

ORIGINAL

2019 JUN 18 PM 3:26

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

In the Matter of

Bloomberg Radio Newburyport LLC

FM Translator W221EE

Newburyport, Massachusetts

)  
)  
)  
)  
)  
)  
)

File No. BLFT-20181009BPF

Facility ID No. 201495

Received-FCC

JUN 17 2019

To: Chief, Audio Division

Bureau / Office

**JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT AND  
DISMISSAL OF OBJECTION**

Blount Communications, Inc. of NH ("Blount"), and Bloomberg Radio Newburyport LLC ("Bloomberg"), pursuant to Section 73.3588 of the Commission's rules, hereby respectfully and jointly petition for approval of a settlement with respect to the above-captioned license application (the "Application") for Bloomberg's FM translator station W221EE, Newburyport, MA, Facility ID No. 201495 ("W221EE"). Blount objected to the Application, claiming that it caused interference to Blount's WDER-FM, Peterborough, New Hampshire (the "Objection"). Bloomberg disagreed with the claim of interference.

To resolve these issues, the parties have developed an engineering proposal to which both are agreeable. That proposal is reflected in the settlement agreement attached hereto as Exhibit 1 (the "Settlement Agreement"), pursuant to which Bloomberg agrees to file a construction permit modification application for W221EE and, following grant of that permit, relocate the translator to a new transmitter site.

Under the terms of the Settlement Agreement the parties respectfully request that the Commission:

1. Grant this Joint Request for Approval of Settlement Agreement;
2. Approve the settlement as proposed herein and in the Settlement Agreement;
3. Grant the W221EE modification application which will specify operations at a new transmitter site; and
4. Dismiss the Objection contingent on the construction and licensing of W221EE at the new transmitter site. In the interim, the Parties ask that the FCC continue to hold Blount's Objection to, and any action on, the Application in abeyance until the grant of the W221EE licensing has occurred and has become a final order.

In accordance with Section 73.3588, the Settlement Agreement and Declarations attached hereto as Exhibit 2 demonstrate that (i) the proposed settlement will serve the public interest; (ii) no party has received any money or other consideration except that set out in the Settlement Agreement; and (iii) the Settlement Agreement sets out the exact nature of the consideration for each party. The Declaration of Blount certifies that the consideration it will receive pursuant to the Settlement Agreement does not exceed its legitimate and prudent expenses incurred in connection with the Objection.

Approval of the proposed Settlement Agreement would serve the public interest in that it will conserve the resources of both the Commission and resolve the issues raised by the Objection.

Accordingly, the parties respectfully request that this Joint Request be approved and that the applications be acted upon as set forth herein.

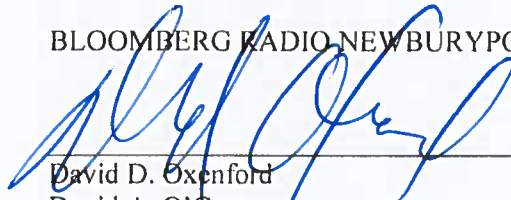
Respectfully submitted,

BLOUNT COMMUNICATIONS, INC. OF NH



Joseph O. Chautin, III  
Attorney for Blount Communications, Inc. of NH  
Hardy, Carey, Chautin & Balkin, LLP  
1080 West Causeway Approach  
Mandeville, LA 70471

BLOOMBERG RADIO NEWBURYPORT LLC



David D. Oxenford  
David A. O'Connor  
Attorneys to Bloomberg Radio Newburyport LLC  
Wilkinson Barker Knauer, LLP  
1800 M St, N.W.  
Suite 800N  
Washington, D.C. 20036  
(202) 383-3337

Dated: June 17, 2019

**EXHIBIT 1**

**SETTLEMENT AGREEMENT**

## **SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** ("*Agreement*") is entered into this 17th day of June, 2019 (the "*Effective Date*"), by and between **BLOUNT COMMUNICATIONS, INC. OF NH** ("**BLOUNT**"), and **BLOOMBERG RADIO NEWBURYPORT LLC**. ("**BLOOMBERG**"), (BLOUNT and BLOOMBERG may each be referred to individually as a "*Party*" and collectively, the "*Parties*").

