

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

In re Application of)
)
THE ASSOCIATION FOR) File No. BPFT-970218TE
COMMUNITY EDUCATION, INC.) (BPFT-960910TB Amended)
)
For Construction Permit)
For New FM Translator Station on)
Channel 211 at Santa Ana, CA)

To: Chief, Audio Services Division
Mass Media Bureau

PETITION FOR RECONSIDERATION

Santa Monica Community College District ("SMCCD"), acting pursuant to Section 1.106 of the Commission's rules, hereby petitions for reconsideration of the action of the Mass Media Bureau ("Bureau") dated August 26, 1998, that denied SMCCD's Motion To Dismiss Or, In The Alternative, Petition To Deny ("Motion") the captioned application of The Association for Community Education, Inc. ("ACE") for a construction permit for a new FM translator station to serve Santa Ana, California. ¹ *Letter of Daniel Fontaine, Supervisory Engineer, Audio Services Division, to The Association For Community Education,*

¹ On September 16, 1998, ACE tendered an application for modification of the construction permit in question for K211DK, Santa Ana, CA (File No. BMPFT-980916TA). ACE proposes to change the antenna system, change power and relocate the station. ACE did not serve SMCCD with a copy of the foregoing application, and SMCCD was not able to obtain a copy of the application from the Commission until Thursday, September 24, 1998. SMCCD intends to file an informal objection to the modification application. In the meantime, since the modification application relates to the above-captioned application, the Commission's *ex parte* rules apply to that modification application as well as to the above-captioned application.

Inc., Lewis J. Paper, Esq. and Christopher D. Imlay, Esq., Ref. No. 1800B3 (MMB Aug. 26, 1998) (hereafter "*Denial*"). The *Denial* (1) failed to apply the correct legal standard set forth in the Commission's rules, (2) disregarded evidence submitted by SMCCD to support the Motion and (3) cannot be sustained in light of the additional evidence and argument provided with this petition for reconsideration. In support of those conclusions, the following is stated:

1. SMCCD holds the license for KCRW(FM), Santa Monica, California, a non-commercial educational FM radio station which operates on Channel 210 (89.9 MHz) – the first adjacent channel to ACE's proposed operation.

2. On December 31, 1996, SMCCD filed its Motion against ACE's application because 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), which states as follows:

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 signal.

3. In applying Section 74.1204(f), the Commission has made it clear that 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). The Bureau has previously interpreted that principle to require a “regularly received off-the-air service” to do no more than “make a convincing showing that the station has listeners” in the proposed service area. If such a showing is made, then the Bureau will dismiss the translator application as unacceptable for filing.

Letter from Larry D. Eads, Chief, Audio Services Division, to Athens Broadcasting Company, Inc. and Big River Broadcasting Corporation, Ref. No. 1800B4-RCC (MMB Feb. 10, 1994). A copy of the foregoing decision is annexed hereto as Exhibit 1.

4. The Bureau applied the foregoing standard in sustaining an objection by SMCCD to a new FM translator on a first adjacent channel in Laguna Beach, California, which was also outside the KCRW 1 mV/m contour. The Bureau dismissed the application because “it stands unrefuted on the record that first adjacent Station KCRW(FM) has listeners in Laguna Beach” and thus “the proposed translator would cause interference to the signal of Station KCRW(FM) in the Laguna Beach area.” *Letter from Larry D. Eads, Chief, Audio Services Division, to John P. Marcom and Santa Monica Community College District*, Ref. No. 8930-MER (MMB Apr. 29, 1992). A copy of that latter decision is annexed hereto as Exhibit 2.

5. The *Denial* acknowledges the prevailing legal standard, stating that, “to demonstrate that ACE’s facility is in violation of § 74.1204(f), [petitioner] 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.” *Denial* at 2.

However, the *Denial* then disregards that unambiguous standard by stating that petitioners must demonstrate that interference “will result.” *Id.*

6. The Bureau’s *Denial* must be reversed because it imposed a standard on SMCCD far more rigorous than the one contemplated by §74.1204(f) of the Commission’s Rules. A party in SMCCD’s situation need not prove that interference will result; a petitioning party only needs to show that there are listeners within the 1 mV/m contour. SMCCD’s Motion plainly provided sufficient evidence to support that latter – and correct – threshold. However, SMCCD is prepared to provide additional evidence to show that SMCCD can even satisfy the more rigorous – and otherwise improper – standard incorporated in the *Denial*.

7. To support its Motion, SMCCD’s consulting engineer, John J. Davis, calculated and graphically depicted the interference area from the proposed FM translator station. As Mr. Davis stated in his Engineering Exhibit dated January 16, 1997, and as he confirms in the Engineering Exhibit attached to the instant Petition as Exhibit 3, the Commission has determined that interference will exist for a first adjacent channel station if the translator will generate a signal level –6 dB or greater than the desired signal. ACE’s proposed translator will produce a 12.2 dB or greater interfering signal and will, by the Commission’s own statements, cause damaging interference to KCRW *everywhere* within the translator’s 60 dBu contour. Exhibit 3 at 3. Mr. Davis reaffirms, in the attached Engineering Exhibit, his prior conclusions stating that there is “almost a certainty” that

interference will be caused to KCRW. Exhibit 3 at 3. Mr. Davis also states in the attached Engineering Exhibit that he drove through the populated areas within the proposed 60 dBu contour and found that “KCRW can be received quite well throughout the area.” Exhibit 3 at 2.

8. Mr. Davis’ findings are further supported by the height of ACE’s antenna. The proposed height above mean sea level is 906 meters (2,972 feet), and the height above average terrain is 515 meters. At ten watts ERP, Mr. Davis concludes that ACE’s translator would produce a signal equivalent to 2.25 kW at a HAAT of 32 meters, which is “hardly insignificant.” Exhibit 3 at 6.

9. In the Engineering Exhibit attached to SMCCD’s Motion, Mr. Davis stated that “the KCRW signal is regularly received in the Santa Ana area” – the proposed community of license. Mr. Davis provided a detailed analysis of the market and identified 1,063 households that provide financial support to KCRW within the interference area. He further calculated that the interference area contains 1,491 square kilometers and 889,107 persons. Motion, Engineering Exhibit at 2. That interference area correlates closely with the predicted 1 mV/m contour of ACE’s proposed FM translator. See ACE’s Opposition to Motion to Dismiss or, in the Alternate, Petition to Deny (“Opposition”), Exhibit 2. As explained in its Motion, SMCCD has determined that its subscribers actually listen to KCRW. It is common knowledge and experience that only a small percentage of the audience of a non-commercial educational FM broadcast station supports the station

through subscription contributions. Therefore, it can be assumed that the actual number of listeners who would experience interference is far greater than these 1,063 households.

10. ACE's Opposition stated that "the predicted 1mV/m contour of the instant translator of the instant translator will fall about 12 kilometers short of reaching Santa Ana." Opposition at 4. Because Santa Ana – ACE's proposed community of license – is located *outside* of the translator's predicted 1 mV/m contour, ACE must intend to provide service *outside* of its predicted 1mV/m contour. The Bureau therefore should have considered interference occurring outside the translator's predicted 1 mV/m contour. It was inappropriate, under these circumstances, to limit the analysis of interference potential to the predicted 1mV/m contour of the proposed translator.

11. As explained in the Declaration of Matthew Holzman, Development Director of KCRW, annexed hereto as Exhibit 4, SMCCD has also determined that several of its significant underwriters are located in the interference area, including the following:

Kids Room, Santa Ana, CA
Murdy Foundation, Santa Ana, CA
Young & Rubicam/Media Edge, Irvine, CA
Micro-rent, Irving, CA
Lifelong Learning, Laguna Beach, CA.

The experience of SMCCD has been that business underwriters tend to provide financial support to KCRW only if they can receive the signal at the place of business.

Consequently, allowing ACE's translator to operate will almost certainly have a direct and very adverse impact on KCRW's financial status.

12. It is not sufficient, as the Bureau suggested in the *Denial*, to say that SMCCD is “not without protection from interference resulting from the operation of the proposed translator” because SMCCD could file “listener complaints” after the translator went on the air. *Denial* at 3. The plain language of Section 74.1204(f) precludes reliance on the translator licensee’s post-grant remedial efforts. And for good reason. The Commission should not have to expend its limited resources to address an obvious interference problem after the fact. Nor should KCRW, which has priority, have to run the risk of irreparable harm.

13. SMCCD has demonstrated that KCRW has listeners in the service area of ACE’s proposed translator and that interference is likely because of the location and operational characteristics of the translator’s transmission facilities. ACE has not provided any evidence or argument to dispute SMCCD’s showing. Section 74.1204(f) of the Commission’s rules therefore requires that ACE’s application be denied.

WHEREFORE, in view of the foregoing and the entire record herein, it is respectfully requested that Chief reconsider the *Denial* and dismiss or deny the ACE application.

Respectfully submitted,

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Lewis J. Paper
Harold K. McCombs, Jr.

