

WZ
COPY

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

RECEIVED
2014 JAN -9 A 6:05
AUDIO SER 1111

In the Matter of Application of)
)
COVENANT NETWORK)
)
for a Construction Permit for)
FM translator K299BH,)
Jackson, Missouri)

File No. BNPFT-20130822AAI
Facility ID No. 156955

To: The Secretary
Attention: Chief, Media Bureau

ACCEPTED/FILED

JAN -7 2014

Federal Communications Commission
Office of the Secretary

PETITION FOR RECONSIDERATION

1. Flat Foot Media, Inc. ("Flat Foot Media" or "Petitioner"), by its counsel and pursuant to Section 1.106(f) of the Commission's Rules, hereby petitions for reconsideration of the grant of the above-captioned application (the "Application") for an original construction permit (the "Permit") specifying facilities for FM translator station K299BH, Jackson, Missouri, on 107.7 MHz (Channel 299). Petitioner is the licensee of LPFM station KHEZ-LP, 107.9 MHz (Channel 300), Cape Girardeau, Missouri. Once constructed, it is undeniable that operation of the authorized K299BH facilities will result in actual interference to current listeners of KHEZ-LP in violation of Section 73.1204(f) of the Commission's Rules. The grant of the construction permit therefore must be rescinded and the Application dismissed. In support, the following is shown:

2. Section 74.1204(f) of the Commission's Rules instructs that an FM translator application will not be accepted for filing "if the predicted 1 mV/m field strength contour of the FM translator station will overlap a populated area already receiving a regularly used, off-the-air

signal of any authorized co-channel, first, second or third adjacent channel broadcast station ... and grant of the authorization will result in interference to the reception of such signal.” 47 C.F.R. § 74.1204(f). In adopting this policy, the Commission noted that it “will not grant an application if an objecting party provides convincing evidence that the proposed translator station would be likely to interfere with the reception of a regularly received off-the-air existing service, even if there is no predicted prohibited overlap.” See *Amendment of Part 74 of the Commission’s Rules Concerning FM Translator Stations*, 5 FCC Rcd 7212, 7230 (1990), *mod.*, 6 FCC Rcd 2334 (1991), *recon. den.*, 8 FCC Rcd 5093 (1993).

3. In order to prevail in such an objection, “an opponent must provide, at a minimum: (1) the name and specific address of each listener for which it claims credit; (2) some demonstration that the address of each purported listener falls within the 60 dBu contour of the proposed translator station; (3) some evidence, such as a declaration from each of the claimed listeners, that the person listens to the [existing] station at the specified location; and (4) evidence that grant of the authorization will result in interference to the reception of the “desired” ... station at that location.” *The Association for Community Education, Inc.*, 19 FCC Rcd 12682, 12687 (2004). Furthermore, “Section 74.1204(f) requires the objector to show that a specific undesired-to-desired signal strength ratio is exceeded at the location of a bona fide listener of the desired station to establish that interference will result.” *Id.*

4. As demonstrated in the attached Engineering Exhibit (attached hereto as Exhibit A),¹ once operational, the new K299BH facilities are predicted to result in interference to the reception of regularly received off-the-air existing first-adjacent LPFM station KHEZ-LP.

¹ The Engineering Exhibit is accompanied by an affidavit by radio engineer Roy P. Stype, III, in compliance with Section 1.106(e) of the Commission’s Rules.

Although this predicted interference lies entirely outside the predicted KHEZ-LP 60 dBu contour (the contour which is explicitly protected from FM translator stations), KHEZ-LP is nonetheless entitled to protection if it has documented listeners within the predicted 60 dBu contour of the proposed FM translator facilities who would suffer interference to the reception of KHEZ-LP as a result of the operation of this translator.

5. The Petitioner has identified five *bona fide* regular listeners of KHEZ-LP located in the predicted 60 dBu contour of the permitted K299BH facilities. Attached hereto at Exhibit B are declarations from each of these five individual listeners attesting to their listenership of KHEZ-LP and registering their objections should any FM translator interfere with their ability to listen to KHEZ-LP over the air. The Engineering Exhibit confirms that the listening locations of these listeners are within the predicted K299BH 60 dBu contour and the undesired-to-desired signal strength ratio will be exceeded at their locations.

