BEFORE THE

**Federal Communications Commission**

WASHINGTON, D. C. 20554

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|---|---|---|
| In re Application of | ) | |
| | ) | |
| LA PROMESA FOUNDATION | ) | File No. BMPFT-20190910AEW |
| W224CK, Vestavia Hills, Alabama | ) | Facility ID # 156965 |
| | ) | |
| For Construction Permit to | ) | |
| Move to Channel 214 | ) | |



TO: Honorable Marlene H. Dortch
Secretary of the Commission

ATTN: Chief, Audio Division, Media Bureau

## FIRST SUPPLEMENT TO PETITION FOR RECONSIDERATION

La Promesa Foundation (LPF), licensee of FM Translator Station W224CK, Vestavia Hills, Alabama, by its attorney, hereby respectfully submits this First Supplement to its November 1, 2019 Petition for Reconsideration in the above-captioned matter. It is respectfully requested that leave be granted to file this First Supplement and that it be considered on its merits. In support whereof, the following is shown:

1. We were informally advised by Audio Division staff that our curative amendment did not contain a request for waiver of Section 74.1233(a)(1), even though that was not a basis for the Commission's letter ruling of October 21, 2019.

4. The purpose of this First Supplement is to submit such a waiver request, which is attached hereto. The public

interest, convenience and necessity would be well served by grant of the waiver, which will eliminate most of the interference to the 60 dBu contour of this FM translator station as well as increase its service to the public and achieve a more efficient use of the broadcast spectrum. As a result, LPF's Petition for Reconsideration should be granted, its curative amendment and waiver request should be granted, and the above-captioned application as amended should be granted.

**WHEREFORE**, it is urged that: (1) this First Supplement **BE ACCEPTED**; (2) the Petition for Reconsideration **BE GRANTED**; (3) the above-captioned application on behalf of FM Translator Station W224CK, Vestavia Hills, Alabama as anebded **BE REINSTATED**; and (4) said application as amended **BE ACCEPTED FOR FILING, PROCESSED AND GRANTED.**

Respectfully submitted,

**LA PROMESA FOUNDATION**

By_____
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DATED AND FILED: February 11, 2020

**REQUEST FOR WAIVER OF 47 CFR §74.1233(a)(1)**
**TO PERMIT W224CK TO CHANGE FREQUENCY**
**FROM CHANNEL 224 TO CHANNEL 214**

La Promesa Foundation, a Texas non-profit corporation and licensee of numerous non-commercial educational AM and FM stations and non-commercially operated FM Translator Stations, hereby respectfully requests a waiver of new Section 74.1233(a)(1) of the Commission's Rules, to permit existing licensed FM Translator Station W224CK, Vestavia Hills, Alabama, to relocate from Channel 224, 92.7 MHz, in the "commercial" FM band, to Channel 214, 90.7 MHz, in the reserved "non-commercial" FM band.

The FCC's Report and Order in MB Docket No. 18-119, FCC 19-40, 34 FCC Rcd -- at ¶7 (May 9, 2019), the FCC wrote:

> ***7. Band-Hopping***
>
> **Given this increased flexibility to change channels, we are not persuaded that it is also necessary to allow translator operators to "band hop"—i.e., to move between the reserved FM band and the non-reserved FM band— to resolve interference issues.21 In the FM service, the Commission has reserved twenty specific channels (channels 201 to 220) exclusively for full-power FM and FM translator use by noncommercial educational (NCE) stations,22 to ensure that NCE stations would have the opportunity to develop without being precluded by commercial stations.23 The Commission grants licenses in the reserved band using different procedures than those used for the non-reserved band. Specifically, non-reserve band channels are subject to competitive bidding when there is mutual exclusivity among competing applicants while reserve band channels are allocated through filing windows with mutually exclusive applications being resolved through a point system.24 With the increased channel change activity that we anticipate will be generated by the rule change adopted herein, as well as the overall growth of the FM translator service, we believe that restricting such channel changes to the same band is necessary to preserve the integrity of the different processing systems we use for each band and to prevent licensees from avoiding competitive bidding by band**

**hoping. Moreover, our use of filing windows is critical to provide equal opportunity to frequencies for translator applicants across the country. (footnotes 21-24 omitted).**