### **RECITALS**

**WHEREAS**, BLOOMBERG has pending before the Federal Communications Commission ("**FCC**" or "*Commission*") an application, FCC File Number BLFT-20181009BPF (the "*Application*"), for a license to cover the construction of a new FM translator W221EE, Newburyport, Massachusetts (Facility ID No. 201495) ("**W221EE**"), and BLOUNT has pending before the FCC an objection to the Application (the "*Objection*") based, in part, on assertions by BLOUNT that W221EE is causing interference to the reception of BLOUNT's radio station WDER-FM, Peterborough, New Hampshire (Facility ID No. 52399) ("**WDER-FM**") by WDER-FM listeners;

WHEREAS, Bloomberg disagrees that the operation of W221EE's Application facilities is causing interference to radio station WDER-FM;

**WHEREAS**, BLOOMBERG is the licensee of FM translator W291CC, Newburyport, Massachusetts (Facility ID No. 150780) ("**W291CC**"), and, through certain changes in the transmitter sites of W291CC and W221EE as specified herein, the Parties believe that BLOUNT's concerns regarding the alleged interference to WDER-FM can be addressed in a manner satisfactory to BLOUNT while still allowing BLOOMBERG to transmit W221EE's signal in a manner that will serve its intended audience consistent with the public interest, but from a different transmitter site;

**WHEREAS**, the Parties believe that a settlement upon the terms set forth in this Agreement will serve the public interest, in that it will preserve radio service to the public by BLOOMBERG, mitigate potential interference to WDER-FM from W221EE, and resolve all pending matters between BLOUNT and BLOOMBERG without the need for the expenditure of additional time and resources of the Parties or the Commission;

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements, conditions, representations and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties to this Agreement hereby agree as follows:

1. **BLOOMBERG Actions.** In consideration of the actions to be taken by BLOUNT hereunder, BLOOMBERG agrees to file FCC construction permit applications (the "*CP Applications*" and each a "*CP Application*") to change the facilities of W291CC and W221EE in a manner substantially similar to the facilities set forth in the engineering proposal provided to BLOUNT's counsel on May 17, 2019, a copy of which is attached hereto as Exhibit

1, and, upon the grant of the CP Applications, to construct the facilities authorized in those CP Applications in a timely manner as further described in Sections 6 and 7 of this Agreement (the "Bloomberg Actions"). The CP Applications will be filed with the FCC within five (5) business days of the Effective Date. In addition, within five (5) business days of the FCC Consents becoming a Final Order, as defined below, BLOOMBERG shall pay to BLOUNT the sum of Twenty Thousand Dollars (\$20,000). BLOUNT represents that this sum is less than its reasonable and prudent expenses incurred in the prosecution of the Objection and the efforts to resolve the issues raised in the Objection, and BLOUNT will provide such evidence as reasonably requested by the FCC to demonstrate that this payment is permissible under the rules and policies of the FCC.

2. **BLOUNT Actions.** In consideration of the actions to be taken by BLOOMBERG hereunder, BLOUNT agrees to join in the filing of the Request for FCC Consent as described in Section 4 below, and further agrees not to object to the proposed or constructed operations of W221EE as contemplated by the CP Application.

3. **Mutual Agreements.** In consideration of the actions set forth above, upon grant of an FCC license for the facilities proposed in the CP Applications (the "Licensing,"), each Party will forever release the other from all liabilities and claims with respect to the subject matter covered herein, with BLOUNT agreeing not to raise any objections to the operations of W221EE or W291CC as authorized in the Licensing, and each Party agreeing to keep confidential all information gathered during the course of this proceeding with respect to the operations of the other Party, including such business and technical plans that may have been revealed during the course of the settlement negotiations leading to this Agreement.

