

## CONTINGENT APPLICATIONS AGREEMENT

This Agreement ("**Agreement**") is made and entered into this 22nd day of November, 2011, between WAY MEDIA, Inc. ("**WAY**"), licensee of Station KFWA(FM), Facility ID 79249, Parker, Colorado ("**Station KFWA**"), and Station K276FL, Facility ID 76196, Colorado Springs, Colorado (the "**Colorado Springs Translator**"), and Lincoln Financial Media Company of Colorado ("**Lincoln**"), licensee of Station KRWZ(AM), Facility ID 30839, Denver, Colorado ("**Station KRWZ**") and Station K276FK, Facility ID 157107, Pinecliffe, Colorado (the "**Lincoln Translator**").

WHEREAS, WAY desires to file an application to change the community of license for Station KFWA on Channel 276 from Parker to Weldona, Colorado at a new transmitter site (the "**Station KFWA Application**");

WHEREAS, Lincoln, in order to accommodate the Station KFWA Application, is willing to file, on the terms and conditions set forth in this Agreement, a minor change application to modify the facilities of Station KRWZ on 950 kHz to change community of license from Denver to Parker, Colorado at its current transmitter site (the "**Station KRWZ Application**");

WHEREAS, the parties have agreed to file contingent applications pursuant to Section 73.3517(e) of the FCC's Rules as described more specifically herein, which necessitates a written agreement which may be filed with the FCC; and

WHEREAS, the Station KFWA Application and the Station KRWZ Application will serve the public interest by providing better service to the public.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth herein, WAY and Lincoln hereby agree as follows:

1. (a) Within 10 business days of the execution of this Agreement, WAY and Lincoln shall prepare the Station KFWA Application and the Station KRWZ Application, respectively, at their own expense, but subject to paragraph 2, and coordinate the filing of the applications on the same day on a contingent basis. Neither party shall take action to interfere with, delay, or prevent the grant of the Station KFWA Application or the Station KRWZ Application. If either application is dismissed or denied, or if the FCC requests correction of a deficiency, the applicant agrees to use reasonable efforts to resolve the deficiencies in a manner that does not materially diminish the benefit of this Agreement for the other party and, if necessary, to refile the application with the deficiency eliminated.

(b) After both the Station KRWZ Application and the Station KFWA Application have been granted by Final Order, Lincoln shall complete the change in community of license by filing the license application (Form 302-AM) (the "**Station KRWZ License Application**") within 45 days after such finality. For the purposes of this Agreement, a "**Final Order**" shall mean an action of the FCC that is no longer subject to reconsideration, review, or appeal under applicable law before the FCC (including on the FCC's own motion) or before any court.

2. Both parties agree to share equally in the costs of preparing and filing the Station KFWA Application and the Station KRWZ Application, including, without limitation, legal, engineering and filing fees, provided that Lincoln shall pay no more than \$7,500 in such costs.

3. The Station KFWA Application shall specify the technical parameters set forth in Exhibit 1 (the "**Station KFWA Specs**"). In addition, WAY and Lincoln shall file applications with the FCC for the Colorado Springs Translator and the Lincoln Translator, contingent on the Station KFWA Application which specify the technical parameters set forth in Exhibit 2 (respectively, the "**K276FK Specs**" and the "**K276FL Specs**"), which such technical specifications include, among other things, the make, model and orientation of such station's directional antenna.

4. Except to conform to the Station KFWA Specs, WAY agrees not to modify or agree to the modification of Station KFWA – such modifications to include, by way of example and not by way of limitation, increasing the height of the antenna, modifying the antenna, increasing effective radiated power or relocating the transmitter site – in a manner that would result in the 60 dBu contour for Station KFWA being any closer to the 60 dBu contour for the Lincoln Translator, assuming operation with the K276FK Specs. WAY acknowledges that the primary reason that Lincoln is entering into this Agreement is that it will permit Lincoln to operate the Lincoln Translator with the K276FK Specs. WAY agrees that it will not directly or indirectly do anything within its reasonable control to preclude operation of the Lincoln Translator with the K276FK Specs. For example, WAY agrees never to complain that the Lincoln Translator operating with the K276FK Specs causes interference to Station KFWA, the Colorado Springs Translator or any other station.

