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In Reply Refer to:

1800B3-AJR/DD

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In Re: KTIA-FM, Boone, Iowa
Facility ID No. 6417
File No: BPH-20121113AMW

Dear Counsel:

We have before us a minor change application, as amended (the “Application”),¹ filed by Truth Broadcasting Corp. (“Truth Broadcasting”), licensee of Station KTIA-FM, Boone, Iowa. We also have before us a pleading styled as a Petition for Reconsideration (the “Petition”) filed by Truth Broadcasting on July 8, 2013, as well as various related pleadings.² The Petition seeks review of a staff letter, notifying Truth Broadcasting of deficiencies in the Application and providing an opportunity to file a curative amendment.³ For the reasons discussed below, we dismiss the Petition as a petition for reconsideration, consider the Petition and related pleadings as responses to the Deficiency Letter, grant the Objection to the extent indicated herein, and dismiss the Application.

Background. The Application proposes to modify the license of Station KTIA-FM from Channel 257A at Boone, Iowa, to Channel 257A at Huxley, Iowa, and to relocate the station’s

¹ See File No. BPH-20121113AMW.

² These pleadings include: (1) an Opposition to Petition for Reconsideration filed on July 23, 2013, by Saga Communications, Inc. (“Saga”) (the “Opposition”); (2) a Consent Motion for Extension of Time filed on July 26, 2013, by Truth Broadcasting; and (3) a Reply to Opposition to Petition for Reconsideration filed on August 19, 2013, by Truth Broadcasting. We also have before us one remaining issue from an Informal Objection to the Application (the “Objection”) that was filed by Saga on February 19, 2013, and was mostly disposed of earlier in this proceeding.

³ Letter to James P. Riley, Esq., and Gary S. Smithwick, Esq., (MB Jun. 6, 2013) (“Deficiency Letter”).

transmitter site pursuant to Section 73.3573(g) of the Commission's Rules.⁴ To facilitate this proposal, the Application requests, and we issued, an *Order to Show Cause* to the licensee of Station KPUL(FM), Winterset, Iowa, for an involuntary channel change from Channel 258A to Channel 269A.⁵ In support of its Application, Truth Broadcasting contends that (1) the reallocation would result in a preferential arrangement of allotments under the FM Allotment Priorities as a first local service at Huxley (population 3,317) (Priority 3) is preferred over the retention of a fourth local service at Boone (population 12,661) (Priority 4);⁶ (2) the proposal should not be considered as a "move-in" to either the Des Moines or Ames, Iowa, urbanized areas under *Rural Radio* because there are no existing towers in the area from which Station KTIA-FM could be modified to cover 50 percent or more of these urbanized areas;⁷ and (3) the station relocation would provide a net gain of service to 247,399 persons.⁸ Accordingly, Truth Broadcasting urges grant of its Application.

On February 19, 2013, Saga, licensee of six radio stations in the Des Moines market, filed the Objection.⁹ The Objection argued that (1) the proposal should be subject to the rebuttable presumption and treated as a move-in to the Ames or Des Moines urbanized areas because Saga has identified two towers, Antenna Structure Registration ("ASR") #1235167 and ASR #1207229, from which KTIA-FM could serve Huxley and, at the same time, place a city-grade signal over 50 percent of either the Ames or the Des Moines Urbanized Area;¹⁰ and (2) in the absence of a rebuttal to the presumption, the Application would not result in a preferential arrangement of allotments as the retention of a fourth local service at Boone under Priority (4) should be preferred over the addition of a 17th local service to the Des Moines urbanized area or a 6th local service to the Ames urbanized area under Priority (4). Accordingly, Saga requested that the Application be dismissed.

⁴ See 47 C.F.R. § 73.3573(g) (permitting an FM station to change its community of license without providing an opportunity for competing expressions of interest provided, *inter alia*, the reallocation would result in a preferential arrangement of allotments).

⁵ See *Letter to Positive Impact Media, Inc.*, Ref. 1800B3-EP, (MB, Jan. 8, 2013) ("OSC").

⁶ See File No. BPH-20121113AMW, Attachment 36, Section 307(b) Legal Exhibit at 2.

