

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of:)
)
OMNI BROADCASTING, LLC)
)
Licensee of)
WTKP(FM) Port St. Joe, FL)
Facility ID No. 67579)
)
File Number: 0000082907)
Dismissed 9/15/2020)

PETITION FOR RECONSIDERATION

With this filing, Omni Broadcasting LLC (“Omni”) requests reconsideration for the dismissal of LMS application 0000082907 which was dismissed on September 15, 2020 for failure to respond to a letter dated April 15, 2020 from Nazifa Sawez, Assistant Chief of the Audio Division, Media Bureau. A copy of that letter is attached hereto for reference.

Omni never received the April 15th letter, which was solely addressed to Counsel for Omni, John C. Trent of Putbrese Hunsaker & Trent, P.C.. Counsel reports to Omni that they did not receive the letter, nor did the Engineering Contact in the application receive the letter. Hence the only way either Omni or its counsel knew of the issue was when the dismissal was made public following the September 15th action. Omni now respectfully requests reconsideration of the dismissal by the submission of this supplemental filing in a timely manner following the action.

The LMS application 0000082907 was filed pursuant to Section 73.3573(g) of the Commission’s Rules, which sets forth the requirements for modification of an FM Station license to specify a new community of license without providing an opportunity for competing expressions of interest. Omni requested a modification of the

Construction Permit BPH-20160829ACO which was active at the time of filing this modification, an action which is necessitated by the destruction of the authorized tower site, Antenna Structure Registration 1027366 which is owned by Beach TV Properties, Inc. of Panama City FL. This structure was totally destroyed by Hurricane Michael in October of 2018.

Omni has acted diligently in seeking an alternate location to return the station to operations, and made such a request in filing the modification requested in LMS application 0000082907. The mass destruction by Hurricane Michael has caused damage to, or destruction of, many commercially available towers in the area making this process long and often unfruitful. The tower site specified in LMS application 0000082907 is one of the very few, if not the only, usable tower structure to support the proposed WTKP FM antenna.

This virtual necessity of using the proposed tower location required a change of community of license, as the proposed site no longer was technically capable of providing service to Port St Joe, FL. The minor change application specified Youngstown FL as the new city of license, which has no aural service currently assigned.

In the April 15th letter it is stated:

“A staff engineering analysis determined that the existing community of Port St. Joe, Florida is not part of any urbanized area and Station WTKP(FM) currently does not cover any urbanized areas, while the proposed community of Youngstown, Florida is located inside the Panama City, Florida Urbanized Area, and the station would cover 59.8 percent of the urbanized area.”

Omni challenges this statement, on which the bulk of the rationale upon which the dismissal of the application is apparently based, as being incorrect in several aspects. While it is accurate to note that Port St Joe is not a part of any Urbanized area; the active construction permit BPH-20160829ACO for WTKP(FM) not only covers the Panama City, Florida Urbanized Area, but covers a measurably larger portion of the

Urbanized area than that proposed in LMS application 0000082907. A map depicting this Urbanized Area coverage is attached hereto to clearly demonstrate that the request in LMS application 0000082907 is less coverage of the Panama City, Florida Urbanized area than that already approved by the Commission in Application BPH-20160829ACO. Therefore, the modification of the WTKP facility for service to Youngstown, Florida is not one which adds an additional signal to the Panama City Florida Urbanized Area, but is a reduction in the Urbanized Area coverage for a facility already authorized to provide service to that Urbanized Area.

Additionally, the statement in the April 15th letter is patently incorrect in stating that Youngstown Florida is a part of the Panama City Florida Urbanized Area. Attached hereto is the US Census Bureau Map which clearly identifies both Urbanized Area and the Urbanized Cluster for the Panama City, Florida Urbanized area. While the community of Youngstown falls inside Bay County, neither of those urbanized boundaries are located within miles of Youngstown community boundaries.

Port St. Joe is not a part of the Panama City Florida Urbanized Area, yet the WTKP(FM) construction permit authorizes the station to place a community grade contour over more than 80 per cent of the Urbanized area. The minor modification of WTKP(FM) requested in LMS application 0000082907 to serve Youngstown Florida, which is also not a part of the Panama City Florida Urbanized Area, with a lesser proposed community grade contour over the Urbanized area, constitutes a preferential arrangement of allotments.

