

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Application of:)
)
THE ASSOCIATION FOR) File No. BMPFT-990818TC
COMMUNITY EDUCATION, INC.)
)
For Modification of Construction Permit)
BMPFT-980916TA)
For K211DK, Santa Ana, CA)

To: Chief, Audio Services Division
Mass Media Bureau

INFORMAL OBJECTION

Santa Monica Community College District ("SMCCD"), pursuant to Section 73.3587 of the Commission's rules, hereby informally objects to the captioned application filed by The Association For Community Education, Inc. ("ACE"). SMCCD requests that the Mass Media Bureau ("Bureau") dismiss the ACE application. In support, SMCCD shows as follows:

1. SMCCD holds the license for KCRW(FM), Santa Monica, California, a non-commercial educational FM radio station that operates on Channel 210 (89.9 MHz) – the first adjacent channel to ACE's proposed operation.
2. On December 31, 1996, SMCCD filed a "Motion To Dismiss Or, In The Alternative, Petition to Deny" ("Motion") against ACE's original application (File No. BPFT-960910TB) for a construction permit for a new FM translator station on Channel 211 to serve Santa Ana, California. The Motion demonstrated that ACE's proposed FM translator station on a first adjacent channel would cause interference to a substantial number of KCRW's listeners. The Motion was premised on Section 74.1204(f) of the Commission's rules, and on the Commission's explanation that in applying Section

74.1204(f) it “will not grant an application if an objecting party provides convincing evidence that the proposed translator station would be likely to interfere with the reception of a regularly received off-the-air existing service, even if there is no predicted prohibited overlap.” *Amendment of Part 74 of the FM Commission’s Rules Concerning Translator Stations*, 5 FCC Rcd 7212, 7230 (1990).

3. ACE amended its original application, and the Bureau assigned the new file number BPFT-970218TE. On July 30, 1998, the Bureau directed ACE to further amend its application. ACE tendered an amendment in response.¹

4. On August 26, 1998, the Bureau denied SMCCD’s Motion and granted ACE’s Application. *Letter of Daniel Fontaine, Supervisory Engineer, Audio Services Division, to The Association For Community Education, Inc., Lewis J. Paper, Esq. and Christopher D. Imlay, Esq.*, Ref. No. 1800B3 (MMB Aug. 26, 1998) (hereafter “Denial”). On September 25, 1998, SMCCD filed a Petition for Reconsideration of the *Denial*. ACE did not oppose the Petition for Reconsideration. That Petition for Reconsideration is still pending.

5. Meanwhile, on September 16, 1998, ACE filed an application (BMPFT-980916TA) for modification of the original construction permit.² On October 13, 1998, ACE amended that application to transform the proposal from a major change to a minor change.³ On October 23, 1998, the Commission gave Public Notice of the receipt of that

¹ As a result of the amendment, ACE proposed operation with 10 Watts ERP from a site located at 33° 49’ 42” N, 117° 38’ 18” W, with an antenna center of radiation 906 meters AMSL.

² ACE proposed to reduce power to 7 Watts ERP, from a different site (33° 47’ 48” N, 117° 37’ 24” W), with a center of radiation 1,183 meters AMSL.

³ ACE amended the proposal to reduce ERP to 4 Watts, without changing site or antenna height from that proposed on September 16, 1998.

amendment, even though on October 22, 1998, the Bureau had granted ACE's amended application. ACE did not serve SMCCD with either the September 16, 1998, application or the October 13, 1998, amendment. SMCCD requested that the Bureau reconsider the grant of the amended application. That request also remains pending before the Commission.

6. ACE has now applied to significantly increase ERP to 10 Watts and to significantly increase coverage area.⁴

7. Once again ACE has violated the Commission's rules by failing to serve SMCCD with a copy of the application for modification of construction permit. Neither of the earlier grants have become final, and two petitions for reconsideration remain pending before the Commission. ACE's actions further violate the FCC's *ex parte* rules.

