

## **REQUEST FOR WAIVER OF THE COMMISSION'S RULES**

Pursuant to §1.3 of the Commission's Rules, Applicant hereby requests a waiver of §73.1675(a)(1)(ii). The waiver request described herein would provide a much needed power increase relief vehicle to broadcasters of the lowest effective radiated power classes, who are operating under both current and anticipated permanent adverse effects related to the SARS-CoV-2 virus outbreak. Low Power FM, FM Translator, and FM Class A, B1, and C3 licensees (collectively, “Lower Powered Broadcasters”) depend primarily upon outdoor radio reception. As more listeners are coerced or opt to telework, sufficient direct over-the-air reception within buildings, where coverage is already attenuated, will be of significantly increased importance to Lower Powered Broadcasters in particular. A waiver-based FM Auxiliary license option, as outlined below, would allow Lower Powered Broadcasters to seek modest power increases on a secondary engineering status basis in order achieve enhanced indoor reception penetration, thus overcoming outbreak-related short-term and anticipated permanent lost outdoor listenership. Commission grant of the waiver request described herein would promote this easily achievable and immediate goal via existing regulatory framework, consuming only unused spectrum and *void of any interference consequences whatsoever*, consistent with the Public Interest.

In order to facilitate the waiver request described herein, Applicant proposes the following special narrow and articulable conditions by which Lower Powered Broadcasters may seek immediate power increase relief via the existing FM Auxiliary permitting process:

- 1) §73.1675(a)(1)(ii) waivers (or equivalent) will be limited to Low Power FM (“LPFM”), FM Translator, FM Class A, and “sub-maximum class” FM Class B1/C3 applicants.
- 2) A §73.1675(a)(1)(ii) waiver applicant may only apply for an auxiliary authorization from its current antenna location and antenna height above average terrain (“HAAT”). Any proposal for an alternate tower site will not be accepted. Only omni-directional FM antenna pattern licensees with omni-directional pattern proposals may apply.

- 3) Applicants may not use a §73.1675(a)(1)(ii) waiver in order to comply with the community of license coverage requirements of §73.315 (or equivalent). The conditions of §73.315 must be satisfied through an applicant's existing primary authorization. Any proposal for an alternate community of license will not be accepted.
- 4) Effective radiated power (“ERP”) levels for §73.1675(a)(1)(ii) waivers will be restricted to: (i) the lesser of 250 Watts or a predicted F(50,50) 60 dBμ primary service contour of 7.1 kilometers for LPFM applicants; (ii) 500 Watts for FM Translator applicants, and; (iii) the lesser of 25,000 Watts or a predicted F(50,50) 60 dBμ primary service contour of 39.1 kilometers for FM Class A and sub-maximum FM Class B1/C3 applicants. In no event will an application be accepted that specifies an ERP in excess of 25,000 Watts.
- 5) FM Auxiliary applicants seeking a §73.1675(a)(1)(ii) waiver may propose facilities that receive, but not cause prohibited interference overlap to adjacent license authorizations and must provide a contour overlap engineering exhibit based upon the Commission's standard FM Curves signal propagation model demonstrating such.
- 6) §73.1675(a)(1)(ii) waivers will be processed on a “first come, first served” basis.

Any FM Auxiliary authorization utilizing a §73.1675(a)(1)(ii) waiver would ultimately be secondary in status to all other broadcast services. The Commission would resolve interference complaints from other broadcast licensees in the same way that it currently processes FM Translator interference claims. If a FM Auxiliary authorization operating under a §73.1675(a)(1)(ii) waiver causes documented interference within the F(50,50) 45 dBμ signal contour of the affected LPFM, FM Translator, or full power station licensee, and the affected licensee can support its claim with the no fewer than six unresolved listener complaints, then the FM Auxiliary authorization of the interfering station will be cancelled and the licensee will immediately return to the original licensed parameters of its main authorization. Given the above and due to its secondary status, a FM Auxiliary §73.1675(a)(1)

(ii) waiver-based authorization would not inhibit the upgrade or relocation opportunity of a neighboring LPFM, FM Translator, or full power station licensee. The §73.1675(a)(1)(ii) waiver-based auxiliary authorization would be an immensely beneficial tool available to Lower Powered Broadcasters, with absolutely no lasting detriment or consequence to all other licensees.

