension of time. In order to treat these permittees similarly to the permittees of transitioning LPTV and TV translator stations, by Public Notice released today, we have suspended the expiration date and construction deadlines of construction permits for new digital LPTV and TV translator stations pending final action in this proceeding. In the event we extend the deadline for transitioning analog LPTV and TV translator stations in this proceeding, we tentatively conclude to extend the deadline for construction permits for new digital

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<sup>11</sup> In the *Incentive Auction Report and Order*, the FCC declined to extend discretionary protection to DRTs because, *inter alia*, protecting existing DRT facilities would significantly affect repacking flexibility in markets where they are licensed. *Incentive Auction Report and Order*, 29 FCC Rcd at 6675, paras. 242-43.

<sup>12</sup> See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations*, MB Docket No. 03-185, Third Notice of Proposed Rulemaking, 29 FCC Rcd 12536 (2014) (*Third Notice*).

stations to conform their construction deadline to the new digital transition deadline.” conclusion.”<sup>13</sup>

Because the Third Notice of Proposed Rulemaking did not specifically address unbuilt DRT extensions of time to construct, SIU and its counsel assumed that the SIU DRTs expiration dates and construction deadlines (for a new digital replacement translator) were suspended, along with all other LPTV and TV translator permittees.

However, when the *Third Report and Order* was released on December 17, 2015; it stated that the more generous digital transition date adopted in the Third Report and Order did not apply to DRTs. Instead, the standard three-year construction permit period in Section 73.3598(a) of the FCC rules applied. Thus, while unbuilt permits for new LPTVs and DRTs (that would provide new service) have now been extended until July 13, 2021, the handful of unbuilt permits for DRTs (that were granted to restore lost service) were not similarly extended. As of December 15, 2015, when the *Third Report and Order* was released, the WSIU DRT permits were no longer valid. In the meantime, however, SIU’s financial situation had changed drastically.

During this same time frame, the State of Illinois was entering what would turn out to be multiple fiscal years without a state budget, which included a two-year budget crisis where state higher education (including WSIU’s licensee, to the Board of Trustees of Southern Illinois University) would receive approximately 25% of its regular state appropriation over a two-year period. Faced with an unprecedented higher education fiscal crisis in Illinois, coupled with no reasonable assurance that its DRT facilities would survive the auction, WSIU could not prudently invest scarce resources into a project of such uncertainty as arguing to restore the DRT permit for the Cape Girardeau area, which it could not afford to construct at that point in time in any event due to the fiscal crises. Thus, the DRT project for Cape Girardeau was shelved.

As fate would have it, some two and a quarter years later, after the results of the incentive auction were announced in April 2017, WSIU found that the DRT facility for Cape Girardeau was on a channel that had miraculously survived – the DRT permit was not displaced by the auction or by repacking.

In the Fall of 2017, after the construction permit for the DRT had expired, a WSIU station donor in Cape Girardeau, Missouri reached out to WSIU management asking about options to improve OTA reception throughout some of the most impoverished areas in the Southeast Missouri region in and around Cape Girardeau. Through a series of phone calls with the donor, the donor made it clear that he would be interested in funding a project to improve public television coverage if a suitable project could be developed. The donor cited the lack of over-the-air broadcast signals in the area and his concern that many of the region’s poorest residents had no access to a public television station without paying a significant price for cable or satellite. See attached donor email.

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<sup>13</sup> *Id.* at para. 12.

At that point in time, WSIU and its communications counsel began discussions to examine options to restore OTA reception in the Missouri Delta region in and around Cape Girardeau, which included helpful informal discussions with FCC staff in January 2018 about WSIU's options to restore the lost service. These discussions culminated in this proposed DTDRT application. An individual -- a donor in the area of lost service in Southeast Missouri -- cares enough about the benefits of educational and public TV service to the region that he is willing to fund construction of the DTDRT facility, provided that WSIU can obtain appropriate FCC authorization for the facility. WSIU submits that the combination of rapid regulatory changes and fiscal crises impacting its DRT, contrasted with the public interests benefits from the restored service, are sufficient good cause for this limited waiver.

