

TECHNICAL STATEMENT
WAIVER REQUEST AND PROCESSING REQUEST UNDER 73.215
SUMMIT BROADCASTING II, LLC
KCNU SILVER CITY, ID, CH. 281C1
FCC FORM 301
DECEMBER 2018

This Technical Statement is being filed as part of an amendment to the pending FCC form 301 application (BMPH-20180122ABG) for the modification of Construction Permit (“CP”) (BNPH-20151013AAM) for KCNU(FM) Silver City, ID, facility ID 198794.

KCNU seeks to relocate to an existing tower site at the established antenna complex located at “War Eagle Peak” adjacent to the town of Silver City, Idaho.

The original modification of CP called for KCNU to one step downgrade from its current class C CP, to a class C3 on channel 280. However, Commission staff notified KCNU that this proposed class downgrade would not be mutually exclusive with the original allotment in FCC FM auction 98 at McCall, Idaho on channel 280A.

The permittee has determined that the original CP site is unable to be constructed due to power limitations (there is no commercial power source at the CP site) and because of a later discovered Effective Radiated Power (“ERP”) limitation imposed at the current CP site (500 watts maximum). This makes the current CP site un-buildable since KCNU has calculated that anything less than an approximate ERP of 90 KW would not place the required 70 dBμ contour over the proposed city of license at Silver City, Idaho.

The Permittee, Summit Broadcasting II, LLC (“SBL”) has made an exhausted search for an alternate site to be utilized by a new operation of KCNU Silver City. No existing sites could be found. The area to locate channel 280C are in very rural and un-developed areas and mostly owned by the Bureau of Land Management which are very restrictive about new tower development areas. The only practical already existing communications tower site that would be

available for use by KCNU is the War Eagle site as mentioned above. Even this site does not have commercial power available to it, but the multiple tower owners at the site have developed a continuous power source using multiple diesel generators and solar panels. The War Eagle site has two other Non-Commercial full power FM installations, KAWS Marsing, ID, facility ID 8417 on channel 206C1 and KGCL Jordan Valley, OR, facility ID 85777, on channel 215C0. Thus, this site is a developed high power FM site.

The only issue facing a proposed operation of KCNU at this multi user site is that it would only meet full 73.207 spacing to all other pertinent stations and allotments on channel 280 if it operated as a Class C3 at Silver City. While a C3 operation would meet all of the technical requirements for a new station at Silver City on channel 280, as mentioned above, a proposed allotment point would not be mutually exclusive to the original FM 98 auction allotment point at McCall, ID on channel 280A.

KCNU is now proposing a Class C1 operation at the War Eagle site on channel 280. However, under the provisions of 73.207 this would create an 8.0 kilometer short spacing condition to the second adjacent channel operations of KSAS-FM Caldwell, ID, facility ID 63920 on channel 278C, and KAWO Boise, ID, facility ID 63916, on channel 282C. A waiver of the provisions of 73.207 and the overlap requirements of 73.215 is hereby being requested in regards to these two stations. It will be later shown that the proposed 100 dB μ interference contour will not cover any population, thus, there will be no “real life” interference caused to either of these two second adjacent channel stations. The short spacing is relatively minimal. KCNU is also proposing to operate with less than maximum class C1 facilities, and just slightly greater than would be allowed by a maximum class C2 operation. This being proposed since with the proposed 1.6 KW ERP of KCNU at the War Eagle site, it will help with the proposed

transmitter power consumption requirements which are limited at the site. Horizontal only polarization is being proposed to help conserve on power consumption needs by KCNU as well.

The other issue is the proposed allotment point for channel 280C1 at Silver City, ID would not quite be mutually exclusive with the original allotment point proposed for channel 280A at McCall, Idaho. However, the original allotment point was just an arbitrary point located within the community, not at an established tower site, and in a residential area in McCall which would not have been a practical area to construct a new FM operation. It was also not at the reference coordinates used for the community. Un-used allotment points for channels at communities are routinely adjusted by the Commission to allow for other new station considerations as long as the allotment point remains qualified to be used at the community technically. SBL suggests the allotment point of $44^{\circ} 49' 41''$, $116^{\circ} 10' 27''$ be utilized for channel 280A at McCall, ID for better reference purposes. This is an established communications tower site located just south of the community. It is an existing 190 foot self-supporting tower. It would provide excellent line of sight service to McCall on channel 280A.

Figure 1 is a channel spacing study conducted at the proposed allotment point for KCNU for use of channel 280C1 at Silver City, ID. It is within the required 50 kilometers of the entire community of Silver City. Figure 1A shows a channel spacing study conducted at the reference allotment point at McCall, Idaho on channel 280A. The distance between these two points is 191.3 kilometers, or well within the 200 kilometer spacing requirements for a co-channel Class A to Class C1 operation under 73.207, making the allotment at Silver City mutually exclusive with the original allotment at McCall, ID in FM auction 98.

Figure 2 shows a channel spacing study conducted at the proposed War Eagle tower site for KNCU on channel 280C1. As mentioned above, this site is short spaced to KSAS-FM and

KAWO. It is also short spaced under 73.207 to KBGZ Spring Creek, NV, facility ID 166019, on channel 280C1. Processing under 73.215 is hereby being requested in regards to KBGZ.

Figure 4 shows a detailed interference study conducted against the proposed operation of KCNU and a maximized Class C1 operation of KBGZ. As can be seen, there will not be any prohibitive overlap between these two facilities.

Figure 3 is the predicted 100 dB μ interference contour for the proposed operation of KCNU which documents that it will not cover any population. Hence, there will be no “real life” interference caused to either KSAS-FM or KAWO. Thus, a waiver of the sections 73.207, and 73.215 are hereby being requested in regards to these two stations. The Commission has previously ruled that Section 73.215(e) waiver requests are evaluated on the basis of the following criteria: (1) The present site is no longer available. (2) Suitable non-short-spaced sites are unavailable; and (3) The site selected is the least short-spaced of all available sites. KCNU represents that the second and third requirements are pertinent in this case.

Figure 5 is the predicted 70 dBu coverage contour for the proposed KCNU.

Figure 6 is a copy of a prior FCC ruling it made in regards to KDBI-FM (formerly KBNH) Homedale, ID, facility ID 87812. This station is located just 41 kilometers from the current KCNU CP. It faced the nearly identical issues now faced by KCNU. It was allowed to short space KCIX(FM) Garden City, ID on its second adjacent channel by some 13.6 kilometers for lack of a suitable transmitter site. KCIX is located at the same “Deer Peak” tower site as KSAS-FM and KAWO at issue in this case. KDBI-FM operates with much higher ERP (100KW) and greater facilities than the proposed KCNU (1.6 KW) and did have some population coverage within its proposed 100 dB μ interference contour. Thus, the waiver request being made here by KCNU is technically much less evasive then the Commission previously granted to KDBI-FM.

