

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re Application of:)
)
)
HOP BROADCASTING, INC.) FCC File No. BNPFT-20180418AHE
) FCC Facility ID No. 202114
)
)
Application for a New FM Translator on FM
Channel 230, 93.9 MHz, at Hopkinsville, KY

To: Office of the Secretary
Attn: The Chief, Audio Division, Media Bureau

OPPOSITION TO PETITION TO DENY

Hop Broadcasting, Inc., the FCC licensee of WHOP(AM), Hopkinsville, Kentucky and applicant for a new FM translator on FM Channel 230 (“Applicant”), by its attorney, pursuant to Section 73.5006(c) of the Commission’s rules, hereby submits this Opposition to Petition to Deny. On May 11, 2018, Sound Broadcasters, Inc., the licensee of WKTG(FM), Madisonville, Kentucky (“Petitioner”), filed a Petition to Deny (the “Petition to Deny”) against the FCC Form 349 long-form application of Applicant for its new FM translator on FM Channel 230, 93.9 MHz, at Hopkinsville, Kentucky (FCC File No. BNPFT-20180418AHE / FCC Facility ID No. 202114) (the “Application”).¹ As show below, the allegations submitted by Petitioner against the Applicant fail to state either a factual or a legal basis for a denial of the Application. In Opposition thereto, the following is submitted:

¹ This Opposition to Petition to Deny is filed within fifteen (15) days of the date for filing the Petition to Deny. Accordingly, pursuant to Section 73.5006(c) of the Commission’s rules, this Petition to Deny is timely filed.

STANDING

1. Section 309(d)(1) of the Act restricts entities that may file a petition to deny to “parties in interest”.² Under the Commission’s long established case law on standing, a petition to deny a broadcast radio application may be granted standing if: (1) petitioner is a competitor in the market suffering signal interference; (2) petitioner is a competitor in the market suffering economic harm; or (3) petitioner is a resident of the station's service area or listens to the station regularly and such listening is not the result of transient contacts with the station.³

2. Petitioner asserts standing by a statement that its radio station, WKTG(FM), is “93.67 KM distant”; alleging “harmful interference”; and it is the “licensee of a competing station”. Petitioner does not submit any verified statement pursuant to Section 73.5006(b) from an individual with knowledge attesting to these facts. But, even assuming the truth of these allegations, Petitioner has submitted no evidence whatsoever to show that Petitioner’s radio market, Madisonville, Kentucky, with a transmitter site 93.67 kilometers distant, is part of the same radio market as Petitioner’s radio market.⁴ Therefore, Petitioner fails to make a showing that it is a “competitor in the market” and is entitled to be accorded standing in this proceeding to file its Petition to Deny.

² 47 U.S.C. § 309(d)(1) (“Section 309(d)(1)”; see also 47 C.F.R. § 73.3584(a); *MCI Communications Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 7790, 7794 (1997).

³ See *Chet-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041, 13042 (1999); *Office of Communications of the United Church of Christ v. FCC*, 359 F.2d 994, 1000-1006 (1966) (expanding standing from traditional categories of electrical interference or economic injury to station listeners).

⁴ It may be officially noticed by the Commission that Petitioner’s WKTG protected signal is expected to extend no further than 52 kilometers from its transmitter site. See Section 73.210(b)(3)(ii) of the Commission’s rules.

THE APPLICATION IS FULLY ACCEPTABLE FOR FILING UNDER SECTION 74.1204(f) OF THE COMMISSION'S RULES

3. Petitioner fails to make a factual or legal showing that the Application is unacceptable for filing. Petitioner cites to Section 74.1204(f) of the Commission's rules as its basis for a denial of the Application,⁵ stating that "the proposed translator will cover areas 'receiving a regularly used, off-the-air signal of [an] authorized co- channel ... broadcast station' and 'grant of the authorization will result in interference to the reception of such signal'".

4. Petitioner, however, fails to fully quote Section 74.1204(f) of the Commission's rule in its Petition to Deny. Petition also fails to cite to the settled criteria for a Section 74.1204(f) petition to deny set forth in *Richard J. Bodorff, Esq.*, 27 FCC Rcd 4870, 4872 (MB 2012). This illustrates the fundamental deficiency with Petitioner's Petition to Deny – Petitioner fails to present anyone who demonstrably regularly listens to WKTG within the 1 mV/m (60 dBμ) proposed signal of the Application as required for a Section 74.1204(f) petition to deny.