Under the circumstances, WSIU submits that it made the most prudent and appropriate decisions that it could about its lost service in Cape Girardeau from the time frame from filing for its DRT in 2010 to the present. In the meantime, however, the viewing public in these rural, sparsely populated Southeast Missouri and Southern Illinois counties remain without any OTA public TV (PBS) service including PBS KIDS Ready to Learn. WSIU submits that there is good cause for a waiver of the DTDRT eligibility rule in this instance.

## **CONCLUSION**

For all these reasons, SIU respectfully requests a waiver of the DTDRT eligibility criteria to permit the processing and grant of its DTDRT application to restore OTA public TV (PBS) service to Southeast Missouri and Southern Illinois.

ATTACHMENT

MAP DEPICTING DRT COVERAGE (FROM EXPIRED DRT)

# Cape Girardeau Translator Coverage

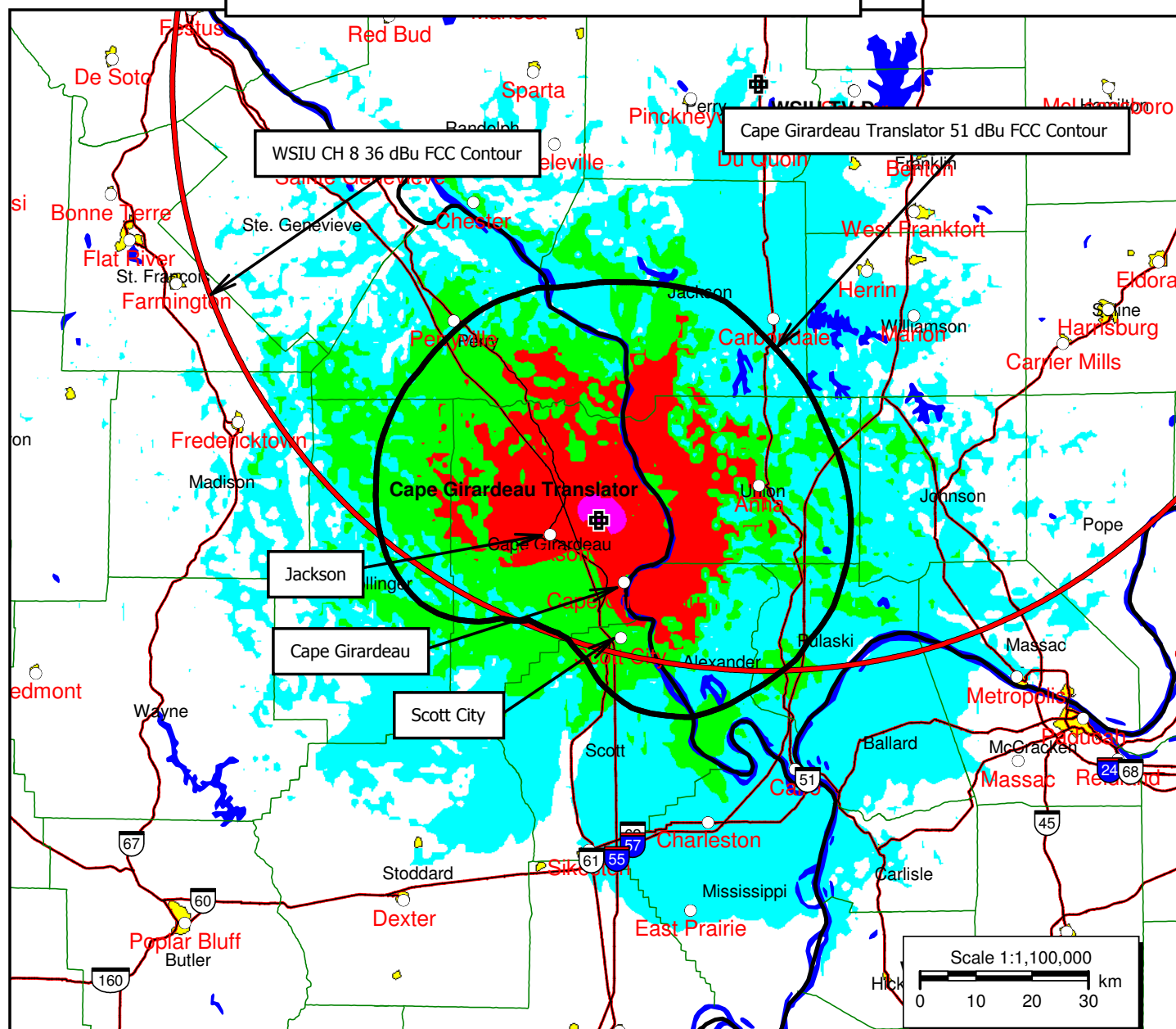
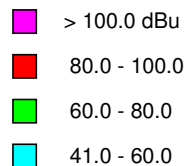
Greg Best Consulting, Inc.

