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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO.: 2019-00176

In the Matter of:

THE APPLICATION OF
NEW CINGULAR WIRELESS PCS, LLC,
A DELAWARE LIMITED LIABILITY COMPANY,
D/B/A AT&T MOBILITY
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 CASEY

SBA COMMUNICATIONS CORPORATION'S 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 Motion, SBA attaches its Memorandum of Law.

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*Chris Clendenen by TJC
at permission*
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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.

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2019, the foregoing document was served via first class USPS, postage prepaid, upon the following:

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Counsel for the Applicant



Counsel for SBA

**COMMONWEALTH OF KENTUCKY
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**MEMORANDUM OF LAW IN SUPPORT OF
SBA COMMUNICATIONS CORPORATION'S 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 Motion to Intervene, states as follows:

FACTS

On or about June 7, 2019, New Cingular Wireless PCS, LLC, a Delaware Limited Liability Company d/b/a AT&T Mobility (AT&T), filed its Application for Certificate of Public convenience and Necessity for Construction of a Wireless Communications Facility in Casey County, Kentucky (the "Application"). In the Application, AT&T states that it requests the certificate because the construction of its proposed wireless communications facility (the "Proposed AT&T 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."

However, AT&T's claims as to the necessity of the Proposed AT&T Tower are wholly unsubstantiated. They amount to bare assertions devoid of the evidence and detail required for the Public Service Commission (the "PSC" or the "Commission") to genuinely evaluate AT&T's Application.

Contrary to the assertions made by AT&T, there is already an existing tower a mere 1/3 mile from the Proposed AT&T 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 its Application, the proposed AT&T 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.

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. 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).

As SBA's request to intervene meets all of these requirements, the PSC should allow it to intervene and fully participate in this case.

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

As the owner of a tower located in the immediate vicinity of the Proposed AT&T Tower, SBA has a clear interest in this matter due to the requirement of a showing of necessity on the part of those wishing to build a new tower. SBA's present status, as the only tower in the area, was part of the return SBA rightfully counted on when it decided to invest in and build a tower in this rural area and bring utility services to this part of Kentucky. KRS § 278.020 protects SBA's interest by disallowing the building of new facilities unless they are a public necessity. SBA now seeks to intervene in this matter to safeguard this interest.

Pursuant to KRS § 278.020, a certificate of convenience and necessity from the PSC is required before a utility may "commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010." KRS § 278.020. No standard for whether such a certificate should be granted is listed in KRS § 278.020. However, Kentucky courts have established that:

To be entitled to such a certificate of necessity, the applicant must demonstrate a need for the proposed facility and the absence of wasteful duplication. A "need" may be demonstrated by "showing of a substantial inadequacy of existing service" and "wasteful duplication" may be demonstrated by showing "an excess of capacity over need," "excessive investment in relation to productivity," or "unnecessary multiplicity of physical properties."

Citizens for Alternative Water Sols. v. Kentucky Pub. Serv. Comm'n, 358 S.W.3d 488, 490 (Ky. Ct. App. 2011) (citing *Ky. Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885 (Ky.1952)).

The Court of Appeals of Kentucky has also held:

We think it is obvious that the establishment of convenience and necessity for a new service system or a new service facility requires first a showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed and operated.

Second, the inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.

Ky. Utils. Co. v. Pub. Serv. Com., 252 S.W.2d 885, 890 (Ky. 1952)

In short, a party, such as AT&T, that wishes to build a new facility must prove to the Commission that the existing facilities are inadequate and that new facilities are not, in fact, duplicative. Additionally, these rules do not just set out the requirements for a utility to build new facilities, they also go to the heart of the legislative impetus behind KRS § 278.020. The PSC is charged with regulating and carefully evaluating where and when new utilities can be constructed. A fact which existing utility owners, such as SBA, rely on as an implicit assurance against an unchained proliferation of duplicative utility facilities which render existing facilities worthless. *See Olive Hill v. Pub. Serv. Com.*, 203 S.W.2d 68, 71 (1947) ("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.").

As no other party to this litigation has any interest in protecting the interest held by SBA, it should now be allowed to intervene to address these issues.

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

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)

In this case, SBA has already commissioned a study by a licensed professional engineer, David Cotton, concerning the radio frequency coverage that can be broadcast from both the SBA Tower and the Proposed AT&T Tower. Exhibit A. As shown in that study, there is little or no additional coverage to be gained by building the Proposed AT&T Tower. As noted by Mr. Cotton, if a wireless operator had an antenna on the SBA Tower and then installed on the Proposed AT&T Tower, this would be duplicative and considered an “overbuild.” Exhibit A. While Mr. Cotton’s report itself is clear evidence and raises the issue that the Proposed AT&T Tower is wholly duplicative of the existing SBA Tower, without his expert testimony, the full range of technical expertise needed to refute the erroneous claims made by AT&T, would not be available to the Commission. If SBA is allowed to intervene in this matter, it would be glad to bring Mr. Cotton 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 AT&T Tower.

Furthermore, 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 it is currently co-locating on the SBA Tower where the company already broadcasts its radio frequency in exactly the same manner as it will be able to broadcast from the Proposed AT&T 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.

3) 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 AT&T Tower. This engineer stands ready and willing to testify on SBA's behalf. SBA's in-house engineers are also ready and willing to submit testimony concerning any question the Commission might have concerning 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.