6. In consideration of the foregoing, Petitioner respectfully requests that the Media Bureau reverse the staff decision, rescind the grant and dismiss the Application as defective.

Respectfully submitted,

FLAT FOOT MEDIA, INC.

By:


Frank R. Jazzo
Davina S. Sashkin
Its Attorneys

Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209
703-812-0400

January 7, 2014

EXHIBIT A
ENGINEERING EXHIBIT

ENGINEERING STATEMENT IN SUPPORT
OF PETITION FOR RECONSIDERATION

BNPFT-20130822AAI

K299BH - JACKSON, MO

Flat Foot Media, Inc.
Cape Girardeau, MO

December 27, 2013

Prepared For: Mr. Ben Crass
Flat Foot Media, Inc.
P. O. Box 1030
Cape Girardeau, MO 63702-1030

CARL E. SMITH CONSULTING ENGINEERS

CONTENTS

Title Page

Contents

Engineering Affidavit

Roy P. Stype, III

Engineering Statement

Fig. 1.0 - Predicted Interference to KHEZ-LP From K299BH

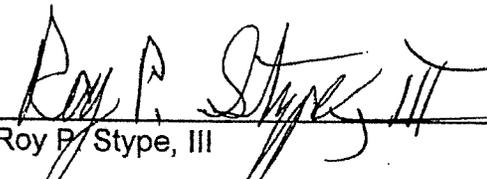
Fig. 1.1 - Expanded View of K299BH 60 dBu Contour Showing
KHEZ-LP Listener Locations

ENGINEERING AFFIDAVIT

State of Ohio)
) ss:
County of Summit)

Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Flat Foot Media, Inc. to prepare the attached "Engineering Statement In Support of Petition For Reconsideration - BNPFT-20130822AAI - K299BH - Jackson, MO."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.



Roy P. Stype, III

Subscribed and sworn to before me on **December 27, 2013**.



Notary Public

/SEAL/

Nancy A. Adams, Notary Public
Residence - Cuyahoga County
State Wide Jurisdiction, Ohio
My Commission Expires Sept. 20, 2015

ENGINEERING STATEMENT

This engineering statement is prepared on behalf of Flat Foot Media, Inc., licensee of Radio Station KHEZ-LP - Cape Girardeau, Missouri. KHEZ-LP is authorized to operate on Channel 300 with an effective radiated power of 43 watts at 45.4 meters above average terrain. On December 12, 2013 Covenant Network was granted a construction permit (BNPFT-20130822AAI) for new FM translator station K299BH - Jackson, Missouri. This construction permit authorizes operation on Channel 299, a first adjacent channel to KHEZ-LP, with a nondirectional effective radiated power of 33 watts from a site located 14.1 kilometers northwest of the KHEZ-LP transmitter site. This engineering statement supports a petition for reconsideration of the grant of this translator application.

Sections 73.215(a)(2), 73.509(a), and 74.1204 of the FCC Rules define the signal ratios for determining the presence of interference in the FM service. In this particular case, interference will be predicted to KHEZ-LP in any area where the predicted KHEZ-LP F(50,50) signal does not exceed the predicted F(50,10) signal for the authorized K299BH facilities by at least 6 dB. Studies were conducted to evaluate the area in which interference would be predicted to KHEZ-LP from the authorized K299BH facilities. The signal calculations in these studies for KHEZ-LP utilized terrain data extracted from the NGDC 30 second terrain database and the F(50,50) curves. Those for the authorized K299BH facilities utilized terrain data extracted from the NGDC 30 second terrain database and the F(50,10) curves. The results of these studies, along with the predicted 60 dBu contours for KHEZ-LP and the authorized K299BH facilities, are shown in Figure 1.0. As can be seen from an examination of this figure, the authorized

K299BH facilities are predicted to cause interference to KHEZ-LP over an extensive area, including the entire area within the predicted 60 dBu contour for the authorized K299BH facilities.

It is recognized that this predicted interference lies entirely outside the predicted KHEZ-LP 60 dBu contour, the contour at which KHEZ-LP is normally entitled to contour protection from FM translator stations. Pursuant to Sections 74.1203(a) and 74.1204(f) of the FCC Rules, however, the location of this interference relative to the KHEZ-LP 60 dBu contour is immaterial, so long as KHEZ-LP can document that it has regular listeners within the predicted 60 dBu contour for the authorized K299BH facilities who would receive interference to the reception of KHEZ-LP as a result of the operation of this translator.