EXHIBIT 1

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

10 FEB 1994

IN REPLY REFER TO:
1800B4-RCC

Athens Broadcasting Company, Inc.
P.O. Box 389
Athens, Alabama 35611

Big River Broadcasting Corporation
P.O. Box 1270
Powell, Ohio 43065

In re: FM Translator Application
107.1 MHz, Channel 296
Huntsville, Alabama
BPFT-920109TB

Dear Applicant and Petitioner:

This concerns the above-referenced application for a new FM translator station to serve Huntsville, Alabama, filed by Athens Broadcasting Company, Inc. ("Athens") and the petition to deny filed by Big River Broadcasting Corporation ("Big River"). For the reasons presented below, the application will be dismissed and the petition will be granted to the extent set out below and dismissed in all other respects.

Athens proposes operation on Channel 296 (107.1 MHz). Big River asserts that operation of the proposed translator on Channel 296 would cause interference to the direct reception by the public of the off-the-air signals of WQLT-FM, Florence, Alabama, operating on Channel 297 (107.3 MHz). Big River states that the WQLT-FM signal is "clearly received" and "regularly used" in Huntsville and surrounding Madison County, Alabama. To support its assertions, Big River alleges that, according to the Arbitron ratings service, WQLT-FM had 14,500 listeners in the Huntsville-Decatur-Athens area.¹ Additionally, Big River states that "the Arbitron survey lists WQLT-FM among the top stations with listeners 18+ years old in the Huntsville Total Survey Area." Big River states further that WQLT-FM is "regularly contacted" by listeners who live and work in Huntsville. It also lists approximately 30 businesses in the Huntsville/Decatur area which advertise on WQLT-FM. Big River avers that "these businesses advertise on WQLT-FM because the station can be regularly received in Huntsville and the Huntsville area."

In opposition, Athens responds that Big River fails to demonstrate by "convincing evidence" that Athens' proposal will interfere with the reception of WQLT-FM's signal. Athens states that there will be no overlap between the proposed translator's 0.5 mV/m contour and WQLT-FM's 1 mV/m contour, a fact which Big River acknowledges. Athens also states that Big River presents no

¹ Big River cites this information from the 1991 Arbitron County Report for the relevant area.

"engineering evidence" that the proposed translator is likely to cause interference to the reception of WQLT-FM.

Under our current rules and policies, FM translator stations may not cause either predicted or actual interference to the direct reception of any authorized FM broadcast station. Predicted interference is an application processing standard used to determine whether a proposed translator's interference contour will overlap the protected contour of a full service station. 47 C.F.R. § 74.1204(a). In this instance, the 0.5 mV/m (54 dBu) interference contour of the first-adjacent channel translator cannot overlap the 1.0 mV/m (60 dBu) contour of WQLT-FM, which operates as a Class C station. 47 C.F.R. § 74.1204(a)(3). Athens alleges, and Big River does not dispute, that no prohibitive overlap will occur between the relevant contours. Consequently, the Athens application meets the acceptability criteria of Section 74.1204(a).

However, Section 74.1204(a) is not a strict "go/no-go" rule. The Commission recognized that strict reliance on the contour overlap method of predicting interference could result in the acceptance of some applications that would nonetheless cause interference. Report and Order In the Matter of Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 5 FCC Rcd 7212 (1990), modified, 6 FCC Rcd 2334 (1991) recon. denied, 8 FCC Rcd 5093 (1993). In that regard, Section 74.1204(f) provides:

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...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...and grant of the authorization will result in interference to the reception of such signal.

Thus, pursuant to Section 74.1204(f), we will not grant an application if the 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 overlap. Report and Order, supra at para. 128.

To show that the proposed translator would interfere with WQLT-FM, Big River must make a convincing showing that the station has listeners in the Huntsville area. We are persuaded from Big River's showing that this is the case. Arbitron reports that WQLT-FM has a significant number of listeners in the area to be served by the proposed translator (Huntsville).² Moreover, WQLT-FM has a large number of advertisers in the Huntsville area. Athens does not refute these facts. We conclude from Big River's showing that the proposed translator would cause interference to the signal of WQLT-FM in the Huntsville area in violation of the provisions of Section 74.1204(f). Pursuant to those provisions, the application will be dismissed as unacceptable for filing.

² See Letter from Larry D. Eads to Monroe Board of Education and Tribune New York Radio, Inc., Ref. 8920-DEB, May 21, 1993. In that proceeding, we accepted Arbitron data as evidence that the petitioner had listeners in the applicant's proposed service area.

Big River also questions whether there is a technical need for the proposed translator. In light of our findings above, we need not address this issue and that portion of the petition will be dismissed as moot.

Accordingly, for the reasons set forth above and pursuant to 47 C.F.R. § 0.283, the petition to deny filed by Big River Broadcasting Corporation IS GRANTED to the extent noted and IS DISMISSED in all other respects and the application for a new FM translator station to serve Huntsville, Alabama, filed by Athens Broadcasting Company, Inc. (BPFT-920109TB) IS DISMISSED.

Sincerely,



Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

cc: M. Scott Johnson, Esq.
Harold K. McCombs, Jr., Esq.

EXHIBIT 2

For
Public File

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

29 APR 1992

IN REPLY REFER TO

8930-MER

John P. Marcom
226 Forest Avenue
Laguna Beach, California 92651

Santa Monica Community College District
Ruth Hirschman, General Manager
Station KCRW(FM)
1900 Pico Boulevard
Santa Monica, California 90405

In re: FM Translator Station (New)
File No. BPFT-880323TB
89.7 MHz, Channel 209
Laguna Beach, California

Dear Applicant and Petitioner:

This letter concerns the above-referenced application for a new noncommercial FM translator station filed by John Marcom (Marcom) to serve Laguna Beach, California and the petition to deny filed by the Santa Monica Community College District, licensee of noncommercial educational Station KCRW(FM), Santa Monica, California (Santa Monica or KCRW). For the reasons presented below, the application will be dismissed and the petition to deny will be granted.

Santa Monica alleges that operation of the proposed translator on Channel 209 (89.7 MHz) would cause interference to the reception of Station KCRW(FM) which operates on first adjacent Channel 210 (89.9 MHz). Petitioner asserts that KCRW(FM) is "an award winning National Public Radio Member Station [received] by a large number of persons (in excess of 150 listener/members and the non-member audience at least 10 times as great) in the area the translator proposes to serve." Based on its records, Santa Monica alleges that there are 147 individuals in Laguna Beach and 89 individuals in the "surrounding postal areas" who have donated money to KCRW(FM) or have contacted the station. On June 29, 1988, Marcom filed a request to hold the application in abeyance for sixty (60) days pending submission of an amended engineering proposal. To date, the Commission has not received this amended engineering proposal. Additionally, Marcom has not responded to KCRW's allegations concerning interference. It is noted that a certificate of service is attached to the petition to deny.

On June 1, 1991, the new FM translator rules became effective. See Report and Order, In the Matter of Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 5 FCC Rcd 7212 (1990) ("Report and Order"), modified, 6 FCC Rcd 2334 (1991). A new section has been added that defines the protection criteria for FM broadcast stations and FM translator stations. This new Section (Section 74.1204) is based on predicted energy contour overlap criteria essentially identical to those set out in Section 73.509 of the Rules,

except that commercial Class B and B1 stations will be protected to their 0.5 mV/m and 0.7 mV/m contours, respectively. All other stations are protected to their 1 mV/m contours.

As previously stated, Station KCRW(FM) operates on Channel 210 (89.9 MHz), and the proposed translator would operate on Channel 209 (89.7 MHz). The stations are, therefore, first adjacent and, pursuant to Section 74.1204(a)(3), the 1 mV/m (60 dBu) and the 0.5 mV/m (54 dBu) contours for Station KCRW(FM) and the translator, respectively, are relevant. Our staff engineering study shows that the site to site distance between the two facilities would be 85.3 kilometers. The 1 mV/m protected contour from Station KCRW(FM) in the direction of the translator station (319° true) extends for a distance of 47.8 kilometers. The 0.5 mV/m (interfering) contour from the translator extends for a distance of 5.4 kilometers. There is, thus, a separation of 32.1 kilometers between these contours,¹ and the proposal conforms with the protection criteria of Section 74.1204(a)(3).

The rule is not a strict go/no-go rule, however. Instead, the Commission recognized that mechanical application of the contour overlap method of predicting interference could lead to the rejection of some applications that would not cause interference, while at the same time strict compliance might also result in the acceptance of some applications that would cause interference. The Commission, therefore, provided for "population and terrain exceptions" and stated that "special circumstances" would be taken into account when they were brought to the attention of the processing staff. More specifically, the Commission stated at paragraph 128 of the Report and Order:

[A]n FM translator applicant may demonstrate that, despite predicted contour overlap, interference will not in fact occur due to such factors as absence of population in the overlap area or mountainous terrain. By the same token, ... we 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.

Revised Section 74.1204(f) of the Rules reflects the concerns expressed in the Report and Order, providing in particular that:

An application for an FM translator station will not be accepted


¹ This figure is obtained by subtracting the distance from the two stations to their relevant contours (47.8 km + 5.4 km) from the distance between the stations (85.3 km).

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 signal.

Here the proposed translator would be located in the city of Laguna Beach and it stands unrefuted on the record that first adjacent Station KCRW(FM) has listeners in Laguna Beach. We conclude, therefrom, that the proposed translator station would cause interference to the signal of Station KCRW(FM) in the Laguna Beach area. Since the application does not conform to Section 74.1204(f) of the Commission's Rules, it will be dismissed.