CONCLUSION

SBA has an interest in this matter which is not now being adequately represented. SBA has and can present issues and develop facts that will assist the commission in fully considering this matter. In particular, AT&T's Application is inaccurate in so far as it states that the Proposed AT&T Tower is required to provide adequate coverage to the area in the vicinity of the Proposed AT&T Tower. As SBA's engineer has already discovered, the radio frequency that can be broadcast from the Proposed AT&T Tower is nearly identical to what can be broadcast from the existing SBA Tower. 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 AT&T's Application.

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Tia J. Combs

Counsel for SBA



David Cotton, PE
17852 Lizern Ln, Redding, CA, 96003-0775

SBA Communications Corporation
8051 Congress Avenue
Boca Raton, FL 33487-1307

Subject: RF Coverage Plot Analysis: Dunnville, KY

Date: June 13, 2019

1. **METHODOLOGY.** The attached plots depict broadcast radio frequency (RF) coverage from the existing site in Dunnville, KY and a proposed site approximately 0.33 miles to the east. At each location, cellular industry typical LTE operating parameters were considered for omnidirectional antennas mounted at 230 feet above ground level at the existing site, and at 237 feet above ground level for the proposed site. Ground elevations are 963 and 974 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.

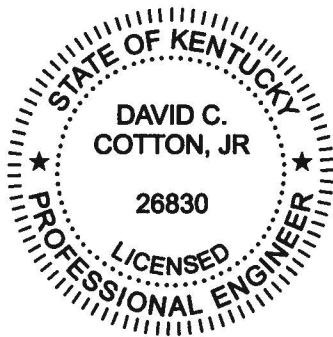
A comparison of coverage performance for each site is based on low band (700 and 850 MHz) and high band (1900 and 2100 MHz) prediction results. Radiowave propagation conditions between these bands differ because of terrain and ground clutter (e.g. vegetation) effects at different frequencies. Generally, 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 in Dunnville, KY. For low band operations, the existing site provides strong coverage 2.2 miles to the north, 1.2 miles to the east, 1.3 miles to the south and 1.4 miles to the west. This includes 2.0 miles of U.S. Highway 127. The site provides marginal coverage up to 3.4 miles 4.3 miles from the site. The proposed site provides strong coverage 1.3 miles to the north, 0.8 miles to the east, 2.1 miles to the south and 1.6 miles to the west. This includes 2.5 miles of U.S. Highway 127. The site provides marginal coverage to between 2.4 miles and 3.2 miles in all directions.

For high band operations, the existing site provides strong coverage 1.6 miles to the north, 0.5 miles to the east, 0.9 miles to the south and 0.4 miles to the west. The proposed site provides strong coverage 0.5 miles to the north, 0.6 miles to the east, 1.0 miles to the south and 0.6 miles to the west.

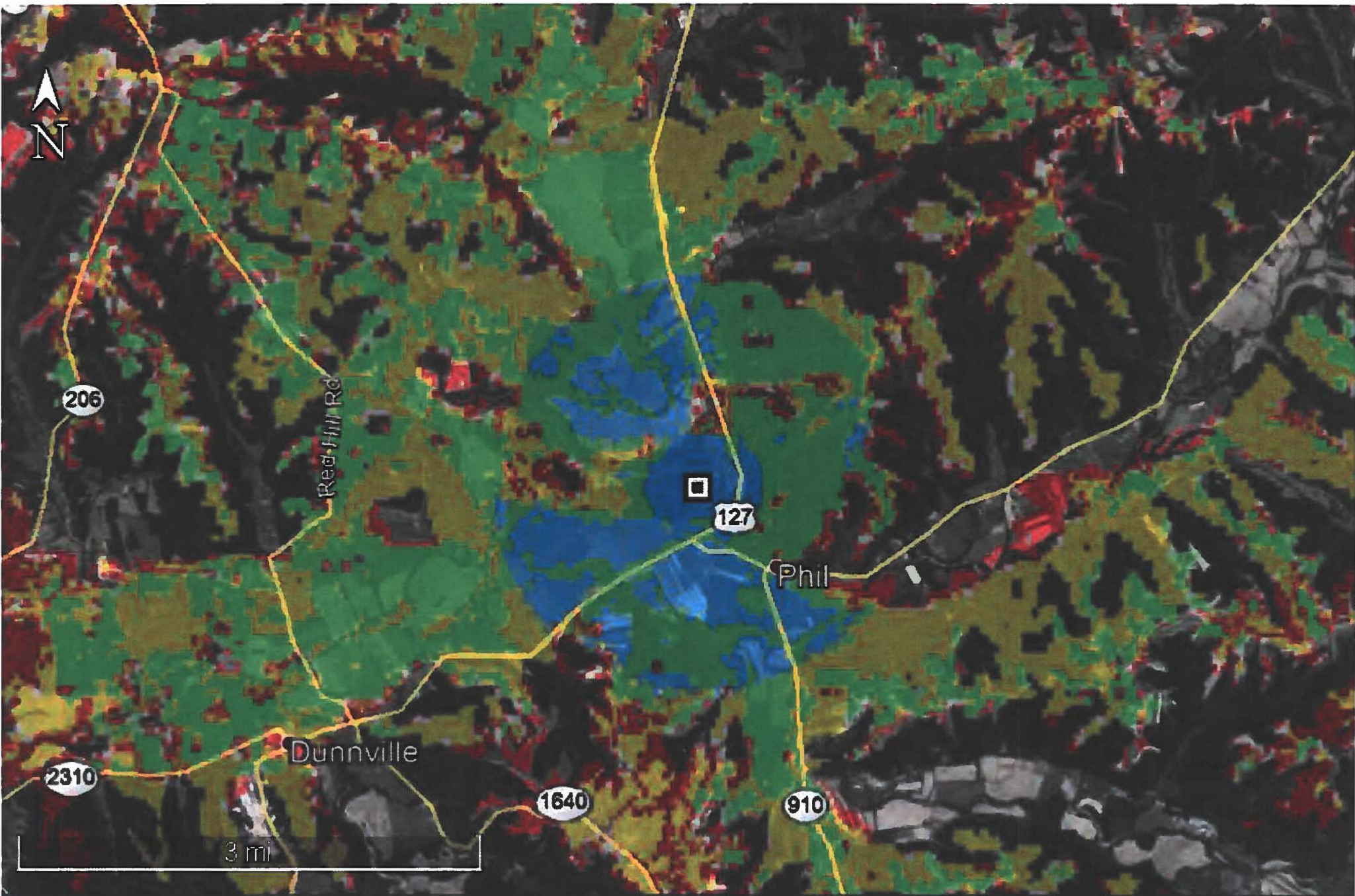
David Cotton, PE
17852 Lizern Ln, Redding, CA, 96003-0775