5. Modifications by Lincoln or WAY to the Lincoln Translator or the Colorado Springs Translator, as the case may be, will be permissible, provided that the respective interfering (40 dBu) and protected (60 dBu) contours do not overlap as required by Section 74.1204 of the FCC's Rules. Both Lincoln and WAY agree never to complain of interference from the Colorado Springs Translator or the Lincoln Translator, as the case may be, provided that such translators are operating in compliance with the first sentence of this paragraph 5. Lincoln and WAY agree that each shall have the right to inspect the other's operations to confirm compliance with the terms of their respective FCC authorizations.

6. WAY may not sell or otherwise transfer Station KFWA (whether all or substantially all of the assets of the Station or any transaction involving a transfer of control requiring FCC approval), other than to a Permitted Transferee (as defined below), without first giving Lincoln (i) prior written notice thereof together with a copy of a bona fide third party offer (the "**Third Party Offer**") to complete such transaction containing all material terms and (ii) a period of thirty (30) days from such notice to elect, by written notice to WAY, to acquire Station KFWA on substantially the terms set forth in such offer, provided that if the Third Party Offer includes non-cash consideration, then Lincoln shall have the right to pay cash equal in amount to the fair market value (as determined by an independent appraiser mutually agreed to by WAY and Lincoln, if necessary) of any non-cash consideration offered in the Third Party Offer. The term "**Permitted Transferee**" means any person or entity that acquires Station KFWA and agrees to assume WAY's obligations under this Agreement, including WAY's obligations under paragraphs 6, 7 and 8.

7. If Lincoln exercises its right to acquire Station KFWA within such time period, the parties shall within thirty (30) days of Lincoln's delivery of the notice of exercise, enter into a definitive agreement on substantially the terms set forth in the Third Party Offer, except as modified by the proviso in the last sentence of paragraph 6. If Lincoln fails to satisfy its obligations under this paragraph 7 or if such definitive purchase agreement is terminated due to Lincoln's material breach, then Lincoln shall no longer have the right to acquire Station KFWA pursuant to paragraphs 6, 7 and 8 of this Agreement.

8. If Lincoln does not exercise its right to acquire Station KFWA within such time period, then WAY may sell or transfer Station KFWA on the terms of the Third Party Offer in all material respects, but otherwise subject to the terms of this Agreement, except that the restrictions on WAY set forth in paragraphs 6, 7 and 8 of this Agreement shall automatically terminate and be of no further force and effect upon closing of the sale to such third party. If such third party sale or transfer does not close substantially on the terms of the Third Party Offer, then Lincoln shall have the right of first refusal set forth in paragraph 6 as to any subsequent bona fide third party offer.

9. Both parties agree that neither will assign nor transfer their licenses for Station KFWA or Station KRWZ unless it causes the assignee or transferee thereof to assume its respective obligations under this Agreement in a manner reasonably satisfactory to the other party. This Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties hereto. As a condition to any sale of Station KFWA for a period of five (5) years from the date this Agreement is executed, WAY agrees that the purchaser shall be required to assume WAY's obligations under this Agreement with respect to Station KFWA, except that if Lincoln has declined to exercise the right of first refusal under paragraphs 6, 7 and 8, a purchaser pursuant to a Third Party Offer shall not be required to assume WAY's obligations under paragraph 6 with respect to the right of first refusal.

10. If any term or provision of this Agreement is determined to be void, unenforceable, or contrary to law, the remainder of this Agreement shall continue in full force and effect provided that such continuation would not materially diminish the benefits of this Agreement for any party. If such continuation would materially diminish the benefits of this Agreement for any party, then the parties shall negotiate in good faith such changes in other terms as shall be practicable in order to restore them to their prior positions.

