

PETITION ORIGINAL
Received & Inspected
1/10/14

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

DEC 31 2013
FCC Mail Room
Received & Inspected

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FCC Mail Room

In re Application of)
)
HENDEE BROADCASTING, INC.) FCC File No. BNPL-20131021ABP
) Facility ID #193061
Construction Permit for a New)
Low Power FM Broadcast Station)
At Wilmington, Ohio on)
Channel 294, 106.7 mHz)

To: Chief, Audio Division
Media Bureau

OPPOSITION TO PETITION TO DENY

Hendee Broadcasting, Inc. (hereafter “Hendee”), by its undersigned counsel, hereby respectfully submits this Opposition to the “Petition To Deny” (hereafter the “Petition”), filed on or about December 20, 2013, by Grant County Broadcasters, Inc. (hereafter “Grant”). For the reasons elucidated herein, the Grant Petition should be summarily dismissed as specious and illusory under Commission legal precedent and indisputable facts, and the above-captioned application expeditiously processed and granted.

I. BACKGROUND

1. Hendee’s above-captioned Low Power FM application was filed with the Commission on October 21, 2013, during the October 15 –November 14, 2013, open filing window. It was accepted for filing On November 22, 2013, and a thirty (30) day public comment period was initiated by a Commission Public Notice released on November 27, 2013.¹

¹ FCC Report No. 28124.

2. On December 20, 2013, Grant filed the subject Petition with the Commission.² Grant is the Commission licensee of WNKR(FM), Williamstown, Kentucky. WNKR(FM) operates on FM channel 294, 106.7 MHz. This is the same channel proposed for use by Hendee in its application for a new Low Power FM Station at Wilmington, Ohio. Grant objects to Commission approval of the Hendee application based on the allegation that "...the proposed Hendee station will cause harmful interference to listeners of WNKR." Grant does not identify any listeners who would be caused "harmful interference" in the reception of WNKR.

3. Grant admits in its Petition that the Hendee application accords WNKR all of the interference protection to which it is entitled under the Commission's rules and policies. Specifically, Grant "...concedes that the Hendee application meets the minimum distance separation requirements of Section §73.807 of the Rules."³ Nevertheless, Grant apparently feels it is entitled to some form of extraordinary protection for WNKR for its unidentified listeners allegedly located in and around Wilmington, Ohio. Obviously, Grant's interference allegations and claimed entitlement are equally specious and ridiculous.

II. GRANT HAS FAILED TO PRESENT EITHER A FACTUAL OR LEGAL BASIS FOR THE DENIAL OF THE HENDEE APPLICATION.

4. WNKR(FM) is licensed merely as a Class A commercial FM station with an effective radiated power of only 1800 watts from a transmitter site located just north of Williamsburg, Kentucky. See Appendix A hereto. The distance from Williamstown, Kentucky to Wilmington, Ohio is approximately 64.15 air miles. See Appendix B hereto. It is technically inconceivable that a commercial Class A FM station operating with a minimal power of 1800 watts could have

² As of this date, the Commission's CDBS database does not reflect the filing of the Petition. Undersigned was sent a copy of the Petition via email from Grant's counsel on December 27, 2013.

³ 47 C.F.R. §73.807.

listenership over 60 air miles away.⁴ Moreover, as shown in Appendix C hereto, the separation distance between the WNKR 60 dBu contour and the proposed 60 dBu contour of the Hendee Low Power FM station is 70.66 kilometers (44 miles). The specious factual basis for the Grant Petition is exceedingly clear.

5. However, the potential for interference to the reception of the WNKR signal is irrelevant. The Hendee application fully complies with the mileage separation distance from WNKR required under the Commission's Rules and Regulations for co-channel Low Power FM stations. See 47 CFR §73.807. As the Hendee technical exhibit demonstrates, the distance between the licensed coordinates for WNKR and the proposed location of the Wilmington, Ohio, Low Power FM Station is 106.55 kilometers, and the required separation under §73.807 is only 66.5 kilometers. See Attachment D hereto. The Hendee application clearly meets the requirements of §73.807. Grant has no factual basis for its objection.