## WSIU-TV-D

BLEDT20090612ADB  
Latitude: 38-06-11 N  
Longitude: 089-14-40 W  
ERP: 53.00 kW  
Channel: 8  
Frequency: 183.0 MHz  
AMSL Height: 410.5 m  
Elevation: 148.1 m  
Horiz. Pattern: Omni  
Vert. Pattern: Yes  
Elec Tilt: 0.5

## Cape Girardeau Translator

Latitude: 37-24-17 N  
Longitude: 089-34-06 W  
ERP: 5.00 kW  
Channel: 28  
Frequency: 557.0 MHz  
AMSL Height: 342.5 m  
Elevation: 213.0 m  
Horiz. Pattern: Directional  
Vert. Pattern: Yes  
Elec Tilt: 1.0





ATTACHMENT

MAP DEPICTING PUBLIC TELEVISION SERVICE TO THE REGION THE DRT WOULD  
SERVE

# WSIU & OTHER PBS STATIONS SERVICE TO CAPE COUNTY

Greg Best Consulting, Inc.

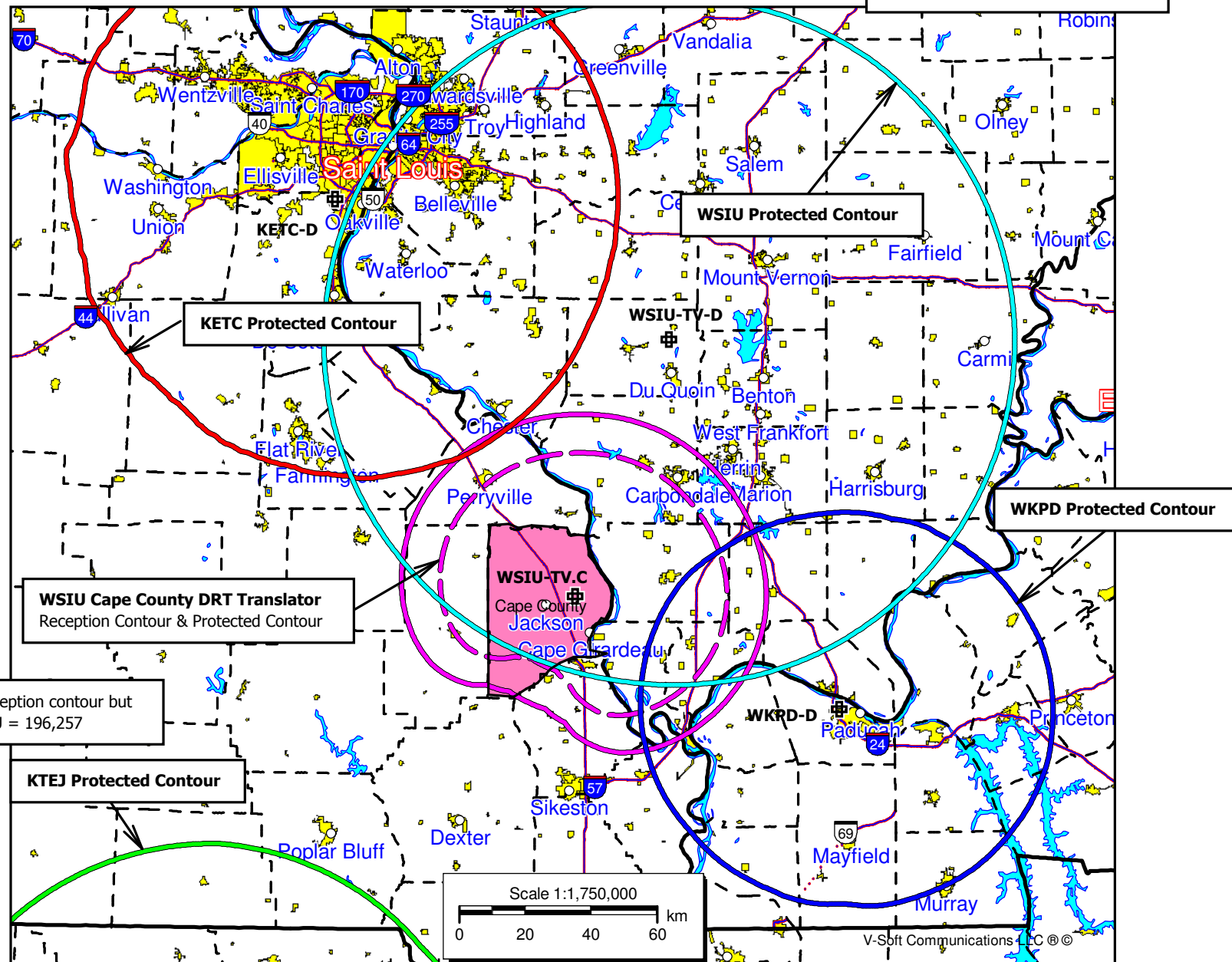
## WSIU-TV.C

BDRTEDT-20100830ABG  
Latitude: 37-24-16.82 N  
Longitude: 089-34-05.66 W  
ERP: 5.00 kW  
Channel: 28  
Frequency: 557.0 MHz  
AMSL Height: 342.5 m  
Elevation: 213.0 m  
HAAT: -999.0 m  
Horiz. Pattern: Directional  
Vert. Pattern: Yes  
Elec Tilt: 1.0  
Prop Model: None

## STATION LEGEND

- KETC CH 9
- WKPD CH 41
- WSIU CH 8
- WSIU CAPE TRANSLATOR
- KETJ CH 20

Note: Population within Cape County DRT Reception contour but not covered by any other station besides WSIU = 196,257



ATTACHMENT

DONOR EMAIL

## Meg Miller

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**From:** Gregory N Petrowich <greg.petrowich@wsiu.org>  