KHEZ-LP has been able to specifically identify five regular listeners to KHEZ-LP at locations within the predicted 60 dBu contour for the authorized K299BH facilities. Figure 1.1 is a detailed map exhibit depicting the locations of these regular listeners in relation to the predicted 60 dBu contour for the authorized K299BH facilities. As noted above, the authorized K299BH facilities are predicted to cause interference to KHEZ-LP over the entire area within the predicted 60 dBu contour. Thus, pursuant to Section 74.1204(f) of the FCC Rules, the grant of the K299BH construction permit must be rescinded and the underlying application must be dismissed since it is obvious that the authorized facilities will result in interference to regular listeners of KHEZ-LP at locations within the authorized 60 dBu contour for K299BH.



89°30'

37°30'

K299BH
(CP)
60 dBu

BOUNDARY OF AREA
OF PREDICTED INTERFERENCE
TO KHEZ-LP FROM K299BH(CP)

K299BH
(CP)
CHANNEL 299

KHEZ-LP
CHANNEL 300

89°45'

37°15'

KHEZ-LP
60 dBu

CARL E. SMITH CONSULTING ENGINEERS
2324 N. CLEVE-MASS RD., BOX 807
BATH, OHIO 44210-0807
330/659-4440

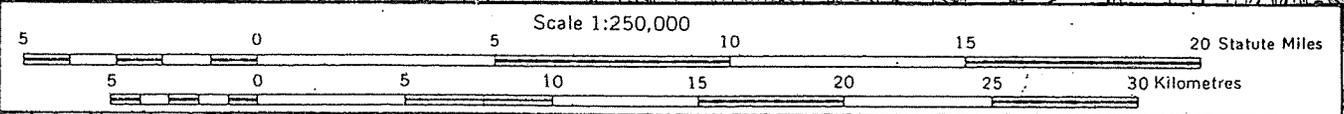
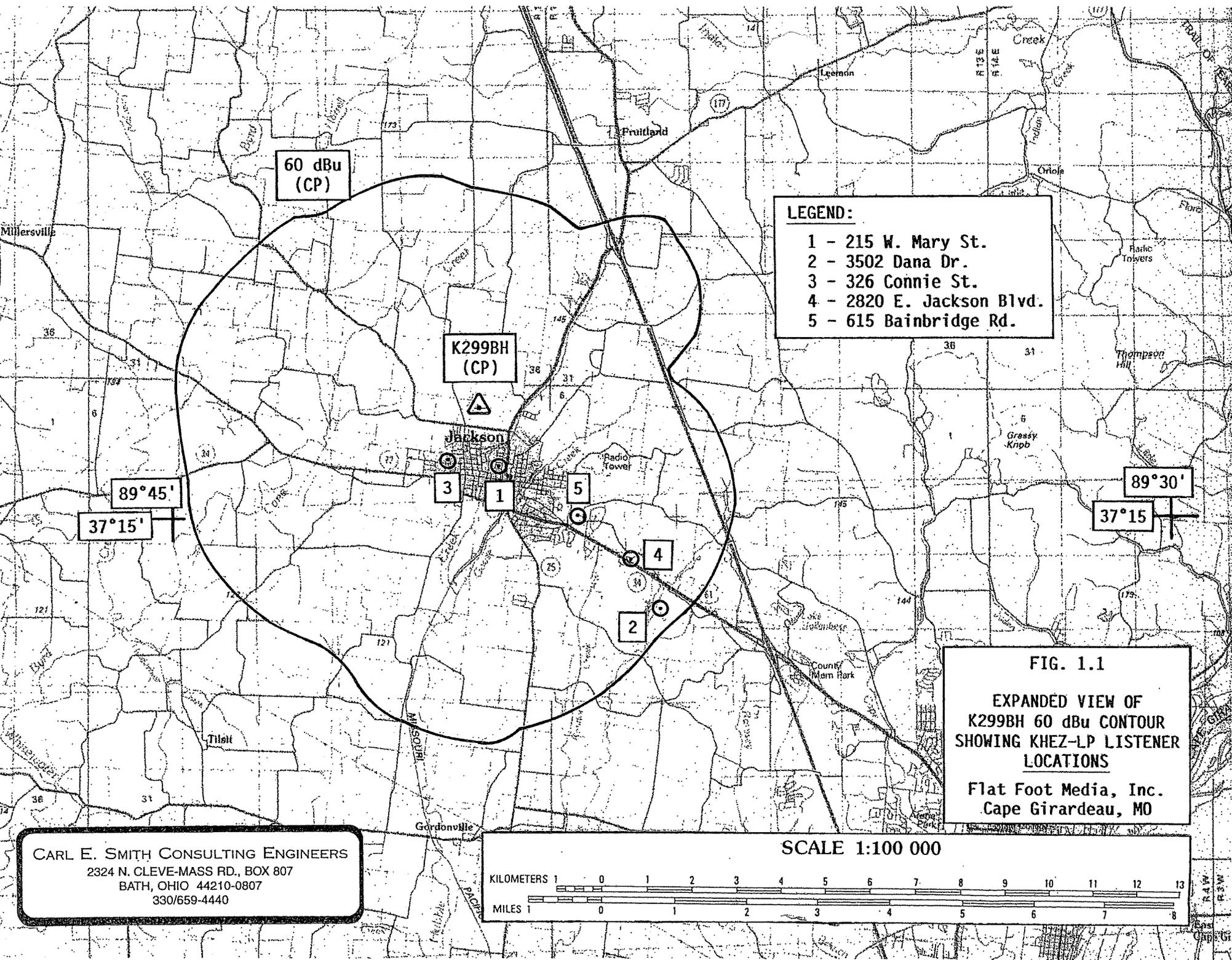