3. CONCLUSION. Based on the coverage comparison presented above, the existing and proposed sites provide comparable coverage to Dunnville, KY based on their close proximity. 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.



A handwritten signature in black ink, appearing to read "David Cotton, Jr.", written in a cursive style.

David C. Cotton, Jr.
Licensed Professional Engineer
State of Kentucky, 26830
Date: 2019-June-13

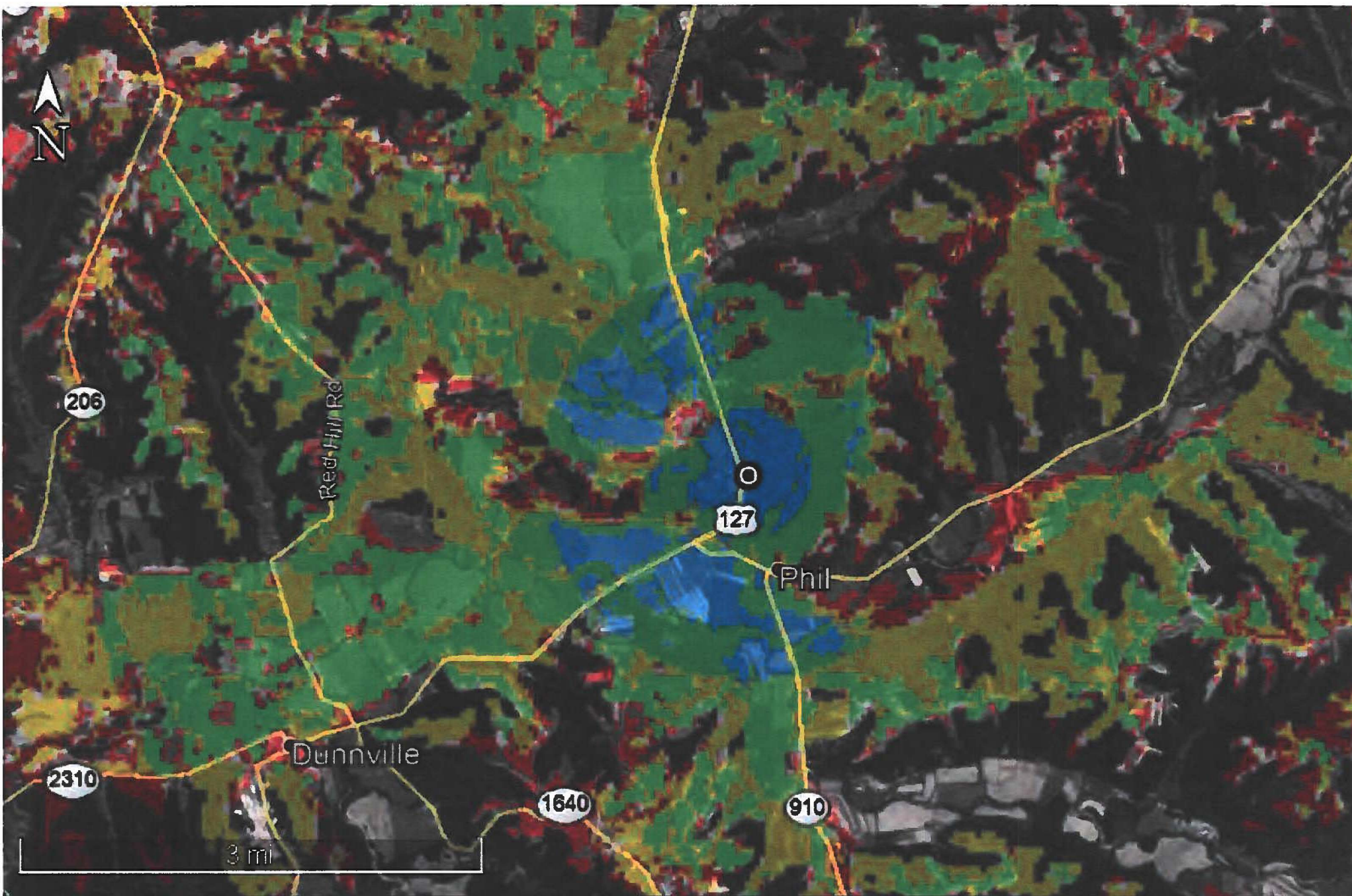


Existing 700 MHz
Coverage – SBA

Site Name: Dunnaville, KY
 Latitude: 37°13'22.08"N
 Longitude: 84°57'39.60"W

Antenna: 15.15 dBi Omni
 Alpha Rad Center (ft): 230
 Azimuth (Deg): 0
 ERP per RS (W): 2.0



