POSTED 5/17/11
ORIGINAL
RECEIVED
MAY 10 A 6:02
AUDIO DIVISION

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

In the Matter of:	}	
	}	
Christian Media Incorporated	}	**Facility Id. No. 11069**
Licensee of Station KCMI(FM),	}	**BLH-19881221KC**
Terrytown, Nebraska	}	
	}	
Appaloosa Broadcasting Company	}	**Facility Id. No. 82007**
Application to Make Minor Changes	}	**BPH-20070822AAI**
To Station KIMX(FM), Laramie, WY	}	

FILED/ACCEPTED
MAY - 6 2011
Federal Communications Commission
Office of the Secretary

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

STATEMENT FOR THE RECORD
AND
REQUEST FOR RELIEF

Christian Media Incorporated ("CMI"), licensee of Station KCMI(FM), Terrytown, Nebraska, by and through its attorneys, hereby submits this **Statement for the Record and Request for Relief** regarding the above-referenced application to change the community of license for Station KIMX(FM) from Laramie, Wyoming, to Nunn, Colorado (the "Application"), filed by Appaloosa Broadcasting Corporation ("ABC").

The Commission granted the Application on October 23, 2009, and CMI timely submitted a petition for reconsideration, which remains pending to date. While ABC subsequently submitted an application to modify the facilities set forth in the Application, that application was voluntarily dismissed on April 8, 2011 (BMPH-20091230ABT). As such, with regard to Station KIMX, Appaloosa has a license to operate as a Class C2 facility on Channel 244 to serve Laramie, Wyoming, and a non-final construction permit to operate as a Class A facility on Channel 245 to serve Nunn, Colorado.

An March 3, 2011, the Commission released an order that will likely have a great impact on the final resolution of the instant matter.[1] In the *Order*, the Commission imposed significantly more stringent rules on minor change applications proposing to change the community of license of a radio station where the proposal rests on the provision of a first local service. The Commission stated that it was their intent to:

> cause applicants to give more consideration to the effects of proposed station moves on listeners, both those they would serve at a new community and those from whom they would remove existing service...[and]...to introduce greater transparency into the community change procedure, both to aid in decision-making and for the benefit of affected listeners.[2]

The Commission concluded by stating that the new rules would serve to balance the "distribution of radio service to the largest populations, on one hand, and distribution of new service to those most in need of it on the other."[3] Most significant for the instant matter is that the Commission decided to apply the *Order*'s new procedures to "any applications to change community of license that are pending" when the *Order* was released.[4]

As noted above, the grant of the Application is not final due to the pending Petition for Reconsideration filed by CMI. In fact, Appaloosa acknowledged the non-final, pending status of the Application through its submission of a tolling request on February 25, 2010, stating that "Appaloosa is not in control of whether it can complete its construction obligations and is subject to whatever action the Commission takes in response to the CMI pleading." The Commission agreed with this assessment, and tolled the expiration date of KIMX's construction permit authorization to move to Nunn, Colorado. More recently, Appaloosa re-affirmed the non-final status of the Nunn construction permit when it filed a report on February 28, 2011.

---

1 *In the Matter of Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 26 FCC Rcd 2556 (2011)(the "*Order*")(emphasis added). Notice of the *Order* was published in the Federal Register on April 6, 2011, 76 FED. REG. 18,492 (Apr. 6, 2011), establishing May 6, 2011 as the effective date of the new rules.

2 *Id.*, at 2578.

3 *Id.*

4 *Id.*

Thus, it is clear that the grant of the Application is not final as the matter remains pending before the Commission, and the new rules set forth in the *Order* must be applied to the Application.[5] As a result, the Commission's staff should immediately rescind the grant of the Application, and require Appaloosa to amend the Application to show that it complies with the *Order*'s new rules relating to proposals to change a station's community of license through the submission of a minor change application.

While it is possible that Appaloosa can demonstrate that it complies with the new rules adopted in the *Order*, it bears mentioning that CMI has provided substantial evidence that the Application would cause severe loss of service to existing rural listeners, and that the proposed facilities would provide service to a large portion of the Fort Collins Urbanized Area. For example, in its Reply to Appaloosa's Opposition to the Petition for Reconsideration, CMI demonstrated that the facilities set forth in the Application would provide service to more than 50% of the Fort Collins Urbanized Area.[6]

However, the proposed service to the Fort Collins Urbanized Area comes at a substantial price to existing listeners of Station KCMI. As shown in CMI's Petition for Reconsideration, the forced channel change being imposed upon KCMI without its consent will result in the loss of service to 65,000 KCMI listeners, creating both white and gray areas.[7] This loss of service is caused by increased interference on the proposed new operating channel for KCMI. Previously, CMI also provided letters from the public attesting to their listenership of KCMI, and their interest in continuing to receive this existing service.[8]

---

5 *See e.g., Hispanic Info. & Tel. Network v. FCC*, 865 F.2d 1289 (D.C. Cir. 1989)(applying new rules to pending applications). *See also Bowen v. Georgetown University Hospital*, 488 U.S. 204, 219-220 (1988)(concluding that the application of rule modifications to non-final proceedings does not constitute retroactive rulemaking).