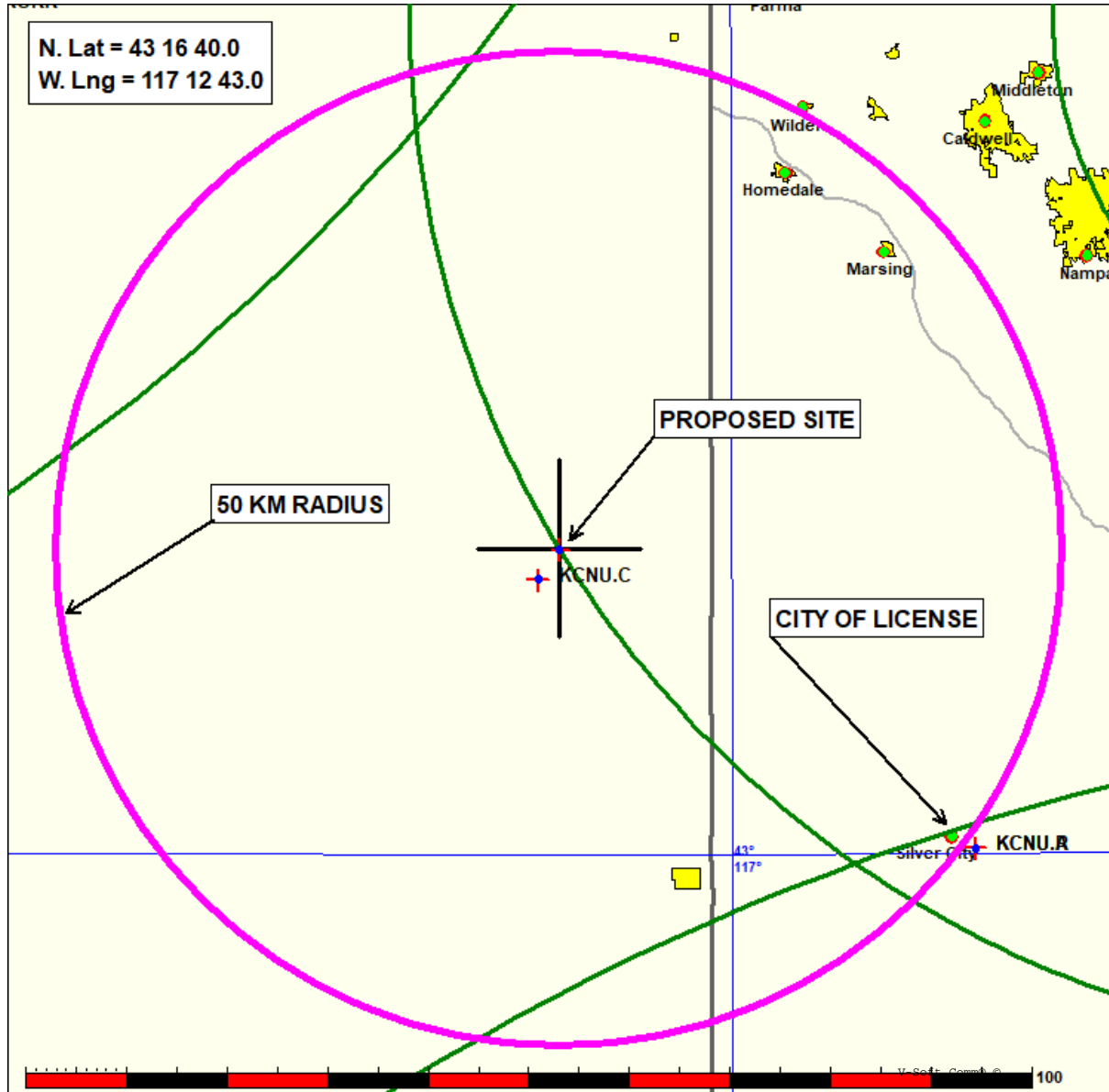
Figure 7 shows a photo of the established communications tower site at War Eagle Peak.

SBL hereby respectfully requests that its waiver request be granted, and a new modified Construction Permit be granted to its KCNU(FM) Silver City, ID on channel 280C1. As a matter of law, the current KCNU CP will expire on February 24th, 2019. Thus, expedited processing is also hereby requested.

CH 280 C1 103.9 MHz

Current Spacings to 3rd Adj.

FIGURE 1 - PROPOSED ALLOTMENT POINT
KCNV SILVER CITY, ID, CH. 280C1



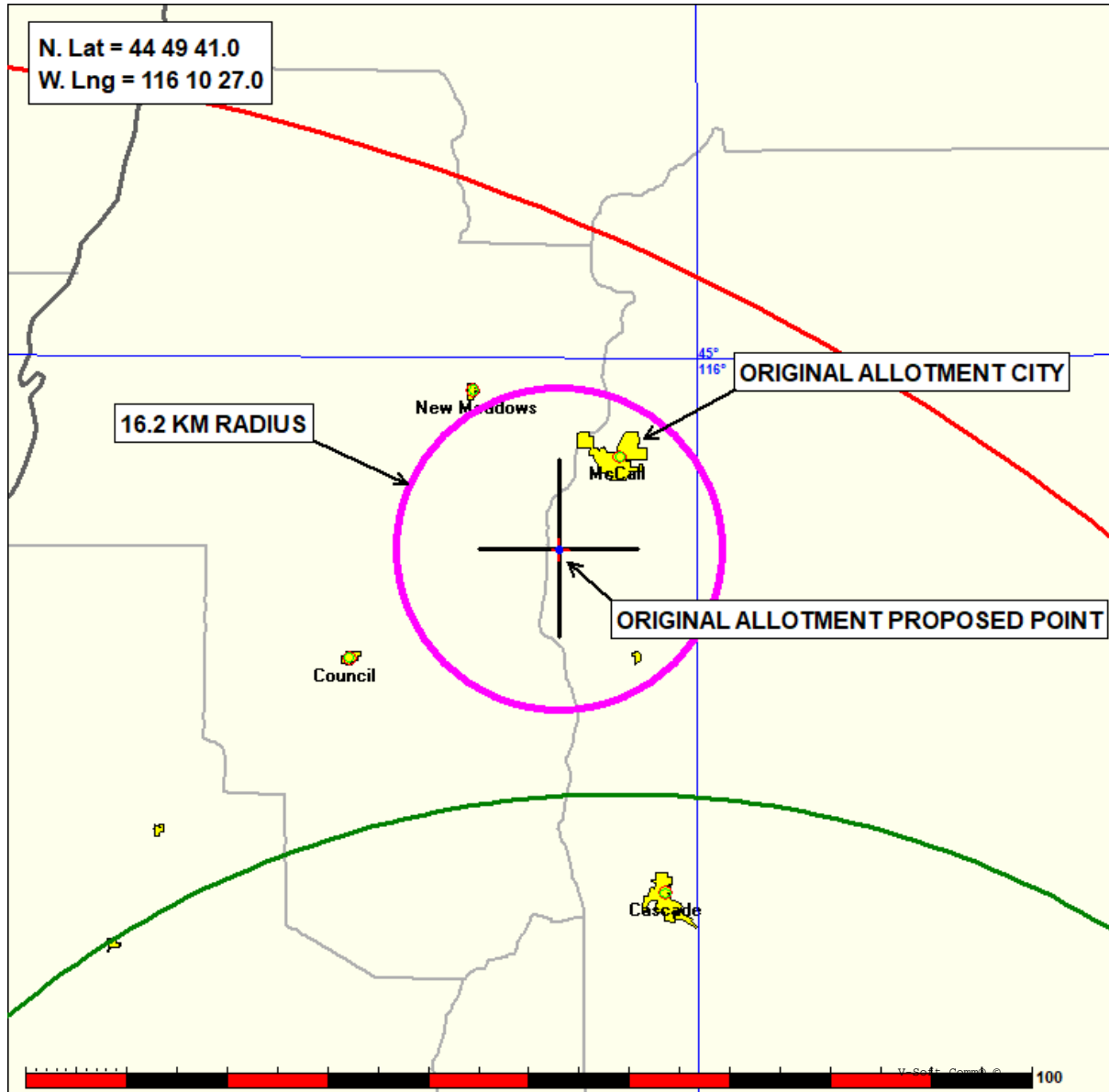
| Data Date:12-20-18 | | | Job Date:12-22-18 | | | | | |
|--------------------|-------|-------|-------------------|----|-------|--------|-------|--------|
| Call | CH# | Type | Location | | Azi | D-KM | FCC | Margin |
| KCNU.C | 280C | CP | Silver City | ID | 214.1 | 3.65 | 269.5 | -265.9 |
| KCNU | 280C3 | RSV-A | Silver City | ID | 126.0 | 51.14 | 210.5 | -159.4 |
| KCNU.A | 280C3 | APP | Silver City | ID | 126.0 | 51.14 | 210.5 | -159.4 |
| KSAS-FM | 278C | LIC | Caldwell | ID | 59.0 | 104.53 | 104.5 | 0.03 |
| KAWO | 282C | LIC | Boise | ID | 59.0 | 104.53 | 104.5 | 0.03 |
| AL2336 | 280C3 | VAC | Monument | OR | 315.7 | 249.82 | 210.5 | 39.3 |
| KBGZ | 280C1 | LIC | Spring Creek | NV | 156.3 | 284.94 | 244.5 | 40.4 |
| KTIK-FM | 226C | LIC | New Plymouth | ID | 59.0 | 104.54 | 40.5 | 64.0 |
| R10567 | 281C2 | DEL | Sisters | OR | 286.5 | 343.79 | 157.5 | 186.3 |
| KWPK-FM | 281C2 | LIC | Sisters | OR | 286.5 | 343.79 | 157.5 | 186.3 |
| KWHT | 278C1 | LIC | Pendleton | OR | 342.2 | 295.22 | 81.5 | 213.7 |
| AU9410530 | 277C | VAC | Alturas | CA | 233.8 | 322.13 | 104.5 | 217.6 |
| KRKL | 227C1 | LIC | Walla Walla | WA | 346.2 | 310.76 | 33.5 | 277.3 |
| KLER-FM.C | 277C3 | CP | Orofino | ID | 11.4 | 362.25 | 75.5 | 286.8 |
| KEZQ.C | 226C1 | CP | Iona | ID | 84.6 | 369.50 | 33.5 | 336.0 |