Accordingly, for the reasons set forth above and pursuant to Section 0.283 of the Commission's Rules, the petition to deny filed by the Santa Monica Community College District IS GRANTED and the above-referenced application filed by John P. Marcom (BPFT-880323TB) IS DISMISSED as patently defective.

Sincerely,



Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

MERindal:cj/asb/asd/mmb
typed: 4-24-92

claudett/wp/ marcom6

EXHIBIT 3

ENGINEERING EXHIBIT

PETITION FOR RECONSIDERATION
RELATED TO THE GRANTING OF THE APPLICATION OF
ASSOCIATION FOR COMMUNITY EDUCATION, INC.
FOR A NEW FM TRANSLATOR STATION. K211KD
TO SERVE
SANTA ANA, CALIFORNIA
CHANNEL 211, 90.1 MHz

FCC FILE NO. BPFT-970218TE

PREPARED FOR:

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

SEPTEMBER 23, 1998

PREPARED BY:

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This Engineering Exhibit was prepared for SANTA MONICA COMMUNITY COLLEGE DISTRICT ("SMCCD"), licensee of Non-Commercial Educational Station KCRW in Santa Monica, California, to support its petition for reconsideration of the Commission's action in the granting of the application of Association for Community Education, Inc. ("ACE") for a construction permit for a new FM translator station to serve Santa Ana, California on Channel 211 (90.1 MHz) [FCC File No. BPFT-970218TE].

SMCCD believes that the Commission has failed to adequately consider the issues raised in its various pleadings. Listed below are significant and compelling issues which were raised that were not dealt with in the Commission's decision to grant the ACE application.

1. Section 74.1204(f) Issues. SMCCD asserted that there was listenership to KCRW within the proposed translator's 60 dBu field strength contour and that interference to the reception of KCRW was likely.

1.1 KCRW Listenership.

To support these assertions, SMCCD provided a zip code list of listener subscribers within the proposed 60 dBu contour. 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. Even

if only 20% of the zip codes in question are totally contained within the proposed 60 dBu contour, this represents a listenership of eighty listeners.

1.2 KCRW Reception Within Translator's 60 dBu Contour:

On March 10, 1997, the writer drove through the populated areas within the proposed translator's 60 dBu contour and it was found that KCRW can be received quite well throughout the area. To further substantiate that the KCRW signal is not shielded to populated portions of the proposed translator's 60 dBu contour, several profile graphs have been drawn from the KCRW transmitter site to the western portion of the translator's contour. This is the region which is heavily populated and will be most adversely affected by interference from the translator's operation:

Figure 1: Terrain Profile from KCRW transmitter site to translator's 60 dBu contour along 120° radial.

Figure 2: Terrain Profile from KCRW transmitter site to translator's 60 dBu contour along 125° radial.

Figure 3: Terrain Profile from KCRW transmitter site to translator's 60 dBu contour along 130° radial.

It can be seen in each of these profile graphs that there is no terrain blocking the KCRW signal which might reduce the KCRW signal strength, in the area of potential interference.

1.3 Interference Level:

Within the proposed translator's 60 dBu contour, the translator's signal strength exceeds the signal strength of KCRW from 6.2 dB to over 90 dB (in the near field at the translator site). By the criteria established by the FCC, an FM

station will receive interference if the undesired signal from a first adjacent channel station is -6 dB or greater than the desired signal. By this definition, there is a 12.2 dB, or greater, interfering signal from the proposed translator which will cause damaging interference to KCRW everywhere within the translator's 60 dBu contour. It is obvious, that there is more than a likelihood that interference will be caused to KCRW, this is almost a certainty.

2.0 Interference Area Methodology:

Even more importantly than the above, is the issue of the actual interference that will be caused to the KCRW off-the-air signal in the vicinity of the translator's operation. SMCCD believes that the Commission failed to take into consideration the impact of the *interference area*¹ where, by definition, interference will be caused to KCRW, because this methodology is not codified in the FM Translator Rules. The fact the Commission has not incorporated this accepted methodology into the FM Translator Rules does not invalidate the concept. In its proceedings dealing with *Grandfathered Shorted-Spaced FM Stations* (FCC R & O 97-276, adopted August 4, 1997), the Commission specifically requires that interference be determined by defining an interference area which is defined by the ratio of 40 dB for co-channel stations and 6 dB for first adjacent channel stations [Section 73.213(a)(1)(i) and (ii)]. In hearing cases, such as in *On The Beach Broadcasting*², it

¹ Interference area is defined as the area where the undesired signal is -6 dB or greater than the desired signal. i.e., if at some point the desired signal strength is 54 dBu then any first adjacent channel signal which is greater than 48 dBu at the location will cause interference.

² *On The Beach Broadcasting* (BPH-850712UP) and *Portola Broadcasting Corporation* (BPH-850712VJ) see 7 FCC Rcd 1346-1349 ¶¶ 2-7.

channel stations shall be defined by this ratio method. In these cases, this methodology has been upheld. There is a good reason this is so. This method is the most scientifically accurate theoretical tool for defining where interference is likely to occur. To ignore this methodology here, when it is widely accepted in other proceedings, makes no sense. Just because the instant case involves an FM translator does not make the methodology any less valid. The Commission gave no reason why it did not consider the interference area in its determination or why the use of this methodology was invalid or inappropriate. The Commission routinely accepts supplemental showings such as this to show coverage, or lack of coverage, where the conventional methods are not adequate. The Commission should do no less here.

SMCCD in its earlier pleadings, submitted an interference area plot (shown here in this Exhibit as Figure 4) which defined an area which met the 6 dB interference ratio criteria. The interference area was determined to be 1,491 square kilometers with a population of 899,107 persons (1990 Census). The interference area was also plotted on a zip code map of the area and those zip codes were compared to the KCRW subscriber database. The database search resulted in 1,063 subscribers who regularly listen to KCRW. Using the same 10:1 criteria of actual listeners-to-subscribers, and discounting for zip codes only partially contained within the interference area, leaves over 1,000 person that would be adversely affected by the proposed translator.

Profile graphs were also drawn for the southern portion of the interference area, the area that is most heavily populated which includes Santa Ana and the surrounding communities, which are included in this exhibit:

- Figure 5: Terrain Profile from KCRW transmitter site to interference area along 121° radial. The interference area starts at 62 km and continues to 75 km along this radial.
- Figure 6: Terrain Profile from KCRW transmitter site to interference area along 125° radial. The interference area starts at 62 km and continues to 73 km along this radial.
- Figure 7: Terrain Profile from KCRW transmitter site to interference area along 131° radial. The interference area starts at 66 km and continues to 70 km along this radial.
- Figure 8: Terrain Profile from KCRW transmitter site to interference area along 135° radial. The interference area starts at 68 km and continues to 80 km along this radial.
- Figure 9: Terrain Profile from KCRW transmitter site to interference area along 140° radial (lands edge).

It can be seen that there are no terrain obstructions which might reduce the KCRW signal in the interference area, especially in the southwestern portion of the interference which includes Santa Ana and surrounding communities.

3.0 High Elevation Site Considerations:

ACE plans to operate its proposed translator from a high elevation site with an ERP of 10 watts and an antenna height above mean sea level of 906 meters (2,972 feet) and an HAAT of 515 meters. Section 74.1235(b)(1) of the FM Translator Rules establishes a height vs. power relationship so as to maintain the same coverage contour of 7.3 km for various antenna heights. However, this table stops at 141 meters HAAT. If this table were extrapolated past 141 meters to 515 meters (the

proposed translator's operation) it would be found that the ERP would only be 1.85 watts. Conversely, if an ERP of 10 watts at 515 meters HAAT³ (as proposed in the ACE application) were extrapolated to 32 meters HAAT the resultant ERP would be 2.25 kW. Since the issue here is the potential for interference, these height vs. power equivalencies are very important to consider. An equivalent ERP of 2.25 kW is hardly insignificant.

4.0 Summary:

SMCCD has shown in its previous pleadings, and reaffirmed here, that interference to the regularly received off-the-air reception of KCRW will be subject to damaging interference from the proposed ACE translator both within the translator's 60 dBu contour, but more importantly (because of its more significant impact), within the 6 dB interference area caused by the proposed translator. Based upon the above, SMCCD respectfully requests that granting of the ACE application be rescinded.

³ Ten watts at 515 meters HAAT results in a 60 dBu coverage contour of 12.7 km.

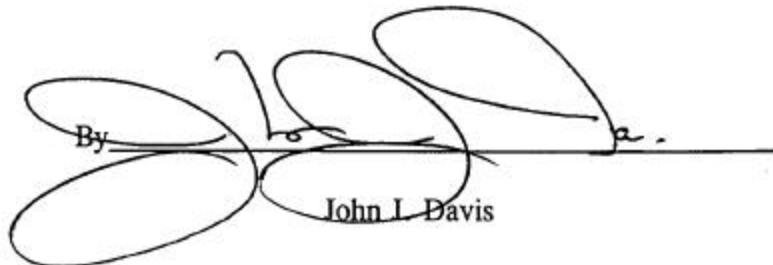
PETITION FOR RECONSIDERATION OF THE GRANTING OF THE
APPLICATION FOR A NEW FM TRANSLATOR TO SERVE SANTA ANA, CA
FILED BY ASSOCIATION FOR COMMUNITY EDUCATION, INC.

