

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

In re Application of)
)
PRIMERA IGLESIA EVANGELICA,)
DE APOSTOLES Y PROFETAS)
)
For a New Noncommercial Educational)
FM Station to Operate on Channel 209B)
at Avalon, California)

File No. BNPED-20071018BAN
Facility ID No. 174043

FILED/ACCEPTED

JUN 26 2008

Federal Communications Commission
Office of the Secretary

To: Office of the Secretary
Attn: Chief, Audio Division, Media Bureau

INFORMAL OBJECTION

Santa Monica Community College District (“SMCCD”), licensee of radio station KCRW(FM), Santa Monica, California, acting pursuant to Section 73.3587 of the Commission’s rules, 47 C.F.R. §73.3587, hereby submits this informal objection (“Objection”) to the above-captioned application (the “Application”) filed October 18, 2007, by Primera Iglesia Evangelica De Apostoles Y Profetas (“PIEAP”) for a new noncommercial educational FM station in Avalon, California. In support of this Objection, the following is stated:

I. Background.

PIEAP filed its Application for the proposed new noncommercial educational FM station in Avalon, California on October 18, 2007. In its Application as originally filed, PIEAP proposed to operate on Channel 206C3 from the existing transmitter site of station KWKW(AM), Los Angeles, California, which is located at 4557 Martin Luther King Blvd., in Los Angeles. Original Application at 7-8; ASR #1015921. PIEAP also proposed to operate with an effective radiated power of 20 kW at 80 meters height above average terrain. Original Application at 8.

On April 24, 2008, PIEAP amended the technical portion of its Application and proposed to operate on Channel 209 as a Class B facility. PIEAP also proposed to operate from a new transmitter site located on San Clemente Island, California with an effective radiated power of 14.1 kW at 213 meters height above average terrain. PIEAP claims that the proposed 60 dBu contour of its proposed station will cover 71% of the Avalon “land area.” Application, Exhibit 16 at 1. PIEAP’s April 24th amendment was accepted for filing on April 28, 2008. *Public Notice*, Report No. 26727 (rel. May 1, 2008).

For the reasons stated herein, PIEAP’s Application should be dismissed because the applicant does not have reasonable assurance of site availability, nor does its Application comply with Section 73.515 of the Commission’s rules. 47 C.F.R. §73.515. The Commission should also conduct an inquiry to determine whether PIEAP misrepresented material facts in certifying that it has reasonable assurance of site availability when it never made an inquiry to the owner of either its current or former specified transmitter site.

II. PIEAP Lacks Reasonable Assurance of Site Availability.

An applicant for a new broadcast facility must, in good faith, possess “reasonable assurance” of the use of its proposed transmitter site at the time it files its application or amends its application to specify a new transmitter site. *See, e.g., Port Huron Family Radio, Inc.*, 4 FCC Rcd 2532, 2534-35 (Rev. Bd. 1989); *Radio Delaware, Inc.*, 4 FCC Rcd 8630, 8631 (Rev. Bd. 1989). It is well established that the specification of a transmitter site in an application or an amendment thereto is an implied representation that the applicant has obtained reasonable assurance that the site will be available. *See, e.g., William F. Wallace and Anne K. Wallace*, 49 FCC 2d 1424, 1427 (Rev. Bd. 1974); *South Florida Broadcasting Co.*, 99 FCC 2d 840, 842 (Rev. Bd. 1984). The “reasonable assurance” standard is satisfied by -

[s]ome clear indication from the landowner that he is amendable to entering into a future arrangement with the applicant for use of the property as its transmitter site, on terms to be negotiated

Elijah Broadcasting Corp., 5 FCC Rcd 5350, 5351 (1990).