6. Similarly, Grant has no legal basis for its objection. None is cited in the Petition. None exists. Grant makes reference to an action by the Audio Division denying a displacement application filed by Educational Media Foundation in connection with a co-channel FM translator at Middletown, Ohio, allegedly causing interference to the reception of WNKR. See, *W294BM, Middletown, OH*, (AD June 6, 2012). However, as Grant is undoubtedly aware, FM translators are secondary broadcast services that are prohibited from operating in a manner that causes actual interference to the reception of a full power FM station.⁵ Low Power FM stations are not secondary services and are not limited by the potential of interference, real or imagined, to full power FM stations. See, 47 C.F.R. §801, *et. seq.*

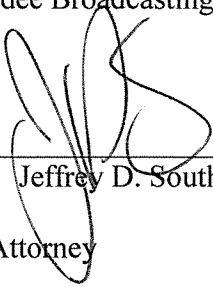
⁴ WCGX(FM), Dublin, Ohio, which operates as a Class B FM station also on Channel 294, is located closer to Wilmington, Ohio (57 miles) than is WNKR. It is ludicrous to think the weak WNKR signal can reach Wilmington and overcome whatever signal the substantially more powerful WCGX(FM) might have in that area.

⁵ See 47 C.F.R. §74.1203.

WHEREFORE, Hendee Broadcasting, Inc. respectfully asks that the Bureau summarily dismiss and/or deny the "Petition To Deny" by Grant County Broadcasters, Inc., and expeditiously process and grant the above-captioned application for a new Low Power FM Station at Wilmington, Ohio.

Respectfully submitted,

Hendee Broadcasting, Inc.

By:  _____
Jeffrey D. Southmayd

Its Attorney

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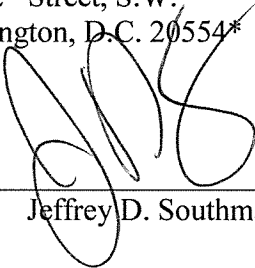
Date: December 31, 2013

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have caused copies of the foregoing "Opposition to Petition to Deny" to be served by first class United States mail, postage pre-paid, on this 31st day of December, 2013, on the following:

Robert L. Olender, Esquire
Koerner & Olender, P.C.
11913 Grey Hollow Court
North Bethesda, Maryland 20852
Counsel to Grant County Broadcasters, Inc.

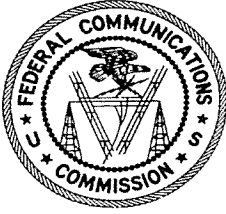
Mr. James Bradshaw
Audio Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554*



Jeffrey D. Southmayd

*Via Email

APPENDIX A



United States of America
FEDERAL COMMUNICATIONS COMMISSION
FM BROADCAST STATION LICENSE

Authorizing Official:

Official Mailing Address:

GRANT COUNTY BROADCASTERS, INC.
P.O. BOX 182
DRY RIDGE KY 41035

Penelope A. Dade
Supervisory Analyst
Audio Division
Media Bureau

Facility Id: 24817

Call Sign: WNKR

License File Number: BLH-20080424AAAY

Grant Date: April 29, 2009

This license expires 3:00 a.m.
local time, August 01, 2020.

This authorization is re-issued November 15, 2013, to remove condition number 2.

Subject to the provisions of the Communications Act of 1934, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this license, the licensee is hereby authorized to use and operate the radio transmitting apparatus herein described.

This license is issued on the licensee's representation that the statements contained in licensee's application are true and that the undertakings therein contained so far as they are consistent herewith, will be carried out in good faith. The licensee shall, during the term of this license, render such broadcasting service as will serve the public interest, convenience, or necessity to the full extent of the privileges herein conferred.

This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein. Neither the license nor the right granted hereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934. This license is subject to the right of use or control by the Government of the United States conferred by Section 606 of the Communications Act of 1934.