4. **Request for FCC Consent.** Simultaneously with the filing of the CP Applications, BLOUNT and BLOOMBERG shall file with the FCC a request for approval of this Agreement containing a request for the dismissal of the BLOUNT objection to the Application (the "Dismissal Request") (together, the approvals of the CP Applications and the Dismissal Request shall be referred to as the "FCC Consents"). In their request for approval of this Agreement, the Parties shall make clear that the Agreement is contingent on the Licensing and shall request that the FCC continue to hold BLOUNT'S objection to, and any action on, the Application in abeyance until the Licensing has occurred and has become a Final Order. The term "Final Order" means action by the FCC which is not reversed, stayed, enjoined, set aside, annulled or suspended, and with respect to which action no timely request for stay, petition for rehearing or appeal is pending, and as to which the time for filing any such request, petition or appeal or reconsideration by the FCC on its own motion has expired. BLOUNT and BLOOMBERG shall take all reasonable steps to cooperate with each other and with the FCC to secure the FCC Consents without delay, and to promptly consummate this Agreement. Neither Party shall take any action adverse to this Agreement or to the obtaining of the FCC Consents.

5. **Expenses.** Each party shall bear its own expenses in the negotiation and prosecution of this Agreement, and the respective individual and mutual actions of the Parties contemplated thereby. Other than the consideration set forth herein, neither party shall pay any consideration to the other.

6. **Construction of CP Applications.** BLOOMBERG will take commercially reasonable steps to construct the facilities specified in the CP Applications expeditiously, it being recognized that tower leases, equipment orders and installation arrangements must be finalized. In no case shall BLOOMBERG be required to take any action with respect to the construction that would impose on it any material adverse burden to its business or operations. BLOUNT agrees that minor changes may be made by BLOOMBERG to the facilities proposed in the CP Applications, including changes to transmitter sites, if issues arise in site negotiation or construction implementation, so long as the 60 dBu contour of W221EE as set forth in the CP Application does not extend further in the direction of WDER-FM.

7. **Termination.** This Agreement may be terminated in the following circumstances:

- (a) by the mutual written agreement of both Parties;
- (b) by BLOOMBERG or BLOUNT, if W221EE is not operating from the site specified in the CP Application within eight (8) months of the Effective Date;
- (c) by BLOOMBERG if the FCC does not grant the Dismissal Request;
- (d) by either Party, if the other Party is in breach of its obligations hereunder and has not cured such breach within five (5) business days of receiving notice from the other Party.

8. **Effect of Termination.** In the event of the termination of this Agreement for any of the reasons set forth above, the parties shall withdraw the request for approval of this Agreement filed with the FCC and the request to hold the current proceeding in abeyance. The Parties will be released from all of their obligations hereunder.

9. **No Admission.** Nothing herein constitutes an admission by either Party, and this agreement shall not be admissible in any forum for any purpose other than to enforce its terms.

10. **Authorization and Binding Obligation.** The Parties hereto represent to one another that they each have the power and authority to enter into and carry out this Agreement and that this Agreement constitutes a valid and binding obligation of each of them in accordance with its terms.

11. **Notices.** All notices, requests, demands and other communications relating to this Agreement shall be in writing and shall be sent by first class, certified or registered mail, return receipt requested, postage prepaid and, pending the designation of another address, addressed as follows:

If to BLOUNT:

William Blount  
President  
Blount Communications of NH, Inc.  
8 Lawrence Road  
P.O. Box 465  
Derry, NH 03038

With copy (which shall not constitute notice) to:

Joseph C. Chautin, III  
Hardy, Carey, Chautin & Balkin, LLP  
1080 West Causeway Approach  
Mandeville, LA 70471

If to BLOOMBERG:

Thomas H. Golden  
Counsel  
Bloomberg L.P.  
731 Lexington Avenue  
New York, NY 10022

With copy (which shall not constitute notice) to:

David D. Oxenford, Esq.  
David A. O'Connor, Esq.  
Wilkinson Barker Knauer, LLP  
1800 M Street, N.W.  
Suite 800N  
Washington, D.C. 20036

12. **Entire Agreement.** This Agreement, together with its exhibit, constitutes the entire understanding of the Parties with respect to the subject matter hereof, and no other consideration, action or forbearance is contemplated or relied upon by them. This Agreement may not be amended or modified except by a writing signed by both Parties.

