

April 12, 2006

VIA COURIER

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WYPX(TV), Channel 55, Amsterdam, New York
Fac. ID No. 13933
Request for Authority to Terminate Analog Operations

Dear Ms. Dortch:

Paxson Albany License, Inc. ("ION"), licensee of television station WYPX(TV), Channel 55, Amsterdam, New York (the "Station"), by its attorneys, hereby requests authority to: (i) terminate analog broadcasting on Channel 55, (ii) surrender its license for that channel; and (iii) thereafter operate WYPX-DT as a digital-only television station on Channel 50 as currently authorized.

This is filed pursuant to the Commission's voluntary band-clearing procedures¹ and as part of an agreement with QUALCOMM, Inc. ("QUALCOMM"). Accordingly, this request is in keeping with four recent Commission decisions granting similar requests under similar circumstances.² As with those requests, this instant one would remove impediments to the early launch of QUALCOMM's MediaFLO service on Channel 55 throughout the Albany, New York market, a market of over 500,000 people.³ Because all analog television stations are scheduled to terminate service by February 2009, and pursuant to the terms of ION's agreement with QUALCOMM, to provide QUALCOMM and the residents of the Albany area with the benefits of a meaningfully early introduction of MediaFLO, we respectfully request that the Commission approve or deny this request on or before **September 7, 2007**.

¹ *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, 17 FCC Rcd 1022, ¶¶182-84 (2002) ("Lower 700 MHz R&O").

² See *Letter to Johnson Broadcasting of Dallas*, DA 06-2319, 21 FCC Rcd 13459 (Nov. 17, 2006); *Letter to WLNY, Inc.*, DA 05-2482, 20 FCC Rcd 14765 (2005); *Letter to Associated Christian Television System, Inc.*, DA 05-2042, 20 FCC Rcd 12425 (2005); *Letter to Puget Sound Educational TV, Inc.*, DA 05-2041, 20 FCC Rcd 12423 (2005).

³ See Letter from Dean R. Brenner, *QUALCOMM, Inc.*, to Marlene Dortch, FCC, (April 10, 2007) submitted in support of this instant request (attached as Exhibit 1).

Termination of analog service by the Station would have a negligible impact, if at all, on the public. WYPX-DT already operates full power facilities on Channel 50 and intends to continue operating post-transition as already authorized.⁴ The WYPX-DT digital service area entirely encompasses the Station's analog service area,⁵ so every person currently receiving the Station's over-the-air analog service could receive the WYPX-DT signal. Moreover, cable and satellite penetration in the Albany-Schenectady-Troy DMA is approximately 89.1%.⁶ In any event, more than 99% of the Station's service area population would continue to receive at least five other full-time licensed analog television services, and 100% of the Station's service area population would continue to receive at least three other full-time licensed analog television services.⁷ Thus, whether they watch television via cable and satellite or over-the-air, the residents of the Albany market will continue to have a wide variety of viewing options upon a grant of the instant request.

* * *

Past Precedent and Commission Policy Support Grant

The public interest factors identified in the *Lower 700 MHz R&O* support the grant of ION's request. In the *Lower 700 MHz R&O*, the Commission stated that it would evaluate Lower 700 MHz band-clearing requests by balancing the public interest benefits to be gained from "making new or expanded wireless services available to consumers or deploying wireless service to rural or other underserved communities" against four possible countervailing public interest considerations: (1) "the loss of any of the four stations in the designated market area with the largest audience share;" (2) "the loss of the sole service licensed to the local community;" (3) "the loss of a community's sole service on a channel reserved for noncommercial educational broadcast service;" and (4) any "negative effect on the pace of the DTV transition."⁸ As discussed below, three of these four countervailing public interest factors overwhelmingly support grant. The lone contrary factor – that the Station is the only full service television station licensed to Amsterdam, New York – neither is dispositive under past precedent nor of sufficient weight to counterbalance the strong public interest benefits that support a grant of this request. The Commission previously has granted other analog service termination requests filed by the only stations licensed to a community.⁹

⁴ ION certified to these same facilities and they are reflected in the Commission's proposed post-transition Table. See *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MB Docket No. 87-268, *Seventh Further Notice of Proposed Rule Making*, Appendix B (Oct. 20, 2006).

⁵ Moreover, the DTV service area population is some 170,000 more than the NTSC. See *Technical Statement of Louis Robert du Treil, Jr.*, Fig. 4 (attached as Exhibit 2).

⁶ See http://www.tvb.org/rcentral/markettrack/Cable_and_ADS_Penetration_by_DMA.asp.

⁷ Exhibit 2, at p. 2 and Fig. 1.

⁸ *Lower 700 MHz R&O* at 1096 n.549.