5. Section 74.1204(f) of the Commission's rules states in full:

An application for an FM translator station will not be accepted for filing even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (a) of this section, 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, including Class D (secondary) noncommercial educational FM stations and grant of the authorization will result in interference to the reception of such signal (emphasis added).

⁵ Petition to Deny at Page 3.

The documentation required for a Section 74.1204(f) petition to deny is set forth in

Richard J. Bodorff, Esq., 27 FCC Rcd 4870, 4872 (MB 2012):

Under Section 74.1204(f), in order to demonstrate that grant of an FM translator construction permit application “will result in interference to the reception” of an existing full-service station, an opponent must provide, at a minimum: (1) the name and specific address of each potentially affected listener; (2) some demonstration that the address of each purported listener falls within the 60 dB μ service contour of the proposed translator station; (3) a declaration from each of the affected listeners that he or she listens to the full-service station at the specified location; and (4) some evidence that grant of the authorization will result in interference to the reception of the “desired” full-service station at that location.⁶

As shown in this Opposition below, none of Petitioner’s listeners claim regular WKTG listening within the proposed 60 dB μ contour of the Application. Therefore, the Petition to Deny fails to show a fundamental required aspect of both Section 74.1204(f) and *Richard J. Bodorff, Esq.* which that there are regular WKTG listeners within the Application’s proposed 60 dB μ contour.

6. The listener statements submitted by Petitioner at Exhibit One include nine alleged WKTG listeners who make statements similar to the example shown below. In an attempt to partially conform with the requirements of Section 74.1204(f) of the Commission’s rules, Petitioner’s alleged listeners set forth their name and address; a that they listen at stated locations, and that there is no business, familial or other relationship with WKTG. Missing from each listener statement in Petitioner’s Exhibit One, however,

⁶ This documentation requirement was originally set forth in *Association for Community Education, Inc.*, 19 FCC Rcd 12682, 12688 (2004) in which the FCC asked for “convincing evidence” under Section 74.1204(f) of the Commission’s rules that the grant of the translator construction permit will result in interference to the reception of an existing full-service station.

is any showing or evidence that any of the listeners regularly listen to WKTG within the proposed 60 dB μ contour of the Application:

William E. McCord III declare under penalty of perjury as follows:

1. I reside at 118 Stonehedge Alley, Hopkinsville Ky.
2. I regularly listen to station WKTG(FM) on 93.9 MHz at my home and at the following other locations in or around Hopkinsville, KY: Home, Work, Car, Motorcycle.
3. If the FCC grants the application of Hop Broadcasting, Inc. for a new FM translator on 93.9 MHz at Hopkinsville, KY, I am concerned that I will longer be able to listen to WKTG's programming on 93.9 MHz.
4. I have no business, familial or other relationship with station WKTG, its owner or its employees. I have not been given or offered anything in exchange for making this declaration.

Signed: William E. McCord III
Printed Name: William E. McCord
Date: 05-04-2018

7. As shown in the attached map prepared by Anderson Communications, LLC, all of the stated listener residences are far outside the proposed 60 dB μ contour of the Application, mostly clustered around Hopkinsville which is significantly to the north of the proposed 60 dB μ .

8. When each listener statement is reviewed, none of the listeners state with any precision that their WKTG listening falls within any areas within the 60 dB μ contour of the proposed Application. Here is specifically what the alleged WKTG listeners state:

Jason Haley. “I regularly listen to station WKTG(FM) on 93.9 MHz at my home and at the following other locations in or around Hopkinsville, KY: Crofton, Dawson Springs, Henderson, Clarksville”

- ✓ As shown in the attached map, each of these communities is partially or wholly outside the Applicant’s proposed 60 dB μ contour. Therefore, the listener fails to provide the definitive documentation required under Section 74.1204(f) as set forth in *Richard J. Bodorff, Esq.*, that there be some demonstration that the address of each purported listener falls within the 60 dB μ service contour of the proposed translator station. Each of Crofton, Dawson Springs, Henderson and Clarksville are either far outside or partially outside the proposed 60 dB μ contour.