8. SMCCD requests that the Bureau treat this latest application as a major change. It is quite evident from ACE's conduct that it has engaged in a series of actions to try to circumvent the FCC's procedural rules and the "cut-off" process. ACE has filed a series of technical proposals, none of which have reflected its true intention as to the facilities it intended to construct and operate on a permanent basis. ACE is attempting to accomplish through a series of steps what it cannot otherwise accomplish through a single step. The Bureau has the authority to look at the overall course of conduct and treat any application as a major change and subject to the filing of competing applications and petitions to deny.

9. With regard to the substance of the ACE application, the only decision on the merits by the Bureau on any filing by ACE for an FM translator station at Santa Ana,

⁴ ACE also proposes a slight reduction in the height of the antenna center of radiation – from 15 to 5 meters above ground and from 1,183 to 1,173 meters AMSL.

California, is the *Denial*, a copy of which is attached. The *Denial* involved a technical facility that ACE has long since abandoned. Nonetheless, in denying SMCCD's Motion, the Bureau said that SMCCD must "provide independent verification or documentation to show that the grant of ACE's application 'will result in interference to the reception' of KCRW." While SMCCD maintains that it provided the Bureau with such independent verification and documentation, SMCCD now submits the attached Engineering Exhibit of John J. Davis, PE as well as the attached letters from KCRW listeners residing in the area identified by Mr. Davis. Together these verify and document that ACE's proposed facility will result in interference to the reception of KRCW by regular station listeners. The ACE application should, therefore, be dismissed.

WHEREFORE, in view of the foregoing and the entire record herein, it is respectfully requested that Chief dismiss ACE's application.

Respectfully submitted,

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October 13, 1999

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET NW
WASHINGTON DC 20554

MASS MEDIA BUREAU
AUDIO SERVICES DIVISION
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APPLICATION STATUS: (202) 418-2730
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AUG 26 1998

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RE: NEW(FX); Santa Ana, CA
Association for Community Education
("ACE")
BPFT-970218TE
(BPFT-960910TB Amended)

Dear Applicant and Counsel:

The staff has under consideration the following

- 1) The application filed by ACE to construct a new FM translator station to serve Santa Ana, CA;
- 2) The petition to deny dated December 30, 1996 and all related pleadings filed on behalf of Buena Park School District ("BPSD"), licensee of station KBPK, Buena Park, CA; and
- 3) The motion to dismiss dated December 31, 1996 and all related pleadings filed on behalf of Santa Monica Community College District ("SMCCD"), licensee of station KCRW, Santa Monica, CA.

For the reasons stated below, we deny the petition to deny and the motion to dismiss and grant the application.

AUG 28 1998

BPSD's Petition to Deny

BPSD's petition asserts that the proposed translator would cause prohibited interference to the reception of station KBPK's signal and therefore, the facility is in violation of 47 CFR § 74.1204(f). In support of its assertion, BPSD provides 21 listener affidavits and a map showing the locations of those listeners to demonstrate that KBPK has listeners located within the predicted 40 dBu interfering contour of the proposed translator. BPSD concludes that operation of the proposed translator is likely to cause interference to the reception of KBPK. Accordingly, BPSD requests that ACE's application be dismissed.

SMCCD's Motion to Dismiss

SMCCD's motion to dismiss asserts that KCRW's signal is regularly received in Santa Ana area and the proposed translator would cause interference to the reception of station KCRW in this area. In support of its claim, SMCCD states that 1,063 subscribers who regularly listen to KCRW will be adversely affected by the proposed operation and therefore, the translator application should be dismissed.