RSV-R, reserved, needs protection, RSV-A, allocation, does not if a CP or LIC has been granted.
All separation margins include rounding

CH 280 A 103.9 MHz

Current Spacings to 3rd Adj.

FIGURE 1A - ALLOTMENT POINT AT MCCALL, ID, CH 280A
KCNV SILVER CITY, ID, CH. 280C1



| Data Date:12-20-18 Job Date:12-22-18 | | | | | | | | |
|--------------------------------------|-------|-------|----------------|----|-------|--------|-------|--------|
| Call | CH# | Type | Location | | Azi | D-KM | FCC | Margin |
| KCNV.C | 280C | CP | Silver City | ID | 206.2 | 194.89 | 225.5 | -30.6 |
| KAWO | 282C | LIC | Boise | ID | 177.1 | 119.39 | 94.5 | 24.9 |
| KSAS-FM | 278C | LIC | Caldwell | ID | 177.1 | 119.39 | 94.5 | 24.9 |
| KCNV.A | 280C3 | APP | Silver City | ID | 192.0 | 206.76 | 141.5 | 65.3 |
| KCNV | 280C3 | RSV-A | Silver City | ID | 192.0 | 206.76 | 141.5 | 65.3 |
| KTIK-FM | 226C | LIC | New Plymouth | ID | 177.1 | 119.29 | 28.5 | 90.8 |
| AL2336 | 280C3 | VAC | Monument | OR | 272.0 | 257.06 | 141.5 | 115.6 |
| KBBD | 280C1 | LIC-N | Spokane | WA | 344.7 | 320.05 | 199.5 | 120.6 |
| KWHT | 278C1 | LIC | Pendleton | OR | 302.9 | 203.74 | 74.5 | 129.2 |
| KLER-FM.C | 277C3 | CP | Orofino | ID | 357.5 | 182.57 | 41.5 | 141.1 |
| KHTR | 282C1 | LIC | Pullman | WA | 345.7 | 227.81 | 74.5 | 153.3 |
| KRKL | 227C1 | LIC | Walla Walla | WA | 310.3 | 202.87 | 21.5 | 181.4 |
| KMSM-FM | 280A | LIC | Butte | MT | 63.7 | 312.19 | 114.5 | 197.7 |
| KKVU | 283C1 | LIC | Stevensville | MT | 37.1 | 278.19 | 74.5 | 203.7 |
| KDTR | 277C2 | LIC-N | Florence | MT | 37.1 | 278.19 | 54.5 | 223.7 |
| KORR | 281C1 | LIC-N | American Falls | ID | 125.4 | 366.26 | 132.5 | 233.8 |
| KXDD | 281C1 | LIC-Z | Yakima | WA | 301.2 | 378.93 | 132.5 | 246.4 |

Page # 2

| Call | CH# | Type | Location | | Azi | D-KM | FCC | Margin |
|--------|-------|-------|--------------|----|-------|--------|------|--------|
| KTWD | 278C2 | LIC | Wallace | ID | 4.8 | 305.20 | 54.5 | 250.7 |
| KGGL | 227C | LIC | Missoula | MT | 33.8 | 297.79 | 28.5 | 269.3 |
| KEZQ.C | 226C1 | CP | Iona | ID | 116.5 | 317.28 | 21.5 | 295.8 |
| KFTZ | 277C1 | LIC-D | Idaho Falls | ID | 114.8 | 371.93 | 74.5 | 297.4 |
| KWLN | 277C3 | LIC | Wilson Creek | WA | 322.3 | 349.24 | 41.5 | 307.7 |
| KZKY | 283C2 | LIC-Z | Ucon | ID | 111.2 | 371.48 | 54.5 | 317.0 |
| KZKY | 283C2 | LIC-Z | Ucon | ID | 111.2 | 371.48 | 54.5 | 317.0 |

RSV-R, reserved, needs protection, RSV-A, allocation, does not if a CP or LIC has been granted.
All separation margins include rounding

FIGURE 2- CHANNEL SPACING STUDY FROM PROPOSED SITE
KCNV SILVER CITY, ID, CH. 280C1

| | | | |
|-------------------------------------|------------------------------|------------|-----------------|
| REFERENCE | | CLASS = C1 | DISPLAY DATES |
| 43 00 25.0 N. | | | DATA 12-20-18 |
| 116 42 13.0 W. | Current Spacings to 3rd Adj. | | SEARCH 12-21-18 |
| ----- Channel 280 - 103.9 MHz ----- | | | |

| Call | Channel | Location | | Azi | Dist | FCC | Margin |
|-----------|-------------|----------------|----|-------|--------|-------|--------|
| KCNV | CP 280C | Silver City | ID | 302.2 | 51.16 | 269.5 | -218.3 |
| KCNV | APP 280C3 | Silver City | ID | 0.0 | 0.00 | 210.5 | -210.5 |
| KCNV | RSV-A 280C3 | Silver City | ID | 0.0 | 0.00 | 210.5 | -210.5 |
| KAWOEÁ | LIC 282C | Boise | ID | 30.3 | 96.52 | 104.5 | -8.0E |
| KSAS-FMEÁ | LIC 278C | Caldwell | ID | 30.3 | 96.52 | 104.5 | -8.0E |
| KBGZ** | LIC 280C1 | Spring Creek | NV | 162.8 | 242.19 | 244.5 | -2.3EE |
| KTIK-FM | LIC 226C | New Plymouth | ID | 30.2 | 96.58 | 40.5 | 56.1 |
| AL2336 | VAC 280C3 | Monument | OR | 314.4 | 300.38 | 210.5 | 89.9 |
| KORR | LIC-N 281C1 | American Falls | ID | 91.3 | 342.08 | 176.5 | 165.6 |
| AU9410530 | VAC 277C | Alturas | CA | 242.3 | 341.43 | 104.5 | 236.9 |
| KWHT | LIC 278C1 | Pendleton | OR | 337.4 | 337.82 | 81.5 | 256.3 |
| KEZQ | CP 226C1 | Iona | ID | 79.1 | 332.76 | 33.5 | 299.3 |
| KRKL | LIC 227C1 | Walla Walla | WA | 341.1 | 351.37 | 33.5 | 317.9 |

RSV-R = reserved - needs protection, RSV-A = allocation
All separation margins include rounding

* A WAIVER OF THE SPACING RULES TOWARDS THESE TWO SECOND ADJACENT CHANNEL STATIONS IS HEREBY BEING REQUESTED. SEE THE TECHNICAL STATEMENT FOR MORE DETAILS.