**25 "Band-Hopping" circumvents the need to file in an appropriate window. In addition, allowing an NCE station to move from the reserved FM band to the non-reserved FM band potentially precludes the use of the relevant frequencies in future auctions**

**26 We decline to undermine the filing window and auction processes by allowing translator operators the additional flexibility of cross-band channel changes for interference mitigation purposes, despite the potential lack of availability of a suitable channel in the same band.**

**27 Therefore, we modify section 74.1233(a)(1) to define as a major change any channel change for a translator seeking to resolve interference from a non-reserved band frequency to a reserved band frequency, or vice versa, as proposed in the *NPRM*.**

**28 This amendment of section 74.1233(a)(1) does not affect our existing provision classifying band-hopping channel changes by any unbuilt station as a major change.**

**29 47 CFR § 74.1233(a)(1). The Commission adopted this provision in response to its experience with parties filing an application for a new station in a non-reserved (commercial) band window and then, before constructing or operating, filing a modification application to move to a reserved (noncommercial educational) band channel.**

We respectfully observe that the stated purpose of new Section 74.1233(a)(1) is to prevent broadcasters from "undermin[ing] the filing window and auction processes" by moving from the non-commercial band into the commercial band. The move of an FM translator station in the other direction, from the commercial band to the non-commercial band, restricts the use of said station and makes it less valuable. LPF is an established non-commercial broadcaster with almost two full decades of experience in owning and operating stations which broadcast a non-

commercial, non-profit Roman Catholic educational and inspirational program formats.

In the case of Station W224CK, there is no suitable channel in the commercial band for it to move to in order to eliminate interference to it caused by WTDR-FM, Talladega, Alabama and by W224CN(FX), Leeds, Alabama, which encompasses 31,667 persons (see Exhibit A).

By relocating to 90.7 MHz, Channel 214, in the "reserved" non-commercial band, W224CK would be able to provide interference-free service to 557,006 persons within its 60 dBu contour in metropolitan Birmingham, Alabama, while receiving interference within its 60 dBu contour encompassing just 6,521 persons (see Exhibit B). At present, the W224CK licensed 60 dBu contour encompasses 99,932 persons, of which 31,667 persons are affected by interference by the co-channel stations listed above. Thus, W224CK effectively serves only 68,265 persons with interference-free service. A grant of this waiver and the underlying application will result in increased interference-free 60 dBu or better service to 488,741 persons, an increase of approximately 615%. This vastly more efficient use of the broadcast spectrum is in the public interest, convenience and necessity and meets a principal statutory objective of Section 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §307(b). We would note that the Media Bureau has indicated that "the most efficient use of limited spectrum" is a factor in deciding to