⁹ See e.g., *Letter to Johnson Broadcasting of Dallas*, DA 06-2319, 21 FCC Rcd 13459 (Nov. 17, 2006).

A. Public Interest Benefits to Be Gained – QUALCOMM Service in the Albany DMA

The termination of the Station's analog Channel 55 operations would benefit the public by allowing QUALCOMM to launch its new wireless communications service for the residents of the Albany, New York DMA. This service is fully described in the attached letter from Dean R. Brenner of QUALCOMM.¹⁰ Significantly, the Commission explicitly has concluded that it is in the public interest for Qualcomm to offer MediaFLO to the public.¹¹

B. Potential Countervailing Public Interest Factors

1. Loss of a "Top Four" Station

Turning to the first of the four potential countervailing public interest factors identified in the *Lower 700 MHz R&O* – the loss of one of the four analog stations in the market with the largest audience share – this factor supports grant. The Station is not among the top four rated stations in the DMA, so this first factor is not implicated.

2. Loss of the Sole Station Licensed to the Community

Although there are between 9 and 19 other analog and digital television stations serving portions of the Station's Grade B contour,¹² WYPX(TV) is the sole full power television station licensed to Amsterdam, New York. Accordingly, this second factor identified in the *Lower 700 MHz R&O* is adverse but should not be dispositive. Rather, this factor is one element to be weighed in the balance. To date, the Commission has granted at least five early band clearing requests involving stations that were the sole television service licensed to their community.¹³ The Media Bureau, however, has denied one early band clearing request involving a station that was the sole television service licensed to its community, but that factor was not determinative.¹⁴ Rather, the primary consideration in that case appears to have been that the

¹⁰ See Exhibit 1.

¹¹ QUALCOMM Incorporated Petition for Declaratory Ruling, *Order*, 21 FCC Rcd 11683, ¶28 (2006).

¹² See Exhibit 2, p. 2 and Fig. 3.

¹³ See *Letter to Johnson Broadcasting of Dallas*, DA 06-2319, 21 FCC Rcd 13459 (Nov. 17, 2006) (involving KLDT(TV), Lake Dallas, Texas); *Letter to WLNY, Inc.*, DA 05-2482, 20 FCC Rcd 14765 (2005) (involving WLNY-TV, Riverhead, New York); *Letter to WRNN-TV Associates L.P.*, DA 04-2039, 19 FCC Rcd 12343 (2004) (involving WRNN-TV, Kingston, New York); *Letter to Commonwealth Public Broadcasting Corp.*, DA 03-2845, 18 FCC Rcd 18517 (2003) (involving WNVN-TV, Goldvein, Virginia); and *Letter to Barry A. Friedman, Esq.*, DA 03-1481, 18 FCC Rcd 9131 (2003) (involving KVMD(TV), Twentynine Palms, California).

¹⁴ *Letter to Barry A. Friedman, Esq.*, DA 05-343, 20 FCC Rcd 2389 (Med. Bur. 2005) (denying request regarding KJLA(TV), Ventura, CA) ("KJLA") *pet. for recon. pending*.

spectrum in question, Channel 57, “has yet to be auctioned for use by new wireless services.”¹⁵ The Bureau thus concluded that the station at issue could not show that vacating its analog spectrum would “serve the public interest by expediting new or expanded use of this spectrum.”¹⁶ Here, however, ION has made a showing that a grant of this request will directly result in the introduction by QUALCOMM of its new wireless service.

3. Loss of a Community’s Sole Service on a Channel Reserved for Noncommercial Educational Broadcast Service

WYPX(TV) is a commercial station, so grant of this request will not deprive Amsterdam, New York of its sole noncommercial service on a channel reserved for noncommercial educational broadcast service. This third factor accordingly is not implicated.

4. Negative Effect on the Pace of the DTV Transition

The last potential countervailing factor – whether the termination of analog operations would have a negative effect on the pace of the DTV transition – also supports a grant. Subsequent to the adoption of the *Lower 700 MHz R&O*, Congress established February 17, 2009 as a firm deadline for the end of the DTV transition period.¹⁷ The spectrum between Channels 52-69, including the Channel 55 spectrum at issue in this request, will be available for deployment of new wireless services. Grant of this request thus will implement the policies embodied in that legislation well beforehand, will permit ION to concentrate on WYPX-DT’s digital service, and will clear the Channel 55 spectrum for use by QUALCOMM. Thus, this factor also favors grant.

C. Other Public Interest Factors Favor Grant

Other public interest factors also support a grant of this request. Upon termination of the Station’s analog service, ION will ensure that the digital programming of WYPX-DT is carried by the appropriate cable operators. ION also will ensure, at its own expense, that that the WYPX-DT signal is delivered to the cable head ends and will provide the necessary equipment to cable operators so that the signal can be carried in an analog format. This will ensure that cable subscribers who today watch the Station’s analog programming will not have to obtain additional equipment to view WYPX-DT programming. Accordingly, grant of this request should not cause any disruption or loss of service to cable subscribers.