Due to a *sudden and unforeseeable* shift in listening habits due to the SARS-CoV-2 outbreak, a situation which constitutes the very definition of “special” or “unique circumstances” that the Commission requires for grant of a waiver request, Lower Powered Broadcasters need the specific form of immediate relief described herein. According to Edison Research, over half of daily radio listeners consume the medium only in their vehicle (*Edison Research, “Share Of Ear” Report, August, 2018*). As of August, 2018, prior to the SARS-CoV-2 pandemic, Edison found that “54% of radio listeners listen to radio only in the car,” and in *no other location*, including 62% of listeners between the ages of 13 and 34 years old. Subsequent to the virus outbreak, a Cumulus Media Community Survey taken between March 31 – April 8, 2020 found that just 47% of radio listeners who previously worked outside of the home were still commuting to work. Taken together, broadcasters have potentially lost access to approximately 28% of their audience in the form of a vanished commuting listeners, all in a matter of weeks.

The outlook for Lower Powered Broadcasters is not anticipated to improve in the foreseeable future. A Brookings Institution analysis published in April, 2020 stated that, “telecommuting will likely continue long after the pandemic,” and “the outbreak is accelerating the trend toward telecommuting, possibly for the long term.” Licensees with larger geographic footprints and higher power levels may be able to withstand this sudden and dramatic shift in listening, as those stations are better able to overcome signal attenuation in order to penetrate buildings for now-teleworking listeners. The loss of the commuting listener base disproportionately affects Lower Powered Broadcasters, however, who depend significantly upon outdoor reception in vehicles in order to retain audience share.

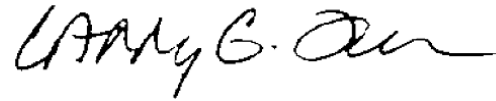
Although larger broadcasters may ultimately opt to promote non-broadcast digital streaming services to reach now-teleworking listeners, Lower Powered Broadcasters often lack the technical and financial resources to implement such technologies. For them, direct, over-the-air broadcast listenership losses are catastrophic, perhaps representing a long-term loss at best and permanent one at worst.

In the past, the Commission has asserted that consideration of a waiver request must be due to special and unique circumstances, and that an applicant faces “a high hurdle, even at the starting gate.” Applicant respectfully asserts that the present and anticipated lasting sudden and unpredictable listening pattern shift due to the SARS-CoV-2 outbreak precisely satisfies this criteria. Although there is a potential for widespread application of a waiver procedure, sometimes contrary to the preferred policy approach of the Commission, the Public Interest *would not be served* through the years-long timeframe that a traditional rulemaking effort would consume. The sudden and long-term damage that the situation has inflicted upon Lower Powered Broadcasters calls for the exact type of immediate relief that the grant of a §73.1675(a)(1)(ii) waiver request would provide.

Applicant respectfully asks that the Commission grant its application request as described herein in an expedited manner. Waiver of §73.1675(a)(1)(ii) of the Commission's Rules will allow Applicant to immediately increase in power in order to reach former commuting listeners who are now teleworking. Further, in the event that demonstrated actual interference occurs to an adjacent licensee, Applicant will immediately surrender its FM Auxiliary authorization and return to its original licensed parameters. The measures outlined herein constitute the exact type of relief that Applicant will need to remain viable due to the sudden and anticipated long-lasting or permanent impact of the SARS-CoV-2 outbreak.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