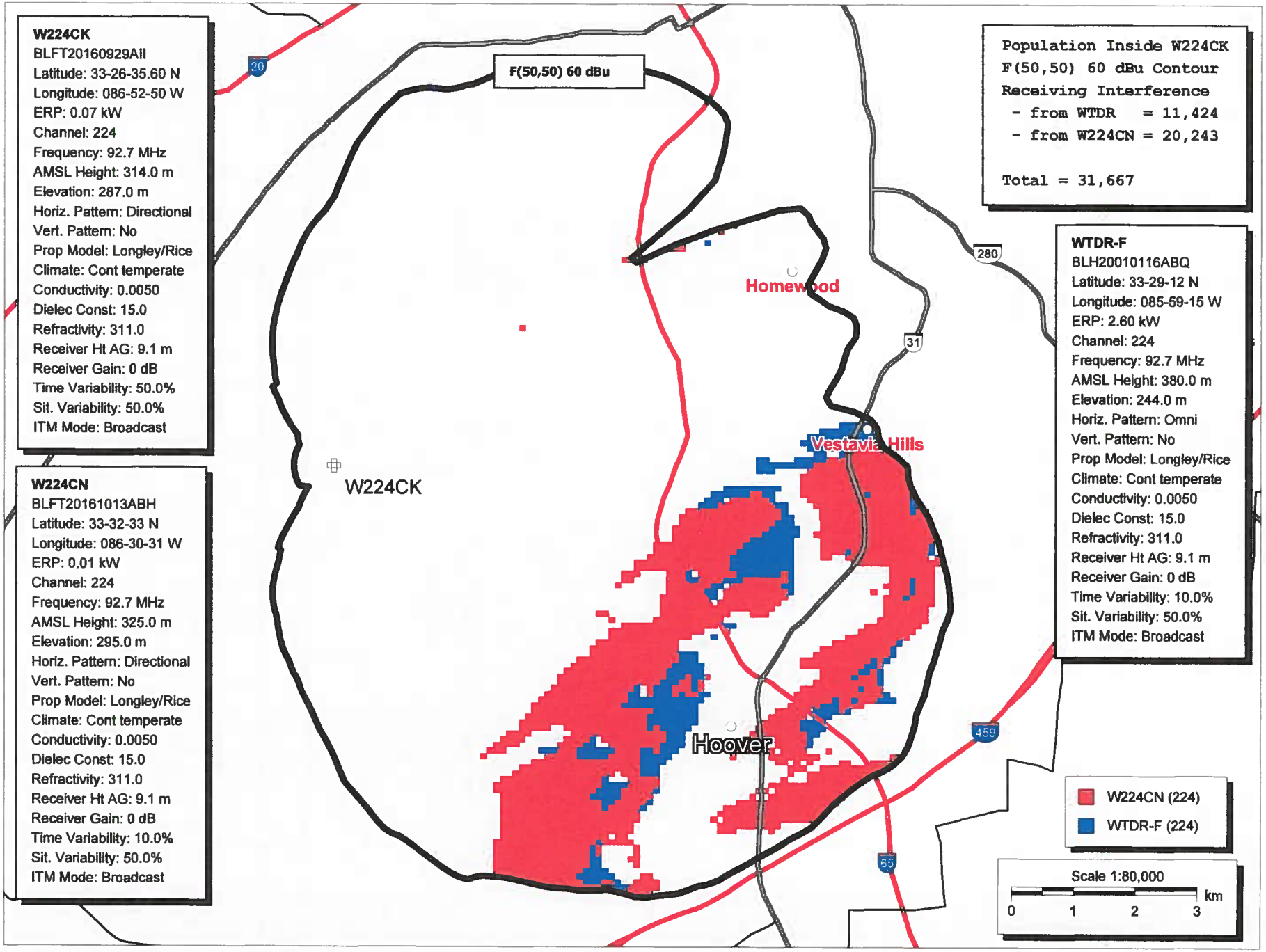
grant a waiver request. ***John F. Garziglia, Esq.***, 26 FCC Rcd 12685, 12688-89 (Audio Div., 2011).

While it is true that an applicant for a waiver of the FCC's Rules faces a "high hurdle at the starting gate", ***WAIT Radio v. FCC,*** *418 F.2d 1153* (D. C. Cir. 1969), it is also true that the FCC is obligated to take a "hard look" at the contentions made by a waiver applicant in its request, and further that the Commission may not summarily "curtail access to broadcast facilities by those applicants who, although technically in violation of a Commission rule, will not be undermining the purpose or policy which the rule was designed to further". ***Id.*** at 1160, n. 21.