6 *CMI Reply*, filed Dec. 18, 2009, at Exhibit A (attached hereto as Appendix 1).

7 *CMI Petition for Reconsideration*, filed November 23, 2009, pg. 5, Exhibit C (1,967 people left with one aural service, and two towns – Oshkosh (887 people) and Lewellen (282 people) – losing their sole aural service)(attached hereto as Appendix 2).

8 *CMI Response to Order to Show Cause*, filed January 16, 2008, pg. 2, Exhibit B (*see* Appendix 3).

Therefore, in light of the rural-to-urban move proposed by Appaloosa, and the loss of existing service to listeners of KCMI, Christian Media Incorporated respectfully requests that the Commission's staff immediately rescind the grant of the Application, and require Appaloosa to supplement its non-final proposal to move KIMX(FM) from Laramie, Wyoming, to Nunn, Colorado, by supplying sufficient information to demonstrate that the pending, non-final change in community of license complies with the rules and policies set forth in the *Order*, and would best serve the public interest in the distribution of radio service in a fair, efficient and equitable manner.

Respectfully submitted,

CHRISTIAN MEDIA INCORPORATED

By: _____

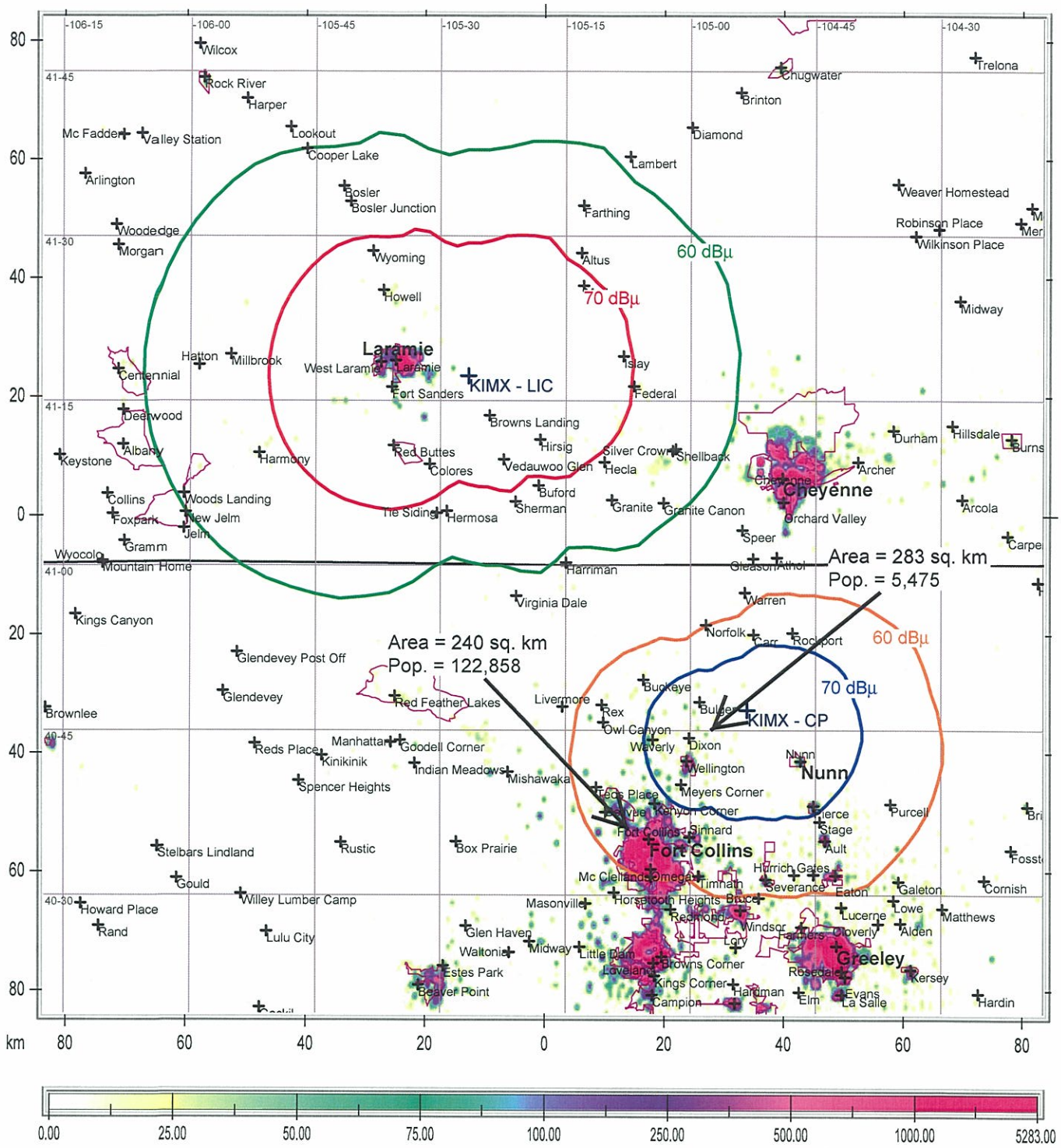
Lee G. Petro
FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209
(703) 812-0400 – Telephone
(703) 812-0486 – Telecopier