13. **Enforcement.** Should the Parties engage in litigation arising out of this Agreement, the prevailing party in such litigation shall be entitled to reasonable attorneys' fees and costs as shall be determined by the court. The Parties recognize that this Agreement confers a unique benefit, the loss of which cannot be compensated for through monetary damages. Thus, in the event of a breach of this Agreement, the Parties acknowledge that specific performance or other equitable relief would be an appropriate remedy, and agree to waive any defense that there is an adequate remedy at law for breach of this Agreement.

14. **Assignment and Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon, the Parties hereto and their heirs, successors, executors, legal



representatives and assigns, provided however that neither Party may voluntarily assign this Agreement without the express written consent of the other Party. If the license to either WDER-FM or W221EE is assigned, the Party to this Agreement who is assigning the license shall require, as a condition of such assignment, that the assignee agree to be bound by the terms of this Agreement, and the other Party shall be named as a third-party beneficiary of such agreement so that the other Party can enforce its rights hereunder against the new assignee.

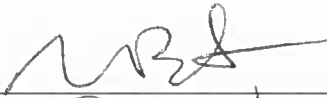
15. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without application of conflicts of laws principles. The Parties agree to accept the jurisdiction of the courts of the Commonwealth of Massachusetts for the resolution of any disputes under this Agreement.

16. **Headings.** The headings herein are included for ease of reference only and shall not control or affect the meaning or construction of the provisions of this Agreement.

17. **Counterparts.** This Agreement may be executed in one or more counterparts and shall be binding when it has been executed by each of the Parties. The Agreement shall become binding upon the exchange of facsimile signatures.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**BLOUNT COMMUNICATIONS, INC. OF NH**