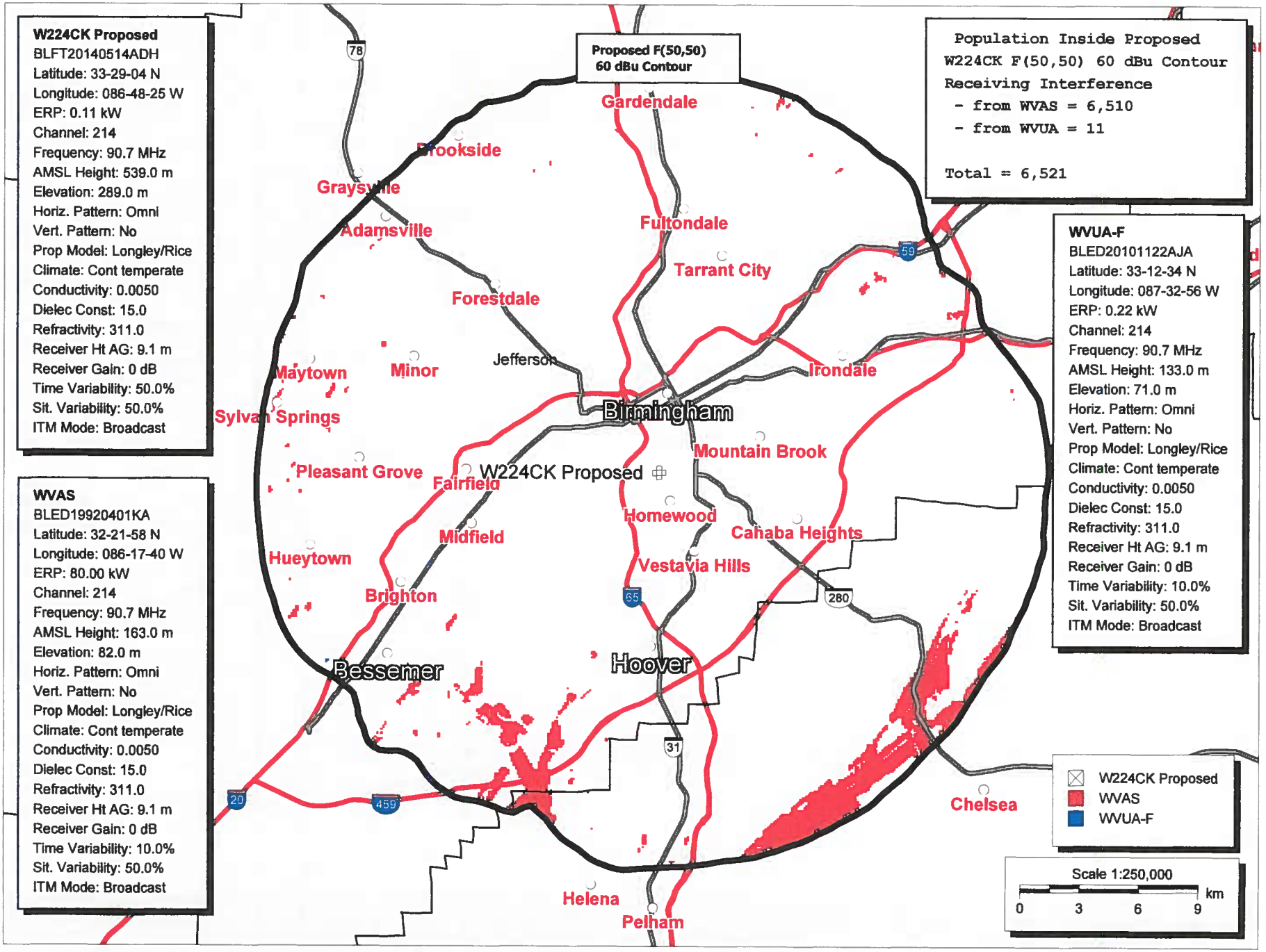
The instant request does not undermine the purpose of the May 9, 2019 amendment to Section 74.1233(a)(1), because this application does not subvert the potential future auction of FM translator spectrum in the commercial band in the Birmingham, Alabama area. It will enhance the most efficient use of the FM spectrum because station W224CK will, according to computer studies, gain 25,146 listeners who currently receive destructive interference from two co-channel facilities on Channel 224.

Therefore, the public interest, convenience and necessity would be well served by a grant of this waiver request and by grant of the underlying application to relocate W224CK to Channel 214.