¹⁵ *Id.*

¹⁶ *Id.* The Commission in *KJLA* also relied on an additional factor – the potential loss of an analog service providing “unique Spanish-language programming,” *id.*, which is inapplicable here. Nowhere in the decision does the Commission appear to place significant reliance on the fact that the station was the sole full power television service licensed to the community.

¹⁷ See Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat 4 (2006) (Title III constituting the DTV Act), *amending* 47 USC §309(j)(14).

April 12, 2007

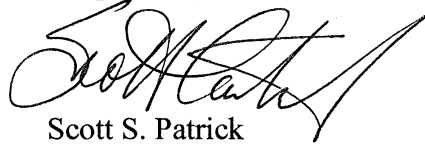
Page 5

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For the reasons discussed herein, ION submits that both the public interest and Commission precedent favor grant of this request to terminate the Station's service. To provide QUALCOMM and its customers with the benefit of a meaningfully early introduction of new wireless service, we respectfully request that the Commission approve or deny this request on or before September 7, 2007.

Should any further information be desired in connection with this request, please contact the undersigned.

Respectfully submitted,



Scott S. Patrick

cc: Monica Desai, Esq.
Andrew Long, Esq.
Barbara Kreisman, Esq.
Clay Pendarvis, Esq.
Joyce Bernstein, Esq. ✓
Dean Brenner, Esq.
Richard Bodorff, Esq.
William L. Watson, Esq.
John R. Feore, Jr., Esq.

EXHIBIT 1

Supporting Letter from Dean R. Brenner, *QUALCOMM, Inc.*



QUALCOMM Incorporated

2001 Pennsylvania Ave., NW ■ Suite 650 ■ Washington, DC 20006 ■ Tel: 202.263.0020

www.qualcomm.com

April 10, 2007

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Station WYPX (TV)
Facility ID No. 13933
Channel 55, Amsterdam, NY

Dear Ms. Dortch:

On behalf of QUALCOMM Incorporated ("QUALCOMM"), I am writing in connection with a request (the "Request") being filed by Paxson Albany License, Inc. ("ION"), the licensee of WYPX (TV) to: (i) terminate analog broadcasting on Channel 55; (ii) surrender its license for that channel; and, (iii) thereafter operate WYPX-DT as a single, digital-only television station on Channel 50 as currently authorized.

As the Request states, a grant of the Request will permit QUALCOMM to launch its innovative MediaFLO wireless service on the Channel 55 spectrum in the Albany market, a market of over 500,000 people. Absent a grant of the Request, QUALCOMM will not be able to launch MediaFLO until February 2009, after the end of the DTV transition. Thus, a grant of the Request will allow QUALCOMM to deliver its innovative and beneficial wireless service to the residents of the Albany area almost two years earlier than will otherwise be possible. Thus, QUALCOMM strongly supports the Request and joins in asking that the Commission rule on the Request by September 7, 2007. The balance of this letter provides background information on QUALCOMM and describes the highly beneficial and innovative MediaFLO service.

QUALCOMM, which is headquartered in San Diego, California, was founded in 1985 and is today a world leader in developing cutting-edge digital wireless communications technologies and in delivering, and enabling other companies to deliver, products and services based on the digital wireless communications technologies that QUALCOMM develops. QUALCOMM has developed a core technology known as code division multiple access ("CDMA"). This technology has been incorporated into standardized wireless technologies deployed by wireless carriers in the United States and around the world, including cdmaOne, the second generation version of CDMA, and CDMA2000, the third generation version of CDMA. QUALCOMM holds more than 3,000 patents and patent applications for CDMA and related technologies.

QUALCOMM has developed technology known as "FLO" – meaning "forward link only" – which enables the efficient delivery of one-way wireless video, audio, and data to mobile phones. When deployed in the Lower 700 MHz band (on Channel 55), FLO technology offers distinct efficiency and cost advantages in delivering content to a very large mobile subscriber base. Deploying high-power transmitters on tall towers with FLO technology provides superior coverage with 30 to 50 times fewer towers than cellular and higher frequency-based systems, enabling the delivery of these innovative wireless services to consumers at mass market prices.

QUALCOMM acquired licenses in the Lower 700 MHz band, Block D, Channel 55, for five of the six EAG markets in a Commission auction in 2003. The following year, QUALCOMM acquired the license for the sixth EAG, and since then, QUALCOMM has held licenses for this spectrum covering the entire nation.

In November of 2004, QUALCOMM announced its plan to launch a new, nationwide "mediacast" service utilizing FLO technology to bring a broad array of multi-channel video, audio and data to 3G mobile phone users nationwide, beginning commercial operation in many parts of the country in the second half of 2006. QUALCOMM's business plan for MediaFLO calls for an investment of \$800 million.