Discussion

Applications for FM translator stations will not be accepted if the predicted 1 mV/m field strength contour of the proposed translator will overlap a populated area already receiving a regularly-used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station. See 47 CFR § 74.1204(f). Therefore, to demonstrate that ACE's facility is in violation of § 74.1204(f), BPSD must "... provide convincing evidence that the station has listeners within the 1 mV/m contour of the proposed translator, and that there is a likelihood of interference."¹ However, review of BPSD's petition reveals that BPSD has failed to provide such evidence. Specifically, the petition demonstrates that KBPK has listeners within 100 uV/m (40 dBu) interfering contour but does not demonstrate that the station has listeners in the 1 mV/m (60 dBu) contour area.² In any event, BPSD has not shown the grant of ACE's application "will result in interference to the reception" of KBPK. In light of the above, BPSD's petition will be denied.

SMCCD is also attempting to show that the proposed translator would likely interfere with station KCRW's signal. Review of SMCCD's motion to dismiss reveals that SMCCD has not provided any evidence to support its claim. In order to find in SMCCD's favor, SMCCD would have to provide independent verification or documentation to show that the grant of ACE's application "will result in interference to the reception" of KCRW. See 47 CFR § 74.1204(f) (emphasis added). In light of the above, SMCCD's motion to dismiss will be denied.

¹ The burden is on the petitioner to show that the proposed facility fails to comply with the rule. See *Report and Order in the matter of Amendment of Part 74 of the Commission's Rules Concerning FM Translator Station*, 5 FCC Rad 7212 (1990), modified, 6 FCC Rad 2334 (1991), *recon. denied*, 8 FCC Rad 5093 (1993).

² Review of the individual addresses listed in BPSD's petition verifies that none of the reported addresses are within 1 mV/m contour of the proposed translator.

47 CFR § 74.1203

BPSD and SMCCD are not without protection from interference resulting from the operation of the proposed translator. Once a translator goes on the air, proof of actual interference would be established through the receipt of unsolicited complaints from listeners who indicate that the signal they regularly receive is being impaired by the translator's operation. Pursuant to 47 CFR § 74.1203, if a translator were to cause any actual interference to "the transmission of any authorized broadcast station" or "the direct reception by the public of the off-the-air signals of any authorized broadcast station" the interference must be promptly eliminated or the translator will have to suspend operations. Upon the submission of listener complaints, the Commission would ask the parties to work cooperatively in determining whether the translator is the source of this interference and whether the translator can eliminate the interference. If any proven interference could not be promptly eliminated, the translator would have to suspend operations.

Conclusion

In light of the above, the petition to deny and the motion to dismiss filed on behalf of BPSD and SMCCD respectively ARE HEREBY DENIED and the application BPFT-970218TE IS HEREBY GRANTED. These actions are taken pursuant to 47 CFR § 0.283.

Sincerely,



Daniel Fontaine
Supervisory Engineer
Audio Services Division
Mass Media Bureau

ENGINEERING EXHIBIT

INFORMAL OBJECTIONS
TO THE APPLICATION OF
ASSOCIATION FOR COMMUNITY EDUCATION, INC.
FOR A MODIFICATION OF CONSTRUCTION PERMIT
FOR FM TRANSLATOR STATION K211KD
SANTA ANA, CALIFORNIA
CHANNEL 211, 90.1 MHz

FCC FILE NO. BMPFT-990818TC

PREPARED FOR:

SANTA MONICA COMMUNITY COLLEGE DISTRICT
1900 PICO BOULEVARD
SANTA MONICA, CALIFORNIA 91405

OCTOBER 11, 1999

PREPARED BY:

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Post Office Changes (continued)