FIG. 1.0
PREDICTED INTERFERENCE TO
KHEZ-LP FROM K299BH
Flat Foot Media, Inc.
Cape Girardeau, MO



60 dBu
(CP)

K299BH
(CP)

- LEGEND:**
- 1 - 215 W. Mary St.
 - 2 - 3502 Dana Dr.
 - 3 - 326 Connie St.
 - 4 - 2820 E. Jackson Blvd.
 - 5 - 615 Bainbridge Rd.

89° 45'

37° 15'

89° 30'

37° 15'

FIG. 1.1
 EXPANDED VIEW OF
 K299BH 60 dBu CONTOUR
 SHOWING KHEZ-LP LISTENER
 LOCATIONS
 Flat Foot Media, Inc.
 Cape Girardeau, MO

CARL E. SMITH CONSULTING ENGINEERS
 2324 N. CLEVE-MASS RD., BOX 807
 BATH, OHIO 44210-0807
 330/659-4440

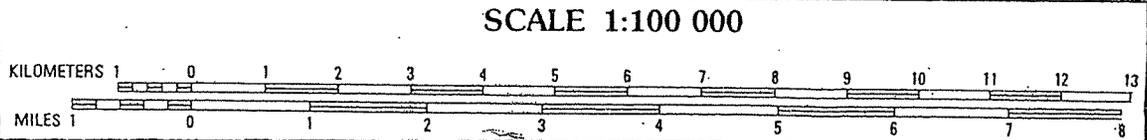


EXHIBIT B

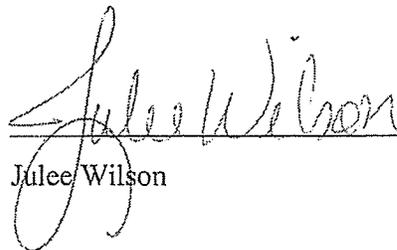
DECLARATIONS OF LISTENERS

DECLARATION OF JULEE WILSON

I, Julee Wilson, do hereby declare and state under perjury that the foregoing is true and correct as follows:

1. I live at 215 W Mary St., Jackson, Missouri 63755. I have lived at that address for 6 years.
2. I often listen to FM broadcast station KHEZ-LP, Cape Girardeau, Missouri on 107.9 MHz over the air at this location.
3. I have learned that FM translator station K299BH has been authorized to broadcast its signal to 107.7 MHz in the area in which I live.
4. I desire to continue to listen to KHEZ-LP over the air at my place of residence and would object to any changes to K299BH that would interfere with my ability to receive KHEZ.