By:   
Its: President

**BLOOMBERG RADIO NEWBURYPORT LLC**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

**BLOUNT COMMUNICATIONS, INC. OF NH**

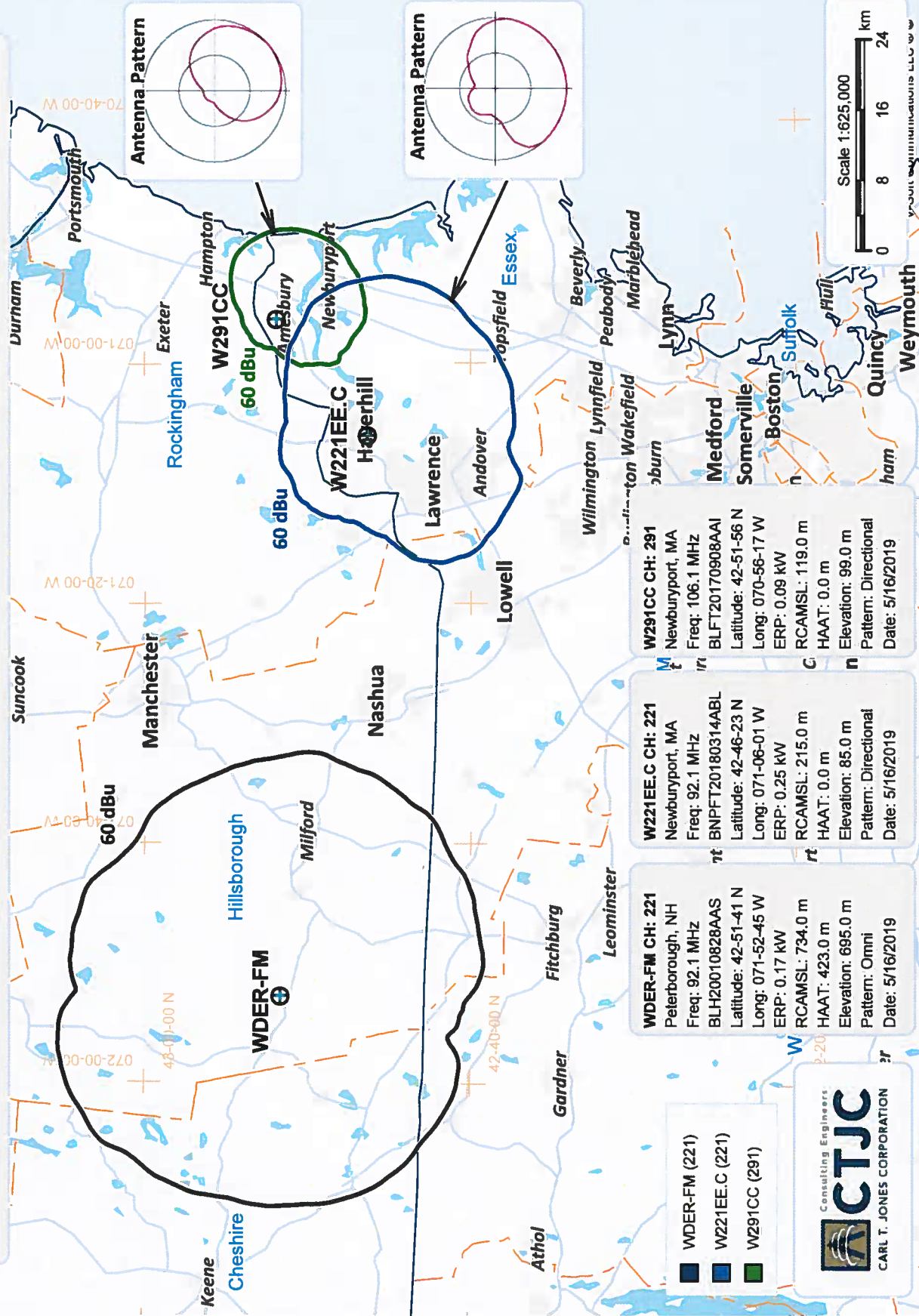
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**BLOOMBERG RADIO NEWBURYPORT LLC**

By: *O. Meyer*  
Its: Globe Radio & TV

**EXHIBIT 1**

# WDER-FM 92.1 FM Peterborough, NH and W221EE 92.1 FM Haverhill MA - W291CC 106.1 FM Newburyport MA



**W291CC CH: 291**  
 Newburyport, MA  
 Freq: 106.1 MHz  
 BLFT20170908AAI  
 Latitude: 42-51-56 N  
 Long: 070-56-17 W  
 ERP: 0.09 kW  
 RCAMSL: 119.0 m  
 HAAT: 0.0 m  
 Elevation: 99.0 m  
 Pattern: Directional  
 Date: 5/16/2019