In this case, the record establishes that PIEAP did not have the requisite reasonable assurance of site availability at the time it filed its original Application on October 18, 2007. Annexed hereto as Exhibit A is a Declaration of Lynden L. Williams dated June 25, 2008. Mr. Williams serves as Director of Engineering for Lotus Communications Corp. (“Lotus”), licensee of radio station KWKW(AM), Los Angeles, California (“KWKW”). Mr. Williams’ primary responsibilities include overseeing all of the technical aspects of the company, which encompass the operation of 27 radio stations and three TV stations. Exhibit A at ¶1. Mr. Williams’ duties also include having supervisory authority over KWKW’s transmitter site. Both of the towers in KWKW’s two-tower array are owned by Lotus. *Id.* at ¶3.

Mr. Williams explained that, in the event a prospective tenant were interested in leasing space on one of the two KWKW towers, they ultimately would be referred to him. As of June 25, 2008, Mr. Williams had not been contacted by anyone about the possibility of leasing space on either of the KWKW towers for purposes of mounting an FM antenna, or even specifying the KWKW transmitter site in an FCC application. Exhibit A at 4. Thus, it is clear that PIEAP did not contact Lotus or otherwise make any inquiry regarding the availability of its initially-specified transmitter site prior to filing its Application on October 18, 2007.

PIEAP also did not have reasonable assurance of site availability at the time it amended its Application on April 24, 2008, and does not have reasonable assurance for the use of its currently-specified transmitter site today. Annexed hereto as Exhibit B is a Declaration of Michael Richno dated June 12, 2008. Mr. Richno is a “Sr Eng Mgr Transmission” for AT&T Services, Inc. (“AT&T”), which is the owner of the tower upon which PIEAP proposes to locate its antenna for its new Avalon FM station. As indicated in his Declaration, one of Mr. Richno’s duties for AT&T includes overseeing its tower structures which are located in California and

Nevada, including the tower structure (the "Tower") located on San Clemente Island. Exhibit B at ¶3.

The Tower is located on a parcel of land which AT&T leases from the U.S. Navy. The Tower is used by AT&T for purposes of providing inter-office communication applications, internal communications, and services in connection with AT&T's public switched telecommunications network. Exhibit B at ¶4. Mr. Richno explained that AT&T does not want broadcast stations operating on its towers because they would interfere with AT&T's ability to operate and maintain its public switched telecommunications network. *Id.*

Mr. Richno further stated that, in the event AT&T were inclined to make space on the Tower available to third parties, in order to obtain permission to use the Tower, any potential lessee would need to obtain approval from both AT&T and the Navy, which owns the underlying property. It would not be enough to obtain permission from only the Navy or AT&T, individually. Exhibit B at ¶5.

Mr. Richno acknowledged the possibility that a party interested in leasing space on the Tower might have contacted someone at AT&T other than himself. He explained that generally there are three (3) sources at AT&T who an interested party might contact to inquire about the use of the Tower: Mr. Richno himself, AT&T's real estate personnel, and personnel in AT&T's radio operations department. As of June 12, 2008, Mr. Richno had not been contacted by anyone about the possibility of leasing space on the Tower to mount an FM antenna, or even specifying the Tower as a transmitter site in an FCC application. Mr. Richno stated that if he had been approached with such a request, he would not have authorized the use of the Tower because that has been his practice in responding to similar requests that he has received over the years for other AT&T towers. Exhibit B at ¶6.

Mr. Richno further explained that, if AT&T's real estate or radio operations personnel had been contacted about the possibility of locating an FM antenna on the Tower, they either

would have denied the request in accordance with AT&T's longstanding practice, or they would have brought the matter to his attention in which case he would have denied the request. In an effort to be certain, however, that AT&T has not been contacted by anyone in connection with the proposed new Avalon station, Mr. Richno conducted an inquiry of those real estate and radio operations personnel who, based on his prior experience, it was reasonable to expect might have been contacted by someone interested in using the Tower. None of those individuals had been contacted about the availability of the Tower or leasing space on the Tower for an FM antenna. Exhibit B at ¶7.

If AT&T had been contacted by a third party interested in leasing space on the Tower, and the prospective tenant was not a broadcast station that would inhibit AT&T's ability to operate its public switched telecommunications network, Mr. Richno stated that AT&T would require the prospective tenant to pay for a structural analysis of the Tower and an interference study to ensure that the prospective tenant's proposed use of the Tower would not pose a hazard to the stability of the existing structure, or cause interference to AT&T's existing operations on the Tower. Mr. Richno further stated that AT&T has not had discussions of any kind regarding a structural analysis or interference study with any potential third-party tenant concerning the Tower. Exhibit B at ¶8.