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

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

September 23, 1998

TERRAIN PROFILE AT 120 DEGREES T.
KCRW TO SANTA ANA

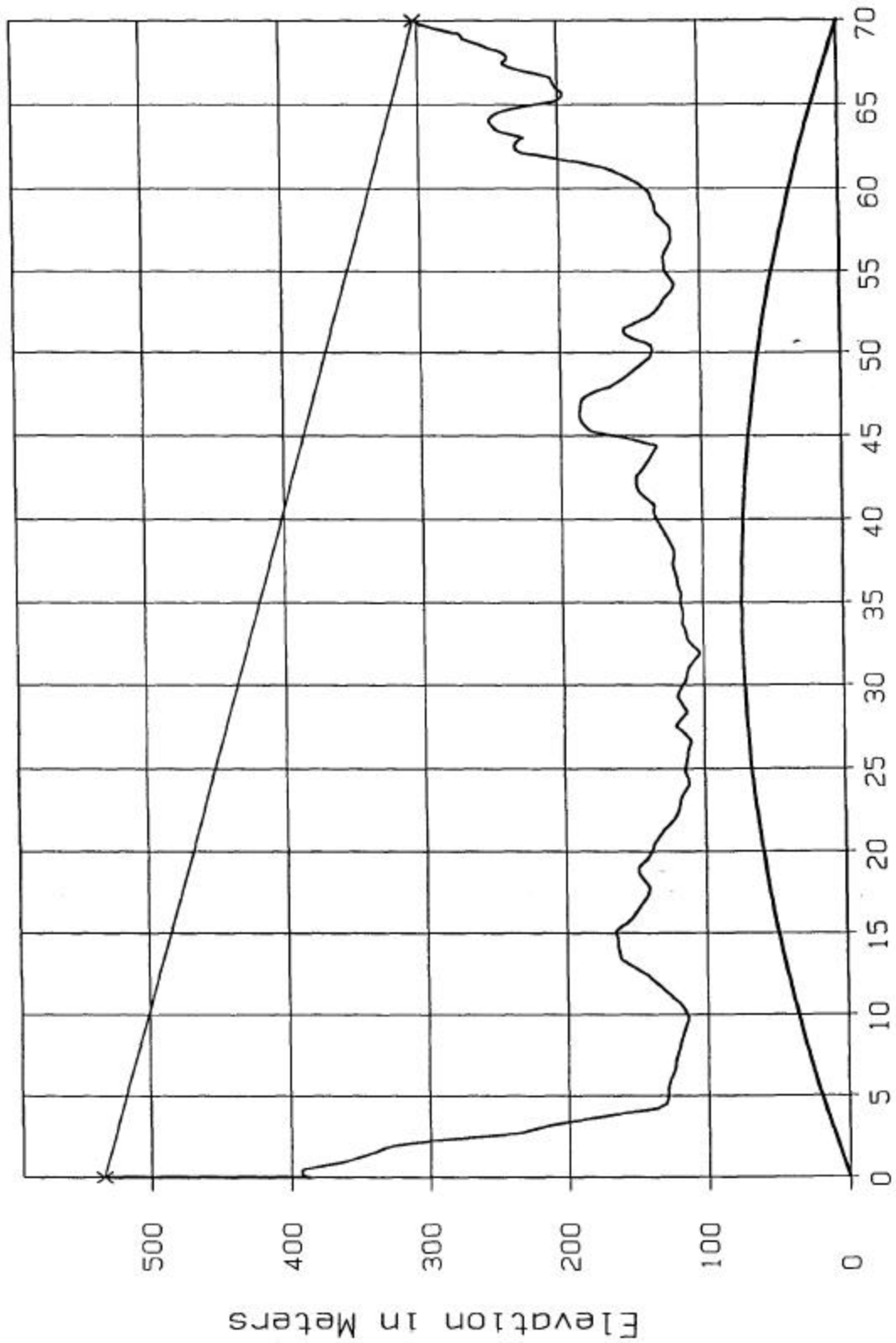


FIGURE 1

Xmtr. AMSL = 534M
Xmtr. AG = 146.3M
Transmitter Site coordinates N. Lat. = 34 07 08 W. Lng. = 118 23 30
Distance in km
K = 1.33
Rcvr. AMSL = 303M
Rcvr. AG = .3M

TERRAIN PROFILE AT 125 DEGREES T.

KCRW TO SANTA ANA

Elevation in Meters

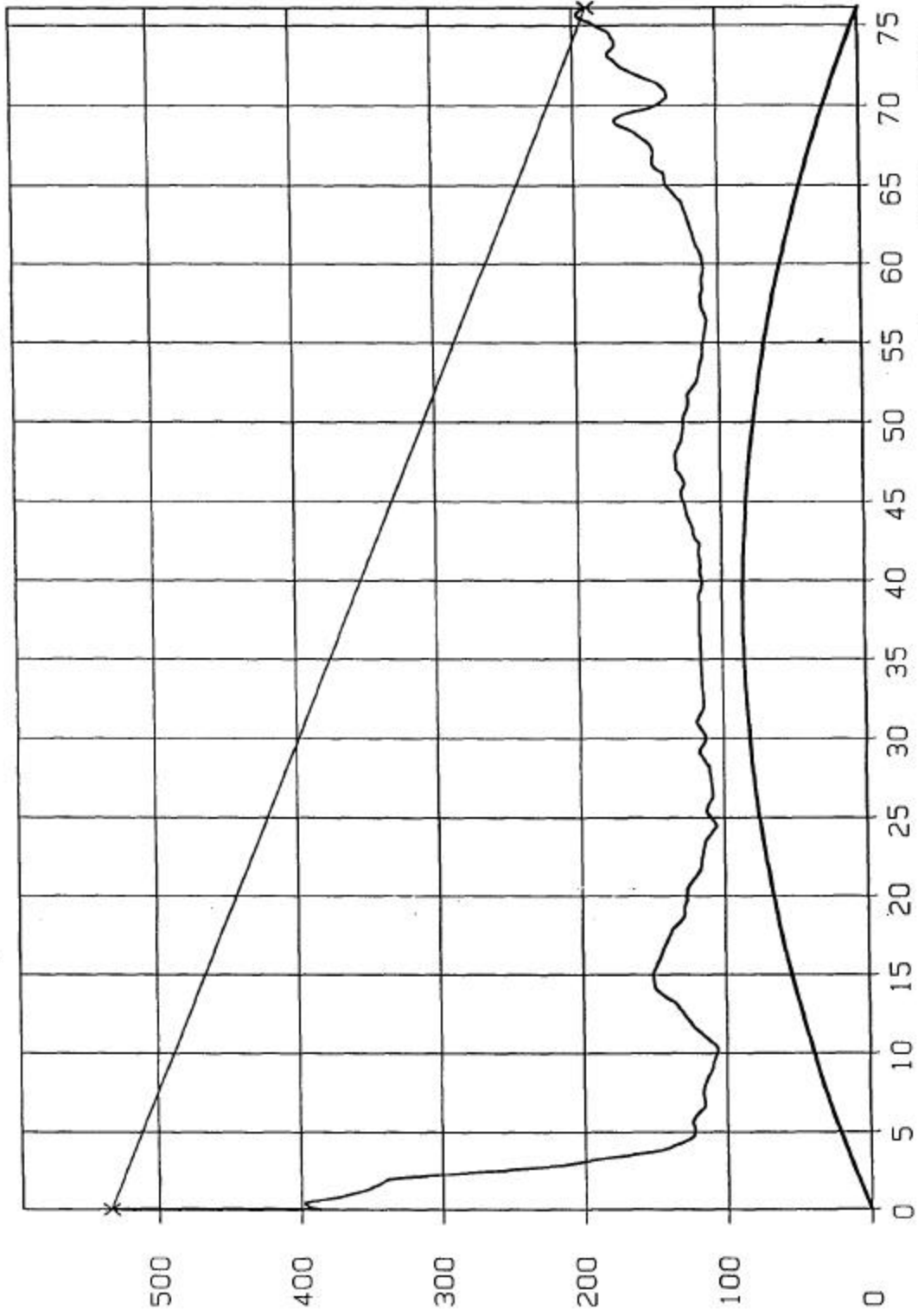
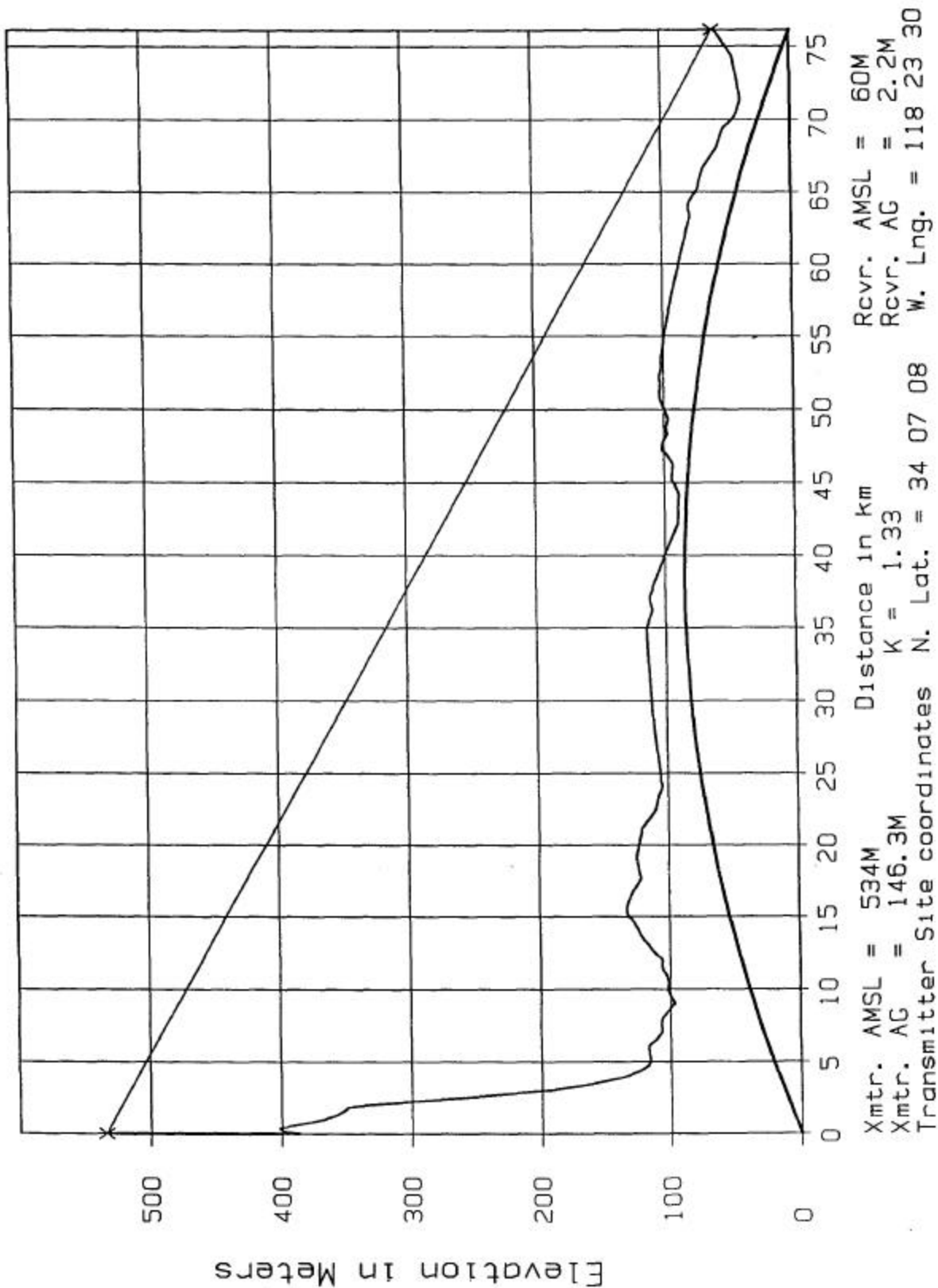


