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October 6, 2006

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OCT 6 2006

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Attention: Media Bureau

Re: Petition for Rule Making
Amendment of TV and DTV Table of Allotments
Owensboro, Kentucky

Dear Ms. Dortch:

Transmitted herewith, on behalf of Pappas Telecasting of America, a California Limited Partnership, and South Central Communications Corporation, are an original and four copies of its "Petition for Rule Making" to substitute DTV channel 35 for NTSC channel 48 at Owensboro, Kentucky.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,



Anne Goodwin Crump
Counsel for Pappas Telecasting of America, a
California Limited Partnership

Enclosures

cc: Clay Pendarvis, Associate Division Chief, Video Division, Media Bureau

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*Before the Federal Communications Commission
Washington, D.C. 20554*

In the Matter of:)
)
Amendment of Section 73.606(b) and)
Amendment of Section 73.622(b);)
Table of Allotments;)
Television Broadcast Stations.)
(Owensboro, Kentucky))

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OCT 6 2006

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Directed to: Media Bureau

PETITION FOR RULE MAKING

Pappas Telecasting of America, a California Limited Partnership (“Pappas”) and South Central Communications Corporation (“SCCC”) (collectively, the “Petitioners”), by their attorneys, hereby respectfully submit a Petition for Rule Making to amend the television Table of Allotments and Digital Television (“DTV”) Table of Allotments to substitute DTV Channel 35 for analog Channel 48 at Owensboro, Kentucky. With respect thereto, the following is stated:

1. Pappas and SCCC have pending applications for construction permit for a new NTSC television station to operate on Channel 48 at Owensboro, Kentucky (File Nos. BPCT-19960722KL and BPCT-19960920IV, respectively). Both Pappas and SCCC filed for the channel as allotted at Owensboro, and they subsequently reached a settlement agreement and, on January 28, 1998, submitted a “Joint Request for Approval of Settlement Agreement.” The settlement agreement contemplates the grant of the Pappas application and dismissal of the SCCC application. In the interim, however, Channel 48 as specified in the applications has been reallocated for use as a DTV companion channel, thereby making that channel unavailable at Owensboro. Petitioners have been seeking a replacement channel since the reallocation took

place, only to have each potential replacement also become unavailable for allotment. Petitioners have now located an in-core DTV channel which can be allotted to allow the applications to go forward and a new television service to be provided at Owensboro. Accordingly, Petitioners are seeking to change the allotted NTSC channel to a DTV-only channel at this time.

2. As an initial matter, Petitioners are aware that the Commission has imposed a freeze on the filing of certain rule making petitions which propose changes in the television or DTV Table of Allotments. *Public Notice, "Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes,"* DA 04-2446, released August 3, 2004. Included in that freeze are rule making petitions in the following categories:

- Petitions for rulemaking to change DTV channels within the DTV Table of Allotments.
- Petitions for rulemaking for new DTV allotment proceedings.
- Petitions for rulemaking to swap in-core DTV and NTSC channels.
- Applications to change DTV channel allotments among two or more licensees.
- Petitions for rulemaking by licensees/permittees to change NTSC channels or communities of license.

Id. A careful examination shows that the instant petition does not fit into any of these categories.

This petition is not seeking to change DTV or NTSC channels or to add a new DTV allotment where no channel has previously been allotted, but rather seeks to change from analog to DTV operation. Likewise, this is not a petition to swap DTV and NTSC channels, as there is only one channel at issue here, nor do Petitioners seek to change DTV channels among licensees. Thus,

the terms of the filing freeze do not apply squarely to this petition. In the event that any of the freeze provisions should be interpreted as applicable, however, Petitioners respectfully request a waiver of the filing freeze. As set forth herein, waiver of the freeze to allow consideration of the proposed change in channel at this time would serve the public interest and would represent an equitable response to matters not in the control of Petitioners.¹

3. As an initial matter, it must be noted that Pappas has been seeking for over ten years now to bring a new television service, representing only the second local television station and first local commercial television station, to the community of Owensboro. Pappas has followed announced FCC procedures throughout the prosecution of its application only to be thwarted at every turn by changes in FCC policies which required numerous changes in direction. These evolutions in policy due to developments in the implementation of DTV were changes clearly beyond the control of Pappas.

