

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO.: 2019-00300**

Electronically Filed

In the Matter of:

THE APPLICATION OF
NEW CINGULAR WIRELESS PCS, LLC,
A DELAWARE LIMITED LIABILITY COMPANY,
D/B/A AT&T MOBILITY
AND UNITI TOWERS LLC, A DELAWARE
LIMITED LIABILITY COMPANY
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO CONSTRUCT A WIRELESS COMMUNICATIONS FACILITY IN THE
COMMONWEALTH OF KENTUCKY
IN THE COUNTY OF LIVINGSTON

SITE NAME: LAKE CITY/LUKA

**SBA COMMUNICATIONS CORPORATION'S AMENDED
MOTION TO INTERVENE**

Comes SBA Communications Corporation d/b/a SBA Towers III LLC (“SBA”), whose full name and mailing address is SBA Communications Corporation, 8051 Congress Avenue, Boca Raton, FL 33487-1307, vweidenthaler@sbsite.com,¹ and hereby requests, pursuant to 807 KAR 5:001 Section 4(11), to intervene in this matter. SBA has a special interest in this case, which, if denied permission to intervene, will not be adequately represented. Further, intervention by SBA, will allow it to present issues and develop facts that will assist the Commission in considering the matter without unduly complicating or disrupting the proceedings. In support its Amended Motion, SBA attaches its Memorandum of Law.

¹ SBA is providing Ms. Weidenthaler’s contact information pursuant to 807 KAR Section 4(11)(a). All official, case-related correspondence should still be directed to undersigned counsel.

FREEMAN MATHIS & GARY, LLP

s/ Tia J. Combs

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Counsel for SBA Communications, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on October 2, the foregoing document was served via first class USPS,
postage prepaid, upon the following:

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Counsel for the Applicant

s/ Tia J. Combs

Counsel for SBA

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COMMONWEALTH OF KENTUCKY
IN THE COUNTY OF LIVINGSTON

SITE NAME: LAKE CITY/LUKA

**SBA COMMUNICATIONS CORPORATION'S MEMORANDUM OF LAW IN
SUPPORT OF ITS AMENDED MOTION TO INTERVENE**

Comes SBA Communications Corporation d/b/a SBA Towers III LLC ("SBA"), pursuant to 807 KAR 5:001 Section 4(11), and for its Memorandum of Law in Support of its Amended Motion to Intervene, states as follows:

FACTS

On or about September 19, 2020, New Cingular Wireless PCS, LLC, a Delaware Limited Liability Company d/b/a AT&T Mobility ("AT&T") and Uniti Towers LLC ("Uniti") (collectively AT&T and Uniti are known herein as "Applicants"), filed its Application for Certificate of Public Convenience and Necessity for Construction of a Wireless Communications Facility in Livingston County, Kentucky (the "Application"). In the Application, the Applicants request the certificate because the construction of the proposed wireless communications facility (the "Proposed Tower") will "bring or improve [AT&T's] services to an area currently not served or not adequately served

by [AT&T] by increasing coverage or capacity and thereby enhancing the public's access to innovative and competitive wireless communication services. The [Proposed Tower] will provide a necessary link in [AT&T's] communications network that is designed to meet the increasing demand for wireless services.”¹

However, AT&T's claims as to the necessity of the Proposed Tower are wholly unsubstantiated in the Application. They are merely vague and self-serving claims of necessity. Contrary to the assertions made by AT&T, there is already an existing tower a mere 0.1083 miles from the Proposed Tower. AT&T is currently a tenant on this tower which is owned and operated by SBA (the “SBA Tower”). From its place on the SBA Tower, AT&T can and already does broadcast its wireless signal to the surrounding area in nearly exactly the same manner, and providing essentially the same coverage, proposed by AT&T in its application. This fact is, and can be, substantiated by SBA, through Coverage Plot Analysis, which has been performed by a Radio Frequency Engineer proving this fact. As such, despite AT&T's erroneous claims in the Application, the Proposed Tower cannot possibly meet the prerequisite of necessity required in order for AT&T to be given a Certificate of Public Convenience and Necessity by the Commission.

As, SBA has an interest in this matter which not now being adequately represented and SBA has can present issues and develop facts that will assist the Commission in fully considering this matter, SBA now requests to intervene in this matter so that it may present the evidence it has already collected concerning the inaccuracies in AT&T's Application.

ARGUMENT

Pursuant to 807 KAR 5:001 Section 4(11):

(a) A person who wishes to become a party to a case before the commission may, by timely motion, request leave to intervene.

¹ *Application for Certificate of Public Convenience and Necessity for Construction of a Wireless Communications Facility*, Case No. 2020-00300 (KY PSC September 19, 2020).

1. The motion shall include the movant's full name, mailing address, and electronic mail address and shall state his or her interest in the case and now intervention is likely to present issues or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

...
(b) The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

807 KAR 5:001 Section 4(11).

Pursuant to this section, SBA is required to prove only that it has either a special interest which is not adequately represented or that it can present issues or develop facts assisting the commission in fully considering the matter, however, SBA believes that it can prove it meets both of these requirements. As such, the PSC should allow SBA to intervene and fully participate in this case.

1) SBA has a special interest in this matter that is not otherwise adequately represented.

SBA is mindful that the PSC has previously stated that SBA's interest in owning a tower in the immediate vicinity of the Proposed Tower is not a proper special interest under 807 KAR 5:001 Section 4(11).² With due regard to that holding, and while SBA does not abandon those arguments and incorporates them here as if fully rewritten,³ SBA will not reiterate those arguments here.

² *Order*, Case No. 2019-00176 (KY PSC October 1, 2019).

³ *SBA Communications Corporation's Motion to Intervene*, Case No. 2019-00176 (KY PSC June 25, 2019) and *SBA Communications Corporation's Reply to New Cingular Wireless PCS, LLC, a Delaware Limited Liability Company d/b/a AT&T Mobility's Response to SBA Communication Corporation's Motion to Intervene*, Case No. 2019-00176 (KY PSC July 8, 2019).

2) If allowed to intervene, SBA can present issues and develop facts that will assist the commission in fully considering this matter.

In its past orders the PSC has never addressed the fact that SBA could intervene for the purposes of providing the PSC with additional information which would be relevant to its determination of whether an applicant has a public convenience or necessity. The PSC is required to give “proper consideration to the essential elements that enter into the matter of convenience and necessity.” *Ky. Utils. Co. v. Pub. Serv. Com.*, 252 S.W.2d 885, 889 (Ky. 1952). The Court of Appeals of Kentucky has stated:

The manifest purpose of a public service commission is to require fair and uniform rates, prevent unjust discrimination and unnecessary duplication of plants, facilities and service and to prevent ruinous competition. The courts generally deny the right of utilities to duplicate service.