Executed on December 20, 2013.



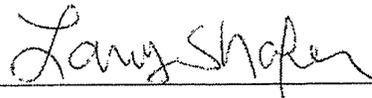
Julee Wilson

DECLARATION OF LARRY SHAFER

I, Larry Shafer, do hereby declare and state under perjury that the foregoing is true and correct as follows:

1. I live at 3502 Dana Dr., Jackson, Missouri 63755. I have lived at that address for 14 years.
2. I often listen to FM broadcast station KHEZ-LP, Cape Girardeau, Missouri on 107.9 MHz over the air at this location.
3. I have learned that FM translator station K299BH has been authorized to broadcast its signal to 107.7 MHz in the area in which I live.
4. I desire to continue to listen to KHEZ-LP over the air at my place of residence and would object to any changes to K299BH that would interfere with my ability to receive KHEZ.

Executed on December 20, 2013.



Larry Shafer

DECLARATION OF AMY COFFEY

I, Amy Coffey, do hereby declare and state under perjury that the foregoing is true and correct as follows:

1. I live at 326 Connie St. Jackson, Missouri 63755. I have lived at that address for 4 years.
2. I often listen to FM broadcast station KHEZ-LP, Cape Girardeau, Missouri on 107.9 MHz over the air at this location.
3. I have learned that FM translator station K299BH has been authorized to broadcast its signal to 107.7 MHz in the area in which I live.
4. I desire to continue to listen to KHEZ-LP over the air at my place of residence and would object to any changes to K299BH that would interfere with my ability to receive KHEZ.

Executed on December 20, 2013.

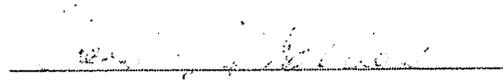

Amy Coffey

DECLARATION OF CHERYL MOTHES

I, Cheryl Mothes, do hereby declare and state under perjury that the foregoing is true and correct as follows:

1. I work at 2820 E Jackson Blvd., Jackson, Missouri 63755. I have worked at that address for 5 plus years.
2. I often listen to FM broadcast station KHEZ-LP, Cape Girardeau, Missouri on 107.9 MHz over the air at this location.
3. I have learned that FM translator station K299BH has been authorized to broadcast its signal to 107.7 MHz in the area in which I live.
4. I desire to continue to listen to KHEZ-LP over the air at my place of work and would object to any changes to K299BH that would interfere with my ability to receive KHEZ.

Executed on December 20, 2013.



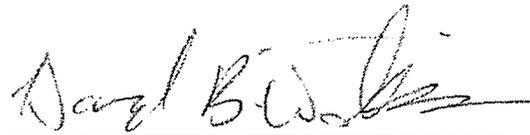
Cheryl Mothes

DECLARATION OF DAVID WATKINS

I, David Watkins, do hereby declare and state under perjury that the foregoing is true and correct as follows:

1. I live at 615 Bainbridge Rd, Jackson, Missouri 63755. I have lived at that address for 10 plus years.
2. I often listen to FM broadcast station KHEZ-LP, Cape Girardeau, Missouri on 107.9 MHz over the air at this location.
3. I have learned that FM translator station K299BH has been authorized to broadcast its signal to 107.7 MHz in the area in which I live.
4. I desire to continue to listen to KHEZ-LP over the air at my place of residence and would object to any changes to K299BH that would interfere with my ability to receive KHEZ.

Executed on December 20, 2013.

A handwritten signature in black ink, appearing to read "David Watkins", written over a horizontal line.

David Watkins

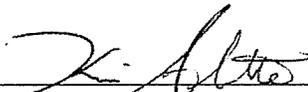
CERTIFICATE OF SERVICE

I, Kimberly Aliotte, a secretary in the law firm of Fletcher Heald & Hildreth, PLC, hereby certify that on January 7, 2014, I caused a copy of the foregoing "Petition for Reconsideration" to be served via U.S. Mail or by hand delivery (denoted by *) upon the following persons:

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

John Anthony Holman
President
Covenant Network
4424 Hampton Avenue
St. Louis, MO 63109

Dennis J. Kelly
Law Office of Dennis J. Kelly
P.O. Box 41177
Washington, DC 20018-0577



Kimberly Aliotte