4. Pappas initially applied for an allocated analog channel 48 at Owensboro. Thereafter, that channel was reallocated as the DTV companion channel for WKGB-TV, Bowling Green, Kentucky. Pursuant to the Commission's *Public Notice*, 14 FCC Rcd 19559 (1999), Pappas joined with SCCC in filing a petition for rule making to substitute channel 47 for 48. Channel 47 then became unavailable due to a DTV maximization application, and the petition for rule making was amended to specify Channel 57, only to have that channel reallocated pursuant to the FCC's lower 700 MHz proceeding.

5. Thereafter, pursuant to the FCC's *Public Notice*, DA 01-270, rel. February 6, 2002, a

¹ Moreover, as further noted below, the Commission is statutorily required to waive any rule necessary to allow settlements such as that involving Petitioners to be effectuated. *See*, 47 U.S.C. §309(l).

further petition for rule making to substitute DTV channel 54 was filed. That *Public Notice* invited applicants in the position of Petitioners to seek to substitute an in-core analog or an out-of-core DTV channels for their existing channels. Only after Petitioners responded to that invitation and filed their petition to substitute DTV channel 54, the determination was made that such petitions proposing out-of-core DTV channels would not be granted. In sum, from the beginning, Pappas has followed announced Commission procedures, only to have available channels made unavailable by Commission actions. It and SCCC have repeatedly adjusted in the manner directed by the Commission, but have then had further roadblocks thrown in the way. While these reversals resulted from larger decisions concerning DTV implementation, they nonetheless were beyond the control of and could not have reasonably been anticipated by Petitioners.

6. Petitioners now have located a new substitute channel, as set forth in the attached Engineering Statement. As set forth above, Petitioners are proposing to substitute DTV channel 35 for NTSC Channel 48 at Owensboro. This proposed facility provides the requisite level of protection to all tentative channel designations through the third round of DTV channel elections. While current analog facilities are not considered, as a practical matter, by the time that the proposed facility could be built and put into operation following allotment of the channel requested and processing and grant of the application for construction permit, the DTV transition is likely to be nearing its end. As the Commission is aware, the statutorily set deadline for cessation of analog broadcasting is February 17, 2009. At this point, that deadline is only approximately two years and four months away. Realistically, by the time that the instant petition could be processed and granted, and by the time that the application could be amended,

processed, and granted, the time remaining until the end of transition will be substantially reduced, perhaps down to little more than a year, if that. The construction process itself would require time for completion as well. In any event, the time remaining until completion of the DTV transition is now less than the three year construction period specified in construction permits for new television stations. Accordingly, Pappas is willing to accept a construction permit which specifies that operation of the new Owensboro station would not commence until after the February 17, 2009, transition deadline.

7. Clearly, this result would serve the public interest by providing for a new television station at Owensboro. Petitioners therefore request a waiver of the ordinarily applicable rules to allow the instant petition to move forward. It must be remembered that Petitioners are applicants involved in a universal settlement agreement reached and timely filed during the statutory settlement period established by the Balanced Budget Act of 1997. Section 309(l) was added to the Communications Act of 1934, as amended, by Section 3002(a) of the Balanced Budget Act. That section directs the Commission to “waive any provisions of its regulations necessary” to permit settlements among mutually exclusive broadcast applicants to go forward. 47 U.S.C. §309(l) (emphasis added). Since the Settlement Agreement in this instance cannot be effectuated without grant of a channel change, the Commission is statutorily bound to grant the requested waiver to permit the change in channel.

8. Furthermore, initiation of the requested rule making proceeding at this time, and grant of the requested change in channel, will clearly serve the public interest. By commencing proceedings at this time, before the final DTV Table of Allotments is adopted and released, the change in channel can be included in that final Table. Thus, a long-pending matter can be

resolved at the commencement of finalized DTV operations. This timing will serve the public interest by conserving administrative resources and providing earlier certainty.

9. Likewise, grant of the requested channel change will allow for implementation of a new local television service for Owensboro. This station will be the only local commercial television station in the community of Owensboro. Addition of the station will provide a unique opportunity for providing service to the residents of Owensboro. In addition, the timing of the addition of the station will assist in the DTV transition by adding a new service just as DTV is being fully implemented, thereby further sparking local interest in DTV broadcasts. Further, grant of Petitioners' proposal will bring about an equitable resolution of a long-pending matter with many twists and turns not of Petitioners' making. Finally, this result will satisfy the Congressional mandate that any rule provisions be waived as necessary to allow implementation of specified settlement agreements.