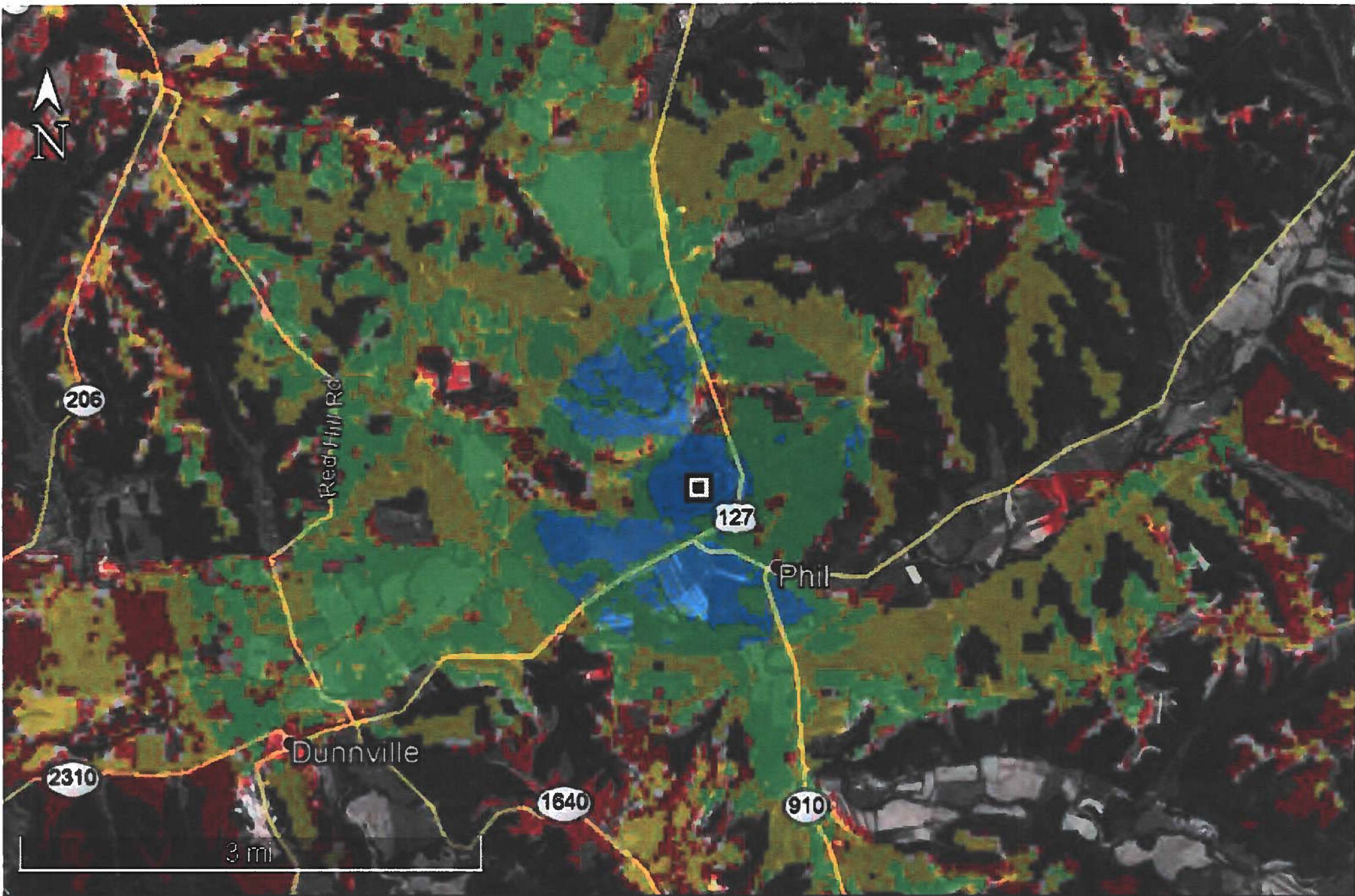


Proposed 700 MHz
Coverage – Applicant

Site Name: Dunnville, KY
 Latitude: 37°13'26.70"N
 Longitude: 84°57'18.90"W

Antenna: 15.15 dBi Omni
 Alpha Rad Center (ft): 237
 Azimuth (Deg): 0
 ERP per RS (W): 2.0