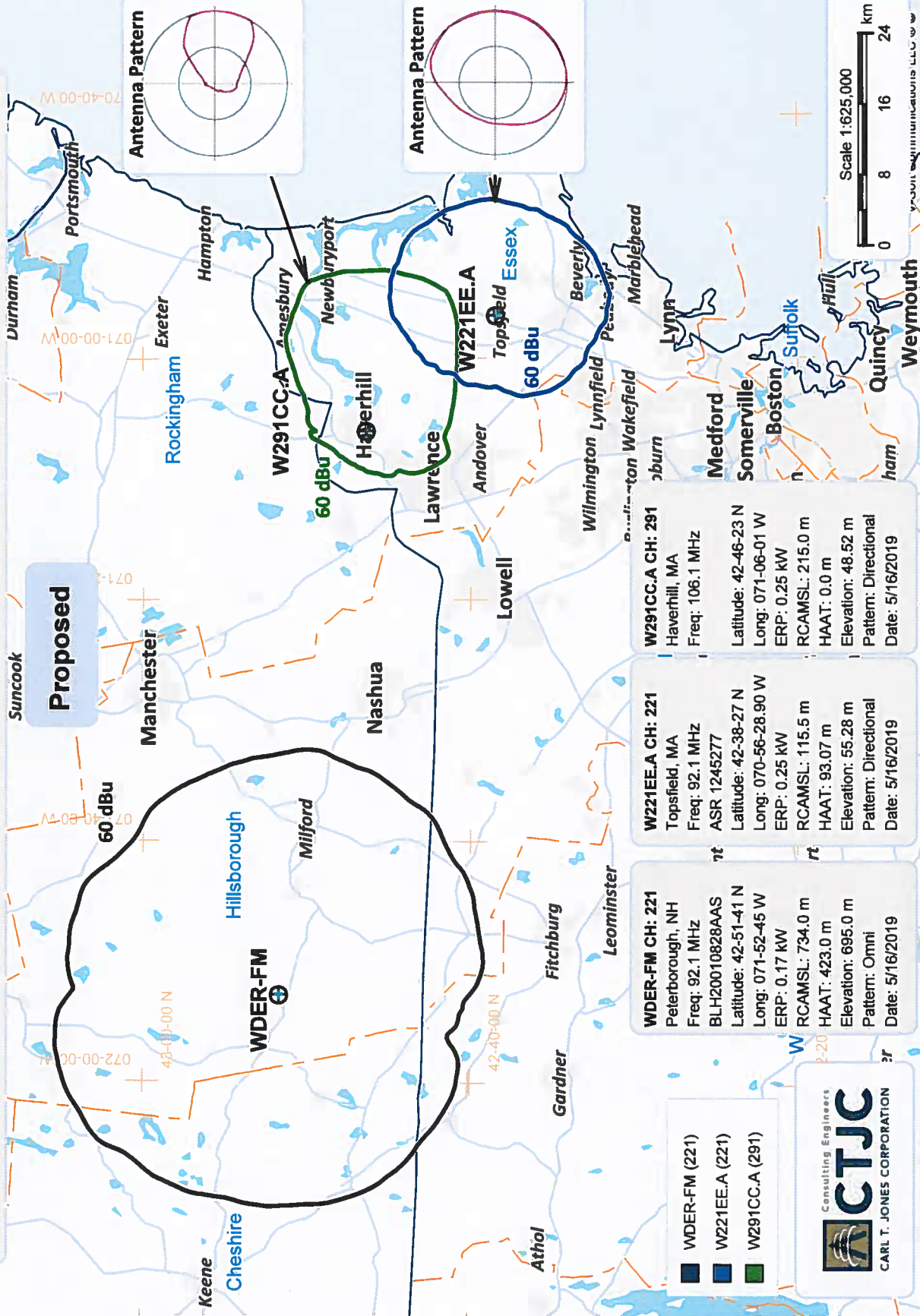
**W221EE.C CH: 221**  
 Newburyport, MA  
 Freq: 92.1 MHz  
 BNPFT20180314ABL  
 Latitude: 42-46-23 N  
 Long: 071-06-01 W  
 ERP: 0.25 kW  
 RCAMSL: 215.0 m  
 HAAT: 0.0 m  
 Elevation: 85.0 m  
 Pattern: Directional  
 Date: 5/16/2019

**WDER-FM CH: 221**  
 Peterborough, NH  
 Freq: 92.1 MHz  
 BLH20010828AAS  
 Latitude: 42-51-41 N  
 Long: 071-52-45 W  
 ERP: 0.17 kW  
 RCAMSL: 734.0 m  
 HAAT: 423.0 m  
 Elevation: 695.0 m  
 Pattern: Omni  
 Date: 5/16/2019

- WDER-FM (221)
- W221EE.C (221)
- W291CC (291)



# WDER-FM 92.1 FM Peterborough, NH and W221EE 92.1 FM Topsfield MA - W291CC 106.1 FM Haverhill MA



**Proposed**

- WDER-FM (221)
- W221EE.A (221)
- W291CC.A (291)