In December 2005, QUALCOMM and Verizon Wireless announced that they would be working together to launch MediaFLO across the country and that Verizon Wireless will be the first wireless carrier to offer MediaFLO service to its subscribers. In February 2006, QUALCOMM and AT&T announced that Cingular (AT&T Mobility) would also offer MediaFLO to its subscribers around the country.

QUALCOMM's efforts in inventing and developing MediaFLO in the United States first came to fruition in March 2006, when the MediaFLO service, under the brand name "V Cast Mobile TV," was launched to Verizon Wireless subscribers in over twenty major markets around the country. Since then, the service has been launched in additional major markets. Verizon Wireless subscribers in these markets can purchase two different wireless phone models and opt to receive either a full package of eight video channels, including news, sports, entertainment and children's programming, or a more limited package of four channels.

Over time, the MediaFLO service is expected to expand to include additional video channels, audio channels, and data services, all to be offered to an ever-increasing variety of wireless phone models. The news programming already being delivered today over MediaFLO includes core public interest content, such as hurricane and tornado warnings, breaking news updates, and the like. The MediaFLO service will only become more robust and beneficial to the public as the service grows and develops further.

All of these innovative services, and more, can be delivered in the same 6 MHz of Lower 700 MHz band spectrum in which a single analog Channel 55 television station such as WYPX (TV) broadcasts today, and the content is delivered in an easy-to-use, familiar format at quality levels that dramatically surpass current mobile phone multimedia offerings through the use of

QVGA video at up to thirty frames per second and high-quality stereo audio. Moreover, because of the efficiency advantages of the FLO technology, the MediaFLO service can in fact be delivered to consumers at mass market prices.

In short, MediaFLO is a highly beneficial and innovative wireless service. It will bring substantial benefits to the residents of the Albany area. As a result, QUALCOMM respectfully submits that a grant of the Request will further the public interest. If any additional information about MediaFLO or QUALCOMM is needed in the course of processing the Request, please contact me.

Respectfully submitted,

/s/ Dean R. Brenner

Dean R. Brenner
Vice President, Government Affairs
QUALCOMM Incorporated

EXHIBIT 2

Technical Statement of Louis Robert du Treil, Jr.

TECHNICAL STATEMENT
CONCERNING OTHER TELEVISION
SERVICES ANALYSIS FOR WYPX(TV)
AMSTERDAM, NEW YORK
CHANNEL 55

This Technical Statement was prepared on behalf of television station WYPX(TV), Amsterdam, New York concerning an analysis of other television services within its predicted Grade B contour.* As detailed herein, the analysis reveals that there is no population within the WYPX(TV) predicted Grade B contour with less than three other analog full-service licensed television services; and, more than 99% of the WYPX(TV) predicted Grade B contour population is served by five or more other television services. Furthermore, considering both analog and digital licensed stations, there are no less than nine, and as many as nineteen, other TV or DTV services within the WYPX(TV) Grade B contour.

The analysis was conducted using the predicted Grade B contour of WYPX(TV) and the predicted Grade B, or equivalent digital Grade B, contours of all other full-service licensed analog and digital television stations with predicted contours overlapping that of WYPX(TV). The Grade B, or equivalent Grade B, contours were calculated according to the conventional contour methods outlined in the FCC Rules using the U.S.G.S. 3-second terrain database. The FCC CDBS Engineering Database was the source of the technical information for the stations under study.

The predicted contours of the subject stations were projected on maps and counts of other analog and digital television services throughout the WYPX(TV) Grade B contour area were made. The population was analyzed using the 2000 Census block data

* WYPX(TV) is licensed for operation on Channel 55 with a maximum directional peak visual effective radiated power of 5000 kW with an antenna height above average terrain of 220 m. See FCC File No. BLCT-20050831ACY. The WYPX-DT facility is licensed for operation on Channel 50 with a maximum average digital effective radiated power of 450 kW with an antenna height above average terrain of 207 m. See FCC File No. BLC DT-20040908ABO.

and area was analyzed through numerical integration. Figure 1 is a map showing the predicted WYPX(TV) Grade B contour and the other analog Grade B television services. Figure 2 is a map showing the predicted WYPX(TV) Grade B contour and the other digital equivalent Grade B contours alone. Figure 3 is a map showing the Grade B and equivalent Grade B contours of all analog and digital facilities together. Figure 4 is a map showing a comparison of the WYPX(TV) analog Grade B contour and the WYPX-DT equivalent digital Grade B contour. Figure 5 is a tabulation of the full-service licensed television stations considered in the analysis.