As demonstrated above, PIEAP never contacted AT&T, the owner of its proposed transmitter site, or the owner of its initially-specified transmitter site. Therefore, because PIEAP has never had reasonable assurance of site availability, the Application should be dismissed with prejudice. *Port Huron Family Radio, Inc.*, 4 FCC Rcd 2532 (Rev. Bd. 1989).

III. PIEAP's Failure to Inquire Regarding the Availability of Its Specified Transmitter Site Warrants a Character Inquiry.

The specification of a transmitter site in an application is an implied representation that the applicant has obtained reasonable assurance that the site will be available. PIEAP's

failure to make any inquiry concerning the availability of either the KWKW transmitter site or AT&T's Tower is inconsistent with such a representation. The Commission should therefore conduct an inquiry to determine whether PIEAP misrepresented material facts to the Commission in certifying to the FCC that it had reasonable assurance of site availability when it clearly did not. *William F. Wallace and Anne K. Wallace*, 49 FCC 2d 1424, 1427 (Rev. Bd. 1974); *Geoffrey A. Lapping*, 23 RR 919, 921-922 (1962).

IV. The Application Fails to Comply with Section 73.515 of the Rules.

Section 73.515 of the Commission's rules, 47 C.F.R. §73.515, provides that an applicant shall select a transmitter site so that, on the basis of its proposed effective radiated power and height above average terrain, the station's 1mV/m (60 dBu) contour shall cover at least 50% of its community of license or reach at least 50% of the population within its proposed community.

The Commission stated over a decade ago that it was willing to consider supplemental showings in the context of determining community of license coverage. *Certain Minor Changes Without a Construction Permit*, 12 FCC Rcd 12371, 12401-12403 (1997). *See also Cloverdale, Montgomery and Warrior, Alabama*, 15 FCC Rcd 11050, 11053 n.4 (2000) (there are situations where it is appropriate to use a propagation methodology to supplement the Commission's F(50,50) curves, such as when the terrain along a radial from a specific site "departs widely" from average terrain and the "contour distances [are] different from what may be expected in practice."). In August 2002, the Media Bureau established guidelines to define what was meant by "terrain departs widely." *See Letter to Mark Lipp dated August 8, 2002 (File No. BPH-20000316ACF)*.

Annexed hereto as Exhibit C is an Engineering Statement provided by Doug Vernier, which contains a Longley-Rice analysis of the terrain between PIEAP's proposed transmitter site on San Clemente Island and the community of Avalon. As shown therein, the delta h between

the proposed transmitter site and Avalon is 357 meters, which greatly exceeds the 100 meter threshold necessary to present an alternative terrain analysis. The Longley-Rice study demonstrates that the proposed Avalon station would cover only 43% of the city of license and 5% of the community's population. Exhibit C at 3. Therefore, the Application does not comply with Section 73.515 of the Commission's rules and, for this additional reason, the Application should be dismissed.

WHEREFORE, in view of the foregoing, PIEAP's Application should be dismissed forthwith and the Commission should conduct an inquiry to determine whether PIEAP misrepresented material facts in falsely certifying to the Commission that it had reasonable assurance of site availability when it clearly has lacked this basic qualification since the filing of its Application.

Respectfully submitted,

Dickstein Shapiro LLP
1825 Eye Street, NW
Washington, DC 20006-5403
(202) 420-2200

Attorneys for
SANTA MONICA COMMUNITY
COLLEGE DISTRICT

By: 
Andrew S. Kersting

June 26, 2008

EXHIBIT A

Declaration of Lynden L. Williams

DECLARATION

Lynden L. Williams hereby declares as follows:

1. I serve as Director of Engineering of Lotus Communications Corp. ("Lotus"), licensee of radio station KWKW(AM), Los Angeles, California (Facility ID 38484) ("KWKW"). I have held this position at Lotus for 30 years, and have been employed by the company for a total of 34 years. My primary responsibilities include overseeing all of the technical aspects of the company, which includes 27 radio and 3 TV stations.