⁷ See File No. BPH-20121113AMW, Attachment 36, Section 307(b) Engineering Exhibit at 2, *citing 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 Rule Making, 26 FCC Rcd 2556, 2567 (2011) (subsequent history omitted) ("*Rural Radio*") (establishing a rebuttable presumption "that, when the community proposed is located in an urbanized area or could through a minor modification application, cover 50 percent of an urbanized area, we will treat the application, for Section 307(b) purposes as proposing service to the entire urbanized area rather than the named community of license").

⁸ Specifically, Truth Broadcasting alleges that there would be a gain of service to 281,477 persons and a loss of service to 34,078 persons, and the entire loss area and population would continue to receive at least ten services. See File No. BPH-20121113AMW, Attachment 36, Section 307(b) Engineering Exhibit at 3-4.

⁹ Truth Broadcasting filed an Opposition to Informal Objection on March 18, 2013, and Saga filed a Reply to Opposition to Informal Objection on April 17, 2013.

¹⁰ See Saga's Informal Objection at 4-5.

In the *Deficiency Letter*, we found that neither of the towers identified by Saga could be used to provide 70 dBu coverage to 50 percent or more of the Ames or Des Moines urbanized areas and at the same time provide a city grade signal to Huxley.¹¹ However, our staff engineering analysis identified an additional site that would meet both of these criteria.¹² Accordingly, we denied the Objection in part and provided a 30-day period for Truth Broadcasting to amend its Section 307(b) showing by rebutting the urbanized area service presumption.¹³

In its Petition, Truth Broadcasting contends that the *Deficiency Letter* should be reviewed and reversed because the staff erred in determining that KTIA-FM could operate as Class C3 facility. Truth Broadcasting contends that there is no theoretical Class C3 allotment site¹⁴ that fully complies with the spacing requirements of Sections 73.207¹⁵ and the city grade coverage requirement of 73.315.¹⁶ In the absence of such a site, Truth Broadcasting claims that KTIA-FM could not be modified to provide a city-grade signal over 50 percent of the Des Moines urbanized area and thus the urbanized area service presumption does not apply to the Application. Accordingly, Truth Broadcasting concludes that no amendment is needed and the Application should be granted.

In its Opposition, Saga alleges that (1) the Petition should be dismissed without reaching the merits because it is an impermissible request for reconsideration of an interlocutory action under Section 1.106(a); (2) the Application should be dismissed for failure to prosecute under Section 73.3568 for failure to respond to the *Deficiency Letter*; and (3) in the alternative, if the Commission grants the Application, it should impose special operating conditions to require Truth Broadcasting to maintain KTIA-FM as a Huxley station.¹⁷

In its Reply, Truth Broadcasting argues that the Commission should (1) consider the merits of the Petition regardless of any procedural flaws as the public interest is better served by processing

¹¹ We explained that Saga's argument about ASR #1235167 is dependent upon the use of an alternative propagation methodology, Longley-Rice, and, under established Commission policy, an objector cannot rely upon an alternative propagation methodology to rebut an applicant's showing that uses the standard prediction method. *See Deficiency Letter* at 3. Likewise, we found that the use of ASR #1207229 was not feasible because it requires relocating other tower appurtenances. *Id.*

¹² In particular, the staff engineering analysis determined that at ASR #1017090, a directional antenna operating as a Class C3 facility would provide a 70 dBu signal over 50 percent of the Des Moines urbanized area. *See id.*

¹³ The second issue raised by the Objection was not ripe for consideration in the *Deficiency Letter* but will be addressed *infra* at 5-6.

¹⁴ *See* Truth Broadcasting's Petition for Reconsideration, Statement of William J. Getz.

¹⁵ *See* 47 C.F.R. § 73.207.

¹⁶ *See* 47 C.F.R. § 73.315. *See also* 47 C.F.R. § 73.203, Note (requiring fully spaced allotment site without resort to contour protection provisions of Section 73.215).

¹⁷ Saga suggests that (1) no future application for modification of KTIA-FM's facilities be entertained unless the facilities specified in the construction permit for ASR #1265420 are first constructed and licensed; and (2) KTIA-FM cannot move to another site that would provide a city-grade signal over 50 percent or more of the Ames or Des Moines urbanized areas, using the standard prediction method, until February 1, 2021, the end of its current license term. *See* Saga's Opposition at 8.

the Application based upon accurate information rather than requiring an unnecessary amendment; (2) not dismiss the Application for failure to prosecute because Truth Broadcasting is actively prosecuting its Application by filing the Petition; and (3) not impose Saga's two requested conditions because it would lack bargaining power to secure commercially reasonable lease terms if it was limited to a single tower location and because the conditions are unreasonably broad and long-lasting. However, in the interest of resolving this case, Truth Broadcasting states that it would be willing to accept a less restrictive condition.¹⁸ Accordingly, Truth Broadcasting requests the grant of its Application.