The numerical results are tabulated and shown on Figures 1 through 3. As indicated in Figure 1, more than 99% of the population and more than 94% of the area within the WYPX(TV) Grade B contour is served by five or more other full-time licensed television services. And there is no populated area with less than three other full-time licensed Grade B services available within the WYPX(TV) Grade B contour.

As indicated in Figure 2, 100% of WYPX(TV) Grade B contour population and area is served by between 7 and 10 other digital television services, including that of WYPX-DT on Channel 50.

As indicated in Figure 3, 100% of WYPX(TV) Grade B contour population and area is served by between 9 and 19 other analog and digital television services, including that of WYPX-DT on Channel 50.

Figure 4 demonstrates that the entire WYPX(TV) Grade B service area is served by the WYPX-DT equivalent Grade B contour. The WYPX-DT equivalent Grade B contour provides service to 17.8% greater population and 47.6% greater area than the WYPX(TV).

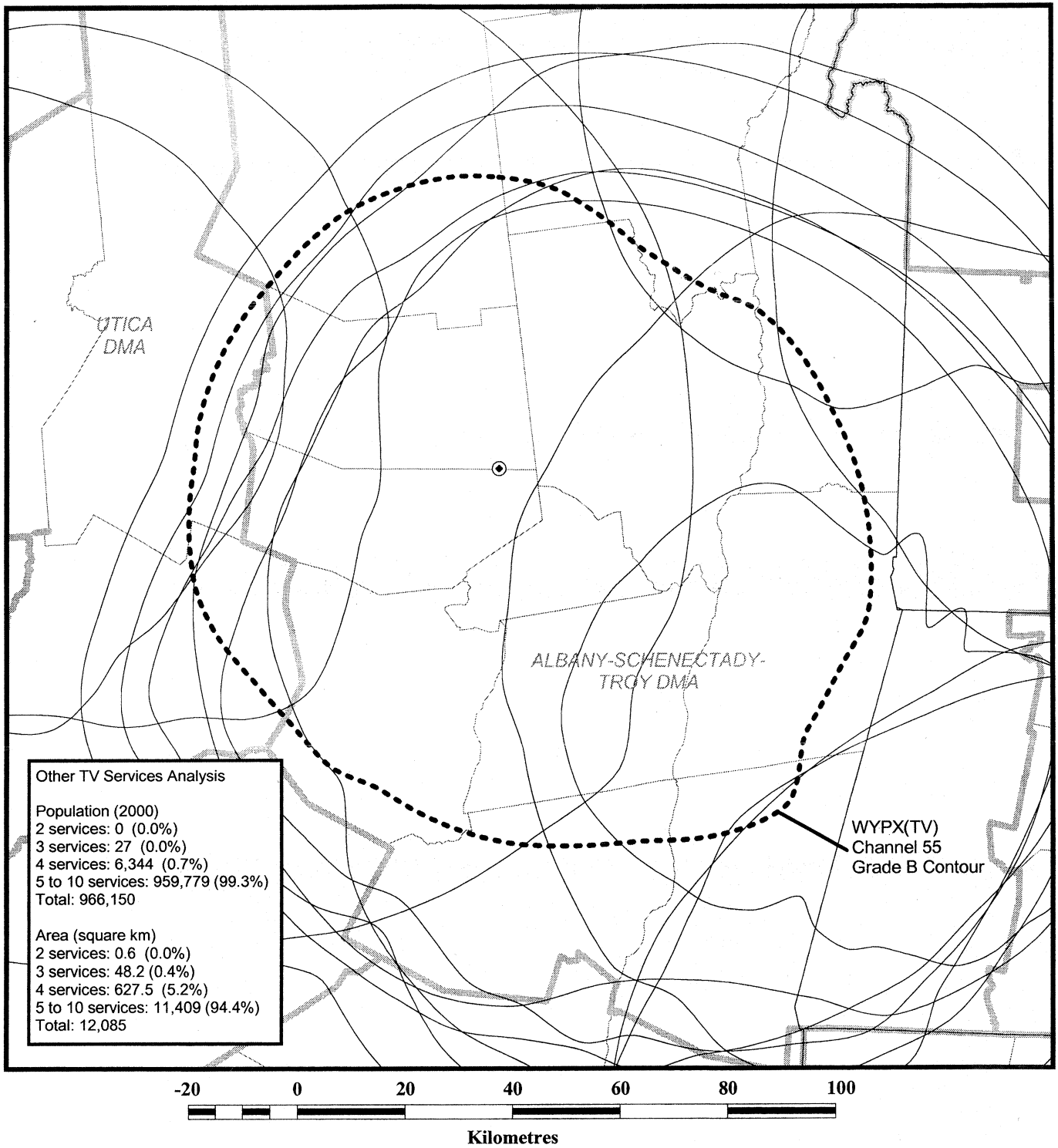
This statement was prepared by me or under my direction and it is true and correct to the best of my knowledge and belief.