Olive Hill v. Pub. Serv. Com., 203 S.W.2d 68, 71 (1947).

Many facts which are needed for the Commission to fully develop these elements are not listed in the Application. SBA can assist the Commission in the process of finding and evaluating these facts.

a) The Application does not specifically detail how an additional tower will benefit consumers.

In the past, the Commission has denied SBA intervention because the one purpose of both the Telecommunications Act of 1996 and KRS § 278.040 are to promote market-based competition that benefits consumers. However, it is unclear from the Application how the Proposed Tower will benefit consumers at all.

The Application states that the Proposed Tower is necessary because it will improve services “by increasing coverage or capacity and thereby enhancing the public’s access to

innovative and competitive wireless communications services.”⁴ Other than restating language from KRS § 278.546(4), the Application is devoid of any facts or exhibits that lend themselves to this nebulous claim that a new tower constructed in such close proximity to the SBA Tower will have any benefit to consumers. Despite unsubstantiated claims of “necessity” and an “integral link,” the Applicants do not offer any insight into how the new tower will provide more economical services nor do they make any mention of innovation to existing technology and services.⁵ The Application is similarly void of reasoning to support the claim that the area is “currently not served or not adequately served.”⁶

AT&T consistently references the Proposed Tower being “necessary to AT&T,” but fails entirely to offer facts that show any increase in services and rates to the consumer as required under KRS § 278.020. These facts and issues related to unsubstantiated claims of benefit to consumers elucidate the import of intervention as SBA is uniquely situated to “present issues or develop facts that will assist the commission in fully considering the matter.” 807 KAR 5:001 Section 4(11).

Even if any practical innovation or increase in services to the consumer can be inferred from the Application, it is nevertheless devoid of any evidence or expert opinion of the alleged benefits of the Proposed Tower. In fact, it is not apparent from the face of the Application if there is any possible or technical way in which the new tower in such proximity will bring about any increase in services or benefits to the consumer. While it is the onus of the Applicants to show necessity and a benefit to consumers, SBA’s intervention is appropriate and necessary here in order to present issues and develop facts that illustrate the absence of a benefit to the rates of services.

⁴ *Application for Certificate of Public Convenience and Necessity for Construction of a Wireless Communications Facility*, Case No. 2020-00300 (KY PSC September 19, 2020).

⁵ *Id.*

⁶ *Id.*

b) SBA has special knowledge of the service that can be had from the SBA Tower and Proposed Tower.

In this case, SBA has already commissioned a study concerning the radio frequency coverage that can be broadcast from both the SBA Tower and the Proposed Tower. Exhibit A. As shown in that study, there is little or no additional coverage to be gained by building the Proposed Tower. If a wireless operator had an antenna on the SBA Tower and then installed on the Proposed Tower, this would be duplicative and considered an “overbuild.” Exhibit A. If SBA is allowed to intervene in this matter, it would be glad to bring its engineer to testify before the Commission to further explain his findings and the similarity of the radio frequency broadcasts from the SBA Tower and the Proposed Tower.

c) SBA has information concerning AT&T’s attempts to co-locate.

When requesting to build a new wireless tower, AT&T is required, by KRS § 278.020 and 807 KAR 5:063 Section 1(s), to present evidence concerning attempts to co-locate on existing structures, such as the SBA Tower. AT&T addresses this issue in the Application at ¶ 12. However, AT&T does not even bother to mention that is currently co-locating on the SBA Tower *which is only 0.1058 miles away*. From its spot on the SBA Tower, AT&T already broadcasts its radio frequency in exactly the same manner as it will be able to broadcast from the Proposed Tower. As SBA is the owner of the tower on which AT&T is required to consider co-locating, SBA has unique information concerning this issue and others which is, as of yet, are wholly unaddressed in these proceedings.

For example, SBA has not been contacted by AT&T specifically concerning any deficiency with the SBA Tower which makes it unsuitable for co-location. There has been no contact that the SBA Tower is not suitable for AT&T’s physical needs as to placement of its equipment. AT&T has not asked SBA to modify the SBA Tower to better accommodate the equipment AT&T wishes

to place on it now or in the future. SBA has even structurally evaluated its tower and it continues to be structurally sound for the equipment placed on it. Exhibit B. AT&T has not contacted SBA specifically concerning the rents on the SBA Tower.⁷

d) SBA’s special knowledge concerns “service” pursuant to KRS § 278.040.

The PSC has previously relied on KRS § 278.040 and *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Construction of a 278 MW (nominal) Circulating Fluidized Bed Coal-Fired Unit in Mason County, Kentucky*, Case No. 2004-00423, (KY PSC Apr. 18, 2005) to deny SBA intervention because SBA did not have an interest in “rates and service.”⁸ However, the information SBA can provide does concern service as defined in this statute.

The term “service,” as used in KRS § 278.040, is defined by KRS § 278.010(13):

“Service” includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility, but does not include Voice over Internet Protocol (VoIP) service;

Thus, the signal AT&T or any other broadcasts is “service.” As shown above, SBA’s intent is to provide the PSC with information relating to this service.

e) Allowing SBA’s intervention will not unduly complicate or disrupt these proceedings.

As noted above and seen in Exhibit A, SBA has already commissioned a report from an expert who can testify as to the lack of necessity for the Proposed Tower. SBA’s staff is similarly

⁷ SBA does admit that it received a bulk request from AT&T to lower rents and make changes to lease agreements across the country, but this was not a specific request concerning the specific rents or conditions of lease on the SBA Tower. It was merely a non-specific request that rents be reduced (without any specific dollar amounts referenced) and that AT&T be granted other “fair” rights without reference to specific terms.

⁸ *Order*, Case No. 2019-00176 (KY PSC October 1, 2019).

ready to testify concerning AT&T's alleged attempt to continue co-locating on the SBA Tower. As SBA is already ready to present its evidence, its intervention in this matter will not delay this matter in any way. Furthermore, SBA is happy to tailor its involvement in this matter to the PSC's wishes and provide information, to the extent not proprietary or confidential, as the PSC requests or deems helpful.

CONCLUSION

SBA has an interest in this matter which not now being adequately represented. Moreover, SBA has and can present issues and develop facts that will assist the commission in fully considering this matter. In particular, SBA can provide technical engineering information concerning the radio frequency that can be broadcast from the Proposed Tower (which is nearly identical to what can be broadcast from the existing SBA Tower) and information concerning AT&T's attempts at co-location. As such, SBA now requests that it be allowed to intervene in this matter so that it may present the evidence it has already collected concerning the inaccuracies in the Application.