Its Attorney

May 6, 2011

APPENDIX 1

Comparison of KIMX Licensed and CP Coverage with Population Distribution (2000 Census)



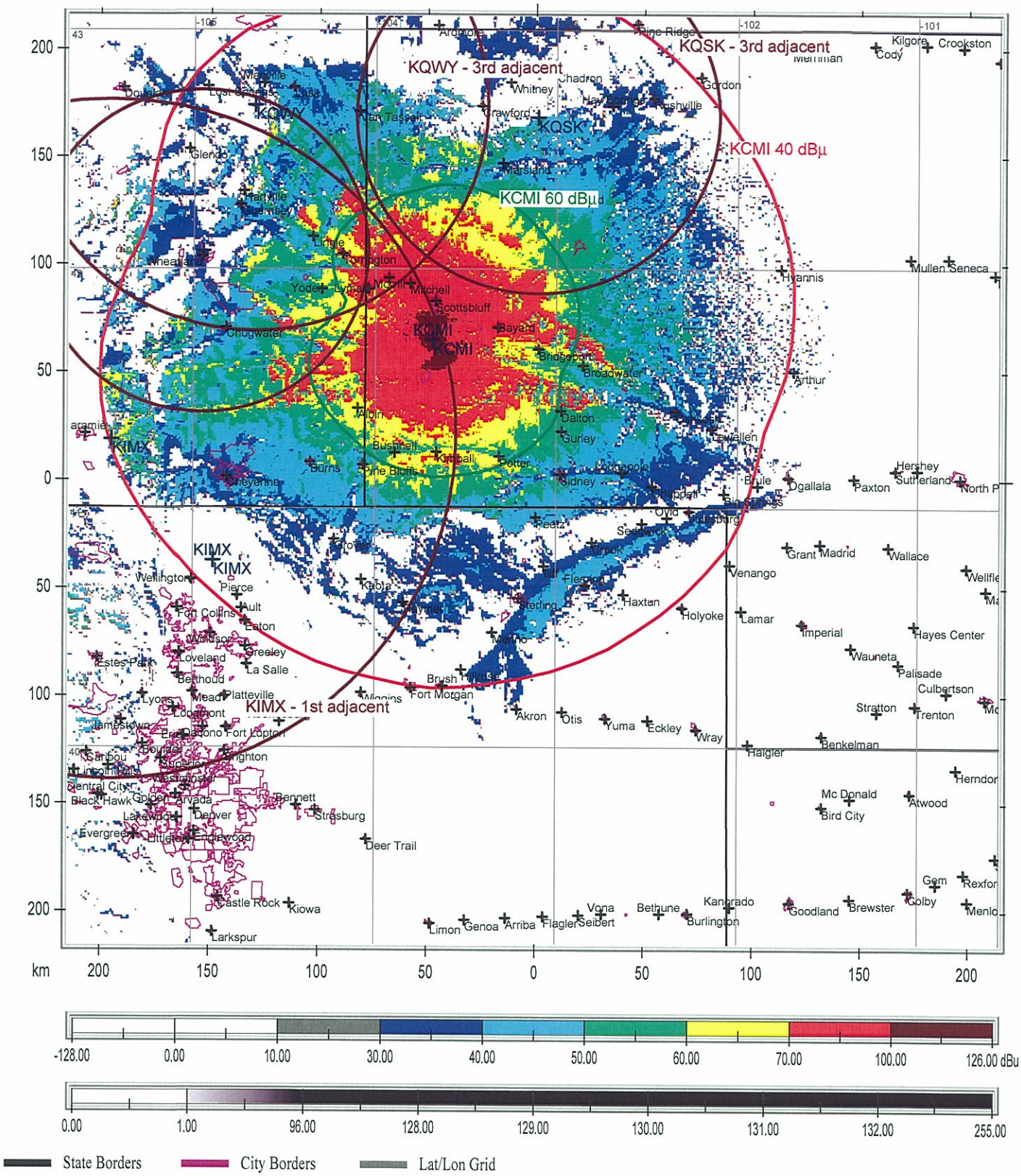
State Borders City Borders Lat/Lon Grid

Map Scale: 1:929640 1 cm = 9.30 km V|H Size: 167.49 x 166.93 km

© MMIX Sterling Communications, Inc.