Old/ New	Finance Number	ZIP Code	ST	PO Name	County/ Parish	Station/ Branch/Unit	Unit Type	Effective Date	Comments
old	053710	92713	CA	Irvine	Orange	Harvest Sta	Classified Sta	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for post office boxes. Use Irvine CA 92623 as last line of address for post office boxes previously in ZIP Code 92713.
new	053710	92623	CA	Irvine	Orange	Harvest Sta	Classified Sta	7/1/98	
old	053710	92714	CA	Irvine	Orange	Main Office	Post Office	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92604 as last line of address for a portion of the deliveries previously in ZIP Code 92714.
new	053710	92604	CA	Irvine	Orange	Main Office	Post Office	7/1/98	
old	053710	92714	CA	Irvine	Orange	Main Office	Post Office	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92606 as last line of address for a portion of the deliveries previously in ZIP Code 92714.
new	053710	92606	CA	Irvine	Orange	Main Office	Post Office	7/1/98	
old	053710	92714	CA	Irvine	Orange	Main Office	Post Office	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92814 as last line of address for a portion of the deliveries previously in ZIP Code 92714.
new	053710	92814	CA	Irvine	Orange	Main Office	Post Office	7/1/98	
old	053710	92714	CA	Irvine	Orange	Main Office	Post Office	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92814 as last line of address for a portion of the deliveries previously in ZIP Code 92714.
new	053710	92814	CA	Irvine	Orange	Main Office	Post Office	7/1/98	
old	053710	92715	CA	Irvine	Orange	Main Office	Post Office	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92782 as last line of address for a portion of the deliveries previously in ZIP Code 92715.
new	053710	92782	CA	Irvine	Orange	Main Office	Post Office	7/1/98	
old	053710	92715	CA	Irvine	Orange	Harvest Sta	Classified Sta	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92812 as last line of address for deliveries previously in ZIP Code 92715.
new	053710	92812	CA	Irvine	Orange	Harvest Sta	Classified Sta	7/1/98	
old	053710	92715	CA	Irvine	Orange	University Sta	Classified Sta	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for post office boxes. Use Irvine CA 92815 as last line of address for post office boxes previously in ZIP Code 92715.
new	053710	92815	CA	Irvine	Orange	University Sta	Classified Sta	7/1/98	
old	053710	92718	CA	Irvine	Orange	Main Office	Post Office	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92603 as last line of address for a portion of the deliveries previously in ZIP Code 92718.
new	053710	92603	CA	Irvine	Orange	Main Office	Post Office	7/1/98	
old	053710	92718	CA	Irvine	Orange	Main Office	Post Office	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92818 as last line of address for a portion of the deliveries previously in ZIP Code 92718.
new	053710	92818	CA	Irvine	Orange	Main Office	Post Office	7/1/98	
old	053710	92720	CA	Irvine	Orange	Main Office	Post Office	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92802 as last line of address for a portion of the deliveries previously in ZIP Code 92720.
new	053710	92802	CA	Irvine	Orange	Main Office	Post Office	7/1/98	
old	053710	92720	CA	Irvine	Orange	Main Office	Post Office	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92820 as last line of address for a portion of the deliveries previously in ZIP Code 92720.
new	053710	92820	CA	Irvine	Orange	Main Office	Post Office	7/1/98	
old	055664	92863	CA	Orange	Orange	Main Office	Post Office	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for post office boxes. Use Orange CA 92864 as last line of address for post office boxes previously in ZIP Code 92863.
new	055664	92864	CA	Orange	Orange	Main Office	Post Office	7/1/98	
old	055664	92864	CA	Orange	Orange	The City	Classified Sta	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for post office boxes. Use Orange CA 92865 as last line of address for post office boxes previously in ZIP Code 92864.
new	055664	92865	CA	Orange	Orange	The City	Classified Sta	7/1/98	
old	055664	92865	CA	Orange	Orange	Olive Sta	Classified Sta	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for post office boxes. Use Orange CA 92867 as last line of address for post office boxes previously in ZIP Code 92865.
new	055664	92867	CA	Orange	Orange	Olive Sta	Classified Sta	7/1/98	
old	055664	92865	CA	Orange	Orange	Olive Sta	Classified Sta	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Orange CA 92865 as last line of address for deliveries previously in ZIP Code 92865.
new	055664	92865	CA	Orange	Orange	Olive Sta	Classified Sta	7/1/98	
old	055664	92866	CA	Orange	Orange	Plaza Sta	Classified Sta	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for post office boxes. Use Orange CA 92866 as last line of address for post office boxes previously in ZIP Code 92866.
new	055664	92866	CA	Orange	Orange	Plaza Sta	Classified Sta	7/1/98	
old	055664	92866	CA	Orange	Orange	Plaza Sta	Classified Sta	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Orange CA 92866 as last line of address for deliveries previously in ZIP Code 92866.
new	055664	92866	CA	Orange	Orange	Plaza Sta	Classified Sta	7/1/98	
old	055664	92867	CA	Orange	Orange	Villa Park	Place Name	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Orange CA 92867 as last line of address for a portion of the deliveries previously in ZIP Code 92867.
new	055664	92867	CA	Orange	Orange	Villa Park	Place Name	7/1/98	
old	055664	92867	CA	Orange	Orange	Main Office	Post Office	7/1/98	ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Orange CA 92867 as last line of address for deliveries previously in ZIP Code 92867.
new	055664	92867	CA	Orange	Orange	Main Office	Post Office	7/1/98	