Callsign: WNKR

License No.: BLH-20080424AAY

Name of Licensee: GRANT COUNTY BROADCASTERS, INC.

Station Location: KY-WILLIAMSTOWN

Frequency (MHz): 106.7

Channel: 294

Class: A

Hours of Operation: Unlimited

Transmitter: Type Accepted. See Sections 73.1660, 73.1665 and 73.1670 of the Commission's Rules.

Transmitter output power: 3.4 kW

Antenna type: Non-Directional

Description: ERI LP-2E-HW

Antenna Coordinates: North Latitude: 38 deg 41 min 19 sec

West Longitude: 84 deg 35 min 07 sec

	Horizontally Polarized Antenna	Vertically Polarized Antenna
Effective radiated power in the Horizontal Plane (kW):	1.80	1.80
Height of radiation center above ground (Meters):	146	146
Height of radiation center above mean sea level (Meters):	432	432
Height of radiation center above average terrain (Meters):	185	185

Antenna structure registration number: 1249934

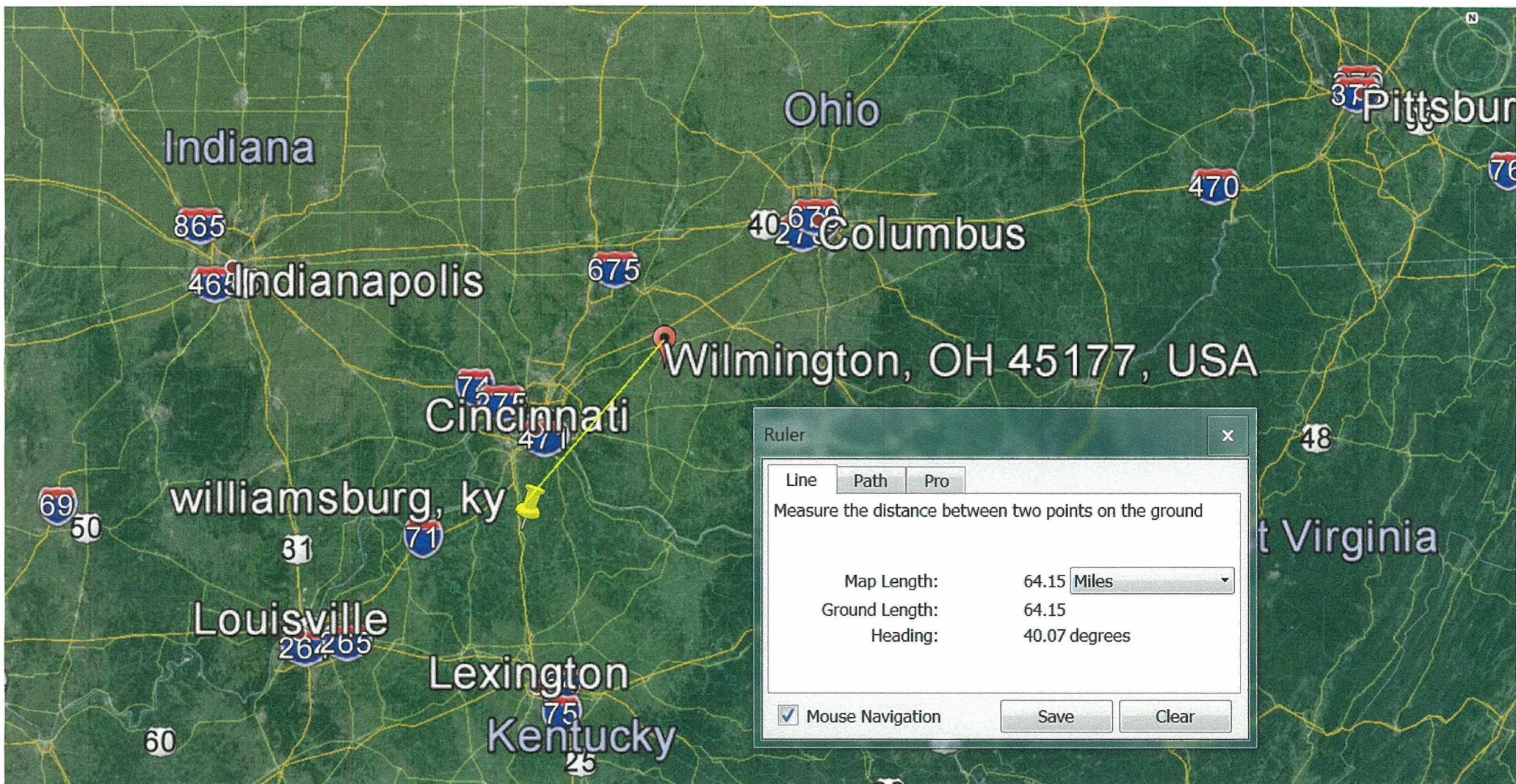
Overall height of antenna structure above ground (including obstruction lighting if any) see the registration for this antenna structure.