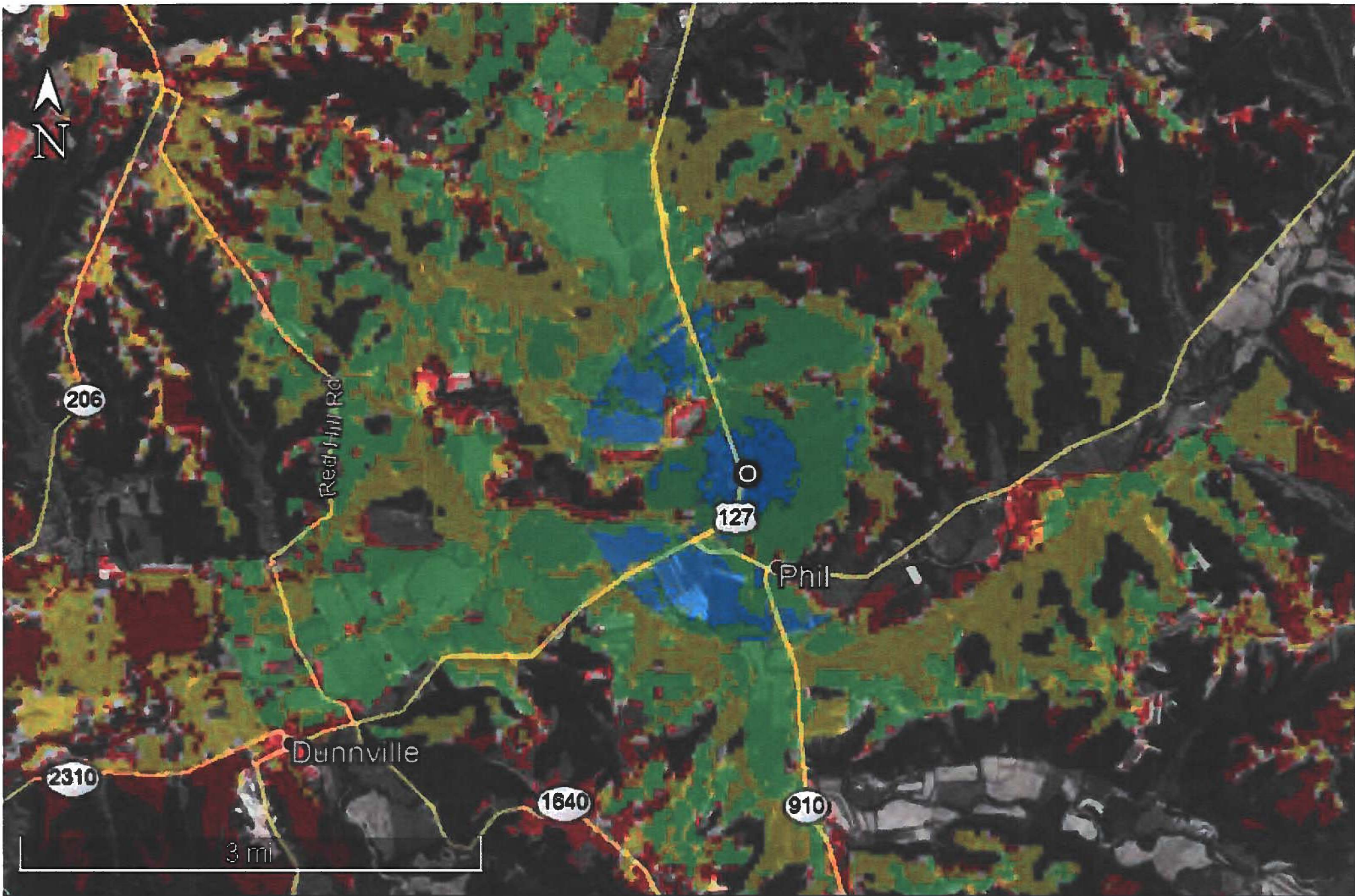


Existing 850 MHz
Coverage – SBA

Site Name: Dunnville, KY
 Latitude: 37°13'22.08"N
 Longitude: 84°57'39.60"W

Antenna: 15.15 dBi Omni
 Alpha Rad Center (ft): 230
 Azimuth (Deg): 0
 ERP per RS (W): 2.0

| RSRP: | | | | |
|------------|-------------|------------|------------|------------|
| < -100 dBm | >= -100 dBm | >= -90 dBm | >= -80 dBm | >= -70 dBm |
| | | | | |