Omni has demonstrated in the original filing of LMS application 0000082907 that Youngstown Florida is qualified as an autonomous community and deserving of first aural service from WTKP(FM). Youngstown meets the Commission guidelines for allotment of WTKP(FM) to serve it, and the proposed tower location provides in excess of the Community Contour signal requirements.

As WTKP is already authorized to serve a large majority of the Panama City Florida Urbanized Area while licensed to Port St Joe, a community outside of the Urbanized Area; the minor change requested to serve Youngstown Florida is a an intra-area modification and is not subject to the scrutiny of *"Policies to Promote Rural Radio Service and to Streamline Allotment an Assignment Procedures"* aka *"Rural Radio"*

Omni herein respectfully requests reconsideration of the dismissal of LMS application 0000082907 and the speedy grant thereof to be able to return operation of WTKP (FM) and provide service to Youngstown Florida.

Attachments:

- FCC Letter Dated April 15, 2020
- Contour Map - WTKP(FM) CP versus APP
- US Census Bureau Urbanized Area Map



Federal Communications Commission
Washington, D.C. 20554

April 15, 2020

In Reply Refer to:
1800B3-RFS

John C. Trent
Putbrese Hunsaker & Trent, P.C.
200 South Church Street
Woodstock, VA 22664

Re: WTKP(FM), Port St. Joe, FL
Fac. ID No. 67579
File No: 0000082907

Dear Mr. Trent:

This letter refers to the minor change application (the "Application") of Omni Broadcasting, LLC, licensee of Station WTKP(FM), Channel 228C2, Port St. Joe, Florida. The Application proposes a community of license modification for Station WTKP(FM) from Channel 228C2 at Port St. Joe, Florida, to Channel 229C3 at Youngstown, Florida, as the community's first local service. For the reasons discussed below, we request that you amend the Application and provide additional evidence in support of the proposed modification.

Background. The Application was filed pursuant to Section 73.3573(g) of the Commission's Rules, which sets forth the requirements for modification of an FM Station license to specify a new community of license without providing an opportunity for competing expressions of interest. Among other requirements, an applicant for such a minor modification must demonstrate that the proposed change of community constitutes a preferential arrangement of allotments.¹ We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.²

Discussion. In the *Rural Radio* proceeding,³ the Commission established a rebuttable presumption applicable when a station's proposed community is located within an urbanized area, cover fifty percent or more of an urbanized area or the station could, through a minor modification application, cover fifty percent or more of an urbanized area. In such cases, we will treat the application as a proposal to serve the entire urbanized area, rather than as a proposal for local service to the proposed named community of license.

¹ See 47 C.F.R. § 73.3573(g). See also *Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License")*, Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

² *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). 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).

³ See *Policies to Promote Rural Radio Service and to Streamline Allotment an Assignment Procedures*, Second Report and Order, First Order On Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556 (2011), *recon pending* ("Rural Radio").

The proposed relocation of Station WTKP(FM), from Port St. Joe, Florida, to Youngstown, Florida would constitute a move into the Panama City, Florida Urbanized Area. A staff engineering analysis determined that the existing community of Port St. Joe, Florida is not part of any urbanized area and Station WTKP(FM) currently does not cover any urbanized areas, while the proposed community of Youngstown, Florida is located inside the Panama City, Florida Urbanized Area, and the station would cover 59.8 percent of the urbanized area. In applying the Commission's allotment priorities, as clarified in the *Rural Radio*, the Panama City, Florida Urbanized Area already has numerous local FM and AM stations. Absent a compelling showing, the proposed community of license modification is considered a proposal to serve the Panama City, Florida urbanized area in lieu of the community of Youngstown, Florida, and it does not satisfy Priority 3 of the Commission's allotment priorities, as a first local service.

You may seek Priority 3 status by submitting evidence to rebut the urbanized area service presumption (UASP) established in *Rural Radio*. Such evidence must constitute "a compelling showing (1) that the proposed community is truly independent of the urbanized area, (2) of the community's specific need for an outlet for local expression separate from the urbanized area and (3) the ability of the proposed station to provide that outlet."⁴ The required compelling showing may be based on the existing three-pronged *Tuck* test to demonstrate independence,⁵ but "the *Tuck* factors, especially the eight-part test of independence, will be more rigorously scrutinized than has sometimes been the case in the past."⁶ In addition to demonstrating independence, a compelling showing requires evidence of the community's need for an outlet for local expression separate from the urbanized area.⁷

Absent of a compelling showing, the proposal would be evaluated pursuant to Priority 4, other public interest matters. Under Priority 4, we take in account, transmission services, reception services, population gains, and other information relevant to the public interest. To satisfy the requirements of Priority 4 of the Commission's allotment priorities, further information regarding the public interest must be submitted. Specifically, you need to submit an explanation as to how the proposal advances the revised Section 307(b) priorities."⁸ In addition to the required information, your Section 307(b) showing may include any information that you believe to be pertinent to the public interest.