3.0 SECTION 74.1204(f) CONSIDERATIONS:

Section 74.1204(f) of the Commission's Rules states:

"An application for an FM translator station will not be accepted for filing even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (a) of this section, if the predicted 1 mV/m field strength contour of the FM translator station will overlap a populated area already receiving a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, including Class D (secondary) noncommercial educational FM stations and grant of the authorization will result in interference to the reception of such signals."

The proposed modification of K211DK would violate these provisions:

- The modified translator's 1 mV/m (60 dBu) contour encloses a populated area.
- The modified translator's 60 dBu contour encloses an area where significant, documented listenership to KCRW exists.
- The field strength level within the translator's 60 dBu contour exceeds the 6 dB protection ratio provided for first adjacent channel stations¹.

Based upon the above, the modified translator violates the provisions of Section 74.1204(f).

¹ It is always true that for co-channel and first adjacent channels, the field strength level of the FM translator will always be greater than the field strength of the full service station whenever the translator's 60 dBu contour lies beyond the protected contour of the full service station.

4.0 INTERFERENCE TO KCRW

The KCRW field strength level varies between 54 dBu and 48.5 dBu across the modified translator's 60 dBu contour². The Rules define, in Section 74.1204(a)(3), first adjacent interference as anywhere the interfering translator signal is 6 dB greater than the protected signal. In this case, within the modified translator's 60 dBu contour, the translator's field strength is 12 to 17.5 dB greater than the protection level, so, by definition, interference to the KCRW signal will exist everywhere with the modified translator's 60 dBu contour³.

Figure 1 shows the modified K211DK 60 dBu contour along with the relevant 54, 52, 50 and 48 dBu F(50,50) contours of KCRW.

² For this engineering study there is no significant difference between the translator's 60 dBu F(50, 50) contour and the F(50,10) contour. Therefore, the F(50,50) was used for this study.

³ These 12 to 17.5 dB interference levels apply to the boundary of the translator's 60 dBu contour. Inside that contour the interfering translator field strength increases as the distance to the translator decreases so within the 60 dBu contour the interference signal level to KCRW will be higher than the predicted 12 to 18 dB.

5.0 LISTENERSHIP WITHIN INTERFERENCE AREA:

Section 4 above establishes the fact that interference to the received signal of KCRW will exist within the 60 dBu contour of the modified translator. Therefore, the only thing left to establish is whether KCRW has any verifiable listenership within the modified translator's 60 dBu contour. The modified translator's 60 dBu contour was plotted on a zip code map of Orange County and those zip codes contained within the translator's 60 dBu contour were compared to the KCRW subscriber database. The zip codes found to be either totally or partially within the modified translator's 60 dBu contour, along with the results of the KCRW subscriber database search, are shown below:

<u>ZIP CODE</u>	<u>KCRW SUBSCRIBERS</u>	<u>%⁴</u>	<u>SUBSCRIBERS RESIDING WITHIN 60 DBU CONTOUR</u>
92602	2	28.2	1
92667	21	28.1	6
92705	212	48.3	102
92869	86	64.8	56
		TOTAL:	165

Attached, as Exhibit A of this exhibit, are several letters from listeners that reside within the zip codes listed above and attest to the fact that they regularly listen to KCRW in their homes and/or offices. This is only a sampling of letters that could be supplied. Additional letters are available upon request.