Special operating conditions or restrictions:

- 1 The permittee/licensee in coordination with other users of the site must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines.

*** END OF AUTHORIZATION ***

APPENDIX B



Ruler

Line Path Pro

Measure the distance between two points on the ground

Map Length:	64.15 Miles
Ground Length:	64.15
Heading:	40.07 degrees

Mouse Navigation

Save Clear

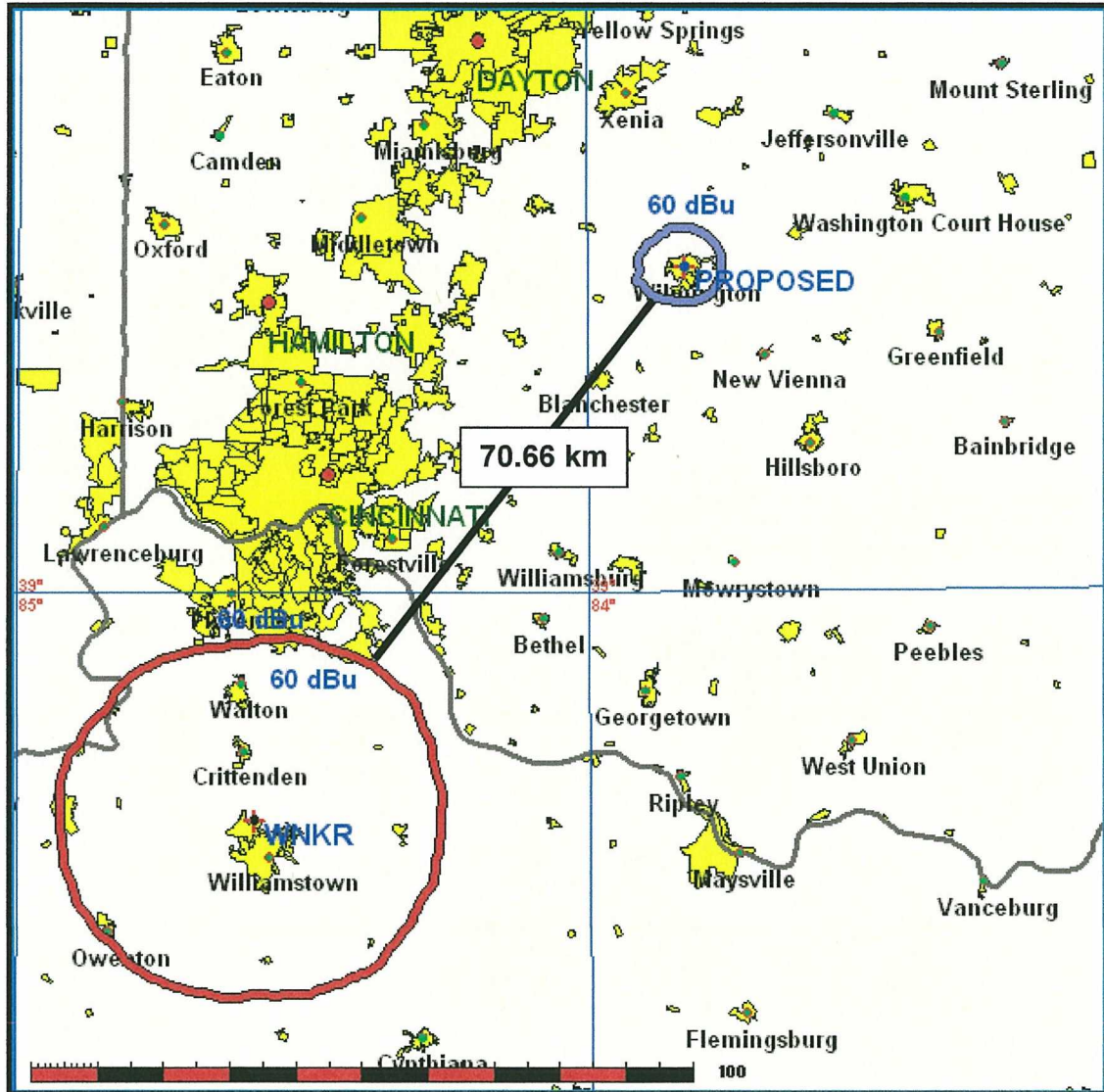
APPENDIX C

CHANNEL 294

60 dBu F(50,50) contour comparison, WNKR vs Proposed LPFM, FID # 193061:

60 dBu contour separation = 70.66 km

(site separation....FCC required = 66.5 km, margin = 40.06 km)



APPENDIX D

TECHNICAL EXHIBIT

This Technical Exhibit is submitted in support of an **APPLICATION FOR CONSTRUCTION PERMIT FOR A LOW POWER FM BROADCAST STATION** on behalf of HENDEE BROADCASTING, INC for a facility to serve the city of Wilmington, OH on FM Channel 294.

Channel Availability

The following study reveals that the requested channel meets all distance separation requirements relative to nearby co-channel and 1st, 2nd and 3rd adjacent channel licensed facilities, allotments, or applications (of record as of October 16, 2013). See Figure 1.