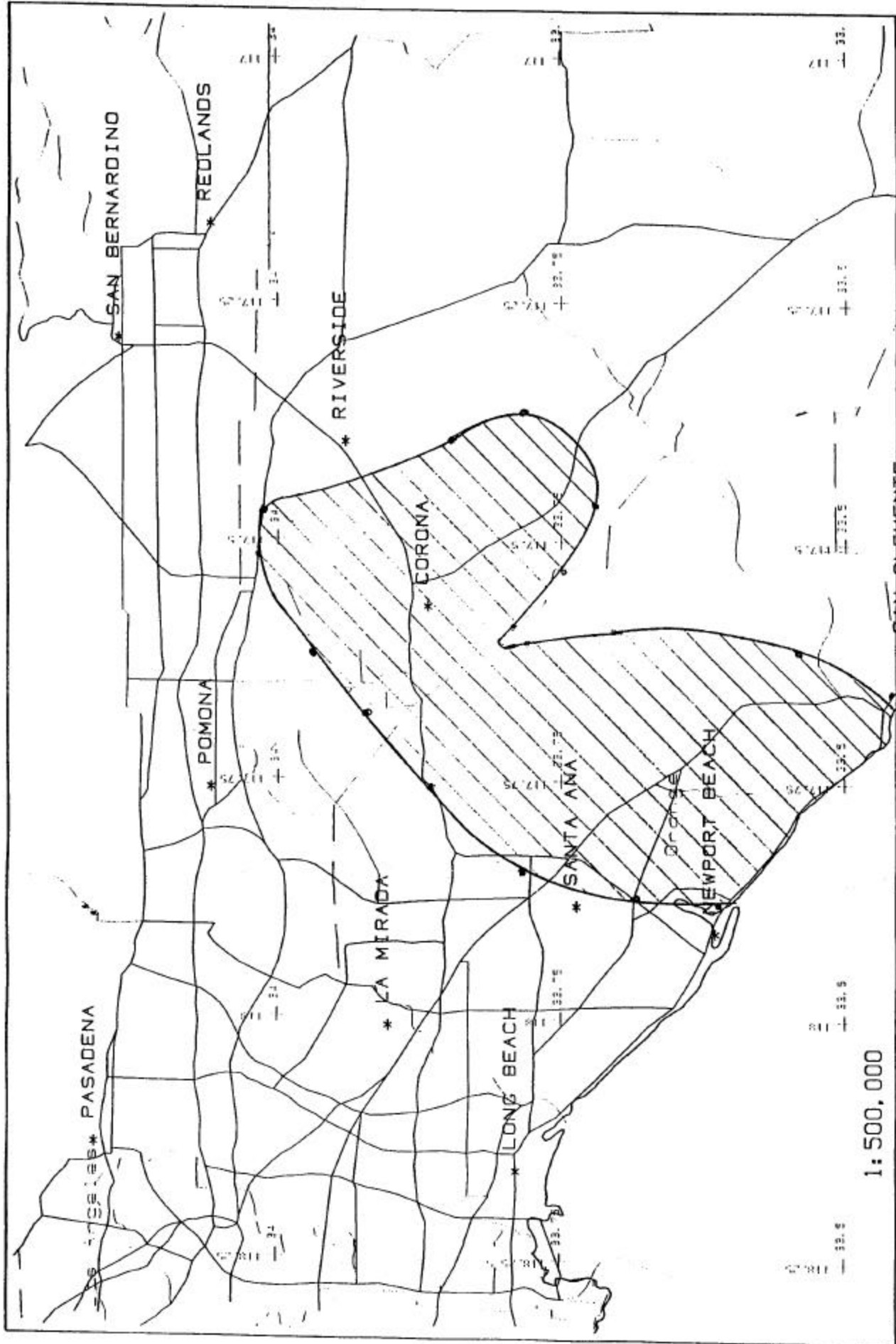
FIGURE 2

Xmtr. AMSL = 534
Xmtr. AG = 146.3
Transmitter Site coordinates N. Lat. = 34 07 08 W. Lng. = 118 23 30
Distance in km Rcvr. AMSL = 190
K = 1.33 Rcvr. AG = 1.2