⁴ Percentage of the zip code within the modified translator's 60 dBu contour . Subscriber database listing adjusted to this percentage.

It is well known that not everyone who listens to an NCE-FM station financially supports that station. The Corporation for Public Broadcasting, National Public Radio, SMCCD and other NCE-FM stations have done enough surveys to know that only about one-in-ten listeners actually support a station. Therefore, the KCRW subscriber database can be multiplied by ten to get an approximation of the actual listeners to the station. If this is done the number of listeners within the interference area would be 1,650 persons.

6.0 SUMMARY:

SMCCD has shown that interference to the regularly received off-the-air reception of the KCRW signal will be subject to damaging interference from the modified ACE translator within the modified translator's 60 dBu contour, violating the provisions of Section 74.1204(f). SMCCD has also shown that it has 165 subscribers who regularly listen to KCRW and reside within the modified translator's 60 dBu contour. The Commission does not have the resources to effectively deal with actual after-grant interference complaints. In such cases, the Commission has relied upon the parties involved to resolve the interference. This has proved in most cases to be ineffective. The parties have different agendas. There is nothing that ACE will be able to do to eliminate the interference so the only solution will be to reduce its ERP back to the original four watts. While this process is going on there could be months before FCC action would be taken to require K211KD to turn to its previous power. This is unacceptable when it comes to the protection of a full service station from interference from a secondary service FM translator. Based upon the above, SMCCD respectfully requests that the proposed modification to the construction permit of K211KD be denied.

INFORMAL OBJECTIONS TO THE APPLICATION FOR MODIFICATION OF
CONSTRUCTION PERMIT, BMPFT-990818TC, FOR FM TRANSLATOR
STATION K211KD, SANTA ANA, CA
FILED BY ASSOCIATION FOR COMMUNITY EDUCATION, INC.

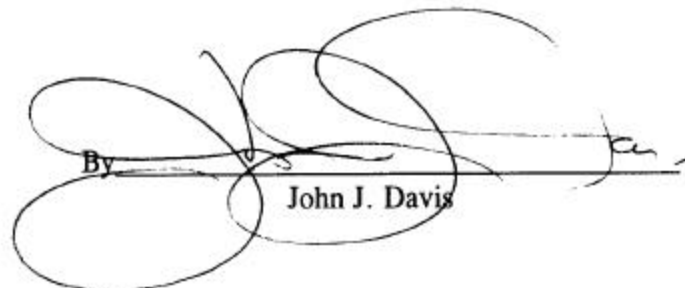
PREPARED FOR
SANTA MONICA COMMUNITY COLLEGE DISTRICT
1900 PICO BOULEVARD
SANTA MONICA, CALIFORNIA