APPENDIX 2

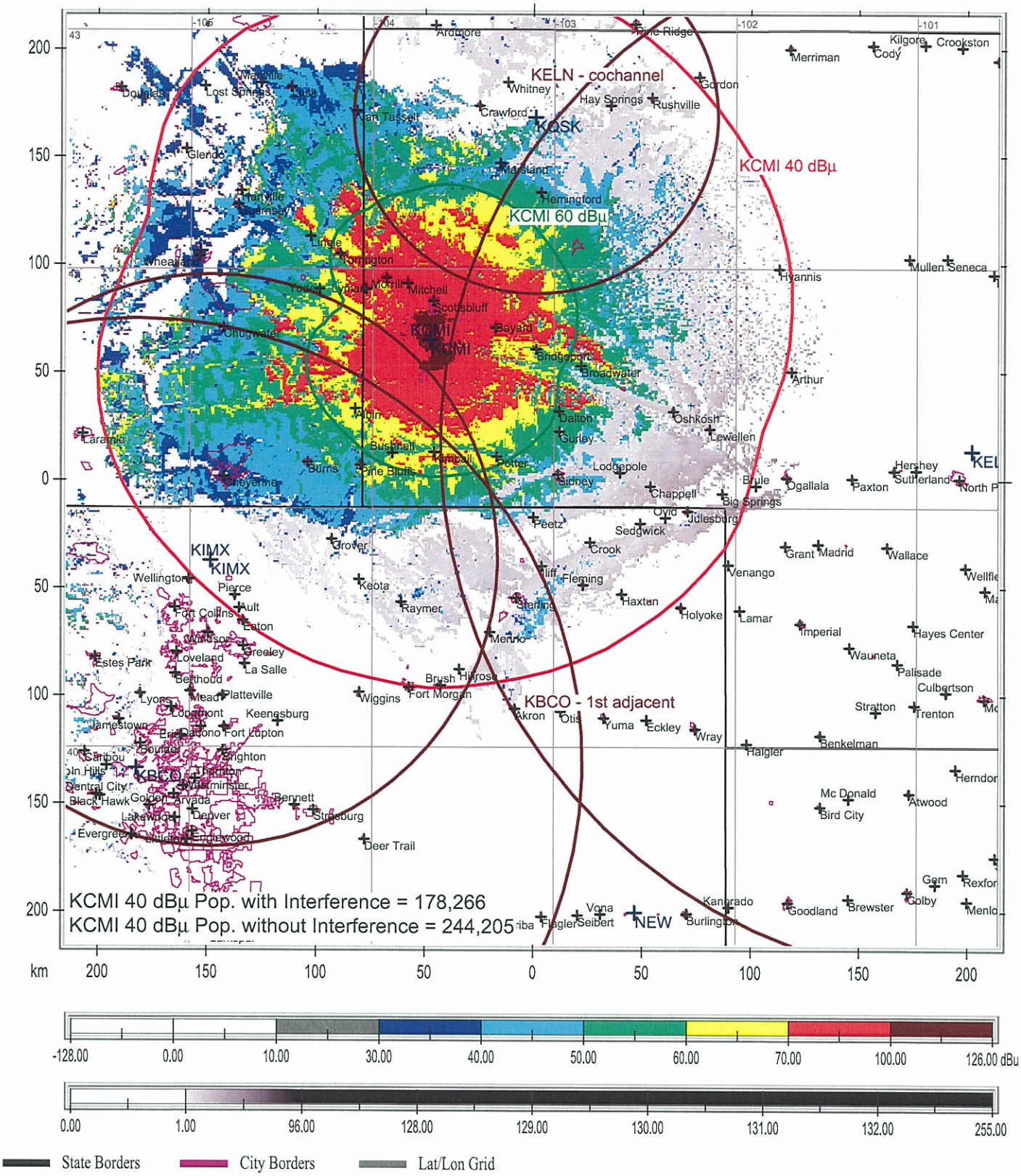
Longley-Rice Predicted Interference on Channel 245



Map Scale: 1:2386116 1 cm = 23.86 km V|H Size: 429.90 x 428.46 km

© MMVIII Sterling Communications, Inc.