11. This Agreement sets forth the entire understanding of the parties hereto at the time of execution and delivery hereof with respect to the subject matter hereof and may not be amended except by written amendment signed by both parties. All prior agreements between the parties with respect to the subject matter hereof shall be of no further force or effect. The undersigned each represents and warrants that it has the requisite authority to bind its respective party to the terms and obligations of this Agreement.

12. If either party breaches its obligations under this Agreement, the other party shall have the right to seek injunctive relief and/or specific performance, without showing any actual damages, as that party's exclusive remedy. The party that breaches agrees to waive any defense as to the adequacy of the other party's remedies at law and to interpose no opposition, legal or otherwise, to the propriety of injunctive relief or specific performance as a remedy, and to waive

any requirement for the posting of any bond or other security. THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING IN ANY WAY TO THIS AGREEMENT, INCLUDING WITH RESPECT TO ANY COUNTERCLAIM MADE IN SUCH ACTION OR PROCEEDING, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE DECIDED SOLELY BY A JUDGE.

13. This agreement may be signed in counterparts with the same effect as if the signature on each counterpart were on the same instrument. Delivery of executed counterpart signatures to this Agreement by facsimile or other electronic transmission shall be effective as delivery of original counterpart signatures to this Agreement.

14. Until the Station KRWZ License Application is granted by Final Order, Lincoln agrees that, it will not negotiate, discuss or solicit proposals from any other party for the purpose of modifying Station KRWZ in a manner contrary to the goals of this Agreement. Nothing herein will preclude or prevent Lincoln from entertaining offers for the sale of Station KRWZ or of air time on that Station.

15. This Agreement will automatically terminate if the Station KRWZ Application has not been granted within one year from the execution date of this Agreement. The parties contemplate that the FCC will grant both the Station KRWZ Application and the Station KFWA Application at the same time; however, should the FCC grant the Station KRWZ Application without granting the Station KFWA Application within one (1) year from the execution date of this Agreement, Lincoln may request cancellation of the construction permit to change KRWZ's community of license to Parker and this Agreement shall terminate upon such cancellation by the FCC. Upon such termination, WAY shall reimburse any expenses that Lincoln paid pursuant to paragraph 2 of this Agreement.

16. This Agreement shall be governed by and construed according to the laws of the State of Colorado, specifically excluding its choice-of-laws provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Contingent Applications Agreement as of the date first written above.

WAY MEDIA, Inc.

By: 