TERRAIN PROFILE AT 130 DEGREES T.
KCRW TO SANTA ANA

FIGURE 3



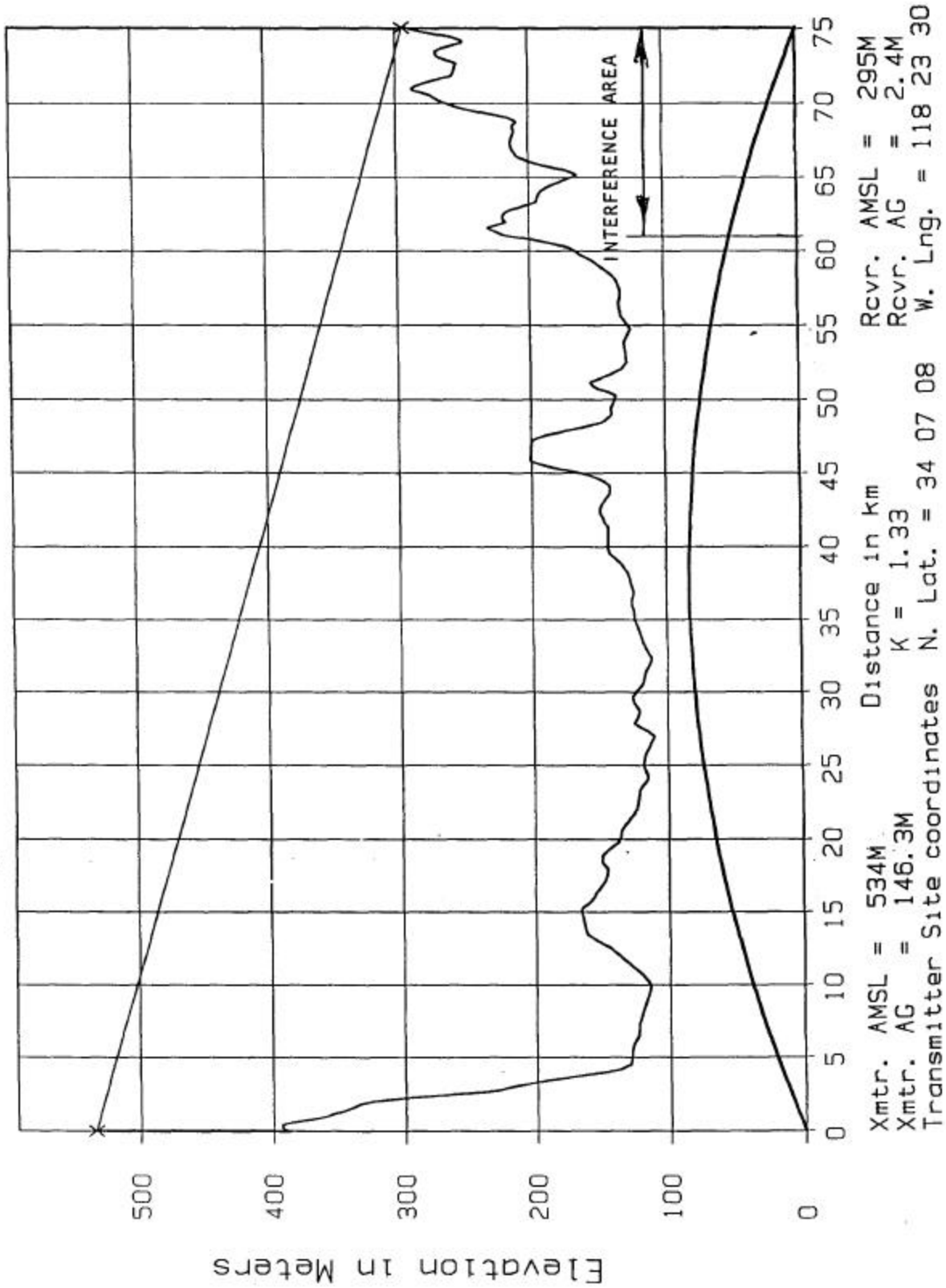


6 dB D/U INTERFERENCE AREA CAUSED BY
 PROPOSED NEW SANTA ANA TRANSLATOR

FIGURE 4
 SMCCD

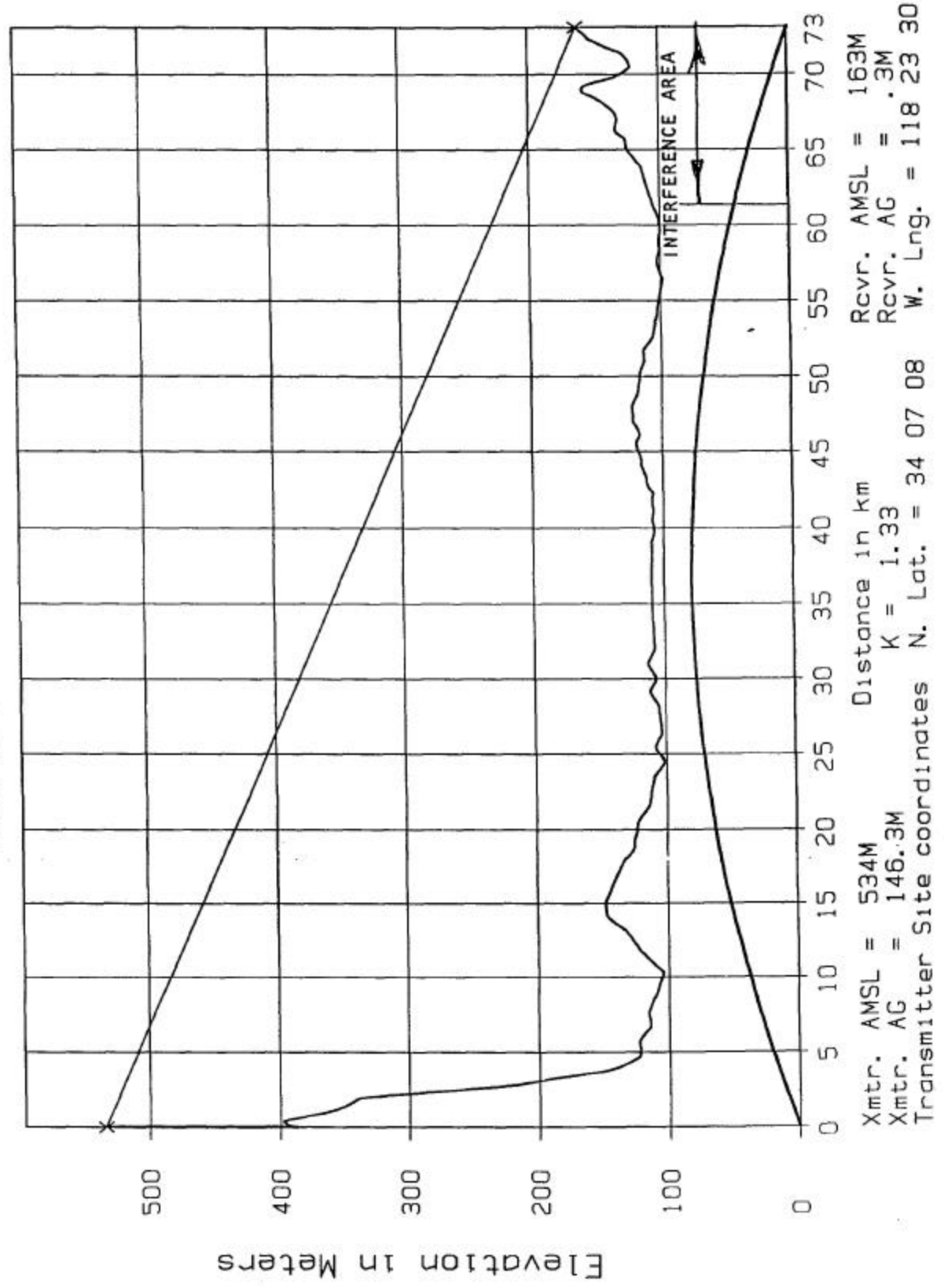
TERRAIN PROFILE AT 121 DEGREES T.
 KCRW TO 6 dB INTERFERENCE AREA