Discussion. Procedure. As a threshold matter, we address three procedural issues. First, Section 1.106(a) generally prohibits petitions for reconsideration of interlocutory orders.¹⁹ The *Deficiency Letter* is an interlocutory order because it did not deny or grant the application. Consequently, the *Deficiency Letter* is not subject to reconsideration at this stage, and we will dismiss the Petition as a petition for reconsideration. However, in this case, we will consider the Petition, as well as the related pleadings, as responses or comments to the *Deficiency Letter*.²⁰ Second, although it is the policy of the Commission that motions for extension of time will not be routinely granted, we will grant Truth Broadcasting's request for a brief extension of time and consider its Reply because Saga has consented and it will facilitate the resolution of this case on a full and complete record.²¹ Third, we will not dismiss the Application for failure to prosecute under Section 73.3568 because Truth Broadcasting timely filed a response to the *Deficiency Letter* and is thus actively prosecuting the Application.²²

Coverage of Urbanized Areas. Next, we consider Truth Broadcasting's claim that, contrary to the findings in the *Deficiency Letter*, there is no fully-spaced allotment site at which KTIA-FM could upgrade to a Class C3 facility and provide a 70 dBu signal to 50 percent or more of the Des Moines urbanized area. Based on our own independent analysis, we agree. Even though we found a transmitter site, ASR #1017090, at which KTIA-FM could operate as a Class C3 station, our analysis confirms that there is no fully-spaced allotment site, and, therefore, that the allotment of a Class C3 station at Huxley would not be possible. However, upon further review, our staff engineering analysis reveals that at a site previously suggested by Saga, ASR #1207229, KTIA-FM could operate on Channel 257A with a directional antenna and cover all of Huxley and 50

¹⁸ Truth Broadcasting suggests that any future modification of KTIA-FM's facilities could be conditioned on the construction and licensing of the facilities specified in the Application, but if the proposed antenna placement on ASR #1265420 is not available on commercially reasonable terms, Truth Broadcasting could specify a different site provided that it would provide a 70 dBu signal to Huxley and not provide a 70 dBu signal over 50 percent or more of the Ames or Des Moines urbanized areas under the standard prediction method. See Truth Broadcasting's Reply at 6.

¹⁹ See 47 C.F.R. § 1.106(a).

²⁰ See, e.g., *Harry F. Cole, Esq. and Scott Woodworth, Esq.*, Letter, 27 FCC Rcd 9295, 9298 (MB 2012) (dismissing as procedurally defective a petition for reconsideration of an interlocutory action but also examining the merits).

²¹ See *Moncks Corner, Kiawah Island, and Sampit, North Carlina*, Memorandum Opinion and Order, 15 FCC Rcd 8973 (granting extension of time with consent of opposing counsel).

²² See, e.g., *Mark Lipp, Esq. and Barry A. Friedman, Esq.*, 27 FCC Rcd 15190, 15194 (MB 2012) (finding no failure to prosecute where applicant, *inter alia*, responded to official staff correspondence regarding application).

percent or more of the Ames urbanized area with a 70 dBu signal.²³ We recognize that, in the *Deficiency Letter*, we previously rejected the use of this tower because it was not feasible to remove antenna appurtenances at the top of the tower. However, Truth Broadcasting has acknowledged the possible use of this tower at the 195-foot level when the Application was filed.²⁴ Accordingly, we find that KTIA-FM could be modified to cover 50 percent or more of the Ames urbanized area and, therefore, the Application is subject to the urbanized area service presumption.

Conditions. To prevent a “move-in” by KTIA-FM to the Des Moines or Ames urbanized areas, Saga has suggested that we impose operating conditions, seeking to ensure that KTIA-FM remains a Huxley, as opposed to an Ames or Des Moines, station. However, we believe that the conditions suggested by Saga are unwarranted. As a preliminary matter, we are unaware of any precedent for the imposition of such conditions. More importantly, Saga has not demonstrated why it would be appropriate to depart from the rules and processing policies that the Commission has established to effectuate Section 307(b) requirements. In these circumstances, we decline to consider the imposition of such conditions.