# EXHIBIT A


W224CK
BLFT20160929AII
Latitude: 33-26-35.60 N
Longitude: 086-52-50 W
ERP: 0.07 kW
Channel: 224
Frequency: 92.7 MHz
AMSL Height: 314.0 m
Elevation: 287.0 m
Horiz. Pattern: Directional
Vert. Pattern: No
Prop Model: Longley/Rice
Climate: Cont temperate
Conductivity: 0.0050
Dielec Const: 15.0
Refractivity: 311.0
Receiver Ht AG: 9.1 m
Receiver Gain: 0 dB
Time Variability: 50.0%
Sit. Variability: 50.0%
ITM Mode: Broadcast
W224CN
BLFT20161013ABH
Latitude: 33-32-33 N
Longitude: 086-30-31 W
ERP: 0.01 kW
Channel: 224
Frequency: 92.7 MHz
AMSL Height: 325.0 m
Elevation: 295.0 m
Horiz. Pattern: Directional
Vert. Pattern: No
Prop Model: Longley/Rice
Climate: Cont temperate
Conductivity: 0.0050
Dielec Const: 15.0
Refractivity: 311.0
Receiver Ht AG: 9.1 m
Receiver Gain: 0 dB
Time Variability: 10.0%
Sit. Variability: 50.0%
ITM Mode: Broadcast
F(50,50) 60 dBu
W224CK
Homewood
Vestavia Hills
Hoover
20
31
280
459
65
Population Inside W224CK
F(50,50) 60 dBu Contour
Receiving Interference
- from WTDR = 11,424
- from W224CN = 20,243
Total = 31,667
WTDR-F
BLH20010116ABQ
Latitude: 33-29-12 N
Longitude: 085-59-15 W
ERP: 2.60 kW
Channel: 224
Frequency: 92.7 MHz
AMSL Height: 380.0 m
Elevation: 244.0 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: Longley/Rice
Climate: Cont temperate
Conductivity: 0.0050
Dielec Const: 15.0
Refractivity: 311.0
Receiver Ht AG: 9.1 m
Receiver Gain: 0 dB
Time Variability: 10.0%
Sit. Variability: 50.0%
ITM Mode: Broadcast
W224CN (224)
WTDR-F (224)
Scale 1:80,000
km
0
1
2
3

# EXHIBIT B


W224CK Proposed
BLFT20140514ADH
Latitude: 33-29-04 N
Longitude: 086-48-25 W
ERP: 0.11 kW
Channel: 214
Frequency: 90.7 MHz
AMSL Height: 539.0 m
Elevation: 289.0 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: Longley/Rice
Climate: Cont temperate
Conductivity: 0.0050
Dielec Const: 15.0
Refractivity: 311.0
Receiver Ht AG: 9.1 m
Receiver Gain: 0 dB
Time Variability: 50.0%
Sit. Variability: 50.0%
ITM Mode: Broadcast
WVAS
BLED19920401KA
Latitude: 32-21-58 N
Longitude: 086-17-40 W
ERP: 80.00 kW
Channel: 214
Frequency: 90.7 MHz
AMSL Height: 163.0 m
Elevation: 82.0 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: Longley/Rice
Climate: Cont temperate
Conductivity: 0.0050
Dielec Const: 15.0
Refractivity: 311.0
Receiver Ht AG: 9.1 m
Receiver Gain: 0 dB
Time Variability: 10.0%
Sit. Variability: 50.0%
ITM Mode: Broadcast
Proposed F(50,50)
60 dBu Contour
Population Inside Proposed
W224CK F(50,50) 60 dBu Contour
Receiving Interference
- from WVAS = 6,510
- from WVUA = 11
Total = 6,521
WVUA-F
BLED20101122AJA
Latitude: 33-12-34 N
Longitude: 087-32-56 W
ERP: 0.22 kW
Channel: 214
Frequency: 90.7 MHz
AMSL Height: 133.0 m
Elevation: 71.0 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: Longley/Rice
Climate: Cont temperate
Conductivity: 0.0050
Dielec Const: 15.0
Refractivity: 311.0
Receiver Ht AG: 9.1 m
Receiver Gain: 0 dB
Time Variability: 10.0%
Sit. Variability: 50.0%
ITM Mode: Broadcast
Gardendale
Brookside
Graysville
Adamsville
Fultondale
Tarrant City
Forestdale
Jefferson
Maytown
Minor
Irondale
Sylvan Springs
Birmingham
Mountain Brook
Pleasant Grove
Fairfield
W224CK Proposed
Homewood
Cahaba Heights
Midfield
Hueytown
Vestavia Hills
Brighton
Bessemer
Hoover
Chelsea
Helena
Pelham
78
59
65
280
31
20
459
W224CK Proposed
WVAS
WVUA-F
Scale 1:250,000
km
0
3
6
9