10. Moreover, there would be no public interest detriment as a result of Petitioners' proposal. As set forth in the Engineering Statement, the proposal is properly spaced and will provide the requisite level of interference protection to all DTV facilities as set forth in tentative channel designations, and such facilities will be the only stations operating by the time the proposed Pappas station would begin broadcasts. Additionally, Petitioners are uniquely situated, and there can be no more than a handful of parties with even remotely similar circumstances. Petitioners initially were among the finite group of those who filed applications in 1996 for construction permits for new television stations and in 1998 entered into universal settlement agreements. That group has been further narrowed by resolution of proceedings over the years. Petitioners submit that their position of having submitted an application for an allotted channel

which was reallocated and then having assiduously and repeatedly followed the Commission's directions for seeking replacement channels, only to have each such option found foreclosed by later Commission action, is now unique.

11. In sum, grant of the proposed change in channel would serve the public interest by providing for a new DTV station, thereby adding a new local service and stimulating interest in DTV generally. Such approval also would provide an equitable outcome in a proceeding marked by reversals of fortune which were beyond Petitioners' control or ability to predict. Finally, this outcome would be in accordance with the statutory mandate that the Commission take all necessary steps to allow implementation of the 1998 universal settlements.

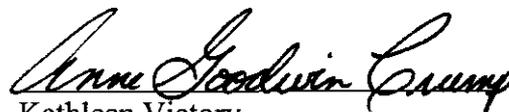
WHEREFORE, the premises considered, Petitioners respectfully request that DTV Channel 35 be substituted for analog Channel 48 at Owensboro, Kentucky.

Respectfully submitted,

PAPPAS TELECASTING OF AMERICA,
A CALIFORNIA LIMITED
PARTNERSHIP

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By: Edward S. O'Neill
Edward S. O'Neill *by [signature]*

Its Attorney

October 6, 2006

ENGINEERING STATEMENT
RE: PETITION FOR RULE MAKING TO SUBSTITUTE
DTV CHANNEL 35 FOR ANALOG TV CHANNEL 48 AT
OWENSBORO, KENTUCKY
SEPTEMBER 2006

This engineering statement has been prepared on behalf of Pappas Telecasting of America, a California Limited Partnership (“Pappas”) and South Central Communications Corporation (“SCCC”), applicants for a new television station at Owensboro, Kentucky in support of their request to substitute digital television (DTV) Channel 35 for the allotted analog TV Channel 48.

Pappas and SCCC each filed application (BPCT-19960672KL, Facility ID No. 82794 and BPCT-19960929IV, Facility ID No. 83924) in 1996 for a construction permit to build a new analog TV station on Channel 48 (674-680 MHz) at Owensboro, Kentucky. A settlement agreement proposing the grant of the Pappas application was subsequently reached. Analog TV Channel 48 was allotted to Owensboro, Kentucky in Section 73.606 of the Commission’s rules. However, due to a conflict with the DTV Channel 48 allotment at Bowling Green, Kentucky for station WKGB-TV, analog TV Channel 48 could not be used at Owensboro, Kentucky. Therefore, Pappas and SCCC proposed Channel 54 (710-716 MHz) (BPRM-20000717ADR, Facility ID No. 127422) in lieu of Channel 48 and to operate the new television station as a digital TV station at Owensboro, Kentucky. The Commission has designated Channels 2-51 as the core spectrum for all digital TV stations. Therefore, the new digital TV station at Owensboro, Kentucky must relocate its operation within Channels 2-51.

A TV allocation study has been conducted according to Section 73.623(d) of the Commission’s rules to determine a suitable DTV channel which can be substituted for the analog TV Channel 48 (or the previously proposed DTV Channel 54) for operation at Owensboro, Kentucky. The attached map shows (Figure 1) the minimum separation arcs from pertinent TV stations operating on DTV Channels 34-36 for the proposed DTV

Channel 35 operation near Owensboro. Since Pappas is proposing to operate the new DTV station after the cessation of analog TV service, the minimum separation arcs from the analog TV stations are not shown on the map. Figure 1 indicates there is a large area near Owensboro where an antenna site for DTV Channel 35 can be located to meet the minimum separation distances to other pertinent DTV stations. For illustrative purposes, an antenna site has been selected within the fully-spaced area for DTV Channel 35 operation. The geographic coordinates of this reference site are as follows:

North Latitude: 37° 46' 26"
West Longitude: 87° 06' 48"

This reference site (center of Owensboro, KY) is also shown on Figure 1. The attached Table I shows actual and required distances from the proposed DTV Channel 35 reference site. Table I indicates the reference site complies with the minimum distance requirements of Section 73.623(d) of the Commission's Rules with respect to all other DTV stations and allotments. Since Pappas plans to operate DTV Channel 35 at Owensboro, Kentucky after the cessation of analog TV service, it is believed compliance of minimum distance requirements to the analog TV stations is not pertinent.