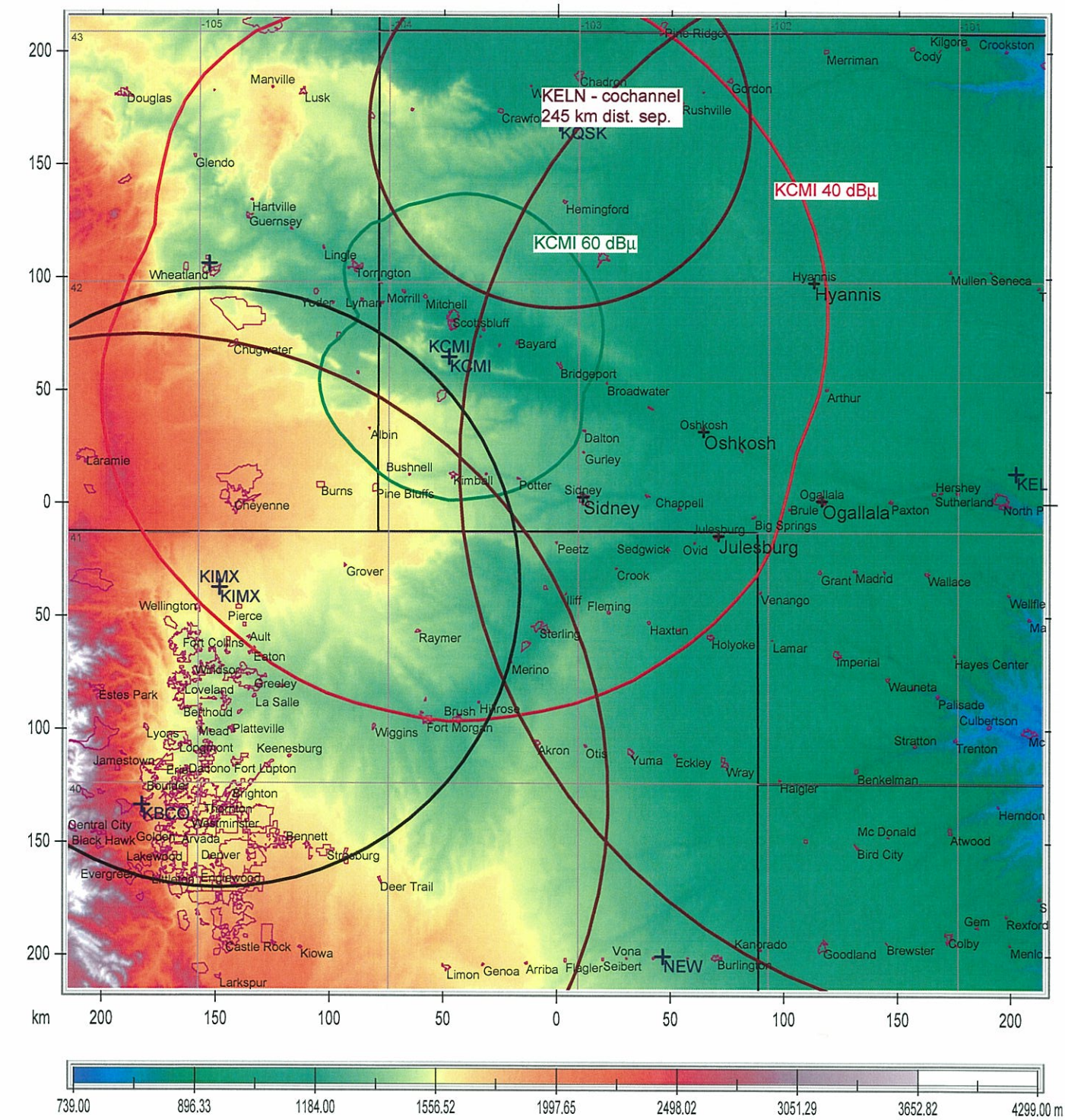
Longley-Rice Predicted Interference on Channel 246



Map Scale: 1:2386116 1 cm = 23.86 km V|H Size: 429.90 x 428.46 km

© MMVIII Sterling Communications, Inc.