FIGURE 5

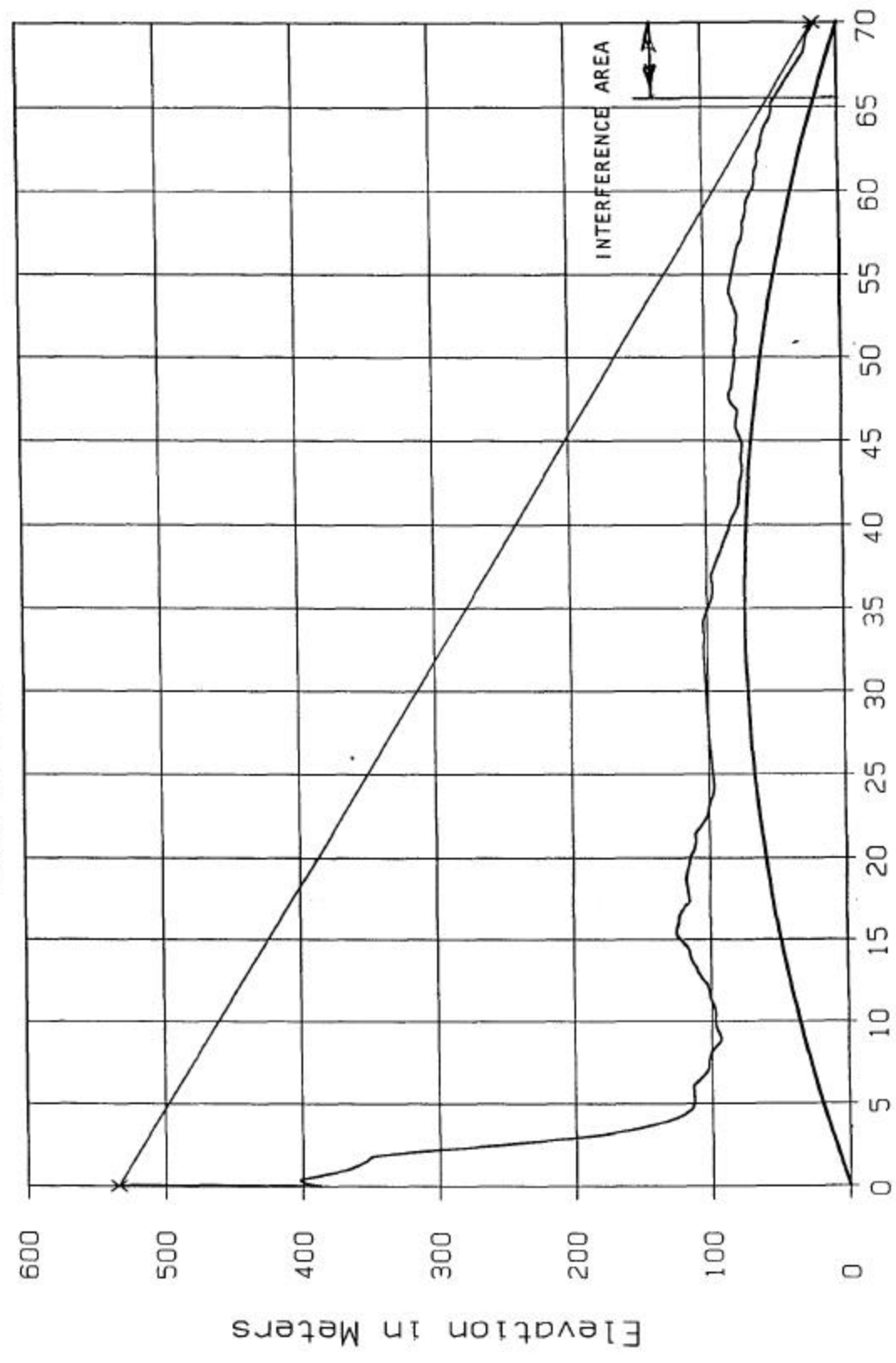


TERRAIN PROFILE AT 125 DEGREES T.
 KCRW TO 6 dB INTERFERENCE AREA

FIGURE 6



TERRAIN PROFILE AT 131 DEGREES T.
 • KCRW TO 6 dB INTERFERENCE AREA

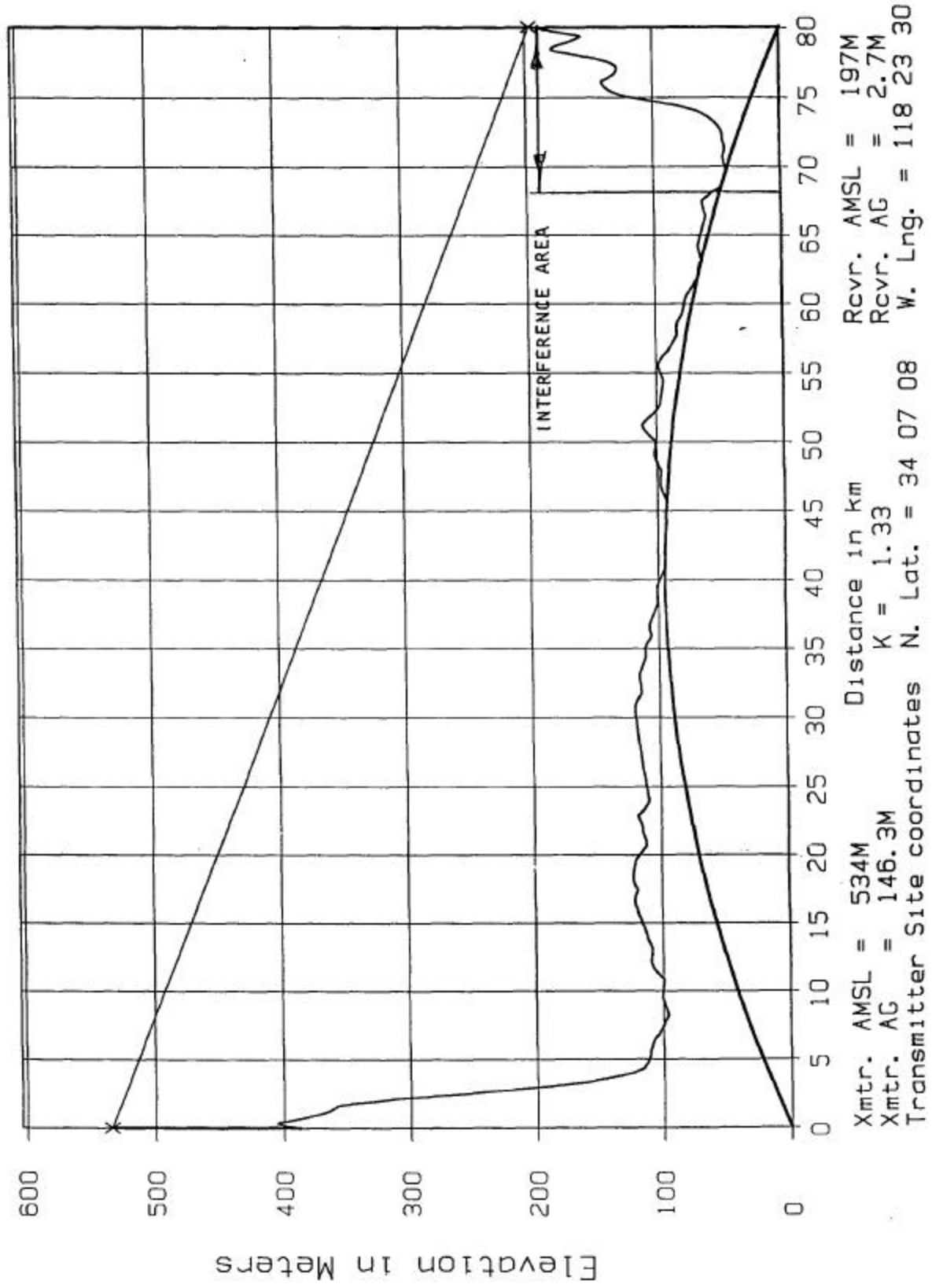


Xmtr. AMSL = 534M Distance in km Rcvr. AMSL = 18M
 Xmtr. AG = 146.3M K = 1.33 Rcvr. AG = 2.3M
 Transmitter Site coordinates N. Lat. = 34 07 08 W. Lng. = 118 23 30

FIGURE 7

TERRAIN PROFILE AT 135 DEGREES T.
 . KCRW TO 6 dB INTERFERENCE AREA

FIGURE 8



TERRAIN PROFILE AT 140 DEGREES T.
 , KCRW TO 6 dB INTERFERENCE AREA

FIGURE 9

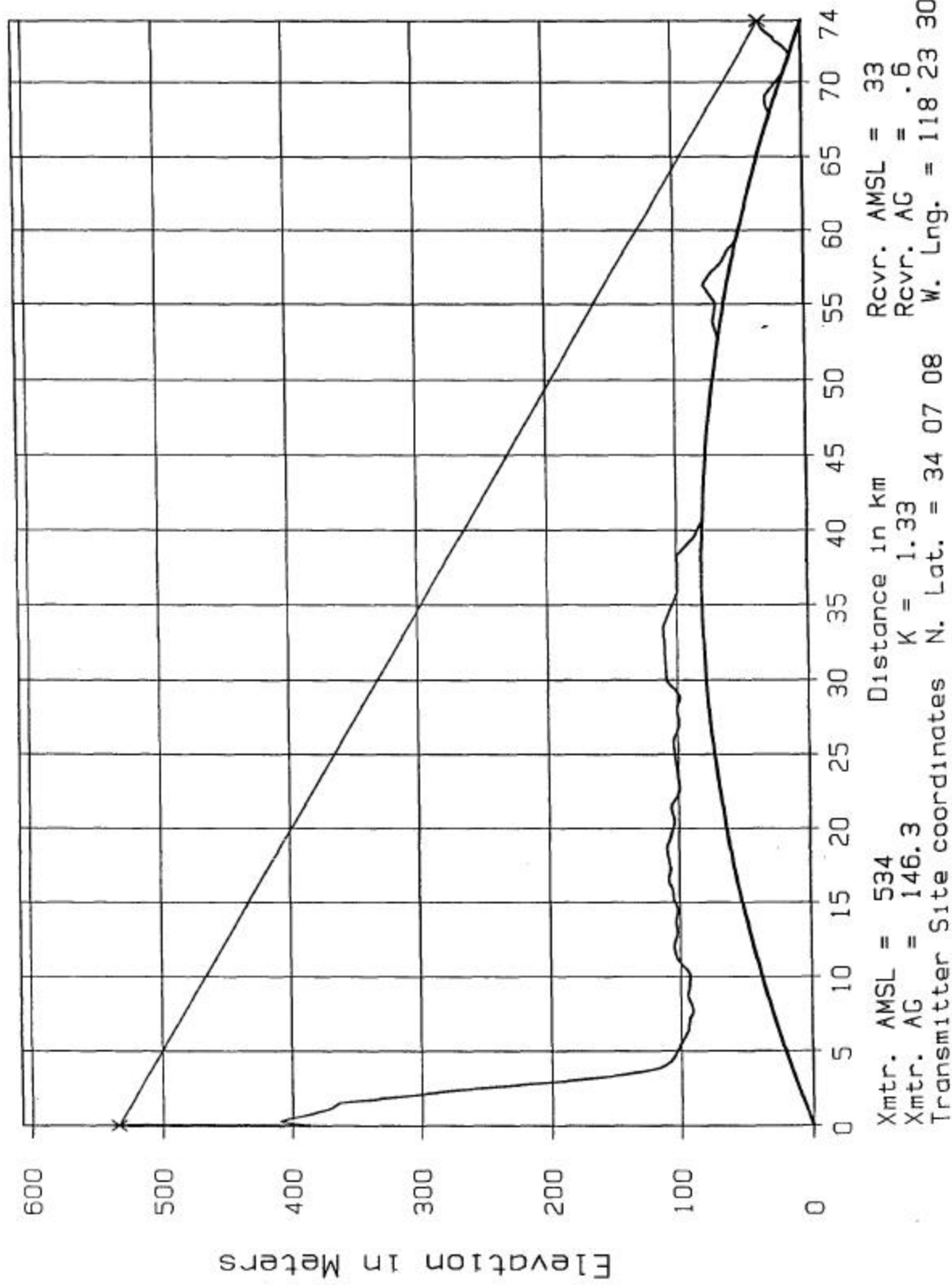


EXHIBIT 4

DECLARATION

I, Matthew Holzman, do hereby declare, under penalty of perjury, that the following statement is true and correct to the best of my knowledge, information and belief.