FREEMAN MATHIS & GARY, LLP

s/ Tia J. Combs

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cstansbury@fmglaw.com

tcombs@fmglaw.com

Counsel for SBA Communications, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2020, the foregoing document was served via first class USPS, postage prepaid, upon the following:

David A. Pike, Esq.
Pike Legal Group, PLLC
1578 Highway 44 East, Suite 6
PO Box 369
Shepherdsville, KY 40165
Counsel for the Complainant

s/ Tia J. Combs

Counsel for SBA

TO: SBA

Subject: RF Coverage Plot Analysis: Livingston County, KY

Date: September 22, 2020

1. **METHODOLOGY.** The attached plots depict broadcast radio frequency (RF) coverage from the existing site to Livingston County, KY and a proposed site approximately 0.10 miles to the north. At each location, cellular industry typical LTE operating parameters were considered for omnidirectional antennas mounted at 250 feet above ground level at the existing site, and at 250 feet above ground level for the proposed site. Ground elevations are 354 and 350 feet above mean sea level, respectively. 5G Broadcast RF coverage was not reviewed since it is not operational as of this date.

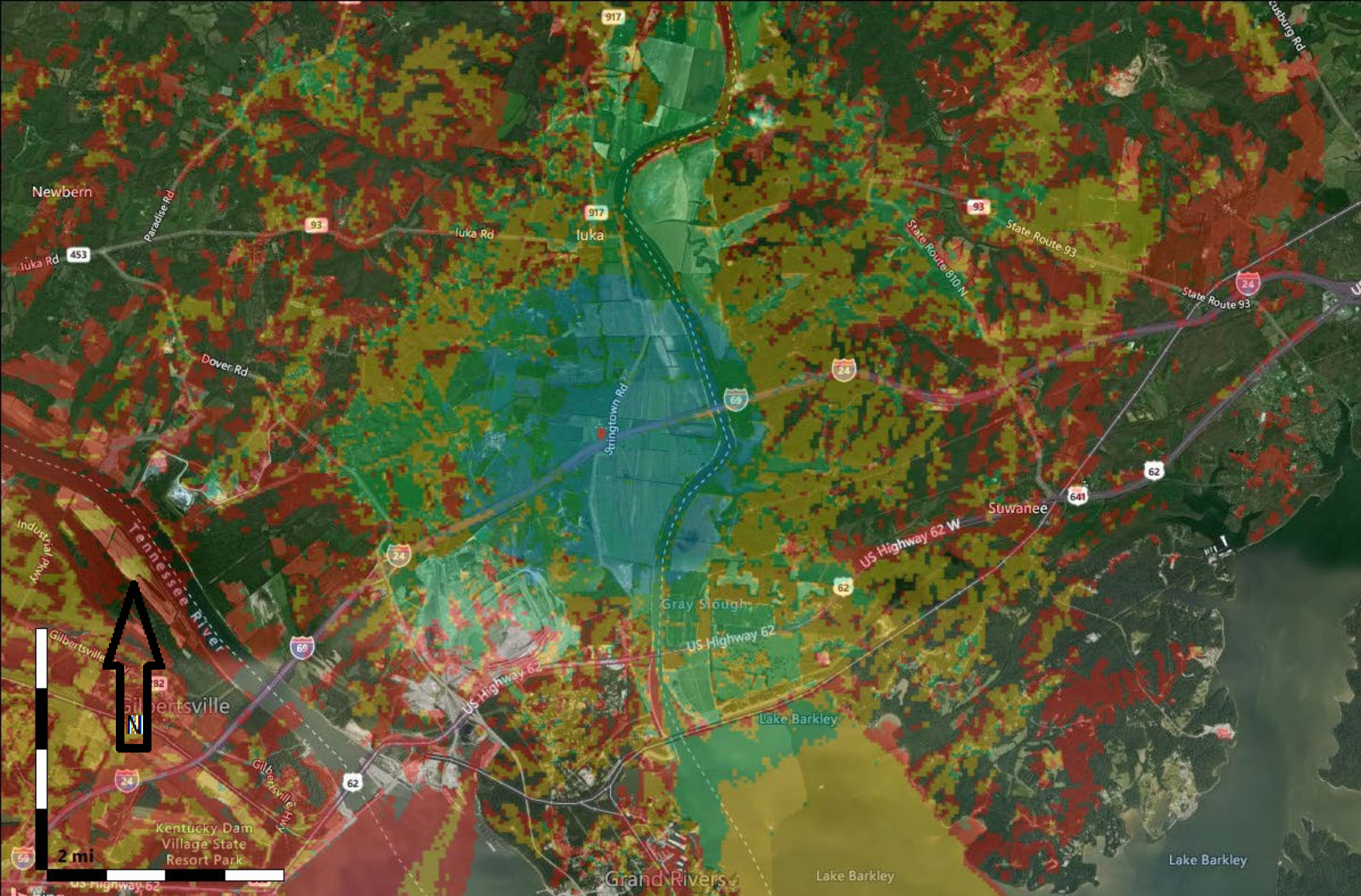
Plots for both locations were generated for 700, 850, 1900 and 2100 MHz operations. The signal levels depicted are associated with LTE service reliability where the strong coverage levels in green and blue occur near the towers and decrease with distance from the sites and intervening terrain obstructions. Signal levels greater than -70 dBm shown as blue are associated with feasible coverage within buildings. Marginal coverage is provided in the regions depicted in yellow between -90 dBm and -80 dBm and signal levels between -100 dBm and -90 dBm shown as red represent poor coverage associated with call failures.

A comparison of coverage performance for each site is based on low band (700 and 850 MHz) and high band (1900 and 2100 MHz) prediction results. Radiowave propagation conditions between these bands differ because of terrain and ground clutter (e.g. vegetation) effects at different frequencies. Generally, low band operations provide greater area coverage. Therefore, high band operations provide additional customer traffic capacity closer to the cellular site.

2. **COMPARISON.** The sites considered in these coverage plots provide service to the depicted locations and roads leading to Livingston County, KY. For low band operations, the existing site provides strong coverage approximately 1.0 miles in all directions and to non-contiguous areas to 3.0 miles from the site. This includes 2.5 miles of I-24. The proposed site provides similar strong coverage 1.0 miles in all directions and to non-contiguous areas to 2.5 miles. This includes the same 2.5 miles of coverage along I-24

For high band operations, both sites provide strong coverage to non-contiguous areas 2.0 miles in all directions.