** PROCESSING UNDER 73.215 IS BEING REQUESTED TOWARDS KBGZ. SEE THE TECHNICAL STATEMENT FOR MORE DETAILS.

FIGURE 3 - PREDICTED 100 DBU INTERFERENCE CONTOUR
KCNU SILVER CITY, ID, CH. 280C1

Coverage Study - NGDC 30 SEC
12-21-2018

KCNU-A CH280 C1, 1.6 kW, 702.0m HAAT, 2465.0m COR AMSL
Interference Contour = 100 dBu. Population = 0

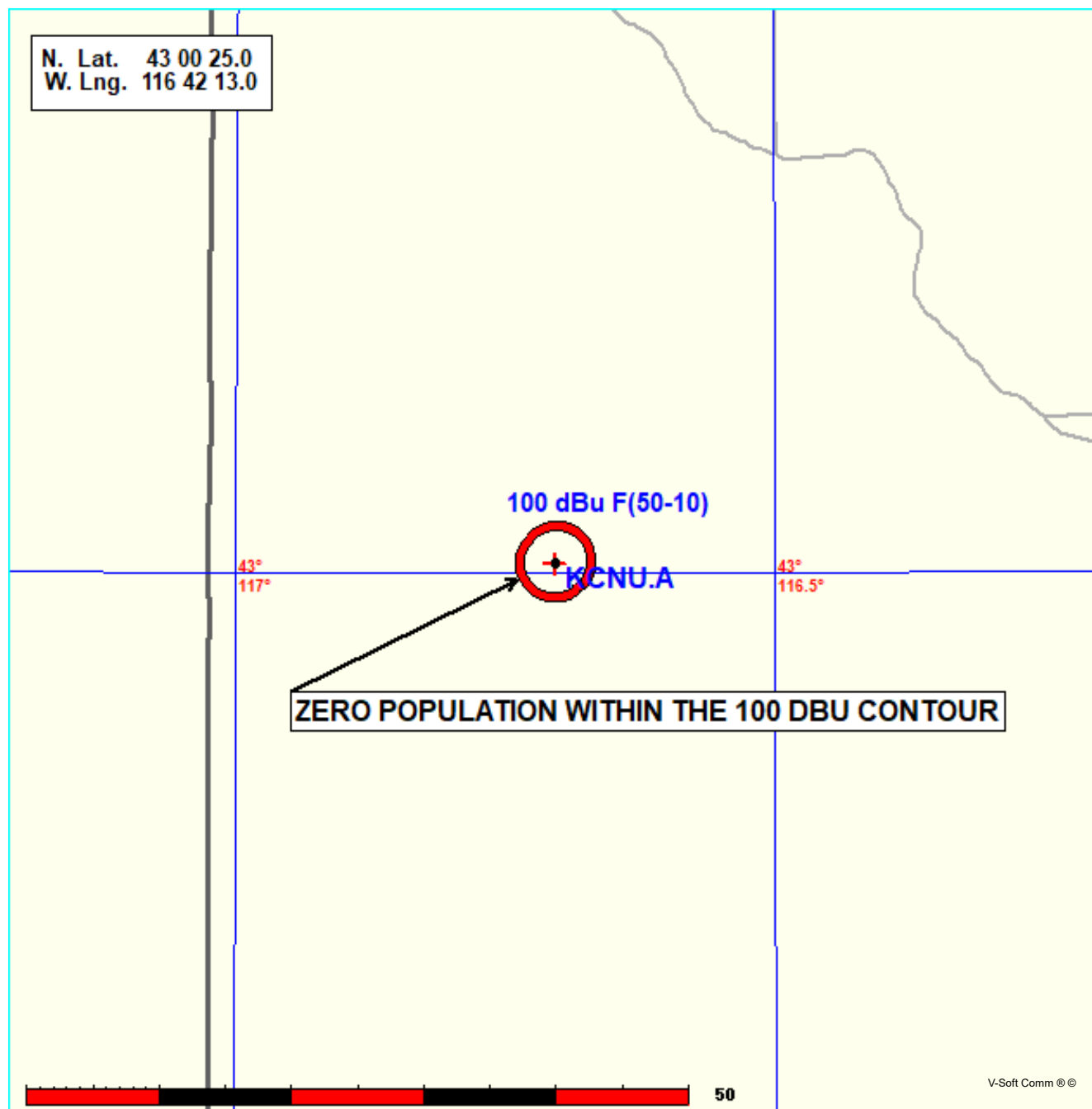


FIGURE 4 - DETAILED INTERFERENCE STUDY WITH KBGZ(FM)
KCNU SILVER CITY, ID, CH. 280C1

FMCommander Single Allocation Study - 12-21-2018 - NGDC 30 SEC
KCNU.A's Overlaps (In= 28.47 km, Out= 54.29 km)

KCNU.A CH 280 C1 73.215 N
Lat= 43 00 25.0, Lng= 116 42 13.0
1.6 kW 702 m HAAT, 2465 m COR
Prot.= 60 dBu, Intef.= 40 dBu

KBGZ^ CH 280 C1 BMLH20180613AAZ
Lat= 40 55 18.0, Lng= 115 50 58.0
Max CIs: 100.0 kW 299 m HAAT, 2317 m COR
Prot.= 60 dBu, Intef.= 40 dBu

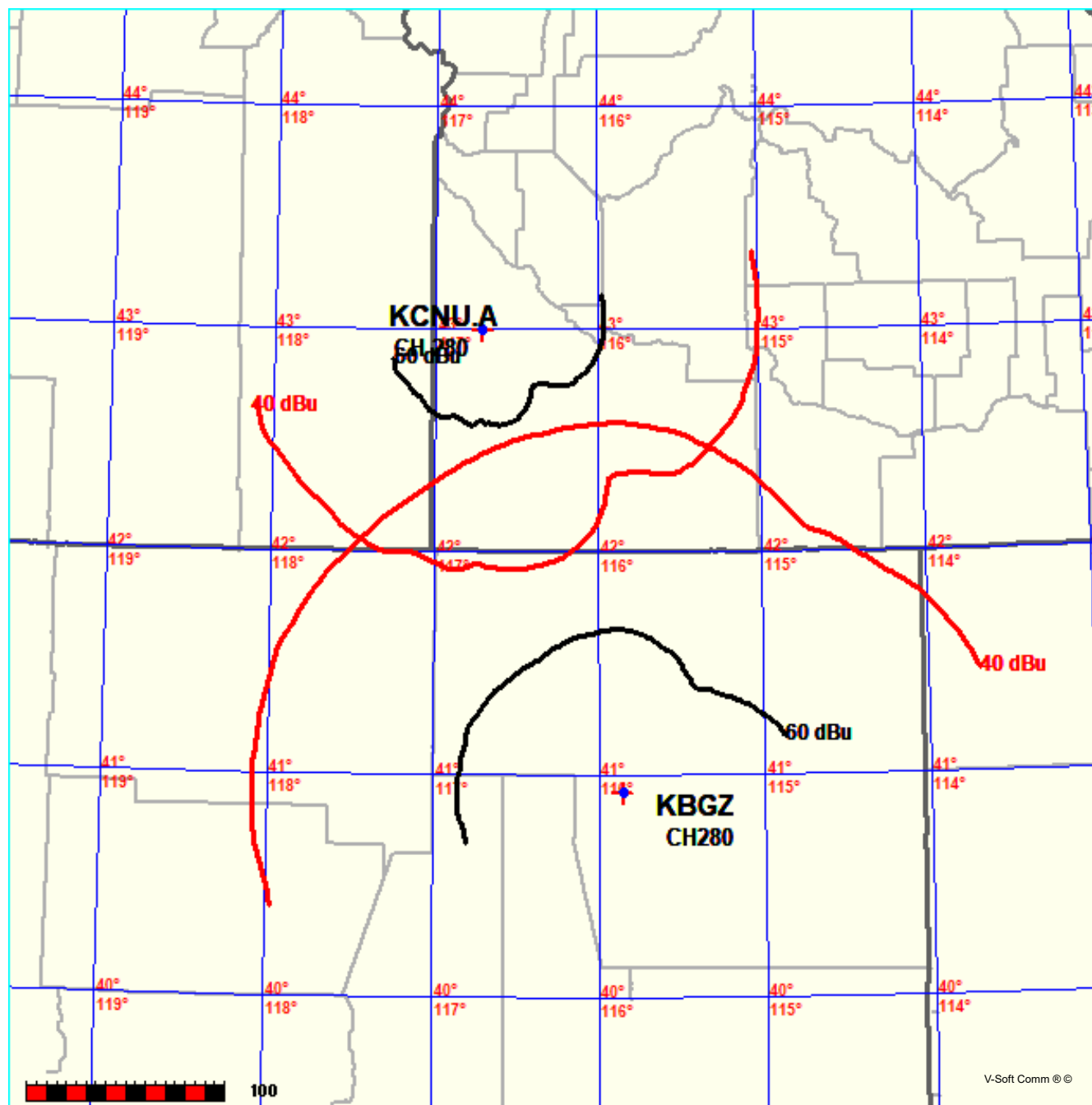


FIGURE 5 - PREDICTED 70 DBU
KCNU SILVER CITY, ID, CH. 280C1

Coverage Study - NGDC 30 SEC
12-21-2018

KCNU-A CH280 C1, 1.6 kW, 702.0m HAAT, 2465.0m COR AMSL
Service Contour = 70 dBu. Population = 844