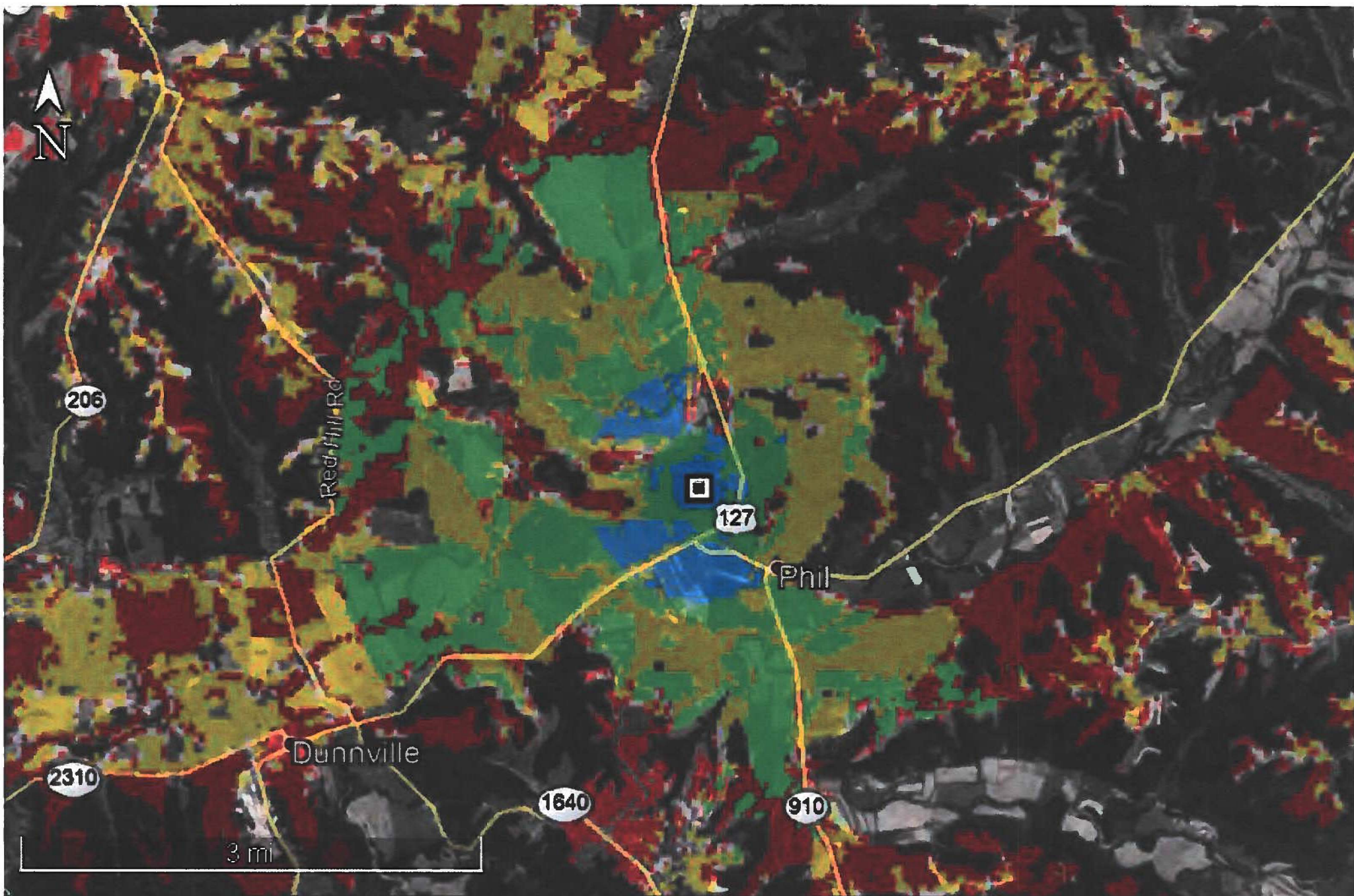
Proposed 850 MHz
Coverage – Applicant

Site Name: Dunnville, KY
 Latitude: 37°13'26.70"N
 Longitude: 84°57'18.90"W

Antenna: 15.15 dBi Omni
 Alpha Rad Center (ft): 237
 Azimuth (Deg): 0
 ERP per RS (W): 2.0

| RSRP: | | | | |
|------------|-------------|------------|------------|------------|
| < -100 dBm | >= -100 dBm | >= -90 dBm | >= -80 dBm | >= -70 dBm |
| | | | | |