**Sent:** Friday, June 01, 2018 1:39 PM  
**To:** Meg Miller  
**Subject:** FW: EXTENDING WSIU-TV SIGNAL.

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**From:** John Boyd <[johnb-cape@att.net](mailto:johnb-cape@att.net)>  
**Reply-To:** John Boyd <[johnb-cape@att.net](mailto:johnb-cape@att.net)>  
**Date:** Friday, January 19, 2018 at 6:40 PM  
**To:** Gregory N Petrowich <[greg.petrowich@wsiu.org](mailto:greg.petrowich@wsiu.org)>, Mark McMullin <[mark@capegirardeaulaw.com](mailto:mark@capegirardeaulaw.com)>, John Boyd <[johnb-cape@att.net](mailto:johnb-cape@att.net)>  
**Subject:** EXTENDING WSIU-TV SIGNAL.

Greg - The southern six counties of Illinois and all of the adjacent counties of southeast Missouri have no access to over-the-air public television unless they subscribe to cable televisoin. These are some of the poorest counties in both Illinois and Missouri. I believe these families could benefit from the quality educational television on the three channels of WSIU-TV, the closest PBS affiliate to their communities. I continue to be available at this time to fund this expansion at the costs you have mentioned. Thank you for your help in trying to improve lives in these areas. - John Boyd, Cape Girardeau, Missouri.