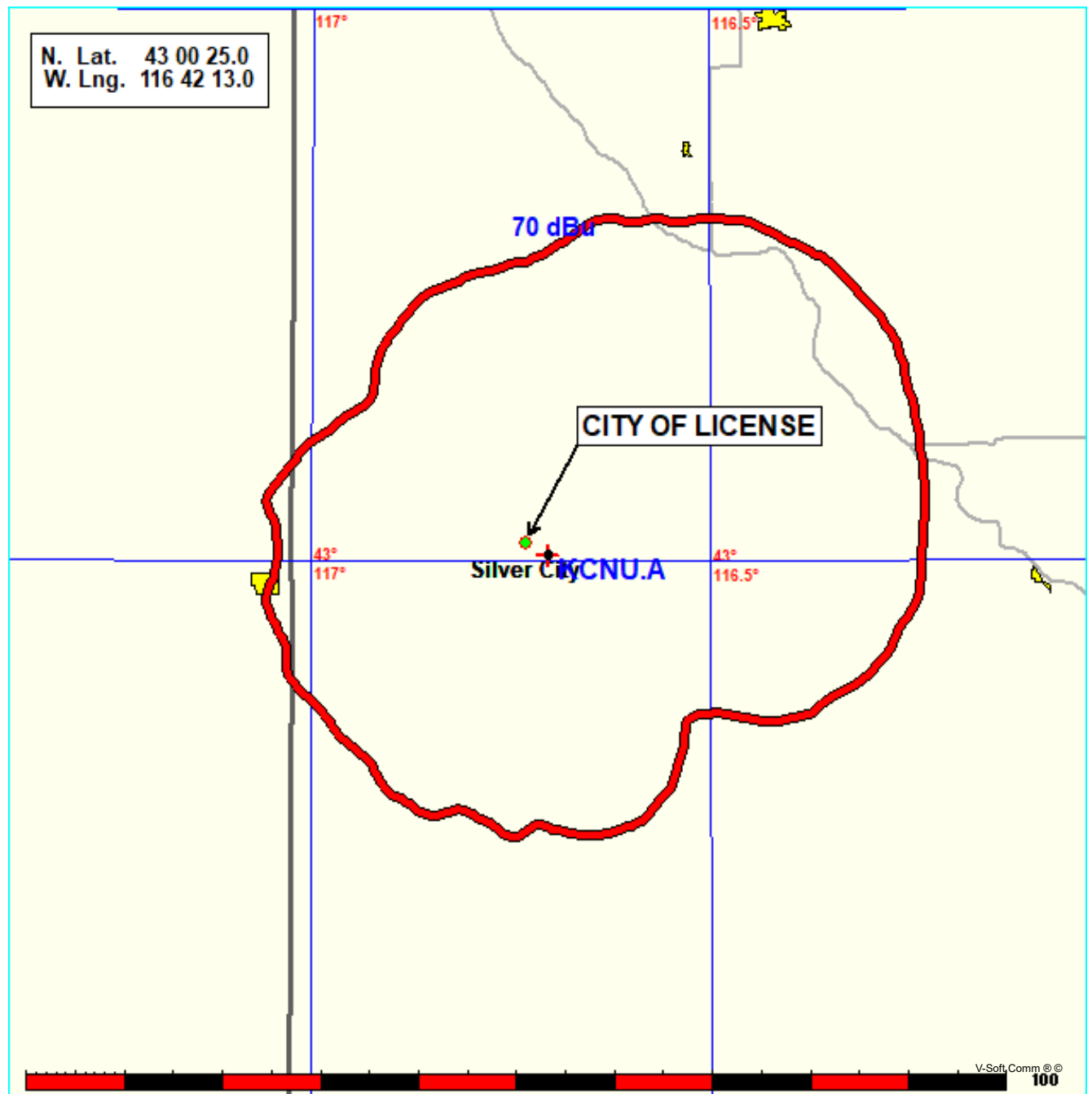


EXHIBIT 6 - KDBI-FM WAIVER REQUEST RULING

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

| | | |
|--|---|---------------------------|
| |) | |
| |) | |
| In the Matter of |) | |
| |) | |
| R & S MEDIA |) | |
| |) | |
| Permittee of Station KBNH(FM), Homedale, Idaho |) | Facility ID No. 87812 |
| |) | |
| For Application to Modify Construction Permit |) | File No. BMPH-20000229ABO |
| |) | |
| For Application for License to Cover Construction Permit |) | File No. BLH-20031229ABR |
| |) | |

MEMORANDUM OPINION AND ORDER

Adopted: February 9, 2005

Released: February 14, 2005

By the Chief, Media Bureau:

Introduction

1. In this *Memorandum Opinion and Order*, we modify the license for Citicasters Co. ("Citicasters"), licensee of KCIX(FM), Garden City, Idaho, by granting the captioned application of R&S Media ("RSM") to modify the facilities of new commercial station KBNH(FM), at Homedale, Idaho.¹

Background

2. RSM was granted a construction permit on March 23, 1999, to build new station KBNH(FM) at Homedale, Idaho, a Class C station on Channel 292 (106.3 MHz).² On February 29, 2000, RSM filed the captioned modification application to change its transmitter site (the "Application"), requesting a waiver of the prohibited contour overlap requirements of Section 73.215(a) and the minimum separation requirements of Section 73.215(e) of the Commission's rules.³ On March 30, 2001, the staff waived Sections 73.215(a) and (e) and granted the unopposed Application.⁴ On May 4, 2001, Citicasters filed a petition for reconsideration ("Petition"). In its reply pleading in that proceeding, Citicasters asserted for the first time that by granting the Application and subjecting KCIX(FM) to interference, from which it is

¹ On July 30, 2004, RSM filed an "Emergency Motion for Summary Reinstatement of CP and Authorization of Immediate Service to Unserved Areas by Fully-Built FM Station." This pleading is unauthorized and, in light of our action herein, it will be dismissed as moot.

² File No. BPH-19970804MC.

³ 47 C.F.R. § 73.207 requires that KBNH(FM) and second-adjacent channel Class C station KCIX(FM), Garden City, Idaho must be separated by at least 105 km. However, as a Section 73.215 proposal, the minimum spacing is 99 km. The separation proposed by KBNH(FM) was 90.9 km from KCIX(FM), therefore a waiver was required.