Louis Robert du Treil, Jr., P.E.

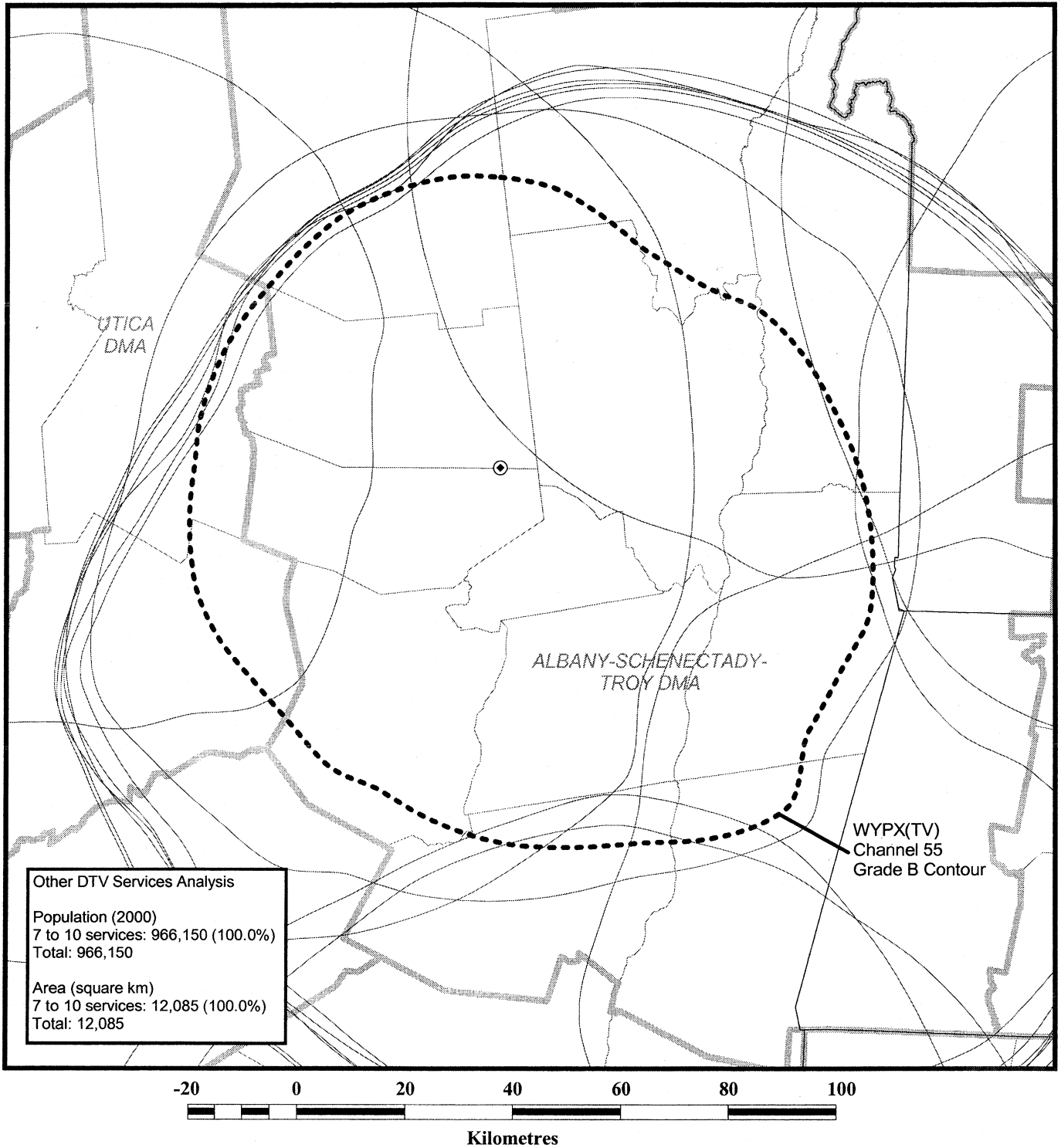
du Treil, Lundin & Rackley, Inc.
201 Fletcher Ave.
Sarasota, Florida 34237