Preferential Arrangement of Allotments. We next must determine whether the Application would result in a preferential arrangement of allotments under the FM Allotment Priorities.²⁵ In the absence of a rebuttal to the urbanized area service presumption, Truth Broadcasting cannot claim a first local service under Priority (3). As a result, we compare the existing and proposed arrangement of allotments under Priority (4). We note that Truth Broadcasting also did not submit a Priority (4) comparison between Boone and the Ames or Des Moines urbanized areas, choosing instead to rely upon its engineering showing that the presumption does not apply. However, based upon the record before us, we agree with Saga’s analysis that the retention of a fourth local service at Boone is preferred over at least a seventh local service in the Ames urbanized area.²⁶ While

²³ Specifically, operating with facilities of 6 kW ERP/ 195 feet AGL (61 meters HAAT and 352 AMSL) and a directional antenna pattern (Antenna ID 113614), the KTIA-FM 70 dBu contour could cover 60.5 percent of the Ames urbanized area. We arrived at this conclusion by examining Truth Broadcasting’s claim in its Opposition to Informal Objection that, on this tower (ASR #1207229) with facilities of 6 kW ERP/195 feet AGL (352 meters AMSL), the predicted 70 dBu contour would cover 45.8 percent of the Ames urbanized area, using a directional antenna pattern (Antenna ID 114555) specified in Exhibit D. See Truth Broadcasting’s Opposition to Informal Objection, Statement of William Getz at 4-5 and Exhibit D. Our analysis confirms that using Truth Broadcasting’s antenna pattern, KTIA-FM would cover 45 percent of the Ames urbanized area. However, by using a different directional pattern (Antenna ID 113614) on this tower, KTIA-FM could provide the necessary protection to all adjacent stations and 70 dBu service to more than 50 percent of the Ames urbanized area. We believe that it is appropriate to consider alternative directional antenna patterns because the Commission indicated in *Rural Radio* that it “expect[s] all applicants and allotment proponents to consider widely-used techniques, such as directional antennas and contour protection, when certifying that the proposal could not be modified to provide a principal signal over the community of license and 50 percent or more of an urbanized area.” See *Rural Radio*, 26 FCC Rcd at 2575, n.97. We have attached, as an exhibit to this *Letter*, polar plots of the directional antenna patterns utilized by Truth Broadcasting and the staff in their engineering studies.

²⁴ See Truth Broadcasting’s Opposition to Informal Objection, Statement of William Getz at 4.

²⁵ The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to Priorities 2 and 3. See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982).

²⁶ See, e.g., *James P. Riley, Esq.*, Letter, 27 FCC Rcd 12318 (MB 2012) (finding, under Priority 4, that retention of fourth local service at Boone is preferred over 17th local service to the Des Moines urbanized area); *Bryan Broadcasting*, Letter, 27 FCC Rcd 8058, 8064 (MB 2012) (dismissing application and finding

there would be a net gain in service to 247,399 persons, we do not believe that this gain in service is decisionally significant in this case because both the gain and loss areas are well served with at least ten services. Accordingly, we will dismiss the Application.²⁷

As a final matter, Truth Broadcasting contends that, since the *Deficiency Letter*'s call for an amendment was erroneous, the *Deficiency Letter* should not count as the "one opportunity for a corrective amendment" under Section 73.3522.²⁸ We disagree. The *Deficiency Letter* identified an erroneous coverage claim in the Application that necessitated a corrective amendment. Further, we explicitly notified Truth Broadcasting that this request constituted its one opportunity to amend²⁹ pursuant to Section 73.3522, which also applies to any deficiency not specifically identified by the staff."³⁰ Accordingly, we do not believe that the public interest would be served by entertaining any further amendment.

Conclusion. IT IS ORDERED that the Petition for Reconsideration filed by Truth Broadcasting Corp. IS DISMISSED as a petition for reconsideration, and the Informal Objection filed by Saga Communications of Iowa, LLC IS GRANTED to the extent indicated herein. IT IS FURTHER ORDERED that the application, File No. BPH-20121113AMW, filed by Truth Broadcasting Corp., IS DISMISSED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

Attachment
cc: Positive Impact Media, Inc.

that retention of second local service at one community is preferred under Priority (4) over addition of 12th local service to an urbanized area).