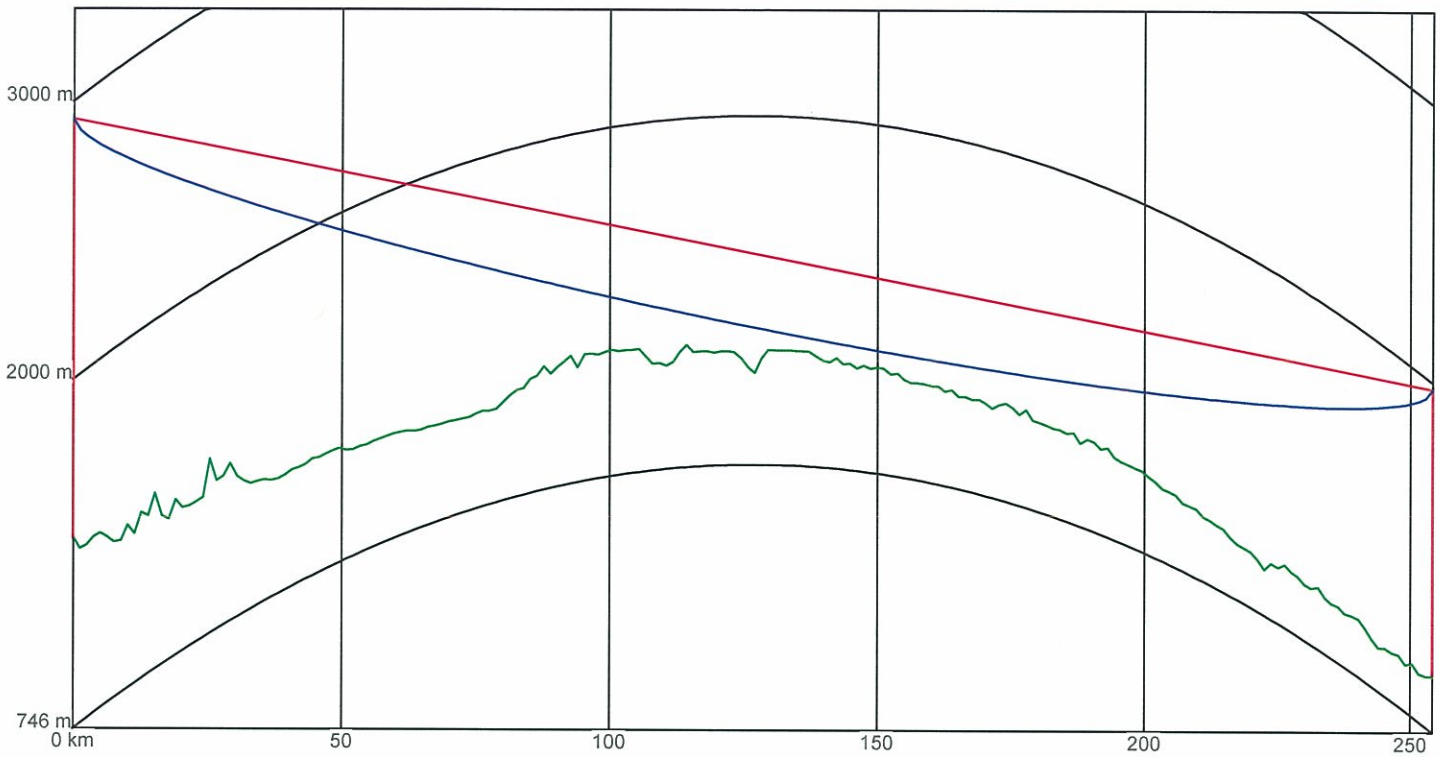
Terrain Map Showing Smooth Topography to KELN



Map Scale: 1:2386116 1 cm = 23.86 km V|H Size: 429.90 x 428.46 km

© MMVIII Sterling Communications, Inc.