March 21, 2007



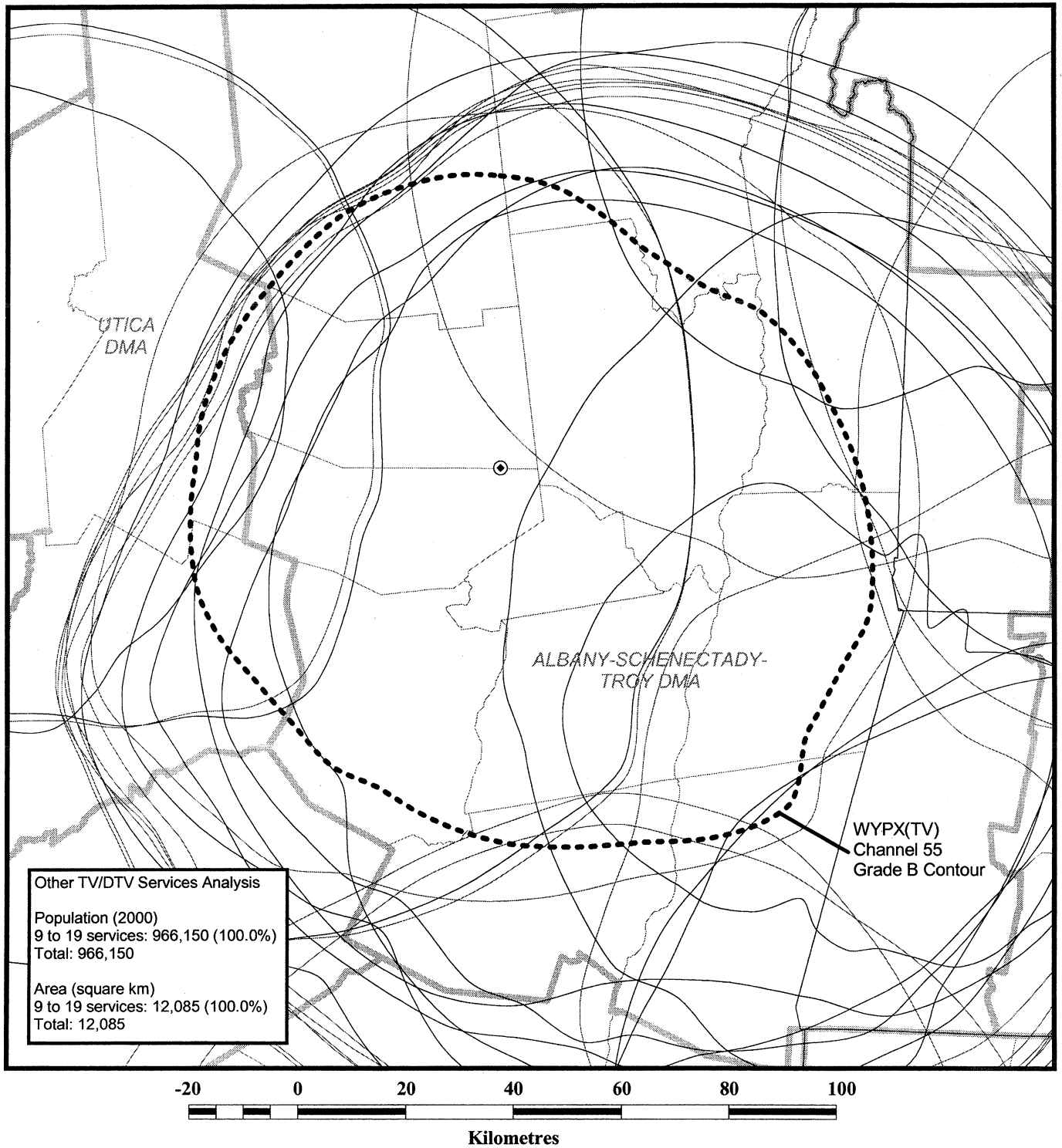
OTHER FULL-SERVICE ANALOG TV SERVICES ANALYSIS FOR WYPX(TV)