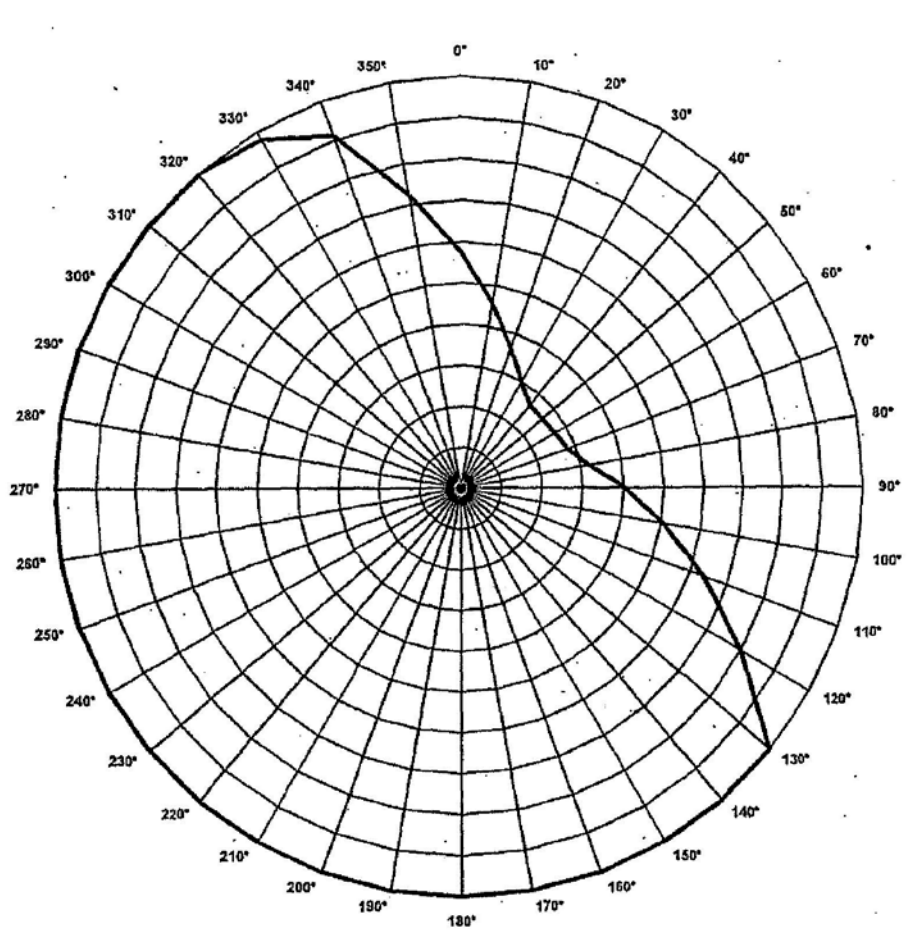
²⁷ In light of this action, there is no need for an involuntary channel change by Station KPUL(FM), Winterset, Iowa, which did not respond to the OSC.

²⁸ See Truth Broadcasting's Petition for Reconsideration at 2 n.2.

²⁹ See *Deficiency Letter* at 4 (stating that "this letter constitutes the one opportunity for corrective amendment").