eddy

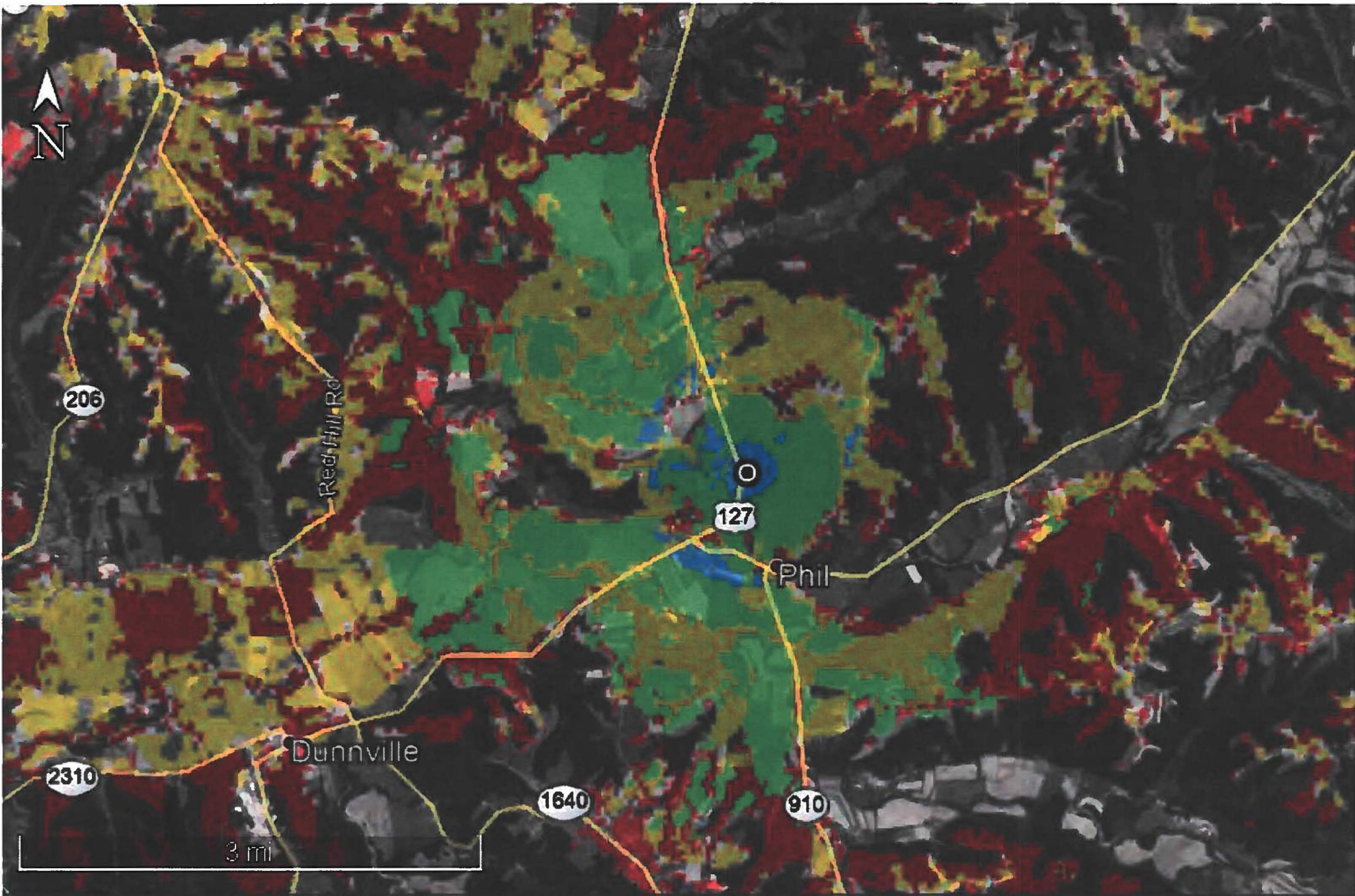


Existing 1900 MHz
Coverage – SBA

Site Name: Dunnville, KY
 Latitude: 37°13'22.08"N
 Longitude: 84°57'39.60"W

Antenna: 17.15 dBi Omni
 Alpha Rad Center (ft): 230
 Azimuth (Deg): 0
 ERP per RS (W): 4.7

| RSRP: | | | | |
|------------|-------------|------------|------------|------------|
| < -100 dBm | >= -100 dBm | >= -90 dBm | >= -80 dBm | >= -70 dBm |
| | | | | |

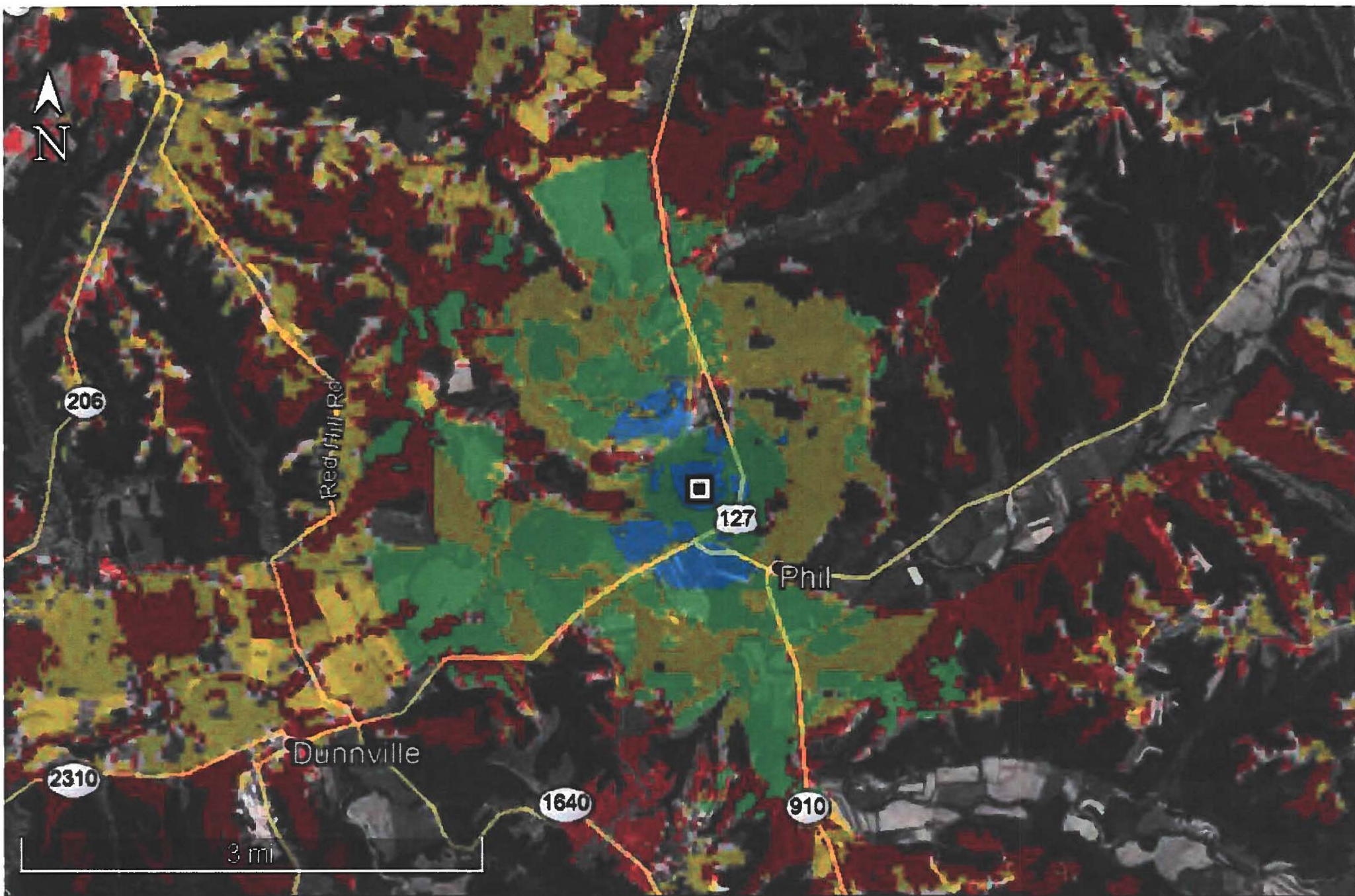


Proposed 1900 MHz
Coverage – Applicant

Site Name: Dunnville, KY
 Latitude: 37°13'26.70"N
 Longitude: 84°57'18.90"W

Antenna: 17.15 dBi Omni
 Alpha Rad Center (ft): 237
 Azimuth (Deg): 0
 ERP per RS (W): 4.7