REFERENCE	New LPFM Hendee Broadcasting, Inc.				DISPLAY DATES			
39 26 44.8 N.	CLASS = L1				DATA 09-26-13			
83 49 42.3 W.	Current Spacings to 3rd Adj.				SEARCH 10-16-13			
----- Channel 294 - 106.7 MHz -----								
Call	Channel	Location	Azi	Dist	FCC	Margin		
WDSJ	LIC 293B	Greenville	OH 319.7	102.67	96.5	6.2		
WQLX	LIC-Z 293A	Chillicothe	OH 99.9	72.75	55.5	17.3		
WKFS	LIC-N 296B1	Milford	OH 237.9	68.66	45.5	23.2		
WCGX	LIC-N 294B1	Dublin	OH 44.0	110.84	86.5	24.3		
WCGX	CP 294A	Dublin	OH 47.2	93.96	66.5	27.5		
WCWT-FM	LIC 297D	Centerville	OH 306.4	34.09	5.5	28.6		
WWSU	LIC 295D	Fairborn	OH 332.0	42.41	12.5	29.9		
WXMG	LIC-Z 292A	London	OH 35.3	59.87	28.5	31.4		
WNKR	LIC 294A	Williamstown	KY 218.1	106.56	66.5	40.1		
W296BO	LIC 296D	Springfield	OH 2.4	48.59	7.5	41.1		
W292CO	LIC-D 292D	Middletown	OH 252.5	63.18	20.5	42.7		
WHOK-FM	LIC 296A	Circleville	OH 73.5	87.43	28.5	58.9		
W294AH	LIC 294D	Columbus	OH 47.2	93.97	25.5	68.5		
W296BA	APP-D 295D	Connersville	IN 281.1	115.23	20.5	94.7		

Reference station has protected zone issue:
All separation margins include rounding

FIGURE 1

Facility is okay toward Table Mountain. Distance to Center = 1835.6 km, Azimuth
= 279.3 Degrees True