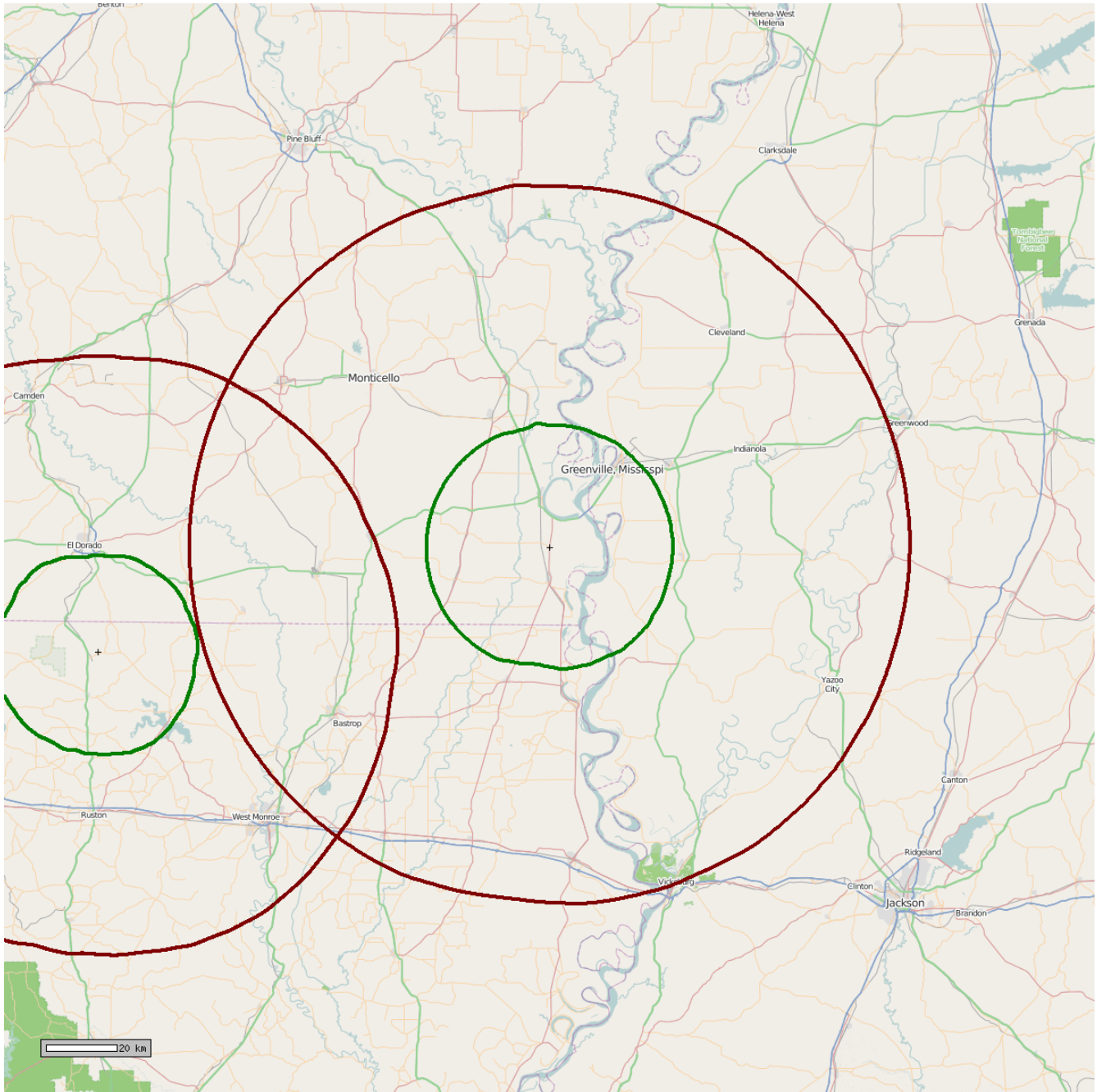
A handwritten signature in black ink, appearing to read "Larry G. Fuss". The signature is fluid and cursive, with a long horizontal stroke at the end.

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Larry Fuss, President

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## **EXHIBIT A – INTERFERENCE OVERLAP SHOWING**



**FIGURE 1:** The F(50,10) 40 dBu interfering signal contour of the proposed FM auxiliary power permit for KZYQ 101.5 FM is shown above in dark red (center), along with the F(50,50) 60 dBu primary service contour for station KLBQ 101.5 FM at Junction City, Arkansas (Facility ID 85169, green, left). As shown above, at no point does the interfering contour of the auxiliary permit overlap the primary service contour of KLBQ.