2. I am providing this Declaration in support of an Informal Objection which is being filed with the FCC. The purpose of the Informal Objection is to challenge an application for a new noncommercial educational FM station which proposes to serve the community of Avalon, California.

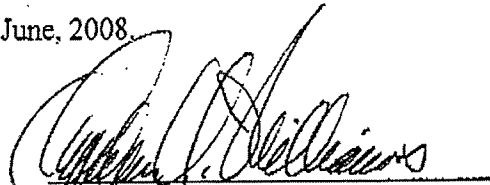
3. I have supervisory authority over station KWKW's transmitter site, which is located at 4557 Martin Luther King Blvd., Los Angeles, California 90016. KWKW's transmitter site consists of a two-tower array, both of which are owned by Lotus. The center of the array is located at North Latitude: 34° 1' 10"; West Longitude: 118° 20' 42". See FCC File No. BZ-20020111ABF.

4. In the event a prospective tenant were interested in leasing space on one of the two KWKW towers, they would ultimately be referred to me. As of the date of this Declaration, I have not been contacted by anyone about the possibility of leasing space on either of the KWKW towers for purposes of mounting an FM antenna, or specifying the KWKW transmitter site in an FCC application.

[Signature on Following Page]

I hereby declare that the foregoing is true and correct to the best of my knowledge and belief.

Signed and dated this 25th day of June, 2008.



Lynden L. Williams

EXHIBIT B

Declaration of Michael A. Richno

DECLARATION

Michael A. Richno hereby declares as follows:

1. I serve as “Sr Eng Mgr Transmission” with AT&T Services, Inc. (“AT&T”). I have held this position at AT&T (successor-in-interest to Pacific Bell) for three years, but have been employed by the company for a total of 29 years. My primary responsibilities include transmission engineering design and FCC licensing of wireless services in California and Nevada. I also oversee certain AT&T tower structures located in California and Nevada.
2. I am providing this Declaration in support of an Informal Objection which is being filed with the FCC. The purpose of the Informal Objection is to challenge an application for a new noncommercial educational FM station which proposes to serve the community of Avalon, California.
3. One of the towers over which I have supervisory authority is located on San Clemente Island, California (ASR #1014334) (the “Tower”). The ground elevation for the Tower is 211.8 meters; its overall height above ground is 18.5 meters; and the Tower’s overall height above mean sea level is 230.3 meters. The Tower is located on a parcel of land which AT&T leases from the United States Navy (the “Navy”). AT&T’s lease includes a small building located near the base of the Tower which is used to house radio equipment.
4. The Tower is used by AT&T for inter-office communication applications, internal communications, and to provide services in connection with AT&T’s public switched telecommunications network. AT&T does not want broadcast stations operating on its towers because of the strong likelihood that they will interfere with AT&T’s ability to operate and maintain the public switched telecommunications network.

5. In the event that AT&T were inclined to make space on the Tower available for a third-party tenant, in order to obtain permission to use the Tower, any potential lessee would need to obtain approval from both AT&T and the Navy, which owns the underlying property. It would not be enough to obtain permission from only the Navy or AT&T individually.

6. There are three (3) sources to contact at AT&T for inquiring about the use of the Tower: myself, AT&T's real estate personnel, and personnel in our radio operations department. As of the date of this Declaration, I have not been contacted by anyone about the possibility of leasing space on the Tower to mount an FM antenna, or even specifying the Tower as a transmitter site in an FCC application. If I had been approached with such a request, the answer would have been "no," which has been my practice in responding to similar requests I have received over the years for other AT&T towers.