The attached map (Figure 2) shows the computed City Grade (48 dBu) contour for DTV Channel 35 based on the maximum facilities (1000 kW effective radiated power (ERP) and 365 meters antenna height above average terrain or equivalent (HAAT)) as specified in Section 73.622(f) of the Commission's rules for a new DTV allotment on Channels 14-51 created subsequent to the initial DTV Table of Allotments. Figure 2 indicates the DTV Channel 35 computed City Grade (48 dBu) from the reference site would serve all of Owensboro, Kentucky, the station's community of license. Therefore

the proposed allotment of DTV Channel 35 to Owensboro would comply with Section 73.625(a) of the Commission's rules.

An electromagnetic interference study conducted according to FCC OET Bulletin 69 also indicates it is feasible to operate DTV Channel 35 at Owensboro, Kentucky by using less than maximum facilities and/or a directional TV antenna. For example, if DTV Channel 35 ERP is limited to approximately 200 kW at 365 meters HAAT by using a directional TV antenna in the direction of adjacent channel DTV operation of WSIL-DT, Channel 34, Harrisburg, Illinois, it would not cause any interference to that station.

The attached map (Figure 3) shows the computed noise limited coverage contour for the proposed DTV Channel 35 based on maximum ERP and HAAT. It is estimated the proposed DTV Channel 35 operation would serve 924,115 people (2000 US Census) and 33,385 square km area.

The DTV channels tentatively allotted by the Commission to all TV stations under Rounds 1, 2 and 3 have been reviewed to determine any impact on the Commission's DTV Channel election process. The attached Table II shows the tentatively designated DTV Channels 34-36 for all TV stations located within 475 km from Owensboro, Kentucky. Table II indicates the proposed DTV Channel 35 operation at Owensboro would not be in conflict with the tentatively designated DTV channels.

Therefore, Pappas and SCCC request the Commission to substitute DTV Channel 35 for analog TV Channel 48 at Owensboro, Kentucky since it complies with the Commission's rules and also is in the Public Interest as it would result in new TV service to more than 920,000 people and 33,380 square km area.