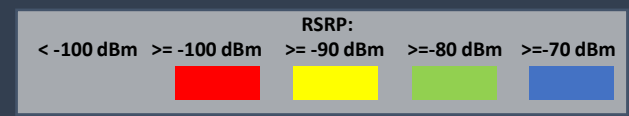
3. **CONCLUSION.** Based on the coverage comparison presented above, the proposed site provides comparable coverage to Livingston County, KY due to its close proximity to the existing site. For wireless operators with antennas mounted on the existing site, the installation of additional antennas on the proposed site would be considered to be an “overbuild” or impractical given the coverage overlap.



Existing Site
700 MHz Coverage

Site Name: KY07253-A
 Latitude: 37.056819N
 Longitude: 88.235364W

Antenna: 15.15 dBi Omni
 Alpha Rad Center (ft): 250
 Azimuth (Deg): 0
 ERP per RS (W): 2.0

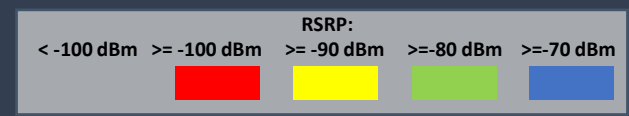


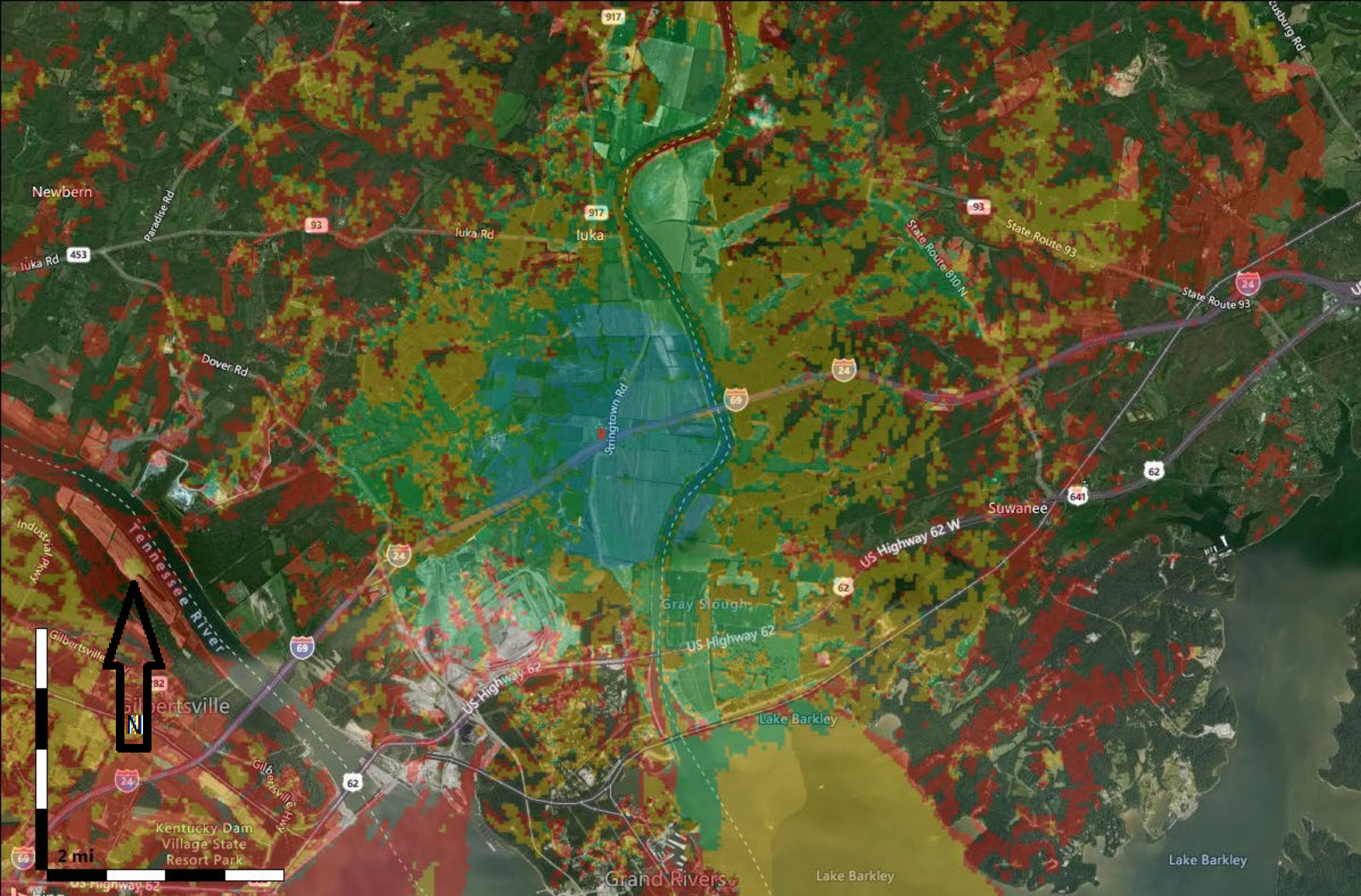


Proposed Site
700 MHz Coverage

Site Name: Proposed
 Latitude: 37.058167N
 Longitude: 88.236361W

Antenna: 15.15 dBi Omni
 Alpha Rad Center (ft): 250
 Azimuth (Deg): 0
 ERP per RS (W): 2.0