7. If AT&T's real estate or radio operations personnel had been contacted about the possibility of locating an FM antenna on the Tower, they either would have denied the request in accordance with our longstanding practice, or they would have brought the request to my attention in which case I would have denied the request. In an effort to be certain that AT&T has not been contacted by anyone on behalf of the applicant for the proposed new Avalon, California FM station, I conducted an inquiry of those real estate and radio operations personnel who, based on our prior experience, it is reasonable to expect might have been contacted by someone interested in using the Tower. None of those individuals has been contacted about the availability of the Tower or leasing space on the Tower for an FM antenna.

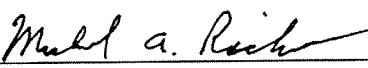
8. If AT&T had been contacted by a third party interested in the availability of space on the Tower, and the prospective tenant was, of course, not a broadcast station (or prospective station) that would inhibit our ability to operate the public switched telecommunications

network, we would require the prospective lessee to pay for the cost of a structural analysis of the Tower and an interference study to ensure that the new facility proposed by the prospective tenant would not pose a hazard to the stability of the existing structure, or cause interference to AT&T's existing operations on the Tower. AT&T has not had discussions of any kind regarding a structural analysis or interference study with any potential third-party tenant concerning the Tower.

[Signature on Following Page]

I hereby declare that the foregoing is true and correct to the best of my knowledge and belief.

Signed and dated this 12th day of June, 2008.



Michael A. Richno

EXHIBIT C

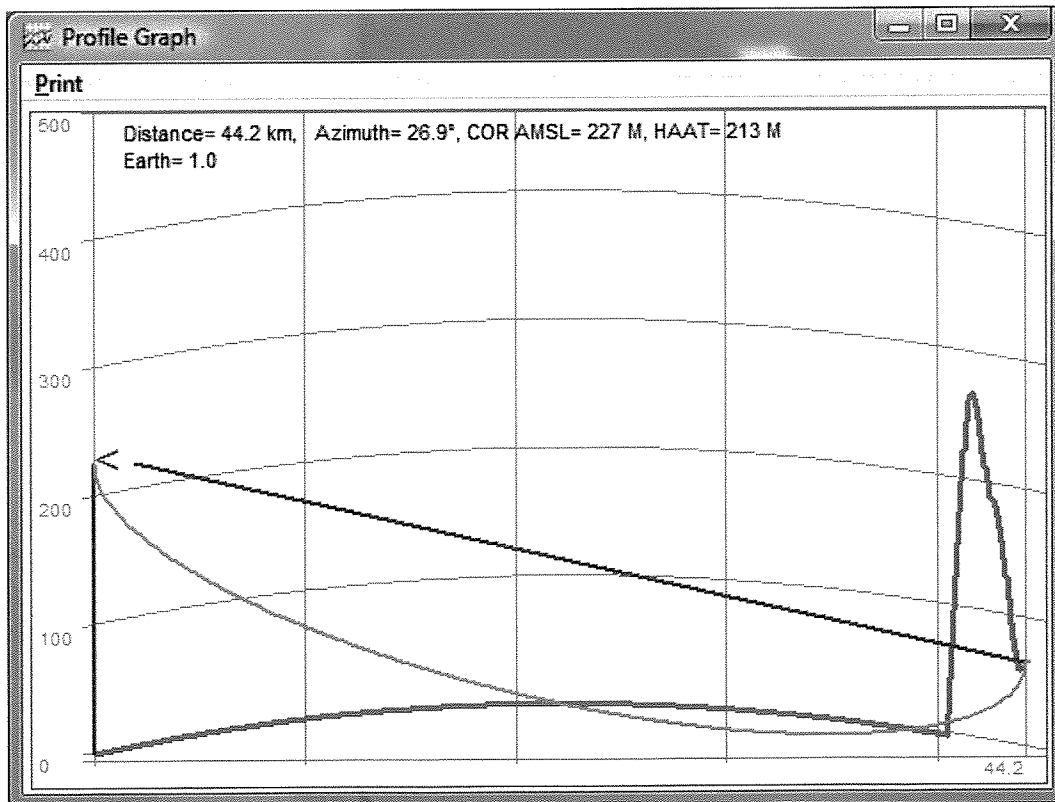
Engineering Statement of Douglas L. Vernier