Conclusion. Accordingly, for the reasons discussed above, we request that you amend the Application to provide additional evidence sufficient to establish that the proposed city of license modification constitutes a preferential arrangement of allotments, as set forth in *Revision of FM Assignment Policies and Procedures*, and further clarified in *Rural Radio*.

⁴ *Id.* at 2572, ¶ 30.

⁵ See *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374, 5378 (1978) ("*Tuck*") (establishing eight factors to determine whether a suburban community is independent of a nearby central city).

⁶ *Rural Radio*, *supra*, at 2573, ¶ 30.

⁷ *Id.*

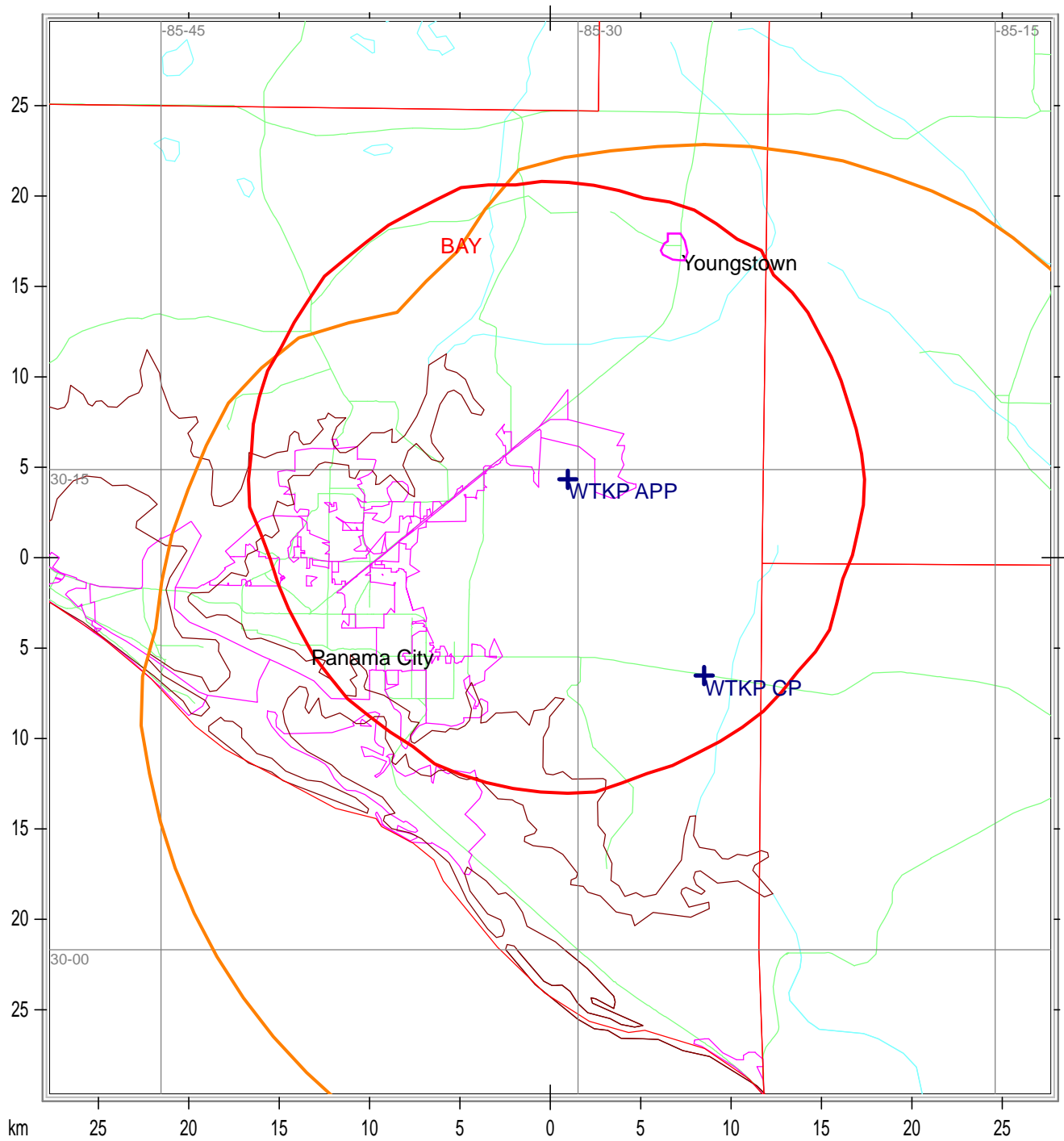
⁸ *Rural Radio*, *supra*. at 2577, ¶ 39.