1. I am Development Director of non-commercial educational FM broadcast station KCRW, Santa Monica, California, licensed to Santa Monica Community College District ("SMCCD").

2. It has been our experience and observation that financial underwriters and contributors to the station actually listen to KCRW. This is true not only for individual contributors but also for businesses that support SMCCD's radio stations. Not only do business underwriters appreciate the fact that their customers hear their business mentioned over KCRW wherever those customers may be, but also KCRW can and will oftentimes be listened to at the place of business of the business underwriters.


3. SMCCD has several financial underwriters in Santa Ana, California, and the surrounding areas, who collectively have donated in excess of \$81,000. These include the following:

Kids Room, Santa Ana, CA
Murdy Foundation, Santa Ana, CA
Young & Rubicam/Media Edge, Irvine, CA
Micro-rent, Irvine, CA
Lifelong Learning, Laguna Beach, CA.

KCRW can be received off air and is listened to in and around these businesses.

4. According to Arbitron's Fall 1997 research period, 17% of KCRW's metro cume comes from Orange County. This represents approximately 56,800 listeners.

Signed and sworn to this 23rd day of September, 1998.



Matthew Holzman

Source: Arbitron Diary Data
Produced by SWS, Inc.

Los Angeles
FBI

Audience Distribution
Monday-Friday: 6AM-Midnight, Persons 12+ in Hundreds

	ALL CPB		KCLU-FM		KCPB-FM		KCRB-FM		KCRV-FM		KCRV-FM	
	AQH	Cume	AQH	Cume	AQH	Cume	AQH	Cume	AQH	Cume	AQH	Cume
Metro Ethnic and Non-Ethnic												
Black	77	1107							14	152		
Hispanic	73	1645							5	300		
Not Black or Hispanic	625	8662		23		13		21	788	3568		
Metro Total	775	11214		23		13		21	207	3851		
Metro County and County												
TD Los Angeles CA	641	8828		13				21	188	3282		
TD Orange CA	133	2386		10		13			21	368		
Non-Metro County By County												
TD Kern East CA	1	23										16
TD Riverside West Inner CA	14	350										30
TD Riverside West Outer CA	1	31										
TD San Bernardino East CA												
TD San Bernardino West Inner CA	20	295										5
TD San Bernardino West Outer CA	10	188										
TD San Bernardino West San Gabriel CA	10	168							4	79		4
TD San Diego North CA	30	695										
TD Santa Barbara South CA	10	180										
TD Ventura East CA	12	178	4	69	2	27			1	32		
TD Ventura West CA	15	229	4	112	2	39	1	26	2	39		
Metro Total	775	11214		23		13		21	207	3851		
TSA Total	804	13552	5	204	3	79	1	32	217	4088	4	
DNA Total	864	12676	5	204	3	79	1	30	216	4017	4	
Surveyed Metros Within Market												
Oxnard-Ventura	15	229	4	112	2	39	1	26	2	39		
Hispanic	2	30		24		3		4		4		
Not Hispanic	14	200	3	88	1	36	1	22	2	35		
Riverside-San Bernardino	39	644							1	35		
Hispanic	6	120								5		
Not Hispanic	29	524							1	30		
Metro 12+ Class Ratings (Percent)												
Los Angeles												
Total Metro Pop(00)'s	99269											11.3
Black Metro Pop(00)'s	7971											13.9
Hispanic Metro Pop(00)'s	36541											4.0
Oxnard-Ventura												
Total Metro Pop(00)'s	3741											6.1
Hispanic Metro Pop(00)'s	1448											2.1
Riverside-San Bernardino												
Total Metro Pop(00)'s	13570											4.7
Hispanic Metro Pop(00)'s	4180											2.9

A daily 6AM-Midnight operating schedule is assumed when the operating schedule is not known.

Terms for the Trade

- Markets Rankings
- List of Markets
- Delivery Schedule
- Survey Schedule
- Survey Process
- Pre-Survey Information
- FAQs
- Terms for the Trade

Average Quarter-Hour Persons (AQH Persons)

The average number of persons listening to a particular station for at least five minutes during a 15-minute period.

Average Quarter-Hour Rating (AQH Rating)

The AQH Persons estimate expressed as a percentage of the population being measured. This estimate is printed for the MSA and DMA. It can also be computed for the TSA.

$$[\text{AQH Persons} / \text{Population}] \times 100 = \text{AQH Rating (\%)}$$

- Home
- About Arbitron
- Radio Survey Information
- Local Market Consumer Information
- New Studies & Insights
- Arbitron NewMedia
- Arbitron Data Express
- Contact Us

Cume Persons

The total number of *different* persons who tune to a radio station during the course of a daypart for at least five minutes.

Cume Rating

The Cume Persons audience expressed as a percentage of all persons estimated to be in the specified demographic group.

$$[\text{Cume Persons} / \text{Population}] \times 100 = \text{Cume Rating (\%)}$$

Rating (AQH or Cume)

The audience expressed as a percentage of the total population.

$$[\text{Listeners} / \text{Population}] \times 100 = \text{Rating (\%)}$$

Share

The percentage of those listening to radio in the Metro who are listening to a particular radio station.

$$[\text{AQH Persons to a Station} / \text{AQH Persons to All Stations}] \times 100 = \text{Share (\%)}$$

Gross Impressions (GIs)

The sum of the Average Quarter-Hour Persons audience for all spots in a given schedule.

$$[\text{AQH Persons}] \times [\text{the number of spots in an advertising schedule}] = \text{GIs}$$

Gross Rating Points (GRPs)

The sum of all rating points achieved for a particular spot schedule.

$$[\text{AQH Rating}] \times [\text{the number of spots in an advertising schedule}] = \text{GRPs}$$

Cost Per Rating Point

The cost of reaching an Average Quarter-Hour Persons audience that's equivalent to one percent of the population in a given demographic group.

$$[\text{Cost of Schedule}] / [\text{GRP}] = \text{Cost Per Rating Point}$$

or

$$[\text{Spot Cost}] / [\text{AQH Rating}] = \text{Cost Per Rating Point}$$

Cost Per Thousand (CPM)

The cost of delivering 1,000 gross impressions.

$$[\text{Cost of Schedule}] / [\text{GI}] \times 1,000 = \text{CPM}$$

or

$$[\text{Spot Cost}] / [\text{AQH Persons}] \times 1,000 = \text{CPM}$$

Exclusive Cume

The number of different persons who listen to only one station during the daypart reported.

Net Reach

The number of different persons reached in a given schedule. Real net reach is available through MaximiSer®, for single-station and multiple-station schedules.

Frequency

The average number of times a person is exposed to a radio spot schedule.

$$[\text{GI}] / \text{Net Reach} = \text{Frequency}$$

Time Spent Listening (TSL)

An estimate of the number of quarter-hours the average person spends listening during a specified time period.

$$[(\text{Quarter-Hours in a time period}) \times (\text{AQH Persons})] / \text{Cume Audience} = \text{TSL}$$

Metro

Includes a city (or cities) whose population is specified as that of the central city together with the county (or counties) in which it is located. The Metro also includes contiguous or additional counties when the economic and social relationships between the central and additional counties meet specific criteria. Arbitron Metros generally correspond to the Metropolitan Statistical Areas (MSAs) defined by the U.S. Government's Office of Management and Budget. They are subject to exceptions dictated by historical industry usage and other marketing considerations.

Total Survey Area (TSA)

A geographic area that encompasses the Metro Survey Area and may include additional counties located outside the Metro which meet certain listening criteria to Metro-licensed stations.

Designated Market Area (DMA®)

The DMA is composed of sampling units (counties or geographically split counties) and is defined and updated annually by Nielsen Media Research, Inc., based on historical television viewing patterns. A county or split county is assigned exclusively to one DMA.

Arbitron reports radio listening estimates for the Top 50 DMAs (ranked on TV households) in the Radio Market Reports of all Standard radio markets whose Metros are located within the DMA and whose names are contained in the DMA name.

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DMA® is a registered service mark of Nielsen Media Research, Inc., and is used pursuant to a license from Nielsen Media Research, Inc.



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of LOS ANGELES } ss.

On 23 SEPT 98, before me, CHERYL D. GEE NOTARY PUBLIC,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared MATTHEW R. HOLZMAN,
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Handwritten Signature]

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: SWORN AFFIDAVIT

Document Date: 23 SEPT 98 Number of Pages: 2

Signer(s) Other Than Named Above: NONE

Capacity(ies) Claimed by Signer

- Signer's Name: _____
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: DEVELOPMENT DIRECTOR / KCRW FOUNDATION, INC

Signer Is Representing: _____



CERTIFICATE OF SERVICE

I, Harold K. McCombs, hereby certify that on September 28, 1998, a copy of the foregoing "Petition For Reconsideration" was delivered by First Class Mail, Postage Prepaid, to the following persons:

Philip C. Guthrie, President
The Association for Community Education, Inc.
Suite 28
2301 Ponderosa Drive
Camarillo, California 93010

Christopher D. Imlay, Esquire
Booth, Freret, Imlay & Tepper, PC
Suite 307
5101 Wisconsin Avenue, NW
Washington, DC 20016-4120

Harold K. McCombs

Harold K. McCombs