⁴ Letter to Mr. Robert Thompson, Esq., (MMB, Mar. 30, 2001) ("Staff Decision").

otherwise entitled to protection under the Commission's rules, the staff modified KCIX(FM)'s license without invoking the "protest" provisions of Section 316 of the Communications Act of 1934, as amended (the "Act").⁵ Accordingly, on April 13, 2004, the staff rescinded the grant of the Application, retained it and the petition for reconsideration in pending status ("Staff Action"), and accorded Citicasters its protest rights under Section 316 of the Act by requesting Citicasters to show cause why the modification application should not be granted.⁶ On May 12, 2004, Citicasters filed its "Response to Order to Show Cause."⁷

Pleadings

3. *RSM Waiver Requests.* Under Section 73.215(e) of the Commission's rules, the proposed KBNH(FM) facilities would be 8.1 kilometers short-spaced to second-adjacent channel class C station KCIX(FM). In support of its section 73.215(e) waiver request, RSM states that its original transmitter site is "unavailable" because of environmental issues raised by the Bureau of Land Management ("BLM"). RSM submits that all of the area acceptable to BLM for use as a transmitter site is short-spaced to KCIX(FM), and that it selected a site that would minimize the short spacing to the greatest extent possible. RSM states that the "practical effect" of the short-spacing is *de minimis* in that the proposed facility would cause interference to only nine persons within the KCIX(FM) 60 dBu service area, equivalent to only 0.0024 percent of the total population within KCIX(FM)'s service area, and correspondingly, KCIX(FM) would cause interference to only 186 persons within KBNH(FM)'s proposed 60 dBu service area, equivalent to only 0.054 percent of the total population.⁸

⁵ Citicasters submitted with the Reply pleading an Engineering Statement and studies purporting to show that operating KBNH(FM) with a directional antenna would ameliorate the interference relationship between KBNH(FM) and KCIX(FM) and would cause a small decrease in "gray area" coverage (see Note 9 *infra*) involving no loss of population. 47 C.F.R. § 1.45(c) prohibits petitioners from raising new matters in reply pleadings. However, we waived that provision here due to the importance of the statutory issue raised.

47 U.S.C. § 316 (a)(1), in pertinent part, provides that:

Any station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity... No such order of modification shall become final until the holder of the license or permit shall have been notified in writing of the proposed action and the grounds and reasons therefore, and shall be given reasonable opportunity, of at least thirty days, to protest such proposed order of modification.

This provision applies to both "direct" and, as here, "indirect" modification of station licenses. *Western Broadcasting Company v. FCC*, 674 F.2d 44, 49 (D.C. Cir. 1982).

⁶ See *Memorandum Opinion & Order, R&S Media*, 19 FCC Rcd 6300 (MB 2004) ("Order to Show Cause"). The staff also dismissed without prejudice RSM's pending license application and PTA request.

⁷ RSM filed a "Reply to Response to Order to Show Cause" on June 14, 2004.

⁸ Specifically, RSM states that the KBNH(FM) facility will cause interference to nine persons within the KCIX(FM) licensed service 60 dBu service contour, encompassing an area of 195.3 square kilometers. This is equivalent to 0.0024 percent of the total population and 0.74 percent of the total land area within the KCIX(FM) service contour; and that KCIX(FM) will cause actual interference within the proposed KBNH(FM) 60 dBu service contour to eight census blocks containing a combined population of 186 persons. The actual interference area encompasses 55.6 square kilometers. This amounts to 0.054 percent of the total population and 0.34 percent of the total land area within the proposed KBNH(FM) service area.

4. The KBNH(FM) proposal would result in prohibited Section 73.215(a) contour overlaps with KCIX(FM). In support of its section 73.215(a) waiver request, RSM states that facility would provide a first service (white area) to 864 persons living within a 4,649.7 square kilometer area and a second service (gray area) to 208 persons living within a 1,541.2 square kilometer area.⁹ Furthermore, RSM states that KBNH(FM) would provide a new service to a total of 3,555 persons who are now underserved, i.e., receive fewer than five full time aural broadcast services; would result in predicted interference to only 186 persons in a 345,000-person service area; would meet the environmental demands of the BLM; and would bring the first local service to Homedale.

5. *Response to Order to Show Cause ("Response").*¹⁰ In its Response, Citicasters states that the "obvious solution" to this matter is to grant a construction permit subject to the specification of a directional antenna, which would: (1) allow KBNH(FM) to more than adequately place a city-grade signal over Homedale; (2) essentially reduce to zero the population subject to interference within KCIX(FM)'s protected contour; (3) eliminate the interference from KCIX(FM) that would be received by KBNH(FM); (4) allow KBNH(FM) to provide the same service to currently white areas as would be provided by the omnidirectional facilities specified in the Application; and (5) only marginally reduce the additional service to gray areas--- all of which are currently unpopulated.¹¹ In sum, according to Citicasters, "with a directional antenna at the site designated by RSM, prohibited overlap to KCIX(FM) will not be 'completely avoided,' but prohibited overlap to KBNH(FM) *would* be completely avoided, and the prohibited overlap to KCIX(FM) would be substantially diminished to the point that essentially no population would be affected."¹²

6. With respect to RSM's request for waiver of Section 73.215(e), Citicasters maintains that, contrary to RSM's threshold showing, fully-spaced sites are available. Citicasters states that it had previously identified five suitable, privately owned sites that are fully-spaced to KCIX(FM) that would provide the requisite principal community coverage to Homedale. In support of these contentions, Citicasters relies on contour studies that use an alternate signal propagation methodology, which it claims is expressly authorized by 47 C.F.R. section 73.313(e).¹³

7. Regarding RSM's Section 73.215(a) waiver request, Citicasters asserts that the factors RSM presents in support of its waiver request are inaccurate. In its petition for reconsideration, Citicasters challenges RSM's calculations and asserts that RSM presents "inaccurately low figures" relating to the populations and areas subject to prohibited contour overlap and the size and population of the white area.

⁹ "White area" is an area over which no station currently provides fulltime coverage within its protected service contour, and "gray" area, where the inhabitants are within the protected service contour of only one station.

¹⁰ Citicasters incorporates by reference the engineering statements appended to its May 4, 2001, Petition for Reconsideration and June 11, 2001, Reply to Opposition to Petition for Reconsideration.

¹¹ Citicasters states that if KBNH(FM) used a directional antenna, the white area service provided by KBNH(FM) would not be changed or reduced, and that the gray area provided KBNH(FM) would be reduced by only 54 sq. km, which according to the 1990 and 2000 Census, is unpopulated. This represents a loss of only 4.6% of the area of the 1,168 sq. km gray area, and no loss of gray area service population. Citicasters maintains that the directional antenna would have a 13 dB power reduction at 50 degrees through 60 degrees True, returning to full power at 125 degrees and 345 degrees True. *Response, Engineering Statement.*

¹² Response at 5 (emphasis in original).

¹³ In its Response, Citicasters indicates that, should the application be granted conditioned upon the installation of directional facilities as specified in its June 11, 2001 Reply pleading, it "would not be inclined to pursue further the issue of the availability to RSM of alternative sites." Response at 6.

Citicasters submits that the amount of contour overlap is "significantly greater" than represented by RSM and that the number of persons who would receive a first aural service from the KBNH(FM) proposal is substantially fewer than specified in the Application.¹⁴ Citicasters' states that operation of KBNH(FM) from one of the fully spaced sites would provide greater white area service than that proposed in the subject application.

Discussion

8. Under Section 316 of the Act and Section 1.87 of the Commission's rules the Commission may modify any license if such action will promote the public interest, convenience and necessity.¹⁵ Further, an applicant seeking a waiver of a Commission rule must plead with particularity the facts and circumstances that warrant grant of the waiver.¹⁶ In turn, we have afforded the waiver requests and related materials the "hard look" called for under *WAIT Radio v. FCC*.¹⁷

9. *Section 73.215(e) Waiver Request.* Section 73.207 requires that KBNH(FM) and KCIX(FM), be separated by at least 105 km. As a Section 73.215 proposal, the minimum spacing is 99 km.¹⁸ The separation proposed by KBNH(FM) would be 90.9 km. Thus, a waiver of the 8.1 km-short-spacing is necessary for the application to be granted. Section 73.215 waivers are considered on a case-by-case basis.¹⁹ In *ECI License Company, L.P. (WYUU)*,²⁰ the Commission explained that Section 73.215(e) waiver requests are based on Section 73.207, not Section 73.215(e) spacing requirements. This is because the Section 73.215(e) table already incorporates a measure of short-spacing, which prior to the adoption of the contour protection rules in 1989, would itself have required grant of a spacing waiver. We must therefore compare the present spacing waiver request against other comparable spacing waiver decisions involving short-spacings of 14.1 km (8.76 miles) in magnitude.