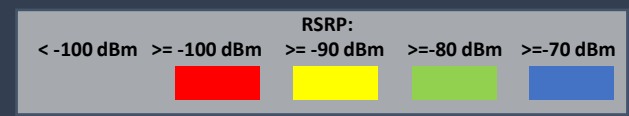


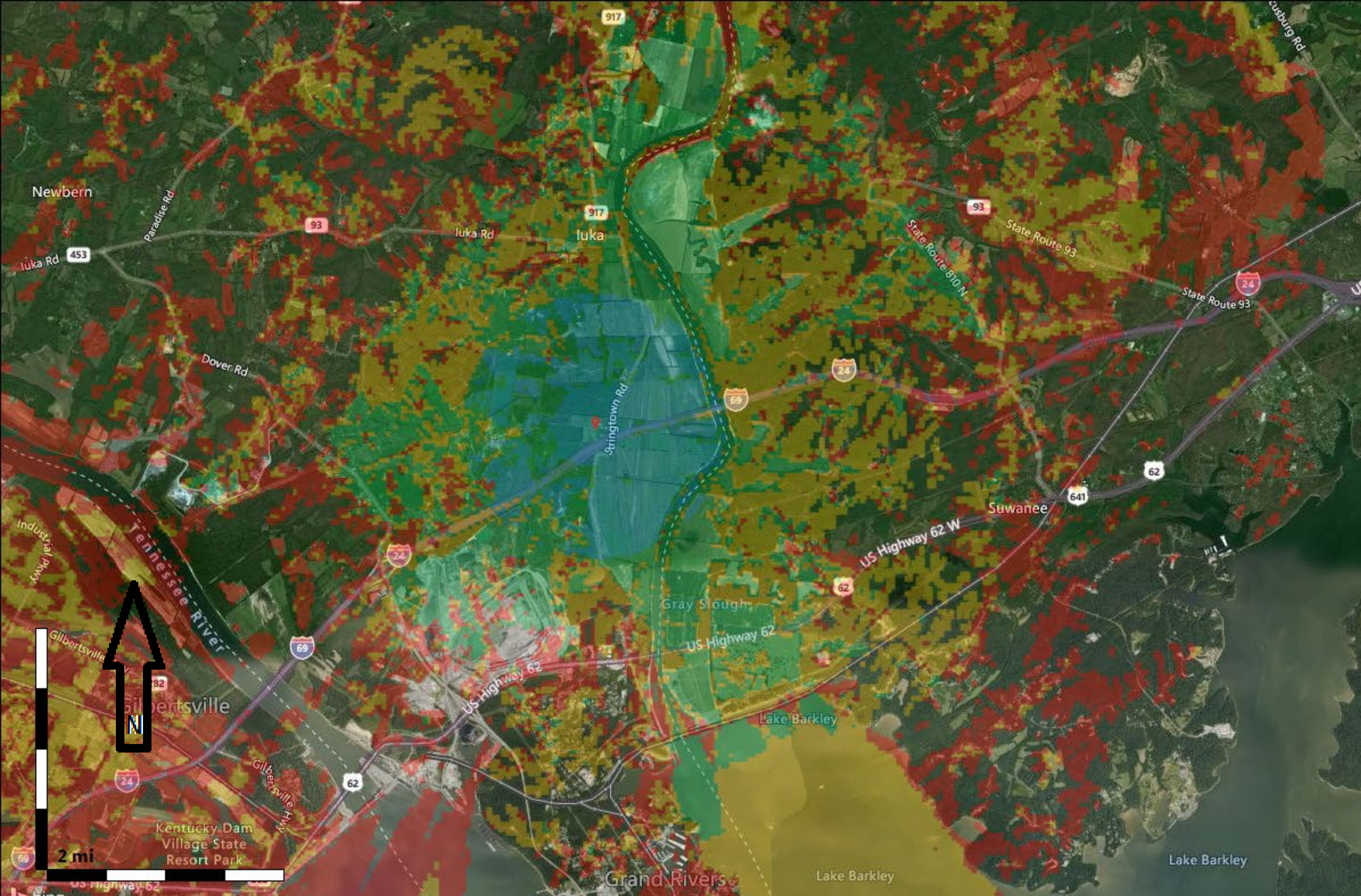


Existing Site
850 MHz Coverage

Site Name: KY07253-A
 Latitude: 37.056819N
 Longitude: 88.235364W

Antenna: 15.15 dBi Omni
 Alpha Rad Center (ft): 250
 Azimuth (Deg): 0
 ERP per RS (W): 2.0