Path Profile KCMI to KELN



KCMI

Lat:	41-42-08.0 N
Lon:	103-41-00.0 W
AMSL:	1433 m
Tower AGL:	1503 m

KELN

Lat:	41-14-20.0 N
Lon:	100-41-43.0 W
AMSL:	945 m
Tower AGL:	1030 m

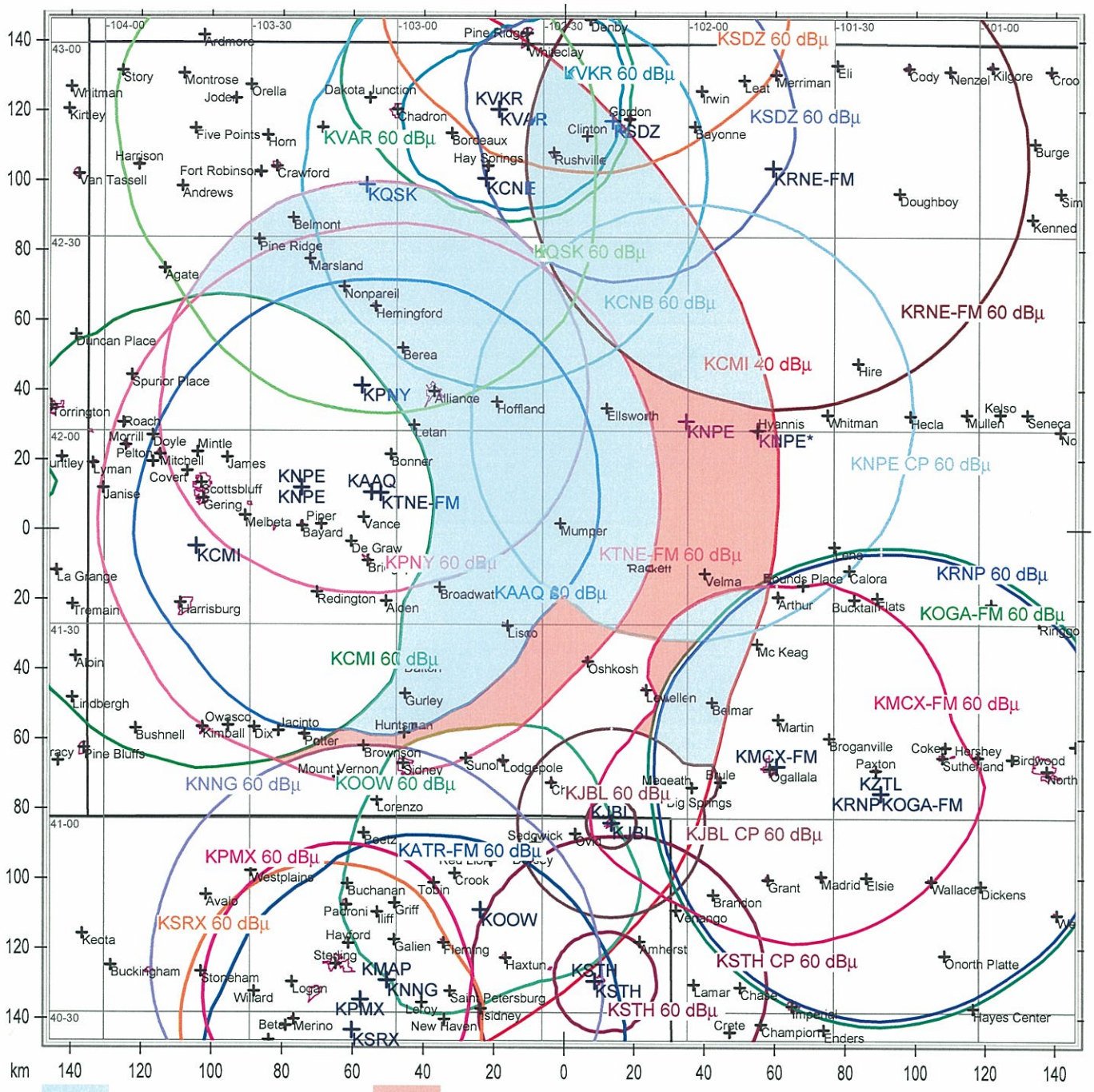
Profile Info

Distance:	254.19 Km
Bearing:	100.70 deg
# of points	200
K value:	1.333
Frequency:	97.1
Clearance:	0.6

Losses

Base Loss:	120.3 dB
Fade Margin:	68.3 dB
Diffraction:	0.0 dB
Fresnel:	1.4 dB

Stations that Provide Protected Service within 40 dBu of KCMI



2 or more services in area between KCMI 60 dBμ and 40 dBμ contours

Total population including 2 or more services = 16,988 people

1 service in area between KCMI 60 dBμ and 40 dBμ contours

Total population of 1 service = 1,967 people

State Borders City Borders Lat/Lon Grid

Map Scale: 1:1624251 1 cm = 16.24 km V|H Size: 292.63 x 291.66 km

© MMIX Sterling Communications, Inc.

APPENDIX 3

----- Original Message -----
From: "DMK Marketing" <veronica@hamilton.net>
To: <Brad@kcmifm.com>
Sent: Friday, January 11, 2008 7:03 PM
Subject: Station

> Dear Brad,
> I heard your request read on KCMI this evening. You requested response
> from the outlying areas one of which is Sidney, NE. I live in Sidney and
> I listen to the KCMI broadcast and have been a supporter as well. It is
> very difficult to pick up any Christian stations in this area and KCMI is
> the best. It would be a great detriment to have the station moved to
> where residents in this area could not listen. I hope this letter is
> helpful in serving the purpose for which you requested it! I pray that
> the Lord continues to use KCMI as an outreach program of praise, worship
> and teaching for everyone in the Sidney area!
> Thank you for your time.
> Veronica Phelps
>
>
> --
> No virus found in this incoming message.
> Checked by AVG Free Edition.
> Version: 7.5.516 / Virus Database: 269.19.2/1221 - Release Date: 1/12/2008
> 2:04 PM
>
>

KCMI RADIO

I listen to KCMI on a daily basis, and would certainly miss their programming if there were changes in the broadcast signal that would cause a poor signal and interference. Christian programming is vital to us and this community, so please don't cause problems by changing the frequency on which you broadcast. I have my car radio tuned to KCMI and enjoy the morning programming you offer from Back to the Bible to Turning Point and your local coffee time. I never listen to our local radio station as their content doesn't fit my lifestyle, so I would certainly miss KCMI. Keep it right where it is on the dial.

I especially enjoy Hymntime Country Style on Sunday Morning. Keep up the great music Don Johnson.

Thank You,

George Perry

Sidney, Nebraska

Please leave KCMI where it is on the dial. I have my radio in the house set on KCMI and never change it. I turn it on each morning while preparing for work to listen to Michael Y. and Chuck Swendol. I really like to listen to Chuck Swendol and would absolutely hate it if I couldn't start my day hearing what great words of wisdom he has to say. So please leave the dial right where it is.