Further action on the subject application will be withheld for a period of thirty days from the date of this letter to provide you an opportunity to respond. Failure to correct all tender and acceptance defects within the thirty days from the date of this letter will result in the dismissal of the application with no further opportunity for corrective amendment pursuant to 47 C.F.R. § 73.3564.

Sincerely,

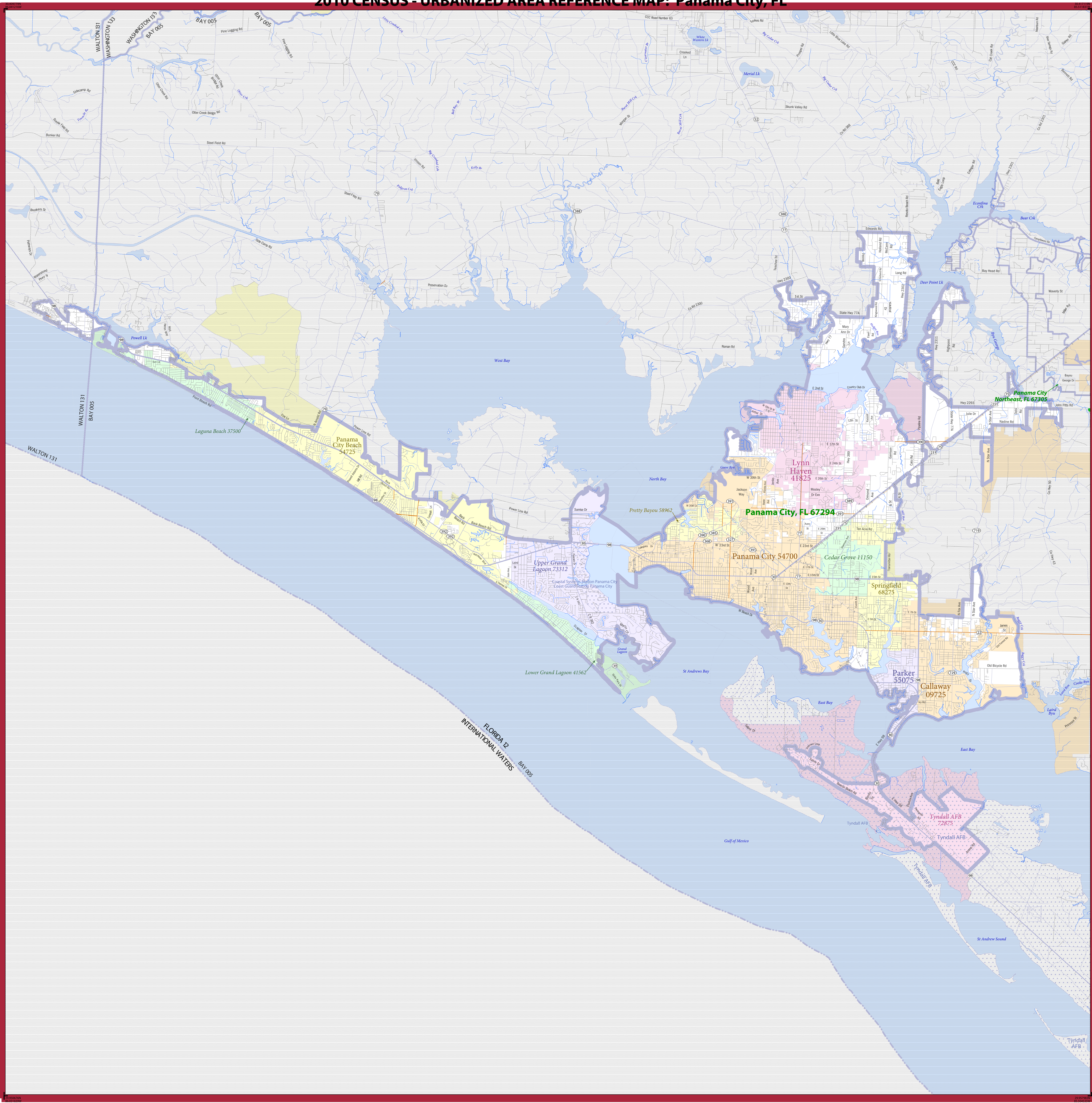
Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau

WTKP(FM) CP vs APP Urbanized Area Coverage



FCC 70dBu (50,50) Contours

2010 CENSUS - URBANIZED AREA REFERENCE MAP: Panama City, FL



LEGEND	
SYMBOL DESCRIPTION	LABEL STYLE
International	CANADA
Federal American Indian Reservation	L'ANSE RES 1880
Off-Reservation Trust Land	T1880
Urbanized Area	Dover, DE 24580
Urban Cluster	Toolee, VT 88057
State (or statistically equivalent entity)	NEW YORK 36
County (or statistically equivalent entity)	ERIE 029
Minor Civil Division (MCD) ^{1,2}	Bristol town 07485
Consolidated City	MILFORD 47500
Incorporated Place ^{1,3}	Davis 18100
Census Designated Place (CDP) ²	Incline Village 35100

DESCRIPTION	SYMBOL	DESCRIPTION	SYMBOL
Interstate		Water Body	
U.S. Highway		Military	
State Highway		Outside Subject Area	
Other Road			
Railroad			
Perennial Stream			
Intermittent Stream			

Where international, state, county, and/or MCD boundaries coincide, the map shows the boundary symbol for only the highest-ranking of these boundaries.

1 A ** following an MCD name denotes a false MCD. A *** following a place name indicates that a false MCD exists with the same name and FIPS code as the place; the false MCD label is not shown.

2 MCD boundaries are shown in the following states in which some or all MCDs function as general-purpose governmental units: Connecticut, Illinois, Indiana, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, and Wisconsin. (Note that Illinois and Nebraska have some counties covered by nongovernmental precincts and Missouri has most counties covered by nongovernmental townships.)

3 Place label color corresponds to the place fill color.
Label colors: Davis Davis Davis Davis Davis

SUBJECT AREA COUNTIES ON MAP SHEET

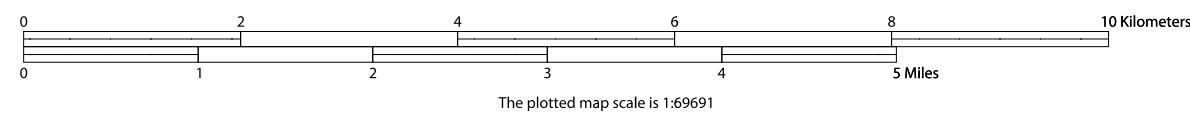
12005 Bay
12131 Walton

All legal boundaries and names are as of January 1, 2010. Urban areas are based on results from the 2010 Decennial Census. The boundaries shown on this map are for Census Bureau statistical data collection and tabulation purposes only; their depiction and designation for statistical purposes does not constitute a determination of jurisdictional authority or rights of ownership or entitlement.

Geographic Vintage: 2010 Census (reference date: January 1, 2010)
Data Source: U.S. Census Bureau's MAF/TIGER database (TAB10)
Map Created by: Geography Division: March 09, 2012

U.S. DEPARTMENT OF COMMERCE Economics and Statistics Administration U.S. Census Bureau

Projection: Albers Equal Area Conic
Datum: NAD 83
Spheroid: GRS 80
1st Standard Parallel: 25 29 46
2nd Standard Parallel: 29 53 54
Central Meridian: -83 48 17
Latitude of Projection's Origin: 24 23 45
False Easting: 0
False Northing: 0



PARENT SHEET 1
Total Sheets: 1
Index Sheets: 0
Parent Sheets: 1

UA NAME: Panama City, FL
UA CODE: 67294
ENTITY TYPE: Urbanized Area (UA)
ST: Florida (12)