7.0

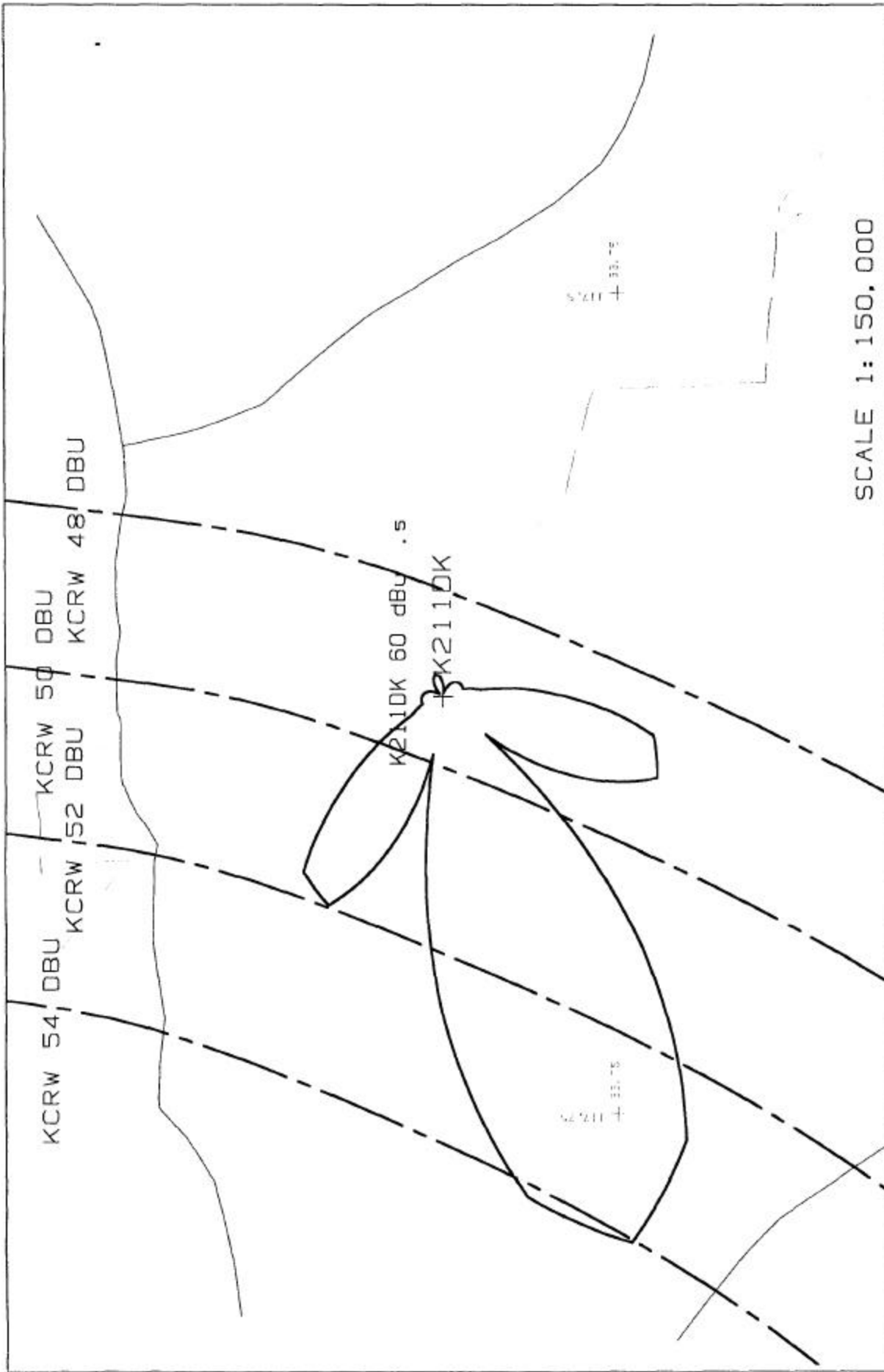
AFFIDAVIT

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

JOHN J. DAVIS, does hereby swear that he is a consulting electronics engineer with offices in Sierra Madre, California; that he is a Registered Professional Engineer in the State of California; that his qualifications as an expert in radio engineering are a matter of record with the Federal Communications Commission; that the foregoing engineering statement was prepared by him or under his direction; and that the statements contained therein are true of his own knowledge and belief, and as to those statements prepared under his direction, he verily believes them to be true and correct.

By  _____
John J. Davis

October 11, 1999



SCALE 1: 150,000



K2110K 2110 .01KW FIGURE 1
 N. Lat. 33 47 48 W. Lng. 117 37 22