Name: Robert Augsburg

Title: President

Lincoln Financial Media Company of Colorado

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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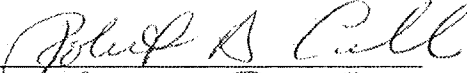
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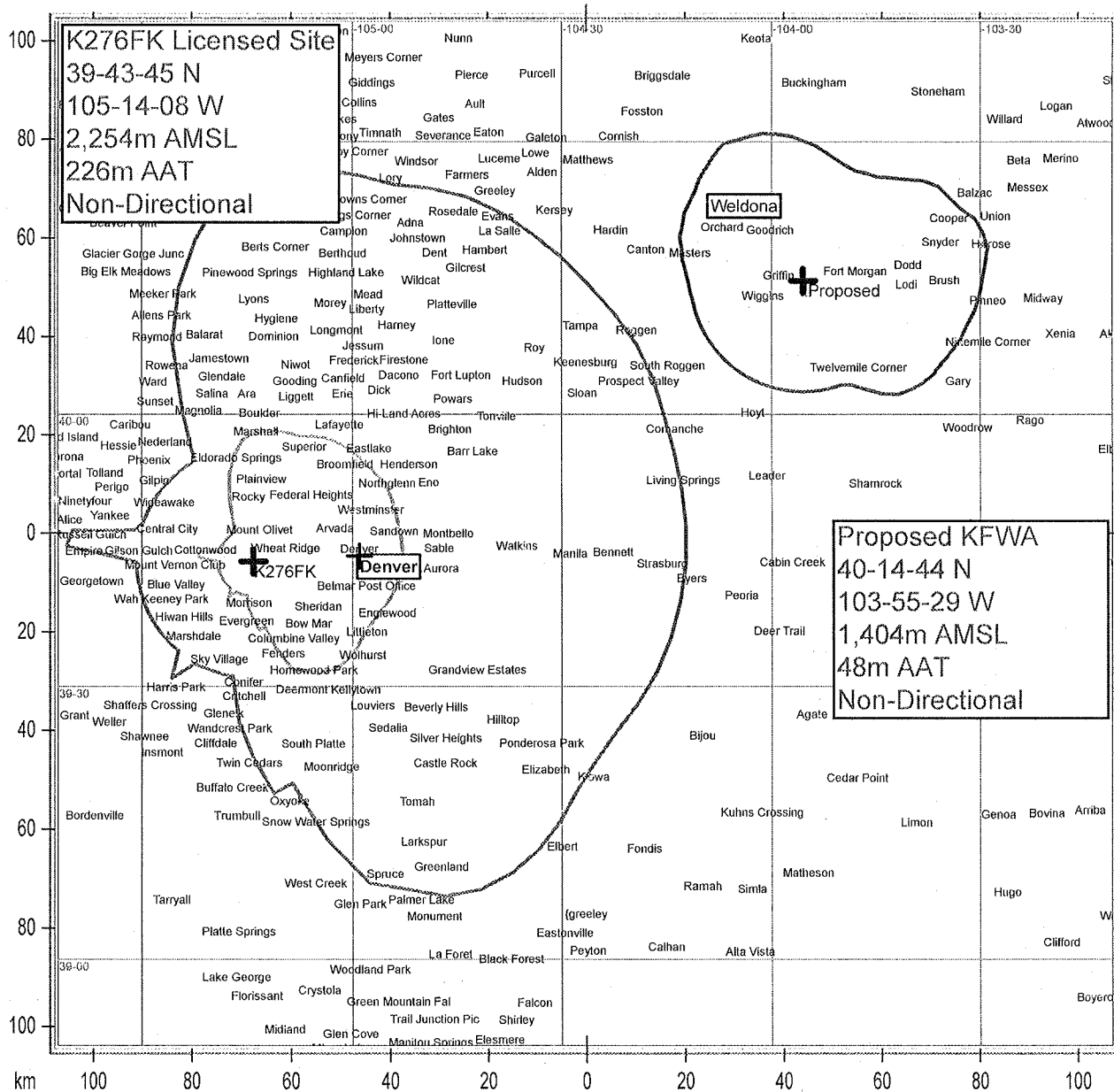
By: \_\_\_\_\_  
Name:  
Title:

Lincoln Financial Media Company of Colorado

By:   
Name: Robert B. Call  
Title: SVP/GM

**Exhibit 1**  
**Station KFWA Specs**

# K276FK Denver contours at 250 watts non-DA



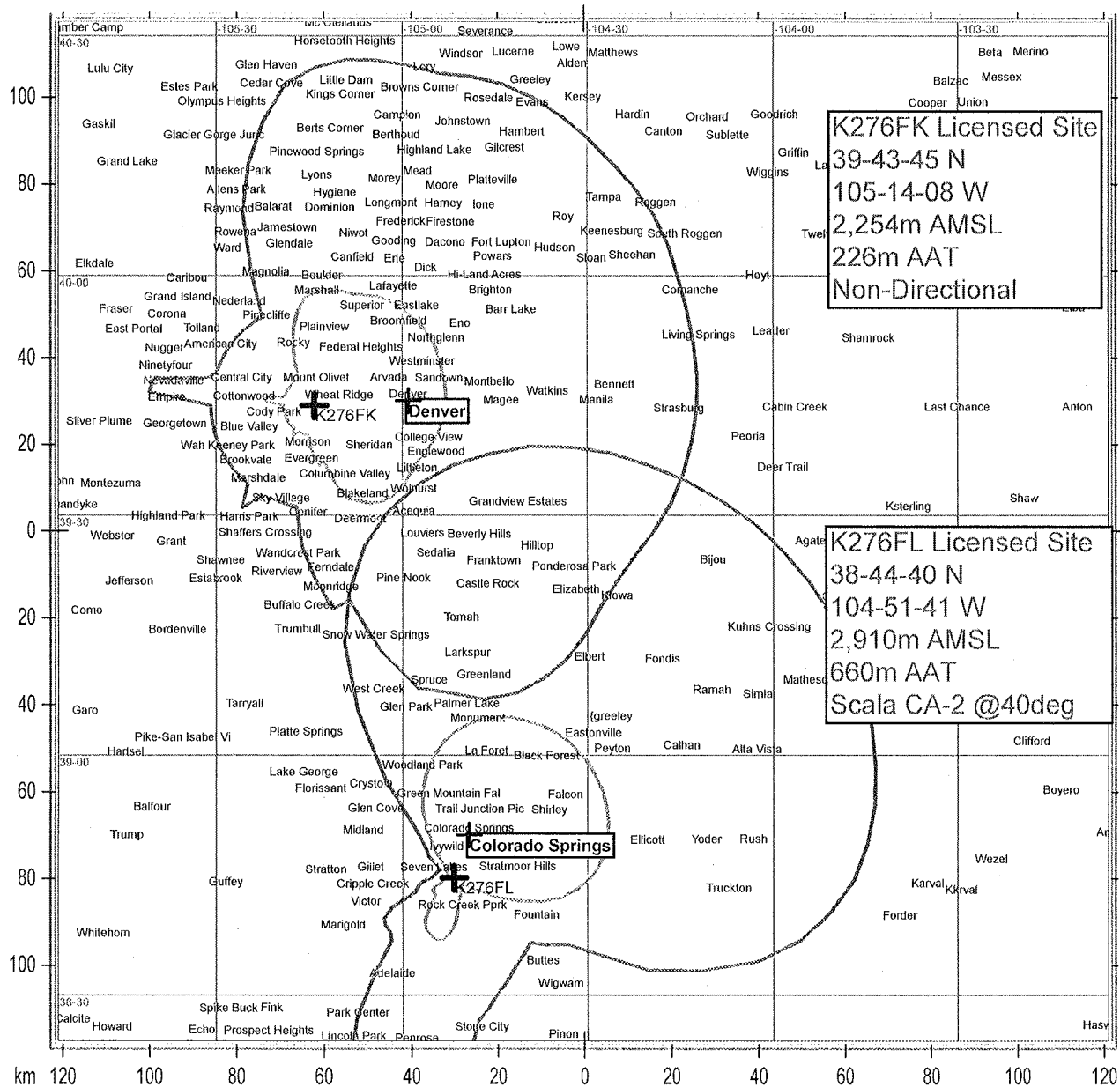
## Proposed KFWA Weldona contours at 25kw non-DA