William E McCord II. “I regularly listen to station WKTG(FM) on 93.9 MHz at my home and at the following other locations in or around Hopkinsville, KY: Home, Work, Car, Motorcycle”

- ✓ The listener stating that he listens in his “Home, Work, Car, Motorcycle” around Hopkinsville, KY fails to provide the definitive documentation required under Section 74.1204(f) as set forth in *Richard J. Bodorff, Esq.*, that there be some demonstration that the address of each purported listener falls within the 60 dB μ service contour of the proposed translator station. As shown in the attached map, Hopkinsville, KY is outside the proposed 60 dB μ contour of the Application.

Raymond F. Campbell. “I regularly listen to station WKTG(FM) on 93.9 MHz at my home and at the following other locations in or around Hopkinsville, KY: Truck, Work, On the Rail Road through Hopkinsville”

- ✓ As shown in the attached map, Hopkinsville is outside the Applicant’s proposed 60 dB μ contour. Also, the listener stating that he listens in his “Home, Work, Car, Motorcycle” around Hopkinsville, KY fails to provide the definitive documentation required under Section 74.1204(f) as set forth in *Richard J. Bodorff, Esq.*, that there be some demonstration that the address of each purported listener falls within the 60 dB μ service contour of the proposed translator station.

Krystal Medina. “I regularly listen to station WKTG(FM) on 93.9 MHz at my home and at the following other locations in or around Hopkinsville, KY: Work, Car, everywhere”

- ✓ The listener stating that she listens in her “Work, Car, everywhere” around Hopkinsville, KY fails to provide the definitive documentation required under Section 74.1204(f) as set forth in *Richard J. Bodorff, Esq.*, that there be some demonstration that the address of each

purported listener falls within the 60 dB μ service contour of the proposed translator station. As shown in the attached map, Hopkinsville, KY is outside the proposed 60 dB μ contour of the Application.

Kris Page. “I regularly listen to station WKTG(FM) on 93.9 MHz at my home and at the following other locations in or around Hopkinsville, KY: in my vehicles”

- ✓ The listener stating that she listens in her “in my vehicles” around Hopkinsville, KY fails to provide the definitive documentation required under Section 74.1204(f) as set forth in *Richard J. Bodorff, Esq.*, that there be some demonstration that the address of each purported listener falls within the 60 dB μ service contour of the proposed translator station. As shown in the attached map, Hopkinsville, KY is outside the proposed 60 dB μ contour of the Application.

Gary Hecker. “I regularly listen to station WKTG(FM) on 93.9 MHz at my home and at the following other locations in or around Hopkinsville, KY: Home, Work, Car”

- ✓ The listener stating that he listens in his “Home, Work, Car” in and around Hopkinsville, KY fails to provide the definitive documentation required under Section 74.1204(f) as set forth in *Richard J. Bodorff, Esq.*, that there be some demonstration that the address of each purported listener falls within the 60 dB μ service contour of the proposed translator station. Also, as shown in the attached map, Hopkinsville, KY is outside the proposed 60 dB μ contour of the Application.

Huel Henderson. “I regularly listen to station WKTG(FM) on 93.9 MHz at my home and at the following other locations in or around Hopkinsville, KY: Home, Car, Work”

- ✓ The listener stating that he listens in his “Home, Car, Work” in and around Hopkinsville, KY fails to provide the definitive documentation required under Section 74.1204(f) as set forth in *Richard J. Bodorff, Esq.*, that there be some demonstration that the address of each purported listener falls within the 60 dB μ service contour of the proposed translator station. Also, as shown in the attached map, Hopkinsville, KY is outside the proposed 60 dB μ contour of the Application.

Kimberly Stewart. “I regularly listen to station WKTG(FM) on 93.9 MHz at my home and at the following other locations in or around Hopkinsville, KY: Home, car”

- ✓ The listener stating that she listens in her “Home, car” in and around Hopkinsville, KY fails to provide the definitive documentation required under Section 74.1204(f) as set forth in *Richard J. Bodorff, Esq.*, that there be some demonstration that the address of each purported listener falls within the 60 dBμ service contour of the proposed translator station. Also, as shown in the attached map, Hopkinsville, KY is outside the proposed 60 dBμ contour of the Application.

Glenn Hecker. “I regularly listen to station WKTG(FM) on 93.9 MHz at my home and at the following other locations in or around Hopkinsville, KY: Car, Work”

- ✓ The listener stating that he listens in his “Car, Work” in and around Hopkinsville, KY fails to provide the definitive documentation required under Section 74.1204(f) as set forth in *Richard J. Bodorff, Esq.*, that there be some demonstration that the address of each purported listener falls within the 60 dBμ service contour of the proposed translator station. Also, as shown in the attached map, Hopkinsville, KY is outside the proposed 60 dBμ contour of the Application.