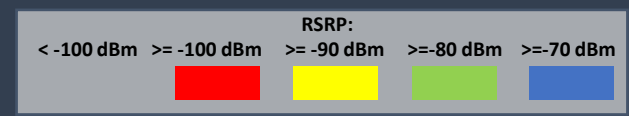


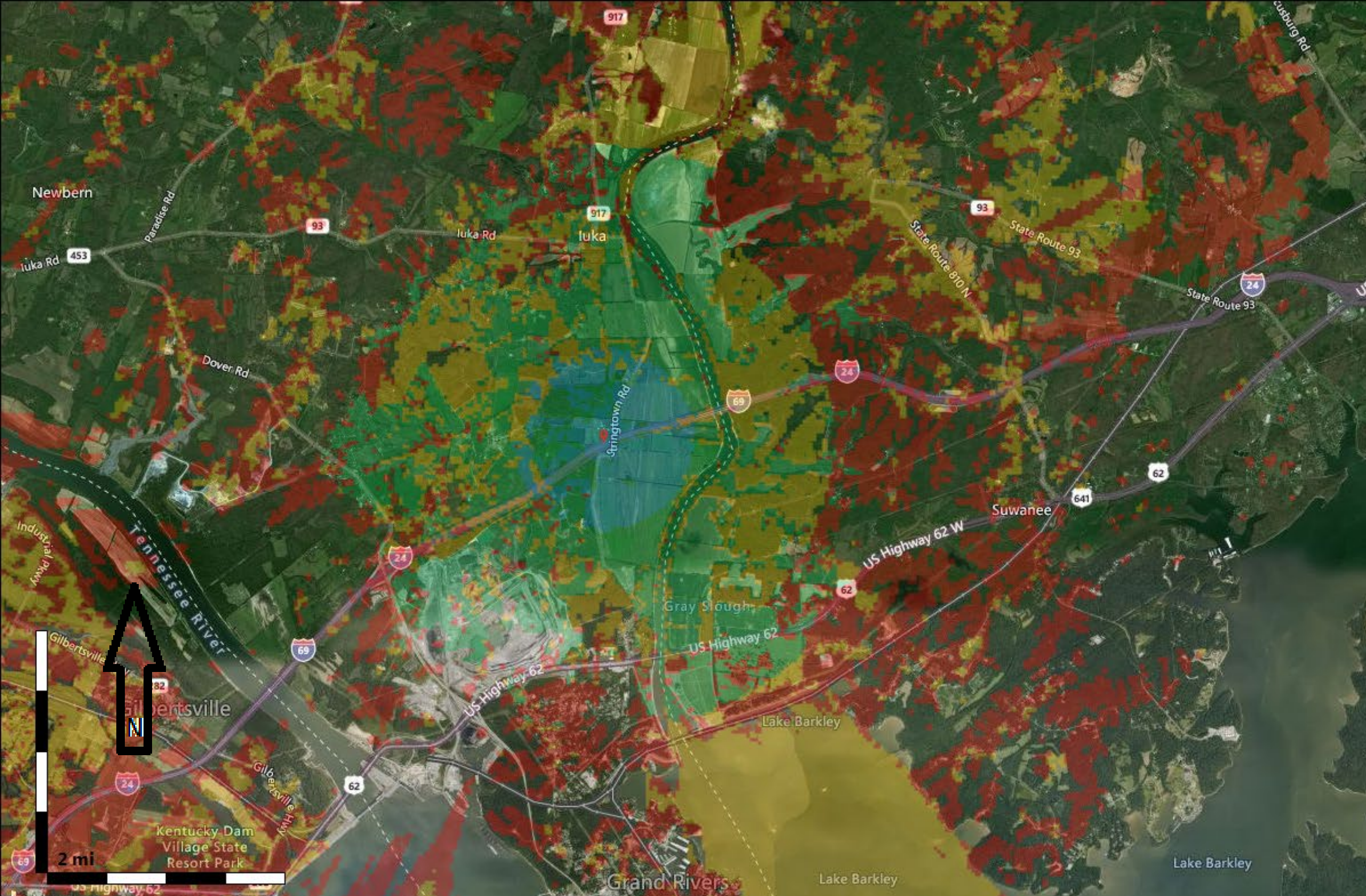


Proposed Site
850 MHz Coverage

Site Name: Proposed
 Latitude: 37.058167N
 Longitude: 88.236361W

Antenna: 15.15 dBi Omni
 Alpha Rad Center (ft): 250
 Azimuth (Deg): 0
 ERP per RS (W): 2.0

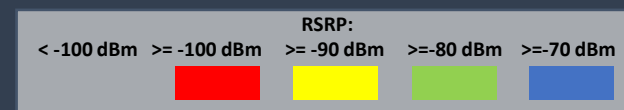


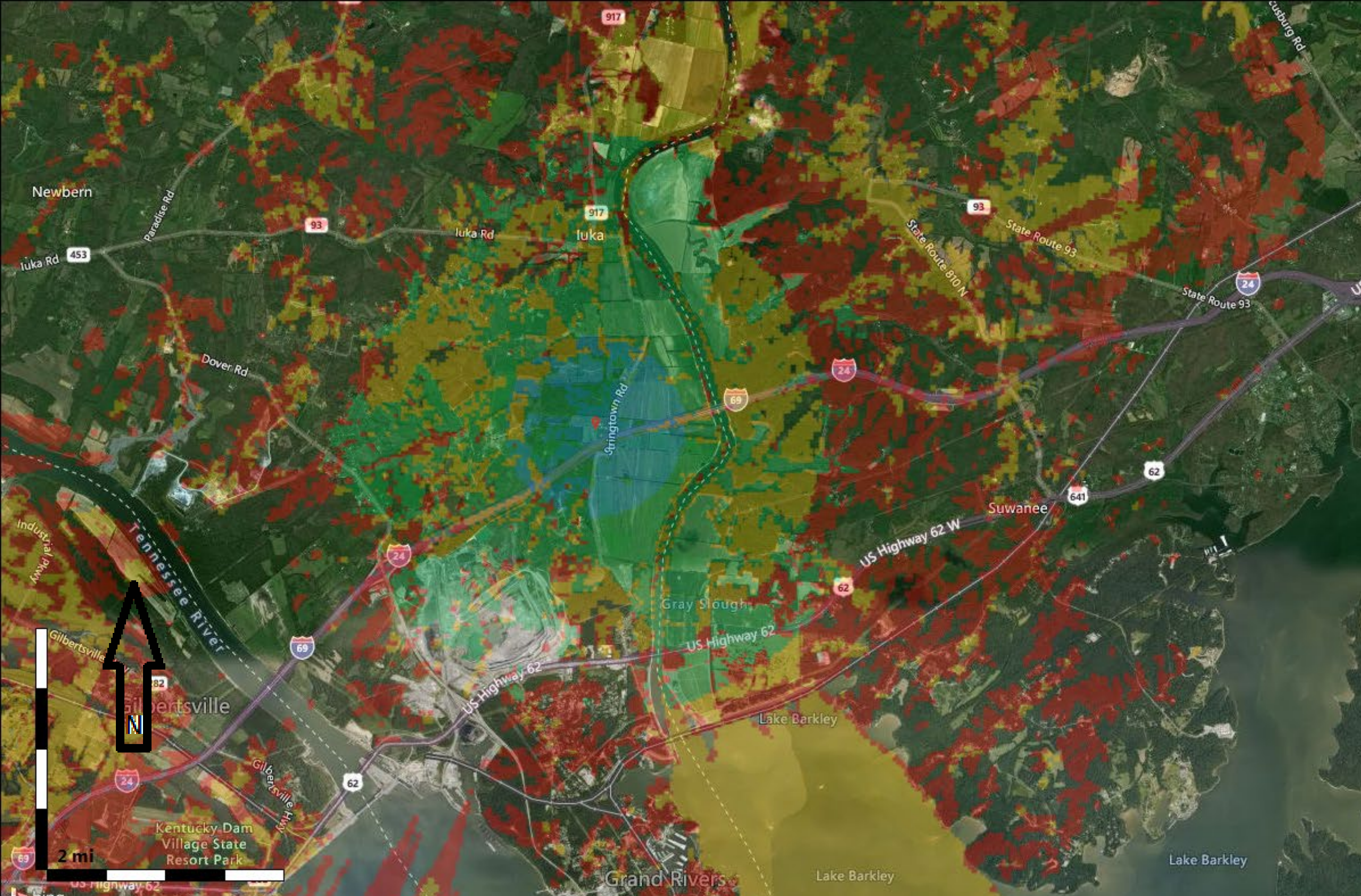


Existing Site
1900 MHz Coverage

Site Name: KY07253-A
 Latitude: 37.056819N
 Longitude: 88.235364W

Antenna: 17.15 dBi Omni
 Alpha Rad Center (ft): 250
 Azimuth (Deg): 0
 ERP per RS (W): 4.7