June 23, 2008

Engineering Statement

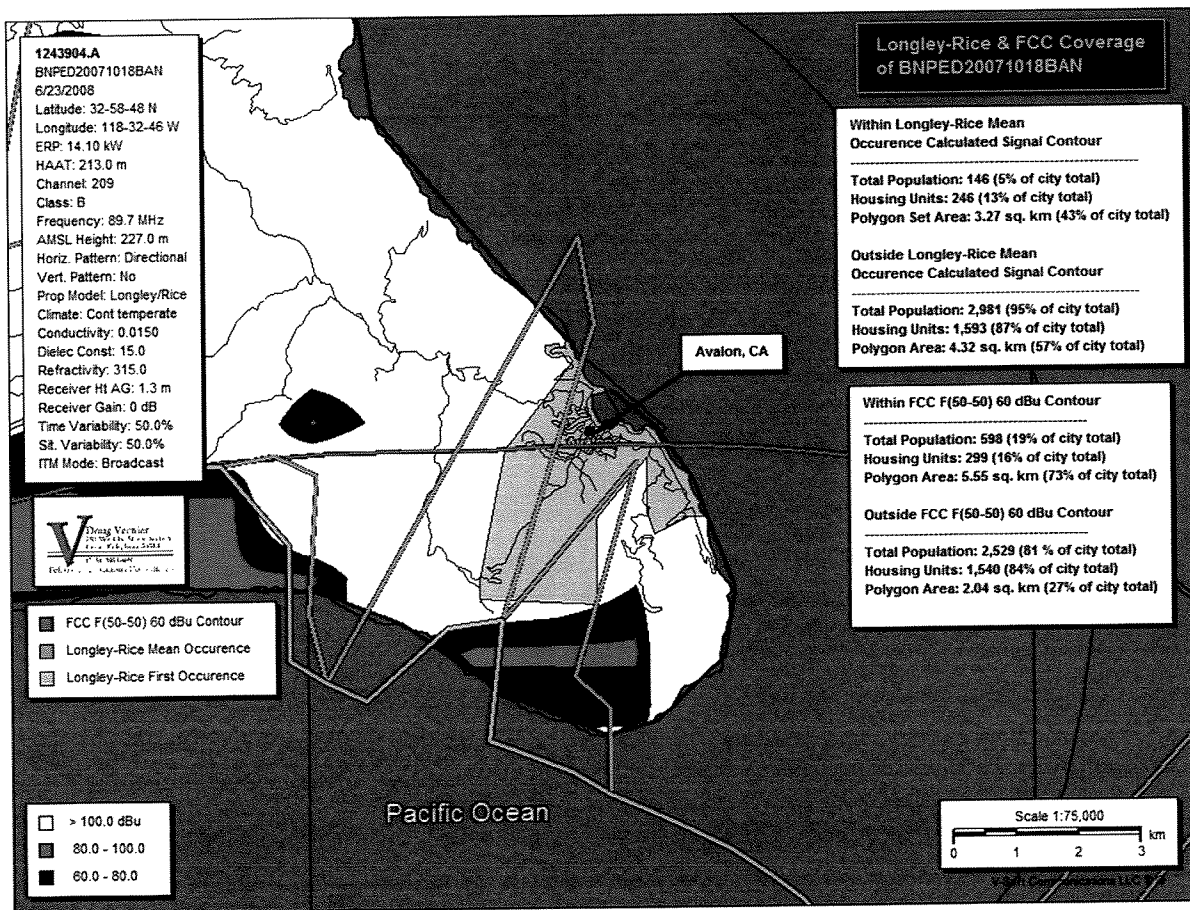
We have been asked by Santa Monica Community College, licensee of KCRW, Santa Monica, to review the question of principal city service to the city of Avalon, California provided by the proposed NCE station having file No. BNPED-20071018BAN, (Applicant: Primera Iglesia Evangelica De Apostoles Y Profetas.)