Thank You

Lena Heath
PO Box 15
Lisco NE 69148

---- Original Message ----
From: Debra Evertson
To: brad@kcmifm.com
Sent: Friday, January 11, 2008 2:38 PM
Subject: impact

KCMI was a part of my family's life for 12 years until we moved from the area. We missed the station greatly over the last 7 years and now that we are back in Kimball County it is a daily blessing!! In fact, it was one of the factors I looked forward to in returning to this area.

This station fills a unique niche in our life. It isn't a national radio station. We support local advertisers and often thank them for their support of KCMI. The thought of not receiving the signal from KCMI is disheartening indeed.

We pray that KCMI may continue to broadcast from 96.9!

Debra Evertson
Kimball, NE

Never miss a thing. Make Yahoo your homepage.

No virus found in this incoming message.
Checked by AVG Free Edition.
Version: 7.5.516 / Virus Database: 269.19.1/1219 - Release Date: 1/11/2008 10:19 AM

—— Original Message ——
From: Evie Miller
To: brad@kcmifm.com ; Phil & Evie Miller
Sent: Tuesday, January 15, 2008 5:20 PM
Subject: FCC letter

TO: Federal Communications Commission

I would like to voice my opinion of you asking KCMI to change their frequency from 96.9 fm to 97.1fm

I am NOT in favor of doing this as it is difficult now for me to get their signal and I understand if this is changed, I could possibly not get it at all. I like it just where it is and I am asking that you keep it as such.

It is very important to me to be able to listen to KCMI and know that there is only Christian music and Christian radio programs on their station. I do not like other radio stations as you never know what will be playing or what program will be on - most are offensive to me!!! Therefore, I am urging to leave KCMI stay where they are – 96.9 fm.

Thank you,

Evie & Phil Miller
8710 RD 40
Potter, NE 69156

No virus found in this incoming message.
Checked by AVG Free Edition.
Version: 7.5.516 / Virus Database: 269.19.2/1224 - Release Date: 1/14/2008 5:39 PM

Paula Fritzler
1827 St Hwy 270
Glendo WY 82213

KCMI FM
Attention: Brad Staman
PO Box 1888
Scottsbluff, NE 69361
January 13, 2008

To: The Management and Staff,

We recently heard something horrifying on your radio station. We heard that the FCC may want KCMI to move to another frequency/channel, with possibly less area coverage.

Let me tell you what KCMI means to me. In the late 1990's while living in Alliance, Nebraska I was at a place where a lady kept turning the dial to 96.9 FM. It annoyed me at first, but then I started to listen to what the programs were saying. Your programs began speaking to my heart. After a while it got so that wherever I went I would tune the radios to 96.9 FM. In 1999 I moved to Torrington, Wyoming, thankfully my dear friend came with me, KCMI. I was married in Torrington in 2000 and my husband and I have been faithful listeners to KCMI. After 4 years we had the opportunity to buy some property about 53 miles northwest of Torrington. There were two prerequisites in purchasing this property. One was that we would be within driving distance of our home church. The other was that we could receive KCMI's broadcasting signal.

In the remote farm areas of Wyoming and western Nebraska, even more so in the ranching areas, radio and television signals are highly cherished, especially if it is a wholesome station. Yes, we could get satellite reception at a cost and with that would come the undesirable channels, frequencies, and stations that the FCC has failed to regulate. With this decision, people in these rural areas would again be "punished" by removing this wholesome station's abilities to transmit to our remote areas. This, in deference to a tower, that would give urban residents even more of what they already have. KCMI is our main source of news; regional, national and world.

We have received so many life lessons from KCMI's programs. We have also received much encouragement. The staff has become our family, we know their names and enjoy hearing their voices on the radio. It would be such a tremendous loss to us and so many more if we cannot receive your signal.

Thank-you for your time and dedication in serving the KCMI listening family.

Paula Fritzler

Rex Fritzler

To whomever this concerns,

I wish to support the request not to move the frequency of our radio station KCMIfm....It is our most listened to radio station. It is the only one I listen to and is my source of inspiration all day long. If the frequency is moved we would not be able to receive it any longer...This would be a sad thing for a lot of people.

Kathryn Bauer

7378 Rd.56

Potter,Ne.69156

CERTIFICATE OF SERVICE

I, Valerie Admana, a Secretary with Fletcher, Heald & Hildreth, PLC, do certify that I caused copies of the foregoing "Statement For Record and Request For Relief" to be placed in the U.S. Mail, first class postage prepaid, on this 6th day of May, 2011, addressed to the following:

Peter H. Doyle, Chief*
Audio Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Rodolfo F. Bonacci, Assistant Chief*
Audio Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Barry A. Friedman, Esq.
Thomas Hine, LLP
1920 N. Street, NW
Suite 800
Washington, DC 20036
Counsel for Appaloosa Broadcasting Company, Inc.

By: _____
Valerie Admana

* Indicates Hand Delivery