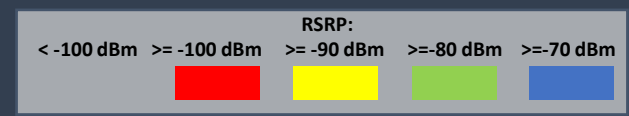


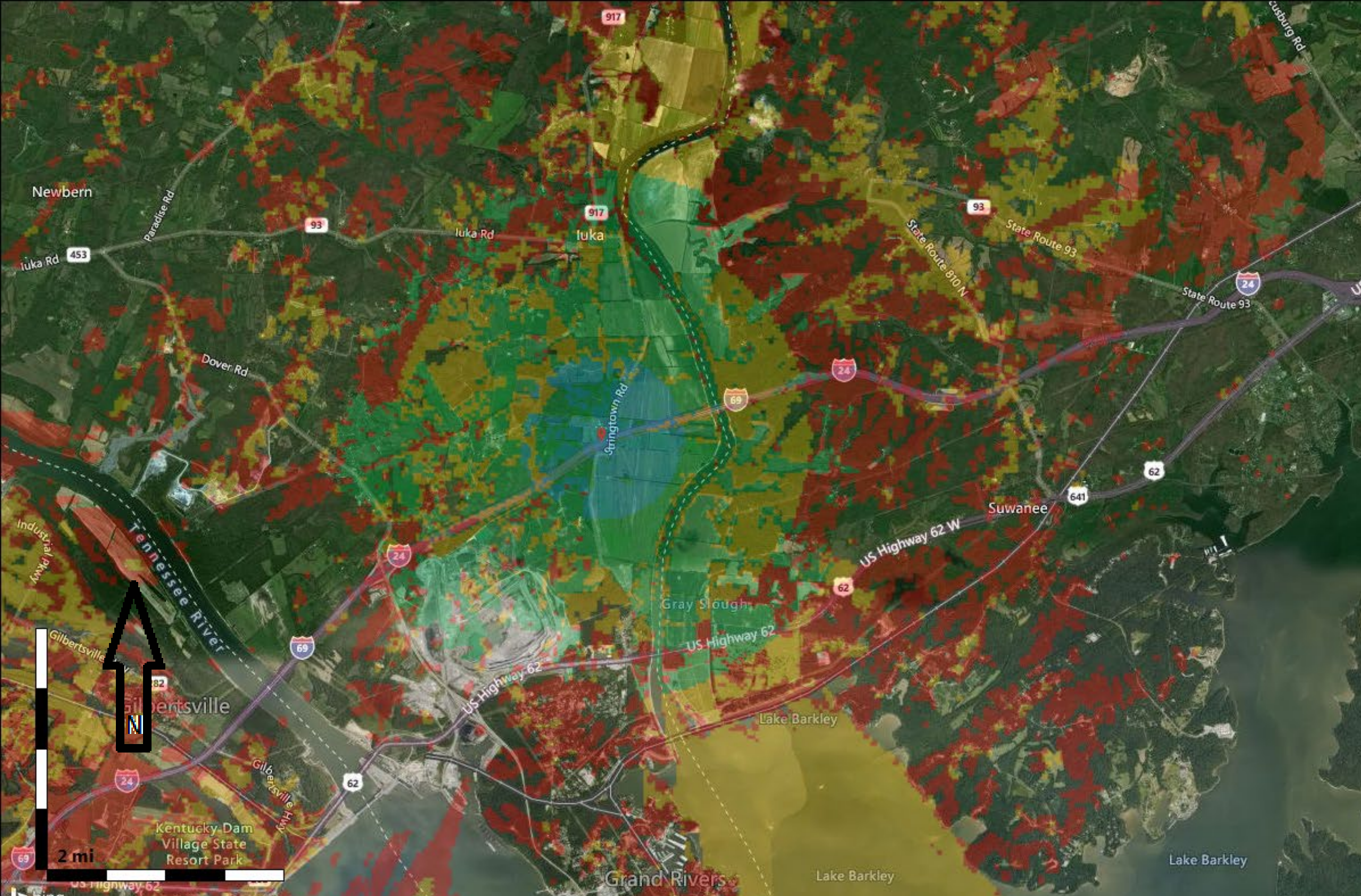


Proposed Site
1900 MHz Coverage

Site Name: Proposed
 Latitude: 37.058167N
 Longitude: 88.236361W

Antenna: 17.15 dBi Omni
 Alpha Rad Center (ft): 250
 Azimuth (Deg): 0
 ERP per RS (W): 4.7