TABLE I
DTV ALLOCATION SITUATION
FOR THE PROPOSED DTV CHANNEL 35 OPERATION AT
OWENSBORO, KENTUCKY
SEPTEMBER 2006

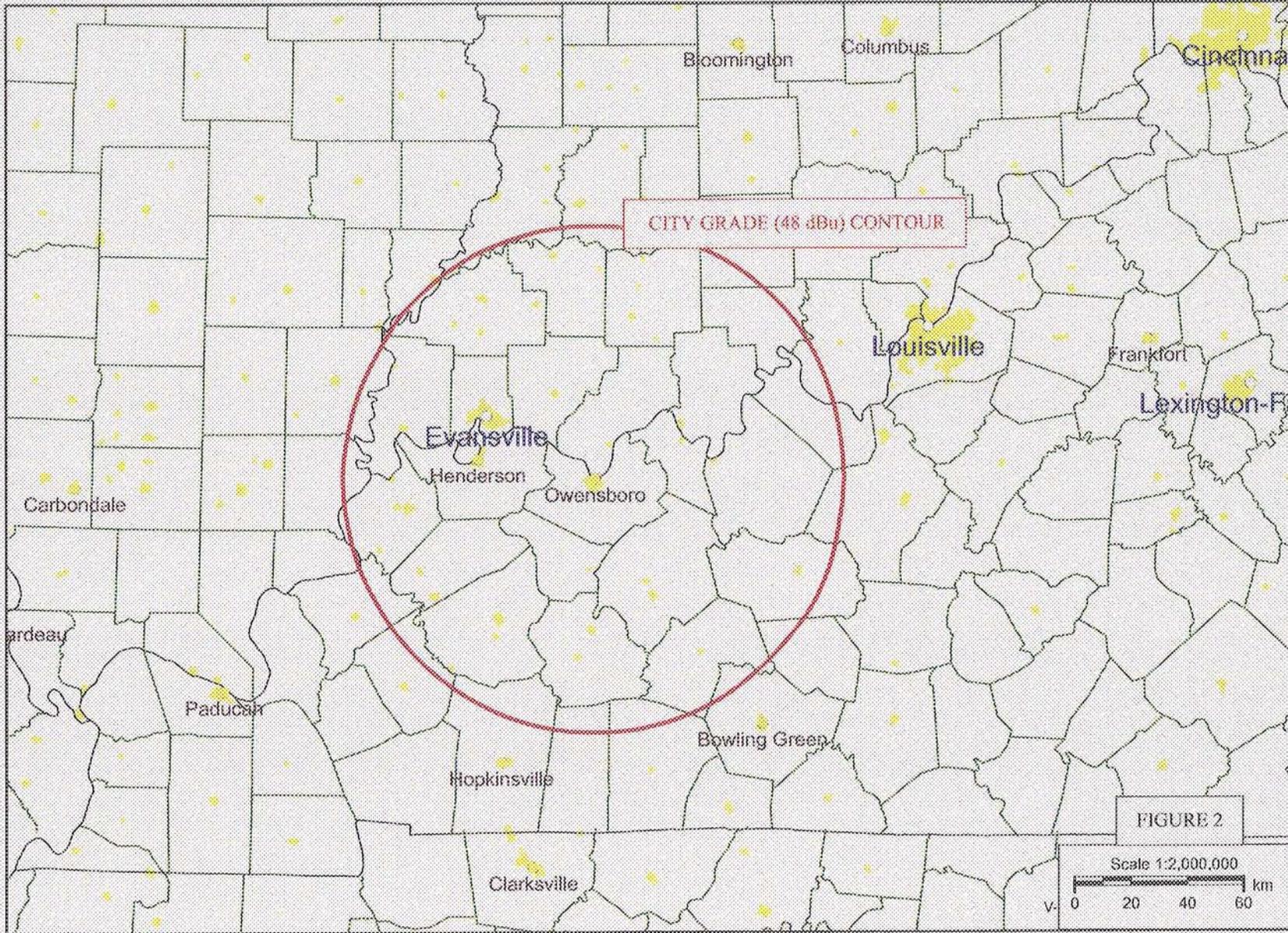
<u>Channel</u>	<u>Station</u>	<u>City/State</u>	<u>Distance¹</u>	
			<u>Actual</u> km	<u>Required</u> km
34	WSIL-TV	Harrisburg, IL	156.1	(20-110)
34	WCET	Cincinnati, OH	271.4	(20-110)
35	KSDK	St. Louisville, MO	295.5	223.7
35	WLWT	Cincinnati, OH	271.4	196.3
35	WTVC	Chattanooga, TN	331.6	223.7
36	WTWO	Terre Haute, IN	164.8	(20-110)
36	WKMU	Murray, KY	174.2	(20-110)
36	WNPX	Cookeville, IN	169.5	(20-110)

¹ Distance from the reference coordinates (center of Owensboro, KY)