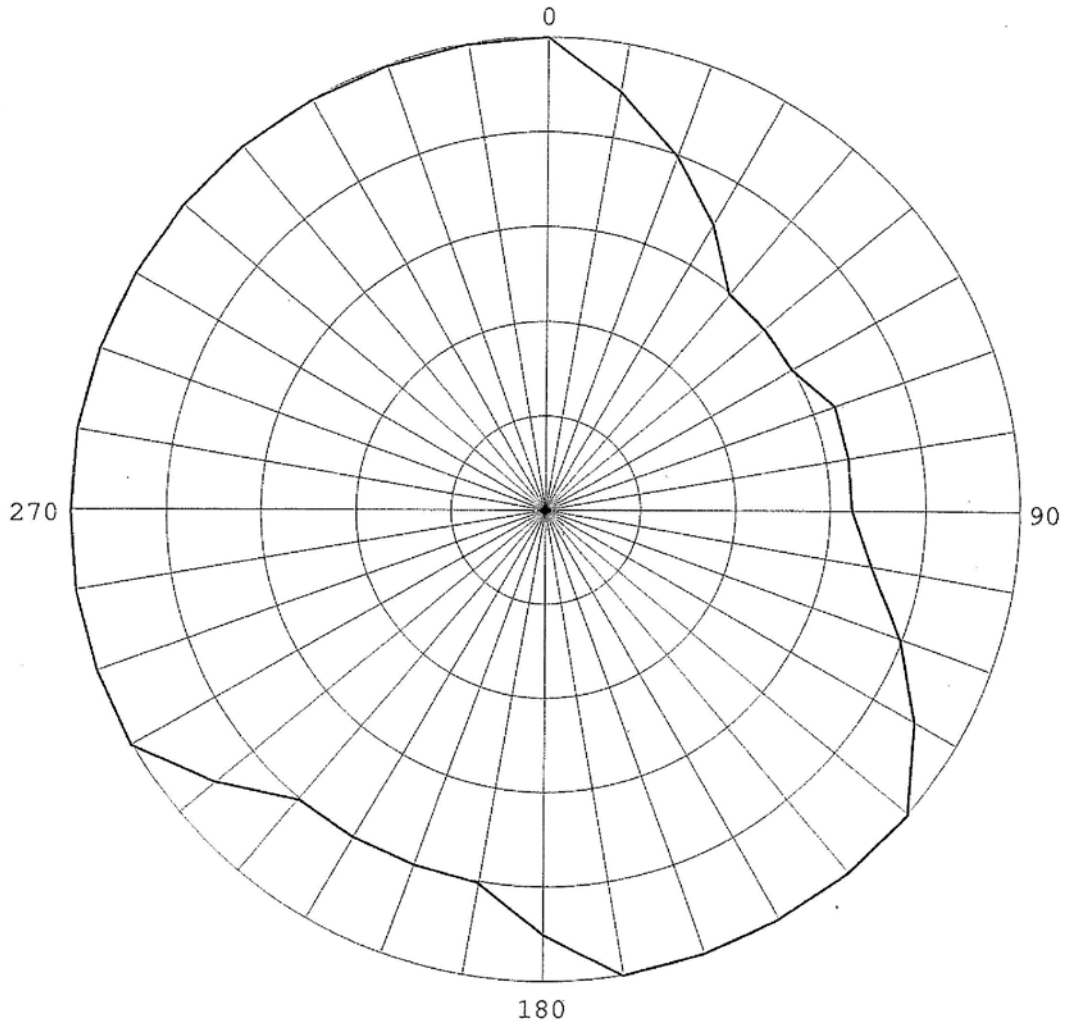
³⁰ See 47 C.F.R. § 73.3522(c)(2).

TRUTH BROADCASTING DIRECTIONAL PATTERN
Antenna ID 114555
Make - HUX
Model TBC - DA



Azimuth (deg T.)	Relative Field	ERP (kilowatts)	ERP (dBk)
0	0.575	1.984	2.975
10	0.457	1.253	0.980
20	0.363	0.791	-1.020
30	0.300	0.540	-2.676
40	0.264	0.418	-3.786
50	0.262	0.412	-3.852
60	0.268	0.431	-3.656
70	0.280	0.470	-3.275
80	0.320	0.614	-2.115
90	0.401	0.965	-0.156
100	0.505	1.530	1.847
110	0.636	2.427	3.851
120	0.800	3.840	5.843
130	1.000	6.000	7.782
140	1.000	6.000	7.782
150	1.000	6.000	7.782
160	1.000	6.000	7.782
170	1.000	6.000	7.782
180	1.000	6.000	7.782
190	1.000	6.000	7.782
200	1.000	6.000	7.782
210	1.000	6.000	7.782
220	1.000	6.000	7.782
230	1.000	6.000	7.782
240	1.000	6.000	7.782
250	1.000	6.000	7.782
260	1.000	6.000	7.782
270	1.000	6.000	7.782
280	1.000	6.000	7.782
290	1.000	6.000	7.782
300	1.000	6.000	7.782
310	1.000	6.000	7.782
320	1.000	6.000	7.782
330	0.979	5.751	7.597
340	0.912	4.990	6.981
350	0.724	3.145	4.976

STAFF ENGINEERING ANALYSIS DIRECTIONAL PATTERN



FMSTUDY

Antenna Make: HUX Model: HUXDA ID: 113614

City: HUXLEY State: IA Country: US

Channel: 257 Class: A

Call: KTIA File: NOFILE

Pattern is rotated 0 degrees from the database tabulations

Outer Circle is relative field = 1.0 each division is 0.2

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