10. Section 73.215(e) waiver requests are evaluated on the basis of the following criteria:²¹

- (1) The present site is no longer available;
- (2) Suitable non-short-spaced sites are unavailable; and
- (3) The site selected is the least short-paced of all available sites.

¹⁴ Citicasters states that operation of KBNH(FM) from one of the fully spaced sites would provide greater white area service than that proposed in the subject application.

¹⁵ See 47 U.S.C. § 316; 47 C.F.R. § 1.87.

¹⁶ *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644 (D.C. Cir. 1968)

¹⁷ 418 F.2d 1153 (D.C. Cir. 1969)

¹⁸ The minimum spacing required by Section 73.215(e) was recently relaxed to 99 km by *Streamlining of Radio Technical Rules in Parts 73 and 74, Second Report and Order*, in MM Docket 98-93, 15 FCC Rcd 21649 (2000).

¹⁹ *Streamlining of Radio Technical Rules in Parts 73 and 74, Second Report and Order*, 15 FCC Rcd 21649, 21654 (2000).

²⁰ See *ECI License Company, L.P. (WYUU)*, 11 FCC Rcd 3545, 3546 (1996) at n. 4, *appeal den.*, Case No. 96-1122, 106 F.3d 442 (D.C. Cir. Dec. 26, 1996). See also *Greater Media Radio Company, Inc. (WPLY)*, 15 FCC Rcd 7090 (1999), *recon. denied*, 15 FCC Rcd 20485 (2000); *Letter to ECI License Company, Inc. (KNRK)*, 11 FCC Rcd 1797, 1799 n. 17 (1996).

²¹ *Greater Media Radio Company, Inc (WPLY)*, 15 FCC Rcd at 7095.

The applicant is also required to show that grant of the short-spacing waiver would be in the public interest.

11. *The present site is no longer available.* In the present case, RSM has submitted detailed declarations that demonstrate that its original construction permit site cannot be used. The BLM, which has jurisdiction over the construction permit site location, has clearly stated that the site is not available for tower construction.

12. *Suitable non-short-spaced sites are not available; the site is the least-short-spaced site.* RSM, in its application and supplements thereto, has provided ample information that establishes that there are no other available non-short-spaced sites or lesser short-spaced-sites. RSM has spent more than six months evaluating various sites and consulting with BLM officials, including Mr. Sheldon Saxton, Realty Specialist for the BLM. The consultation process with BLM has been so exhaustive and intensive that RSM has agreed to reimburse the BLM for staff costs incurred on this project. Sites at greater separations than proposed here were found to fall within the Owyhee Reservoir Basin, or in state parklands, which lie behind a ridge that would prevent line-of-sight to the community of Homedale. Other sites that the BLM indicated would be acceptable are no less short-spaced to KCIX(FM). The applicant has provided terrain studies from the city center radially outward to show that a tall tower would be required to achieve line-of-sight to Homedale from transmitter sites located further west (and thus, more fully spaced) than the proposed site. However, the BLM has expressly stated that it would not permit a tower in excess of 200 feet to be constructed, effectively preventing KBNH(FM) from serving Homedale with a 70 dBu signal from these more remote sites to the west of Homedale.

13. RSM has also investigated the relatively few scattered small parcels of non-BLM land in the properly spaced areas (either under Section 73.207 or Section 73.215(e)). Terrain profiles provided with the application as supplemented show that such locations would require a tower structure in excess of 1000 feet in height to achieve line-of-sight to Homedale. However, BLM has indicated that it would "emphatically" object to any proposal for a tower in excess of 200 feet in height on private land adjacent to BLM land. This leaves the proposed site as the only possible site. The applicant has provided a letter from Mr. Roy J. Masinton, Malheur Field Office Manager, BLM dated January 10, 2000, stating that RSM and the BLM have entered into an agreement for use of the proposed site for a radio tower. The proposed transmitter site will have line-of-sight to the community of license, Homedale.

14. Citicasters' assertion that it has identified five potential fully spaced sites is not persuasive. It appears that the sites identified by Citicasters are unsuitable in that they are mountain top sites located in an inaccessible rugged wilderness area devoid of adequate roads and electrical power. Citicasters indicates in its Response that "assumed inconveniences or undocumented obstacles" such as those claimed by RSM "do not meet the burden necessary for an applicant requesting waiver of Section 73.215(a) and 73.215(e)."²² Citicasters cites no authority for this proposition and, in fact, the Commission has considered these factors in determining the availability and suitability of potential sites.²³

²² Response at 6 n. 18.

²³ See *St. Maries, Idaho and Spokane, Washington*, 14 FCC Rcd 17012 (MB 1999) (the suitability of a site relates to a site's feasibility, which includes availability of electrical power and road access); *Topsail Beach and Wilmington, North Carolina*, 3 FCC Rcd 159 (MMB 1988), *reconsideration granted*, 3 FCC Rcd 3129 (1988) (it is unfair to require a station to undertake extreme measures, in terms of difficulty and expense, to locate a transmitter at an unfeasible site in order to achieve a proscribed site restriction); *Cuban-American Limited*, 2 FCC Rcd 3264 (1987), *subsequent history omitted* (circumstances that are extremely hazardous, expensive or disruptive can render a transmitter site unsuitable despite evidence of technical feasibility and possibility).

We reject Citicasters' attempt to downplay the problems associated with each of its five purported antenna locations, and thus we reject Citicasters' proffer of fully spaced sites from which KBNH(FM) could provide a principal community contour to Homedale. We find the site proposed in the subject application to be the least-short-spaced available site.

15. RSM's showing is similar to that made in *Beasley Broadcasting of Philadelphia (WXTU)*,²⁴ in which a Philadelphia station was granted a 12.2-km (7.6-mile) spacing waiver with respect to Section 73.207 to overcome patently defective coverage in its community of license. There, as here, the applicant undertook a thorough search for a non-short-spaced or lesser-short-spaced transmitter site, and also provided radial data to demonstrate line-of-sight problems in locating an acceptable transmitter site.²⁵ In the present case, the applicant has clearly demonstrated that absent grant of a spacing waiver, no alternative site is available that will permit line-of-sight to Homedale.

16. We also note that a reduction in station class to Class C0 or Class C1 would not reduce the spacing deficiency, since the minimum spacings required to KCIX(FM) under Section 73.207 are identical with the spacings for these lower classes (105 km). Section 73.215(e) likewise provides no additional relief since the required minimum spacing under the contour protection rule for Class C, C0, and C1 stations is 99 km.

17. *Section 73.215(a) Waiver Request.* RSM also requests a waiver of Section 73.215(a) to allow KBNH(FM) to cause prohibited contour overlap to and receive prohibited contour overlap from KCIX(FM). Specifically, the 100 dB μ interfering contour of KBNH(FM) would cause prohibited contour overlap within the 60 dBu service contour of KCIX(FM), in a 195.3 square kilometer area, containing 9 persons. Conversely, the 100 dB μ interfering contour of KCIX(FM) would cause prohibited contour overlap within the proposed 60 dB μ service contour of KBNH(FM), affecting 186 persons in a 55.6 square kilometer area.

18. RSM indicates that it has investigated the use of a directional antenna through which the prohibited contour overlap received by KBNH(FM) from KCIX(FM) could be reduced or eliminated. This would require a reduction in power from 100 kW to 53 kW toward the 100 dB μ interfering contour of KCIX(FM). According to calculations submitted in a supplement to the application, this would have the minimal effect of reducing the population that would potentially receive interference to KCIX(FM) from 9 persons to 1 person, and would diminish coverage of "white" and "gray" service areas which would receive service by a nondirectional 100 kW ERP operation. No amount of power reduction can completely eliminate the prohibited overlap caused to KCIX(FM), because the transmitter site proposed by RSM lies within the 60 dB μ contour of KCIX(FM). Citicasters contends that the *Order to Show Cause* erroneously concluded that "a power reduction toward KCIX(FM) by use of a directional antenna would have a minimal effect on the area and population that would receive prohibited overlap from KCIX(FM), but would substantially diminish coverage of white and gray areas that would receive service from KBNH(FM)'s 100-kW operation."²⁶ Rather, Citicasters asserts that a directional antenna would completely eliminate the area and population receiving prohibited overlap from KCIX(FM).²⁷ We agree, but conclude that this minor error in the *Order to Show Cause* does not require a different result. Use of a directional antenna, as observed in the *Order to Show Cause* and reiterated here, would not eliminate

²⁴ 100 F.C.C.2d 106 (1985).