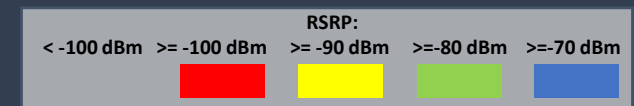


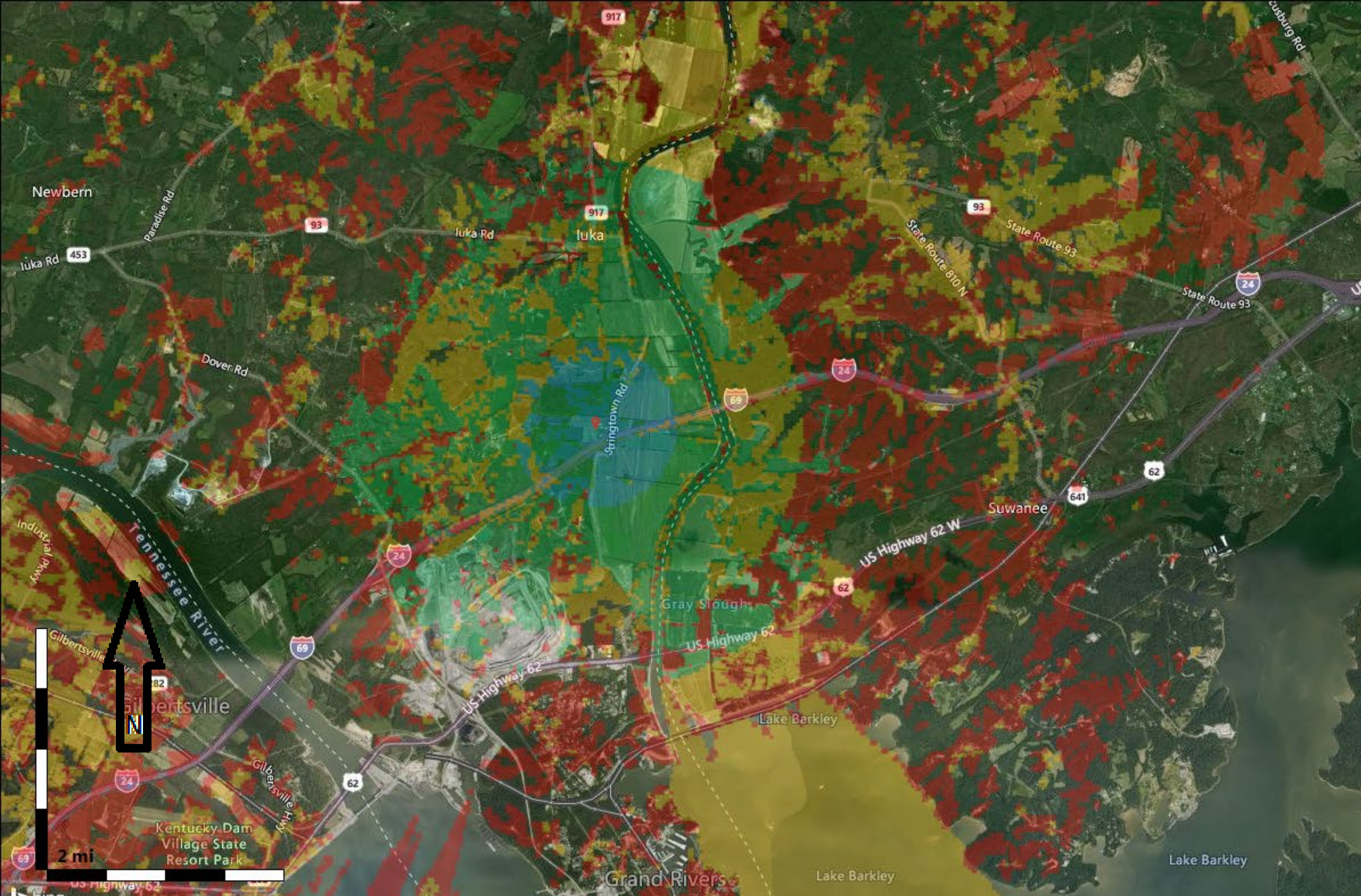


Existing Site
2100 MHz Coverage

Site Name: KY07253-A
 Latitude: 37.056819N
 Longitude: 88.235364W

Antenna: 17.15 dBi Omni
 Alpha Rad Center (ft): 250
 Azimuth (Deg): 0
 ERP per RS (W): 4.7

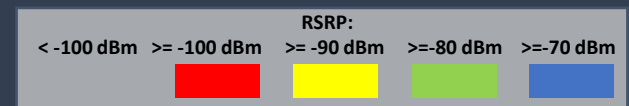




Proposed Site
2100 MHz Coverage

Site Name: Proposed
 Latitude: 37.058167N
 Longitude: 88.236361W

Antenna: 17.15 dBi Omni
 Alpha Rad Center (ft): 250
 Azimuth (Deg): 0
 ERP per RS (W): 4.7





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September 21, 2020

Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

Re: Existing 310 ft. Guyed Tower
SBA Site # KY07253-A
SBA Site Name: Lake City 3, KY
863 Spring Town Rd.
Grand Rivers, KY 42045-9284
Livingston County
Latitude: 37.056819
Longitude: -88.235364

The Honorable Kentucky Public Service Commission:

This letter will summarize the results of our engineering determination on the adequacy of the above-referenced structure to safely support the antenna and equipment changed as noted below. Our engineering determination was based on an investigation of the antenna and equipment loading used in the recent previous passing structural analysis by GPD Group, Inc., (GPD Group, Inc., Project # 2018788.07253.06 dated 12/13/2018) and the new proposed equipment:

The following information was used in the determination:

- Tower Drawings prepared by World Tower, Job # Q00407-2 dated 01/22/2001
- Foundation Drawings prepared by World Tower, Job # Q00407-2 dated 01/22/2001
- Geotech Report prepared by GPD Group, Inc., Project # 2014778.07253.03 dated 07/14/2014
- Modifications drawings prepared by FDH, Project # 1469XM1400 dated 08/07/2014
- Modifications drawings prepared by GPD Group, Inc., Project # 2019778.07253.06 dated 12/13/2018
- Structural Analysis Report by GPD Group, Inc., Project # 2018788.07253.06 dated 12/13/2018

Our engineering determination was based on a comparison of the antenna and equipment loading used in the original pole design and the new existing and proposed antenna configuration.

Analysis Criteria:

- 106 mph Ultimate Design Wind Speed, per ASCE 7-16 wind maps
- Exposure C
- Structural Category II
- Topography Category 1
- Crest Height of 0 ft.
- TIA-222-H Standard

EXHIBIT B

Final Antennas, Mounts and Transmission Lines

Information pertaining to the proposed carrier's final configuration of antennas and transmission lines was taken from the recent previous passing structural analysis by GPD Group, Inc., (GPD Group, Inc., Project # 2018788.07253.06 dated 12/13/2018).


Mount Elev. (ft)	CL Elev. (ft)	Type	Qty	Manufacturer	Model	Feed Line Size	Mount Type Qty.	Carrier
310	317	Dipole	1		16' Dipole	(1) 7/8"		
302	302	Yagi	1		14' Yagi	(1) 3/8"		
290	290	Panels	3	Commscope	FFHH-65C-R3	(5) 1-5/8" (1) 1-5/8" Hybrid	(3)\ Sector mounts w/ (6) V-Stabilizer Kits & (6) Face Horizontals	
		Panels	2	Cellmax	CMA-B/3324/E2/TB05			
		Panels	1	Andrew	TMBX-6517-A1M			
		TMA	3	Andrew	3C-TMAT1921B78-21A			
		RRU	3	Nokia	AHLOA			
		RRU	2	Nokia	FXFB/C			
		Other	1	Raycap	RNSNDC-7771-PF-48			
275	275	Panels	4	Decibel	DB980F65EM	(5) 1-5/8"	(2) Sector Mounts	
250	250	Panels	3	Andrew	DBXLH-9090C-R2M	(6) 1-5/8" (1) 3/8" RET (2) 3/8" Fiber (5) 3/4" Power	(3) Sector Mounts	AT&T
		Panels	5	Andrew	SBNHH-1D65C			
		Panels	2	CCI	HBSA-M65R-KU-H4			
		TMA	6	Andrew	ETD819H-12UB			
		Junction	1	Andrew	ATJB200-A01-007			
		RRU	3	Ericsson	RRUS A2 Module			
		RRU	4	Ericsson	RRUS-32			
		RRU	6	Ericsson	RRUS 11			
		Other	1	Raycap	DC6-48-60-18-8C			
Other	2	Raycap	DC6-48-60-18-8F					
224	224	Dish	1	-	6' Dish	-	-	

Conclusion

The guyed structure and the foundation will be structurally adequate with an additional 125 sq. ft. of wind loading at the 250' RAD center with some minor modifications. Due to the non-linear behavior of guyed towers it is expected that some minor modifications will be required based on the exact loading and RAD center, which is not available at this time.

This PE Letter determination is based on the information outlined above. Deviation from the information will invalidate the determination and require further review.

If you have any questions, please do not hesitate to contact us.

Sincerely,

 Nitesh Ahuja, P.E.