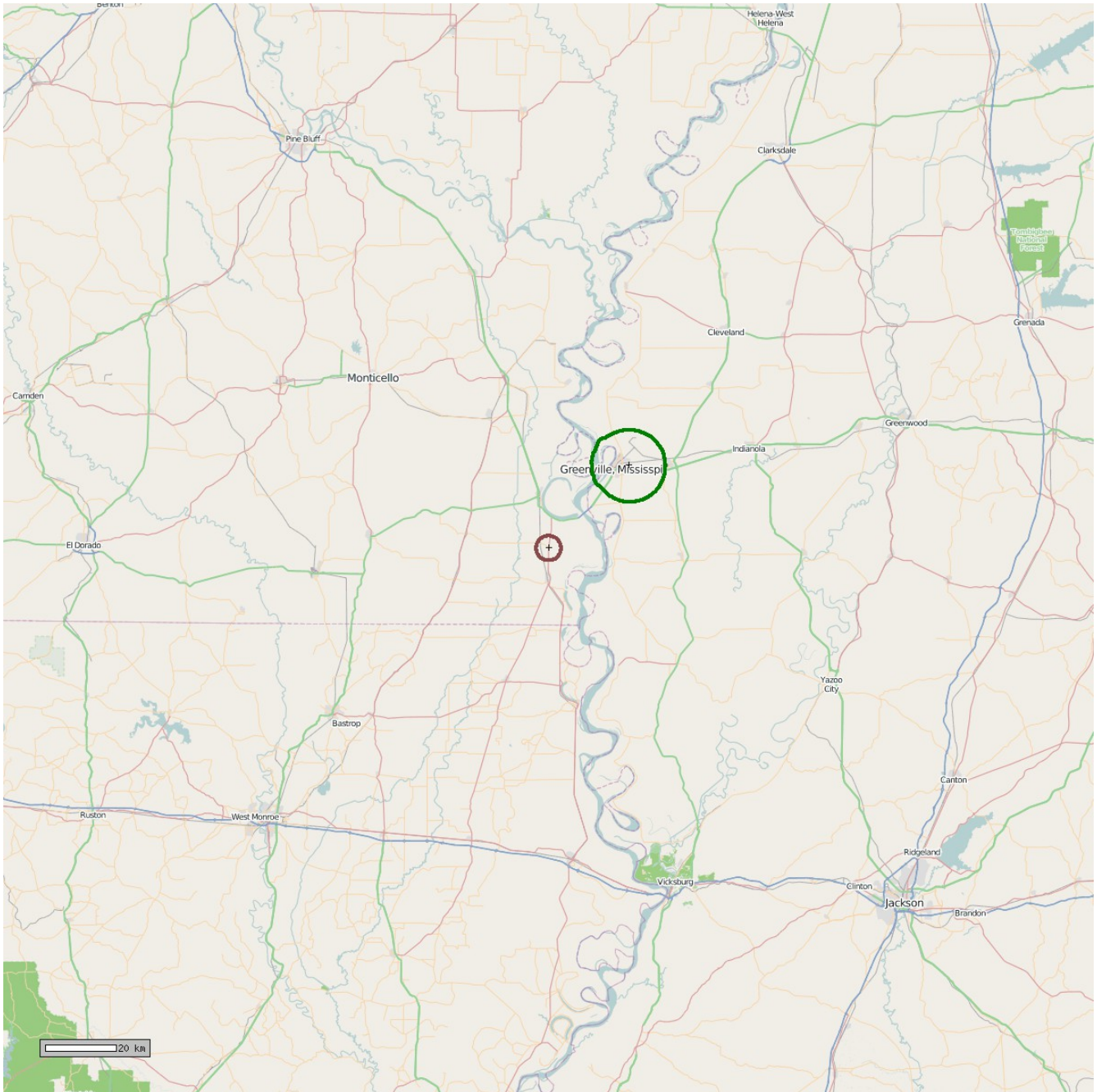


FIGURE 2: The F(50,10) 100 dBu interfering signal contour of the proposed FM auxiliary power permit for KZYQ 101.5 FM is shown above in dark red (center), along with the F(50,50) 60 dBu primary service contour for station W266BY 101.1 FM at Greenville, Mississippi (Facility ID 151062, green, center-right). As shown above, at no point does the interfering contour of the auxiliary permit overlap the primary service contour of W266BY 101.1 FM.