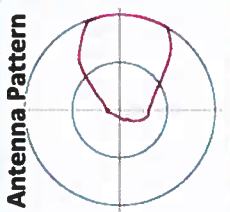


CARL T. JONES CORPORATION

**WDER-FM CH: 221**  
 Peterborough, NH  
 Freq: 92.1 MHz  
 BLH20010828AAS  
 Latitude: 42-51-41 N  
 Long: 071-52-45 W  
 ERP: 0.17 kW  
 RCAMSL: 734.0 m  
 HAAT: 423.0 m  
 Elevation: 695.0 m  
 Pattern: Omni  
 Date: 5/16/2019

**W221EE.A CH: 221**  
 Topsfield, MA  
 Freq: 92.1 MHz  
 ASR 1245277  
 Latitude: 42-38-27 N  
 Long: 070-56-28.90 W  
 ERP: 0.25 kW  
 RCAMSL: 115.5 m  
 HAAT: 93.07 m  
 Elevation: 55.28 m  
 Pattern: Directional  
 Date: 5/16/2019

**W291CC.A CH: 291**  
 Haverhill, MA  
 Freq: 106.1 MHz  
 Latitude: 42-46-23 N  
 Long: 071-06-01 W  
 ERP: 0.25 kW  
 RCAMSL: 215.0 m  
 HAAT: 0.0 m  
 Elevation: 48.52 m  
 Pattern: Directional  
 Date: 5/16/2019



Scale 1:625,000  
 0 8 16 24 km

## **EXHIBIT 2**

### **DECLARATIONS**

**EXHIBIT 2-A**

**Declaration of Blount Communications, Inc. of NH**

I, William Blount, do hereby declare, under penalty of perjury, as follows:

I am the President of Blount Communications, Inc. of NH ("Blount"). On October 12, 2018, Blount filed the Objection to the Application, as further described in the Joint Request for Approval of Settlement Agreement and Dismissal of Objection ("Joint Request").

Blount has entered into a Settlement Agreement with Bloomberg Radio Newburyport LLC ("Bloomberg") as further described in the Joint Request.


The Settlement Agreement and the Joint Request constitute the entire understanding between Blount and Bloomberg for settlement of this proceeding. Other than as stated in the Settlement Agreement, neither Blount nor Blount's principals have received any consideration from Bloomberg, and have not been paid or promised any consideration from Bloomberg. The consideration set forth in the Settlement Agreement does not exceed the legitimate and prudent expenses of Blount or its principals incurred in connection with the Objection.

Blount did not file the Objection for purpose of reaching or carrying out a settlement.

Approval of the Settlement Agreement is in the public interest. It will conserve the resources of the parties and the Commission by resolving the issues raised in the Objection in a mutually satisfactory manner.

I am authorized to sign this Declaration and the Settlement Agreement on behalf of Blount.

BLOUNT COMMUNICATIONS, INC. OF NH

By:   
Name: William Blount  
Title: President



**Declaration of Bloomberg Radio Newburyport LLC**

I, Al Mayers, do hereby declare, under penalty of perjury, as follows:

I am Global Head of Television and Radio for Bloomberg L.P., the parent entity of Bloomberg Radio Newburyport LLC ("Bloomberg"). Bloomberg filed the Application for W221EE, and an objection was filed by Blount Communications, Inc. of NH ("Blount"), as further described in the Joint Request for Approval of Settlement Agreement and Dismissal of Objection ("Joint Request").

Bloomberg has entered into a Settlement Agreement with Blount to resolve the issues raised in the Objection.

The Joint Request and Settlement Agreement constitute the entire understanding between Bloomberg and Blount for settlement of this proceeding. Other than as stated in the Settlement Agreement, neither Bloomberg nor any of its principals has provided any consideration to Blount, or paid or promised any consideration to Blount.

Bloomberg did not file the Application for the purpose of reaching or carrying out a settlement.

Approval of the Settlement Agreement is in the public interest. It will conserve the resources of the parties and the Commission by resolving the issues raised in the Objection in a mutually satisfactory manner.

I am authorized to sign this Declaration and the Settlement Agreement on behalf of Bloomberg.

**BLOOMBERG RADIO NEWBURYPORT LLC**

By: Al Mayers

Name: Al Mayers

Title: Global Head of Television and Radio  
Bloomberg L.P.