9. Petitioner submits as Exhibit Two a Comprehensive Technical Statement prepared by George Nicholas, Technical Consultant. Petitioner’s Comprehensive Engineering Statement states the following:

“Exhibit T-1 shows the Protected and interfering contours for the Co-channel frequency relationship of WKTG and the Proposed translator. While there is no prohibitive overlap of the predicted interfering contour to WKTG’s protected contour, there is a close margin indicated where WKTG listeners have been documented.”

- This “close margin” is irrelevant to a Section 74.1204(f) petition to deny. The Comprehensive Engineering Statement does not state that any of the purported WKTG listeners are within the Applicant’s proposed 60 dBμ contour as required by Section 74.1204(f) of the Commission’s rules.

“Exhibit T-2 is the same map with population density displayed. As can be seen, there is population within the interfering contour of the proposed translator.”

- “Population density” and “population within the interfering contour of the proposed translator” are likewise irrelevant for a Section 74.1204(f) petition to deny. The degree of population density and population within the interfering contour of the proposed Application are not the criteria for a Section 74.1204(f) petition to deny. What is

required is a showing of regular listeners within the FM translator's predicted 60 dB μ contour.

“Exhibit T-3 and T-4 are overlays of the above referenced contours, and locations of WKTG listener supplied addresses, using Google Earth Pro™. As shown, there are several WKTG listeners in the Hopkinsville, KY metro area, inside of the proposed, predicted translator interfering contour.”

- Again, listeners within the “proposed, predicted translator interfering contour” are not the criteria for a Section 74.1204(f) petition to deny. Only listeners within the Application's proposed 60 dB μ contour are relevant.

“Exhibit T-5 is a computer-generated FM Interference study, using Longley-Rice calculations. The transmitter information, as well as Longley-Rice parameters are displayed on the map. As calculated, there are several small pockets of predicted interference that fall within the WKTG 60 dBu protected F(50,50) contour.”

- The FCC has never taken Longley-Rice calculations into consideration for a Section 74.1204(f) petition to deny. Small pockets of Longley-Rice calculated interference within the complaining station's (WKTG) 60 dB μ contour are wholly irrelevant to the consideration of a Section 74.1204(f) petition to deny.

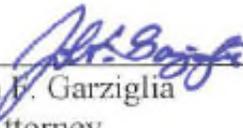
CONCLUSION

10. The requirements of *Richard J. Bodorff, Esq.* for a Section 74.1204(f) showing are simply not met by the Petition to Deny. None of the statements from the alleged WKTG listeners demonstrate that the stated listening locations fall within the Application's proposed 60 dB μ contour. Therefore, the Petition to Deny is wholly deficient and must be denied.

WHEREFORE, for the reasons above, the Application is acceptable for filing pursuant to Section 74.1204(f) of the Commission's rules, the Petition to Deny must be expeditiously dismissed, and the Application for a New FM Translator on FM Channel 230, 93.9 MHz, at Hopkinsville, KY (FCC File No. BNPFT-20180418AHE / FCC Facility ID No. 202114) granted .⁷

Respectfully submitted,

HOP BROADCASTING, INC.

By  _____
John F. Garziglia
Its Attorney

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May 29, 2018

⁷ A contingent amendment is being filed this day to the Application specifying Channel 284, requesting that the amendment be accepted only if the Commission disagrees with Applicant in this Opposition.

NEW
BNPFT20180418AHE
Latitude: 36-40-53 N
Longitude: 087-24-35 W
ERP: 0.25 kW
Channel: 230
Frequency: 93.9 MHz
AMSL Height: 223.0 m
Elevation: 163.0 m
Horiz. Pattern: Omni

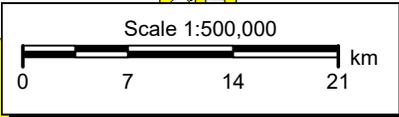
DAWSON SPRINGS, KY

HENDERSON, KY IS ON THE OHIO RIVER
MANY MILES NORTH OF THIS MAP BORDER.