Under section 73.515 of the Rules and Regulations, the Commission requires service to at least 50% of the area or population of the principal community. Our analysis shows that the proposed FCC 60 dBu contour is predicted to cover 73% of the principal city boundaries, which normally would qualify Avalon to be the city of license, however we find that the method used to predict this contour fails under the circumstances of a very high hill located such that coverage to Avalon will be much less than that which is required. The graph below shows the terrain path of the proposed Avalon signal from the transmitter to the principal city:



Since the FCC method looks at terrain only at the distances of between 3.16 km to 16 kilometers from the transmitter, the method fails to include a large hill beyond 16 kilometers that will block service to the principal city. In this case, there is a hill (rising approximately 270 meters from sea level) at approximately 41 kilometers from the proposed transmitter that will effectively block the proposal's signal into Avalon.

The Commission has established a precedence of accepting supplemental procedure showings and waiver requests that provide for a more accurate service prediction to the principal community in lieu of FCC model calculations. The Commission's letter to Mark Lipp, written in August 2002, defines the requirements for using such procedures when the terrain varies widely from that used to establish the FCC curves. We find that the calculated delta h from the Avalon transmitter to the principal city is 357 meters which is above the 100 meter figure required to establish the use of a supplemental procedure. We have selected the Longley-Rice method since it is in common use at the Commission, particularly in evaluating DTV interference calculations. The map below shows a Longley-Rice study of the proposed transmitter:



The area of the 60 dBu is predicted to end before it reaches the city limits on the south side. (See the pool of color {black}, above, representing the area where the 60 dBu signal strength or better is available.)

We can make a Longley-Rice pooled coverage map into a contour map by drawing a line from one 60 dBu point on a radial line to the transmitter to another point on the next radial line (the radials are 1 degree apart) until we have formed a contour line. This is what we call a "calculated" Longley-Rice contour. When we calculate the contour, we can choose to connect the first occurrence of a 60 dBu value along the radial, the mean occurrence or the last occurrence. Generally, we use the mean occurrence and that is what is shown along with the first occurrence. As you can see, the first occurrence (grey line) calculated, L-R, 60 dBu contour does not touch the city limits, however the mean occurrence 60 dBu contour (green line) does ripple through the city, partially covering it. This places the amount of the city covered by the mean occurrence, L-R, 60 dBu contour to be only 43% of the city's area which amounts to coverage of just 5% of the city's population.¹ It should also be noted that the first occurrence and the mean occurrence meet each other on the direct radial line from the proposed transmitter to the main gathering of population in the center of the Avalon city polygon boundaries. This means that the 60 dBu signal comes to a halt at that point and goes no further. This is further supported by the tiny 5% population predicted to be served by the mean occurrence 60 dBu contour.² Please see attachments #1 and #2 for a large scale map showing both the transmitter and the community of service and a table of distances to the 60 dBu Longley-Rice mean occurrence contour.

Consequently, we conclude that the large hill directly to the south of the city of Avalon will cause less than 50% of the city of Avalon to be served by the required 60 dBu service.

Doug Vernier

¹ U.S. 2000 census – SF1 digital files

² The standard 60 dBu contour is shown as a red line across the map.

1243904.A

BNPED20071018BAN

6/23/2008

Latitude: 32-58-48 N

Longitude: 118-32-46 W

ERP: 14.10 kW

HAAT: 213.0 m

Channel: 209

Class: B

Frequency: 89.7 MHz

AMSL Height: 227.0 m

Horiz. Pattern: Directional

Vert. Pattern: No

Prop Model: Longley/Rice

Climate: Cont temperate

Conductivity: 0.0150

Dielec Const: 15.0

Refractivity: 315.0

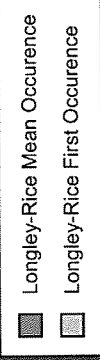
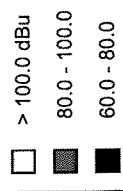
Receiver Ht AG: 1.3 m

Receiver Gain: 0 dB

Time Variability: 50.0%

Sit. Variability: 50.0%

ITM Mode: Broadcast

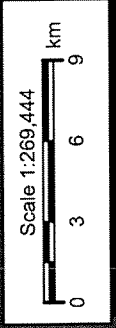


Longley-Rice & FCC Coverage
of BNPED20071018BAN

Avalon, CA

Pacific Ocean

Proposed Transmitter
1243904.A



V-Sat Communications LLC

Doug Vernier
274 West 1st Street, Suite A
Cedar Falls, Iowa 50613
319-266-8402
Telecommunications Consultants, Inc.