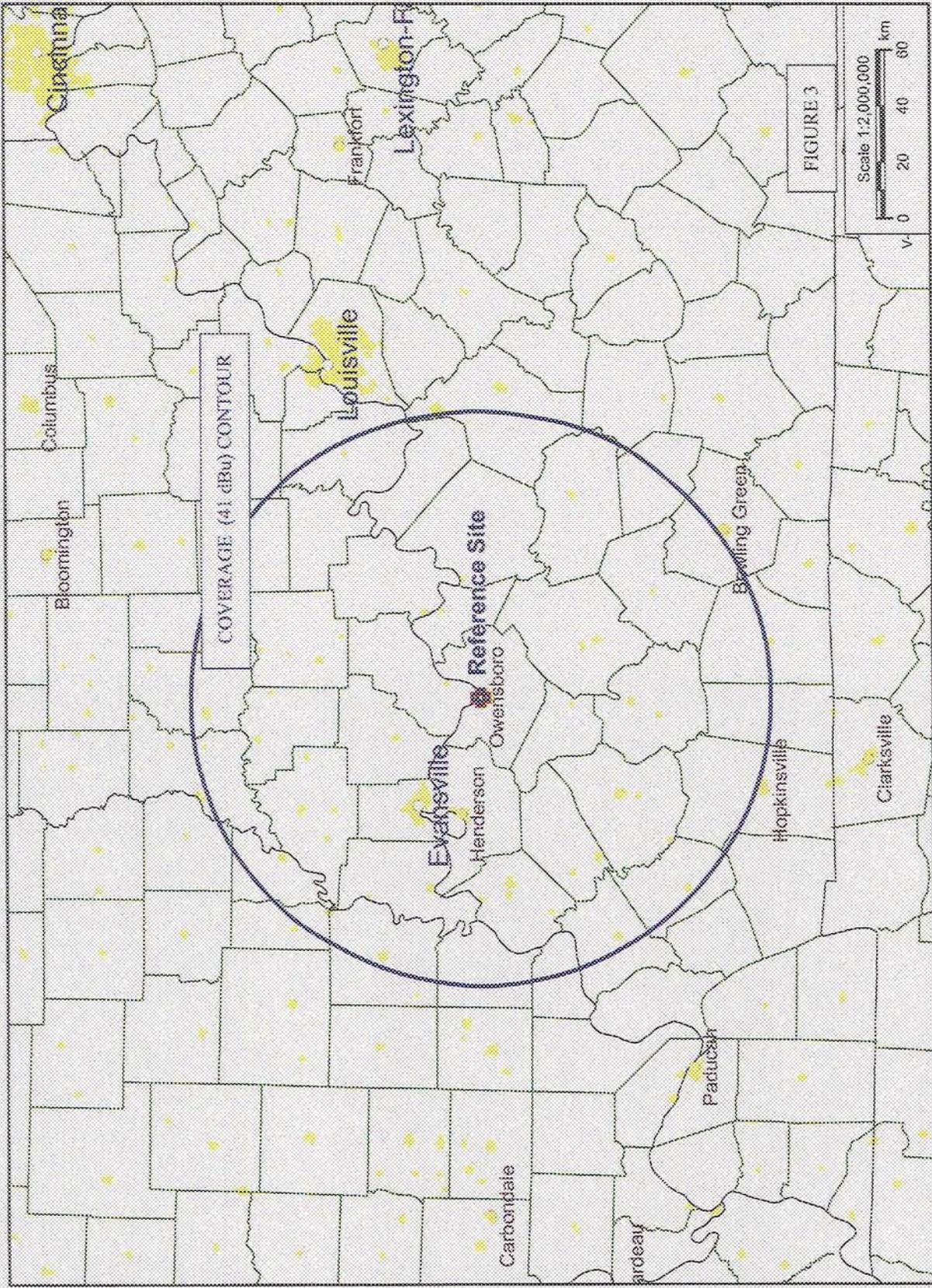
TABLE II
TENTATIVE DTV CHANNEL 34-36 DESIGNATIONS
FOR TV STATIONS LOCATED WITHIN 475 KM FROM
THE PROPOSED DTV CHANNEL 35 REFERENCE SITE AT
OWENSBORO, KENTUCKY
SEPTEMBER 2006

<u>Channel</u>	<u>Station</u>	<u>City/State</u>	<u>Distance²</u>	
			<u>Actual</u> km	<u>Required</u> km
34	WSIL-TV	Harrisburg, IL	156.1	(20-110)
34	WCET	Cincinnati, OH	271.4	(20-110)
34	WQEC	Quincy, IL	438.7	(20-110)
34	WNIT	South Bend, IN	433.8	(20-110)
34	WTNZ	Knoxville, TN	344.2	(20-110)
35	KSDK	St. Louisville, MO	295.5	223.7
35	WLWT	Cincinnati, OH	271.4	196.3
35	WTVC	Chattanooga, TN	331.6	223.7
35	WCBI-TV	Columbus, MS	473.9	223.7
36	WTWO	Terre Haute, IN	164.8	(20-110)
36	WKMU	Murray, KY	174.2	(20-110)
36	WNPX	Cookeville, IN	169.5	(20-110)
36	WMAV-TV	Oxford, MS	451.6	(20-110)
36	WTTE	Columbus, OH	428.8	(20-110)
36	WFFT-TV	Wayne, IN	405.5	(20-110)
36	WJYS	Hammond, IN	423.5	(20-110)

² Distance from the reference coordinates (center of Owensboro, KY)



COMPUTED CITY GRADE CONTOUR FOR THE PROPOSED DTV CHANNEL 35 OPERATION AT OWENSBORO, KENTUCKY



COMPUTED NOISE LIMITED COVERAGE CONTOUR FOR THE PROPOSED DTV CHANNEL 35 OPERATION AT OWENSBORO, KENTUCKY