duTreil, Lundin & Rackley, Inc. Sarasota, Florida



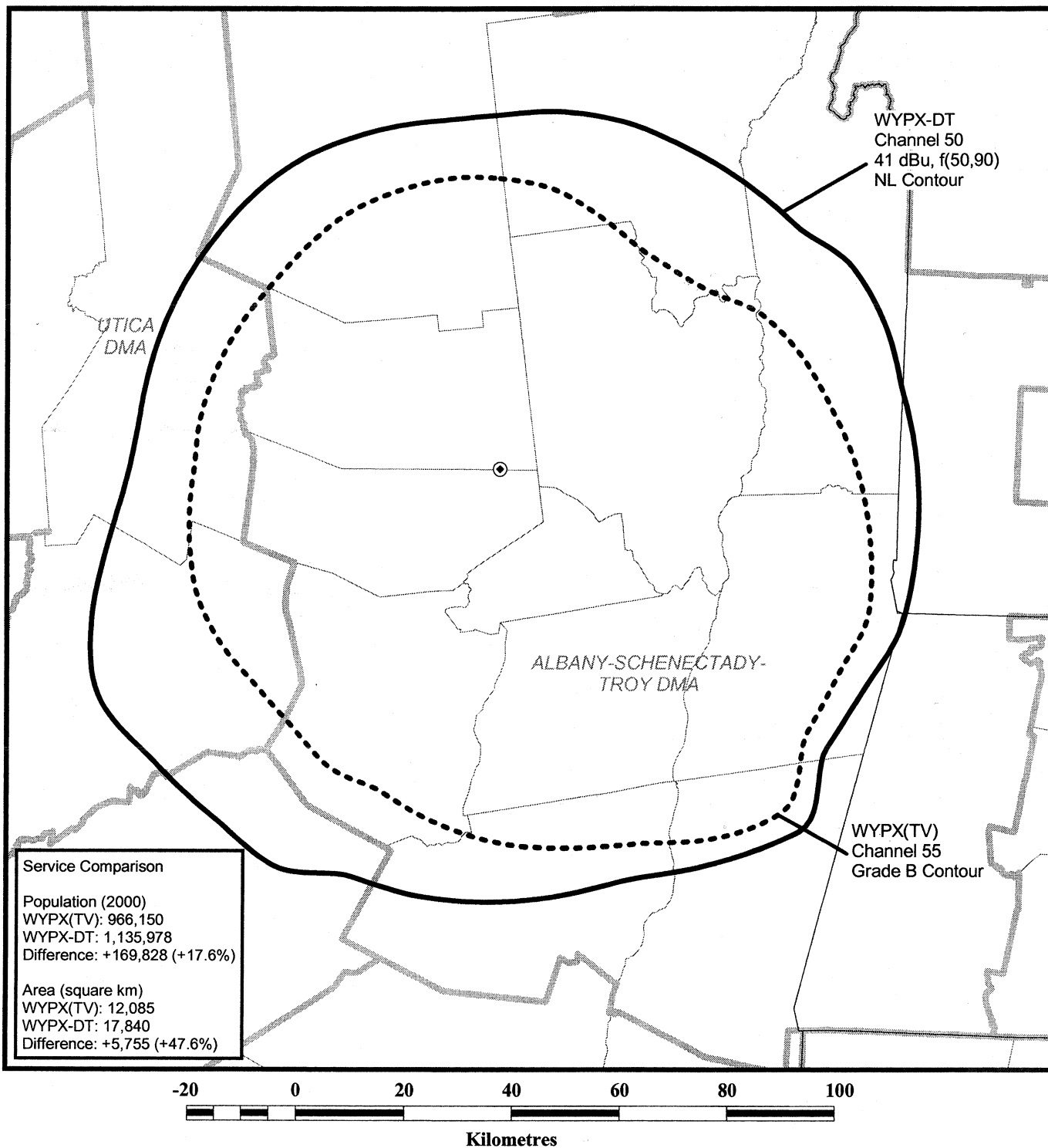
OTHER FULL-SERVICE DIGITAL TV SERVICES ANALYSIS FOR WYPX(TV)

duTreil, Lundin & Rackley, Inc. Sarasota, Florida



OTHER FULL-SERVICE ANALOG & DIGITAL TV SERVICES ANALYSIS FOR WYPX(TV)

duTreil, Lundin & Rackley, Inc. Sarasota, Florida



SERVICE COMPARISON FOR WYPX(TV) AND WYPX-DT

duTreil, Lundin & Rackley, Inc. Sarasota, Florida

**TECHNICAL STATEMENT
CONCERNING OTHER TELEVISION
SERVICES ANALYSIS FOR WYPX(TV)**

Stations Considered in Other Services Analysis

Call Sign	City	State	Channel
DTV Stations			
WXXA-T	ALBANY	NY	7
WVER	RUTLAND	VT	9
WWLP	SPRINGFIELD	MA	11
WNYT	ALBANY	NY	12
WNNE	HARTFORD	VT	25
WTEN	ALBANY	NY	26
WTBY-T	POUGHKEEPSIE	NY	27
WKTV	UTICA	NY	29
WUTR	UTICA	NY	30
WMHT	SCHENECTADY	NY	34
WRGB	SCHENECTADY	NY	39
WCWN	SCHENECTADY	NY	43
WRNN-T	KINGSTON	NY	48
WEKW-T	KEENE	NH	49
WYPX	AMSTERDAM	NY	50
TV Stations			
WKTV	UTICA	NY	2
WFSB	HARTFORD	CT	3
WRGB	SCHENECTADY	NY	6
WTEN	ALBANY	NY	10
WNYT	ALBANY	NY	13
WMHT	SCHENECTADY	NY	17
WCDC-T	ADAMS	MA	19
WUTR	UTICA	NY	20
WXXA-T	ALBANY	NY	23
WVER	RUTLAND	VT	28
WFXV	UTICA	NY	33
WVTA	WINDSOR	VT	41
WCWN	SCHENECTADY	NY	45
WNYA	PITTSFIELD	MA	51
WTIC-T	HARTFORD	CT	61