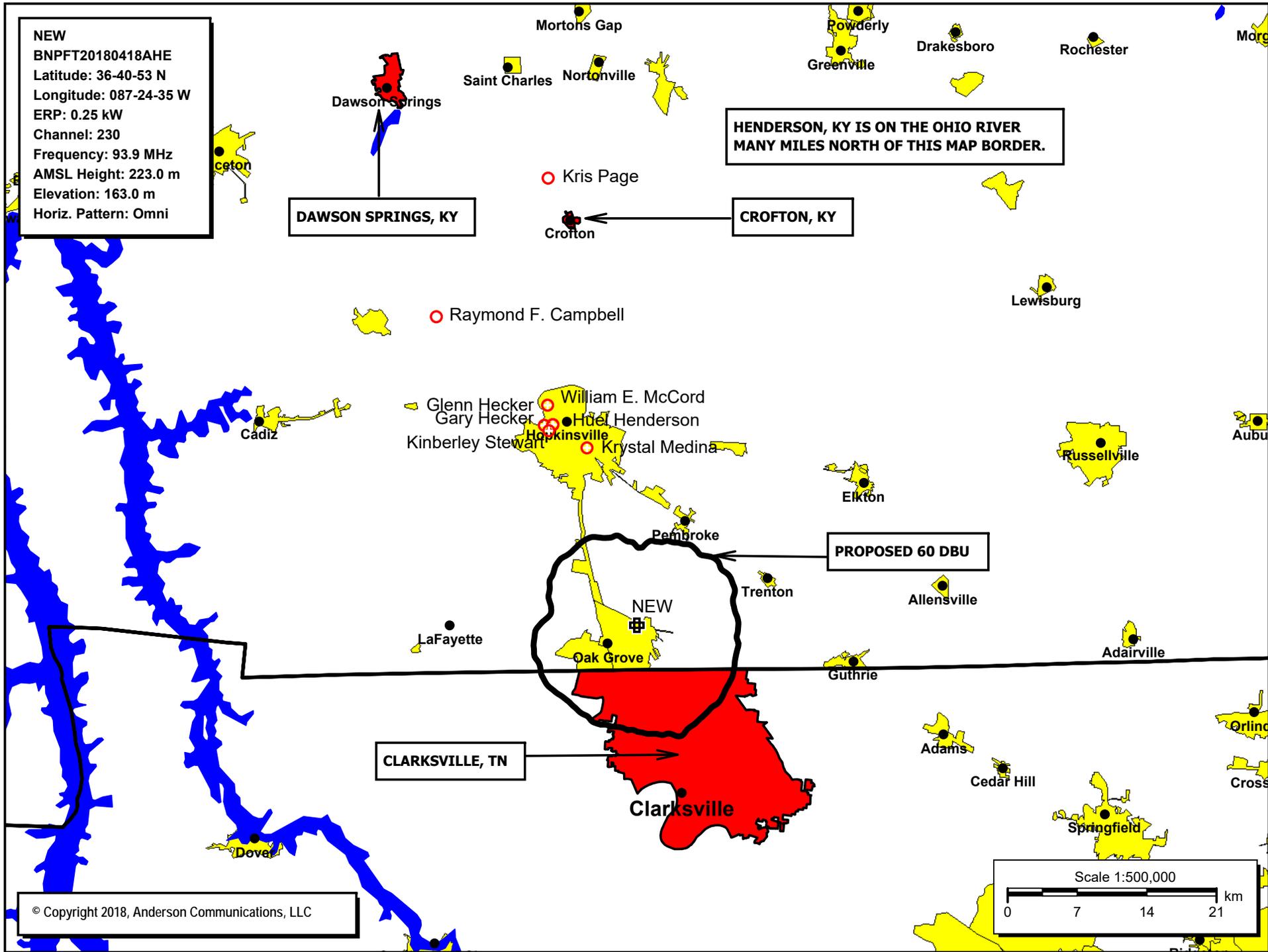
CROFTON, KY

CLARKSVILLE, TN

PROPOSED 60 DBU



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CERTIFICATE OF SERVICE

I, John F. Garziglia, do hereby certify that a true copy of the foregoing “Petition to Deny” was sent the 29th day of May, 2018 via USPS mail, postage prepaid, to the following:

Dawn M. Sciarrino
Christine McLaughlin
Sciarrino & Schubert, PLLC
4610 N. Fairfax Drive, Suite 1200
Arlington, VA 22203
(Counsel to Sound Broadcasters, Inc.)



John F. Garziglia