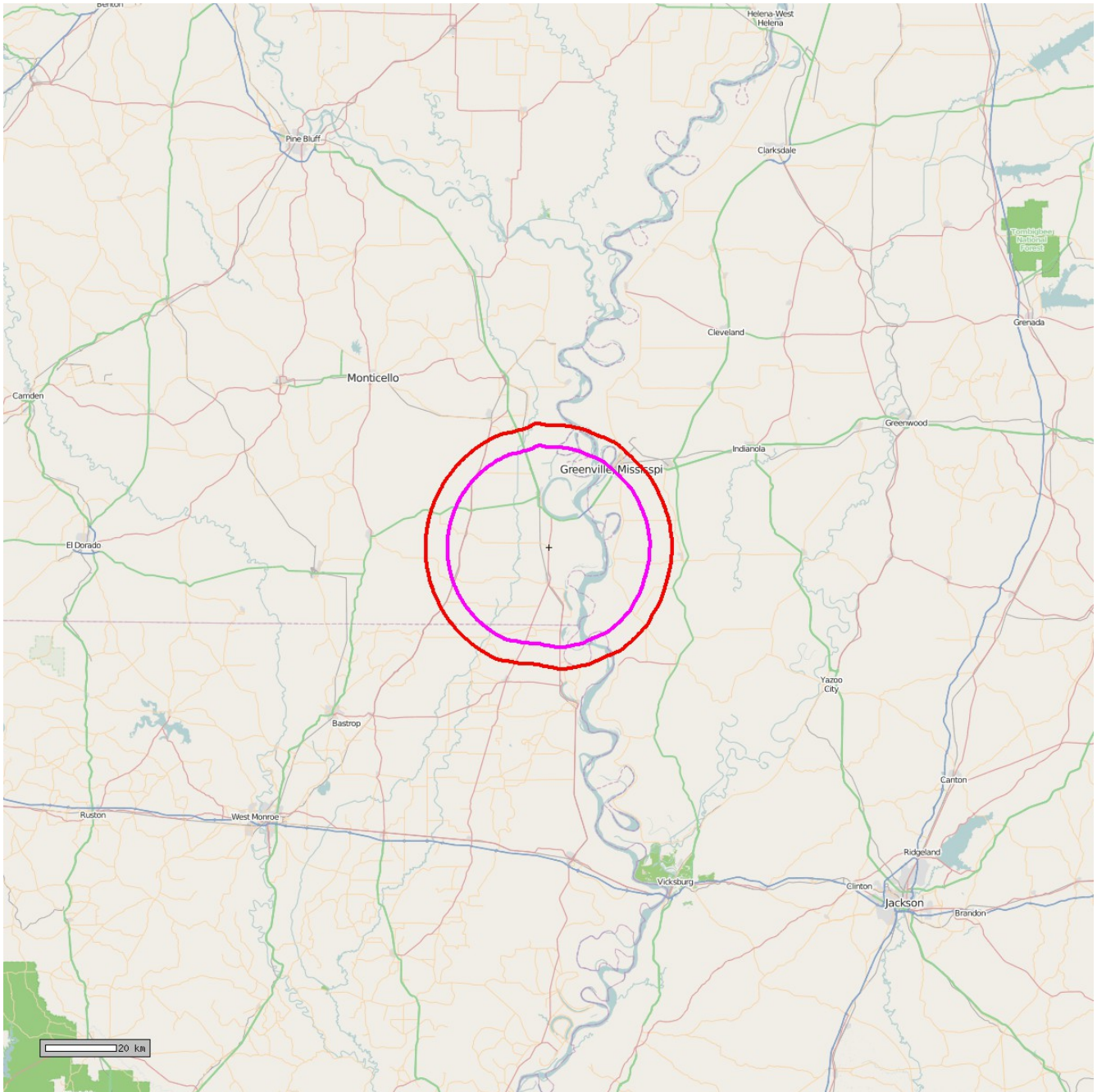


FIGURE 3: The F(50,50) 60 dBu primary service contour of the licensed KZYQ 101.5 FM facility is shown above in magenta. The proposed F(50,50) 60 dBu contour of the FM auxiliary power permit is shown in red. Although the proposed FM auxiliary contour extends beyond KZYQ's licensed FM primary service contour, in violation of Section 73.1675(a)(1)(ii), Applicant requests a waiver of 73.1675(a)(1)(ii), as described herein.