## **Exhibit 2**

### **K276FK Specs And K276FL Specs**

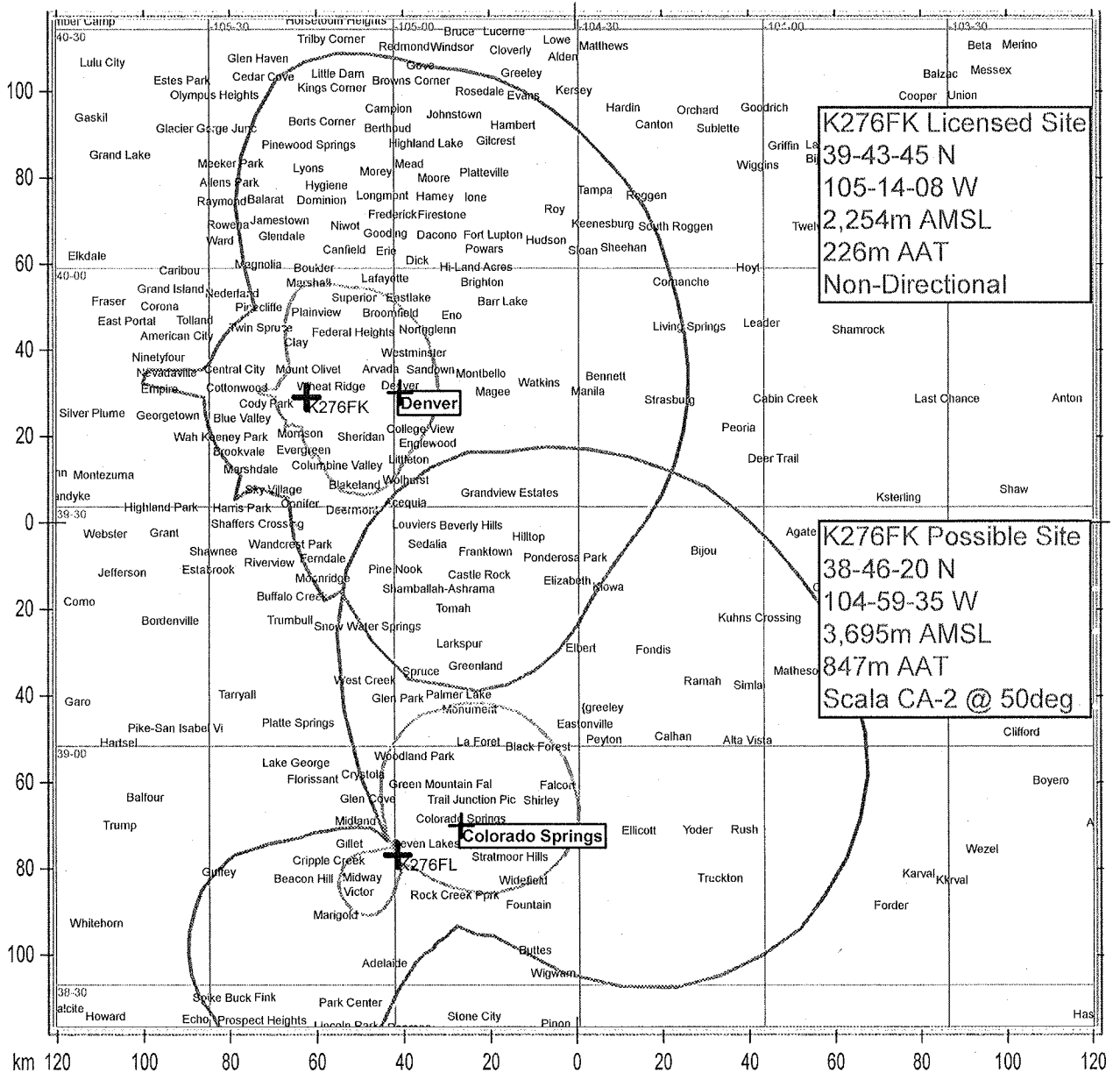


# K276FK Denver contours at 250 watts non-DA



K276FL Colo Spr at 200w DA at 40 degrees from 2910m (existing site Cheyenne Mountain)

# K276FK Denver contours at 250 watts non-DA



K276FL Colo Spr at 200w DA at 50 degrees from 3790m (Almagre Mountain) possible alternate site

State Borders Lat/Lon Grid

Map Scale: 1:1474357 1 cm = 14.74 km V/H Size: 233.22 x 240.45 km