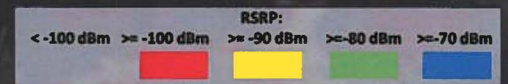


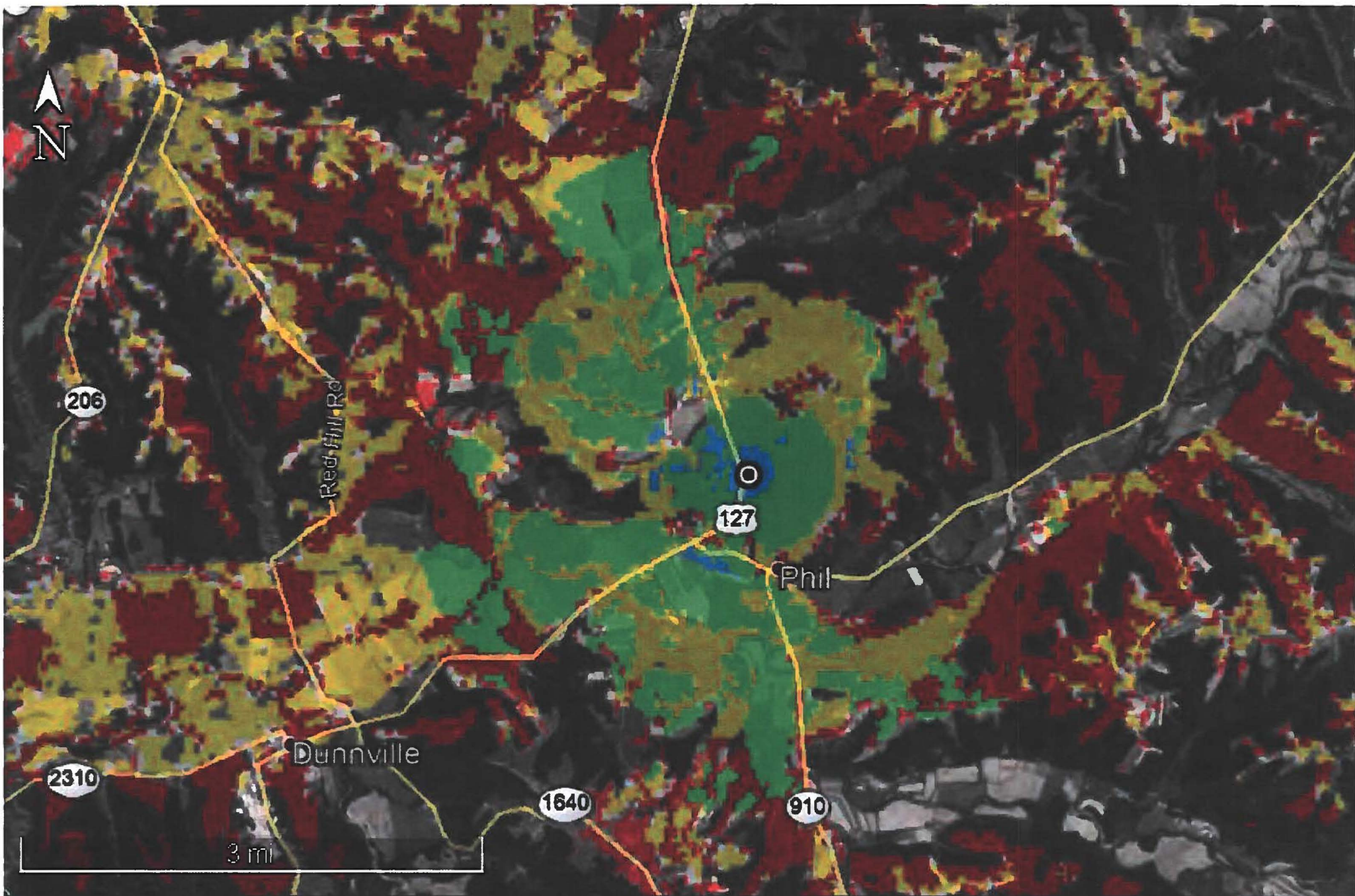


Existing 2100 MHz
Coverage – SBA

Site Name: Dunnville, KY
 Latitude: 37°13'22.08"N
 Longitude: 84°57'39.60"W

Antenna: 17.15 dBi Omni
 Alpha Rad Center (ft): 230
 Azimuth (Deg): 0
 ERP per RS (W): 4.7





Proposed 2100 MHz
Coverage – Applicant

Site Name: Dunnville, KY
 Latitude: 37°13'26.70"N
 Longitude: 84°57'18.90"W

Antenna: 17.15 dBi Omni
 Alpha Rad Center (ft): 237
 Azimuth (Deg): 0
 ERP per RS (W): 4.7