Call Letters: 1243904.A
 File Number: BNPED20071018BAN
 Latitude: 32-58-48 N
 Longitude: 118-32-46 W
 ERP: 14.10 kW
 Channel: 209
 Frequency: 89.7 MHz
 AMSL Height: 227.0 m
 Elevation: 212.0 m
 HAAT: 213.0 m
 Horiz. Antenna Pattern: Directional
 Vert. Elevation Pattern: No

Type of contour: Signal Calculated
 # of Radials Calculated: 360
 Using the mean occurrence method at 60.0 dBu

Bearing (deg)	Distance (km)	HAAT (m)
-----	-----	-----
0.0	49.0	227.0
1.0	48.0	227.0
2.0	47.6	227.0
3.0	48.0	227.0
4.0	47.8	227.0
5.0	46.5	227.0
6.0	46.2	227.0
7.0	46.2	227.0
8.0	44.8	227.0
9.0	44.4	227.0
10.0	64.4	227.0
11.0	64.1	227.0
12.0	40.6	227.0
13.0	63.8	227.0
14.0	44.5	227.0
15.0	45.0	227.0
16.0	43.5	227.0
17.0	43.1	227.0
18.0	42.9	227.0
19.0	42.0	227.0
20.0	42.3	227.0
21.0	42.8	227.0
22.0	42.7	227.0
23.0	40.6	227.0
24.0	39.7	227.0
25.0	47.8	227.0
26.0	46.7	227.0
27.0	41.8	227.0
28.0	45.0	227.0
29.0	41.5	227.0
30.0	41.4	227.0
31.0	40.2	227.0
32.0	40.3	227.0
33.0	40.4	227.0

Declaration:

I, Douglas L. Vernier, declare that I have received training as an engineer from the University of Michigan School of Engineering. That, I have received degrees from the University in the field of Broadcast Telecommunications. That, I have been active in broadcast consulting for over 30 years;

That, I have held a Federal Communications Commission First Class Radiotelephone License continually since 1964. In 1985, this license was reissued by the Commission as a lifetime General Radiotelephone license no. PG-16-16464;

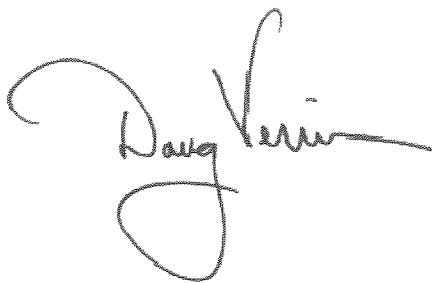
That, I am certified as a Professional Broadcast Engineer (#50258) by the Society of Broadcast Engineers, Indianapolis, Indiana. (Re-certified 1/2006.)

That, my qualifications are a matter of record with the Federal Communications Commission;

That, I have been retained by Santa Monica Community College to prepare the engineering showings appended hereto:

That, I have prepared these broadcast engineering showings, the technical information contained in same and the facts stated within are true of my knowledge;

That, under penalty of perjury, I declare that the foregoing is correct.

A handwritten signature in black ink that reads "Douglas L. Vernier". The signature is written in a cursive style with a large, looping initial "D" and a long horizontal stroke at the end.


Douglas L. Vernier

Executed on June 23, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June, 2008, a copy of the foregoing "Informal Objection" was mailed first-class, postage prepaid, to the following:

Dan J. Alpert, Esquire
The Law Office of Dan J. Alpert
2120 N. 21st Road
Arlington, VA 22201
(Counsel for Primera Iglesia Evangelica
De Apostoles Y Profetas)



Karen Richardson