²⁵ See *Megamedia, supra*, (12.9-km (8-mile) short-spacing granted by the Commission after exhaustive search for site to remedy excessive radiofrequency emissions).

²⁶ *Order to Show Cause* at 6.

²⁷ Citicasters Response at 4-5.

our primary concern: that the proposal will *cause* prohibited overlap to KCIX(FM). That problem cannot be eliminated by downgrade or directional antenna. Therefore, use of either of those approaches would only serve to decrease the coverage benefits derived from the KBNH(FM) proposal.

19. Additionally, the exhibits provided by RSM show that approximately one-third of the area within the proposed KBNH(FM) 60 dBμ contour, generally to the west of the proposed transmitter site, consists of "white area," over which no station currently provides fulltime coverage. A significant additional portion of the KBNH(FM) proposed 60 dBμ service area consists of "gray" area, where the inhabitants are within the protected service contour of only one station. The proposed 60 dBμ contour also would encompass portions of U.S. Highways 20 and 26 west of Vale, Oregon, that presently receive no radio service. While the populations of these areas are only 864 persons and 208 persons respectively, the areas themselves are extensive. Outside of Alaska, large white areas in the United States are rare. In the past, we have granted rule waivers where new service would be provided to large white areas.²⁸

20. In addition to covering a large white area, KBNH(FM) would provide a first local service to Homedale, Idaho and provide service to approximately 345,000 persons within its 60 dBμ contour. Finally, grant of the requested waivers would support BLM's efforts to protect the "environmentally sensitive" Owyhee Reservoir Basin.

21. Citicasters challenges RSM's calculations and asserts that RSM presents "inaccurately low figures" relating to the populations and areas subject to prohibited contour overlap and the size and population of the white area.²⁹ Citicasters submits that the amount of contour overlap is "significantly greater" than represented by RSM and that the number of persons who would receive a first aural service from the KBNH(FM) proposal is substantially fewer than specified in the application.³⁰

22. For the reasons stated above, we do not find these arguments persuasive. There is no available and suitable site from which prohibited contour overlap with KCIX-FM could be completely avoided. Also as noted above, the use of a directional antenna or power reduction would not avoid the creation of new predicted overlap with KCIX(FM). This is a significant factor in considering RSM's waiver request.³¹ Additionally, a reduction in KBNH(FM)'s power toward KCIX(FM) by use of a

²⁸ For example, waiver of Section 73.211(b) was granted in 1996 to then-KXVR-FM, Mountain Pass, CA in construction permit BPH-820714AB to enable that station to cover a very large white area in the California desert. There, as here, most of the available sites were controlled by the Southern California Desert Conservancy or the Bureau of Land Management. The BLM approved the KXVR-FM site after six months of negotiations, prior to the filing of that application.

²⁹ Citicasters indicates that RSM submitted its figures not based on the contour-overlap methodology, but instead using the "undesired-to-desired" signal contour ratio methodology; Citicasters claims that this methodology has never been employed in Section 73.215 short-spacing cases. Based on the "correct application of the contour overlap method used in Section 73.215 short-spacing cases," writes Citicasters, KBNH(FM) will cause overlap of 315 square kilometers including 90 persons within the KCIX(FM) 1 mV/m contour, and KBNH(FM) will receive overlap of 142 square kilometers containing 7,023 persons within its 1 mV/m contour. Petition for Reconsideration, Engineering Statement, at 11. Additionally, Citicasters argues that RSM "presents an inaccurate picture of the size and population of the white area to which grant of the KBNH(FM) application will provide the first aural service." Citicasters claims that KBNH(FM) will provide a first aural service to only 145 persons in a 3,439-square-kilometer area, which represents only 0.04 percent of the population within the KBNH(FM) 1 mV/M contour. Petition for Reconsideration, Engineering Statement, at 11-12.

³⁰ Citicasters states that operation of KBNH(FM) from one of the fully spaced sites would provide greater white area service than that proposed in the subject application.

³¹ See *Greater Media supra*, 15 FCC Rcd at 7099, ¶ 18.

directional antenna would have minimal effect on the area and population that would receive prohibited overlap from KCIX(FM), but it would substantially diminish coverage of the white and gray areas that would receive service from KBNH(FM)'s 100-kW operation.

23. RSM's exhibits clearly indicate that it undertook an initial analysis of overlap impact with respect KCIX(FM) under Section 73.215 using the standard prediction methodology in Section 73.313 of the Commission's rule. It also augmented that analysis, as is often done by waiver applicants, with supplementary data using the desired-to-undesired signal contour ratio methodology. The differences between the areas and populations in the overlap and white areas derived from the standard methodology and those determined by use of the contour ratio method are neither unexpected nor so great as to alter our conclusion that grant of the KBNH(FM) application would serve the public interest.

Conclusions/Actions

24. Based upon the record in this matter, pursuant to Section 316 of the Communications Act of 1934, as amended, we conclude that it would be in the public interest to modify Citicasters' license for Station KCIX(FM) by granting the R&S Media application for modification of construction permit.

25. Given the information presented, we find that the RSM has fully established that there are no non-short-spaced or lesser-short-spaced sites available to KBNH(FM), and that the specified site is the least short-spaced feasible site. Thus, waiver of section 73.215(e) is warranted. Moreover, having reviewed the exhibits provided by RSM, waiver of the contour overlap provisions of Section 73.215(a) is warranted on the exceptional facts of this case. As noted above, no other transmitter sites are available at which prohibited contour overlap could be completely avoided. We agree that requiring KBNH(FM) to operate directionally would provide minimal protection to very few persons while depriving a large "white" area of a first new service.³² These factors support grant of the requested 73.215(a) contour overlap waiver.

26. In conclusion, RSM has demonstrated that unique and compelling factors to warrant grant of the requested waivers of 47 C.F.R. Section 73.215(a) and (e) and we find that Citicasters has failed to raise a substantial and material question of fact regarding whether the proposed modification of the RSM construction permit is in the public interest.

27. Accordingly, IT IS ORDERED, that Sections 73.215 (a) and (e) ARE WAIVED, and the applications of R&S Media to modify its outstanding construction permit and for license to cover (File Nos. BMPH-20000229ABO and BLH-20031229ABR, respectively) ARE GRANTED.

28. IT IS FURTHER ORDERED, that pursuant to Section 316 of the Communications Act of 1934, as amended, and Section 1.87 of the Commission's Rules,³³ the license for Station KCIX(FM) Garden City, Idaho, IS MODIFIED, indirectly, by the grant of the R&S Media application for construction permit, effective thirty days from the release of this *Memorandum Opinion and Order*.

³² *Greater Media supra*. Also, insofar as interference to KCIX(FM) from KBNH(FM) is concerned, we note that under Section 73.318 of the Commission's rules, KBNH(FM) would be required to resolve complaints if interference to KCIX(FM) or other stations which would be received during the first year of operation, and provide effective technical assistance to complainants outside of that contour.

³³ 47 C.F.R. § 1.87.


29. IT IS FURTHER ORDERED, that the July 30, 2004, "Emergency Motion for Summary Reinstatement of CP and Authorization of Immediate Service to Unserved Areas by Fully-Built FM Station" IS DISMISSED.

30. IT IS FURTHER ORDERED, that this *Memorandum Opinion and Order* shall be sent by Certified Mail, Return Receipt Requested to:

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FEDERAL COMMUNICATIONS COMMISSION



Peter H. Doyle, Chief
Audio Division
Media Bureau

EXHIBIT 7 - PHOTO OF PROPOSED WAR EAGLE MOUNTAIN TOWER SITE

